

**SENATE, No. 3076**

**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

INTRODUCED NOVEMBER 23, 2009

**Sponsored by:**  
**Senator JOHN A. GIRGENTI**  
**District 35 (Bergen and Passaic)**

**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.



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2

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

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

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

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

**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.**

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1 petitioner's reputation in the community. If the court finds that the  
2 applicant will not likely act in a manner dangerous to the public  
3 safety and finds that the grant of relief is not contrary to the public  
4 interest, the court shall grant such relief for which the petitioner has  
5 applied and, an order [shall be made] directing the clerk of the  
6 court to expunge such commitment from the records of the court.  
7 (cf: P.L.1976, c.108, s.2)

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

11 3. This act shall not apply to any case in which the commitment  
12 resulted from a determination that the defendant was not guilty of a  
13 crime[, ] because of insanity or from a determination that [he] the  
14 defendant was incompetent to stand trial, except for the purpose of  
15 applying to the court pursuant to the NICS Improvement  
16 Amendments Act of 2007, Pub.L.110-180, for relief from a federal  
17 firearms disability to possess a firearm imposed under 18 U.S.C. ss.  
18 922(d)(4) and (g)(4).  
19 (cf: P.L.1976, c.108, s.3)

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

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

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

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

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

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

42 e. disclosure to comply with the data reporting provisions of the  
43 NICS Improvement Amendments Act of 2007, Pub. L. 110-180, and  
44 the Brady Handgun Violence Prevention Act of 1993, Pub. L. 103-  
45 159.

46 Nothing in this section shall preclude disclosure, upon proper  
47 inquiry, of information as to a patient's current medical condition to  
48 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.