

SENATE, No. 4046

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED NOVEMBER 8, 2021

Sponsored by:

Senator NIA H. GILL

District 34 (Essex and Passaic)

SYNOPSIS

Eliminates qualified immunity and sovereign immunity in certain cases.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning qualified immunity, supplementing Title 10 of
2 the Revised Statutes, and amending R.S.59:3-3.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. a. (New section) As used in this section:

8 “Law enforcement officer” means any person who is employed
9 as a permanent member of a law enforcement agency or an auxiliary
10 or volunteer officer acting under color of law, who is statutorily
11 empowered to act for the detection, investigation, arrest, and
12 conviction of persons violating the criminal laws of this State, or
13 statutorily required to successfully complete a training course
14 approved by the Police Training Commission pursuant to P.L.1961,
15 c.56 (C.52:17B-66 et seq.), or certified by the commission as being
16 substantially equivalent to an approved course. This term shall
17 include Class I, Class II, and Class III special law enforcement
18 officers appointed pursuant to the provisions of P.L.1985, c.439
19 (C.40A:14-146.8 et seq.); probationary and temporary police
20 officers; school and campus police officers; county correctional
21 police officers; State correctional police officers and investigators
22 of the Department of Corrections; and parole officers employed by
23 the State Parole Board.

24 “Public entity” means the State and any county, municipality,
25 district, public authority, public agency, or any other political
26 subdivision or public body in the State.

27 b. A defendant shall not be granted qualified immunity from
28 suit under P.L.2004, c.143 (C.10:6-1 et seq.) and it shall not be a
29 defense to any action brought under P.L.2004, c.143 (C.10:6-1 et
30 seq.) that:

31 (1) the defendant was acting in good faith or that the defendant
32 believed, reasonably or otherwise, that the defendant’s conduct was
33 lawful at the time the conduct was committed; or

34 (2) the rights, privileges, or immunities secured by the United
35 States Constitution or laws of the United States, or any rights,
36 privileges, or immunities secured by the New Jersey Constitution or
37 laws of this State were not clearly established at the time of their
38 deprivation by the defendant, or that at that time, the state of the
39 law was otherwise such that the defendant could not reasonably
40 have been expected to know whether the defendant’s conduct was
41 lawful.

42 c. The State shall not be entitled to sovereign immunity for
43 itself or any public entity within the State for claims brought
44 pursuant to P.L.2004, c.143 (C.10:6-1 et seq.), and the public entity
45 or person acting under color of law or law enforcement officer

**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 acting on behalf of, under color of, or within the course and scope
2 of the authority of the public entity shall not assert sovereign
3 immunity as a defense or bar to an action under P.L.2004, c.143
4 (C.10:6-1 et seq.).

5 d. The prohibition on the use of qualified immunity pursuant to
6 this section shall not abrogate:

7 (1) judicial, legislative, or any other statutory immunity; or

8 (2) the use of qualified immunity regarding claims brought
9 pursuant to subsection c. of section 2 of P.L.2004, c.143 (C.10:6-2).

10
11 2. R.S.59:3-3 is amended to read as follows:

12 a. A public employee is not liable if **【he】** the employee acts in
13 good faith in the execution or enforcement of any law.

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

16 (1) false arrest or false imprisonment; or

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

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

26 (cf: P.L.1972, c. 45, s.3)

27
28 3. This act shall take effect immediately.

31 STATEMENT

32
33 This bill eliminates qualified immunity and sovereign immunity
34 in certain cases. Under the qualified immunity doctrine, public
35 employees are immune from civil liability when their conduct does
36 not violate clearly established statutory or constitutional rights of
37 which a reasonable person would have known. In determining
38 whether a public employee is entitled to qualified immunity, a court
39 is required to inquire whether: (1) the facts, taken in the light most
40 favorable to the party asserting the injury, show the public
41 employee's conduct violated a constitutional right; and (2) that
42 constitutional right was clearly established at the time that the
43 defendant acted.

44 Under the provisions of this bill, a defendant is not to be granted
45 qualified immunity from suit under the New Jersey Civil Rights Act
46 and it is not a defense in any action brought under the act that:

1 1) the defendant was acting in good faith or that the defendant
2 believed, reasonably or otherwise, that the defendant's conduct was
3 lawful at the time the conduct was committed, or

4 2) the rights, privileges, or immunities secured by the United
5 States Constitution or laws of the United States, or any rights,
6 privileges, or immunities secured by the New Jersey Constitution or
7 laws of this State were not clearly established at the time of their
8 deprivation by the defendant, or that at that time, the state of the
9 law was otherwise such that the defendant could not reasonably
10 have been expected to know whether the defendant's conduct was
11 lawful.

12 In addition, under the bill, the State is not entitled to sovereign
13 immunity for itself or any public entity within the State for claims
14 brought pursuant to the New Jersey Civil Rights Act. In addition,
15 the public entity or person acting under color of law, or a law
16 enforcement officer acting on behalf of, under color of, or within
17 the course and scope of the authority of the public entity is not to
18 assert sovereign immunity as a defense or bar to an action under the
19 act.

20 Further, the bill provides that the prohibition on the use of
21 qualified immunity under the bill is not to abrogate judicial,
22 legislative, or any other statutory immunity. The bill's prohibition
23 also does not abrogate the use of qualified immunity for claims
24 brought by a person who has been deprived of any substantive due
25 process or equal protection rights, privileges or immunities secured
26 by the Constitution or laws of the United States, or any substantive
27 rights, privileges or immunities secured by the New Jersey
28 Constitution or laws, or whose exercise or enjoyment of those
29 substantive rights, privileges or immunities has been interfered with
30 or attempted to be interfered with, by threats, intimidation or
31 coercion by a person acting under color of law.

32 In addition, the bill provides that public employees and
33 employers are not immune from civil liability for unjustified use of
34 force or deadly force or violations of the use of force guidelines for
35 law enforcement officers promulgated by the Attorney General.
36 The bill prohibits public employees and employers from invoking a
37 defense that the plaintiff's rights, privileges, or immunities were not
38 clearly established at the time of their deprivation in causes of
39 action for unjustified use of force or violations of the New Jersey
40 Civil Rights Act.