

ASSEMBLY, No. 714

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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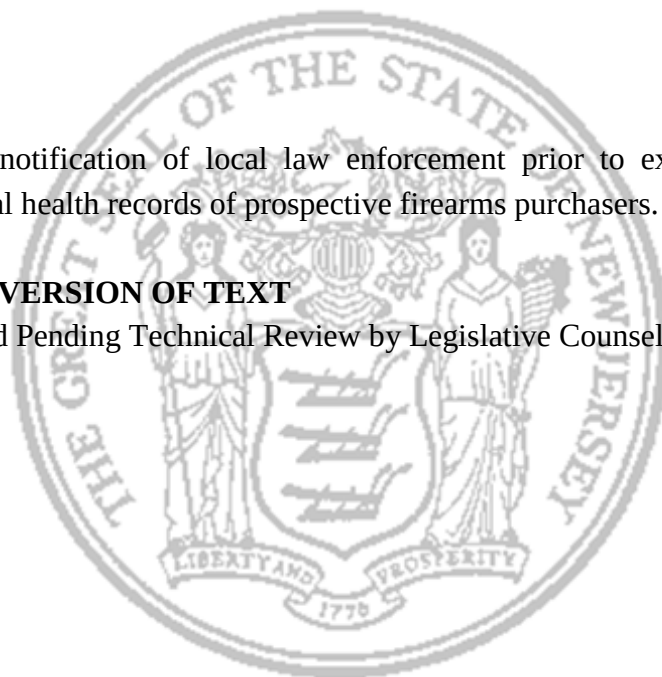
Assemblywoman Lampitt, Assemblyman Houghtaling, Assemblywoman Mosquera, Assemblyman Verrelli and Assemblywoman Murphy

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.

3

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

6

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 person was committed or upon
15 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, Pub.L.
22 110-180 and the Brady Handgun Violence Prevention Act of 1993,
23 Pub.L.103-159 or under N.J.S.2C:58-3 also shall serve a copy of the
24 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 relief for which the petitioner has
43 applied and, an order directing the clerk of the court to expunge
44 such commitment from the records of the court.

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

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

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

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

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

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

45 (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, c.115,
14 the Administrative Office of the Courts (AOC), in cooperation with
15 the Attorney General and the State Police, has transmitted almost
16 425,000 records of mental health adjudications dating back to the
17 1970s to NICS. Prospective purchasers who were formerly
18 committed to a mental institution, but who have since recovered and
19 now seek to legally purchase a firearm, may be found ineligible due
20 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 Administrative Office of
36 the Courts and State Police provide for the record to be amended in
37 NICS to reflect the expungement.

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

1 or her current state of residence if the purpose of the expungement
2 is to remove the mental health adjudication record from NICS to
3 allow for the purchase of a firearm. Upon being served, law
4 enforcement officials would have the discretion as to whether to
5 provide information to the court on the applicant's criminal history
6 or behavior for consideration during the expungement proceedings.