

# SENATE, No. 2360

## STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED SEPTEMBER 15, 2014

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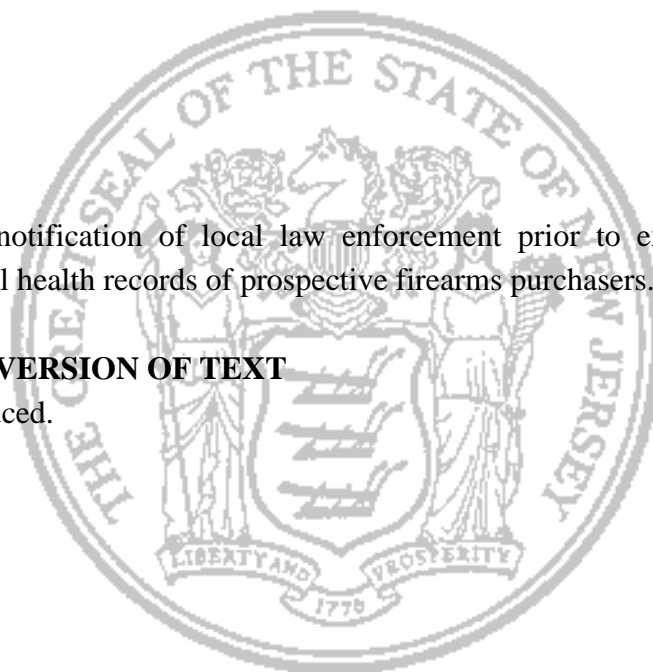
**Senators Bateman, Greenstein, Beck, Assemblyman Singleton and  
Assemblywoman Lampitt**

**SYNOPSIS**

Requires notification of local law enforcement prior to expungement of certain mental health records of prospective firearms purchasers.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 10/20/2015)**

1 AN ACT concerning expungement of certain mental health records  
2 and amending P.L.1953, c.268 and P.L.1965, c.59.

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

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

9 2. a. Upon reading and filing **[such]** the petition, the court  
10 shall by order fix a time, not less than 10 nor more than 30 days  
11 thereafter, for the hearing of **[such]** the matter**[,]** and a copy of  
12 **[which]** the order shall be served by the petitioner upon the county  
13 adjuster of the county and upon the medical director of the  
14 institution or facility to which such person was committed or upon  
15 the party or parties who applied for the determination that the  
16 person be found to be a danger to himself, others, or property, or  
17 determined to be an incapacitated individual as defined in  
18 N.J.S.3B:1-2**[, and at]** .

19 A petitioner who is seeking relief from a disability barring the  
20 receipt, purchase, possession, or other acquisition of a firearm  
21 under the NICS Improvement Amendments Act of 2007,  
22 Pub.L.110-180 and the Brady Handgun Violence Prevention Act of  
23 1993, Pub.L.103-159 or under N.J.S.2C:58-3 also shall serve a copy  
24 of the order upon the following persons:

25 (1) if the petitioner is a resident of New Jersey, the Attorney  
26 General; the county prosecutor of the county in which the petitioner  
27 was committed; the chief of police of the municipality in which the  
28 petitioner resides, or the Superintendent of State Police if there is  
29 no police force; and the chief of police of the municipality in which  
30 the petitioner resided at the time of commitment or the  
31 superintendent if there is no police force; or

32 (2) if the petitioner is not a resident of New Jersey, the Attorney  
33 General of the state and the chief of police of the county or  
34 municipality where the petitioner currently resides.

35 b. At the time so appointed, or to which it may be adjourned, the  
36 court shall hear evidence as to: the circumstances of why the  
37 commitment or determination was imposed upon the petitioner, the  
38 petitioner's mental health record and criminal history, and the  
39 petitioner's reputation in the community. If the court finds that the  
40 petitioner will not likely act in a manner dangerous to the public  
41 safety and finds that the grant of relief is not contrary to the public  
42 interest, the court shall grant such relief for which the petitioner has  
43 applied and, an order directing the clerk of the court to expunge  
44 such commitment from the records of the court.

45 (cf: P.L.2009, c.183, s.2)

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

3       11. All certificates, applications, records, and reports made  
4 pursuant to the provisions of Title 30 of the Revised Statutes and  
5 directly or indirectly identifying any individual **【presently】**  
6 currently or formerly receiving services in a noncorrectional  
7 institution under Title 30 of the Revised Statutes, or for whom  
8 services in a noncorrectional institution shall be sought under this  
9 act shall be kept confidential and shall not be disclosed by any  
10 person, except insofar as:

11       a. the individual identified or his legal guardian, if any, or, if  
12 he is a minor, his parent or legal guardian, shall consent; **【or】**

13       b. disclosure may be necessary to carry out any of the  
14 provisions of this act or of article 9 of chapter 82 of Title 2A of the  
15 New Jersey Statutes; **【or】**

16       c. a court may direct, upon its determination that disclosure is  
17 necessary for the conduct of proceedings before it and that failure to  
18 make such disclosure would be contrary to the public interest; **【or】**

19       d. disclosure may be necessary to conduct an investigation into  
20 the financial ability to pay of any person receiving services or his  
21 chargeable relatives pursuant to the provisions of R.S.30:1-12**【.】** ;

22       e. disclosure is needed to comply with the data reporting  
23 provisions of the NICS Improvement Amendments Act of 2007,  
24 Pub. L. 110-180, and the Brady Handgun Violence Prevention Act  
25 of 1993, Pub. L. 103-159**【.】** ; or

26       f. disclosure may be necessary in connection with the review  
27 of an application for expungement pursuant to P.L.1953, c.268  
28 (C:30:4-80.8 et seq.) seeking relief from a disability barring the  
29 receipt, purchase, possession, or other acquisition of a firearm under  
30 federal or State law, except that these records shall not be disclosed  
31 to a third party or used for any purpose other than permitted in this  
32 subsection.

33       Nothing in this section shall preclude disclosure, upon proper  
34 inquiry, of information as to a patient's current medical condition to  
35 any relative or friend or to the patient's personal physician or  
36 attorney if it appears that the information is to be used directly or  
37 indirectly for the benefit of the patient.

38       Nothing in this section shall preclude the professional staff of a  
39 community agency under contract with the Division of Mental  
40 Health Services in the Department of Human Services, or of a  
41 screening service, short-term care or psychiatric facility as those  
42 facilities are defined in section 2 of P.L.1987, c.116 (C.30:4-27.2)  
43 from disclosing information that is relevant to a patient's current  
44 treatment to the staff of another such agency.

45 (cf: P.L.2009, c.183, s.4)

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47       3. This act shall take effect immediately.

STATEMENT

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This bill provides for certain law enforcement officials to be notified when a person applies to the court to have a mental health record expunged for the purposes of purchasing a firearm.

Current law requires licensed firearms retailers to conduct a background check of prospective firearms purchasers using the National Instant Criminal Background Check System (NICS). A NICS check determines if the person is eligible to purchase a firearm under federal and State law. Pursuant to P.L.2013, c.115, the Administrative Office of the Courts (AOC), in cooperation with the Attorney General and the State Police, has transmitted almost 425,000 records of mental health adjudications dating back to the 1970s to NICS. Prospective purchasers who were formerly committed to a mental institution, but who have since recovered and now seek to legally purchase a firearm, may be found ineligible due to a mental health record in NICS.

To have a mental health record removed from NICS, a person is required to file an expungement application in the state that transmitted the record to NICS. In this State, expungement of a mental health adjudication is governed by P.L.1953, c.268 (C:30:4-80.8 et seq.). Persons with a mental health record who are recovered, substantially improved, or in substantial remission, may apply to the court to have that record expunged. When considering an application to have the record expunged, the court is required to hear evidence as to the circumstances of the petitioner's commitment or determination, the petitioner's mental health record and criminal history, and the petitioner's reputation in the community. If the court finds that the petitioner will not likely act in a manner dangerous to the public safety and that the grant of relief is not contrary to the public interest, the court is required to grant relief and expunge the record. The Administrative Office of the Courts and State Police provide for the record to be amended in NICS to reflect the expungement.

Law enforcement officials currently are not involved in the determination of whether a mental health record of a prospective firearms purchaser should be expunged. Since law enforcement officials may be aware of information which is not readily accessible to the court, such as pending charges, the purchaser's criminal history, or any aberrant behavior within the community, this bill authorizes law enforcement participation in this determination. Specifically, the bill requires a purchaser applying for expungement to serve notice to law enforcement officials in his or her current state of residence if the purpose of the expungement is to remove the mental health adjudication record from NICS to allow for the purchase of a firearm. Upon being served, law enforcement officials would have the discretion as to whether to

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- 1 provide information to the court on the applicant's criminal history
- 2 or behavior for consideration during the expungement proceedings.