



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016**

ON THE FOLLOWING MEASURE:

S.B. NO. 2813, S.D. 1, RELATING TO GUARDIANSHIP.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, March 29, 2016

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Debbie L. Tanakaya, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General supports this bill related to firearm safety and our State's compliance with mental-health-related provisions of the federal National Instant Criminal Background Check System (NICS).

The purpose of this bill is to allow for the information from adult guardianship appointment orders to be reported to the NICS. It addresses an area that Hawai'i is currently not reporting and closes the gap in being compliant with the NICS reporting requirements.

NICS is a federal database to which states are asked to contribute data, in order to identify those who are prohibited from possessing a firearm under federal law. If someone wants to purchase a firearm, anywhere in the United States, an instant NICS check can be done to determine whether the person is prohibited from possessing a firearm under federal law.

According to the NICS Improvement Amendments Act of 2007, Public Law 110-180 (NIAA) (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 unfit to stand trial, involuntarily committed to a mental institution, or "lacks the mental capacity to contract or manage his own affairs." 27 C.F.R. §478.11. In Hawai'i, a legal guardianship may be ordered for an individual who is an "incapacitated person," and that person's needs cannot be met by any other less restrictive means. Section 560:5-311(a)(1), Hawaii Revised Statutes (HRS). The term "incapacitated person" is defined in section 560:5-102, HRS, as "an individual who, for reasons other than being a minor, is unable to receive and evaluate information or make or communicate decisions to such an

extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance." Clearly, those who have court orders for a legal guardianship under Hawai'i law fall within the federal definition of being adjudicated as a mental defective.

Hawai'i currently does not share information on those that have been placed in legal guardianship status to the NICS, nor does it share the information with our local law enforcement agencies responsible for granting firearm permits and registering firearms. This bill amends section 560:5-311, HRS, to require the courts to forward information about adult guardianship appointment orders to the Hawaii Criminal Justice Data Center (HCJDC), which in turn will forward the information to be included in the NICS database. It also requires the HCJDC to maintain the information for disclosure to law enforcement for the purpose of firearms permitting and registration.

This measure will strengthen Hawai'i's participation in NICS by allowing additional information to be shared about individuals who are not capable of safely owning or using a firearm, and it will enhance public safety and the safety of those appointed guardianships because those issuing firearms permits and registrations will have access to this information, and they will be able to deny a firearms license those who are mentally incapacitated. We urge you to pass this bill. Thank you for the opportunity to testify.