

ASSEMBLY, No. 1181

STATE OF NEW JERSEY

218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

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Assemblyman McKeon, Assemblywoman Caride, Assemblyman Houghtaling and Assemblywoman Murphy

SYNOPSIS

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

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 3/6/2018)

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.

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. In addition to complying with subsection c. of this section, a
10 licensed practitioner shall notify the chief law enforcement officer
11 of the municipality in which the patient resides or the
12 Superintendent of State Police if the patient resides in a
13 municipality that does not have a full-time police department that a
14 duty to warn and protect has been incurred with respect to the
15 patient and shall provide to the chief law enforcement officer or
16 superintendent, as appropriate, the patient's name and other non-
17 clinical identifying information. The chief law enforcement officer
18 or superintendent, as appropriate, shall use that information to
19 ascertain whether the patient has been issued a firearms purchaser
20 identification card, permit to purchase a handgun, or any other
21 permit or license authorizing possession of a firearm.

22 If the patient has been issued a firearms purchaser identification
23 card, permit to purchase a handgun, or any other permit or license
24 authorizing possession of a firearm, or if there is information
25 indicating that the patient otherwise may have access to a firearm,
26 the information provided may be used in determining whether the
27 patient has become subject to any of the disabilities set forth in
28 subsection c. of N.J.S.2C:58-3. If the chief law enforcement officer
29 or superintendent, as appropriate, determines that the patient has
30 become subject to any of the disabilities set forth in subsection c. of
31 N.J.S.2C:58-3, any identification card or permit issued to the
32 patient shall be void and subject to revocation by the Superior Court
33 in accordance with the procedure established in subsection f. of
34 N.J.S.2C:58-3.

35 If the court determines that the patient is subject to any of the
36 disabilities set forth in subsection c. of N.J.S.2C:58-3 and revokes
37 the patient's firearms identification card in accordance with the
38 procedure established in subsection f. of N.J.S.2C:58-3, the court
39 may order the patient to surrender to the county prosecutor any
40 firearm owned by or accessible to the patient and order the
41 prosecutor to dispose of the firearms. When the court orders the
42 county prosecutor to dispose of the firearms, the prosecutor shall
43 dispose of the firearms as provided in N.J.S.2C:64-6.

44 If the court, upon motion of the prosecutor, finds probable cause
45 that the patient has failed to surrender any firearm, card, or permit,
46 the court may order a search for and removal of these items at any
47 location where the judge has reasonable cause to believe these items

1 are located. The judge shall state with specificity the reasons and
2 the scope of the search and seizure authorized by the order.

3 A firearm surrendered or seized pursuant to this subsection
4 which is not legally owned by the patient shall be immediately
5 returned to the legal owner of the firearm if the legal owner submits
6 a written request to the prosecutor attesting that the patient does not
7 have access to the firearm.

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

11 A patient who is determined to be subject to any of the
12 disabilities established in paragraph (3) of subsection c. of
13 N.J.S.2C:58-3 and submits a certificate of a medical doctor or
14 psychiatrist licensed in New Jersey, or other satisfactory proof in
15 accordance with that paragraph shall be entitled to the reinstatement
16 of any firearms purchaser identification cards, permits to purchase a
17 handgun, and any other permit or license authorizing possession of
18 a firearm seized pursuant to this subsection.

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

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21 2. This act shall take effect immediately.

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STATEMENT

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26 This bill requires the Attorney General to seize a firearm that is
27 in the possession of a person determined by a mental health
28 professional to be likely to engage in conduct that poses a threat of
29 serious harm to the patient or another person.

30 Specifically, the bill requires licensed medical professionals who
31 incur a duty to warn or protect a potential victim from a patient's
32 violent act to submit to law enforcement officials the patient's name
33 and other non-clinical identifying information for the purpose of
34 determining whether the patient has been issued a firearms purchaser
35 identification card, permit to purchase a handgun, or any other permit
36 or license authorizing possession of a firearm. Specifically, the bill
37 requires a medical professional to contact the municipal police
38 department in which the patient resides or the Superintendent of State
39 Police if the patient resides in a municipality that does not have a full-
40 time police department.

41 The bill also requires the chief law enforcement officer or
42 superintendent, as appropriate, to use the information provided by the
43 medical professional to determine whether the patient has been issued
44 a card or permit authorizing possession of a firearm or has access to a
45 firearm. If the patient has been issued a card or permit, or has access
46 to a firearm the chief law enforcement officer or superintendent may
47 use that information to assist in determining whether the patient has
48 become subject to any of the disabilities established in subsection c. of

1 N.J.S.2C:58-3 that would disqualify the patient from owning a firearm.
2 A patient who is determined to be prohibited from owning a firearm is
3 to have his or her identification card or permit voided and subject to
4 revocation by the Superior Court in accordance with current law. The
5 bill permits the court to order the patient to surrender any firearm
6 owned by the patient to the county prosecutor and order the prosecutor
7 to dispose of the firearms. The court may order a search for and
8 removal of firearms if there is probable cause that the patient has failed
9 to surrender the firearms. The bill requires the court to state with
10 specificity the reasons for and the scope of the search and seizure. The
11 bill also provides that a seized or surrendered firearm which is legally
12 owned by a person who is not the patient is to be immediately returned
13 to the legal owner upon a written request sent to the prosecutor
14 attesting that the patient does not have access to the firearm.

15 The bill allows a patient who submits to the Superior Court a
16 certificate of a medical doctor or psychiatrist licensed in New Jersey or
17 other satisfactory proof that the patient is no longer suffering from a
18 medical disorder that would interfere with the safe handling of
19 firearms to have the patient's firearms purchaser identification cards or
20 other permit or license reinstated.

21 The bill clarifies that a licensed medical professional who discloses
22 a privileged communication in complying with the bill's provisions is
23 immune from civil liability in regard to that disclosure.