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LAW/RWH

[First Reprint]

ASSEMBLY, No. 4301

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED NOVEMBER 30, 2009

Sponsored by:

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Assemblywoman L. GRACE SPENCER

District 29 (Essex and Union)

Assemblywoman CARIDAD RODRIGUEZ

District 33 (Hudson)

Assemblywoman ELEASE EVANS

District 35 (Bergen and Passaic)

Assemblyman REED GUSCIORA

District 15 (Mercer)

Assemblywoman LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Assemblyman RUBEN J. RAMOS, JR.

District 33 (Hudson)

Co-Sponsored by:

Senators Girgenti, Turner and Whelan

SYNOPSIS

Brings State law into conformity with federal law concerning sharing of certain mental health information relating to the purchase and possession of firearms.

CURRENT VERSION OF TEXT

As reported by the Assembly Law and Public Safety Committee on December 3, 2009, with amendments.

(Sponsorship Updated As Of: 12/11/2009)

1 AN ACT concerning compliance with the federal NICS
2 Improvement Amendments Act of 2007, Pub. L. 110-180, and
3 amending P.L.1953, c.268 and P.L.1965, c.59.

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

7
8 1. Section 1 of P.L.1953, c.268 (C.30:4-80.8) is amended to
9 read as follows:

10 1. Any person who has been, or shall be, committed to any
11 institution or facility providing mental health services, or has been
12 determined to be a danger to himself¹, others, or property,¹ or
13 determined to¹ [lack the mental capacity to contract or manage his
14 own affairs by reason of mental illness, incompetency, condition, or
15 disease] be an incapacitated individual as defined in N.J.S.3B:1-2¹,
16 by order of any court or by voluntary ¹[determination or
17 voluntary]¹ commitment[, to any institution or facility providing
18 mental health services] and who was, or shall be, discharged from
19 such institution or facility as recovered, or whose illness upon
20 discharge, or subsequent [thereto] to discharge or determination, is
21 substantially improved or in substantial remission, may apply to the
22 court by which such commitment was made, or ¹[, if voluntarily
23 determined to lack the mental capacity to contract or manage his
24 own affairs by reason of mental illness, incompetency, condition, or
25 disease or voluntarily committed,]¹ to the Superior Court by
26 verified petition setting forth the facts and praying for the relief
27 provided for in this act.

28 (cf: P.L.1991, c.91, s.317)

29
30 2. Section 2 of P.L.1953, c.268 (C.30:4-80.9) is amended to
31 read as follows:

32 2. Upon reading and filing such petition, the court shall by
33 order fix a time, not less than 10 nor more than 30 days thereafter,
34 for the hearing of such matter, a copy of which order shall be
35 served by the petitioner upon the county [adjuster] ¹[counsel]
36 adjuster¹ of the county and upon the medical director of the
37 institution or facility to which such person was committed or upon
38 the party or parties who applied for the determination that the
39 person be found to be a danger to himself¹, others, or property,¹ or
40 determined to¹ [lack the mental capacity to contract or manage his
41 own affairs by reason of mental illness, incompetency, condition, or
42 disease] be an incapacitated individual as defined in N.J.S.3B:1-2¹,
43 and at the time so appointed, or to which it may be adjourned, the

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:

¹Assembly ALP committee amendments adopted December 3, 2009.

1 court shall hear **[**the matter and if no reason appears to the
2 **contrary]** evidence as to: the circumstances of why the
3 commitment or determination was imposed upon the petitioner, the
4 petitioner's mental health record and criminal history, and the
5 petitioner's reputation in the community. If the court finds that the
6 '[applicant] petitioner' will not likely act in a manner dangerous to
7 the public safety and finds that the grant of relief is not contrary to
8 the public interest, the court shall grant such relief for which the
9 petitioner has applied and, an order [shall be made] directing the
10 clerk of the court to expunge such commitment from the records of
11 the court.

12 (cf: P.L.1976, c.108, s.2)

13

14 3. Section 3 of P.L.1953, c.268 (C.30:4-80.10) is amended to
15 read as follows:

16 3. This act shall not apply to any case in which **'[**the
17 **commitment resulted from a determination that]** **'** the defendant was
18 **'found'** not guilty of a crime~~[,]~~ because of insanity or from a
19 determination that **[he]** the defendant was incompetent to stand
20 trial, except for the purpose of applying to the court pursuant to the
21 NICS Improvement Amendments Act of 2007, Pub. L. 110-180, for
22 relief from a federal firearms disability to possess a firearm
23 imposed under 18 U.S.C. ss. 922(d)(4) and (g)(4).

24 (cf: P.L.1976, c.108, s.3)

25

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

28 11. All certificates, applications, records, and reports made
29 pursuant to the provisions of Title 30 of the Revised Statutes and
30 directly or indirectly identifying any individual presently or
31 formerly receiving services in a noncorrectional institution under
32 Title 30 of the Revised Statutes, or for whom services in a
33 noncorrectional institution shall be sought under this act shall be
34 kept confidential and shall not be disclosed by any person, except
35 insofar as:

36 a. the individual identified or his legal guardian, if any, or, if
37 he is a minor, his parent or legal guardian, shall consent; or

38 b. disclosure may be necessary to carry out any of the
39 provisions of this act or of article 9 of chapter 82 of Title 2A of the
40 New Jersey Statutes; or

41 c. a court may direct, upon its determination that disclosure is
42 necessary for the conduct of proceedings before it and that failure to
43 make such disclosure would be contrary to the public interest; or

44 d. disclosure may be necessary to conduct an investigation into
45 the financial ability to pay of any person receiving services or his
46 chargeable relatives pursuant to the provisions of R.S.30:1-12.

1 e. disclosure 'is needed' to comply with the data reporting
2 provisions of the NICS Improvement Amendments Act of 2007,
3 Pub. L. 110-180, and the Brady Handgun Violence Prevention Act
4 of 1993, Pub. L. 103-159.

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

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

17 (cf: P.L.1995, c.155, s.3)

18

19 5. This act shall take effect immediately.

ASSEMBLY, No. 4301

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED NOVEMBER 30, 2009

Sponsored by:

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Assemblywoman L. GRACE SPENCER

District 29 (Essex and Union)

SYNOPSIS

Brings State law into conformity with federal law concerning sharing of certain mental health information relating to the purchase and possession of firearms.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/4/2009)

1 AN ACT concerning compliance with the federal NICS
2 Improvement Amendments Act of 2007, Pub. L. 110-180, and
3 amending P.L.1953, c.268 and P.L.1965, c.59.
4

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

8 1. Section 1 of P.L.1953, c.268 (C.30:4-80.8) is amended to
9 read as follows:

10 1. Any person who has been, or shall be, committed to any
11 institution or facility providing mental health services, or has been
12 determined to be a danger to himself, or determined to lack the
13 mental capacity to contract or manage his own affairs by reason of
14 mental illness, incompetency, condition, or disease, by order of any
15 court or by voluntary determination or voluntary commitment[, to
16 any institution or facility providing mental health services] and
17 who was, or shall be, discharged from such institution or facility as
18 recovered, or whose illness upon discharge, or subsequent [thereto]
19 to discharge or determination, is substantially improved or in
20 substantial remission, may apply to the court by which such
21 commitment was made, or, if voluntarily determined to lack the
22 mental capacity to contract or manage his own affairs by reason of
23 mental illness, incompetency, condition, or disease or voluntarily
24 committed, to the Superior Court by verified petition setting forth
25 the facts and praying for the relief provided for in this act.

26 (cf: P.L.1991, c.91, s.317)
27

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

30 2. Upon reading and filing such petition, the court shall by
31 order fix a time, not less than 10 nor more than 30 days thereafter,
32 for the hearing of such matter, a copy of which order shall be
33 served by the petitioner upon the county [adjuster] counsel of the
34 county and upon the medical director of the institution or facility to
35 which such person was committed or upon the party or parties who
36 applied for the determination that the person be found to be a
37 danger to himself or determined to lack the mental capacity to
38 contract or manage his own affairs by reason of mental illness,
39 incompetency, condition, or disease, and at the time so appointed,
40 or to which it may be adjourned, the court shall hear [the matter
41 and if no reason appears to the contrary] evidence as to: the
42 circumstances of why the commitment or determination was
43 imposed upon the petitioner, the petitioner's mental health record
44 and criminal history, and the petitioner's reputation in the
45 community. If the court finds that the applicant will not likely act

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 in a manner dangerous to the public safety and finds that the grant
2 of relief is not contrary to the public interest, the court shall grant
3 such relief for which the petitioner has applied and, an order [shall
4 be made] directing the clerk of the court to expunge such
5 commitment from the records of the court.

6 (cf: P.L.1976, c.108, s.2)

7

8 3. Section 3 of P.L.1953, c.268 (C.30:4-80.10) is amended to
9 read as follows:

10 3. This act shall not apply to any case in which the
11 commitment resulted from a determination that the defendant was
12 not guilty of a crime[,] because of insanity or from a determination
13 that [he] the defendant was incompetent to stand trial, except for
14 the purpose of applying to the court pursuant to the NICS
15 Improvement Amendments Act of 2007, Pub. L. 110-180, for relief
16 from a federal firearms disability to possess a firearm imposed
17 under 18 U.S.C. ss. 922(d)(4) and (g)(4).

18 (cf: P.L.1976, c.108, s.3)

19

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

22 11. All certificates, applications, records, and reports made
23 pursuant to the provisions of Title 30 of the Revised Statutes and
24 directly or indirectly identifying any individual presently or
25 formerly receiving services in a noncorrectional institution under
26 Title 30 of the Revised Statutes, or for whom services in a
27 noncorrectional institution shall be sought under this act shall be
28 kept confidential and shall not be disclosed by any person, except
29 insofar as:

30 a. the individual identified or his legal guardian, if any, or, if
31 he is a minor, his parent or legal guardian, shall consent; or

32 b. disclosure may be necessary to carry out any of the
33 provisions of this act or of article 9 of chapter 82 of Title 2A of the
34 New Jersey Statutes; or

35 c. a court may direct, upon its determination that disclosure is
36 necessary for the conduct of proceedings before it and that failure to
37 make such disclosure would be contrary to the public interest; or

38 d. disclosure may be necessary to conduct an investigation into
39 the financial ability to pay of any person receiving services or his
40 chargeable relatives pursuant to the provisions of R.S.30:1-12.

41 e. disclosure to comply with the data reporting provisions of
42 the NICS Improvement Amendments Act of 2007, Pub. L. 110-180,
43 and the Brady Handgun Violence Prevention Act of 1993, Pub. L.
44 103-159.

45 Nothing in this section shall preclude disclosure, upon proper
46 inquiry, of information as to a patient's current medical condition to
47 any relative or friend or to the patient's personal physician or

1 attorney if it appears that the information is to be used directly or
2 indirectly for the benefit of the patient.

3 Nothing in this section shall preclude the professional staff of a
4 community agency under contract with the Division of Mental
5 Health Services in the Department of Human Services, or of a
6 screening service, short-term care or psychiatric facility as those
7 facilities are defined in section 2 of P.L.1987, c.116 (C.30:4-27.2)
8 from disclosing information that is relevant to a patient's current
9 treatment to the staff of another such agency.
10 (cf: P.L.1995, c.155, s.3)

11

12 5. This act shall take effect immediately.

13

14

15

STATEMENT

16

17 The purpose of this bill is to bring New Jersey law into
18 conformance with changes to the Brady Handgun Violence
19 Protection Act of 1993, Pub. 103-159 (Brady Act), which the
20 federal government adopted in response to the Virginia Tech
21 tragedy in April 2007.

22 The Virginia Tech shooter was able to purchase the firearms
23 used in the shootings because information concerning his mental
24 health history, which would have prohibited him from purchasing a
25 firearm, had not been entered into the National Instant Criminal
26 Background Check System (NICS). To avoid similar tragedies in
27 the future, the Brady Act was amended to improve the NICS
28 database by enhancing the law's requirements that federal
29 departments and agencies provide relevant information to NICS and
30 create grant incentives for the states to improve their information
31 sharing with NICS concerning individuals prohibited from
32 receiving and possessing firearms. States which fail to comply are
33 subject to penalties.

34 While New Jersey complies with the federal law's requirements
35 concerning the reporting of criminal convictions and indictments, it
36 does not have a comprehensive electronic system for identifying
37 and reporting information to the federal government concerning
38 individuals who have been adjudicated as mental defectives or
39 committed to mental institutions.

40 On June 22, 2009, the Administrative Office of the Courts
41 applied for a federal grant to improve the recording, automation,
42 and transmittal of State mental health adjudications. The program
43 design would provide this mental health information to both the
44 New Jersey State Police and NICS.

45 New Jersey's grant application was denied by the U.S. Attorney
46 General on October 14, 2009 because State law: (1) does not
47 adequately afford individuals adjudicated as mental defectives the
48 right to apply for an expungement; (2) does not require State courts

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1 to hear any of the evidence expressly required by federal law in
2 such expungement cases; (3) contains directive language and
3 phraseology concerning the factors to be considered by the court in
4 reviewing petitions for expungement that are too vague to comply
5 with the new federal law; and (4) does not grant the federal
6 government access to State mental health records.

7 The provisions of this bill amend the appropriate sections of
8 State law to address the concerns raised by the U.S Attorney
9 General. With their adoption, New Jersey will become compliant
10 with the provisions of the NICS Improvement Act of 2007 and be
11 qualified to receive federal grant moneys to assist in the
12 implementation of those changes.

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4301

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 3, 2009

The Assembly Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 4301.

The purpose of this bill, as amended and reported by the committee, is to bring New Jersey law into conformance with changes to the Brady Handgun Violence Protection Act of 1993, Pub. 103-159 (Brady Act), which the federal government adopted in response to the Virginia Tech tragedy in April 2007.

The Virginia Tech shooter was able to purchase the firearms used in the shootings because information concerning his mental health history, which would have prohibited him from purchasing a firearm, had not been entered into the National Instant Criminal Background Check System (NICS). To avoid similar tragedies in the future, the Brady Act was amended to improve the NICS database by enhancing the law's requirements that federal departments and agencies provide relevant information to NICS and create grant incentives for the states to improve their information sharing with NICS concerning individuals prohibited from receiving and possessing firearms. States which fail to comply are subject to penalties.

While New Jersey complies with the federal law's requirements concerning the reporting of criminal convictions and indictments, it does not have a comprehensive electronic system for identifying and reporting information to the federal government concerning individuals who have been adjudicated as mental defectives or committed to mental institutions.

On June 22, 2009, the Administrative Office of the Courts applied for a federal grant to improve the recording, automation, and transmittal of State mental health adjudications. The program design would provide this mental health information to both the New Jersey State Police and NICS.

New Jersey's grant application was denied by the U.S. Attorney General on October 14, 2009 because State law: (1) does not adequately afford individuals adjudicated as mental defectives the right to apply for an expungement; (2) does not require State courts to hear any of the evidence expressly required by federal law in such expungement cases; (3) contains directive language and phraseology

concerning the factors to be considered by the court in reviewing petitions for expungement that are too vague to comply with the new federal law; and (4) does not grant the federal government access to State mental health records.

This bill, as amended, revises the appropriate sections of State law to address the concerns raised by the U.S Attorney General. With their adoption, New Jersey will become compliant with the provisions of the NICS Improvement Act of 2007 and could qualify to receive federal grant moneys to assist in the implementation of those changes.

COMMITTEE AMENDMENTS:

The committee made substantive amendments to the bill to conform with federal requirements and to make it consistent with provisions in Title 3B concerning incapacitated individuals. The committee also made technical and clarifying amendments to the bill.

SENATE, No. 3076

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED NOVEMBER 23, 2009

Sponsored by:
Senator JOHN A. GIRGENTI
District 35 (Bergen and Passaic)

SYNOPSIS

Brings State law into conformity with federal law concerning sharing of certain mental health information relating to the purchase and possession of firearms.

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT concerning compliance with the federal NICS
2 Improvement Amendments Act of 2007, Pub.L.110-180, and
3 amending P.L.1953, c.268 and P.L.1965, c.59.

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5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
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9 as follows:

10 1. Any person who has been, or shall be, committed to any
11 institution or facility providing mental health services, or has been
12 determined to be a danger to himself, or determined to lack the
13 mental capacity to contract or manage his or her own affairs by
14 reason of mental illness, incompetency, condition, or disease, by
15 order of any court or by voluntary determination or voluntary
16 commitment **],** to any institution or facility providing mental health
17 services **]** and who was, or shall be, discharged from such institution
18 or facility as recovered, or whose illness upon discharge, or
19 subsequent **[thereto]** to discharge or determination, is substantially
20 improved or in substantial remission, may apply to the court by
21 which such commitment was made, or, if voluntarily determined to
22 lack the mental capacity to contract or manage his own affairs by
23 reason of mental illness, incompetency, condition, or disease or
24 voluntarily committed, to the Superior Court by verified petition
25 setting forth the facts and praying for the relief provided for in this
26 act.

27 (cf: P.L.1991, c.91, s.317)

28
29 2. Section 2 of P.L.1953, c.268 (C.30:4-80.9) is amended to read
30 as follows:

31 2. Upon reading and filing such petition, the court shall by order
32 fix a time, not less than 10 nor more than 30 days thereafter, for the
33 hearing of such matter, a copy of which order shall be served by
34 the petitioner upon the county **[adjuster]** counsel of the county and
35 upon the medical director of the institution or facility to which
36 such person was committed or upon the party or parties who applied
37 for the determination that the person be found to be a danger to
38 himself or determined to lack the mental capacity to contract or
39 manage his own affairs by reason of mental illness, incompetency,
40 condition, or disease, and at the time so appointed, or to which it
41 may be adjourned, the court shall hear **[the matter and if no reason**
42 **appears to the contrary]** evidence as to: the circumstances of why
43 the commitment or determination was imposed upon the petitioner,
44 the petitioner's mental health record and criminal history, and the

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Matter underlined thus is new matter.

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1 petitioner's reputation in the community. If the court finds that the
2 applicant will not likely act in a manner dangerous to the public
3 safety and finds that the grant of relief is not contrary to the public
4 interest, the court shall grant such relief for which the petitioner has
5 applied and, an order [shall be made] directing the clerk of the
6 court to expunge such commitment from the records of the court.
7 (cf: P.L.1976, c.108, s.2)

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9 3. Section 3 of P.L.1953, c.268 (C.30:4-80.10) is amended to
10 read as follows:

11 3. This act shall not apply to any case in which the commitment
12 resulted from a determination that the defendant was not guilty of a
13 crime[,] because of insanity or from a determination that [he] the
14 defendant was incompetent to stand trial, except for the purpose of
15 applying to the court pursuant to the NICS Improvement
16 Amendments Act of 2007, Pub.L.110-180, for relief from a federal
17 firearms disability to possess a firearm imposed under 18 U.S.C. ss.
18 922(d)(4) and (g)(4).
19 (cf: P.L.1976, c.108, s.3)

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

23 11. All certificates, applications, records, and reports made
24 pursuant to the provisions of Title 30 of the Revised Statutes and
25 directly or indirectly identifying any individual presently or
26 formerly receiving services in a noncorrectional institution under
27 Title 30 of the Revised Statutes, or for whom services in a
28 noncorrectional institution shall be sought under this act shall be
29 kept confidential and shall not be disclosed by any person, except
30 insofar as:

31 a. the individual identified or his legal guardian, if any, or, if he
32 is a minor, his parent or legal guardian, shall consent; or

33 b. disclosure may be necessary to carry out any of the provisions
34 of this act or of article 9 of chapter 82 of Title 2A of the New Jersey
35 Statutes; or

36 c. a court may direct, upon its determination that disclosure is
37 necessary for the conduct of proceedings before it and that failure to
38 make such disclosure would be contrary to the public interest; or

39 d. disclosure may be necessary to conduct an investigation into
40 the financial ability to pay of any person receiving services or his
41 chargeable relatives pursuant to the provisions of R.S.30:1-12.

42 e. disclosure to comply with the data reporting provisions of the
43 NICS Improvement Amendments Act of 2007, Pub. L. 110-180, and
44 the Brady Handgun Violence Prevention Act of 1993, Pub. L. 103-
45 159.

46 Nothing in this section shall preclude disclosure, upon proper
47 inquiry, of information as to a patient's current medical condition to
48 any relative or friend or to the patient's personal physician or

1 attorney if it appears that the information is to be used directly or
2 indirectly for the benefit of the patient.

3 Nothing in this section shall preclude the professional staff of a
4 community agency under contract with the Division of Mental
5 Health Services in the Department of Human Services, or of a
6 screening service, short-term care or psychiatric facility as those
7 facilities are defined in section 2 of P.L.1987, c.116 (C.30:4-27.2)
8 from disclosing information that is relevant to a patient's current
9 treatment to the staff of another such agency.
10 (cf: P.L.1995, c.155, s.3)

11

12 5. This act shall take effect immediately.

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15

STATEMENT

16

17 The purpose of this bill is to bring New Jersey law into
18 conformance with changes to the Brady Handgun Violence
19 Protection Act of 1993, Pub. 103-159 (Brady Act), which the
20 federal government adopted in response to the Virginia Tech
21 tragedy in April 2007.

22 The Virginia Tech shooter was able to purchase the firearms
23 used in the shootings because information concerning his mental
24 health history, which would have prohibited him from purchasing a
25 firearm, had not been entered into the National Instant Criminal
26 Background Check System (NICS). To avoid similar tragedies in
27 the future, the Brady Act was amended to improve the NICS
28 database by enhancing the law's requirements that federal
29 departments and agencies provide relevant information to NICS and
30 create grant incentives for the states to improve their information
31 sharing with NICS concerning individuals prohibited from
32 receiving and possessing firearms. States which fail to comply are
33 subject to penalties.

34 While New Jersey complies with the federal law's requirements
35 concerning the reporting of criminal convictions and indictments, it
36 does not have a comprehensive electronic system for identifying
37 and reporting information to the federal government concerning
38 individuals who have been adjudicated as mental defectives or
39 committed to mental institutions.

40 On June 22, 2009, the Administrative Office of the Courts
41 applied for a federal grant to improve the recording, automation,
42 and transmittal of State mental health adjudications. The program
43 design would provide this mental health information to both the
44 New Jersey State Police and NICS.

45 New Jersey's grant application was denied by the U.S. Attorney
46 General on October 14, 2009 because State law: (1) does not
47 adequately afford individuals adjudicated as mental defectives the
48 right to apply for an expungement; (2) does not require State courts

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1 to hear any of the evidence expressly required by federal law in
2 such expungement cases; (3) contains directive language and
3 phraseology concerning the factors to be considered by the court in
4 reviewing petitions for expungement that are too vague to comply
5 with the new federal law; and (4) does not grant the federal
6 government access to State mental health records.

7 The provisions of this bill amend the appropriate sections of
8 State law to address the concerns raised by the U.S Attorney
9 General. With their adoption, New Jersey will become compliant
10 with the provisions of the NICS Improvement Act of 2007 and be
11 qualified to receive federal grant moneys to assist in the
12 implementation of those changes.

SENATE LAW AND PUBLIC SAFETY AND VETERANS'
AFFAIRS COMMITTEE

STATEMENT TO
SENATE, No. 3076

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 7, 2009

The Senate Law and Public Safety and Veterans' Affairs Committee reports favorably and with committee amendments Senate Bill No. 3076.

The purpose of this bill, as amended and reported by the committee, is to bring New Jersey law into conformance with changes to the Brady Handgun Violence Protection Act of 1993, Pub. 103-159 (Brady Act), which the federal government adopted in response to the Virginia Tech tragedy in April 2007.

The Virginia Tech shooter was able to purchase the firearms used in the shootings because information concerning his mental health history, which would have prohibited him from purchasing a firearm, had not been entered into the National Instant Criminal Background Check System (NICS). To avoid similar tragedies in the future, the Brady Act was amended to improve the NICS database by enhancing the law's requirements that federal departments and agencies provide relevant information to NICS and create grant incentives for the states to improve their information sharing with NICS concerning individuals prohibited from receiving and possessing firearms. States which fail to comply are subject to penalties.

While New Jersey complies with the federal law's requirements concerning the reporting of criminal convictions and indictments, it does not have a comprehensive electronic system for identifying and reporting information to the federal government concerning individuals who have been adjudicated as mental defectives or committed to mental institutions.

On June 22, 2009, the Administrative Office of the Courts applied for a federal grant to improve the recording, automation, and transmittal of State mental health adjudications. The program design would provide this mental health information to both the New Jersey State Police and NICS.

New Jersey's grant application was denied by the U.S. Attorney General on October 14, 2009 because State law: (1) does not adequately afford individuals adjudicated as mental defectives the

right to apply for an expungement; (2) does not require State courts to hear any of the evidence expressly required by federal law in such expungement cases; (3) contains directive language and phraseology concerning the factors to be considered by the court in reviewing petitions for expungement that are too vague to comply with the new federal law; and (4) does not grant the federal government access to State mental health records.

This bill, as amended, revises the appropriate sections of State law to address the concerns raised by the U.S Attorney General. With their adoption, New Jersey will become compliant with the provisions of the NICS Improvement Act of 2007 and could qualify to receive federal grant moneys to assist in the implementation of those changes.

The committee made substantive amendments to the bill to conform with federal requirements and to make it consistent with provisions in Title 3B concerning incapacitated individuals. The committee also made technical amendments to the bill.

As amended and reported by the committee, this bill is identical to Assembly Bill No. 4301 (1R).