

P.L. 2018, CHAPTER 34, *approved June 13, 2018*  
Assembly, No. 1181 (*First Reprint*)

1 AN ACT concerning <sup>1</sup>**mental**<sup>1</sup> health <sup>1</sup>care<sup>1</sup> professionals' duty to  
2 warn and 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:

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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 <sup>1</sup>**counseling**<sup>1</sup> and family therapy<sup>1</sup>, whether or  
12 not compensation is received or expected, is immune from any civil  
13 liability for a patient's violent act against another person or against  
14 himself unless the practitioner has incurred a duty to warn and  
15 protect the potential victim as set forth in subsection b. of this  
16 section and fails to discharge that duty as set forth in subsection c.  
17 of this section.

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

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

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

29 c. A licensed practitioner of psychology, psychiatry, medicine,  
30 nursing, clinical social work or marriage <sup>1</sup>**counseling**<sup>1</sup> and family  
31 therapy<sup>1</sup> shall discharge the duty to warn and protect as set forth in  
32 subsection b. of this section by doing any one or more of the  
33 following:

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

38 (2) Initiating procedures for involuntary commitment to  
39 treatment of the patient to an outpatient treatment provider, a short-  
40 term care facility, a special psychiatric hospital or a psychiatric

**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:

<sup>1</sup>Assembly AJU committee amendments adopted March 5, 2018.

1 facility, under the provisions of P.L.1987, c.116 (C.30:4-27.1 et  
2 seq.);

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

5 (4) Warning the intended victim of the threat, or, in the case of  
6 an intended victim who is under the age of 18, warning the parent  
7 or guardian of the intended victim; or

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

11 d. A practitioner who is licensed in the State of New Jersey to  
12 practice psychology, psychiatry, medicine, nursing, clinical social  
13 work or marriage <sup>1</sup>['counseling'] and family therapy<sup>1</sup> who, in  
14 complying with subsection c. of this section, discloses a privileged  
15 communication, is immune from civil liability in regard to that  
16 disclosure.

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

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

43 If the court determines that the patient is subject to any of the  
44 disabilities set forth in subsection c. of N.J.S.2C:58-3 and revokes  
45 the patient's firearms identification card in accordance with the  
46 procedure established in subsection f. of N.J.S.2C:58-3, the court  
47 may order the patient to surrender to the county prosecutor any  
48 firearm owned by or accessible to the patient and order the

1 prosecutor to dispose of the firearms. When the court orders the  
2 county prosecutor to dispose of the firearms, the prosecutor shall  
3 dispose of the firearms as provided in N.J.S.2C:64-6.

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

10 A firearm surrendered or seized pursuant to this subsection  
11 which is not legally owned by the patient shall be immediately  
12 returned to the legal owner of the firearm if the legal owner submits  
13 a written request to the prosecutor attesting that the patient does not  
14 have access to the firearm.

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

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

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

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28 <sup>1</sup>2. Section 2 of P.L.1991, c.270 (C.2A:62A-17) is amended to  
29 read as follows:

30 2. When a duty to warn and protect arises from the receipt of a  
31 privileged communication from a patient in a drug or alcohol abuse  
32 program governed by federal law, a licensed practitioner of  
33 psychology, psychiatry, medicine, nursing, clinical social work or  
34 marriage **【counseling】** and family therapy may be required to  
35 obtain a court order authorizing disclosure prior to disclosure of  
36 information about the patient including the patient's threat of  
37 violence, in accordance with 42 U.S.C. s. 290dd-3 and 42 U.S.C. s.  
38 290ee-3 and regulations promulgated thereunder.<sup>1</sup>

39 (cf: P.L.1991, c.270, s.2)

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41 <sup>1</sup>**【2.】 3.**<sup>1</sup> This act shall take effect immediately.

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46 Requires firearms seizure when certain health care professional  
47 determines patient poses threat of harm to self or others.