

34:13A-40

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2011 **CHAPTER:** 69

NJSA: 34:13A-40 (Sets confidentiality standards for public employee assistance program records)

BILL NO: S2562 (Substituted for A1068)

SPONSOR(S) Greenstein and others

DATE INTRODUCED: December 13, 2010

COMMITTEE: **ASSEMBLY:** ---

SENATE: Labor

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** March 14, 2011

SENATE: March 21, 2011

DATE OF APPROVAL: May 9, 2011

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Second reprint enacted)

S2562

SPONSOR'S STATEMENT: (Begins on page 4 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No .

SENATE: Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: Yes

LEGISLATIVE FISCAL NOTE: No

A1068

SPONSOR'S STATEMENT: (Begins on page 4 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes .

SENATE: No

FLOOR AMENDMENT STATEMENT: Yes

LEGISLATIVE FISCAL NOTE: No

(continued)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

LAW/KR

P.L.2011, CHAPTER 69, *approved May 9, 2011*
Senate, No. 2562 (*Second Reprint*)

1 AN ACT concerning employee assistance programs for certain
2 public employees and supplementing P.L.1941, c.100
3 (C.34:13A-1 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. For the purposes of this act:

9 "Civil union" means a civil union as defined in section 2 of
10 P.L.2006, c.103 (C.37:1-29).

11 "Employee assistance program" means a program in which a
12 public employer provides or contracts with a service provider to
13 provide assistance to the employer's employees and their
14 dependents to resolve problems which may affect employee work
15 performance, irrespective of whether the problems originate on the
16 job, including, but not limited to, marital and family problems,
17 emotional problems, ¹**[alcohol abuse, drug]** substance¹ abuse,
18 compulsive gambling, financial problems, and medical problems.

19 "Dependent" means an employee's spouse, civil union partner, or
20 domestic partner, an unmarried child of the employee who is less
21 than ²**[23]** 31² years of age and lives with the employee in a regular
22 parent-child relationship, or an unmarried child of the employee
23 who is not less than ²**[23]** 31² years of age and is not capable of
24 self support. "Child of the employee" includes any child, stepchild,
25 legally adopted child, or foster child of the employee, or of a
26 domestic partner or civil union partner of the employee, who is
27 reported for coverage and dependent upon the employee for support
28 and maintenance.

29 "Domestic partner" means a domestic partner as defined in
30 section 3 of P.L.2003, c.246 (C.26:8A-3).

31 "Employee" means an employee of a public employer.

32 "Public employer" means the State of New Jersey, or the
33 counties and municipalities thereof, or any other political
34 subdivision of the State, or a school district, or any special district,
35 or any authority, including a bi-state authority, or any commission,
36 or board, or any branch or agency of the public service.

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SLA committee amendments adopted January 20, 2011.

²Assembly floor amendments adopted March 14, 2011.

1 2. Employee assistance programs may provide advice,
2 counseling, treatment, referral and other assistance, except that
3 nothing in this act shall be construed to authorize a person to
4 provide any service in connection with an employee assistance
5 program without holding the license required by law to provide the
6 service. An employee assistance program may be established
7 through a negotiated agreement between the majority representative
8 of the employees in an appropriate bargaining unit and a public
9 employer, or established by a public employer through the adoption
10 of a policy which conforms to the requirements of this act.

11
12 3. No public employer shall take any action against an
13 employee of the employer, including termination, because the
14 employee or a dependent of the employee has obtained counseling,
15 referrals or other services from an employee assistance program or
16 has obtained treatment or other services from any program to which
17 the employee assistance program refers the employee or dependent,
18 unless the employee 'was referred by the employer to the employee
19 assistance program due to issues related to job performance and'
20 fails to make a good faith effort to '[utilize treatment or services
21 made available under] comply with the recommendations made by'
22 the employee assistance program. The provisions of this section
23 shall not be construed as preventing the public employer from
24 taking any action which the employer is otherwise authorized to
25 take for workplace misconduct of the employee or poor work
26 performance, even if the misconduct or poor performance is related
27 to a problem for which the employee is obtaining services provided
28 by an employee assistance program or other program to which the
29 employee assistance program refers the employee.

30
31 4. a. Except as provided in subsection b. of this section, each
32 request by an employee or dependent for assistance from, referral
33 to, participation in, or referral by, an employee assistance program
34 shall be confidential, and no public employer, service provider or
35 other person shall divulge to any person that an employee or
36 dependent has requested assistance from, been referred to, or
37 participated in, an employee assistance program or any treatment
38 program to which the employee assistance program refers the
39 employee or dependent. The requirement of confidentiality shall
40 apply to all information related to an employee assistance program,
41 including but not limited to any statements, materials, documents,
42 evaluations, impressions, conclusions, findings, or acts taken in the
43 course of, or in connection with, the program. If, however, a public
44 employer documents to the employee assistance program that the
45 employee has accepted a referral by a public employer for
46 assistance during normal working hours with sick leave or other
47 paid leave, the public employer shall be entitled to know whether
48 the employee has kept his appointment and the amount of time of

1 the appointment.

2 b. The requirements for confidentiality provided for in
3 subsection a. of this section may be waived only if:

4 (1) the employee or dependent to whom the information applies
5 has requested and authorized ~~'[the] a'~~ waiver; ~~'[(2)]'~~ the waiver is
6 in writing and specifies the information to be released and the
7 persons to whom the information may be provided; and ~~'[(3)]'~~ the
8 information released is the information authorized for release by the
9 employee or dependent and is released only to the persons
10 designated by the employee or dependent ~~'[. A], provided that a'~~
11 public employer may not require an employee to authorize a waiver
12 pursuant to this subsection or take any action against an employee
13 for not authorizing the waiver¹;

14 (2) the employee assistance program advisor reasonably
15 believes that the employee is at substantial risk of imminent death
16 or serious bodily injury to self or others; or

17 (3) the advisor is reporting suspected child abuse or neglect.

18 c. The provisions of this act shall not be construed to affect
19 other evidentiary privileges and recognized exceptions¹.

20

21 5. This act shall take effect immediately.

22

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24

25

26 Sets confidentiality standards for public employee assistance
27 program records; prohibits employer actions against program
28 participants.

SENATE, No. 2562

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED DECEMBER 13, 2010

Sponsored by:

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

SYNOPSIS

Sets confidentiality standards for public employee assistance program records; prohibits employer actions against program participants.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning employee assistance programs for certain
2 public employees and supplementing P.L.1941, c.100
3 (C.34:13A-1 et seq.).
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*
7

8 1. For the purposes of this act:

9 "Civil union" means a civil union as defined in section 2 of
10 P.L.2006, c.103 (C.37:1-29).

11 "Employee assistance program" means a program in which a
12 public employer provides or contracts with a service provider to
13 provide assistance to the employer's employees and their
14 dependents to resolve problems which may affect employee work
15 performance, irrespective of whether the problems originate on the
16 job, including, but not limited to, marital and family problems,
17 emotional problems, alcohol abuse, drug abuse, compulsive
18 gambling, financial problems, and medical problems.

19 "Dependent" means an employee's spouse, civil union partner, or
20 domestic partner, an unmarried child of the employee who is less
21 than 23 years of age and lives with the employee in a regular
22 parent-child relationship, or an unmarried child of the employee
23 who is not less than 23 years of age and is not capable of self
24 support. "Child of the employee" includes any child, stepchild,
25 legally adopted child, or foster child of the employee, or of a
26 domestic partner or civil union partner of the employee, who is
27 reported for coverage and dependent upon the employee for support
28 and maintenance.

29 "Domestic partner" means a domestic partner as defined in
30 section 3 of P.L.2003, c.246 (C.26:8A-3).

31 "Employee" means an employee of a public employer.

32 "Public employer" means the State of New Jersey, or the
33 counties and municipalities thereof, or any other political
34 subdivision of the State, or a school district, or any special district,
35 or any authority, including a bi-state authority, or any commission,
36 or board, or any branch or agency of the public service.
37

38 2. Employee assistance programs may provide advice,
39 counseling, treatment, referral and other assistance, except that
40 nothing in this act shall be construed to authorize a person to
41 provide any service in connection with an employee assistance
42 program without holding the license required by law to provide the
43 service. An employee assistance program may be established
44 through a negotiated agreement between the majority representative
45 of the employees in an appropriate bargaining unit and a public
46 employer, or established by a public employer through the adoption
47 of a policy which conforms to the requirements of this act.

1 3. No public employer shall take any action against an
2 employee of the employer, including termination, because the
3 employee or a dependent of the employee has obtained counseling,
4 referrals or other services from an employee assistance program or
5 has obtained treatment or other services from any program to which
6 the employee assistance program refers the employee or dependent,
7 unless the employee fails to make a good faith effort to utilize
8 treatment or services made available under the employee assistance
9 program. The provisions of this section shall not be construed as
10 preventing the public employer from taking any action which the
11 employer is otherwise authorized to take for workplace misconduct
12 of the employee or poor work performance, even if the misconduct
13 or poor performance is related to a problem for which the employee
14 is obtaining services provided by an employee assistance program
15 or other program to which the employee assistance program refers
16 the employee.

17

18 4. a. Except as provided in subsection b. of this section, each
19 request by an employee or dependent for assistance from, referral
20 to, participation in, or referral by, an employee assistance program
21 shall be confidential, and no public employer, service provider or
22 other person shall divulge to any person that an employee or
23 dependent has requested assistance from, been referred to, or
24 participated in, an employee assistance program or any treatment
25 program to which the employee assistance program refers the
26 employee or dependent. The requirement of confidentiality shall
27 apply to all information related to an employee assistance program,
28 including but not limited to any statements, materials, documents,
29 evaluations, impressions, conclusions, findings, or acts taken in the
30 course of, or in connection with, the program. If, however, a public
31 employer documents to the employee assistance program that the
32 employee has accepted a referral by a public employer for
33 assistance during normal working hours with sick leave or other
34 paid leave, the public employer shall be entitled to know whether
35 the employee has kept his appointment and the amount of time of
36 the appointment.

37 b. The requirements for confidentiality provided for in
38 subsection a. of this section may be waived only if:

39 (1) the employee or dependent to whom the information applies
40 has requested and authorized the waiver;

41 (2) the waiver is in writing and specifies the information to be
42 released and the persons to whom the information may be provided;
43 and

44 (3) the information released is the information authorized for
45 release by the employee or dependent and is released only to the
46 persons designated by the employee or dependent. A public
47 employer may not require an employee to authorize a waiver

1 pursuant to this subsection or take any action against an employee
2 for not authorizing the waiver.

3

4 5. This act shall take effect immediately.

5

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STATEMENT

8

9 This bill prohibits a public employer from taking any action
10 against an employee, including termination, because the employee
11 or a dependent of the employee has obtained counseling, referrals or
12 other services from an employee assistance program or treatment or
13 other services from any program to which the employee assistance
14 program refers the employee or dependent, unless the employee
15 fails to make a good faith effort to utilize treatment or services
16 made available under the program.

17 The bill requires that information regarding services provided to
18 an employee or dependent of the employee through an employee
19 assistance program be confidential, unless an employee provides a
20 written waiver. The confidentiality requirement applies to all
21 information related to the services provided to the employee or
22 dependent by the program, except that if the employee accepts a
23 referral by the public employer for assistance during normal
24 working hours with pay, the employer is entitled to know whether
25 the employee has kept the appointment and the length of time of the
26 appointment.

27 Employee assistance programs are designed to help resolve
28 employee problems which may affect work performance, including
29 marital and family problems, emotional problems, alcohol abuse,
30 drug abuse, compulsive gambling, financial problems, and medical
31 problems.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 2562

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 20, 2011

The Senate Labor Committee reports favorably and with committee amendments Senate Bill No. 2562.

This bill prohibits a public employer from taking any action against an employee, including termination, because the employee or a dependent of the employee has obtained counseling, referrals or other services from an employee assistance program or treatment or other services from any program to which the employee assistance program refers the employee or dependent, unless the employee was referred by the employer to the program due to issues related to job performance and fails to make a good faith effort to comply with the recommendations made by the program.

As amended by the committee, the bill requires that information regarding services provided to an employee or dependent of the employee through an employee assistance program be confidential, unless: an employee provides a written waiver; the employee assistance program advisor reasonably believes the employee is at substantial risk of imminent death or serious bodily injury to self or others; or the advisor is reporting suspected child abuse or neglect. The confidentiality requirements of the bill are not intended to affect evidentiary privileges and recognized exceptions in legal proceedings. The confidentiality requirements apply to all information related to the services provided to the employee or dependent by the program, except that if the employee accepts a referral by the public employer for assistance during normal working hours with pay, the employer is entitled to know whether the employee has kept the appointment and the length of time of the appointment.

Employee assistance programs are designed to help resolve employee problems which may affect work performance, including marital and family problems, emotional problems, substance abuse, compulsive gambling, financial problems, and medical problems.

The committee amendments:

1. Limit the instances in which an employer may take action against an employee for failure to make a good faith effort to those instances in which the employee was referred to the employee

assistance program due to job performance-related issues and the employee did not make a good faith effort to comply with program recommendations;

2. Provide the bill's exceptions from its confidentiality requirements in cases of substantial risk of imminent death or serious bodily injury and suspected child abuse or neglect; and

3. Clarify that the confidentiality requirements of the bill are not intended to affect evidentiary privileges and recognized exceptions in legal proceedings.

STATEMENT TO
[First Reprint]
SENATE, No. 2562

with Assembly Floor Amendments
(Proposed by Assemblyman GUSCIORA)

ADOPTED: MARCH 14, 2011

These amendments raise, from 22 to 30, the maximum age at which an employee's unmarried children are provided the confidentiality protections of the bill regarding information provided to an employee assistance program. This makes the maximum age provisions of the bill consistent with recent changes in the age of eligibility of an employee's children for health benefit coverage in New Jersey.

ASSEMBLY, No. 1068

STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

Assemblyman REED GUSCIORA

District 15 (Mercer)

Assemblywoman LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Assemblyman CRAIG J. COUGHLIN

District 19 (Middlesex)

Assemblyman WAYNE P. DEANGELO

District 14 (Mercer and Middlesex)

SYNOPSIS

Sets confidentiality standards for public employee assistance program records; prohibits employer actions against program participants.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 1/25/2011)

1 AN ACT concerning employee assistance programs for certain
2 public employees and supplementing P.L.1941, c.100
3 (C.34:13A-1 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
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8 1. For the purposes of this act:

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10 P.L.2006, c.103 (C.37:1-29).

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12 public employer provides or contracts with a service provider to
13 provide assistance to the employer's employees and their
14 dependents to resolve problems which may affect employee work
15 performance, irrespective of whether the problems originate on the
16 job, including, but not limited to, marital and family problems,
17 emotional problems, alcohol abuse, drug abuse, compulsive
18 gambling, financial problems, and medical problems.

19 "Dependent" means an employee's spouse, civil union partner, or
20 domestic partner, an unmarried child of the employee who is less
21 than 23 years of age and lives with the employee in a regular
22 parent-child relationship, or an unmarried child of the employee
23 who is not less than 23 years of age and is not capable of self
24 support. "Child of the employee" includes any child, stepchild,
25 legally adopted child, or foster child of the employee, or of a
26 domestic partner or civil union partner of the employee, who is
27 reported for coverage and dependent upon the employee for support
28 and maintenance.

29 "Domestic partner" means a domestic partner as defined in
30 section 3 of P.L.2003, c.246 (C.26:8A-3).

31 "Employee" means an employee of a public employer.

32 "Public employer" means the State of New Jersey, or the
33 counties and municipalities thereof, or any other political
34 subdivision of the State, or a school district, or any special district,
35 or any authority, including a bi-state authority, or any commission,
36 or board, or any branch or agency of the public service.
37

38 2. Employee assistance programs may provide advice,
39 counseling, treatment, referral and other assistance, except that
40 nothing in this act shall be construed to authorize a person to
41 provide any service in connection with an employee assistance
42 program without holding the license required by law to provide the
43 service. An employee assistance program may be established
44 through a negotiated agreement between the majority representative
45 of the employees in an appropriate bargaining unit and a public
46 employer, or established by a public employer through the adoption
47 of a policy which conforms to the requirements of this act.

1 3. No public employer shall take any action against an
2 employee of the employer, including termination, because the
3 employee or a dependent of the employee has obtained counseling,
4 referrals or other services from an employee assistance program or
5 has obtained treatment or other services from any program to which
6 the employee assistance program refers the employee or dependent,
7 unless the employee fails to make a good faith effort to utilize
8 treatment or services made available under the employee assistance
9 program. The provisions of this section shall not be construed as
10 preventing the public employer from taking any action which the
11 employer is otherwise authorized to take for workplace misconduct
12 of the employee or poor work performance, even if the misconduct
13 or poor performance is related to a problem for which the employee
14 is obtaining services provided by an employee assistance program
15 or other program to which the employee assistance program refers
16 the employee.

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18 4. a. Except as provided in subsection b. of this section, each
19 request by an employee or dependent for assistance from, referral
20 to, participation in, or referral by, an employee assistance program
21 shall be confidential, and no public employer, service provider or
22 other person shall divulge to any person that an employee or
23 dependent has requested assistance from, been referred to, or
24 participated in, an employee assistance program or any treatment
25 program to which the employee assistance program refers the
26 employee or dependent. The requirement of confidentiality shall
27 apply to all information related to an employee assistance program,
28 including but not limited to any statements, materials, documents,
29 evaluations, impressions, conclusions, findings, or acts taken in the
30 course of, or in connection with, the program. If, however, a public
31 employer documents to the employee assistance program that the
32 employee has accepted a referral by a public employer for
33 assistance during normal working hours with sick leave or other
34 paid leave, the public employer shall be entitled to know whether
35 the employee has kept his appointment and the amount of time of
36 the appointment.

37 b. The requirements for confidentiality provided for in
38 subsection a. of this section may be waived only if:

39 (1) the employee or dependent to whom the information applies
40 has requested and authorized the waiver;

41 (2) the waiver is in writing and specifies the information to be
42 released and the persons to whom the information may be provided;
43 and

44 (3) the information released is the information authorized for
45 release by the employee or dependent and is released only to the
46 persons designated by the employee or dependent. A public
47 employer may not require an employee to authorize a waiver
48 pursuant to this subsection or take any action against an employee

1 for not authorizing the waiver.

2

3 5. This act shall take effect immediately.

4

5

6

STATEMENT

7

8 This bill prohibits a public employer from taking any action
9 against an employee, including termination, because the employee
10 or a dependent of the employee has obtained counseling, referrals or
11 other services from an employee assistance program or treatment or
12 other services from any program to which the employee assistance
13 program refers the employee or dependent, unless the employee
14 fails to make a good faith effort to utilize treatment or services
15 made available under the program.

16 The bill requires that information regarding services provided to
17 an employee or dependent of the employee through an employee
18 assistance program be confidential, unless an employee provides a
19 written waiver. The confidentiality requirement applies to all
20 information related to the services provided to the employee or
21 dependent by the program, except that if the employee accepts a
22 referral by the public employer for assistance during normal
23 working hours with pay, the employer is entitled to know whether
24 the employee has kept the appointment and the length of time of the
25 appointment.

26 Employee assistance programs are designed to help resolve
27 employee problems which may affect work performance, including
28 marital and family problems, emotional problems, alcohol abuse,
29 drug abuse, compulsive gambling, financial problems, and medical
30 problems.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1068

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 24, 2011

The Assembly Labor Committee reports favorably and with committee amendments Assembly Bill No. 1068.

As amended by the committee, this bill prohibits a public employer from taking any action against an employee, including termination, because the employee or a dependent of the employee has obtained counseling, referrals or other services from an employee assistance program or treatment or other services from any program to which the employee assistance program refers the employee or dependent, unless the employee was referred by the employer to the program due to issues related to job performance and the employee fails to make a good faith effort to comply with the recommendations made by the program.

As amended, the bill requires that information regarding services provided to an employee or dependent of the employee through an employee assistance program be confidential, unless: an employee provides a written waiver; the employee assistance program advisor reasonably believes the employee is at substantial risk of imminent death or serious bodily injury to self or others; or the advisor is reporting suspected child abuse or neglect. The confidentiality requirements of the bill are not intended to affect evidentiary privileges and recognized exceptions in legal proceedings. The confidentiality requirements apply to all information related to the services provided to the employee or dependent by the program, except that if the employee accepts a referral by the public employer for assistance during normal working hours with pay, the employer is entitled to know whether the employee has kept the appointment and the length of time of the appointment.

Employee assistance programs are designed to help resolve employee problems which may affect work performance, including marital and family problems, emotional problems, substance abuse, compulsive gambling, financial problems, and medical problems.

This bill was pre-filed for introduction in the 2010-2011 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

COMMITTEE AMENDMENTS

The committee amended the bill to:

1. Limit the instances in which an employer may take action against an employee for failure to make a good faith effort to those instances in which the employee was referred to the employee assistance program due to job performance-related issues and the employee did not make a good faith effort to comply with program recommendations;

2. Provide exceptions to the confidentiality requirements of the bill in cases of substantial risk of imminent death or serious bodily injury and suspected child abuse or neglect; and

3. Clarify that the confidentiality requirements of the bill are not intended to affect evidentiary privileges and recognized exceptions in legal proceedings.

These amendments make this bill identical to Senate Bill 2562 (1R), reported by the Senate Labor Committee on January 20, 2011.

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 1068

with Assembly Floor Amendments
(Proposed by Assemblyman GUSCIORA)

ADOPTED: FEBRUARY 17, 2011

These amendments raise, from 22 to 30, the maximum age at which an employee's unmarried children are provided the confidentiality protections of the bill regarding information provided to an employee assistance program. This makes the maximum age provisions of the bill consistent with recent changes in the age of eligibility of an employee's children for health benefit coverage in New Jersey.