

# ASSEMBLY JUDICIARY COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 1181**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: FEBRUARY 28, 2018

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 1181.

As amended and reported by the committee, Assembly Bill No. 1181 requires law enforcement, upon order of the court, to seize a firearm that is in the possession of a person determined by certain licensed health care professionals to be likely to engage in conduct that poses a threat of serious harm to the patient or another person. Specifically, the amended bill applies to professionals licensed in the State of New Jersey to practice psychology, psychiatry, medicine, nursing, clinical social work, or marriage and family therapy who have incurred a duty to warn or protect a potential victim under current law.

Under current law, a duty to warn and protect is incurred when: (1) the patient has communicated to that practitioner a threat of imminent, serious physical violence against a readily identifiable individual or against himself and the circumstances are such that a reasonable professional in the practitioner's area of expertise would believe the patient intended to carry out the threat; or (2) the circumstances are such that a reasonable professional in the practitioner's area of expertise would believe the patient intended to carry out an act of imminent, serious physical violence against a readily identifiable individual or against himself.

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

The amended bill also requires the chief law enforcement officer or superintendent, as appropriate, to use the information provided by the health care professional to determine whether the patient has been

issued a card or permit authorizing possession of a firearm or has access to a firearm.

If the patient has been issued a card or permit, or has access to a firearm the chief law enforcement officer or superintendent may use that information to assist in determining whether the patient has become subject to any of the disabilities established in subsection c. of N.J.S.2C:58-3 that would disqualify the patient from owning a firearm.

Subsection c. of N.J.S.2C:58-3 prohibits the issuance of a firearm purchaser identification card (FPIC) or permit to purchase a handgun (PPH) to any person who: (1) has been convicted of any crime; (2) is drug dependent; (3) has been confined for a mental disorder; (4) is a habitual drunkard or alcoholic; (5) suffers from a physical defect or disease which would make it unsafe for the person to handle a firearm; (6) knowingly falsifies any information on the application form for a FPIC or a PPH; (7) refuses to waive statutory or other rights of confidentiality relating to institutional confinement; (8) is subject to a domestic violence court order prohibiting firearms possession; or (9) is named on the Terrorist Watchlist maintained by the FBI.

A patient who is determined to be prohibited from owning a firearm is to have his or her identification card or permit voided and subject to revocation by the Superior Court in accordance with current law. The amended bill permits the court to order the patient to surrender any firearm owned by the patient to the county prosecutor and order the prosecutor to dispose of the firearms. The court may order a search for and removal of firearms if there is probable cause that the patient has failed to surrender the firearms. The amended bill requires the court to state with specificity the reasons for and the scope of the search and seizure. The amended bill also provides that a seized or surrendered firearm which is legally owned by a person who is not the patient is to be immediately returned to the legal owner upon a written request sent to the prosecutor attesting that the patient does not have access to the firearm.

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

The amended bill clarifies that a licensed health care professional who discloses a privileged communication in complying with the bill's provisions is immune from civil liability in regard to that disclosure.

This bill was pre-filed for introduction in the 2018-2019 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

#### COMMITTEE AMENDMENTS

The committee amended the bill to:

1) remove from the title and synopsis of the bill references to mental health professional; and

2) replace the outdated term “marriage counseling” in the duty to warn act with the term “marriage and family therapy” in accordance with section 24 of P.L.1995, c.366 (C.45:8B-2.1)