

ACT 19

S.B. NO. 2813

A Bill for an Act Relating to Guardianship.

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 an area that Hawaii is currently not reporting and closes the gap in being compliant with NICS reporting requirements.

Under the NICS Improvement Amendments Act of 2007, Public Law 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. This prohibited category includes those who have been adjudicated as not guilty by reason of insanity, determined to be incompetent to stand trial, involuntarily committed to a mental institution, or placed in legal guardianship status as an adult due to mental incapacitation.

Hawaii currently does not submit information on those that have been placed in legal guardianship status to NICS, nor does it share the information with local law enforcement agencies responsible for granting firearm permits and registering firearms. This Act amends section 560:5-311, Hawaii Revised Statutes, to require the courts to forward information about adult guardianship appointment 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.

SECTION 2. Section 560:5-311, Hawaii Revised Statutes, is amended to read as follows:

“§560:5-311 Findings; order of appointment. (a) The court may:

(1) Appoint a limited or unlimited guardian for a respondent only if it finds by clear and convincing evidence that:

(A) The respondent is an incapacitated person; and

(B) The respondent’s identified needs cannot be met by less restrictive means, including use of appropriate and reasonably available technological assistance; or

(2) With appropriate findings, treat the petition as one for a protective order under section 560:5-401, enter any other appropriate order, or dismiss the proceeding.

(b) The court, whenever feasible, shall grant to a guardian only those powers necessitated by the ward’s limitations and demonstrated needs and make appointive and other orders that will encourage the development of the ward’s maximum self-reliance and independence.

(c) Within fourteen days after an appointment, a guardian shall send or deliver to the ward and to all other persons given notice of the hearing on the petition a copy of the order of appointment, together with a notice of the right to request termination or modification; provided that, for good cause shown, the court may extend time for the order and notice to be sent or delivered to the ward, or otherwise modify or waive that requirement.

(d) The court shall forward to the Hawaii criminal justice data center all orders of appointment or information from all orders of appointment 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 of appointment 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 orders appointing a guardian of an incapacitated person without regard to the date of the appointment.”

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect on January 1, 2017.

(Approved April 26, 2016.)