

39:4-91

LEGISLATIVE HISTORY CHECKLIST
Compiled by the NJ State Law Library

(Law enforcement liability)

NJSA: 39:4-91

LAWS OF: 1997 **CHAPTER:** 423

BILL NO: A1888

SPONSOR(S): Weingarten

DATE INTRODUCED: May 6, 1996

COMMITTEE: ASSEMBLY: Law and Public Safety

SENATE: Law and Public Safety

AMENDED DURING PASSAGE: Yes

Fourth reprint enacted

DATE OF PASSAGE: ASSEMBLY: January 17, 1996 Re-enacted 1-12-98

SENATE: January 8, 1998 Re-enacted 1-12-98

DATE OF APPROVAL: January 19, 1998

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes Also attached: statement adopted 12-11-97 & 12-18-97

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: Yes

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: Yes

HEARINGS: No

974.90 New Jersey. Law Enforcement Officers Study Commission.
P766 Final report..., October 26, 1995. Trenton, 1995.
1995 [see pp. 13 & Appendix]

KBP:pp

P.L. 1997, CHAPTER 423, *approved January 19, 1998*
Assembly, No. 1888 (*Fourth Reprint*)

1 AN ACT concerning certain immunities for law enforcement officers
2 and amending R.S.39:4-91 and N.J.S.59:5-2.

3

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

6

7 1. R.S.39:4-91 is amended to read as follows:

8 39:4-91. a. The driver of a vehicle upon a highway shall yield the
9 right of way to any authorized emergency vehicle when it is operated
10 on official business, or in the exercise of the driver's profession or
11 calling, in response to an emergency call or in the pursuit of an actual
12 or suspected violator of the law and when an audible signal by bell,
13 siren, exhaust whistle or other means is sounded from the authorized
14 emergency vehicle and when the authorized emergency vehicle, except
15 a police vehicle, is equipped with at least one lighted lamp displaying
16 a red light visible under normal atmospheric conditions from a distance
17 of at least five hundred feet to the front of the vehicle.

18 b. **[This]** ¹**[Except as provided in N.J.S.59:5-2, this]** **This**¹ section
19 shall not relieve the driver of any authorized emergency vehicle from
20 the duty to drive with due regard for the safety of all persons, nor shall
21 it protect the driver from the consequences of his reckless disregard
22 for the safety of others. ¹Nothing in this section shall be construed to
23 limit any immunity or defense otherwise provided by law.¹

24 (cf: P.L.1951, c.23, s.49)

25

26 2. N.J.S.59:5-2 is amended to read as follows:

27 59:5-2. Parole or escape of prisoner; injuries between prisoners
28 ¹: pursuit for law enforcement purposes¹.

29 Neither a public entity nor a public employee is liable for:

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ALP committee amendments adopted June 3, 1996.

² Senate floor amendments adopted December 11, 1997.

³ Senate floor amendments adopted December 18, 1997.

⁴ Assembly amendments adopted in accordance with Governor's recommendations January 12, 1998.

1 a. An injury resulting from the parole or release of a prisoner or
2 from the terms and conditions of his parole or release or from the
3 revocation of his parole or release¹;

4 b. any injury caused by:

5 (1) an escaping or escaped prisoner;

6 (2) an escaping or escaped person; or

7 (3) a person resisting arrest ¹or evading arrest¹ ;

8 (4) a prisoner to any other prisoner ; or

9 c. any injury resulting from or caused by a law enforcement
10 officer's ¹[motor vehicle]¹ pursuit of a ¹[fleeing suspect] person¹.
11 (cf: N.J.S. 59:5-2)

12
13 ⁴[²3. (New section) Notwithstanding the provisions of
14 ³N.J.S.59:3-14 or³ any other law, a public entity ³or public employee³
15 shall not be liable for any injury ³which occurs during the course of a
16 law enforcement officer's pursuit³ to any ³[person] third party³ who
17 ³, at the time of that injury,³ was in the course of committing or
18 attempting to commit a crime under Title 2C of the New Jersey
19 Statutes, including the immediate flight therefrom.²]⁴

20
21 ²[3.] ⁴[⁴.²]³.⁴ This act shall take effect immediately.

22
23
24
25
26 Limits law enforcement officers' liability for injuries occurring during
27 pursuits.

ASSEMBLY, No. 1888

STATE OF NEW JERSEY

INTRODUCED MAY 6, 1996

By Assemblyman WEINGARTEN

1 AN ACT concerning certain immunities for law enforcement officers
2 and amending R.S.39:4-91 and N.J.S.59:5-2.

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

6
7 1. R.S.39:4-91 is amended to read as follows:

8 39:4-91. a. The driver of a vehicle upon a highway shall yield the
9 right of way to any authorized emergency vehicle when it is operated
10 on official business, or in the exercise of the driver's profession or
11 calling, in response to an emergency call or in the pursuit of an actual
12 or suspected violator of the law and when an audible signal by bell,
13 siren, exhaust whistle or other means is sounded from the authorized
14 emergency vehicle and when the authorized emergency vehicle, except
15 a police vehicle, is equipped with at least one lighted lamp displaying
16 a red light visible under normal atmospheric conditions from a distance
17 of at least five hundred feet to the front of the vehicle.

18 b. **[This]** Except as provided in N.J.S.59:5-2, this section shall not
19 relieve the driver of any authorized emergency vehicle from the duty
20 to drive with due regard for the safety of all persons, nor shall it
21 protect the driver from the consequences of his reckless disregard for
22 the safety of others.

23 (cf: P.L.1951, c.23, s.49)

24
25 2. N.J.S.59:5-2 is amended to read as follows:

26 59:5-2. Parole or escape of prisoner; injuries between prisoners.
27 Neither a public entity nor a public employee is liable for:

28 a. An injury resulting from the parole or release of a prisoner or
29 from the terms and conditions of his parole or release or from the
30 revocation of his parole or release**].**

31 b. any injury caused by:

- 32 (1) an escaping or escaped prisoner;
33 (2) an escaping or escaped person; or
34 (3) a person resisting arrest; or

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 (4) a prisoner to any other prisoner ; or
2 c. any injury resulting from or caused by a law enforcement
3 officer's motor vehicle pursuit of a fleeing suspect.
4 (cf: N.J.S. 59:5-2)

5

6 3. This act shall take effect immediately.

7

8

9

STATEMENT

10

11 Currently, law enforcement officers may be reluctant to
12 aggressively pursue fleeing offenders because of the officers' possible
13 liability for accidents arising out of the pursuits.

14 This bill amends the New Jersey Tort Claims Act to clarify that an
15 officer involved in a motor vehicle pursuit of a fleeing suspect will not
16 be liable for injuries arising out of that pursuit.

17 The immunity from liability granted to law enforcement officers
18 would also apply to public entities.

19

20

21

22

23 Limits law enforcement officers' liability for injuries occurring during
24 motor vehicle pursuits.

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1888

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 3, 1996

The Assembly Law and Public Safety Committee reports favorably Assembly Bill No.1888 with committee amendments.

Assembly Bill No.1888, as amended by the committee, amends the "New Jersey Tort Claims Act," specifically N.J.S.59:5-2, to clarify that a law enforcement officer involved in the pursuit of a person will not be liable for any injuries arising out of that pursuit. The immunity afforded law enforcement officers under this amendment also extends to public entities. The committee amendments clarify that the protections apply (1) to all pursuits, not just motor vehicle pursuits of fleeing suspects and (2) injuries caused by persons evading arrest as well as resisting arrest. The committee also amended the bill to remove the proposed amendatory phrase "[e]xcept as provided in N.J.S.59:5-2" from subsection b. of R.S.39:4-91 and added a new sentence at the end of the subsection. The new sentence was incorporated to clarify that nothing in the section should be construed to limit any immunity or defense otherwise provided by law.

It is the committee's understanding that this amendment will statutorily codify the New Jersey Supreme Court's 1995 determination in Fielder v. Stonack. In that case, the court ruled that a law enforcement officer engaged in a motor vehicle pursuit was not liable for any injuries arising out of that pursuit unless those injuries were the result of "willful misconduct" on the part of the officer. The provisions of this bill are consistent with the court's ruling since the immunities afforded under chapter 3, section 14 of the "New Jersey Tort Claims Act" (N.J.S.59:3-14) states:

59:3-14. Public employee immunity--exception

a. Nothing in this act shall exonerate a public employee from liability if it is established that his conduct was outside the scope of his employment or constituted a crime, actual fraud, actual malice or willful misconduct.

b. Nothing in this act shall exonerate a public employee from the full measure of recovery applicable to a person in the private sector if it is established that his conduct was outside the scope of his employment or constituted a crime, actual fraud, actual malice or willful misconduct.

SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 1888

STATE OF NEW JERSEY

DATED: MAY 15, 1997

The Senate Law and Public Safety Committee reports favorably Assembly Bill No. 1888 (1R).

Assembly Bill No.1888 (1R) amends the "New Jersey Tort Claims Act," specifically N.J.S.59:5-2, to clarify that a law enforcement officer involved in the pursuit of a person will not be liable for any injuries arising out of that pursuit. The immunity afforded law enforcement officers under this amendment also extends to public entities. The committee amendments clarify that the protections apply to (1) all pursuits, not just motor vehicle pursuits of fleeing suspects and (2) injuries caused by persons evading arrest as well as resisting arrest. The bill also clarifies that nothing in R.S.39:4-91 should be construed to limit any immunity or defense otherwise provided by law.

It is the committee's understanding that this amendment will statutorily codify the New Jersey Supreme Court's 1995 determination in Fielder v. Stonack. In that case, the court ruled that a law enforcement officer engaged in a motor vehicle pursuit was not liable for any injuries arising out of that pursuit unless those injuries were the result of "willful misconduct" on the part of the officer. The provisions of this bill are consistent with the court's ruling since the immunities afforded under chapter 3, section 14 of the "New Jersey Tort Claims Act" (N.J.S.59:3-14) states:

59:3-14. Public employee immunity--exception

a. Nothing in this act shall exonerate a public employee from liability if it is established that his conduct was outside the scope of his employment or constituted a crime, actual fraud, actual malice or willful misconduct.

b. Nothing in this act shall exonerate a public employee from the full measure of recovery applicable to a person in the private sector if it is established that his conduct was outside the scope of his employment or constituted a crime, actual fraud, actual malice or willful misconduct.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 1888

with Senate Floor Amendments
(Proposed By Senators RICE and BASSANO)

ADOPTED: DECEMBER 11, 1997

Assembly Bill No.1888 (1R) amends the "New Jersey Tort Claims Act," specifically N.J.S.59:5-2, to clarify that a law enforcement officer involved in the pursuit of a person will not be liable for any injuries arising out of that pursuit.

These Senate amendments supplement chapter 5 of the Tort Claims Act to clarify that a public entity would not be liable for any injury to any person who was in the course of committing or attempting to commit a crime under Title 2C of the New Jersey Statutes, including the immediate flight therefrom.

STATEMENT TO
[Second Reprint]
ASSEMBLY, No. 1888

with Senate Floor Amendments
(Proposed By Senator RICE and Senator BASSANO)

ADOPTED: DECEMBER 18, 1997

Assembly Bill No.1888 (1R) amends the "New Jersey Tort Claims Act," specifically N.J.S.59:5-2, to clarify that a law enforcement officer involved in the pursuit of a person will not be liable for any injuries arising out of that pursuit.

These Senate amendments further clarify that neither a public entity or public employee would be liable for any injury occurring during a law enforcement officer's pursuit to a bystander who, at the time of that injury, was in the course of committing or attempting to commit a crime or fleeing a crime scene.

ASSEMBLY BILL NO. 1888
(THIRD REPRINT)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 1888 (Third Reprint) with my recommendations for reconsideration.

Summary of Bill

This bill amends the New Jersey Tort Claims Act to clarify that an officer involved in the pursuit of a person will not be liable for injuries arising out of that pursuit. The immunity from liability granted to law enforcement officers would also apply to public entities. This bill will codify the New Jersey Supreme Court's decision in Fielder v. Stonack, 141 N.J. 101 (1995). The Court ruled that a law enforcement officer engaged in a motor vehicle pursuit was not liable for injuries arising out of that pursuit unless they were the result of "willful misconduct" on the part of the officer. The "willful misconduct" language already exists in the New Jersey Tort Claims Act.

Recommended Action

The intent of this bill to provide immunity from liability to public entities and public officials for injuries occurring during pursuits is sound. Section 3 of this bill attempts to provide immunity for public entities and employees for injuries suffered by a third party during a law enforcement officer's pursuit, if the third party was in the course of committing a crime. However, I am advised by the Division of Law in the Department of Law and Public Safety that Section 3, as written, would provide immunity to public entities and employees from liability even if the public employee was acting 1) outside the

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

scope of his employment; 2) criminally; 3) with actual fraud; 4) with actual malice; or 5) with willful misconduct. The bill does this by referencing N.J.S.A. 59:3-14 and thereby goes beyond the scope of Fielder v. Stonack.

This is not sound public policy. I believe law enforcement officers should be immune from liability when pursuing individuals. This will encourage effective police conduct. However, when the actions of public employees are criminal, fraudulent, malicious, or with willful misconduct, civil immunity should not be granted.

Therefore, I herewith return Assembly Bill No. 1888 (Third Reprint) and recommend that it be amended as follows:

Page 2, Section 3, Lines 14-20 : Delete in their entirety.

Page 2, Section 4, Line 22 : Delete "4." and insert "3."

Respectfully,

/s/ Christine Todd Whitman

GOVERNOR

[seal]

Attest:

/s/ Michael P. Torpey

Chief Counsel to the Governor