

JAN 27 2016

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# A BILL FOR AN ACT

RELATING TO GUARDIANSHIP.

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

1           SECTION 1. Prior to a person purchasing a firearm in the  
2 State of Hawaii, a National Instant Criminal Background Check  
3 System (NICS) check is completed by the police department in the  
4 county in which the firearm is being purchased to determine  
5 whether the person is federally prohibited from possessing a  
6 firearm. NICS is a federal database to which states are asked  
7 to contribute data, in order to identify those who are federally  
8 prohibited from possessing a firearm. Recent events have  
9 resulted in some states being criticized for failing to provide  
10 sufficient information to NICS. This Act addresses an area that  
11 Hawaii is currently not reporting and closes the gap in being  
12 compliant with NICS reporting requirements.

13           Under the NICS Improvement Amendments Act of 2007, Pub. L.  
14 110-180 (18 U.S.C. §922(d)(4) and (g)(4)), a person "who has  
15 been adjudicated as a mental defective or has been committed to  
16 any mental institution" may not possess firearms or ammunition.  
17 This prohibited category includes those who have been  
18 adjudicated as not guilty by reason of insanity, determined to

1 be incompetent to stand trial, involuntarily committed to a  
2 mental institution, or placed in legal guardianship status as an  
3 adult due to mental incapacitation.

4 Hawaii currently does not submit information on those that  
5 have been placed in legal guardianship status to NICS, nor does  
6 it share the information with our local law enforcement agencies  
7 responsible for granting firearm permits and registering  
8 firearms. This Act amends section 560:5-311, Hawaii Revised  
9 Statutes, to require the courts to forward information about  
10 adult guardianship appointment orders to the Hawaii criminal  
11 justice data center, which in turn will forward the information  
12 to the Federal Bureau of Investigation for inclusion in the NICS  
13 database. It also requires the Hawaii criminal justice data  
14 center to maintain the information for disclosure to law  
15 enforcement for the purpose of firearms permitting and  
16 registration.

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

19 **"§560:5-311 Findings; order of appointment.** (a) The  
20 court may:

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

1 (A) The respondent is an incapacitated person; and

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

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

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

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



**Report Title:**

Guardianship; Gun Control

**Description:**

Requires the courts to provide information relating to adult guardianships to the Hawaii criminal justice data center to disclose to the Federal Bureau of Investigation National Instant Criminal Background Check System database for gun control purposes.

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

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO GUARDIANSHIP.

PURPOSE: The purpose of this bill is to allow for the information from adult guardianship appointment orders to be reported to the National Instant Criminal Background Check System (NICS).

MEANS: Amend section 560:5-311, Hawaii Revised Statutes.

JUSTIFICATION: There is a need to ensure that those who are mentally incapacitated do not have the opportunity to possess a firearm. NICS provides the resources to sellers of firearms and law enforcement to help identify those who are prohibited from owning a firearm by federal law. NICS, however, is only as good as the information states provide. Because of our State's law, neither a firearms seller nor the police department will ever know if a person was appointed a guardian as an adult. This bill would fix that by allowing this information to be shared with NICS. The information will also be disclosed to local law enforcement for the purpose of firearms permitting and registration.

Impact on the public: Possible increase in safety from firearm violence.

Impact on the department and other agencies: Positive because there are federal moneys available to help ensure that this information is being properly reported to NICS.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: None.

OTHER AFFECTED  
AGENCIES: The Judiciary; county police departments

EFFECTIVE DATE: January 1, 2017.