

P.L. 2003, CHAPTER 31, *approved March 14, 2003*
Assembly Substitute (*First Reprint*) for
Senate Committee Substitute for
Senate, Nos. 429 and 1422

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, ¹[age,]¹ handicap, sexual

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:

¹ Senate floor amendments adopted February 27, 2003.

1 orientation or ethnicity, the public servant: (1) subjects another to
2 unlawful arrest or detention, including, but not limited to, motor
3 vehicle investigative stops, search, seizure, dispossession, assessment,
4 lien or other infringement of personal or property rights; or (2) denies
5 or impedes another in the lawful exercise or enjoyment of any right,
6 privilege, power or immunity.

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

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

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

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

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

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

35

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

42 b. Pattern of official misconduct is a crime of the second degree
43 if one of the acts committed by the defendant is a first or second
44 degree crime; otherwise, it is a crime of the third degree, provided,
45 however, that the presumption of nonimprisonment set forth in
46 subsection e. of N.J.S.2C:44-1 for persons who have not previously

1 been convicted of an offense shall not apply. Notwithstanding the
2 provisions of N.J.S.2C:1-8 or any other law, a conviction of pattern
3 of official misconduct shall not merge with a conviction of official
4 misconduct, official deprivation of civil rights, or any other criminal
5 offense, nor shall such other conviction merge with a conviction under
6 this section, and the court shall impose separate sentences upon each
7 violation of N.J.S.2C:30-2 and sections 2 and 3 of P.L. , c.
8 (C.)and (C.) (now pending before the Legislature as
9 this bill).

10

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

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

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

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

41 (2) The section of the office acting as the liaison shall establish
42 procedures for: (a) receiving notice from all entities enumerated in
43 paragraph (1) of this subsection of any case in which a criminal civil
44 rights violation by a public servant is suspected or has been
45 substantiated; (b) receiving referrals for the investigation of alleged
46 violations; (c) receiving referrals for the prosecution of violations; (d)

1 receiving and referring information regarding cases, administrative or
2 otherwise, under investigation by any department or other entity to the
3 appropriate authority; and (e) providing information to and
4 coordinating information among any referring entities on pending cases
5 of criminal civil rights violations which are under investigation or
6 being litigated or prosecuted. The liaison section of the office shall
7 maintain a record of every referral or investigation.

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

17 f. The Independent Prosecutor shall maintain a data base which
18 includes:

19 (1) referrals by other entities; and

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

24 g. The Independent Prosecutor shall have access to all necessary
25 information in the possession of the State or local public entities,
26 including individual case files and intelligence information compiled
27 and maintained by the Division of State Police in the Department of
28 Law and Public Safety.

29 h. The Independent Prosecutor shall:

30 (1) confer from time to time with departments or other units of
31 State government which have units which investigate criminal civil
32 rights violations in order to coordinate activities, share information,
33 and provide any assistance necessary to any State agency in overseeing
34 administrative enforcement activities;

35 (2) formulate and evaluate proposals for legislative, administrative
36 and judicial initiatives to strengthen enforcement of criminal civil
37 rights statutes;

38 (3) in connection with criminal civil rights enforcement activities,
39 act as the liaison for the Executive Branch of government with
40 agencies involved in criminal civil rights enforcement outside the
41 Executive Branch, including federal agencies and the Judiciary; and

42 (4) provide an annual report to the Governor and the Legislature,
43 no later than March 1 of each year, summarizing the activities of the
44 Independent Prosecutor for the preceding calendar year, including, but
45 not limited to, the number of cases referred, the number of cases
46 investigated, the number of cases in which action was taken against

1 a public servant, the number of criminal cases prosecuted and the
2 number of convictions procured.

3 i. The Independent Prosecutor shall have access to all information
4 concerning criminal civil rights enforcement activities in the possession
5 of all State departments and agencies. The office shall meet on a
6 regular basis with representatives of State departments and agencies
7 and county prosecutors to set specific goals and strategies for the most
8 effective resolution of cases of criminal civil rights violations by public
9 servants, whether by criminal, civil, or administrative enforcement
10 action, or a combination thereof.

11 j. The Legislature shall annually appropriate such sums as may be
12 necessary for the operation of the Office of the Independent
13 Prosecutor.]¹

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15 ¹[5. a. Every allegation of a violation of this State's criminal civil
16 rights laws shall be made on a standard complaint form which shall be
17 prescribed by the Attorney General within 60 days of the effective date
18 of this act.

19 b. The Independent Prosecutor shall determine within 120 days of
20 the receipt of a completed standard complaint form required under
21 subsection a. of this section whether further action on the complaint
22 shall be taken.]¹

23

24 ¹[6.] 4.¹ This act shall take effect immediately.

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28

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