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**STATE OF NEW JERSEY**  
**210th LEGISLATURE**

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ADOPTED NOVEMBER 18, 2002

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**SYNOPSIS**

Criminalizes deprivation of civil rights, including racial profiling, by public officials.

**CURRENT VERSION OF TEXT**

As amended by the Senate on February 27, 2003.

1 AN ACT concerning certain acts of official misconduct involving  
2 deprivation of civil rights by public officials and supplementing  
3 chapter 30 of Title 2C of the New Jersey Statutes.

4

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

7

8 1. The Legislature finds and declares that:

9 a. Public confidence in the institutions of government is  
10 undermined when an official engages in any form of misconduct  
11 involving the official's office.

12 b. Such misconduct, and the corresponding damage to the public  
13 confidence, impairs the ability of government to function properly,  
14 fosters mistrust and engenders disrespect for government and public  
15 servants.

16 c. A particular concern arises when a law enforcement official,  
17 duly entrusted to protect the public safety and impartially enforce the  
18 laws, abuses that trust by unlawfully depriving persons of their civil  
19 rights, especially in the context of racial profiling.

20 d. It is important to ensure that law enforcement officers are  
21 prohibited from using racial characteristics or color, either alone or in  
22 conjunction with other composite characteristics such as a generalized  
23 vehicle description or the age of the driver or passengers, as the basis  
24 for initiating an investigative stop.

25 e. Existing laws must be amended to provide a greater deterrent  
26 to this type of conduct, as well as to enhance other provisions of the  
27 law targeting official misconduct.

28 f. Accordingly, it is in the public interest to strengthen our laws  
29 that define and punish acts of official misconduct by members of law  
30 enforcement and other public servants.

31

32 2. a. A public servant acting or purporting to act in an official  
33 capacity commits the crime of official deprivation of civil rights if,  
34 knowing that his conduct is unlawful, and acting with the purpose to  
35 intimidate or discriminate against an individual or group of individuals  
36 because of race, color, religion, gender, <sup>1</sup>[age,]<sup>1</sup> handicap, sexual  
37 orientation or ethnicity, the public servant: (1) subjects another to  
38 unlawful arrest or detention, including, but not limited to, motor  
39 vehicle investigative stops, search, seizure, dispossession, assessment,  
40 lien or other infringement of personal or property rights; or (2) denies  
41 or impedes another in the lawful exercise or enjoyment of any right,

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and 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> Senate floor amendments adopted February 27, 2003.

1 privilege, power or immunity.

2 b. (1) Except as provided in paragraphs (2) and (3) of this  
3 subsection, a public servant who violates the provisions of subsection  
4 a. of this section is guilty of a crime of the third degree.

5 (2) If bodily injury results from depriving a person of a right or  
6 privilege in violation of subsection a. of this section, the public servant  
7 is guilty of a crime of the second degree.

8 (3) If, during the course of violating the provisions of this section,  
9 a public servant commits or attempts or conspires to commit murder,  
10 manslaughter, kidnapping or aggravated sexual assault against a  
11 person who is being deprived of a right or privilege in violation of  
12 subsection a. of this section, the public servant is guilty of a crime of  
13 the first degree.

14 c. Notwithstanding the provisions of N.J.S.2C:1-8 or any other  
15 law, a conviction of official deprivation of civil rights under this  
16 section shall not merge with a conviction of any other criminal offense,  
17 nor shall such other conviction merge with a conviction under this  
18 section, and the court shall impose separate sentences upon each  
19 violation of this section and any other criminal offense.

20 d. Proof that a public servant made a false statement, prepared a  
21 false report, or, if the agency that employs the public servant, the  
22 Attorney General or the county prosecutor having supervisory  
23 authority over the agency required a report to be prepared, failed to  
24 prepare a report concerning the conduct that is the subject of the  
25 prosecution, shall give rise to an inference that the actor knew his  
26 conduct was unlawful.

27 e. For purposes of this section, an act is unlawful if it violates the  
28 Constitution of the United States or the Constitution of this State, or  
29 if it constitutes a criminal offense under the laws of this State.

30

31 3. a. A person commits the crime of pattern of official misconduct  
32 if he commits two or more acts that violate the provisions of  
33 N.J.S.2C:30-2 or section 2 of P.L. , c. (C. ) (now pending  
34 before the Legislature as this bill). It shall not be a defense that the  
35 violations were not part of a common plan or scheme, or did not have  
36 similar methods of commission.

37 b. Pattern of official misconduct is a crime of the second degree  
38 if one of the acts committed by the defendant is a first or second  
39 degree crime; otherwise, it is a crime of the third degree, provided,  
40 however, that the presumption of nonimprisonment set forth in  
41 subsection e. of N.J.S.2C:44-1 for persons who have not previously  
42 been convicted of an offense shall not apply. Notwithstanding the  
43 provisions of N.J.S.2C:1-8 or any other law, a conviction of pattern  
44 of official misconduct shall not merge with a conviction of official  
45 misconduct, official deprivation of civil rights, or any other criminal  
46 offense, nor shall such other conviction merge with a conviction under

1 this section, and the court shall impose separate sentences upon each  
2 violation of N.J.S.2C:30-2 and sections 2 and 3 of P.L. , c.  
3 (C. )and (C. ) (now pending before the Legislature as  
4 this bill).

5  
6 <sup>1</sup>[4. a. There is established the Office of the Independent  
7 Prosecutor to investigate and prosecute criminal civil rights violations  
8 involving any public servant. For purposes of Article V, Section IV,  
9 Paragraph 1 of the New Jersey Constitution, the office shall be in, but  
10 not of, the Department of Law and Public Safety. The Independent  
11 Prosecutor shall be appointed by, and serve at the pleasure of, the  
12 Governor with the advice and consent of the Senate and be under the  
13 direction and supervision of the Governor. Any person appointed as  
14 Independent Prosecutor shall have had prosecutorial experience,  
15 including experience in the litigation of criminal cases.

16 b. The Independent Prosecutor may appoint such personnel,  
17 including attorneys and clerical personnel, as necessary to carry out  
18 the duties of the office. Personnel transferred to the Office of the  
19 Independent Prosecutor from any other department in State  
20 government pursuant to this section shall be transferred with all tenure  
21 rights and any rights or protections provided by Title 11A of the New  
22 Jersey Statutes or other applicable statutes and any pension law or  
23 retirement system.

24 c. The Independent Prosecutor shall investigate and, if warranted,  
25 prosecute cases referred to it where criminal civil rights violations  
26 involving any public servant have been alleged. The office shall  
27 prioritize the cases referred for prosecution or other litigation and shall  
28 assist referring entities in establishing priorities among investigations  
29 or cases to be disposed of by the entities themselves.

30 d. (1) The Independent Prosecutor shall designate a section of the  
31 office for the purpose of establishing a liaison and continuing  
32 communication between the Department of Law and Public Safety, the  
33 Division of State Police, such local government units as may be  
34 necessary or practicable, and interested groups, organizations and  
35 associations in the community.

36 (2) The section of the office acting as the liaison shall establish  
37 procedures for: (a) receiving notice from all entities enumerated in  
38 paragraph (1) of this subsection of any case in which a criminal civil  
39 rights violation by a public servant is suspected or has been  
40 substantiated; (b) receiving referrals for the investigation of alleged  
41 violations; (c) receiving referrals for the prosecution of violations; (d)  
42 receiving and referring information regarding cases, administrative or  
43 otherwise, under investigation by any department or other entity to the  
44 appropriate authority; and (e) providing information to and  
45 coordinating information among any referring entities on pending cases  
46 of criminal civil rights violations which are under investigation or

1 being litigated or prosecuted. The liaison section of the office shall  
2 maintain a record of every referral or investigation.

3 e. The Independent Prosecutor shall establish standards of  
4 performance for the office, which shall include, but not be limited to,  
5 recording the cases referred to the office by other entities,  
6 investigating cases of alleged criminal civil rights violations in  
7 accordance with the priorities established by the Independent  
8 Prosecutor, recording the disposition of the cases referred to the  
9 office, and making recommendations to the Governor and the  
10 Legislature as to any procedural, regulatory, or statutory changes  
11 which may be necessary to carry out the provisions of this act.

12 f. The Independent Prosecutor shall maintain a data base which  
13 includes:

14 (1) referrals by other entities; and

15 (2) reports of cases prosecuted or litigated and the results of such  
16 proceedings, which shall include identification of the referring entity,  
17 type of violation, disposition of case, and such other data as may be  
18 necessary to the work of the office and the referring entities.

19 g. The Independent Prosecutor shall have access to all necessary  
20 information in the possession of the State or local public entities,  
21 including individual case files and intelligence information compiled  
22 and maintained by the Division of State Police in the Department of  
23 Law and Public Safety.

24 h. The Independent Prosecutor shall:

25 (1) confer from time to time with departments or other units of  
26 State government which have units which investigate criminal civil  
27 rights violations in order to coordinate activities, share information,  
28 and provide any assistance necessary to any State agency in overseeing  
29 administrative enforcement activities;

30 (2) formulate and evaluate proposals for legislative, administrative  
31 and judicial initiatives to strengthen enforcement of criminal civil  
32 rights statutes;

33 (3) in connection with criminal civil rights enforcement activities,  
34 act as the liaison for the Executive Branch of government with  
35 agencies involved in criminal civil rights enforcement outside the  
36 Executive Branch, including federal agencies and the Judiciary; and

37 (4) provide an annual report to the Governor and the Legislature,  
38 no later than March 1 of each year, summarizing the activities of the  
39 Independent Prosecutor for the preceding calendar year, including, but  
40 not limited to, the number of cases referred, the number of cases  
41 investigated, the number of cases in which action was taken against  
42 a public servant, the number of criminal cases prosecuted and the  
43 number of convictions procured.

44 i. The Independent Prosecutor shall have access to all information  
45 concerning criminal civil rights enforcement activities in the possession  
46 of all State departments and agencies. The office shall meet on a

1 regular basis with representatives of State departments and agencies  
2 and county prosecutors to set specific goals and strategies for the most  
3 effective resolution of cases of criminal civil rights violations by public  
4 servants, whether by criminal, civil, or administrative enforcement  
5 action, or a combination thereof.

6 j. The Legislature shall annually appropriate such sums as may be  
7 necessary for the operation of the Office of the Independent  
8 Prosecutor.]<sup>1</sup>

9

10 <sup>1</sup>[5. a. Every allegation of a violation of this State's criminal civil  
11 rights laws shall be made on a standard complaint form which shall be  
12 prescribed by the Attorney General within 60 days of the effective date  
13 of this act.

14 b. The Independent Prosecutor shall determine within 120 days of  
15 the receipt of a completed standard complaint form required under  
16 subsection a. of this section whether further action on the complaint  
17 shall be taken.]<sup>1</sup>

18

19 <sup>1</sup>[6.] 4.<sup>1</sup> This act shall take effect immediately.