

# S.B. NO. 898

JAN 25 2017

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

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

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

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1 county prosecutor or deputy county prosecutor, or the  
2 United States Attorney for the District of Hawaii or  
3 any Assistant United States Attorney;

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

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

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

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

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

21 (3) The judge determines that probable cause exists to  
22 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 court shall not disclose any  
5 information pertaining to the application or any affidavits upon  
6 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 such firearm or ammunition  
10 are 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 firearms 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  
22 the person named in the warrant poses a serious risk of violence  
23 or harm to public safety, and whether the seized firearms and

1 ammunition should be returned to the individual from whom they  
2 were seized, or retained by the law enforcement agency having  
3 custody of the firearm or ammunition. In making this  
4 determination, the court shall consider, among any other  
5 pertinent factors:

- 6 (1) Whether the person is named on the Terrorist Screening  
7 Database maintained by the Federal Bureau of  
8 Investigation, or any successor or equivalent to the  
9 Terrorist Screening Database;
- 10 (2) Whether the person has made statements in support of  
11 any Foreign Terrorist Organization, as designated by  
12 the United States Secretary of State;
- 13 (3) Whether the person has expressed a credible desire to  
14 kill or commit other criminal acts of violence against  
15 others;
- 16 (4) Whether the person is a "mentally ill person" as  
17 defined in section 334-1, or has a significant  
18 behavioral, emotional, or mental disorder, as defined  
19 by the most current diagnostic manual of the American  
20 Psychiatric Association;
- 21 (5) For a person described in paragraph (4), whether such  
22 person's mental illness or disease may be controlled  
23 by medication, and whether the person has shown a

1 pattern of not voluntarily and consistently taking  
2 such medication; or

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

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

10 (h) If the court determines that the party that sought the  
11 warrant has proved by clear and convincing evidence that the  
12 individual named in the warrant poses a serious risk of violence  
13 or harm to public safety, the court shall order the law  
14 enforcement agency having custody of the seized firearm or  
15 ammunition to retain the firearm. If the court determines that  
16 the party has failed to so prove, the court shall order the  
17 firearm or ammunition returned to the lawful owner of the  
18 firearm. If the court orders a law enforcement agency to retain  
19 a firearm, the law enforcement agency shall retain the firearm  
20 until the court orders the firearm returned or otherwise  
21 disposed of. If the lawful owner so requests, the court may  
22 order the law enforcement agency to sell the firearm at auction,

1 and provide the proceeds of the sale to the lawful owner of the  
2 firearm.

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

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

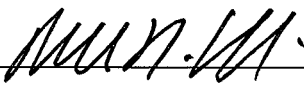
12 SECTION 2. New statutory material is underscored.

13 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY:



16

BY REQUEST

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**Report Title:**

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

**Description:**

Upon application 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.

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

PURPOSE: Allow 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.

MEANS: Add a new section to chapter 134, Hawaii Revised Statutes.

JUSTIFICATION: Hawaii law currently allows people in certain circumstances to be disqualified from gun ownership.

According to section 134-7, Hawaii Revised Statutes (HRS), this includes: (a) fugitives from justice; (b) persons under indictment for, or who have waived indictment for, or who have been bound over to the circuit court for, or have been convicted of having committed a felony, or any crime of violence, or an illegal sale of any drug; (c) persons who are under treatment or counseling for addiction to, abuse of, or dependence upon any dangerous, harmful, or detrimental drug, intoxicating compound as defined in section 712-1240, HRS, persons who have been acquitted of a crime on the grounds of mental disease, disorder, or defect pursuant to section 704-411, HRS, persons who have been diagnosed as having a significant behavioral, emotional, or mental disorders as defined by the most current diagnostic manual of the American Psychiatric Association or for treatment for organic brain syndromes; (d) persons who are



less than twenty-five years old and have been adjudicated by the family court to have committed a felony, two or more crimes of violence, or an illegal sale of any drug; (e) minors who have been under treatment for addiction to any dangerous, harmful, or detrimental drug, intoxicating compound as defined in section 712-1240, HRS, or intoxicating liquor, are fugitives from justice; or have been determined not to have been responsible for a criminal act or has been committed to any institution on account of a mental disease, disorder, or defect; and (f) persons who have been restrained pursuant to an order of any court from contacting, threatening, or physically abusing any person.

Sometimes law enforcement becomes aware of a person, however, who poses a serious risk of violence or harm to public safety, and who currently possesses firearms, who nevertheless does not fit into one of these existing categories. This may include persons named on the Terrorist Screening Database maintained by the Federal Bureau of Investigation or persons who have made troubling or disturbing statements in support of Foreign Terrorist Organizations, as designated by the United States Secretary of State, or who have expressed a credible desire to kill or harm others, but without the factors ordinarily required to obtain a temporary restraining order. When that occurs law enforcement is currently limited in what it can do to remove the firearms, even when it recognizes such a serious risk of harm or violence.

This bill would allow law enforcement, upon a showing of clear and convincing evidence and upon a court order, to remove the firearms from that person and disqualify them from ownership.

Impact on the public: Decreased likelihood of mass shooting incidents.

Impact on the department and other agencies:  
This bill will allow the appropriate county, state, and federal officers, upon a showing of clear and convincing evidence and pursuant to a court order, to remove firearms from someone who poses a serious risk of violence or harm to public safety.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: None.

OTHER AFFECTED  
AGENCIES: County Police, Department of Public Safety.

EFFECTIVE DATE: Upon approval.