ASSEMBLY, No. 712

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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SYNOPSIS

Transfers probation employees from Judiciary to State Parole Board.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

(Sponsorship Updated As Of: 11/8/2021)

AN ACT concerning probation employees, supplementing chapter 4 of Title 30 of the Revised Statutes, and amending P.L.1968, c.303 and P.L.2001, c.362.

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

1. (New section) The Legislature finds and declares that:

a. The enforcement of probation sentences is crucial to the public safety;

b. Despite a drop in the overall crime rate, the number of dangerous and repeat offenders who are serving probation sentences has continued to rise in New Jersey;

c. The number of probationers who have violated the conditions of probation and have a warrant issued for their arrest has reached 15,000;

d. Probation officers working in the New Jersey State courts are not currently permitted to enforce these warrants;

e. Probation officers in other states are permitted to act as law enforcement officers;

f. Probation officers in other states have law enforcement powers and at least 200 of them in New Jersey should in the interest of public safety, have these powers here independent of their current employer, the Judiciary which has limited these powers;

g. The Legislature's efforts to address this issue in 2001 by establishing a "Probation Officer Community Safety Unit" consisting of 200 officers empowered to carry a firearm, enforce the criminal laws of the State, and arrest probationers who violate the terms of their probation was held to be unconstitutional by the New Jersey Supreme Court as a violation of the separation of powers doctrine;

h. It is, therefore, altogether fitting and proper, and within the public interest, for the Legislature to accomplish these objectives by transferring all probation officers, and those covered by current contracts involving probation officers, from the Judiciary to the Bureau of Probation in the State Parole Board, authorizing 200 of those probation officers to carry a firearm and affording them law enforcement powers.

2. (New section) a. All of the functions, powers, and duties of the Judiciary concerning probation, except as herein otherwise provided, are hereby transferred to the Bureau of Probation in the State Parole Board and shall be exercised by the Chairman of the State Parole Board. Unless otherwise specified in this act, this

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined <u>thus</u> is new matter.

transfer shall be subject to the provisions of the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

b. All records, equipment, technology, and other personal property, appropriations, and any unexpended balances of funds appropriated or otherwise available to the Judiciary pertaining to probation officers and employees covered by the two contracts as set forth in section 3 of P.L. , c. (C.) (pending before the Legislature as this bill) and appropriated for the continued performance of these employees' duties., shall be transferred to the Bureau of Probation in the State Parole Board pursuant to the State Agency Transfer Act.

3. (New section) a. All probation officers appointed pursuant to N.J.S.2A:168-5, including supervisory employees and case-related professional employees, and all employees who are subject to Judiciary contracts for the professional supervisors unit and case-related professionals unit, are hereby transferred from the Judiciary to the Bureau of Probation in the State Parole Board.

b. The affected contracts are as follows: Contract between PANJ and the New Jersey State Judiciary covering the "Case-Related Professional Unit," and Contract between PANJ and PANJ Supervisors, covering the Professional Supervisors Unit or Union. The terms and provisions of these contracts shall remain in effect until successor contracts are negotiated. All employees who are represented pursuant to these contracts shall be included in this transfer from the Judiciary to the Bureau of Probation in the State Parole Board.

4. (New section) a. Nothing in this act, including any provision concerning the transfer or use of funds or property, shall be construed to alter or modify the responsibilities and specifications for any probation officer, or the position of employees covered by the two contracts, as those responsibilities, specifications, and positions were prior to the effective date of this act.

b. The implementation of this act shall not be construed to alter or modify the assignment of any probation officer or employees covered by the two contracts prior to the effective date of this act.

c. Nothing in this act shall be construed to alter or modify the rights and privileges granted to probation officers pursuant to the provisions of P.L.2001, c.362 (C.2B:10A-1 et seq.) and any judicial determinations concerning that act.

5. (New section) Whenever any statute, rule, regulation, order, contract, tariff, document, reorganization plan, or judicial or administrative proceeding concerning probation officers refers to the Judiciary or the Administrative Office of the Courts, the

reference shall mean and refer to the Bureau of Probation in the State Parole Board, unless otherwise stated in this act.

6. (New section) a. The contracts in effect on the effective date of this act shall continue in full force and effect until successor contracts are entered into. The employee organizations and the Chairman of the State Parole Board immediately upon the effective date of this law shall open negotiations to effectuate those contractual changes appropriate to accomplish the transfer, including but not limited to, the expiration dates of those contracts, if mutually agreed. In addition, such employees shall be subject to the rules and regulations of the Public Employment Relations Commission, except as modified herein, in connection with successor agreements to these contracts.

b. This act shall not be construed to transfer any employee who is represented by any other employee organization.

c. Notwithstanding any law, rule, regulation, contract, or agreement to the contrary, the categories of employees represented in the Judiciary and covered by the contracts shall continue as they existed prior to the effective date of this act after the transfer of probation functions, powers and duties to the State Parole Board.

7. (New section) All probation employees and all employees covered by the two contracts transferred pursuant to the provisions of this act shall be employees of the Bureau of Probation in the State Parole Board and shall retain their career service employment status and collective bargaining status, including all rights of tenure, retirement, pension, disability, leave of absence or similar benefits, held on the effective date of this act.

8. (New section) All probation employees and all employees covered by the two contracts transferred to the Bureau of Probation in the State Parole Board pursuant to the provisions of this act shall retain their membership in the Public Employees' Retirement System and shall not be eligible for membership in the Police and Firemen's Retirement System.

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

7. Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; provided, however, that this right shall not extend to elected officials, members of boards and commissions, managerial executives, or confidential employees, except in a school district the term managerial executive shall mean the superintendent of schools or his equivalent, nor, except where established practice, prior

agreement or special circumstances dictate the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits nonsupervisory personnel to membership, and the fact that any organization has such supervisory employees as members shall not deny the right of that organization to represent the appropriate unit in collective negotiations; and provided further, that, except where established practice, prior agreement, or special circumstances dictate the contrary, or for employee organizations with members who are probation officers, such as those covered by the two contracts no policeman shall have the right to join an employee organization that admits employees other than policemen to membership. The negotiating unit shall be defined with due regard for the community of interest among the employees concerned, but the commission shall not intervene in matters of recognition and unit definition except in the event of a dispute.

Representatives designated or selected by public employees for the purposes of collective negotiation by the majority of the employees in a unit appropriate for such purposes, by the majority of the employees voting in an election conducted by the commission as authorized by this act or, at the option of the representative in a case in which the commission finds that only one representative is seeking to be the majority representative, by a majority of the employees in the unit signing authorization cards indicating their preference for that representative, shall be the exclusive representatives for collective negotiation concerning the terms and conditions of employment of the employees in such unit. An authorization card indicating preference shall not be valid unless it is printed in a language understood by the employees who signs it.

Nothing herein shall be construed to prevent any official from meeting with an employee organization for the purpose of hearing the views and requests of its members in such unit so long as (a) the majority representative is informed of the meeting; (b) any changes or modifications in terms and conditions of employment are made only through negotiation with the majority representative; and (c) a minority organization shall not present or process grievances. Nothing herein shall be construed to deny to any individual employee his rights under Civil Service laws or regulations. When no majority representative has been selected as the bargaining agent for the unit of which an individual employee is a part, he may present his own grievance either personally or through an appropriate representative or an organization of which he is a member and have such grievance adjusted.

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing

the interest of all such employees without discrimination and without regard to employee organization membership. Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established. In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment. Nothing herein shall be construed as permitting negotiation of the standards or criteria for employee performance.

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

Public employers shall negotiate written policies setting forth grievance and disciplinary review procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions, including disciplinary determinations, affecting them, provided that such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance and disciplinary review procedures may provide for binding arbitration as a means for resolving disputes. Except as otherwise provided herein, the procedures agreed to by the parties may not replace or be inconsistent with any alternate statutory appeal procedure nor may they provide for binding arbitration of disputes involving the discipline of employees with statutory protection under tenure or civil service laws, except that such procedures may provide for binding arbitration of disputes involving the minor discipline of any public employees protected under the provisions of section 7 of P.L.1968, c.303 (C.34:13A-5.3), other than public employees subject to discipline pursuant to R.S.53:1-10. Grievance and disciplinary review procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement. For the purposes of this section, minor discipline shall mean a suspension or fine of less than five days unless the employee has been suspended or fined an aggregate of 15 or more days or received more than three suspensions or fines of five days or less in one calendar year.

Where the State of New Jersey and the majority representative have agreed to a disciplinary review procedure that provides for binding arbitration of disputes involving the major discipline of any public employee protected under the provisions of this section, other than public employees subject to discipline pursuant to R.S.53:1-10, the grievance and disciplinary review procedures established by agreement between the State of New Jersey and the

majority representative shall be utilized for any dispute covered by the terms of such agreement. For the purposes of this section, major discipline shall mean a removal, disciplinary demotion, suspension or fine of more than five days, or less where the aggregate number of days suspended or fined in any one calendar year is 15 or more days or unless the employee received more than three suspensions or fines of five days or less in one calendar year.

In interpreting the meaning and extent of a provision of a collective negotiation agreement providing for grievance arbitration, a court or agency shall be bound by a presumption in favor of arbitration. Doubts as to the scope of an arbitration clause shall be resolved in favor of requiring arbitration.

Any law to the contrary notwithstanding, the two contracts subject to the provisions of P.L. c. (C.) (pending before the Legislature as this bill) shall continue in full force and effect after the transfer and the organizations currently representing the employees under those two contracts, the Probation Association of New Jersey or a division thereof, shall remain as the employee organizations in any successor contracts or amended contracts negotiated pursuant to this act.

(cf: P.L.2005, c.380, s.1)

10. Section 2 of P.L.2001, c.362 (C.2B:10A-2) is amended to read as follows:

2. a. There shall be established within the ⟦Administrative Office of the Courts⟧ Bureau of Probation in the State Parole Board a "Probation Officer Community Safety Unit." The "Probation Officer Community Safety Unit" shall consist of no less than 200 probation officers, duly appointed pursuant to the provisions of ⟦N.J.S.2A:168-5⟧ P.L. c. (C.) (pending before the Legislature as this bill), who shall be authorized to carry a firearm provided the carrying is in accordance with the authority provided in paragraph (17) of subsection c. of N.J.S.2C:39-6 and such rules as are adopted by the ⟦Supreme Court⟧ Bureau of Probation regarding the carrying of a firearm by a probation officer. The probation officer shall undergo a course of law enforcement training as administered by the Police Training Commission which training shall be subject to and in accordance with rules adopted by the ⟦Supreme Court⟧ Bureau of Probation. A probation officer in the "Probation Officer Community Safety Unit" shall have the authority to arrest, detain, and transport probationers and enforce the criminal laws of this State in accordance with such conditions and guidelines as set forth in rules adopted by the ⟦Supreme Court⟧ Bureau of Probation and shall be empowered to enforce warrants for the apprehension and arrest of probationers who violate the conditions of their probation sentence.

b. A "Probation Officer Community Safety Unit" shall be assigned to every county and consist of no less than five probation officers.

c. Prior to being permitted to carry a firearm, a probation officer assigned to the "Probation Officer Community Safety Unit" shall take and successfully complete a firearms training course administered by the Police Training Commission, pursuant to P.L.1961, c.56 (C.52:17B-66 et seq.), and shall annually qualify in the use of a revolver or similar weapon prior to being permitted to carry a firearm.

d. A probation officer assigned to the "Probation Officer Community Safety Unit" shall not be eligible for membership in the Police and Firemen's Retirement System.

(cf: P.L.2001, c.362, s.2)

11. This act shall take effect on the first day of the fourth month after enactment.

STATEMENT

This bill would implement the provisions of Assembly Concurrent Resolution No. 116, a constitutional amendment which authorizes the transfer of probation from the Judiciary to the newly created Bureau of Probation in the State Parole Board.

Specifically, the bill transfers all of the functions, powers, and duties of the Judiciary concerning probation to the Bureau of Probation in the State Parole Board. The transfer includes all records, equipment, technology, and other personal property, appropriations, and any unexpended balances of funds appropriated or otherwise available to the Judiciary pertaining to probation officers. The transfer would be subject to the provisions of the State Agency Transfer Act.

Under the bill, all probation officers and those employees who are subject to the professional case-related contract and the professional supervisors contract are transferred from the Judiciary to the Bureau of Probation in the State Parole Board.

The bill provides that the two contracts concerning probation officers and other employees who are supervisory employees and those who are case-related professional employees, and any others continues in full force and effect until their until successor contracts are negotiated. Changes appropriate to these contracts as a result of the transfer would immediately be negotiated by the current probation officers' employee organizations and the State Parole Board.

The bill further specifies that all transferred employees and those covered by the two contracts would be employees of the Bureau of Probation in the State Parole Board and would retain their career

service employment status and collective bargaining status, including all rights of tenure, retirement, pension, disability, leave of absence or similar benefits, held on the bill's effective date.

The bill specifically provides that all probation employees transferred to the Bureau of Probation are to retain their membership in the Public Employees' Retirement System and are not eligible for membership in the Police and Firemen's Retirement System.

The bill also permits the employee organizations which have represented probation officers prior to the enactment of this bill to continue their representation.

Finally, the bill moves the previously established "Probation Officer Community Safety Unit" from the Judiciary to the Bureau of Probation. The unit is to consist of at least 200 probation officers who are authorized to carry a firearm and who have the authority to arrest probationers, enforce the criminal laws of this State, and enforce warrants for the apprehension and arrest of probationers who violate conditions of probation. Initially established in 2001, the New Jersey Supreme Court held that the Legislature violated the separation of powers doctrine when it established the unit as probation officers are an integral part of the court system and are under the regulatory control of the Judiciary. Under Assembly Concurrent Resolution No. 116 and this bill, probation employees would no longer be part of the Judiciary.