

[First Reprint]

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

As reported by the Senate Law and Public Safety Committee on March 11, 2021, with amendments.



1 AN ACT concerning expungement of certain mental health records
 2 and amending P.L.1953, c.268 ¹**[and]**,¹ P.L.1965, c.59¹, and
 3 N.J.S.2C:58-3¹.
 4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
 6 *of New Jersey:*
 7

8 1. Section 2 of P.L.1953, c.268 (C.30:4-80.9) is amended to
 9 read as follows:

10 2. a. Upon reading and filing **[such]** the petition, the court
 11 shall by order fix a time, not less than 10 nor more than 30 days
 12 thereafter, for the hearing of **[such]** the matter¹, **and** a copy of
 13 **[which]** the order shall be served by the petitioner upon the county
 14 adjuster of the county and upon the medical director of the
 15 institution or facility to which **[such]** the person was committed or
 16 upon the party or parties who applied for the determination that the
 17 person be found to be a danger to himself, others, or property, or
 18 determined to be an incapacitated individual as defined in
 19 N.J.S.3B:1-2¹, and at] .

20 A petitioner who is seeking relief from a disability barring the
 21 receipt, purchase, possession, or other acquisition of a firearm
 22 under the NICS Improvement Amendments Act of 2007,
 23 Pub.L.110-180 and the Brady Handgun Violence Prevention Act of
 24 1993, Pub.L.103-159 or under N.J.S.2C:58-3 also shall serve a copy
 25 of the order upon the following persons:

26 (1) if the petitioner is a resident of New Jersey, the Attorney
 27 General; the county prosecutor of the county in which the petitioner
 28 was committed; the chief of police of the municipality in which the
 29 petitioner resides, or the Superintendent of State Police if there is
 30 no police force; and the chief of police of the municipality in which
 31 the petitioner resided at the time of commitment or the
 32 superintendent if there is no police force; or

33 (2) if the petitioner is not a resident of New Jersey, the Attorney
 34 General of the state and the chief of police of the county or
 35 municipality where the petitioner currently resides.

36 b. At the time so appointed, or to which it may be adjourned,
 37 the court shall hear evidence as to: the circumstances of why the
 38 commitment or determination was imposed upon the petitioner, the
 39 petitioner's mental health record and criminal history, and the
 40 petitioner's reputation in the community. If the court finds that the
 41 petitioner will not likely act in a manner dangerous to the public
 42 safety and finds that the grant of relief is not contrary to the public
 43 interest, the court shall grant **[such]** the relief for which the
 44 petitioner has applied and¹, **[issue]** ¹an order directing the clerk of

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:

¹Senate SLP committee amendments adopted March 11, 2021.

1 the court to expunge **[such]** the commitment from the records of
2 the court.

3 (cf: P.L.2009, c.183, s.2)
4

5 2. Section 11 of P.L.1965, c.59 (C.30:4-24.3) is amended to
6 read as follows:

7 11. All certificates, applications, records, and reports made
8 pursuant to the provisions of Title 30 of the Revised Statutes and
9 directly or indirectly identifying any individual **[presently]**
10 currently or formerly receiving services in a noncorrectional
11 institution under Title 30 of the Revised Statutes, or for whom
12 services in a noncorrectional institution shall be sought under this
13 act shall be kept confidential and shall not be disclosed by any
14 person, except insofar as:

15 a. the individual identified or his legal guardian, if any, or, if
16 he is a minor, his parent or legal guardian, shall consent; **[or]**

17 b. disclosure may be necessary to carry out any of the
18 provisions of this act or of article 9 of chapter 82 of Title 2A of the
19 New Jersey Statutes; **[or]**

20 c. a court may direct, upon its determination that disclosure is
21 necessary for the conduct of proceedings before it and that failure to
22 make **[such]** the disclosure would be contrary to the public interest;
23 **[or]**

24 d. disclosure may be necessary to conduct an investigation into
25 the financial ability to pay of any person receiving services or **[his]**
26 the person's chargeable relatives pursuant to the provisions of
27 R.S.30:1-12**[.]**;

28 e. disclosure is needed to comply with the data reporting
29 provisions of the NICS Improvement Amendments Act of 2007,
30 Pub. L. 110-180, and the Brady Handgun Violence Prevention Act
31 of 1993, Pub. L. 103-159**[.]**; or

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

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

44 Nothing in this section shall preclude the professional staff of a
45 community agency under contract with the Division of Mental
46 Health Services in the Department of Human Services, or of a
47 screening service, short-term care or psychiatric facility as those

1 facilities are defined in section 2 of P.L.1987, c.116 (C.30:4-27.2)
2 from disclosing information that is relevant to a patient's current
3 treatment to the staff of another such agency.
4 (cf: P.L.2009, c.183, s.4)

5
6 ¹3. N.J.S.2C:58-3 is amended to read as follows:

7 2C:58-3. a. Permit to purchase a handgun.

8 (1) No person shall sell, give, transfer, assign or otherwise
9 dispose of, nor receive, purchase, or otherwise acquire a handgun
10 unless the purchaser, assignee, donee, receiver or holder is licensed
11 as a dealer under this chapter or has first secured a permit to
12 purchase a handgun as provided by this section.

13 (2) A person who is not a licensed retail dealer and sells, gives,
14 transfers, assigns, or otherwise disposes of, or receives, purchases
15 or otherwise acquires a handgun pursuant to this section shall
16 conduct the transaction through a licensed retail dealer.

17 The provisions of this paragraph shall not apply if the transaction
18 is:

19 (a) between members of an immediate family as defined in
20 subsection n. of this section;

21 (b) between law enforcement officers;

22 (c) between collectors of firearms or ammunition as curios or
23 relics as defined in Title 18, U.S.C. section 921 (a) (13) who have
24 in their possession a valid Collector of Curios and Relics License
25 issued by the Bureau of Alcohol, Tobacco, Firearms, and
26 Explosives; or

27 (d) a temporary transfer pursuant to section 1 of P.L.1992, c.74
28 (C.2C:58-3.1) or section 1 of P.L.1997, c.375 (C.2C:58-3.2).

29 (3) Prior to a transaction conducted pursuant to this subsection,
30 the retail dealer shall complete a National Instant Criminal
31 Background Check of the person acquiring the handgun. In
32 addition:

33 (a) the retail dealer shall submit to the Superintendent of State
34 Police, on a form approved by the superintendent, information
35 identifying and confirming the background check;

36 (b) every retail dealer shall maintain a record of transactions
37 conducted pursuant to this subsection, which shall be maintained at
38 the address displayed on the retail dealer's license for inspection by
39 a law enforcement officer during reasonable hours;

40 (c) a retail dealer may charge a fee for a transaction conducted
41 pursuant to this subsection; and

42 (d) any record produced pursuant to this subsection shall not be
43 considered a public record pursuant to P.L.1963, c.73 (C.47:1A-1 et
44 seq.) or P.L.2001, c.404 (C.47:1A-5 et al.).

45 b. Firearms purchaser identification card.

46 (1) No person shall sell, give, transfer, assign or otherwise
47 dispose of nor receive, purchase or otherwise acquire an antique
48 cannon or a rifle or shotgun, other than an antique rifle or shotgun,

1 unless the purchaser, assignee, donee, receiver or holder is licensed
2 as a dealer under this chapter or possesses a valid firearms
3 purchaser identification card, and first exhibits the card to the seller,
4 donor, transferor or assignor, and unless the purchaser, assignee,
5 donee, receiver or holder signs a written certification, on a form
6 prescribed by the superintendent, which shall indicate that he
7 presently complies with the requirements of subsection c. of this
8 section and shall contain his name, address and firearms purchaser
9 identification card number or dealer's registration number. The
10 certification shall be retained by the seller, as provided in paragraph
11 (4) of subsection a. of N.J.S.2C:58-2, or, in the case of a person
12 who is not a dealer, it may be filed with the chief of police of the
13 municipality in which he resides or with the superintendent.

14 (2) A person who is not a licensed retail dealer and sells, gives,
15 transfers, assigns, or otherwise disposes of, or receives, purchases
16 or otherwise acquires an antique cannon or a rifle or shotgun
17 pursuant to this section shall conduct the transaction through a
18 licensed retail dealer.

19 The provisions of this paragraph shall not apply if the transaction
20 is:

21 (a) between members of an immediate family as defined in
22 subsection n. of this section;

23 (b) between law enforcement officers;

24 (c) between collectors of firearms or ammunition as curios or
25 relics as defined in Title 18, U.S.C. section 921 (a) (13) who have
26 in their possession a valid Collector of Curios and Relics License
27 issued by the Bureau of Alcohol, Tobacco, Firearms, and
28 Explosives; or

29 (d) a temporary transfer pursuant to section 1 of P.L.1992, c.74
30 (C.2C:58-3.1) and section 1 of P.L.1997, c.375 (C.2C:58-3.2).

31 (3) Prior to a transaction conducted pursuant to this subsection,
32 the retail dealer shall complete a National Instant Criminal
33 Background Check of the person acquiring an antique cannon or a
34 rifle or shotgun. In addition:

35 (a) the retail dealer shall submit to the Superintendent of State
36 Police, on a form approved by the superintendent, information
37 identifying and confirming the background check;

38 (b) every retail dealer shall maintain a record of transactions
39 conducted pursuant to this section which shall be maintained at the
40 address set forth on the retail dealer's license for inspection by a law
41 enforcement officer during reasonable hours;

42 (c) a retail dealer may charge a fee for a transaction conducted
43 pursuant to this subsection; and

44 (d) any record produced pursuant to this subsection shall not be
45 considered a public record pursuant to P.L.1963, c.73 (C.47:1A-1 et
46 seq.) or P.L.2001, c.404 (C.47:1A-5 et al.).

47 c. Who may obtain. No person of good character and good
48 repute in the community in which he lives, and who is not subject to

1 any of the disabilities set forth in this section or other sections of
2 this chapter, shall be denied a permit to purchase a handgun or a
3 firearms purchaser identification card, except as hereinafter set
4 forth. No handgun purchase permit or firearms purchaser
5 identification card shall be issued:

6 (1) To any person who has been convicted of any crime, or a
7 disorderly persons offense involving an act of domestic violence as
8 defined in section 3 of P.L.1991, c.261 (C.2C:25-19), whether or
9 not armed with or possessing a weapon at the time of the offense;

10 (2) To any drug dependent person as defined in section 2 of
11 P.L.1970, c.226 (C.24:21-2), to any person who is confined for a
12 mental disorder to a hospital, mental institution or sanitarium, or to
13 any person who is presently an habitual drunkard;

14 (3) To any person who suffers from a physical defect or disease
15 which would make it unsafe for him to handle firearms, to any
16 person who has ever been confined for a mental disorder, or to any
17 alcoholic unless any of the foregoing persons produces a certificate
18 of a medical doctor or psychiatrist licensed in New Jersey, or other
19 satisfactory proof, that he is no longer suffering from that particular
20 disability in a manner that would interfere with or handicap him in
21 the handling of firearms; to any person who knowingly falsifies any
22 information on the application form for a handgun purchase permit
23 or firearms purchaser identification card; notwithstanding the
24 provisions of this paragraph, a record of commitment expunged
25 pursuant to P.L.1953, c.268 (C.30:4-80.8 et seq.) shall not be used
26 as the sole basis for denial of a firearms purchaser identification
27 card or permit to purchase a handgun;

28 (4) To any person under the age of 18 years for a firearms
29 purchaser identification card and to any person under the age of 21
30 years for a permit to purchase a handgun;

31 (5) To any person where the issuance would not be in the
32 interest of the public health, safety or welfare;

33 (6) To any person who is subject to a restraining order issued
34 pursuant to the "Prevention of Domestic Violence Act of 1991,"
35 P.L.1991, c.261 (C.2C:25-17 et seq.) prohibiting the person from
36 possessing any firearm;

37 (7) To any person who as a juvenile was adjudicated delinquent
38 for an offense which, if committed by an adult, would constitute a
39 crime and the offense involved the unlawful use or possession of a
40 weapon, explosive or destructive device or is enumerated in
41 subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2);

42 (8) To any person whose firearm is seized pursuant to the
43 "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261
44 (C.2C:25-17 et seq.) and whose firearm has not been returned; or

45 (9) To any person named on the consolidated Terrorist Watchlist
46 maintained by the Terrorist Screening Center administered by the
47 Federal Bureau of Investigation; or

1 (10) To any person who is subject to a court order prohibiting the
2 custody, control, ownership, purchase, possession, or receipt of a
3 firearm or ammunition issued pursuant to the "Extreme Risk
4 Protective Order Act of 2018," P.L.2018, c.35 (C.2C:58-20 et al.).

5 d. Issuance. The chief of police of an organized full-time
6 police department of the municipality where the applicant resides or
7 the superintendent, in all other cases, shall upon application, issue
8 to any person qualified under the provisions of subsection c. of this
9 section a permit to purchase a handgun or a firearms purchaser
10 identification card.

11 Any person aggrieved by the denial of a permit or identification
12 card may request a hearing in the Superior Court of the county in
13 which he resides if he is a resident of New Jersey or in the Superior
14 Court of the county in which his application was filed if he is a
15 nonresident. The request for a hearing shall be made in writing
16 within 30 days of the denial of the application for a permit or
17 identification card. The applicant shall serve a copy of his request
18 for a hearing upon the chief of police of the municipality in which
19 he resides, if he is a resident of New Jersey, and upon the
20 superintendent in all cases. The hearing shall be held and a record
21 made thereof within 30 days of the receipt of the application for a
22 hearing by the judge of the Superior Court. No formal pleading and
23 no filing fee shall be required as a preliminary to a hearing.
24 Appeals from the results of a hearing shall be in accordance with
25 law.

26 e. Applications. Applications for permits to purchase a
27 handgun and for firearms purchaser identification cards shall be in
28 the form prescribed by the superintendent and shall set forth the
29 name, residence, place of business, age, date of birth, occupation,
30 sex and physical description, including distinguishing physical
31 characteristics, if any, of the applicant, and shall state whether the
32 applicant is a citizen, whether he is an alcoholic, habitual drunkard,
33 drug dependent person as defined in section 2 of P.L.1970, c.226
34 (C.24:21-2), whether he has ever been confined or committed to a
35 mental institution or hospital for treatment or observation of a
36 mental or psychiatric condition on a temporary, interim or
37 permanent basis, giving the name and location of the institution or
38 hospital and the dates of confinement or commitment, whether he
39 has been attended, treated or observed by any doctor or psychiatrist
40 or at any hospital or mental institution on an inpatient or outpatient
41 basis for any mental or psychiatric condition, giving the name and
42 location of the doctor, psychiatrist, hospital or institution and the
43 dates of the occurrence, whether he presently or ever has been a
44 member of any organization which advocates or approves the
45 commission of acts of force and violence to overthrow the
46 Government of the United States or of this State, or which seeks to
47 deny others their rights under the Constitution of either the United
48 States or the State of New Jersey, whether he has ever been

1 convicted of a crime or disorderly persons offense, whether the
2 person is subject to a restraining order issued pursuant to the
3 "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261
4 (C.2C:25-17 et seq.) prohibiting the person from possessing any
5 firearm, whether the person is subject to a protective order issued
6 pursuant to the "Extreme Risk Protective Order Act of 2018,"
7 P.L.2018, c.35 (C.2C:58-20 et al.) prohibiting the person from
8 possessing any firearm, and other information as the superintendent
9 shall deem necessary for the proper enforcement of this chapter.
10 For the purpose of complying with this subsection, the applicant
11 shall waive any statutory or other right of confidentiality relating to
12 institutional confinement. The application shall be signed by the
13 applicant and shall contain as references the names and addresses of
14 two reputable citizens personally acquainted with him.

15 Application blanks shall be obtainable from the superintendent,
16 from any other officer authorized to grant a permit or identification
17 card, and from licensed retail dealers.

18 The chief police officer or the superintendent shall obtain the
19 fingerprints of the applicant and shall have them compared with any
20 and all records of fingerprints in the municipality and county in
21 which the applicant resides and also the records of the State Bureau
22 of Identification and the Federal Bureau of Investigation, provided
23 that an applicant for a handgun purchase permit who possesses a
24 valid firearms purchaser identification card, or who has previously
25 obtained a handgun purchase permit from the same licensing
26 authority for which he was previously fingerprinted, and who
27 provides other reasonably satisfactory proof of his identity, need not
28 be fingerprinted again; however, the chief police officer or the
29 superintendent shall proceed to investigate the application to
30 determine whether or not the applicant has become subject to any of
31 the disabilities set forth in this chapter.

32 f. Granting of permit or identification card; fee; term; renewal;
33 revocation. The application for the permit to purchase a handgun
34 together with a fee of \$2, or the application for the firearms
35 purchaser identification card together with a fee of \$5, shall be
36 delivered or forwarded to the licensing authority who shall
37 investigate the same and, unless good cause for the denial thereof
38 appears, shall grant the permit or the identification card, or both, if
39 application has been made therefor, within 30 days from the date of
40 receipt of the application for residents of this State and within 45
41 days for nonresident applicants. A permit to purchase a handgun
42 shall be valid for a period of 90 days from the date of issuance and
43 may be renewed by the issuing authority for good cause for an
44 additional 90 days. A firearms purchaser identification card shall
45 be valid until such time as the holder becomes subject to any of the
46 disabilities set forth in subsection c. of this section, whereupon the
47 card shall be void and shall be returned within five days by the
48 holder to the superintendent, who shall then advise the licensing

1 authority. Failure of the holder to return the firearms purchaser
2 identification card to the superintendent within the five days shall
3 be an offense under subsection a. of N.J.S.2C:39-10. Any firearms
4 purchaser identification card may be revoked by the Superior Court
5 of the county wherein the card was issued, after hearing upon
6 notice, upon a finding that the holder thereof no longer qualifies for
7 the issuance of the permit. The county prosecutor of any county,
8 the chief police officer of any municipality or any citizen may apply
9 to the court at any time for the revocation of the card.

10 There shall be no conditions or requirements added to the form
11 or content of the application, or required by the licensing authority
12 for the issuance of a permit or identification card, other than those
13 that are specifically set forth in this chapter.

14 g. Disposition of fees. All fees for permits shall be paid to the
15 State Treasury if the permit is issued by the superintendent, to the
16 municipality if issued by the chief of police, and to the county
17 treasurer if issued by the judge of the Superior Court.

18 h. Form of permit; quadruplicate; disposition of copies. The
19 permit shall be in the form prescribed by the superintendent and
20 shall be issued to the applicant in quadruplicate. Prior to the time
21 he receives the handgun from the seller, the applicant shall deliver
22 to the seller the permit in quadruplicate and the seller shall
23 complete all of the information required on the form. Within five
24 days of the date of the sale, the seller shall forward the original
25 copy to the superintendent and the second copy to the chief of
26 police of the municipality in which the purchaser resides, except
27 that in a municipality having no chief of police, the copy shall be
28 forwarded to the superintendent. The third copy shall then be
29 returned to the purchaser with the pistol or revolver and the fourth
30 copy shall be kept by the seller as a permanent record.

31 i. Restriction on number of firearms person may purchase.
32 Only one handgun shall be purchased or delivered on each permit
33 and no more than one handgun shall be purchased within any 30-
34 day period, but this limitation shall not apply to:

35 (1) a federal, State, or local law enforcement officer or agency
36 purchasing handguns for use by officers in the actual performance
37 of their law enforcement duties;

38 (2) a collector of handguns as curios or relics as defined in Title
39 18, United States Code, section 921 (a) (13) who has in his
40 possession a valid Collector of Curios and Relics License issued by
41 the federal Bureau of Alcohol, Tobacco, Firearms and Explosives;

42 (3) transfers of handguns among licensed retail dealers,
43 registered wholesale dealers and registered manufacturers;

44 (4) transfers of handguns from any person to a licensed retail
45 dealer or a registered wholesale dealer or registered manufacturer;

46 (5) any transaction where the person has purchased a handgun
47 from a licensed retail dealer and has returned that handgun to the
48 dealer in exchange for another handgun within 30 days of the

1 original transaction, provided the retail dealer reports the exchange
2 transaction to the superintendent; or

3 (6) any transaction where the superintendent issues an
4 exemption from the prohibition in this subsection pursuant to the
5 provisions of section 4 of P.L.2009, c.186 (C.2C:58-3.4).

6 The provisions of this subsection shall not be construed to afford
7 or authorize any other exemption from the regulatory provisions
8 governing firearms set forth in chapter 39 and chapter 58 of Title
9 2C of the New Jersey Statutes;

10 A person shall not be restricted as to the number of rifles or
11 shotguns he may purchase, provided he possesses a valid firearms
12 purchaser identification card and provided further that he signs the
13 certification required in subsection b. of this section for each
14 transaction.

15 j. Firearms passing to heirs or legatees. Notwithstanding any
16 other provision of this section concerning the transfer, receipt or
17 acquisition of a firearm, a permit to purchase or a firearms
18 purchaser identification card shall not be required for the passing of
19 a firearm upon the death of an owner thereof to his heir or legatee,
20 whether the same be by testamentary bequest or by the laws of
21 intestacy. The person who shall so receive, or acquire the firearm
22 shall, however, be subject to all other provisions of this chapter. If
23 the heir or legatee of the firearm does not qualify to possess or carry
24 it, he may retain ownership of the firearm for the purpose of sale for
25 a period not exceeding 180 days, or for a further limited period as
26 may be approved by the chief law enforcement officer of the
27 municipality in which the heir or legatee resides or the
28 superintendent, provided that the firearm is in the custody of the
29 chief law enforcement officer of the municipality or the
30 superintendent during that period.

31 k. Sawed-off shotguns. Nothing in this section shall be
32 construed to authorize the purchase or possession of any sawed-off
33 shotgun.

34 l. Nothing in this section and in N.J.S.2C:58-2 shall apply to
35 the sale or purchase of a visual distress signalling device approved
36 by the United States Coast Guard, solely for possession on a private
37 or commercial aircraft or any boat; provided, however, that no
38 person under the age of 18 years shall purchase nor shall any person
39 sell to a person under the age of 18 years a visual distress signalling
40 device.

41 m. The provisions of subsections a. and b. of this section and
42 paragraphs (4) and (5) of subsection a. of N.J.S.2C:58-2 shall not
43 apply to the purchase of firearms by a law enforcement agency for
44 use by law enforcement officers in the actual performance of the
45 officers' official duties, which purchase may be made directly from
46 a manufacturer or from a licensed dealer located in this State or any
47 other state.

1 n. For the purposes of this section, "immediate family" means a
2 spouse, domestic partner as defined in section 3 of P.L.2003, c.246
3 (C.26:8A-3), partner in a civil union couple as defined in section 2
4 of P.L.2006, c.103 (C.37:1-29), parent, stepparent, grandparent,
5 sibling, stepsibling, child, stepchild, and grandchild, as related by
6 blood or by law.¹
7 (cf: P.L.2018, c.36, s.1)

8

9 ¹**[3.]** 4.¹ This act shall take effect immediately.