

ACT 87

H.B. NO. 2246

A Bill for an Act Relating to Mental Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Prior to a person purchasing a firearm in the State of Hawaii, a National Instant Criminal Background Check System (NICS) check is completed by the police department in the county in which the firearm is being purchased to determine whether the person is federally prohibited from possessing a firearm. NICS is a federal database to which states are asked to contribute data, in order to identify those who are federally prohibited from possessing a firearm. Recent events have resulted in some states being criticized for failing to provide sufficient information to NICS. This Act addresses Hawaii's noncompliance with NICS information requirements with respect to those with mental illness.

Under the NICS Improvement Amendments Act of 2007, Pub. L. 110-180 (18 U.S.C. §922(d)(4) and (g)(4)), a person "who has been adjudicated as a mental defective or has been committed to any mental institution" may not possess firearms or ammunition. That prohibition is extended to Hawaii law pursu-

ant to section 134-7(a), Hawaii Revised Statutes, which provides: "No person who . . . is a person prohibited from possessing firearms or ammunition under federal law shall own, possess, or control any firearm or ammunition therefor."

Hawaii, however, does not submit involuntary civil commitment information to NICS. Persons who have been involuntarily civilly committed have been found by a court to be mentally ill and to be an imminent danger to themselves or others. Pursuant to Hawaii's confidentiality law on mental health information and records, the State cannot submit civil commitment information to NICS, nor share it with law enforcement agencies responsible for granting firearm permits and registering firearms. This Act amends sections 334-5 and 334-60.5, Hawaii Revised Statutes, to require the courts to forward information about involuntary civil commitment orders to the Hawaii criminal justice data center, which in turn will forward the information to the Federal Bureau of Investigation for inclusion in the NICS database. It also requires the Hawaii criminal justice data center to maintain the information for disclosure to law enforcement for the purpose of firearms permitting and registration.

This Act also addresses a provision of the NICS Improvement Amendments Act of 2007 to implement a relief from disabilities programs. It creates a relief program that would allow someone, who is prohibited under federal law from possessing a firearm because the person was adjudicated a "mental defective" or involuntarily committed to a psychiatric institution, to obtain relief from that federal prohibitor once the person's mental health issues have been addressed and the person is no longer a danger to the public. The person could petition the court and obtain relief by proving to the court that the person will not be likely to act in a manner dangerous to public safety and that the granting of relief would not be contrary to the public interest. With the implementation of a relief program, Hawaii would be eligible for federal funding. There are now twenty-three states with relief programs that have qualified for over \$50,000,000 in federal fiscal years 2009, 2010, 2011, and 2012 to assist them in ensuring that appropriate information is being properly reported to NICS.

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

§134- Relief from federal firearms mental health prohibitor. (a) Any person who is prohibited from shipping, transporting, possessing, or receiving any firearm or ammunition, pursuant to title 18 United States Code section 922(d)(4) or (g)(4), having been adjudicated as a mental defective or having been committed to a mental institution under the laws of this State, may petition the circuit court in the circuit where the adjudication or commitment was made, in a civil proceeding, for relief from the federal firearm prohibitor based on the adjudication or commitment. The attorney general shall represent the State; provided that the attorney general, with the prosecuting agency's consent, may designate the prosecuting attorney for the county in which the petitioner seeks relief to represent the State.

(b) In the civil proceeding, the court shall consider:

- (1) The circumstances regarding the adjudication or commitment from which relief is sought, including the court files of the adjudication or commitment;
- (2) The petitioner's mental health and criminal history records, if any;
- (3) The petitioner's reputation in the community, developed at a minimum through character witness statements, testimony, or other character evidence; and

- (4) Changes in the petitioner's condition or circumstances since the disqualifying events relevant to the relief sought, including medical documentation that the petitioner is no longer adversely affected by the condition that resulted in the petitioner's adjudication or commitment and is not likely to act in a manner dangerous to public safety.
- (c) The court shall grant the petition for relief if the petitioner proves, by clear and convincing evidence, that the petitioner will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. The court shall make written findings of facts and conclusions of law on the issues before it and issue a final order.
- (d) When a court issues an order granting or denying a petition for relief, the court shall forward this information to the Hawaii criminal justice data center, which in turn shall forward this information to the Federal Bureau of Investigation, or its successor agency, for inclusion in the National Instant Criminal Background Check System database. The information shall also be maintained by the Hawaii criminal justice data center for disclosure to and use by law enforcement officials for the purpose of firearms permitting or registration pursuant to chapter 134.
- (e) A person may file a petition for relief under this section no less than two years after the adjudication or commitment from which the relief is sought, and no more frequently than once every three years thereafter.
- (f) For purposes of this section, the terms "adjudicated as a mental defective", "committed to a mental institution", and "mental institution" shall be construed in accordance with title 18 United States Code section 922, title 27 Code of Federal Regulations section 478.11, and judicial interpretations of those provisions.
- (g) Any relief granted pursuant to this section shall not constitute relief from any other federal prohibitors or from any state prohibition pursuant to chapter 134. The State, its officers, and its employees shall not be liable for any damages, attorneys' fees, or costs related to this relief process.
- (h) The petitioner may appeal a denial of relief, and the standard of review on appeal shall be de novo."

SECTION 3. Section 334-5, Hawaii Revised Statutes, is amended to read as follows:

"§334-5 Confidentiality of records. All certificates, applications, records, and reports made for the purposes of this chapter and directly or indirectly identifying a person subject hereto shall be kept confidential and shall not be disclosed by any person except so far as:

- (1) The person identified, or the person's legal guardian, consents;
- (2) Disclosure may be deemed necessary by the director of health or by the administrator of a private psychiatric or special treatment facility to carry out this chapter;
- (3) A court may direct upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make the disclosure would be contrary to the public interest;
- (4) Disclosure may be deemed necessary under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986, Public Law 99-319, to protect and advocate the rights of persons with mental illness who reside in facilities providing treatment or care;
- (5) Disclosure of a person's treatment summary from a previous five-year period from one health care provider to another may be

deemed necessary for the purpose of continued care and treatment of the person, or for health care operations; provided that the health care provider seeking disclosure makes reasonable efforts to obtain advance consent from the person; [øf]

- (6) Disclosures are made between the person's health care provider and payor to obtain reimbursement for services rendered to the person; provided that disclosure shall be made only if the provider informs the person that a reimbursement claim will be made to the person's payor, the person is afforded an opportunity to pay the reimbursement directly, and the person does not pay[-]; or
- (7) Disclosures are made by a court or the Hawaii criminal justice data center of orders of involuntary civil commitment issued pursuant to section 334-60.5 for the purpose of firearms permitting or registration pursuant to chapter 134.

Nothing in this section shall preclude the application of more restrictive rules of confidentiality set forth for records covered by Title 42, Part 2, Code of Federal Regulations, relating to the confidentiality of alcohol and drug abuse patient records. For the purposes of this section, "facilities" shall include but not be limited to hospitals, nursing homes, community facilities for mentally ill individuals, boarding homes, and care homes.

Nothing in this section shall preclude disclosure, upon proper inquiry, of any information relating to a particular patient and not clearly adverse to the interests of the patient, to the patient, the patient's family, legal guardian, or relatives, nor, except as provided above, affect the application of any other rule or statute of confidentiality. The use of the information disclosed shall be limited to the purpose for which the information was furnished."

SECTION 4. Section 334-60.5, Hawaii Revised Statutes, is amended by amending subsection (j) to read as follows:

"(j) If the court finds that the criteria for involuntary hospitalization under section 334-60.2(1) has been met beyond a reasonable doubt and that the criteria under sections 334-60.2(2) and 334-60.2(3) have been met by clear and convincing evidence, the court may issue an order to any law enforcement officer to deliver the subject to a facility that has agreed to admit the subject as an involuntary patient, or if the subject is already a patient in a psychiatric facility, authorize the facility to retain the patient for treatment for a period of ninety days unless sooner discharged. The court may also authorize the involuntary administration of medication, where the subject has an existing order for assisted community treatment, issued pursuant to part VIII of this chapter, relating to assisted community treatment, and in accordance with the treatment prescribed by that prior order. An order of commitment shall specify which of those persons served with notice pursuant to section 334-60.4, together with such other persons as the court may designate, shall be entitled to receive any subsequent notice of intent to discharge, transfer, or recommit. The court shall forward to the Hawaii criminal justice data center all orders of involuntary civil commitment or information from all orders of involuntary civil commitment, as requested by the Hawaii criminal justice data center, which in turn shall forward the information to the Federal Bureau of Investigation, or its successor agency, for inclusion in the National Instant Criminal Background Check System database. The orders or information shall also be maintained by the Hawaii criminal justice data center for disclosure to and use by law enforcement officials for the purpose of firearms permitting or registration pursuant to chapter 134. This subsection shall apply to all involuntary civil commitments without regard to the date of the involuntary civil commitment."

SECTION 5. Statutory material to be repealed is bracketed and stricken.
New statutory material is underscored.¹

SECTION 6. This Act shall take effect on July 1, 2014.
(Approved June 16, 2014.)

Note

1. Edited pursuant to HRS §23G-16.5.