

[First Reprint]

ASSEMBLY, No. 2938

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED FEBRUARY 16, 2016

Sponsored by:

Assemblywoman PATRICIA EGAN JONES

District 5 (Camden and Gloucester)

Assemblywoman GABRIELA M. MOSQUERA

District 4 (Camden and Gloucester)

Assemblywoman SHAVONDA E. SUMTER

District 35 (Bergen and Passaic)

Assemblywoman JOANN DOWNEY

District 11 (Monmouth)

Assemblyman ARTHUR BARCLAY

District 5 (Camden and Gloucester)

Co-Sponsored by:

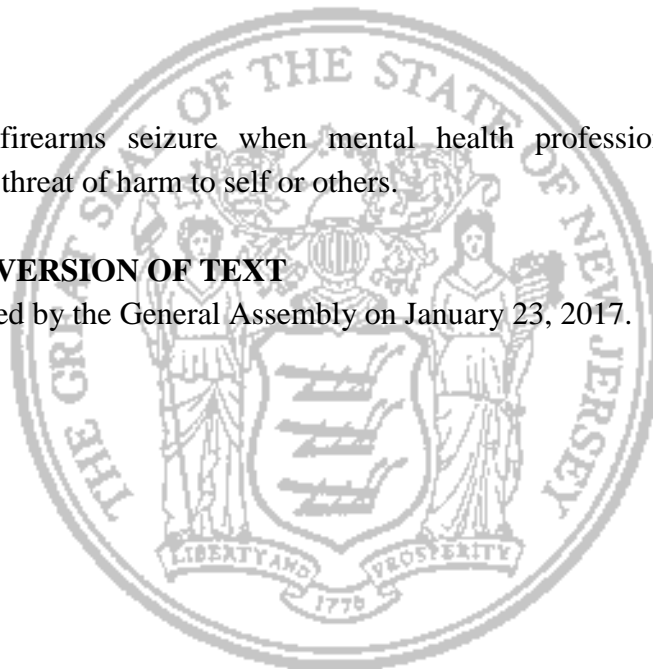
Assemblyman McKeon, Assemblywoman Caride and Assemblyman Houghtaling

SYNOPSIS

Requires firearms seizure when mental health professional determines patient poses threat of harm to self or others.

CURRENT VERSION OF TEXT

As amended by the General Assembly on January 23, 2017.



(Sponsorship Updated As Of: 3/24/2017)

1 AN ACT concerning mental health professionals' duty to warn and
2 protect and amending P.L.1991, c.270.

3

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

6

7 1. Section 1 of P.L.1991, c.270 (C.2A:62A-16) is amended to
8 read as follows:

9 1. a. Any person who is licensed in the State of New Jersey to
10 practice psychology, psychiatry, medicine, nursing, clinical social
11 work, or marriage counseling, whether or not compensation is
12 received or expected, is immune from any civil liability for a
13 patient's violent act against another person or against himself unless
14 the practitioner has incurred a duty to warn and protect the potential
15 victim as set forth in subsection b. of this section and fails to
16 discharge that duty as set forth in subsection c. of this section.

17 b. A duty to warn and protect is incurred when the following
18 conditions exist:

19 (1) The patient has communicated to that practitioner a threat of
20 imminent, serious physical violence against a readily identifiable
21 individual or against himself and the circumstances are such that a
22 reasonable professional in the practitioner's area of expertise would
23 believe the patient intended to carry out the threat; or

24 (2) The circumstances are such that a reasonable professional in
25 the practitioner's area of expertise would believe the patient
26 intended to carry out an act of imminent, serious physical violence
27 against a readily identifiable individual or against himself.

28 c. A licensed practitioner of psychology, psychiatry, medicine,
29 nursing, clinical social work or marriage counseling shall discharge
30 the duty to warn and protect as set forth in subsection b. of this
31 section by doing any one or more of the following:

32 (1) Arranging for the patient to be admitted voluntarily to a
33 psychiatric unit of a general hospital, a short-term care facility, a
34 special psychiatric hospital or a psychiatric facility, under the
35 provisions of P.L.1987, c.116 (C.30:4-27.1 et seq.);

36 (2) Initiating procedures for involuntary commitment to
37 treatment of the patient to an outpatient treatment provider, a short-
38 term care facility, a special psychiatric hospital or a psychiatric
39 facility, under the provisions of P.L.1987, c.116 (C.30:4-27.1 et
40 seq.);

41 (3) Advising a local law enforcement authority of the patient's
42 threat and the identity of the intended victim;

43 (4) Warning the intended victim of the threat, or, in the case of
44 an intended victim who is under the age of 18, warning the parent
45 or guardian of the intended victim; or

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly floor amendments adopted January 23, 2017.

1 (5) If the patient is under the age of 18 and threatens to commit
2 suicide or bodily injury upon himself, warning the parent or
3 guardian of the patient.

4 d. A practitioner who is licensed in the State of New Jersey to
5 practice psychology, psychiatry, medicine, nursing, clinical social
6 work or marriage counseling who, in complying with subsection c.
7 of this section, discloses a privileged communication, is immune
8 from civil liability in regard to that disclosure.

9 e. 1[If a licensed practitioner of psychology, psychiatry,
10 medicine, nursing, clinical social work, or marriage counseling who
11 currently is providing treatment services determines, in the exercise
12 of reasonable professional judgment, that the patient is likely to
13 engage in conduct that would result in serious harm to self or
14 others, the licensee shall report, as soon as practicable to the
15 Attorney General the patient's name and other non-clinical
16 identifying information which the Attorney General shall only use
17 to determine whether the patient has been issued a firearms
18 purchaser identification card, permit to purchase a handgun, or any
19 other permit or license authorizing possession of a firearm. If the
20 patient has been issued a card or permit, the Attorney General shall
21 arrange for any firearm possessed by the patient to be seized
22 pending a hearing. The Attorney General shall issue guidelines
23 governing the seizure of firearms pursuant to this subsection.

24 A licensed practitioner who, in complying with this subsection,
25 discloses a privileged communication is immune from civil liability
26 in regard to that disclosure.] In addition to complying with
27 subsection c. of this section, a licensed practitioner shall notify the
28 chief law enforcement officer of the municipality in which the
29 patient resides or the Superintendent of State Police if the patient
30 resides in a municipality that does not have a full-time police
31 department that a duty to warn and protect has been incurred with
32 respect to the patient and shall provide to the chief law enforcement
33 officer or superintendent, as appropriate, the patient's name and
34 other non-clinical identifying information. The chief law
35 enforcement officer or superintendent, as appropriate, shall use that
36 information to ascertain whether the patient has been issued a
37 firearms purchaser identification card, permit to purchase a
38 handgun, or any other permit or license authorizing possession of a
39 firearm.

40 If the patient has been issued a firearms purchaser identification
41 card, permit to purchase a handgun, or any other permit or license
42 authorizing possession of a firearm, or if there is information
43 indicating that the patient otherwise may have access to a firearm,
44 the information provided may be used in determining whether the
45 patient has become subject to any of the disabilities set forth in
46 subsection c. of N.J.S.2C:58-3. If the chief law enforcement officer
47 or superintendent, as appropriate, determines that the patient has
48 become subject to any of the disabilities set forth in subsection c. of

1 N.J.S.2C:58-3, any identification card or permit issued to the
2 patient shall be void and subject to revocation by the Superior Court
3 in accordance with the procedure established in subsection f. of
4 N.J.S.2C:58-3.

5 If the court determines that the patient is subject to any of the
6 disabilities set forth in subsection c. of N.J.S.2C:58-3 and revokes
7 the patient's firearms identification card in accordance with the
8 procedure established in subsection f. of N.J.S.2C:58-3, the court
9 may order the patient to surrender to the county prosecutor any
10 firearm owned by or accessible to the patient and order the
11 prosecutor to dispose of the firearms. When the court orders the
12 county prosecutor to dispose of the firearms, the prosecutor shall
13 dispose of the firearms as provided in N.J.S.2C:64-6.

14 If the court, upon motion of the prosecutor, finds probable cause
15 that the patient has failed to surrender any firearm, card, or permit,
16 the court may order a search for and removal of these items at any
17 location where the judge has reasonable cause to believe these items
18 are located. The judge shall state with specificity the reasons and
19 the scope of the search and seizure authorized by the order.

20 A firearm surrendered or seized pursuant to this subsection
21 which is not legally owned by the patient shall be immediately
22 returned to the legal owner of the firearm if the legal owner submits
23 a written request to the prosecutor attesting that the patient does not
24 have access to the firearm.

25 A law enforcement officer or agency shall not be held liable in
26 any civil action brought by any person for failing to learn of, locate,
27 or seize a firearm pursuant to this subsection.

28 A patient who is determined to be subject to any of the
29 disabilities established in paragraph (3) of subsection c. of
30 N.J.S.2C:58-3 and submits a certificate of a medical doctor or
31 psychiatrist licensed in New Jersey, or other satisfactory proof in
32 accordance with that paragraph shall be entitled to the reinstatement
33 of any firearms purchaser identification cards, permits to purchase a
34 handgun, and any other permit or license authorizing possession of
35 a firearm seized pursuant to this subsection¹.

36 (cf: P.L.2009, c.112, s.21)

37

38 2. This act shall take effect immediately.