

SENATE, No. 568

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

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

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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]** the person was committed or
15 upon 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,
36 the 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]** the relief for which the
43 petitioner has applied and**[,]** an order directing the clerk of the
44 court to expunge **[such]** the commitment from the records of the
45 court.

46 (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】** the disclosure would be contrary to the public interest;
19 **【or】**

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

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

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

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

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

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

1 3. This act shall take effect immediately.

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STATEMENT

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

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

21 To have a mental health record removed from NICS, a person is
22 required to file an expungement application in the state that
23 transmitted the record to NICS. In this State, expungement of a
24 mental health adjudication is governed by P.L.1953, c.268 (C:30:4-
25 80.8 et seq.). Persons with a mental health record who are
26 recovered, substantially improved, or in substantial remission, may
27 apply to the court to have that record expunged. When considering
28 an application to have the record expunged, the court is required to
29 hear evidence as to the circumstances of the petitioner's
30 commitment or determination, the petitioner's mental health record
31 and criminal history, and the petitioner's reputation in the
32 community. If the court finds that the petitioner will not likely act
33 in a manner dangerous to the public safety and that the grant of
34 relief is not contrary to the public interest, the court is required to
35 grant relief and expunge the record. The AOC and the State Police
36 amend the record in NICS to reflect the expungement.

37 Law enforcement officials currently are not involved in the
38 determination of whether a mental health record of a prospective
39 firearms purchaser should be expunged. Since law enforcement
40 officials may be aware of information which is not readily
41 accessible to the court, such as pending charges, the purchaser's
42 criminal history, or any aberrant behavior within the community,
43 this bill authorizes law enforcement participation in this
44 determination. Specifically, the bill requires the applicant for
45 expungement to serve notice on law enforcement officials in his or
46 her current state of residence if the purpose of the expungement is

1 to remove the mental health adjudication record from NICS to allow
2 for the purchase of a firearm. Upon being served, these law
3 enforcement officials would have the option to provide information
4 to the court concerning the applicant's criminal history or behavior
5 for consideration during the expungement proceedings.