

SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

SENATE, No. 568

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 11, 2021

The Senate Law and Public Safety Committee reports favorably and with committee amendments Senate Bill No. 568.

As amended and reported by the committee, this bill provides for certain law enforcement officials to be notified when a person applies to the court to have a mental health record expunged for the purposes of purchasing a firearm.

Current law requires licensed firearms retailers to conduct a background check of prospective firearms purchasers using the National Instant Criminal Background Check System (NICS). A NICS check determines if the person is eligible to purchase a firearm under federal and State law. Pursuant to section 1 of P.L.2013, c.115 (C.30:4-24.3a), the Administrative Office of the Courts (AOC), in cooperation with the Attorney General and the State Police, has transmitted approximately 558,000 records of mental health adjudications dating back to the 1970s to NICS. Prospective purchasers who were formerly committed to a mental institution, but who have since recovered and now seek to legally purchase a firearm, may be found ineligible due to a mental health record in NICS.

To have a mental health record removed from NICS, a person is required to file an expungement application in the state that transmitted the record to NICS. In this State, expungement of a mental health adjudication is governed by P.L.1953, c.268 (C.30:4-80.8 et seq.). A person with a mental health record who has been discharged from a psychiatric facility as recovered, substantially improved, or in substantial remission, may apply to the court to have that record expunged. When considering an application to have the record expunged, the court is required to hear evidence concerning the circumstances of the petitioner's commitment or determination, the petitioner's mental health record and criminal history, and the petitioner's reputation in the community. If the court finds that the petitioner will not likely act in a manner dangerous to the public safety and that the grant of relief is not contrary to the public interest, the court is required to grant relief and expunge the record. The AOC and the State Police amend the record in NICS to reflect the expungement. Once the record is

expunged, the commitment is deemed not to have occurred. Under the bill as amended, the expungement of the record is not to be used as the sole basis for denial of a firearms purchaser identification card or permit to purchase a handgun.

Law enforcement officials currently are not involved in the determination of whether a mental health record of a prospective firearms purchaser should be expunged. Since law enforcement officials may be aware of information which is not readily accessible to the court, such as pending charges, the purchaser's criminal history, or any aberrant behavior within the community, this bill authorizes law enforcement participation in this determination. Specifically, the bill requires an applicant for expungement to serve notice on law enforcement officials in the applicant's current state of residence if the purpose of the expungement is to remove the mental health adjudication record from NICS to allow for the purchase of a firearm. Upon being served, these law enforcement officials would have the option to provide information to the court concerning the applicant's criminal history or behavior for consideration during the expungement proceedings.

This bill was pre-filed for introduction in the 2020-2021 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) specify that the expungement of a mental health record is not to be used as the sole basis for denial of a firearms purchaser identification card or permit to purchase a handgun; and
- 2) make technical amendments.