

# ASSEMBLY, No. 4578

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED AUGUST 25, 2020

**Sponsored by:**

**Assemblyman BENJIE E. WIMBERLY**

**District 35 (Bergen and Passaic)**

**Assemblywoman VERLINA REYNOLDS-JACKSON**

**District 15 (Hunterdon and Mercer)**

**SYNOPSIS**

Establishes certain restrictions on qualified immunity defense for public employees.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 8/25/2020)

A4578 WIMBERLY, REYNOLDS-JACKSON

2

1 AN ACT concerning liability of public employees and amending  
2 P.L.2004, c.143 and R.S.59:3-3.

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

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7 1. Section 2 of P.L.2004, c.143 (C.10:6-2) is amended to read  
8 as follows:

9 2. a. If a person, whether or not acting under color of law,  
10 subjects or causes to be subjected any other person to the  
11 deprivation of any substantive due process or equal protection  
12 rights, privileges or immunities secured by the Constitution or laws  
13 of the United States, or any substantive rights, privileges or  
14 immunities secured by the Constitution or laws of this State, the  
15 Attorney General may bring a civil action for damages and for  
16 injunctive or other appropriate relief. The civil action shall be  
17 brought in the name of the State and may be brought on behalf of  
18 the injured party. If the Attorney General proceeds with and  
19 prevails in an action brought pursuant to this subsection, the court  
20 shall order the distribution of any award of damages to the injured  
21 party and shall award reasonable attorney's fees and costs to the  
22 Attorney General. The penalty provided in subsection e. of this  
23 section shall be applicable to a violation of this subsection.

24 b. If a person, whether or not acting under color of law,  
25 interferes or attempts to interfere by threats, intimidation or  
26 coercion with the exercise or enjoyment by any other person of any  
27 substantive due process or equal protection rights, privileges or  
28 immunities secured by the Constitution or laws of the United States,  
29 or any substantive rights, privileges or immunities secured by the  
30 Constitution or laws of this State, the Attorney General may bring a  
31 civil action for damages and for injunctive or other appropriate  
32 relief. The civil action shall be brought in the name of the State and  
33 may be brought on behalf of the injured party. If the Attorney  
34 General proceeds with and prevails in an action brought pursuant to  
35 this subsection, the court shall order the distribution of any award  
36 of damages to the injured party and shall award reasonable  
37 attorney's fees and costs to the Attorney General. The penalty  
38 provided in subsection e. of this section shall be applicable to a  
39 violation of this subsection.

40 c. Any person who has been deprived of any substantive due  
41 process or equal protection rights, privileges or immunities secured  
42 by the Constitution or laws of the United States, or any substantive  
43 rights, privileges or immunities secured by the Constitution or laws  
44 of this State, or whose exercise or enjoyment of those substantive  
45 rights, privileges or immunities has been interfered with or

**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 attempted to be interfered with, by threats, intimidation or coercion  
2 by a person acting under color of law, may bring a civil action for  
3 damages and for injunctive or other appropriate relief. The penalty  
4 provided in subsection e. of this section shall be applicable to a  
5 violation of this subsection.

6 d. (1) An action brought pursuant to this act may be filed in  
7 Superior Court. Upon application of any party, a jury trial shall be  
8 directed.

9 (2) In a cause of action for the unjustified use of force or deadly  
10 force in violation of N.J.S.2C:3-7 or a violation of this act the  
11 burden of proof shall be on the public employee or employer to  
12 demonstrate that the public employee or employer did not violate a  
13 clearly established constitutional or statutory right.

14 e. Any person who deprives, interferes or attempts to interfere  
15 by threats, intimidation or coercion with the exercise or enjoyment  
16 by any other person of any substantive due process or equal  
17 protection rights, privileges or immunities secured by the  
18 Constitution or laws of the United States, or any substantive rights,  
19 privileges or immunities secured by the Constitution or laws of this  
20 State is liable for a civil penalty for each violation. The court or  
21 jury, as the case may be, shall determine the appropriate amount of  
22 the penalty. Any money collected by the court in payment of a civil  
23 penalty shall be conveyed to the State Treasurer for deposit into the  
24 State General Fund.

25 f. In addition to any damages, civil penalty, injunction or other  
26 appropriate relief awarded in an action brought pursuant to  
27 subsection c. of this section, the court may award the prevailing  
28 party reasonable attorney's fees and costs.

29 (cf: P.L.2004, c.143, s.2)

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31 2. R.S.59:3-3 is amended to read as follows:

32 a. A public employee is not liable if he acts in good faith in the  
33 execution or enforcement of any law.

34 b. Nothing in this section **【exonerates】** shall exonerate a public  
35 employee from liability for:

36 (1) false arrest or false imprisonment; or

37 (2) unjustified use of force or deadly force in violation of  
38 N.J.S.2C:3-7 or the use of force guidelines promulgated by the  
39 Attorney General.

40 c. It shall not be a defense pursuant to this section with respect  
41 to any cause of action for unjustified use of force or deadly force in  
42 violation of N.J.S.2C:3-7 or a violation of the "New Jersey Civil  
43 Rights Act," P.L.2004, c.143 (C.10:6-1 et seq.), that the plaintiff's  
44 rights, privileges, or immunities were not clearly established at the  
45 time of their deprivation.

46 (cf: PL.1972, c. 45, s.3)

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48 3. This act shall take effect immediately.

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STATEMENT

This bill places certain restrictions on the qualified immunity doctrine which shields public employees, including law enforcement officers, from civil liability.

Under the qualified immunity doctrine, public employees are immune from civil liability when their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. In determining whether a public employee is entitled to qualified immunity, a court is required to inquire whether: (1) the facts, taken in the light most favorable to the party asserting the injury, show the public employee's conduct violated a constitutional right; and (2) that constitutional right was clearly established at the time that the defendant acted.

This bill places the burden on public employees or employers in a cause of action for violations of the "New Jersey Civil Rights Act" and the unjustified use of force or deadly force to demonstrate that the public employee or employer did not violate a clearly established constitutional or statutory right. In addition, the bill provides that public employees and employers are not immune from civil liability for unjustified use of force or deadly force or violations of the use of force guidelines for law enforcement officers promulgated by the Attorney General. The bill prohibits public employees and employers from invoking a defense that the plaintiff's rights, privileges, or immunities were not clearly established at the time of their deprivation in causes of action for unjustified use of force or violations of the "New Jersey Civil Rights Act."