

[Second Reprint]
SENATE, No. 1259

STATE OF NEW JERSEY

INTRODUCED MAY 30, 1996

By Senators LaROSSA, INVERSO, Kosco and Matheussen

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[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.]¹

23

24 ¹[2.] 1.¹ 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

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 SLP committee amendments adopted June 6, 1996.

² Senate SBA committee amendments adopted June 20, 1996.

1 (3) It is committed when the actor, acting either alone or with one
2 or more other persons, is engaged in the commission of, or an attempt
3 to commit, or flight after committing or attempting to commit robbery,
4 sexual assault, arson, burglary, kidnapping or criminal escape, and in
5 the course of such crime or of immediate flight therefrom, any person
6 causes the death of a person other than one of the participants; except
7 that in any prosecution under this subsection, in which the defendant
8 was not the only participant in the underlying crime, it is an affirmative
9 defense that the defendant:

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

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

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

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

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

27 (2) If the victim was a law enforcement officer and was murdered
28 while performing his official duties or was murdered because of his
29 status as a law enforcement officer, the person convicted of that
30 murder shall be sentenced, except as otherwise provided in subsection
31 c. of this section, by the court to a term of life imprisonment, during
32 which the person shall not be eligible for parole. ²[¹As used in this
33 paragraph, "law enforcement officer" means any person who is
34 employed as a permanent full-time member of any State, county or
35 municipal law enforcement agency, department, or division of those
36 governments who is statutorily empowered to act for the detection,
37 investigation, arrest, conviction, detention, or rehabilitation of persons
38 violating the criminal laws of this State and statutorily required to
39 successfully complete a training course approved, or certified as being
40 substantially equivalent to such an approved course, by the Police
41 Training Commission pursuant to P.L.1961, c.56 (C.52:17B-66 et
42 seq.).¹]²

43 c. Any person convicted under subsection a.(1) or (2) who
44 committed the homicidal act by his own conduct; or who as an
45 accomplice procured the commission of the offense by payment or
46 promise of payment of anything of pecuniary value; or who, as a leader

1 of a narcotics trafficking network as defined in N.J.S.2C:35-3 and in
2 furtherance of a conspiracy enumerated in N.J.S.2C:35-3, commanded
3 or by threat or promise solicited the commission of the offense, shall
4 be sentenced as provided hereinafter:

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

8 Where the defendant has been tried by a jury, the proceeding shall
9 be conducted by the judge who presided at the trial and before the jury
10 which determined the defendant's guilt, except that, for good cause,
11 the court may discharge that jury and conduct the proceeding before
12 a jury empaneled for the purpose of the proceeding. Where the
13 defendant has entered a plea of guilty or has been tried without a jury,
14 the proceeding shall be conducted by the judge who accepted the
15 defendant's plea or who determined the defendant's guilt and before a
16 jury empaneled for the purpose of the proceeding. On motion of the
17 defendant and with consent of the prosecuting attorney the court may
18 conduct a proceeding without a jury. Nothing in this subsection shall
19 be construed to prevent the participation of an alternate juror in the
20 sentencing proceeding if one of the jurors who rendered the guilty
21 verdict becomes ill or is otherwise unable to proceed before or during
22 the sentencing proceeding.

23 (2) (a) At the proceeding, the State shall have the burden of
24 establishing beyond a reasonable doubt the existence of any
25 aggravating factors set forth in paragraph (4) of this subsection. The
26 defendant shall have the burden of producing evidence of the existence
27 of any mitigating factors set forth in paragraph (5) of this subsection
28 but shall not have a burden with regard to the establishment of a
29 mitigating factor.

30 (b) The admissibility of evidence offered by the State to establish
31 any of the aggravating factors shall be governed by the rules governing
32 the admission of evidence at criminal trials. The defendant may offer,
33 without regard to the rules governing the admission of evidence at
34 criminal trials, reliable evidence relevant to any of the mitigating
35 factors. If the defendant produces evidence in mitigation which would
36 not be admissible under the rules governing the admission of evidence
37 at criminal trials, the State may rebut that evidence without regard to
38 the rules governing the admission of evidence at criminal trials.

39 (c) Evidence admitted at the trial, which is relevant to the
40 aggravating and mitigating factors set forth in paragraphs (4) and (5)
41 of this subsection, shall be considered without the necessity of
42 reintroducing that evidence at the sentencing proceeding; provided
43 that the fact finder at the sentencing proceeding was present as either
44 the fact finder or the judge at the trial.

45 (d) The State and the defendant shall be permitted to rebut any
46 evidence presented by the other party at the sentencing proceeding and

1 to present argument as to the adequacy of the evidence to establish the
2 existence of any aggravating or mitigating factor.

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

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

11 (3) The jury or, if there is no jury, the court shall return a special
12 verdict setting forth in writing the existence or nonexistence of each
13 of the aggravating and mitigating factors set forth in paragraphs (4)
14 and (5) of this subsection. If any aggravating factor is found to exist,
15 the verdict shall also state whether it outweighs beyond a reasonable
16 doubt any one or more mitigating factors.

17 (a) If the jury or the court finds that any aggravating factors exist
18 and that all of the aggravating factors outweigh beyond a reasonable
19 doubt all of the mitigating factors, the court shall sentence the
20 defendant to death.

21 (b) If the jury or the court finds that no aggravating factors exist,
22 or that all of the aggravating factors which exist do not outweigh all
23 of the mitigating factors, the court shall sentence the defendant
24 pursuant to subsection b.

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

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

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

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

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

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

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

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

46 (g) The offense was committed while the defendant was engaged

1 in the commission of, or an attempt to commit, or flight after
2 committing or attempting to commit murder, robbery, sexual assault,
3 arson, burglary or kidnapping;

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

7 (i) The defendant: (i) as a leader of a narcotics trafficking network
8 as defined in N.J.S.2C:35-3 and in furtherance of a conspiracy
9 enumerated in N.J.S.2C:35-3, committed, commanded or by threat or
10 promise solicited the commission of the offense or (ii) committed the
11 offense at the direction of a leader of a narcotics trafficking network
12 as defined in N.J.S.2C:35-3 in furtherance of a conspiracy enumerated
13 in N.J.S.2C:35-3;

14 (j) The homicidal act that the defendant committed or procured
15 was in violation of paragraph (1) of subsection a. of N.J.S.2C:17-2; or

16 (k) The victim was less than 14 years old.

17 (5) The mitigating factors which may be found by the jury or the
18 court are:

19 (a) The defendant was under the influence of extreme mental or
20 emotional disturbance insufficient to constitute a defense to
21 prosecution;

22 (b) The victim solicited, participated in or consented to the
23 conduct which resulted in his death;

24 (c) The age of the defendant at the time of the murder;

25 (d) The defendant's capacity to appreciate the wrongfulness of his
26 conduct or to conform his conduct to the requirements of the law was
27 significantly impaired as the result of mental disease or defect or
28 intoxication, but not to a degree sufficient to constitute a defense to
29 prosecution;

30 (e) The defendant was under unusual and substantial duress
31 insufficient to constitute a defense to prosecution;

32 (f) The defendant has no significant history of prior criminal
33 activity;

34 (g) The defendant rendered substantial assistance to the State in
35 the prosecution of another person for the crime of murder; or

36 (h) Any other factor which is relevant to the defendant's character
37 or record or to the circumstances of the offense.

38 (6) When a defendant at a sentencing proceeding presents evidence
39 of the defendant's character or record pursuant to subparagraph (h) of
40 paragraph (5) of this subsection, the State may present evidence of the
41 murder victim's character and background and of the impact of the
42 murder on the victim's survivors. If the jury finds that the State has
43 proven at least one aggravating factor beyond a reasonable doubt and
44 the jury finds the existence of a mitigating factor pursuant to
45 subparagraph (h) of paragraph (5) of this subsection, the jury may
46 consider the victim and survivor evidence presented by the State

1 pursuant to this paragraph in determining the appropriate weight to
2 give mitigating evidence presented pursuant to subparagraph (h) of
3 paragraph (5) of this subsection.

4 d. The sentencing proceeding set forth in subsection c. of this
5 section shall not be waived by the prosecuting attorney.

6 e. Every judgment of conviction which results in a sentence of
7 death under this section shall be appealed, pursuant to the Rules of
8 Court, to the Supreme Court. Upon the request of the defendant, the
9 Supreme Court shall also determine whether the sentence is
10 disproportionate to the penalty imposed in similar cases, considering
11 both the crime and the defendant. Proportionality review under this
12 section shall be limited to a comparison of similar cases in which a
13 sentence of death has been imposed under subsection c. of this section.
14 In any instance in which the defendant fails, or refuses to appeal, the
15 appeal shall be taken by the Office of the Public Defender or other
16 counsel appointed by the Supreme Court for that purpose.

17 f. Prior to the jury's sentencing deliberations, the trial court shall
18 inform the jury of the sentences which may be imposed pursuant to
19 subsection b. of this section on the defendant if the defendant is not
20 sentenced to death. The jury shall also be informed that a failure to
21 reach a unanimous verdict shall result in sentencing by the court
22 pursuant to subsection b.

23 g. A juvenile who has been tried as an adult and convicted of
24 murder shall not be sentenced pursuant to the provisions of subsection
25 c. but shall be sentenced pursuant to the provisions of subsection b. of
26 this section.

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

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

33
34 ¹[3. N.J.S.40A:14-117 is amended to read as follows:

35 40A:14-117. Whenever a member or officer of a county police, or
36 county park police, department or force is a defendant in any action or
37 legal proceeding arising out of or incidental to the performance of his
38 duties, the governing body of the county, or county park commission,
39 as the case may be, shall provide said member or officer with
40 necessary means for the defense of such action or proceeding, other
41 than for his defense in a disciplinary proceeding instituted against him
42 by the county or park commission, or in a criminal proceeding
43 instituted as a result of a complaint on behalf of the county or park
44 commission. [If] Notwithstanding the provisions of this section, if
45 any such disciplinary or criminal proceeding instituted by or on
46 complaint of the county or park commission, or any other legal

1 proceeding arising out of or incidental to the performance of his duties
2 in which the member or officer is the defendant shall be dismissed or
3 finally determined in favor of the member or officer, he shall be
4 reimbursed for the expense of his defense.

5 (cf: P.L.1977, c.455, s.1)]¹

6
7 ¹[4.] 2.¹ N.J.S.40A:14-147 is amended to read as follows:

8 40A:14-147. Except as otherwise provided by law, no permanent
9 member or officer of the police department or force shall be removed
10 from his office, employment or position for political reasons or for any
11 cause other than incapacity, misconduct, or disobedience of rules and
12 regulations established for the government of the police department
13 and force, nor shall such member or officer be suspended, removed,
14 fined or reduced in rank from or in office, employment, or position
15 therein, except for just cause as hereinbefore provided and then only
16 upon a written complaint setting forth the charge or charges against
17 such member or officer. [Said] The complaint shall be filed in the
18 office of the body, officer or officers having charge of the department
19 or force wherein the complaint is made and a copy shall be served
20 upon the member or officer so charged, with notice of a designated
21 hearing thereon by the proper authorities, which shall be not less than
22 10 nor more than 30 days from date of service of the complaint.

23 A complaint charging a violation of the internal rules and
24 regulations established for the conduct of a law enforcement unit shall
25 be filed no later than the 45th day after the date on which the person
26 filing the complaint obtained sufficient information to file the matter
27 upon which the complaint is based. The 45-day time limit shall not
28 apply if an investigation of a law enforcement officer for a violation of
29 the internal rules or regulations of the law enforcement unit is included
30 directly or indirectly within a concurrent investigation of that officer
31 for a violation of the criminal laws of this State. The 45-day limit shall
32 begin on the day after the disposition of the criminal investigation.
33 The 45-day requirement of this paragraph for the filing of a complaint
34 against an officer shall not apply to a filing of a complaint by a private
35 individual.

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

39 ¹[The law enforcement officer] ²[a. A member or officer shall be
40 served with a preliminary notice of disciplinary action setting forth the
41 charges and statement of facts supporting the charges and afforded the
42 opportunity for a hearing prior to imposition of major discipline,
43 except:

44 (1) A member or officer may be suspended immediately and prior
45 to a hearing where it is determined that the member or officer is unfit
46 for duty or is a hazard to any person if permitted to remain on the job,

1 or that an immediate suspension is necessary to maintain safety, health,
 2 order or effective direction of law enforcement services; provided,
 3 however, a preliminary notice of disciplinary action with opportunity
 4 for a hearing shall be served in person or by certified mail within five
 5 days following the immediate suspension.

6 (2) A member or officer may be suspended immediately when the
 7 member or officer is formally charged with a crime of the first, second
 8 or third degree, or a crime of the fourth degree on the job or directly
 9 related to his office, employment or position.

10 For the purposes of this subsection, major discipline shall mean any
 11 violation for which a suspension of more than five days or a fine
 12 equal to an amount of more than five days salary would be imposed
 13 upon the violator .

14 b. A member or officer¹] The law enforcement officer² may
 15 waive the right to a hearing and may appeal the charges directly to any
 16 available authority specified by²[any other]² law or² [the Department
 17 of Personnel] regulation² , or follow any other procedure recognized
 18 by a contract, as permitted by law.

19 ¹[No] ²[In the case of a minor disciplinary matter, no¹ penalty
 20 shall be imposed¹[in any administrative proceeding pending the final
 21 outcome of this appeal] until the member or officer has exhausted his
 22 right of administrative appeal. For the purposes of this paragraph,
 23 minor disciplinary matter means a violation for which a suspension of
 24 five or less days or a fine of an amount equal to five or less days salary
 25 would be imposed upon the violator¹] Prior to imposition of discipline,
 26 a member or officer employed by a municipality that has not adopted
 27 the provisions of Title 11A of the New Jersey Statutes shall be
 28 afforded procedural protections substantially equivalent to those
 29 afforded under Title 11A of the New Jersey Statutes and the
 30 regulations adopted pursuant thereto² .

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

32
 33 ¹[5. N.J.S.40A:14-155 is amended to read as follows:

34 40A:14-155. Whenever a member or officer of a municipal police
 35 department or force is a defendant in any action or legal proceeding
 36 arising out of and directly related to the lawful exercise of police
 37 powers in the furtherance of his official duties, the governing body of
 38 the municipality shall provide said member or officer with necessary
 39 means for the defense of such action or proceeding, but not for his
 40 defense in a disciplinary proceeding instituted against him by the
 41 municipality or in criminal proceeding instituted as a result of a
 42 complaint on behalf of the municipality. [If] Notwithstanding the
 43 provisions of this section, if any such disciplinary or criminal
 44 proceeding instituted by or on the complaint of the municipality, or if
 45 any other legal [action or] proceeding [instituted by or on complaint
 46 of the municipality] arising out of and directly related to the lawful

1 exercise of police powers in the furtherance of his official duties in
2 which the member or officer is the defendant shall be dismissed or
3 finally determined in favor of the member or officer, [he] the officer
4 shall be reimbursed for the expense of his defense.

5 (cf: P.L.1985, c.457, s.1)]¹

6
7 ¹[6.] 3.¹ Section 1 of P.L.1977, c.437 (C.40A:14-152.2) is
8 amended to read as follows:

9 1. Whenever any municipal police officer or other law enforcement
10 officer¹, as defined in section 2 of P.L. , c. (C.) (now pending
11 before the Legislature as this bill).¹ has been conferred with
12 Statewide police powers and is acting under lawful authority beyond
13 the territorial limits of his employing municipality or other appointing
14 authority, said police officer or law enforcement officer, as the case
15 may be, shall have all of the immunities from tort liability and shall
16 have all of the pension, relief, disability, workmen's compensation,
17 insurance, and other benefits enjoyed while performing duties within
18 said employing municipality or the jurisdictional responsibility of the
19 other appointing authority, as the case may be ²; provided, however,
20 in the case of a law enforcement officer other than a municipal police
21 officer or a county law enforcement officer afforded such immunities
22 and benefits under the provisions of section 1 of P.L.1977, c.439
23 (C.40A:14-107.1), the immunities from tort liability and other benefits
24 enjoyed while performing duties within the jurisdictional responsibility
25 of the appointing authority shall be extended only in those instances
26 where (1) the law enforcement officer has been requested by the other
27 jurisdiction to perform law enforcement duties within its boundaries;
28 or (2) the law enforcement officer is performing law enforcement
29 duties within another jurisdiction upon the orders of his superiors².

30 ¹As used in this section, "law enforcement officer" means any
31 person who is employed as a permanent full-time member of any State,
32 county or municipal law enforcement agency, department, or division
33 of those governments who is statutorily empowered to act for the
34 detection, investigation, arrest, conviction, detention, or rehabilitation
35 of persons violating the criminal laws of this State and statutorily
36 required to successfully complete a training course approved, or
37 certified as being substantially equivalent to such an approved course,
38 by the Police Training Commission pursuant to P.L.1961, c.56
39 (C.52:17B-66 et seq.). "Law enforcement agency" means any public
40 agency, other than the Department of Law and Public Safety, any
41 police force, department or division within the State of New Jersey, or
42 any county or municipality thereof, which is empowered by statute to
43 act for the detection, investigation, arrest, conviction, detention, or
44 rehabilitation of persons violating the criminal laws of this State.¹

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

46 ¹[7. Section 1 of P.L.1973, c.353 (C.40:37-11.5) is amended to

1 read as follows:

2 1. Whenever a member or officer of a county park police system
3 is a defendant in any action or legal proceeding arising out of or
4 incidental to the performance of his duties, the county park
5 commission shall provide said member or officer with necessary and
6 reasonable means for the defense of such action or proceeding, other
7 than for his defense in a disciplinary proceeding instituted against him
8 by the county park commission or in a criminal proceeding instituted
9 as a result of a complaint on behalf of the park commission. [If
10 Notwithstanding the provisions of this section, if any such disciplinary
11 or criminal proceeding instituted by or on complaint of the park
12 commission, or if any other legal proceeding arising out of or
13 incidental to the performance of his duties in which the member or
14 officer is the defendant shall be dismissed or finally determined in
15 favor of the member or officer, he shall be reimbursed for the
16 reasonable expense of his defense.
17 (cf: P.L.1973, c.353, c.1)]¹

18

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

21 4. Every person so appointed and commissioned shall possess all
22 the powers of policemen and constables in criminal cases and offenses
23 against the law anywhere in the State of New Jersey [, pursuant to any
24 limitations as may be imposed by the governing body of the institution
25 which appointed and commissioned the person].
26 (cf: P.L.1991, c.327, s.1)]¹

27

28 ¹[9.] 4.¹ Section 7 of P.L.1968, c.303 (C.34:13A-5.3) is amended
29 to read as follows:

30 7. Except as hereinafter provided, public employees shall have, and
31 shall be protected in the exercise of, the right, freely and without fear
32 of penalty or reprisal, to form, join and assist any employee
33 organization or to refrain from any such activity; provided, however,
34 that this right shall not extend to elected officials, members of boards
35 and commissions, managerial executives, or confidential employees,
36 except in a school district the term managerial executive shall mean the
37 superintendent of schools or his equivalent, nor, except where
38 established practice, prior agreement or special circumstances, dictate
39 the contrary, shall any supervisor having the power to hire, discharge,
40 discipline, or to effectively recommend the same, have the right to be
41 represented in collective negotiations by an employee organization that
42 admits nonsupervisory personnel to membership, and the fact that any
43 organization has such supervisory employees as members shall not
44 deny the right of that organization to represent the appropriate unit in
45 collective negotiations; and provided further, that, except where
46 established practice, prior agreement, or special circumstances dictate

1 the contrary, no policeman shall have the right to join an employee
2 organization that admits employees other than policemen to
3 membership. The negotiating unit shall be defined with due regard for
4 the community of interest among the employees concerned, but the
5 commission shall not intervene in matters of recognition and unit
6 definition except in the event of a dispute.

7 Representatives designated or selected by public employees for the
8 purposes of collective negotiation by the majority of the employees in
9 a unit appropriate for such purposes or by the majority of the
10 employees voting in an election conducted by the commission as
11 authorized by this act shall be the exclusive representatives for
12 collective negotiation concerning the terms and conditions of
13 employment of the employees in such unit. Nothing herein shall be
14 construed to prevent any official from meeting with an employee
15 organization for the purpose of hearing the views and requests of its
16 members in such unit so long as (a) the majority representative is
17 informed of the meeting; (b) any changes or modifications in terms and
18 conditions of employment are made only through negotiation with the
19 majority representative; and (c) a minority organization shall not
20 present or process grievances. Nothing herein shall be construed to
21 deny to any individual employee his rights under Civil Service laws or
22 regulations. When no majority representative has been selected as the
23 bargaining agent for the unit of which an individual employee is a part,
24 he may present his own grievance either personally or through an
25 appropriate representative or an organization of which he is a member
26 and have such grievance adjusted.

27 A majority representative of public employees in an appropriate unit
28 shall be entitled to act for and to negotiate agreements covering all
29 employees in the unit and shall be responsible for representing the
30 interest of all such employees without discrimination and without
31 regard to employee organization membership. Proposed new rules or
32 modifications of existing rules governing working conditions shall be
33 negotiated with the majority representative before they are established.
34 In addition, the majority representative and designated representatives
35 of the public employer shall meet at reasonable times and negotiate in
36 good faith with respect to grievances, disciplinary disputes, and other
37 terms and conditions of employment. Nothing herein shall be
38 construed as permitting negotiation of the standards or criteria for
39 employee performance.

40 When an agreement is reached on the terms and conditions of
41 employment, it shall be embodied in writing and signed by the
42 authorized representatives of the public employer and the majority
43 representative.

44 Public employers shall negotiate written policies setting forth
45 grievance and disciplinary review procedures by means of which their
46 employees or representatives of employees may appeal the

1 interpretation, application or violation of policies, agreements, and
2 administrative decisions, including disciplinary determinations,
3 affecting them, provided that such grievance and disciplinary review
4 procedures shall be included in any agreement entered into between
5 the public employer and the representative organization. Such
6 grievance and disciplinary review procedures may provide for binding
7 arbitration as a means for resolving disputes. The procedures agreed
8 to by the parties may not replace or be inconsistent with any alternate
9 statutory appeal procedure [nor may they provide for binding
10 arbitration of disputes involving the discipline of employees with
11 statutory protection under] ²[for the specific form of discipline
12 imposed, but may provide for binding arbitration of any form of
13 discipline which is not specifically covered by] nor may they provide
14 for binding arbitration disputes involving discipline of employees with
15 statutory protection² tenure or civil service laws ², except that such
16 procedures may provide for binding arbitration of disputes involving
17 the minor discipline of any public employees protected under the
18 provisions of P.L.1968, c.303 (C.34:13A-5.3), other than public
19 employees subject to discipline pursuant to R.S.53:1-10 ². Grievance
20 and disciplinary review procedures established by agreement between
21 the public employer and the representative organization shall be
22 utilized for any dispute covered by the terms of such agreement. ²[The
23 provisions of this paragraph shall apply to all public employees and
24 employers ¹, except members and officers of the Division of State
25 Police¹] For the purposes of this section, minor discipline shall mean
26 a suspension or fine of less than five days unless the employee has
27 been suspended or fined an aggregate of 15 or more days or received
28 more than three suspensions or fines of five days or less in one
29 calendar year ².

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

31

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

34 1. Any individual, including (a) a person licensed to practice any
35 method of treatment of human ailments, disease, pain, injury,
36 deformity, mental or physical condition, or licensed to render services
37 ancillary thereto, or (b) any person who is a volunteer member of a
38 duly incorporated first aid and emergency or volunteer ambulance or
39 rescue squad association, or (c) any municipal, county or State law
40 enforcement officer, who, in good faith and provided reasonable care
41 is exercised, renders emergency care at the scene of an accident or
42 emergency to the victim or victims thereof, or while transporting the
43 victim or victims thereof to a hospital or other facility where treatment
44 or care is to be rendered, shall not be liable for any civil damages as a
45 result of any acts or omissions by such person in rendering the
46 emergency care.

1 (cf: P.L.1987, c.296, s.1)]¹

2

3 ¹5. (New section) A municipal, county or State law enforcement
4 officer is not liable for any civil damages as a result of any acts or
5 omissions undertaken in good faith in rendering care at the scene of an
6 accident or emergency to any victim thereof, or in transporting any
7 such victim to a hospital or other facility where treatment or care is to
8 be rendered; provided however, that nothing in this section shall
9 exonerate a law enforcement officer for gross negligence.¹

10

11 ¹[11.] 6.¹ Section 6 of P.L.1961, c.56 (C.52:17B-71) is amended
12 to read as follows:

13 6. The commission is vested with the power, responsibility and
14 duty:

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

23 b. To approve and issue certificates of approval to such schools,
24 to inspect such schools from time to time, and to revoke any approval
25 or certificate issued to such schools;

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

34 d. To prescribe minimum qualifications for instructors at such
35 schools and to certify, as qualified, instructors for approved police
36 training schools and to issue appropriate certificates to such
37 instructors;

38 e. To certify police officers, corrections officers, juvenile
39 corrections officers and juvenile detention officers who have
40 satisfactorily completed training programs and to issue appropriate
41 certificates to such police officers, corrections officers, juvenile
42 corrections officers and juvenile detention officers;

43 f. To advise and consent in the appointment of an administrator of
44 police services by the Attorney General pursuant to section 8 of
45 P.L.1961, c.56 (C.52:17B-73);

46 g. (Deleted by amendment, P.L.1985, c.491.)

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

1 Officers Training and Equipment Fund established by section ¹[16] ⁹1
2 of P.L..... c.... (C.....)(now pending before the Legislature as this
3 bill) and make such rules and regulations for the administration and
4 distribution of the monies as may be necessary or appropriate to
5 accomplish the purpose for which the fund was established.
6 (cf: P.L.1995, c.280, s.55)

7
8 ¹[12. (New section) Notwithstanding any provisions of law to the
9 contrary, a law enforcement officer who is authorized to carry a
10 firearm under the provisions of N.J.S.2C:39-6, and who in the lawful
11 exercise of his police powers in the furtherance of his official duties,
12 and consistent with all applicable departmental policies and guidelines,
13 discharges or fires that weapon shall not be liable in any civil action for
14 damages resulting from that discharging or firing. Nothing in this
15 section shall be deemed to grant immunity to any law enforcement
16 officer causing any damage by his willful, wanton, or grossly negligent
17 act of commission or omission.]¹

18
19 ¹[13.] 7.¹ (New section) a. In addition to any other disposition
20 made pursuant to law, a court shall order a person convicted of,
21 indicted for or formally charged with a criminal offense, a disorderly
22 persons offense or a petty disorderly persons offense, to submit to an
23 approved serological test for acquired immune deficiency syndrome
24 (AIDS) or infection with the human immunodeficiency virus (HIV) or
25 any other related virus identified as a probable causative agent of
26 AIDS if:

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

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

38 The court may order a person to submit to an approved serological
39 test for AIDS or infection with the HIV or any other related virus
40 identified as a probable cause agent of AIDS if in the course of the
41 performance of any other law enforcement duties, a law enforcement
42 officer suffers a prick from a hyperdermic needle, provided that there
43 is probable cause to believe that the defendant is an intravenous user
44 of controlled dangerous substances, or had contact with the defendant
45 which involved or was likely to involve the transmission of bodily
46 fluids. The court shall issue such an order only upon the request of the

1 law enforcement officer, victim of the offense or other affected person
2 made at the time of indictment, charge or conviction. If a county
3 prosecutor declines to make such an application within 72 hours of
4 being requested to do so by the law enforcement officer, the law
5 enforcement officer may appeal to the Division of Criminal Justice in
6 the Department of Law and Public Safety for that officer to bring the
7 application. The person shall be ordered by the court to submit to
8 such repeat or confirmatory tests as may be medically necessary.

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

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

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

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

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

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

46

1 ¹[14.] 8.¹ (New section) a. In addition to any other disposition
2 made pursuant to law, a court shall order a juvenile charged with
3 delinquency or adjudicated delinquent for an act which, if committed
4 by an adult would constitute a crime, a disorderly persons offense or
5 a petty disorderly persons offense, to submit to an approved
6 serological test for acquired immune deficiency syndrome (AIDS) or
7 infection with the human immunodeficiency virus (HIV) or any other
8 related virus identified as a probable causative agent of AIDS if:

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

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

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

37 b. A court order issued pursuant to subsection a. of this section
38 shall require testing to be performed as soon as practicable by the
39 Executive Director of the Juvenile Justice Commission pursuant to
40 authority granted to the executive director by sections 6 and 10 of
41 P.L.1976, c.98 (C.30:1B-6 and 30:1B-10) or by a provider of health
42 care or at a health care facility licensed pursuant to section 12 of
43 P.L.1971, c.136 (C.26:2H-12). The order shall also require that the
44 results of the test be reported to the offender, the appropriate Office
45 of Victim-Witness Advocacy if a victim of an offense is tested , and
46 the affected law enforcement officer. Upon receipt of the result of a

1 test ordered pursuant to subsection a. of this section, the Office of
2 Victim-Witness Advocacy shall provide the victim with appropriate
3 counseling, referral for counseling and if appropriate, referral for
4 health care. The office shall notify the victim or make appropriate
5 arrangements for the victim to be notified of the test result.

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

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

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

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

25

26 ¹[15. (New section) Whenever a county correctional officer is a
27 defendant in any action or legal proceeding arising out of and directly
28 related to or incident to the lawful exercise of his official duties, the
29 governing body of the county shall provide that officer with the
30 necessary means for the defense of such action or proceeding, other
31 than for his defense in a disciplinary proceeding instituted against him
32 by the county or in a criminal proceeding instituted as a result of a
33 complaint on behalf of the county. Notwithstanding the provisions of
34 this section, if any such disciplinary or criminal proceeding instituted
35 by or on the complaint of the county, or if any other legal proceeding
36 in which the officer is the defendant shall be dismissed or finally
37 determined in favor of the officer, the officer shall be reimbursed for
38 the expense of his defense.]¹

39

40 ¹[16.] 9.¹ (New section) a. In addition to any disposition made
41 pursuant to the provisions of Title 2C of the New Jersey Statutes, any
42 person convicted of a crime shall be assessed a penalty of \$30.

43 b. In addition to any other disposition made pursuant to the
44 provisions of section 24 of P.L.1982, c.77 (C.2A:4A-43) or any other
45 statute indicating the dispositions that may be ordered for
46 adjudications of delinquency, a juvenile adjudicated delinquent for an

1 offense which if committed by an adult would be a crime shall be
2 assessed a penalty of \$15.

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

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

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

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

35

36 ¹[17. (New section) A] 10. (New section) Every¹ law
37 enforcement agency ¹[, as defined in section 1 of P.L. , c. (C.)
38 (now pending before the Legislature as this bill).]¹ shall adopt and
39 implement ¹guidelines which shall be consistent with¹ the guidelines
40 governing the "Internal Affairs Policy and Procedures" of the Police
41 Management Manual promulgated by the Police Bureau of the
42 Division of Criminal Justice in the Department of Law and Public
43 Safety ²[¹or any tenure or civil service laws or existing contractual
44 agreements¹], and shall be consistent with any tenure or civil service
45 laws, and shall not supersede any existing contractual agreements ².

1 ¹[18.] 11.¹ This act shall take effect ²[immediately] on the 120th
2 day following enactment².

3

4

5

6

7 "Law Enforcement Officers' Protection Act."