

SENATE, No. 1259

STATE OF NEW JERSEY

INTRODUCED MAY 30, 1996

By Senators LaROSSA and INVERSO

1 AN ACT concerning law enforcement officers, and amending and
2 supplementing parts of statutory law.

3

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

6

7 1. (New section) As used in this act, unless another meaning is
8 clearly apparent from the language or context:

9 "Law enforcement agency" means any public agency, other than the
10 Department of Law and Public Safety, any police force, department or
11 division within the State of New Jersey, or any county or municipality
12 thereof, which is empowered by statute to act for the detection,
13 investigation, arrest, conviction, detention, or rehabilitation of persons
14 violating the criminal law of this State.

15 "Law enforcement officer" means any person who is employed as
16 a permanent full-time member of any State, county or municipal law
17 enforcement agency, department, or division of those governments
18 who is statutorily empowered to act for the detection, investigation,
19 arrest, conviction, detention, or rehabilitation of persons violating the
20 criminal law of this State and statutorily required to successfully
21 complete a training course approved by or certified as substantially
22 equivalent by the Police Training Commission.

23

24 2. N.J.S.2C:11-3 is amended to read as follows:

25 2C:11-3. Murder.

26 a. Except as provided in N.J.S.2C:11-4 criminal homicide
27 constitutes murder when:

28 (1) The actor purposely causes death or serious bodily injury
29 resulting in death; or

30 (2) The actor knowingly causes death or serious bodily injury
31 resulting in death; or

32 (3) It is committed when the actor, acting either alone or with one
33 or more other persons, is engaged in the commission of, or an attempt
34 to commit, or flight after committing or attempting to commit robbery,

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.

1 sexual assault, arson, burglary, kidnapping or criminal escape, and in
2 the course of such crime or of immediate flight therefrom, any person
3 causes the death of a person other than one of the participants; except
4 that in any prosecution under this subsection, in which the defendant
5 was not the only participant in the underlying crime, it is an affirmative
6 defense that the defendant:

7 (a) Did not commit the homicidal act or in any way solicit, request,
8 command, importune, cause or aid the commission thereof; and

9 (b) Was not armed with a deadly weapon, or any instrument, article
10 or substance readily capable of causing death or serious physical injury
11 and of a sort not ordinarily carried in public places by law-abiding
12 persons; and

13 (c) Had no reasonable ground to believe that any other participant
14 was armed with such a weapon, instrument, article or substance; and

15 (d) Had no reasonable ground to believe that any other participant
16 intended to engage in conduct likely to result in death or serious
17 physical injury.

18 b. (1) Murder is a crime of the first degree but a person convicted
19 of murder shall be sentenced, except as provided in subsection c. of
20 this section, by the court to a term of 30 years, during which the
21 person shall not be eligible for parole or to a specific term of years
22 which shall be between 30 years and life imprisonment of which the
23 person shall serve 30 years before being eligible for parole.

24 (2) If the victim was a law enforcement officer and was murdered
25 while performing his official duties or was murdered because of his
26 status as a law enforcement officer, the person convicted of that
27 murder shall be sentenced, except as otherwise provided in subsection
28 c. of this section, by the court to a term of life imprisonment, during
29 which the person shall not be eligible for parole.

30 c. Any person convicted under subsection a.(1) or (2) who
31 committed the homicidal act by his own conduct; or who as an
32 accomplice procured the commission of the offense by payment or
33 promise of payment of anything of pecuniary value; or who, as a leader
34 of a narcotics trafficking network as defined in N.J.S.2C:35-3 and in
35 furtherance of a conspiracy enumerated in N.J.S.2C:35-3, commanded
36 or by threat or promise solicited the commission of the offense, shall
37 be sentenced as provided hereinafter:

38 (1) The court shall conduct a separate sentencing proceeding to
39 determine whether the defendant should be sentenced to death or
40 pursuant to the provisions of subsection b. of this section.

41 Where the defendant has been tried by a jury, the proceeding shall
42 be conducted by the judge who presided at the trial and before the jury
43 which determined the defendant's guilt, except that, for good cause,
44 the court may discharge that jury and conduct the proceeding before
45 a jury empaneled for the purpose of the proceeding. Where the
46 defendant has entered a plea of guilty or has been tried without a jury,

1 the proceeding shall be conducted by the judge who accepted the
2 defendant's plea or who determined the defendant's guilt and before a
3 jury empaneled for the purpose of the proceeding. On motion of the
4 defendant and with consent of the prosecuting attorney the court may
5 conduct a proceeding without a jury. Nothing in this subsection shall
6 be construed to prevent the participation of an alternate juror in the
7 sentencing proceeding if one of the jurors who rendered the guilty
8 verdict becomes ill or is otherwise unable to proceed before or during
9 the sentencing proceeding.

10 (2) (a) At the proceeding, the State shall have the burden of
11 establishing beyond a reasonable doubt the existence of any
12 aggravating factors set forth in paragraph (4) of this subsection. The
13 defendant shall have the burden of producing evidence of the existence
14 of any mitigating factors set forth in paragraph (5) of this subsection
15 but shall not have a burden with regard to the establishment of a
16 mitigating factor.

17 (b) The admissibility of evidence offered by the State to establish
18 any of the aggravating factors shall be governed by the rules governing
19 the admission of evidence at criminal trials. The defendant may offer,
20 without regard to the rules governing the admission of evidence at
21 criminal trials, reliable evidence relevant to any of the mitigating
22 factors. If the defendant produces evidence in mitigation which would
23 not be admissible under the rules governing the admission of evidence
24 at criminal trials, the State may rebut that evidence without regard to
25 the rules governing the admission of evidence at criminal trials.

26 (c) Evidence admitted at the trial, which is relevant to the
27 aggravating and mitigating factors set forth in paragraphs (4) and (5)
28 of this subsection, shall be considered without the necessity of
29 reintroducing that evidence at the sentencing proceeding; provided
30 that the fact finder at the sentencing proceeding was present as either
31 the fact finder or the judge at the trial.

32 (d) The State and the defendant shall be permitted to rebut any
33 evidence presented by the other party at the sentencing proceeding and
34 to present argument as to the adequacy of the evidence to establish the
35 existence of any aggravating or mitigating factor.

36 (e) Prior to the commencement of the sentencing proceeding, or at
37 such time as he has knowledge of the existence of an aggravating
38 factor, the prosecuting attorney shall give notice to the defendant of
39 the aggravating factors which he intends to prove in the proceeding.

40 (f) Evidence offered by the State with regard to the establishment
41 of a prior homicide conviction pursuant to paragraph (4)(a) of this
42 subsection may include the identity and age of the victim, the manner
43 of death and the relationship, if any, of the victim to the defendant.

44 (3) The jury or, if there is no jury, the court shall return a special
45 verdict setting forth in writing the existence or nonexistence of each
46 of the aggravating and mitigating factors set forth in paragraphs (4)

1 and (5) of this subsection. If any aggravating factor is found to exist,
2 the verdict shall also state whether it outweighs beyond a reasonable
3 doubt any one or more mitigating factors.

4 (a) If the jury or the court finds that any aggravating factors exist
5 and that all of the aggravating factors outweigh beyond a reasonable
6 doubt all of the mitigating factors, the court shall sentence the
7 defendant to death.

8 (b) If the jury or the court finds that no aggravating factors exist,
9 or that all of the aggravating factors which exist do not outweigh all
10 of the mitigating factors, the court shall sentence the defendant
11 pursuant to subsection b.

12 (c) If the jury is unable to reach a unanimous verdict, the court
13 shall sentence the defendant pursuant to subsection b.

14 (4) The aggravating factors which may be found by the jury or the
15 court are:

16 (a) The defendant has been convicted, at any time, of another
17 murder. For purposes of this section, a conviction shall be deemed
18 final when sentence is imposed and may be used as an aggravating
19 factor regardless of whether it is on appeal;

20 (b) In the commission of the murder, the defendant purposely or
21 knowingly created a grave risk of death to another person in addition
22 to the victim;

23 (c) The murder was outrageously or wantonly vile, horrible or
24 inhuman in that it involved torture, depravity of mind, or an
25 aggravated assault to the victim;

26 (d) The defendant committed the murder as consideration for the
27 receipt, or in expectation of the receipt of anything of pecuniary value;

28 (e) The defendant procured the commission of the offense by
29 payment or promise of payment of anything of pecuniary value;

30 (f) The murder was committed for the purpose of escaping
31 detection, apprehension, trial, punishment or confinement for another
32 offense committed by the defendant or another;

33 (g) The offense was committed while the defendant was engaged
34 in the commission of, or an attempt to commit, or flight after
35 committing or attempting to commit murder, robbery, sexual assault,
36 arson, burglary or kidnapping;

37 (h) The defendant murdered a public servant, as defined in
38 N.J.S.2C:27-1, while the victim was engaged in the performance of his
39 official duties, or because of the victim's status as a public servant;

40 (i) The defendant: (i) as a leader of a narcotics trafficking network
41 as defined in N.J.S.2C:35-3 and in furtherance of a conspiracy
42 enumerated in N.J.S.2C:35-3, committed, commanded or by threat or
43 promise solicited the commission of the offense or (ii) committed the
44 offense at the direction of a leader of a narcotics trafficking network
45 as defined in N.J.S.2C:35-3 in furtherance of a conspiracy enumerated
46 in N.J.S.2C:35-3;

- 1 (j) The homicidal act that the defendant committed or procured
2 was in violation of paragraph (1) of subsection a. of N.J.S.2C:17-2; or
3 (k) The victim was less than 14 years old.
- 4 (5) The mitigating factors which may be found by the jury or the
5 court are:
- 6 (a) The defendant was under the influence of extreme mental or
7 emotional disturbance insufficient to constitute a defense to
8 prosecution;
- 9 (b) The victim solicited, participated in or consented to the
10 conduct which resulted in his death;
- 11 (c) The age of the defendant at the time of the murder;
- 12 (d) The defendant's capacity to appreciate the wrongfulness of his
13 conduct or to conform his conduct to the requirements of the law was
14 significantly impaired as the result of mental disease or defect or
15 intoxication, but not to a degree sufficient to constitute a defense to
16 prosecution;
- 17 (e) The defendant was under unusual and substantial duress
18 insufficient to constitute a defense to prosecution;
- 19 (f) The defendant has no significant history of prior criminal
20 activity;
- 21 (g) The defendant rendered substantial assistance to the State in
22 the prosecution of another person for the crime of murder; or
- 23 (h) Any other factor which is relevant to the defendant's character
24 or record or to the circumstances of the offense.
- 25 (6) When a defendant at a sentencing proceeding presents evidence
26 of the defendant's character or record pursuant to subparagraph (h) of
27 paragraph (5) of this subsection, the State may present evidence of the
28 murder victim's character and background and of the impact of the
29 murder on the victim's survivors. If the jury finds that the State has
30 proven at least one aggravating factor beyond a reasonable doubt and
31 the jury finds the existence of a mitigating factor pursuant to
32 subparagraph (h) of paragraph (5) of this subsection, the jury may
33 consider the victim and survivor evidence presented by the State
34 pursuant to this paragraph in determining the appropriate weight to
35 give mitigating evidence presented pursuant to subparagraph (h) of
36 paragraph (5) of this subsection.
- 37 d. The sentencing proceeding set forth in subsection c. of this
38 section shall not be waived by the prosecuting attorney.
- 39 e. Every judgment of conviction which results in a sentence of
40 death under this section shall be appealed, pursuant to the Rules of
41 Court, to the Supreme Court. Upon the request of the defendant, the
42 Supreme Court shall also determine whether the sentence is
43 disproportionate to the penalty imposed in similar cases, considering
44 both the crime and the defendant. Proportionality review under this
45 section shall be limited to a comparison of similar cases in which a
46 sentence of death has been imposed under subsection c. of this section.

1 In any instance in which the defendant fails, or refuses to appeal, the
2 appeal shall be taken by the Office of the Public Defender or other
3 counsel appointed by the Supreme Court for that purpose.

4 f. Prior to the jury's sentencing deliberations, the trial court shall
5 inform the jury of the sentences which may be imposed pursuant to
6 subsection b. of this section on the defendant if the defendant is not
7 sentenced to death. The jury shall also be informed that a failure to
8 reach a unanimous verdict shall result in sentencing by the court
9 pursuant to subsection b.

10 g. A juvenile who has been tried as an adult and convicted of
11 murder shall not be sentenced pursuant to the provisions of subsection
12 c. but shall be sentenced pursuant to the provisions of subsection b. of
13 this section.

14 h. In a sentencing proceeding conducted pursuant to this section,
15 no evidence shall be admissible concerning the method or manner of
16 execution which would be imposed on a defendant sentenced to death.

17 i. For purposes of this section the term "homicidal act" shall mean
18 conduct that causes death or serious bodily injury resulting in death.
19 (cf: P.L.1995, c.123, s.1)

20
21 3. N.J.S.40A:14-117 is amended to read as follows:

22 40A:14-117. Whenever a member or officer of a county police, or
23 county park police, department or force is a defendant in any action or
24 legal proceeding arising out of or incidental to the performance of his
25 duties, the governing body of the county, or county park commission,
26 as the case may be, shall provide said member or officer with
27 necessary means for the defense of such action or proceeding, other
28 than for his defense in a disciplinary proceeding instituted against him
29 by the county or park commission, or in a criminal proceeding
30 instituted as a result of a complaint on behalf of the county or park
31 commission. [If] Notwithstanding the provisions of this section, if
32 any such disciplinary or criminal proceeding instituted by or on
33 complaint of the county or park commission, or any other legal
34 proceeding arising out of or incidental to the performance of his duties
35 in which the member or officer is the defendant shall be dismissed or
36 finally determined in favor of the member or officer, he shall be
37 reimbursed for the expense of his defense.

38 (cf: P.L.1977, c.455, s.1)

39
40 4. N.J.S.40A:14-147 is amended to read as follows:

41 40A:14-147. Except as otherwise provided by law, no permanent
42 member or officer of the police department or force shall be removed
43 from his office, employment or position for political reasons or for any
44 cause other than incapacity, misconduct, or disobedience of rules and
45 regulations established for the government of the police department
46 and force, nor shall such member or officer be suspended, removed,

1 fined or reduced in rank from or in office, employment, or position
2 therein, except for just cause as hereinbefore provided and then only
3 upon a written complaint setting forth the charge or charges against
4 such member or officer. [Said] The complaint shall be filed in the
5 office of the body, officer or officers having charge of the department
6 or force wherein the complaint is made and a copy shall be served
7 upon the member or officer so charged, with notice of a designated
8 hearing thereon by the proper authorities, which shall be not less than
9 10 nor more than 30 days from date of service of the complaint.

10 A complaint charging a violation of the internal rules and
11 regulations established for the conduct of a law enforcement unit shall
12 be filed no later than the 45th day after the date on which the person
13 filing the complaint obtained sufficient information to file the matter
14 upon which the complaint is based. The 45-day time limit shall not
15 apply if an investigation of a law enforcement officer for a violation of
16 the internal rules or regulations of the law enforcement unit is included
17 directly or indirectly within a concurrent investigation of that officer
18 for a violation of the criminal laws of this State. The 45-day limit shall
19 begin on the day after the disposition of the criminal investigation.
20 The 45-day requirement of this paragraph for the filing of a complaint
21 against an officer shall not apply to a filing of a complaint by a private
22 individual.

23 A failure to comply with said provisions as to the service of the
24 complaint and the time within which a complaint is to be filed shall
25 require a dismissal of the complaint.

26 The law enforcement officer may waive the right to a hearing and
27 may appeal the charges directly to any available authority specified by
28 any other law or the Department of Personnel, or follow any other
29 procedure recognized by a contract, as permitted by law. No penalty
30 shall be imposed in any administrative proceeding pending the final
31 outcome of this appeal.

32 (cf: P.L.1988, c.145, s.1)

33

34 5. N.J.S.40A:14-155 is amended to read as follows:

35 40A:14-155. Whenever a member or officer of a municipal police
36 department or force is a defendant in any action or legal proceeding
37 arising out of and directly related to the lawful exercise of police
38 powers in the furtherance of his official duties, the governing body of
39 the municipality shall provide said member or officer with necessary
40 means for the defense of such action or proceeding, but not for his
41 defense in a disciplinary proceeding instituted against him by the
42 municipality or in criminal proceeding instituted as a result of a
43 complaint on behalf of the municipality. [If] Notwithstanding the
44 provisions of this section, if any such disciplinary or criminal
45 proceeding instituted by or on the complaint of the municipality, or if
46 any other legal [action or] proceeding [instituted by or on complaint

1 of the municipality] arising out of and directly related to the lawful
2 exercise of police powers in the furtherance of his official duties in
3 which the member or officer is the defendant shall be dismissed or
4 finally determined in favor of the member or officer, [he] the officer
5 shall be reimbursed for the expense of his defense.

6 (cf: P.L.1985, c.457, s.1)

7

8 6. Section 1 of P.L.1977, c.437 (C.40A:14-152.2) is amended to
9 read as follows:

10 1. Whenever any municipal police officer or other law enforcement
11 officer, as defined in section 2 of P.L. , c. (C.) (now pending
12 before the Legislature as this bill), has been conferred with Statewide
13 police powers and is acting under lawful authority beyond the
14 territorial limits of his employing municipality or other appointing
15 authority, said police officer or law enforcement officer, as the case
16 may be, shall have all of the immunities from tort liability and shall
17 have all of the pension, relief, disability, workmen's compensation,
18 insurance, and other benefits enjoyed while performing duties within
19 said employing municipality or the jurisdictional responsibility of the
20 other appointing authority, as the case may be.

21 (cf: P.L.1977, c.437, s.1)

22

23 7. Section 1 of P.L.1973, c.353 (C.40:37-11.5) is amended to read
24 as follows:

25 1. Whenever a member or officer of a county park police system
26 is a defendant in any action or legal proceeding arising out of or
27 incidental to the performance of his duties, the county park
28 commission shall provide said member or officer with necessary and
29 reasonable means for the defense of such action or proceeding, other
30 than for his defense in a disciplinary proceeding instituted against him
31 by the county park commission or in a criminal proceeding instituted
32 as a result of a complaint on behalf of the park commission. [If]
33 Notwithstanding the provisions of this section, if any such disciplinary
34 or criminal proceeding instituted by or on complaint of the park
35 commission, or if any other legal proceeding arising out of or
36 incidental to the performance of his duties in which the member or
37 officer is the defendant shall be dismissed or finally determined in
38 favor of the member or officer, he shall be reimbursed for the
39 reasonable expense of his defense.

40 (cf: P.L.1973, c.353, c.1)

41

42 8. Section 4 of P.L.1970, c.211 (C.18A:6-4.5) is amended to read
43 as follows:

44 4. Every person so appointed and commissioned shall possess all
45 the powers of policemen and constables in criminal cases and offenses
46 against the law anywhere in the State of New Jersey [, pursuant to any

1 limitations as may be imposed by the governing body of the institution
2 which appointed and commissioned the person].

3 (cf: P.L.1991, c.327, s.1)

4

5 9. Section 7 of P.L.1968, c.303 (C.34:13A-5.3) is amended to read
6 as follows:

7 7. Except as hereinafter provided, public employees shall have, and
8 shall be protected in the exercise of, the right, freely and without fear
9 of penalty or reprisal, to form, join and assist any employee
10 organization or to refrain from any such activity; provided, however,
11 that this right shall not extend to elected officials, members of boards
12 and commissions, managerial executives, or confidential employees,
13 except in a school district the term managerial executive shall mean the
14 superintendent of schools or his equivalent, nor, except where
15 established practice, prior agreement or special circumstances, dictate
16 the contrary, shall any supervisor having the power to hire, discharge,
17 discipline, or to effectively recommend the same, have the right to be
18 represented in collective negotiations by an employee organization that
19 admits nonsupervisory personnel to membership, and the fact that any
20 organization has such supervisory employees as members shall not
21 deny the right of that organization to represent the appropriate unit in
22 collective negotiations; and provided further, that, except where
23 established practice, prior agreement, or special circumstances dictate
24 the contrary, no policeman shall have the right to join an employee
25 organization that admits employees other than policemen to
26 membership. The negotiating unit shall be defined with due regard for
27 the community of interest among the employees concerned, but the
28 commission shall not intervene in matters of recognition and unit
29 definition except in the event of a dispute.

30 Representatives designated or selected by public employees for the
31 purposes of collective negotiation by the majority of the employees in
32 a unit appropriate for such purposes or by the majority of the
33 employees voting in an election conducted by the commission as
34 authorized by this act shall be the exclusive representatives for
35 collective negotiation concerning the terms and conditions of
36 employment of the employees in such unit. Nothing herein shall be
37 construed to prevent any official from meeting with an employee
38 organization for the purpose of hearing the views and requests of its
39 members in such unit so long as (a) the majority representative is
40 informed of the meeting; (b) any changes or modifications in terms and
41 conditions of employment are made only through negotiation with the
42 majority representative; and (c) a minority organization shall not
43 present or process grievances. Nothing herein shall be construed to
44 deny to any individual employee his rights under Civil Service laws or
45 regulations. When no majority representative has been selected as the
46 bargaining agent for the unit of which an individual employee is a part,

1 he may present his own grievance either personally or through an
2 appropriate representative or an organization of which he is a member
3 and have such grievance adjusted.

4 A majority representative of public employees in an appropriate unit
5 shall be entitled to act for and to negotiate agreements covering all
6 employees in the unit and shall be responsible for representing the
7 interest of all such employees without discrimination and without
8 regard to employee organization membership. Proposed new rules or
9 modifications of existing rules governing working conditions shall be
10 negotiated with the majority representative before they are established.
11 In addition, the majority representative and designated representatives
12 of the public employer shall meet at reasonable times and negotiate in
13 good faith with respect to grievances, disciplinary disputes, and other
14 terms and conditions of employment. Nothing herein shall be
15 construed as permitting negotiation of the standards or criteria for
16 employee performance.

17 When an agreement is reached on the terms and conditions of
18 employment, it shall be embodied in writing and signed by the
19 authorized representatives of the public employer and the majority
20 representative.

21 Public employers shall negotiate written policies setting forth
22 grievance and disciplinary review procedures by means of which their
23 employees or representatives of employees may appeal the
24 interpretation, application or violation of policies, agreements, and
25 administrative decisions, including disciplinary determinations,
26 affecting them, provided that such grievance and disciplinary review
27 procedures shall be included in any agreement entered into between
28 the public employer and the representative organization. Such
29 grievance and disciplinary review procedures may provide for binding
30 arbitration as a means for resolving disputes. The procedures agreed
31 to by the parties may not replace or be inconsistent with any alternate
32 statutory appeal procedure [nor may they provide for binding
33 arbitration of disputes involving the discipline of employees with
34 statutory protection under] for the specific form of discipline imposed,
35 but may provide for binding arbitration of any form of discipline which
36 is not specifically covered by tenure or civil service laws. Grievance
37 and disciplinary review procedures established by agreement between
38 the public employer and the representative organization shall be
39 utilized for any dispute covered by the terms of such agreement. The
40 provisions of this paragraph shall apply to all public employees and
41 employers.

42 (cf: P.L.1982, c.103, s.1)

43

44 10. Section 1 of P.L.1963, c.140 (C.2A:62A-1) is amended to read
45 as follows:

46 1. Any individual, including (a) a person licensed to practice any

1 method of treatment of human ailments, disease, pain, injury,
2 deformity, mental or physical condition, or licensed to render services
3 ancillary thereto, or (b) any person who is a volunteer member of a
4 duly incorporated first aid and emergency or volunteer ambulance or
5 rescue squad association, or (c) any municipal, county or State law
6 enforcement officer, who, in good faith and provided reasonable care
7 is exercised, renders emergency care at the scene of an accident or
8 emergency to the victim or victims thereof, or while transporting the
9 victim or victims thereof to a hospital or other facility where treatment
10 or care is to be rendered, shall not be liable for any civil damages as a
11 result of any acts or omissions by such person in rendering the
12 emergency care.

13 (cf: P.L.1987, c.296, s.1)

14

15 11. Section 6 of P.L.1961, c.56 (C.52:17B-71) is amended to read
16 as follows:

17 6. The commission is vested with the power, responsibility and
18 duty:

19 a. To prescribe standards for the approval and continuation of
20 approval of schools at which police training courses authorized by this
21 act and in-service police training courses shall be conducted, including
22 but not limited to presently existing regional, county, municipal and
23 police chief association police training schools or at which basic
24 training courses and in-service training courses shall be conducted for
25 State and county juvenile and adult corrections officers and juvenile
26 detention officers;

27 b. To approve and issue certificates of approval to such schools,
28 to inspect such schools from time to time, and to revoke any approval
29 or certificate issued to such schools;

30 c. To prescribe the curriculum, the minimum courses of study,
31 attendance requirements, equipment and facilities, and standards of
32 operation for such schools. Courses of study in crime prevention may
33 be recommended to the Police Training Commission by the Crime
34 Prevention Advisory Committee, established by section 2 of P.L.1985,
35 c.1 (C.52:17B-77.1). The Police Training Commission may prescribe
36 psychological and psychiatric examinations for police recruits while in
37 such schools;

38 d. To prescribe minimum qualifications for instructors at such
39 schools and to certify, as qualified, instructors for approved police
40 training schools and to issue appropriate certificates to such
41 instructors;

42 e. To certify police officers, corrections officers, juvenile
43 corrections officers and juvenile detention officers who have
44 satisfactorily completed training programs and to issue appropriate
45 certificates to such police officers, corrections officers, juvenile
46 corrections officers and juvenile detention officers;

- 1 f. To advise and consent in the appointment of an administrator of
2 police services by the Attorney General pursuant to section 8 of
3 P.L.1961, c.56 (C.52:17B-73);
- 4 g. (Deleted by amendment, P.L.1985, c.491.)
- 5 h. To make such rules and regulations as may be reasonably
6 necessary or appropriate to accomplish the purposes and objectives of
7 this act;
- 8 i. To make a continuous study of police training methods and
9 training methods for corrections officers, juvenile corrections officers
10 and juvenile detention officers and to consult and accept the
11 cooperation of any recognized federal or State law enforcement
12 agency or educational institution;
- 13 j. To consult and cooperate with universities, colleges and
14 institutes in the State for the development of specialized courses of
15 study for police officers in police science and police administration;
- 16 k. To consult and cooperate with other departments and agencies
17 of the State concerned with police training or the training of
18 corrections officers, juvenile corrections officers and juvenile detention
19 officers;
- 20 l. To participate in unified programs and projects relating to police
21 training and the training of corrections officers, juvenile corrections
22 officers and juvenile detention officers sponsored by any federal, State,
23 or other public or private agency;
- 24 m. To perform such other acts as may be necessary or appropriate
25 to carry out its functions and duties as set forth in this act;
- 26 n. To extend the time limit for satisfactory completion of police
27 training programs or programs for the training of corrections officers,
28 juvenile corrections officers and juvenile detention officers upon a
29 finding that health, extraordinary workload or other factors have,
30 singly or in combination, effected a delay in the satisfactory
31 completion of such training program;
- 32 o. To furnish approved schools, for inclusion in their regular police
33 training courses and curriculum, with information concerning the
34 advisability of high speed chases, the risk caused thereby, and the
35 benefits resulting therefrom;
- 36 p. To review and approve new standards and course curricula
37 developed by the Department of Corrections for both basic and
38 in-service training of State and county corrections officers and juvenile
39 detention officers. These courses for the State corrections officers and
40 juvenile detention officers shall be centrally provided at the
41 Corrections Officers' Training Academy of the Department of
42 Corrections. Courses for the county corrections officers and juvenile
43 detention officers shall also be centrally provided at the Corrections
44 Officers' Training Academy unless an off-grounds training program is
45 established by the county. A county may elect to establish and
46 conduct a basic training program for corrections officers and juvenile

1 detention officers seeking permanent appointment in that county. The
2 Corrections Officers' Training Academy shall develop the curriculum
3 of the basic training program to be conducted by a county.;

4 q. To administer and distribute the monies in the Law Enforcement
5 Officers Training and Equipment Fund established by section 16 of
6 P.L....., c.... (C.....)(now pending before the Legislature as this bill)
7 and make such rules and regulations for the administration and
8 distribution of the monies as may be necessary or appropriate to
9 accomplish the purpose for which the fund was established.

10 (cf: P.L.1995, c.280, s.55)

11

12 12. (New section) Notwithstanding any provisions of law to the
13 contrary, a law enforcement officer who is authorized to carry a
14 firearm under the provisions of N.J.S.2C:39-6, and who in the lawful
15 exercise of his police powers in the furtherance of his official duties,
16 and consistent with all applicable departmental policies and guidelines,
17 discharges or fires that weapon shall not be liable in any civil action for
18 damages resulting from that discharging or firing. Nothing in this
19 section shall be deemed to grant immunity to any law enforcement
20 officer causing any damage by his willful, wanton, or grossly negligent
21 act of commission or omission.

22

23 13. (New section) a. In addition to any other disposition made
24 pursuant to law, a court shall order a person convicted of, indicted for
25 or formally charged with a criminal offense, a disorderly persons
26 offense or a petty disorderly persons offense, to submit to an approved
27 serological test for acquired immune deficiency syndrome (AIDS) or
28 infection with the human immunodeficiency virus (HIV) or any other
29 related virus identified as a probable causative agent of AIDS if:

30 (1) in the course of the commission of the offense, including the
31 immediate flight thereafter or during any investigation or arrest related
32 to that offense, a law enforcement officer, the victim or other person
33 suffered a prick from a hypodermic needle, provided there is probable
34 cause to believe that the defendant is an intravenous user of controlled
35 dangerous substances; or

36 (2) in the course of the commission of the offense, including the
37 immediate flight thereafter or during any investigation or arrest related
38 to that offense, a law enforcement officer, the victim or other person
39 had contact with the defendant which involved or was likely to involve
40 the transmission of bodily fluids.

41 The court may order a person to submit to an approved serological
42 test for AIDS or infection with the HIV or any other related virus
43 identified as a probable cause agent of AIDS if in the course of the
44 performance of any other law enforcement duties, a law enforcement
45 officer suffers a prick from a hyperdermic needle, provided that there
46 is probable cause to believe that the defendant is an intravenous user

1 of controlled dangerous substances, or had contact with the defendant
2 which involved or was likely to involve the transmission of bodily
3 fluids. The court shall issue such an order only upon the request of the
4 law enforcement officer, victim of the offense or other affected person
5 made at the time of indictment, charge or conviction. If a county
6 prosecutor declines to make such an application within 72 hours of
7 being requested to do so by the law enforcement officer, the law
8 enforcement officer may appeal to the Division of Criminal Justice in
9 the Department of Law and Public Safety for that officer to bring the
10 application. The person shall be ordered by the court to submit to
11 such repeat or confirmatory tests as may be medically necessary.

12 As used in this section, "formal charge" includes a proceeding by
13 accusation in the event that the defendant has waived the right to an
14 indictment.

15 b. A court order issued pursuant to subsection a. of this section
16 shall require testing to be performed as soon as practicable by the
17 Commissioner of the Department of Corrections pursuant to authority
18 granted to the commissioner by sections 6 and 10 of P.L.1976, c.98
19 (C.30:1B-6 and 30:1B-10) or by a provider of health care or at a
20 health care facility licensed pursuant to section 12 of P.L.1971, c.136
21 (C.26:2H-12). The order shall also require that the results of the test
22 be reported to the offender, the appropriate Office of Victim-Witness
23 Advocacy if a victim of an offense is tested, and the affected law
24 enforcement officer. Upon receipt of the result of a test ordered
25 pursuant to subsection a. of this section, the Office of Victim-Witness
26 Advocacy shall provide the victim with appropriate counseling, referral
27 for counseling and if appropriate, referral for health care. The office
28 shall notify the victim or make appropriate arrangements for the victim
29 to be notified of the test result.

30 c. In addition to any other disposition authorized, a court may
31 order an offender at the time of sentencing to reimburse the State for
32 the costs of the tests ordered pursuant to subsection a. of this section.

33 d. The result of a test ordered pursuant to subsection a. of this
34 section shall be confidential and health care providers and employees
35 of the Department of Corrections, the Office of Victim-Witness
36 Advocacy, a health care facility or counseling service shall not disclose
37 the result of a test performed pursuant to this section except as
38 authorized herein or as otherwise authorized by law or court order.
39 The provisions of this section shall not be deemed to prohibit
40 disclosure of a test result to the person tested.

41 e. Persons who perform tests ordered pursuant to subsection a. of
42 this section in accordance with accepted medical standards for the
43 performance of such tests shall be immune from civil and criminal
44 liability arising from their conduct.

45 f. This section shall not be construed to preclude or limit any other
46 testing for AIDS or infection with the HIV or any other related virus

1 identified as a probable causative agent of AIDS which is otherwise
2 permitted by statute, court rule or common law.

3
4 14. (New section) a. In addition to any other disposition made
5 pursuant to law, a court shall order a juvenile charged with
6 delinquency or adjudicated delinquent for an act which, if committed
7 by an adult would constitute a crime, a disorderly persons offense or
8 a petty disorderly persons offense, to submit to an approved
9 serological test for acquired immune deficiency syndrome (AIDS) or
10 infection with the human immunodeficiency virus (HIV) or any other
11 related virus identified as a probable causative agent of AIDS if:

12 (1) in the course of the commission of the act, including the
13 immediate flight thereafter or during any investigation or arrest related
14 to that act, a law enforcement officer, the victim or other person
15 suffered a prick from a hypodermic needle, provided there is probable
16 cause to believe that the juvenile is an intravenous user of controlled
17 dangerous substances; or

18 (2) in the course of the commission of the act, including the
19 immediate flight thereafter or during any investigation or arrest related
20 to that act, a law enforcement officer, the victim or other person had
21 contact with the juvenile which involved or was likely to involve the
22 transmission of bodily fluids.

23 The court may order a juvenile to submit to an approved serological
24 test for AIDS or infection with the HIV or any other related virus
25 identified as a probable cause agent of AIDS if in the course of the
26 performance of any other law enforcement duties, a law enforcement
27 officer suffers a prick from a hyperdermic needle, provided that there
28 is probable cause to believe that the defendant is an intravenous user
29 of controlled dangerous substances, or had contact with the defendant
30 which involved or was likely to involve the transmission of bodily
31 fluids. The court shall issue such an order only upon the request of the
32 law enforcement officer, victim of the offense or other affected person
33 made at the time of indictment, charge or conviction. If a county
34 prosecutor declines to make such an application within 72 hours of
35 being requested to do so by the law enforcement officer, the law
36 enforcement officer may appeal to the Division of Criminal Justice in
37 the Department of Law and Public Safety for that officer to bring the
38 application. The juvenile shall be ordered by the court to submit to
39 such repeat or confirmatory tests as may be medically necessary.

40 b. A court order issued pursuant to subsection a. of this section
41 shall require testing to be performed as soon as practicable by the
42 Executive Director of the Juvenile Justice Commission pursuant to
43 authority granted to the executive director by sections 6 and 10 of
44 P.L.1976, c.98 (C.30:1B-6 and 30:1B-10) or by a provider of health
45 care or at a health care facility licensed pursuant to section 12 of
46 P.L.1971, c.136 (C.26:2H-12). The order shall also require that the

1 results of the test be reported to the offender, the appropriate Office
2 of Victim-Witness Advocacy if a victim of an offense is tested , and
3 the affected law enforcement officer. Upon receipt of the result of a
4 test ordered pursuant to subsection a. of this section, the Office of
5 Victim-Witness Advocacy shall provide the victim with appropriate
6 counseling, referral for counseling and if appropriate, referral for
7 health care. The office shall notify the victim or make appropriate
8 arrangements for the victim to be notified of the test result.

9 c. In addition to any other disposition authorized, a court may
10 order a juvenile at the time of sentencing to reimburse the State for the
11 costs of the tests ordered by subsection a. of this section.

12 d. The result of a test ordered pursuant to subsection a. of this
13 section shall be confidential and health care providers and employees
14 of the Juvenile Justice Commission, the Office of Victim-Witness
15 Advocacy, a health care facility or counseling service shall not disclose
16 the result of a test performed pursuant to this section except as
17 authorized herein or as otherwise authorized by law or court order.
18 The provisions of this section shall not be deemed to prohibit
19 disclosure of a test result to the person tested.

20 e. Persons who perform tests ordered pursuant to subsection a. of
21 this section in accordance with accepted medical standards for the
22 performance of such tests shall be immune from civil and criminal
23 liability arising from their conduct.

24 f. This section shall not be construed to preclude or limit any other
25 testing for AIDS or infection with the HIV or any other related virus
26 identified as a probable causative agent of AIDS which is otherwise
27 permitted by statute, court rule or common law.

28

29 15. (New section) Whenever a county correctional officer is a
30 defendant in any action or legal proceeding arising out of and directly
31 related to or incident to the lawful exercise of his official duties, the
32 governing body of the county shall provide that officer with the
33 necessary means for the defense of such action or proceeding, other
34 than for his defense in a disciplinary proceeding instituted against him
35 by the county or in a criminal proceeding instituted as a result of a
36 complaint on behalf of the county. Notwithstanding the provisions of
37 this section, if any such disciplinary or criminal proceeding instituted
38 by or on the complaint of the county, or if any other legal proceeding
39 in which the officer is the defendant shall be dismissed or finally
40 determined in favor of the officer, the officer shall be reimbursed for
41 the expense of his defense.

42

43 16. (New section) a. In addition to any disposition made pursuant
44 to the provisions of Title 2C of the New Jersey Statutes, any person
45 convicted of a crime shall be assessed a penalty of \$30.

46 b. In addition to any other disposition made pursuant to the

1 provisions of section 24 of P.L.1982, c.77 (C.2A:4A-43) or any other
2 statute indicating the dispositions that may be ordered for
3 adjudications of delinquency, a juvenile adjudicated delinquent for an
4 offense which if committed by an adult would be a crime shall be
5 assessed a penalty of \$15.

6 c. The penalties assessed under subsections a. and b. of this section
7 shall be collected as provided for the collection of fines and restitution
8 in section 3 of P.L.1979, c.396 (C.2C:46-4) and forwarded to the
9 State Treasury for deposit in a separate account to be known as the
10 "Law Enforcement Officers Training and Equipment Fund." The
11 penalty assessed in this section shall be collected only after a penalty
12 assessed in section 2 of P.L.1979, c.396 (C.2C:43-3.1) and any
13 restitution ordered is collected.

14 The fund shall be used to support the development and provision of
15 basic and in-service training courses for law enforcement officers by
16 police training schools approved pursuant to P.L.1961, c.56
17 (C.52:17B-66 et seq.). In addition, the fund shall also be used to
18 enable police training schools to purchase equipment needed for the
19 training of law enforcement officers. Distributions from the fund shall
20 only be made directly to such approved schools.

21 d. The Police Training Commission in the Department of Law and
22 Public Safety shall be responsible for the administration and
23 distribution of the fund pursuant to its authority under section 6 of
24 P.L.1961, c.56 (C.52:17B-71).

25 e. An adult prisoner of a State correctional institution who does
26 not pay the penalty imposed pursuant to this section shall have the
27 penalty deducted from any income the inmate receives as a result of
28 labor performed at the institution or any type of work release program.
29 If any person, including an inmate, fails to pay the penalty imposed
30 pursuant to this section, the court may order the suspension of the
31 person's driver's license or nonresident reciprocity privilege, or
32 prohibit the person from receiving or obtaining a license until the
33 assessment is paid. The court shall notify the Director of the Division
34 of Motor Vehicles of such an action. Prior to any action being taken
35 pursuant to this subsection, the person shall be given notice and a
36 hearing before the court to contest the charge of the failure to pay the
37 assessment.

38
39 17. (New section) A law enforcement agency, as defined in section
40 1 of P.L. , c. (C.)(now pending before the Legislature as
41 this bill), shall adopt and implement the guidelines governing the
42 "Internal Affairs Policy and Procedures" of the Police Management
43 Manual promulgated by the Police Bureau of the Division of Criminal
44 Justice in the Department of Law and Public Safety.

45
46 18. This act shall take effect immediately.

STATEMENT

1
2
3 This bill, known as the "Law Enforcement Officers' Protection
4 Act," amends and supplements parts of statutory law to clarify and
5 codify certain law enforcement officer powers, protections, privileges
6 and rights.

7 The provisions of the bill:

8 (1) Provide for life imprisonment without parole for murderers
9 convicted of killing law enforcement officers but who escape the death
10 penalty;

11 (2) Establish and extend certain tort coverages and immunities to
12 law enforcement officers, most notably in rendering good faith
13 assistance to victims of an accident or in times of emergency, for
14 duties performed outside their employment jurisdiction, and relating
15 to the firing of their weapon in the performance of their official duties;

16 (3) Entitle all local law enforcement officers, including county
17 correctional officers, to reimbursements of legal fees in certain civil
18 suits and disciplinary hearings;

19 (4) Require HIV and AIDS testing whenever body fluids have been
20 transmitted between a law enforcement officer and any other person
21 (adult or juvenile) the officer may arrest for an offense;

22 (5) Stipulate that any person designated to hear charges filed
23 against a law enforcement officer shall not be an officer, agent,
24 representative, elected or appointed official, or employee of the
25 employing governmental unit; and

26 (6) Extend the jurisdictional law enforcement duties and
27 responsibilities of campus police officers.

28 The bill also establishes a Law Enforcement Officers Training and
29 Equipment Fund and provides for its funding by imposing additional
30 monetary penalties upon adults convicted of crimes and juveniles
31 adjudicated delinquent.

32 The committee, at the request of the sponsor, amended the bill to
33 provide that law enforcement agencies be required to adopt and
34 implement the guidelines set forth in the "Internal Affairs Policy and
35 Procedures" of the Police Management Manual promulgated by the
36 Attorney General.

37 The bill clarifies that the indemnification for legal expenses
38 authorized for county officers under N.J.S.40A-14-117, municipal
39 officers under N.J.S.40A:14-155, and county park officers under
40 section 1 of P.L.1973, c.353 (C.40:37-11.5) applies only to those legal
41 proceedings arising out of or incidental to the performance of the
42 officer's duties.

43 In addition, the committee amended section 4 of the bill to remove
44 the amendatory language which would have precluded any "officer,
45 agent, representative, elected or appointed official, or employee of the
46 municipality or county or any subdivision thereof" to hear a complaint

1 filed against an officer. The committee further amended the section to
2 clarify that the limitation on imposing penalties pending the final
3 outcome of all appeals applies only to administrative proceedings.

4 Finally, the committee amended section 10 of the bill to provide
5 that the immunity from civil liability afforded law enforcement officers
6 under section 1 of P.L.1963, c.140 (C.2A:62A-1) applies only when
7 the officer acts in good faith and when "reasonable care is exercised."

8

9

10

11

12 "Law Enforcement Officers' Protection Act."