

[First Reprint]

**ASSEMBLY, No. 1181**

**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

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**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As reported by the Assembly Judiciary Committee on March 5, 2018, with amendments.

(Sponsorship Updated As Of: 6/8/2018)

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:

6  
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]** 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]** 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  
41 facility, under the provisions of P.L.1987, c.116 (C.30:4-27.1 et  
42 seq.);

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

**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 (4) Warning the intended victim of the threat, or, in the case of  
2 an intended victim who is under the age of 18, warning the parent  
3 or guardian of the intended victim; or

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

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

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

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

39 If the court determines that the patient is subject to any of the  
40 disabilities set forth in subsection c. of N.J.S.2C:58-3 and revokes  
41 the patient's firearms identification card in accordance with the  
42 procedure established in subsection f. of N.J.S.2C:58-3, the court  
43 may order the patient to surrender to the county prosecutor any  
44 firearm owned by or accessible to the patient and order the  
45 prosecutor to dispose of the firearms. When the court orders the  
46 county prosecutor to dispose of the firearms, the prosecutor shall  
47 dispose of the firearms as provided in N.J.S.2C:64-6.

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

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

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

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

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

24  
25 <sup>1</sup>2. Section 2 of P.L.1991, c.270 (C.2A:62A-17) is amended to  
26 read as follows:

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

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

37  
38 <sup>1</sup>**【2.】** 3.<sup>1</sup> This act shall take effect immediately.