
A BILL FOR AN ACT

RELATING TO FIREARMS OWNED, POSSESSED, OR CONTROLLED BY PERSONS WHO POSE A SERIOUS RISK OF VIOLENCE OR HARM TO PUBLIC SAFETY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 134, Hawaii Revised Statutes, is
2 amended by adding to part I a new section to be appropriately
3 designated and to read as follows:

4 "§134- Ownership or possession by persons who pose a
5 serious risk of violence or harm to public safety prohibited;
6 penalty; proceedings for the seizure and retention of firearms
7 or ammunition. (a) Any person found by a judge of the State of

8 Hawaii, or of the United States, after a hearing described in
9 subsection (f), to pose a serious risk of violence or harm to
10 public safety that warrants disqualification from firearms
11 ownership, possession, or control, shall be prohibited from
12 owning, possessing, or controlling any firearm or ammunition.

13 (b) A judge may issue a warrant to search for and seize
14 firearms or ammunition if:

15 (1) An ex parte application for the warrant is filed by
16 the attorney general, a deputy attorney general, any
17 county prosecutor or deputy county prosecutor, or the



1 United States Attorney for the District of Hawaii or
2 any Assistant United States Attorney;

3 (2) The ex parte application includes a sworn affidavit
4 from a law enforcement officer of the State of Hawaii
5 or of the United States that:

6 (A) States why the law enforcement officer believes
7 that the person poses a serious risk of violence
8 or harm to public safety and is in possession of
9 a firearm;

10 (B) Describes the law enforcement officer's
11 observations of or interactions with the person
12 who is alleged to pose a serious risk of violence
13 or harm to public safety;

14 (C) Describes any other individual's observations of
15 or interactions with the person, if the law
16 enforcement officer believes that information
17 obtained from that individual is credible and
18 reliable; and

19 (D) Describes the location of the firearm; and

20 (3) The judge determines that probable cause exists to
21 believe that the individual owns, possesses, or



1 controls a firearm or ammunition, and poses a serious
2 risk of violence or harm to public safety.

3 (c) Prior to the execution and return of a warrant issued
4 under this section, the clerk of the court shall not disclose
5 any information pertaining to the application or any affidavits
6 upon which the application was based.

7 (d) The warrant shall be executed within a reasonable
8 period of time, and shall permit the law enforcement officer to
9 enter into and search any place where the firearm or ammunition
10 is located, and to seize any and all firearms and ammunition
11 owned, possessed, or controlled by the person named in the
12 warrant. The warrant shall name the date, time, and location of
13 a hearing to be held pursuant to subsection (f).

14 (e) Not later than forty-eight hours after the warrant is
15 served, the law enforcement officer shall file a return with the
16 court that sets forth the time and date on which the warrant was
17 served, the name and address of the person named in the warrant,
18 and the quantity and identity of any firearm or ammunition
19 seized by the law enforcement officer.

20 (f) Not later than thirty days after issuance of the
21 warrant, the court shall conduct a hearing to determine whether



1 the person named in the warrant poses a serious risk of violence
2 or harm to public safety, and whether the seized firearms and
3 ammunition should be returned to the individual from whom they
4 were seized, or retained by the law enforcement agency having
5 custody of the firearm or ammunition. In making this
6 determination, the court shall consider, among any other
7 pertinent factors:

8 (1) Whether the person is named on the Terrorist Screening
9 Database maintained by the Federal Bureau of
10 Investigation, or any successor or equivalent to the
11 Terrorist Screening Database;

12 (2) Whether the person has made statements in support of
13 any foreign terrorist organization, as designated by
14 the United States Secretary of State;

15 (3) Whether the person has expressed a credible desire to
16 kill or commit other criminal acts of violence against
17 others;

18 (4) Whether the person is a mentally ill person, as
19 defined in section 334-1, or has a significant
20 behavioral, emotional, or mental disorder, as defined



1 by the most current diagnostic manual of the American
2 Psychiatric Association;

3 (5) For a person described in paragraph (4), whether such
4 person's mental illness or disease may be controlled
5 by medication, and whether the person has shown a
6 pattern of not voluntarily and consistently taking
7 such medication; or

8 (6) Whether the person is the subject of other documented,
9 credible evidence that would give rise to a reasonable
10 belief that the individual poses a serious risk of
11 committing unlawful violent conduct.

12 (g) In a hearing conducted under subsection (f), the party
13 that sought the warrant has the burden of proving all material
14 facts by clear and convincing evidence.

15 (h) If the court determines that the party that sought the
16 warrant has proved by clear and convincing evidence that the
17 individual named in the warrant poses a serious risk of violence
18 or harm to public safety, the court shall order the law
19 enforcement agency having custody of the seized firearm or
20 ammunition to retain the firearm. If the court determines that
21 the party has failed to so prove, the court shall order the



1 firearm or ammunition returned to its lawful owner. If the
2 court orders a law enforcement agency to retain a firearm, the
3 law enforcement agency shall retain the firearm until the court
4 orders the firearm returned or otherwise disposed of. If the
5 lawful owner so requests, the court may order the law
6 enforcement agency to sell the firearm at auction, and provide
7 the proceeds of the sale to the lawful owner of the firearm.

8 (i) Any person who has been found to pose a serious risk
9 of violence or harm to public safety after a hearing described
10 in subsection (f) shall be disqualified from ownership,
11 possession, control, or the right to transfer ownership of
12 firearms and ammunition.

13 (j) Any person who owns, possesses, or controls a firearm
14 or ammunition after having been found to pose a serious risk of
15 violence or harm to public safety after a hearing described in
16 subsection (f) shall be guilty of a class B felony."

17 SECTION 2. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun before its effective date.

20 SECTION 3. New statutory material is underscored.

21 SECTION 4. This Act shall take effect upon its approval.



Report Title:

Firearms; Possession; Seizure; Public Safety

Description:

Allows law enforcement to seize and retain firearms or ammunition owned, possessed, or controlled by a person who poses a serious risk of violence or harm to public safety, pursuant to court order. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

