

ASSEMBLY, No. 963

STATE OF NEW JERSEY

214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

SYNOPSIS

Authorizes probation officers to exercise police powers.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel

AN ACT authorizing probation officers to exercise police powers and amending P.L.1968, c.427.

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

1. Section 1 of P.L.1968, c.427 (C.2A:154-4) is amended to read as follows:

1. All correction officers of the State of New Jersey, parole officers employed by the State Parole Board, probation officers employed by the Administrative Office of the Courts, and investigators in the Department of Corrections, who have been or who may hereafter be appointed or employed, shall, by virtue of such appointment or employment and in addition to any other power or authority, be empowered to act as officers for the detection, apprehension, arrest and conviction of offenders against the law.

(cf: P.L.2001, c.79, s.14)

2. This act shall take effect immediately.

STATEMENT

This bill authorizes probation officers to exercise police powers. Specifically, they would have the authority to act as officers for the detection, apprehension, arrest, and conviction of offenders against the law by virtue of their appointment or employment as probation officers.

P.L.1968, c.427 (C.2A:154-4) authorizes corrections officers, parole officers, and investigators in the Department of Corrections to exercise police powers. This bill expands this law to similarly empower probation officers to act as police officers.

ASSEMBLY, No. 964

STATE OF NEW JERSEY

214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Assemblywoman LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

SYNOPSIS

Transfers all probation functions and employees to Bureau of Probation in State Parole Board.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel

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

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

1. (New section) All of the functions, powers and duties of the New Jersey State 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 transfer shall be subject to the provisions of the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.). All records, equipment, and other personal property, appropriations, and any unexpended balances of funds appropriated or otherwise available to the New Jersey State Judiciary pertaining to probation officers subject to the provisions of this act shall be transferred to the Bureau of Probation in the State Parole Board pursuant to the "State Agency Transfer Act."

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

3. (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 position which are applicable prior to the effective date of this act.

b. The implementation of this act in and of itself shall not be construed to alter or modify the assignment of any probation officer existing 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.

4. (New section) Whenever any statute, rule, regulation, order, contract, tariff, document, reorganization plan, or judicial or administrative proceeding concerning probation officers refers to the New Jersey State 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.

5. (New section) a. The contracts concerning employee organizations representing probation officers who are supervisory employees and those who are case-related professional employees which expire on June 30, 2008, or any successor agreement, shall continue in full force and effect until the expiration date; provided, however, that the employee organizations and the Chairman of the State Parole Board, immediately upon the effective date of this act, shall negotiate any changes appropriate to these contracts as a result of the transfer. 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 those which expire June 30, 2008.

b. This act shall not be construed to transfer any employee who is represented by any other employee organization; provided, however, this act shall be construed to transfer Chief Probation Officers and Assistant Chief Probation Officers to the Bureau of Parole in the State Parole Board.

c. Notwithstanding any law, rule, regulation, contract, or agreement to the contrary, the categories of employees represented in the Judiciary professional supervisors unit and case-related professional unit 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.

6. (New section) All employees 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.

7. (New section) Any act which is inconsistent with this act shall be considered modified or repealed. The modification shall be consistent with the provisions of this act.

8. 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, 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.

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

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

STATEMENT

This bill creates a Bureau of Probation in the State Parole Board. Except as provided in the bill, all of the functions, powers, and duties of the New Jersey State Judiciary concerning probation are transferred to the Bureau of Probation in the State Parole Board. The transfer would be subject to the provisions of the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

Under the provisions of 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 New Jersey State Judiciary to the Bureau of Probation in the State Parole Board.

The bill provides that contracts concerning probation officers who are supervisory employees and those who are case-related professional employees would continue in full force and effect until their expiration. Any changes appropriate to these contracts as a result of the transfer would immediately be negotiated by probation officers' employee organizations and the State Parole Board.

The bill further specifies that all transferred employees 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.

Finally, the bill amends section 7 of P.L.1968, c.303 (C.34:13A-5.3) to permit the employee organizations which have represented probation officers prior to the enactment of this bill to continue their representation.

ASSEMBLY CONCURRENT RESOLUTION No. 55

STATE OF NEW JERSEY

214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Assemblyman DAVID P. RIBLE

District 11 (Monmouth)

Assemblyman THOMAS P. GIBLIN

District 34 (Essex and Passaic)

Co-Sponsored by:

Assemblywomen Oliver, McHose, Assemblymen Chiusano and Schaer

SYNOPSIS

Proposes constitutional amendment authorizing statute transferring probation functions from Judiciary to State Parole Board.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel

A CONCURRENT RESOLUTION proposing to amend Article V, Section IV of the Constitution of New Jersey by adding a new paragraph.

BE IT RESOLVED by the General Assembly of the State of New Jersey (the Senate concurring):

1. The following proposed amendment to the Constitution of the State of New Jersey is agreed to:

PROPOSED AMENDMENT

Amend Article V, Section IV by adding a new paragraph 7 to read as follows:

7. The Legislature is authorized to establish by law a Bureau of Probation in the State Parole Board and to authorize by law the transfer of all the functions, powers, duties, and responsibilities concerning probation, and the probation officers and other professional supervisors, case workers, and case-related employees who perform probation functions, from the Judiciary to the Bureau of Probation. No term or condition of any existing contract shall be altered or abrogated by this transfer and the transfer shall not affect the status of existing exclusive employee bargaining representatives. The units and contracts and the contract representatives shall, therefore, be continued in the Bureau of Probation.

2. When this proposed amendment to the Constitution is finally agreed to pursuant to Article IX, paragraph 1 of the Constitution, it shall be submitted to the people at the next general election occurring more than three months after the final agreement and shall be published at least once in at least one newspaper of each county designated by the President of the Senate, the Speaker of the General Assembly and the Attorney General, not less than three months prior to the general election.

3. This proposed amendment to the Constitution shall be submitted to the people at that election in the following manner and form:

There shall be printed on each official ballot to be used at the general election, the following:

a. In every municipality in which voting machines are not used, a legend which shall immediately precede the question as follows:

If you favor the proposition printed below make a cross (X), plus (+), or check (a) in the square opposite the word "Yes." If you are opposed thereto make a cross (X), plus (+) or check (a) in the square opposite the word "No."

b. In every municipality the following question:

	<p>YES</p>	<p>AMENDS CONSTITUTION TO AUTHORIZE CREATION OF BUREAU OF PROBATION IN STATE PAROLE BOARD AND TRANSFER OF CERTAIN PROBATION FUNCTIONS AND PROBATION OFFICERS THERETO.</p> <p>Do you approve the proposed amendment to the New Jersey Constitution authorizing the Legislature to enact a law that would establish a Bureau of Probation in the State Parole Board and transfer all of the functions, powers, duties and responsibilities concerning probation, and the probation officers and other employees who perform probation-related functions, from the Judiciary to the Bureau of Probation?</p>
	<p>NO</p>	<p>INTERPRETIVE STATEMENT</p> <p>Adoption of this amendment would authorize the Legislature to pass a law to create the Bureau of Probation in the State Parole Board and transfer the functions, powers, duties and responsibilities concerning probation, and probation officers and other employees who perform probation-related functions, from the Judiciary to the Bureau of Probation. The terms and conditions of a existing contracts would not be altered or abrogated by this transfer and the transfer shall not affect the status of existing exclusive employee bargaining representatives.</p>

STATEMENT

This concurrent resolution proposes to amend the State Constitution to authorize the Legislature to enact a statute to establish a Bureau of Probation in the State Board of Parole and transfer all of the functions, powers, duties and responsibilities concerning probation, and the probation officers and other professional supervisors, case workers, and case-related employees who perform probation functions from the Judiciary to this new Bureau of Probation. Under the proposed constitutional amendment, existing contractual terms and conditions would remain unchanged, as would the status of exclusive employee bargaining representatives. The units and contracts, as well as the contract representatives, would be continued in the Bureau of Probation.

The Legislature passed P.L.2001, c.362 (C.2B:10A-1 et al.) to establish a “Probation Officer Community Safety Unit” consisting of at least 200 probation officers to carry a firearm in accordance with the provisions of paragraph (17) of subsection c. of N.J.S.2C:39-6 and regulations adopted by the Attorney General. The legislation also granted these probation officers 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.

In April 2006, the New Jersey Supreme Court ruled that P.L.2001, c.362 (C.2B:10A-1 et al.) was unconstitutional because it violated the separation of powers doctrine. The court stated that it is the responsibility of the Judiciary to define the duties of probation officers. The court also reiterated its position that probation officers are not law enforcement officers, but impartial agents of the Judiciary.

SENATE CONCURRENT RESOLUTION No. 37

STATE OF NEW JERSEY

214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

Senator JOHN A. GIRGENTI

District 35 (Bergen and Passaic)

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

Co-Sponsored by:

Senators Sacco, Stack, Sarlo, Connors, Cardinale, Whelan, Madden, Oroho and S.Kean

SYNOPSIS

Proposes constitutional amendment authorizing statute transferring probation functions from Judiciary to State Parole Board.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel

A CONCURRENT RESOLUTION proposing to amend Article V, Section IV of the Constitution of New Jersey by adding a new paragraph.

BE IT RESOLVED by the Senate of the State of New Jersey (the General Assembly concurring):

1. The following proposed amendment to the Constitution of the State of New Jersey is agreed to:

PROPOSED AMENDMENT

Amend Article V, Section IV by adding a new paragraph 7 to read as follows:

7. The Legislature is authorized to establish by law a Bureau of Probation in the State Parole Board and to authorize by law the transfer of all the functions, powers, duties, and responsibilities concerning probation, and the probation officers and other professional supervisors, case workers, and case-related employees who perform probation functions, from the Judiciary to the Bureau of Probation. No term or condition of any existing contract shall be altered or abrogated by this transfer and the transfer shall not affect the status of existing exclusive employee bargaining representatives. The units and contracts and the contract representatives shall, therefore, be continued in the Bureau of Probation.

2. When this proposed amendment to the Constitution is finally agreed to pursuant to Article IX, paragraph 1 of the Constitution, it shall be submitted to the people at the next general election occurring more than three months after the final agreement and shall be published at least once in at least one newspaper of each county designated by the President of the Senate, the Speaker of the General Assembly and the Attorney General, not less than three months prior to

the general election.

3. This proposed amendment to the Constitution shall be submitted to the people at that election in the following manner and form:

There shall be printed on each official ballot to be used at the general election, the following:

a. In every municipality in which voting machines are not used, a legend which shall immediately precede the question as follows:

If you favor the proposition printed below make a cross (X), plus (+), or check (a) in the square opposite the word "Yes." If you are opposed thereto make a cross (X), plus (+) or check (a) in the square opposite the word "No."

b. In every municipality the following question:

		<p>AMENDS CONSTITUTION TO AUTHORIZE CREATION OF BUREAU OF PROBATION IN STATE PAROLE BOARD AND TRANSFER OF CERTAIN PROBATION FUNCTIONS AND PROBATION OFFICERS THERETO.</p>
	YES	<p>Do you approve the proposed amendment to the New Jersey Constitution authorizing the Legislature to enact a law that would establish a Bureau of Probation in the State Parole Board and transfer all of the functions, powers, duties and responsibilities concerning probation, and the probation officers and other employees who perform probation-related functions, from the Judiciary to the Bureau of Probation?</p>
	NO	<p>INTERPRETIVE STATEMENT</p> <p>Adoption of this amendment would authorize the Legislature to pass a law to create the Bureau of Probation in the State Parole Board and transfer the functions, powers, duties and responsibilities concerning probation, and</p>

	probation officers and other employees who perform probation-related functions, from the Judiciary to the Bureau of Probation. The terms and conditions of a existing contracts would not be altered or abrogated by this transfer and the transfer shall not affect the status of existing exclusive employee bargaining representatives.
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STATEMENT

This concurrent resolution proposes to amend the State Constitution to authorize the Legislature to enact a statute to establish a Bureau of Probation in the State Board of Parole and transfer all of the functions, powers, duties and responsibilities concerning probation, and the probation officers and other professional supervisors, case workers, and case-related employees who perform probation functions from the Judiciary to this new Bureau of Probation. Under the proposed constitutional amendment, existing contractual terms and conditions would remain unchanged, as would the status of exclusive employee bargaining representatives. The units and contracts, as well as the contract representatives, would be continued in the Bureau of Probation.

The Legislature passed P.L.2001, c.362 (C.2B:10A-1 et al.) to establish a “Probation Officer Community Safety Unit” consisting of at least 200 probation officers to carry a firearm in accordance with the provisions of paragraph (17) of subsection c. of N.J.S.2C:39-6 and regulations adopted by the Attorney General. The legislation also granted these probation officers 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.

In April 2006, the New Jersey Supreme Court ruled that P.L.2001, c.362 (C.2B:10A-1 et al.) was unconstitutional because it violated the separation of powers doctrine. The court stated that it is the responsibility of the Judiciary to define the duties of probation officers. The court also reiterated its position that probation officers are not law enforcement officers, but impartial agents of the Judiciary.