

SENATE, No. 1713

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:
Senator LORETTA WEINBERG
District 37 (Bergen)

SYNOPSIS

Transfers probation employees from Judiciary to State Parole Board.

CURRENT VERSION OF TEXT

As introduced.



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

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

- 7
8 1. (New section) The Legislature finds and declares that:
9 a. The enforcement of probation sentences is crucial to the
10 public safety;
11 b. Despite a drop in the overall crime rate, the number of
12 dangerous and repeat offenders who are serving probation sentences
13 has continued to rise in New Jersey;
14 c. The number of probationers who have violated the
15 conditions of probation and have a warrant issued for their arrest
16 has reached 15,000;
17 d. Probation officers working in the New Jersey State courts
18 are not currently permitted to enforce these warrants;
19 e. Probation officers in other states are permitted to act as law
20 enforcement officers;
21 f. Probation officers in other states have law enforcement
22 powers and at least 200 of them in New Jersey should in the interest
23 of public safety, have these powers here independent of their
24 current employer, the Judiciary which has limited these powers;
25 g. The Legislature's efforts to address this issue in 2001 by
26 establishing a "Probation Officer Community Safety Unit"
27 consisting of 200 officers empowered to carry a firearm, enforce the
28 criminal laws of the State, and arrest probationers who violate the
29 terms of their probation was held to be unconstitutional by the New
30 Jersey Supreme Court as a violation of the separation of powers
31 doctrine;
32 h. It is, therefore, altogether fitting and proper, and within the
33 public interest, for the Legislature to accomplish these objectives by
34 transferring all probation officers, and those covered by current
35 contracts involving probation officers, from the Judiciary to the
36 Bureau of Probation in the State Parole Board, authorizing 200 of
37 those probation officers to carry a firearm and affording them law
38 enforcement powers.
39
40 2. (New section) a. All of the functions, powers, and duties of
41 the Judiciary concerning probation, except as herein otherwise
42 provided, are hereby transferred to the Bureau of Probation in the
43 State Parole Board and shall be exercised by the Chairman of the
44 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 thus is new matter.

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

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

12
13 3. (New section) a. All probation officers appointed pursuant
14 to N.J.S.2A:168-5, including supervisory employees and case-
15 related professional employees, and all employees who are subject
16 to Judiciary contracts for the professional supervisors unit and case-
17 related professionals unit, are hereby transferred from the Judiciary
18 to the Bureau of Probation in the State Parole Board.

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

28
29 4. (New section) a. Nothing in this act, including any
30 provision concerning the transfer or use of funds or property, shall
31 be construed to alter or modify the responsibilities and
32 specifications for any probation officer, or the position of
33 employees covered by the two contracts, as those responsibilities,
34 specifications, and positions were prior to the effective date of this
35 act.

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

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

43
44 5. (New section) Whenever any statute, rule, regulation, order,
45 contract, tariff, document, reorganization plan, or judicial or
46 administrative proceeding concerning probation officers refers to
47 the Judiciary or the Administrative Office of the Courts, the

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

3
4 6. (New section) a. The contracts in effect on the effective
5 date of this act shall continue in full force and effect until successor
6 contracts are entered into. The employee organizations and the
7 Chairman of the State Parole Board immediately upon the effective
8 date of this law shall open negotiations to effectuate those
9 contractual changes appropriate to accomplish the transfer,
10 including but not limited to, the expiration dates of those contracts,
11 if mutually agreed. In addition, such employees shall be subject to
12 the rules and regulations of the Public Employment Relations
13 Commission, except as modified herein, in connection with
14 successor agreements to these contracts.

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

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

22
23 7. (New section) All probation employees and all employees
24 covered by the two contracts transferred pursuant to the provisions
25 of this act shall be employees of the Bureau of Probation in the
26 State Parole Board and shall retain their career service employment
27 status and collective bargaining status, including all rights of tenure,
28 retirement, pension, disability, leave of absence or similar benefits,
29 held on the effective date of this act.

30
31 8. (New section) All probation employees and all employees
32 covered by the two contracts transferred to the Bureau of Probation
33 in the State Parole Board pursuant to the provisions of this act shall
34 retain their membership in the Public Employees' Retirement
35 System and shall not be eligible for membership in the Police and
36 Firemen's Retirement System.

37
38 9. Section 7 of P.L.1968, c.303 (C.34:13A-5.3) is amended to
39 read as follows:

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

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

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

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

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

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

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

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

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

1 established by agreement between the State of New Jersey and the
2 majority representative shall be utilized for any dispute covered by
3 the terms of such agreement. For the purposes of this section,
4 major discipline shall mean a removal, disciplinary demotion,
5 suspension or fine of more than five days, or less where the
6 aggregate number of days suspended or fined in any one calendar
7 year is 15 or more days or unless the employee received more than
8 three suspensions or fines of five days or less in one calendar year.

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

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

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

23
24 10. Section 2 of P.L.2001, c.362 (C.2B:10A-2) is amended to
25 read as follows:

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

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

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

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

12 Finally, the bill moves the previously established "Probation
13 Officer Community Safety Unit" from the Judiciary to the Bureau
14 of Probation. The unit is to consist of at least 200 probation
15 officers who are authorized to carry a firearm and who have the
16 authority to arrest probationers, enforce the criminal laws of this
17 State, and enforce warrants for the apprehension and arrest of
18 probationers who violate conditions of probation. Initially
19 established in 2001, the New Jersey Supreme Court held that the
20 Legislature violated the separation of powers doctrine when it
21 established the unit as probation officers are an integral part of the
22 court system and are under the regulatory control of the Judiciary.