

# ASSEMBLY, No. 4301

## STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED NOVEMBER 30, 2009

**Sponsored by:**

**Assemblyman GORDON M. JOHNSON**

**District 37 (Bergen)**

**Assemblywoman L. GRACE SPENCER**

**District 29 (Essex and Union)**

**SYNOPSIS**

Brings State law into conformity with federal law concerning sharing of certain mental health information relating to the purchase and possession of firearms.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 12/4/2009)

1 AN ACT concerning compliance with the federal NICS  
2 Improvement Amendments Act of 2007, Pub. L. 110-180, and  
3 amending P.L.1953, c.268 and P.L.1965, c.59.  
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*  
7

8 1. Section 1 of P.L.1953, c.268 (C.30:4-80.8) is amended to  
9 read as follows:

10 1. Any person who has been, or shall be, committed to any  
11 institution or facility providing mental health services, or has been  
12 determined to be a danger to himself, or determined to lack the  
13 mental capacity to contract or manage his own affairs by reason of  
14 mental illness, incompetency, condition, or disease, by order of any  
15 court or by voluntary determination or voluntary commitment[, to  
16 any institution or facility providing mental health services] and  
17 who was, or shall be, discharged from such institution or facility as  
18 recovered, or whose illness upon discharge, or subsequent [thereto]  
19 to discharge or determination, is substantially improved or in  
20 substantial remission, may apply to the court by which such  
21 commitment was made, or, if voluntarily determined to lack the  
22 mental capacity to contract or manage his own affairs by reason of  
23 mental illness, incompetency, condition, or disease or voluntarily  
24 committed, to the Superior Court by verified petition setting forth  
25 the facts and praying for the relief provided for in this act.

26 (cf: P.L.1991, c.91, s.317)  
27

28 2. Section 2 of P.L.1953, c.268 (C.30:4-80.9) is amended to  
29 read as follows:

30 2. Upon reading and filing such petition, the court shall by  
31 order fix a time, not less than 10 nor more than 30 days thereafter,  
32 for the hearing of such matter, a copy of which order shall be  
33 served by the petitioner upon the county [adjuster] counsel of the  
34 county and upon the medical director of the institution or facility to  
35 which such person was committed or upon the party or parties who  
36 applied for the determination that the person be found to be a  
37 danger to himself or determined to lack the mental capacity to  
38 contract or manage his own affairs by reason of mental illness,  
39 incompetency, condition, or disease, and at the time so appointed,  
40 or to which it may be adjourned, the court shall hear [the matter  
41 and if no reason appears to the contrary] evidence as to: the  
42 circumstances of why the commitment or determination was  
43 imposed upon the petitioner, the petitioner's mental health record  
44 and criminal history, and the petitioner's reputation in the  
45 community. If the court finds that the applicant will not likely act

**EXPLANATION** – Matter enclosed in bold-faced brackets [thus] in the above bill is  
not enacted and is intended to be omitted in the law.

**Matter underlined thus is new matter.**

1 in a manner dangerous to the public safety and finds that the grant  
2 of relief is not contrary to the public interest, the court shall grant  
3 such relief for which the petitioner has applied and, an order [shall  
4 be made] directing the clerk of the court to expunge such  
5 commitment from the records of the court.

6 (cf: P.L.1976, c.108, s.2)

7

8 3. Section 3 of P.L.1953, c.268 (C.30:4-80.10) is amended to  
9 read as follows:

10 3. This act shall not apply to any case in which the  
11 commitment resulted from a determination that the defendant was  
12 not guilty of a crime[, ] because of insanity or from a determination  
13 that [he] the defendant was incompetent to stand trial, except for  
14 the purpose of applying to the court pursuant to the NICS  
15 Improvement Amendments Act of 2007, Pub. L. 110-180, for relief  
16 from a federal firearms disability to possess a firearm imposed  
17 under 18 U.S.C. ss. 922(d)(4) and (g)(4).

18 (cf: P.L.1976, c.108, s.3)

19

20 4. Section 11 of P.L.1965, c.59 (C.30:4-24.3) is amended to  
21 read as follows:

22 11. All certificates, applications, records, and reports made  
23 pursuant to the provisions of Title 30 of the Revised Statutes and  
24 directly or indirectly identifying any individual presently or  
25 formerly receiving services in a noncorrectional institution under  
26 Title 30 of the Revised Statutes, or for whom services in a  
27 noncorrectional institution shall be sought under this act shall be  
28 kept confidential and shall not be disclosed by any person, except  
29 insofar as:

30 a. the individual identified or his legal guardian, if any, or, if  
31 he is a minor, his parent or legal guardian, shall consent; or

32 b. disclosure may be necessary to carry out any of the  
33 provisions of this act or of article 9 of chapter 82 of Title 2A of the  
34 New Jersey Statutes; or

35 c. a court may direct, upon its determination that disclosure is  
36 necessary for the conduct of proceedings before it and that failure to  
37 make such disclosure would be contrary to the public interest; or

38 d. disclosure may be necessary to conduct an investigation into  
39 the financial ability to pay of any person receiving services or his  
40 chargeable relatives pursuant to the provisions of R.S.30:1-12.

41 e. disclosure to comply with the data reporting provisions of  
42 the NICS Improvement Amendments Act of 2007, Pub. L. 110-180,  
43 and the Brady Handgun Violence Prevention Act of 1993, Pub. L.  
44 103-159.

45 Nothing in this section shall preclude disclosure, upon proper  
46 inquiry, of information as to a patient's current medical condition to  
47 any relative or friend or to the patient's personal physician or

1 attorney if it appears that the information is to be used directly or  
2 indirectly for the benefit of the patient.

3 Nothing in this section shall preclude the professional staff of a  
4 community agency under contract with the Division of Mental  
5 Health Services in the Department of Human Services, or of a  
6 screening service, short-term care or psychiatric facility as those  
7 facilities are defined in section 2 of P.L.1987, c.116 (C.30:4-27.2)  
8 from disclosing information that is relevant to a patient's current  
9 treatment to the staff of another such agency.  
10 (cf: P.L.1995, c.155, s.3)

11

12 5. This act shall take effect immediately.

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#### STATEMENT

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17 The purpose of this bill is to bring New Jersey law into  
18 conformance with changes to the Brady Handgun Violence  
19 Protection Act of 1993, Pub. 103-159 (Brady Act), which the  
20 federal government adopted in response to the Virginia Tech  
21 tragedy in April 2007.

22 The Virginia Tech shooter was able to purchase the firearms  
23 used in the shootings because information concerning his mental  
24 health history, which would have prohibited him from purchasing a  
25 firearm, had not been entered into the National Instant Criminal  
26 Background Check System (NICS). To avoid similar tragedies in  
27 the future, the Brady Act was amended to improve the NICS  
28 database by enhancing the law's requirements that federal  
29 departments and agencies provide relevant information to NICS and  
30 create grant incentives for the states to improve their information  
31 sharing with NICS concerning individuals prohibited from  
32 receiving and possessing firearms. States which fail to comply are  
33 subject to penalties.

34 While New Jersey complies with the federal law's requirements  
35 concerning the reporting of criminal convictions and indictments, it  
36 does not have a comprehensive electronic system for identifying  
37 and reporting information to the federal government concerning  
38 individuals who have been adjudicated as mental defectives or  
39 committed to mental institutions.

40 On June 22, 2009, the Administrative Office of the Courts  
41 applied for a federal grant to improve the recording, automation,  
42 and transmittal of State mental health adjudications. The program  
43 design would provide this mental health information to both the  
44 New Jersey State Police and NICS.

45 New Jersey's grant application was denied by the U.S. Attorney  
46 General on October 14, 2009 because State law: (1) does not  
47 adequately afford individuals adjudicated as mental defectives the  
48 right to apply for an expungement; (2) does not require State courts

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1 to hear any of the evidence expressly required by federal law in  
2 such expungement cases; (3) contains directive language and  
3 phraseology concerning the factors to be considered by the court in  
4 reviewing petitions for expungement that are too vague to comply  
5 with the new federal law; and (4) does not grant the federal  
6 government access to State mental health records.

7 The provisions of this bill amend the appropriate sections of  
8 State law to address the concerns raised by the U.S Attorney  
9 General. With their adoption, New Jersey will become compliant  
10 with the provisions of the NICS Improvement Act of 2007 and be  
11 qualified to receive federal grant moneys to assist in the  
12 implementation of those changes.