

2C:39-6

LEGISLATIVE HISTORY CHECKLIST

NJSA 2C:39-6 and 40A:14-146 (Special police--certain municipalities - carrying weapons off duty)

LAWS 1982 CHAPTER 154

Bill No. A940

Sponsor(s) Thompson, Herman and Zangari

Date Introduced Feb. 22, 1982

Committee: Assembly -----

Senate -----

Amended during passage Yes ~~No~~ Substituted for S887 (not attached since identical to A940)

according to Governor's recommendations

Date of Passage: Assembly March 1, 1982 Re-enacted 9-20-82

Senate June 3, 1982 Re-enacted 10-18-82

Date of approval Oct. 26, 1982

Following statements are attached if available:

Sponsor statement Yes ~~No~~

Committee Statement: Assembly Yes ~~No~~

Senate Yes ~~No~~

Fiscal Note Yes ~~No~~

Veto Message Yes ~~No~~

Message on signing Yes ~~No~~

Following were printed:

Reports Yes ~~No~~

Hearings Yes ~~No~~

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154
APPROVED 10-26-82

[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 940

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 22, 1982

By Assemblymen THOMPSON, HERMAN and ZANGARI

(Without Reference)

AN ACT concerning firearms and amending N. J. S. 2C:39-6 and
N. J. S. 40A:14-146.

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

1 1. N. J. S. 2C:39-6 is amended to read as follows:

2 2C:39-6. Exemptions. a. Section 2C:39-5 does not apply to:

3 (1) Members of the Armed Forces of the United States or of the
4 National Guard while actually on duty, or while traveling between
5 places of duty and carrying authorized weapons in the manner
6 prescribed by the appropriate military authorities;

7 (2) Federal law enforcement officers, and any other federal offi-
8 cers and employees required to carry firearms in the performance
9 of their official duties;

10 (3) Members of the State Police, a motor vehicle inspector;

11 (4) A sheriff, undersheriff, sheriff's officer, county prosecutor,
12 assistant prosecutor, prosecutor's detective or investigator, deputy
13 attorney general or State investigator employed by the Division of
14 Criminal Justice of the Department of Law and Public Safety,
15 investigator employed by the State Commission of Investigation,
16 inspectors and investigators of the Division of Alcoholic Beverage
17 Control in the Department of Law and Public Safety, State park
18 ranger, or State conservation officer;

19 (5) A prison or jail warden of any penal institution in this State
20 or his deputies, or an employee of the Department of Corrections
21 engaged in the interstate transportation of convicted offenders,
22 while in the performance of his duties, and when required to possess

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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly amendment adopted in accordance with Governor's recommen-
dations August 5, 1982.

23 such a weapon by his superior officer, or a correction officer or
 24 keeper of a penal institution in this State at all times while in the
 25 State of New Jersey provided he annually passes an examination
 26 approved by the superintendent testing his proficiency in the han-
 27 dling of firearms;

28 (6) A civilian employee of the United States Government under
 29 the supervision of the commanding officer of any post, camp, station,
 30 base or other military or naval installation located in this State
 31 who is required, in the performance of his official duties, to carry
 32 firearms, and who is authorized to carry such firearms by said com-
 33 manding officer, while in the actual performance of his official
 34 duties;

35 (7) A regularly employed member, including a detective, of the
 36 police department of any county or municipality, or of any State,
 37 interstate, municipal or county park police force or boulevard police
 38 force, at all times while in the State of New Jersey, *or any special*
 39 *policeman authorized to carry a revolver or other similar weapons*
 40 *while off duty within the municipality where he is employed, as*
 41 *provided in N. J. S. 40A:14-146, or a special policeman appointed*
 42 *by the governing body of any county or municipality, except as pro-*
 43 *vided in this paragraph, or by the commission, board or other body*
 44 *having control of a county park or boulevard police force, while*
 45 *engaged in the actual performance of his official duties and when*
 46 *specifically authorized by the governing body to carry weapons; or*

47 (8) A paid member of a paid or part-paid fire department or
 48 force of any municipality who is assigned full-time to an arson
 49 investigation unit created pursuant to section 1 of P. L. 1981, c. 409
 50 (C. 40A:14-7.1) while engaged in the actual performance of arson
 51 investigation duties and when specifically authorized by the govern-
 52 ing body to carry weapons.

53 b. Subsections a., b. and c. of section 2C:39-5 do not apply to:

54 (1) A law enforcement officer employed by a governmental
 55 agency outside of the State of New Jersey while actually engaged
 56 in his official duties, provided, however, that he has first notified
 57 the superintendent or the chief law enforcement officer of the mu-
 58 nicipality or the prosecutor of the county in which he is engaged; or

59 (2) A licensed dealer in firearms and his registered employees
 60 during the course of their normal business while traveling to and
 61 from their place of business and other places for the purpose of
 62 demonstration, exhibition or delivery in connection with a sale,
 63 provided, however, that any such weapon is carried in the manner
 64 specified in subsection g. of this section.

65 c. Subsections b. and c. of section 2C:39-5 do not apply to:

66 (1) A special agent of the Division of Taxation who has passed
67 an examination in an approved police training program testing
68 proficiency in the handling of any firearm which he may be required
69 to carry or a railway policeman, while in the actual performance
70 of his official duties and while going to or from his place of duty,
71 a campus police officer appointed pursuant to P. L. 1970, c. 211
72 (C. 18A:6-4.2 et seq.) or any other police officer, while in the actual
73 performance of his official duties;

74 (2) A State deputy conservation officer or a full-time employee
75 of the Division of Parks and Forestry having the power of arrest
76 and authorized to carry weapons, while in the actual performance
77 of his official duties;

78 (3) A full-time member of the marine patrol force or a special
79 marine patrolman authorized to carry such a weapon by the Com-
80 missioner of Environmental Protection, while in the actual per-
81 formance of his official duties;

82 (4) A court attendant serving as such under appointment by the
83 sheriff of the county or by the judge of any municipal court or other
84 court of this State, while in the actual performance of his official
85 duties;

86 (5) A guard in the employ of any railway express company,
87 banking or building and loan or savings and loan institution of
88 this State, while in the actual performance of his official duties;

89 (6) A member of a legally recognized military organization while
90 actually under orders or while going to or from the prescribed
91 place of meeting and carrying the weapons prescribed for drill,
92 exercise or parade;

93 (7) An officer of the Society for the Prevention of Cruelty to
94 Animals, while in the actual performance of his duties; or

95 (8) An employee of a public utilities corporation actually en-
96 gaged in the transportation of explosives.

97 d. Subsections c. and d. of section 2C:39-5 do not apply to
98 antique firearms, provided that such antique firearms are unloaded
99 or are being fired for the purposes of exhibition or demonstration
100 at an authorized target range or in such other manner as has been
101 approved in writing by the chief law enforcement officer of the
102 municipality in which the exhibition or demonstration is held.

103 e. Nothing in subsections b., c. and d. of section 2C:39-5 shall
104 be construed to prevent a person keeping or carrying about his
105 place of business, residence, premises or other land owned or
106 possessed by him, any firearm, or from carrying the same, in the
107 manner specified in subsection g. of this section, from any place of
108 purchase to his residence or place of business between his dwellings

109 and his place of business, between one place of business or residence
110 and another when moving, or between his dwelling or place of
111 business and place where such firearms are repaired, for the
112 purpose of repair. For the purposes of this section, a place of
113 business shall be deemed to be a fixed location.

114 f. Nothing in subsections b., c. and d. of section 2C:39-5 shall
115 be construed to prevent:

116 (1) A member of any rifle or pistol club organized in accordance
117 with the rules prescribed by the National Board for the Promotion
118 of Rifle Practice, in going to or from a place of target practice,
119 carrying such firearms as are necessary for said target practice
120 provided that the club has filed a copy of its charter with the su-
121 perintendent and annually submits a list of its members to the
122 superintendent and provided further that the firearms are carried
123 in the manner specified in subsection g. of this section;

124 (2) A person carrying a firearm or knife in the woods or fields
125 or upon the waters of this State for the purpose of hunting, target
126 practice or fishing, provided that the firearm or knife is legal and
127 appropriate for hunting or fishing purposes in this State and he
128 has in his possession a valid hunting license, or, with respect to
129 fresh water fishing, a valid fishing license;

130 (3) A person transporting any firearm or knife while traveling:

131 (a) Directly to or from any place for the purpose of hunting or
132 fishing, provided such person has in his possession a valid hunting
133 or fishing license; or

134 (b) Directly to or from any target range, or other authorized
135 place for the purpose of practice, match, target, trap or skeet shoot-
136 ing exhibitions, provided in all cases that during the course of
137 such travel all firearms are carried in the manner specified in sub-
138 section g. of this section and the person has complied with all the
139 provisions and requirements of Title 23 of the Revised Statutes
140 and any amendments thereto and all rules and regulations promul-
141 gated thereunder; or

142 (c) In the case of a firearm, directly to or from any exhibition
143 or display of firearms which is sponsored by any law enforcement
144 agency, any rifle or pistol club, or any firearms collectors club,
145 for the purpose of displaying of the firearms to the public or to the
146 members of such organization or club, provided, however, that not
147 less than 30 days prior to such exhibition or display, notice of such
148 exhibition or display shall be given to the Superintendent of the
149 State Police by the sponsoring organization or club, and the spon-
150 sor has complied with such reasonable safety regulations as the
151 superintendent may promulgate. Any firearms transported pur-

152 suant to this section shall be transported in the manner specified in
153 subsection g. of this section.

154 g. All weapons being transported under subsections b. (2), e. or
155 f. (1) or (3) of this section shall be carried unloaded and contained
156 in a closed and fastened case, gunbox, securely tied package, or
157 locked in the trunk of the automobile in which it is being trans-
158 ported, and the course of travel shall include only such deviations
159 as are reasonably necessary under the circumstances.

160 h. Nothing in subsection d. of section 2C:39-5 shall be construed
161 to prevent any employee of a public utility, as defined in R. S.
162 48:2-13, doing business in this State or any United States Postal
163 Service employee, while in the actual performance of duties which
164 specifically require regular and frequent visits to private premises,
165 from possessing, carrying or using any device which projects, re-
166 leases or emits any substance specified as being noninjurious to
167 canines or other animals by the Commissioner of Health and which
168 immobilizes only on a temporary basis and produces only tempo-
169 rary physical discomfort through being vaporized or otherwise
170 dispensed in the air for the sole purpose of repelling canine or other
171 animal attacks.

172 The device shall be used solely to repel only those canine or other
173 animal attacks when the canines or other animals are not restrained
174 in a fashion sufficient to allow the employee to properly perform
175 his duties.

176 Any device used pursuant to this act shall be selected from a list
177 of products, which consist of active and inert ingredients, per-
178 mitted by the Commissioner of Health.

179 i. Nothing in subsection d. of 2C:39-5 shall be construed to pre-
180 vent any person who is 18 years of age or older and who has not
181 been convicted of a felony, from possession for the purpose of
182 personal self-defense of one pocket-sized device which contains
183 and releases not more than three-quarters of an ounce of chemical
184 substance not ordinarily capable of lethal use or of inflicting serious
185 bodily injury, but rather, is intended to produce temporary physical
186 discomfort or disability through being vaporized or otherwise
187 dispensed in the air. Any person in possession of any device in
188 violation of this subsection shall be deemed and adjudged to be a
189 disorderly person, and upon conviction thereof, shall be punished
190 by a fine of not less than \$100.00.

1 2. N. J. S. 40A:14-146 is amended to read as follows:

2 40A:14-146. The governing body of any municipality, whenever
3 they shall deem it necessary, may appoint special policemen for
4 terms not exceeding 1 year and revoke such appointments without
5 ~~cause or hearing. They shall not be members of the police force,~~

6 and their powers and duties shall cease at the expiration of the
 7 terms for which they were appointed or upon revocation of their
 8 appointments. They may be furnished with badges upon the
 9 deposit of sums to be fixed by the governing body, which may be
 10 refunded on the return of the badges. A fee to be fixed by the
 11 governing body may be charged for issuing to any such special
 12 policeman a certificate of appointment.

13 No person shall be appointed as a special policeman unless he:

14 (1) Is a citizen of the United States;

15 (2) Is able to read, write and speak the English language well
 16 and intelligently *and possesses a high school diploma or its equi-*
 17 *valent;*

18 (3) Is sound in body and *mind and* of good health;

19 (4) Is of good moral character; **[and]**

20 (5) Has not been convicted of any criminal offense involving
 21 moral turpitude**[.]**; *and*

22 (6) *Is capable of obtaining a passing grade in a course of study*
 23 *on firearms, powers of arrest, and criminal law and procedure,*
 24 *given by the appointing authority under the supervision and control*
 25 *of the local police department.*

26 No such special policeman shall carry a revolver or other similar
 27 weapon when off duty; *provided, however, that if any such special*
 28 *policeman appointed by the governing body of any municipality*
 29 *having a population in excess of 300,000, according to the 1980*
 30 *federal census who is a resident of the municipality and is employed*
 31 *as a special policeman at least 35 hours per week, or less at the*
 32 *discretion of the director of the municipal police force and mayor,*
 33 *shall, at the direction of the director of the municipal police force,*
 34 *have taken and successfully completed a firearms training course*
 35 *administered by the Police Training Commission, pursuant to P. L.*
 36 *1961, c. 56 (C. 52:17B-66 et seq.) and has successfully completed*
 37 *within 3 years of the effective date of this act all other training*
 38 *courses required of the permanent police officers in that muni-*
 39 *city, said special policeman shall be permitted to carry a revolver*
 40 *or other similar weapon when off duty within the municipality*
 41 *where he is employed. Specific authorization shall be in the form*
 42 *of a permit, which is subject to renewal annually and may be*
 43 *revoked at any time by the director. The permit shall be on the*
 44 *person of the special policeman whenever a revolver or other*
 45 *similar weapon is carried off duty. *No such permit shall be issued*
 45A *until the special police officer has successfully completed all training*
 45B *courses required under this section.**

46 Every such special policeman shall have his fingerprints taken
 47 and they shall be filed with the Division of State Police and the

48 Federal Bureau of Investigation. He shall be under the super-
49 vision and direction of the chief of police of the municipality
50 wherein he is appointed and shall perform his duties only in such
51 municipality unless in fresh pursuit of any person pursuant to
52 chapter 156 (uniform act on intrastate fresh pursuit) of Title 2A
53 of the New Jersey Statutes. He shall comply with the rules and
54 regulations applicable to the conduct and decorum of the regular
55 policemen of the municipality.

56 Before any such appointment is made the chief of police of the
57 municipality shall ascertain the eligibility, *character, integrity,*
58 *psychological fitness* and qualifications of the applicant *for the*
59 *position* and make a report thereon to the governing body.

1 3. This act shall take effect immediately.

48 Federal Bureau of Investigation. He shall be under the super-
 49 vision and direction of the chief of police of the municipality
 50 wherein he is appointed and shall perform his duties only in such
 51 municipality unless in fresh pursuit of any person pursuant to
 52 chapter 156 (uniform act on intrastate fresh pursuit) of Title 2A
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 54 regulations applicable to the conduct and decorum of the regular
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 57 municipality shall ascertain the eligibility, *character, integrity,*
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 59 *position* and make a report thereon to the governing body.

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STATEMENT

Currently, special policemen appointed under authority of N. J. S. 40A:14-146 cannot carry firearms when off duty. This bill permits special policemen appointed by a municipality having a population in excess of 300,000, according to the 1980 federal census, to carry firearms on their persons while off-duty within the municipality where they are employed if they (1) are residents of the employing municipality; (2) are employed as special policemen at least 35 hours per week, or less at the discretion of the director of the municipal police force and mayor; (3) possess a high school diploma or its equivalent, are sound in mind; and (4) are capable of obtaining a passing grade in a course of study on firearms, powers of arrest, and criminal law and procedure, as well as meeting the existing requirements of N. J. S. 40A:14-146 governing the appointment of special policemen.

Specific authority to carry a revolver or other similar weapon when off-duty will be in the form of a permit, which is subject to renewal annually and may be revoked at any time by the director. The permit must be on the person of the special policemen whenever a revolver or similar weapon is carried off-duty. Special policemen could carry a revolver only upon completion of a firearms course administered by the police training commission and upon completion of any other course required of permanent police officers of the municipality within 3 years of the effective date of this act.

The justification for this bill is to provide special police protection in large urban centers where the incidents of violent crimes are exceedingly high and the municipal police force is critically understaffed.

A940 (1982)



August 5, 1982

ASSEMBLY BILL NO. 940

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I herewith return Assembly Bill No. 940 with my objections and recommendations for amendment.

This bill would permit Newark special policemen who also reside in Newark to carry firearms while off duty within the city limits of Newark. Recently the New Jersey Supreme Court decided the case of P.B.A. v. Bellmawr. In that decision the Court stated that New Jersey Statute 2C:39-6a.(7) specifically exempted special policemen while engaged in the actual performance of his official duties from the provisions of New Jersey Statute 2C:39-5. This means that special policemen who are appointed by the governing body of a municipality may carry firearms while on duty.

The Supreme Court did not authorize special police to carry firearms while off duty. I have several concerns regarding allowing special police to carry firearms while off duty. First, since the municipality has the responsibility to train special police regarding firearms, if any mishap occurs involving a special policeman and his firearm, the municipality might be held pecuniarily liable under the doctrine of respondeat superior. Also, I am concerned about the level of training special police receive regarding firearms. Regular police are required to undergo an intense training course and are placed in stress situations. They are specifically trained and tested to see how they will use a firearm under stress. If special police are allowed to carry firearms while off duty, there will be a greater chance that an innocent civilian might be shot.

Assembly Bill No. 940 is intended to afford greater protection to the citizens of certain urban areas by permitting special police who live in those areas to carry weapons while off duty.

In order to meet the salutary objective of this bill and yet safeguard urban residents from mishaps to the fullest extent possible, I am recommending insertion of language that will make clear that no special police officer will be permitted to carry a weapon while off duty until he has completed the training courses referenced in this bill.



STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT



-2-

Therefore, I herewith return Assembly Bill No. 940 and recommend that it be amended as follows:

Page 6, Section 2, Line 45: Insert after "duty" the following:

"No such permit shall be issued until the special police officer has successfully completed all training courses required under this section."

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

(seal)

Attest:

/s/ W. Cary Edwards
Chief Counsel to the Governor