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TO: **ALL BERGEN COUNTY CHIEFS OF POLICE, POLICE DIRECTORS, OFFICERS-IN-CHARGE, AND SHERIFF**

FROM: **ACTING PROSECUTOR DENNIS CALO**

DATE: **NOVEMBER 27, 2018**

SUBJECT: **BERGEN COUNTY PROSECUTOR'S OFFICE LAW ENFORCEMENT DIRECTIVE NO. 2018-5 REGARDING DUTY TO WARN UNDER THE MENTAL HEALTH PROFESSIONALS' DUTY TO WARN ACT *N.J.S.A.* 2A:62-16**

On January 13, 2018, an update to the Mental Health Professionals' Duty to Warn and Protect Act became effective. See *N.J.S.A.* 2A:62A-16 attached to this Directive. That updated act requires mental health professionals to notify the chief law enforcement officer of a municipality where a patient resides, or the Superintendent of State Police if the municipality does not have a police department, whenever a patient has communicated a threat of imminent, serious physical violence against an individual or the patient himself/herself, or whenever a reasonable mental health practitioner believes that a patient intends to carry out an act of imminent, serious physical violence.

In response to such a warning, the respective police department **must** ascertain whether the patient has been issued **a firearms purchaser identification card, any permit to purchase or possess a firearm, or whether the patient may possess or have access to any firearm**.

Whenever any Bergen County law enforcement agency receives a warning from a mental health professional pursuant to *N.J.S.A.* 2A:62A-16, that agency must immediately contact the Bergen County Public Safety Operations Center ("PSOC") at 201-753-PSOC (7762) and request that a detective from the Bergen County Prosecutor's Office ("BCPO") Threat Management Unit contact the agency. Upon that contact, the agency shall communicate the details of the warning to the BCPO detective.

Additionally, if the respective law enforcement agency determines that the patient possesses a firearms purchaser identification card or a permit to purchase or possess a firearm, or possesses or has access to a firearm, the law enforcement agency must attempt to secure the identification card, permit, and/or firearms either consensually or with a warrant if consent is denied, on the basis of the imminent threat of serious physical harm. Any identification cards, permits, and firearms seized must be turned over to the Bergen County Prosecutor's Office for further proceedings.

Dennis Calo

DENNIS CALO
ACTING BERGEN COUNTY PROSECUTOR

DC:pms
Attachment

CHAPTER 34
(CORRECTED COPY)

AN ACT concerning health care professionals' duty to warn and protect and amending P.L.1991, c.270.

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

1. Section 1 of P.L.1991, c.270 (C.2A:62A-16) is amended to read as follows:

C.2A:62A-16 Health care professionals, immunity from civil liability; duty to warn and protect.

1. a. Any person who is licensed in the State of New Jersey to practice psychology, psychiatry, medicine, nursing, clinical social work, or marriage and family therapy, whether or not compensation is received or expected, is immune from any civil liability for a patient's violent act against another person or against himself unless the practitioner has incurred a duty to warn and protect the potential victim as set forth in subsection b. of this section and fails to discharge that duty as set forth in subsection c. of this section.

b. A duty to warn and protect is incurred when the following conditions exist:

(1) The patient has communicated to that practitioner a threat of imminent, serious physical violence against a readily identifiable individual or against himself and the circumstances are such that a reasonable professional in the practitioner's area of expertise would believe the patient intended to carry out the threat; or

(2) The circumstances are such that a reasonable professional in the practitioner's area of expertise would believe the patient intended to carry out an act of imminent, serious physical violence against a readily identifiable individual or against himself.

c. A licensed practitioner of psychology, psychiatry, medicine, nursing, clinical social work or marriage and family therapy shall discharge the duty to warn and protect as set forth in subsection b. of this section by doing any one or more of the following:

(1) Arranging for the patient to be admitted voluntarily to a psychiatric unit of a general hospital, a short-term care facility, a special psychiatric hospital or a psychiatric facility, under the provisions of P.L.1987, c.116 (C.30:4-27.1 et seq.);

(2) Initiating procedures for involuntary commitment to treatment of the patient to an outpatient treatment provider, a short-term care facility, a special psychiatric hospital or a psychiatric facility, under the provisions of P.L.1987, c.116 (C.30:4-27.1 et seq.);

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

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

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

d. A practitioner who is licensed in the State of New Jersey to practice psychology, psychiatry, medicine, nursing, clinical social work or marriage and family therapy who, in complying with subsection c. of this section, discloses a privileged communication, is immune from civil liability in regard to that disclosure.

e. In addition to complying with subsection c. of this section, a licensed practitioner shall notify the chief law enforcement officer of the municipality in which the patient resides or the Superintendent of State Police if the patient resides in a municipality that does not have a full-time police department that a duty to warn and protect has been incurred with respect to the patient and shall provide to the chief law enforcement officer or superintendent, as appropriate, the patient's name and other non-clinical identifying

information. The chief law enforcement officer or superintendent, as appropriate, shall use that information to ascertain whether the patient has been issued a firearms purchaser identification card, permit to purchase a handgun, or any other permit or license authorizing possession of a firearm.

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

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

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

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

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

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

2. Section 2 of P.L.1991, c.270 (C.2A:62A-17) is amended to read as follows:

C.2A:62A-17 Court order required for certain disclosures.

2. When a duty to warn and protect arises from the receipt of a privileged communication from a patient in a drug or alcohol abuse program governed by federal law, a licensed practitioner of psychology, psychiatry, medicine, nursing, clinical social work or marriage and family therapy may be required to obtain a court order authorizing disclosure prior to disclosure of information about the patient including the patient's threat of violence, in accordance with 42 U.S.C. s. 290dd-3 and 42 U.S.C. s. 290ee-3 and regulations promulgated thereunder.

3. This act shall take effect immediately.

Approved June 13, 2018.