



NEW JERSEY LAW REVISION COMMISSION
Tentative Report Regarding
Anachronistic Statutes Involving Citizen's Arrest and
Special Officers

November 09, 2020

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” *N.J.S. 1:12A-8*.

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **January 18, 2021**.

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report or direct any related inquiries, to:

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Executive Summary

New Jersey has recognized the doctrine of “citizen’s arrest” since before the turn of the twentieth century. Under certain circumstances, this doctrine authorizes a private person to detain another without a warrant, or process, and bring them before a designated member of the judiciary.¹

During the past century, organized police forces have become the norm and the necessity for the “citizen’s arrest” doctrine has waned. In addition, the statutes in question do not address the level of suspicion necessary to detain an individual, the amount of force that may be used to effectuate an arrest, the length of detention that is legally permitted, or the breadth of the immunity granted to those who act pursuant to these statutes.²

The Commission recommends that individuals, librarians, and special officers no longer be permitted to effectuate a citizen’s arrest, and that the shopkeeper’s privilege be modified.

Analysis

The project giving rise to this Report began as an examination of three New Jersey statutes that incorporate the doctrine of citizen’s arrest.³ During the Commission’s work in this area, additional research revealed that the term “special officer”, used in two of the citizen’s arrest statutes, is also used in several other titles and may be confused with the term “special law enforcement officer.” The results of the research, and the Commission’s recommendations in both of these areas follow. Part I of this Report deals with Citizen’s Arrest, and Part II with Special Officers.

Part I. Citizen’s Arrest

• *Administration of Civil and Criminal Justice*

The New Jersey statute authorizing the arrest of disorderly persons dates back to 1898.⁴ By 1910, it provided that, “it shall be... lawful for any other person, to apprehend, without warrant or process, any disorderly person....”⁵ Over the next one hundred and twenty-two years, the substance of the statute authorizing a citizen’s arrest would remain virtually unchanged.

¹ N.J. STAT. ANN. § 2A:169-3 (West 2020).

² See Ira P. Robbins, A Narrowed Scope of Citizen’s Arrest, 25 CORNELL J.L. & PUB. POL’Y 557 (2016).

³ N.J. STAT. ANN. § 2A:169-3 (West 2020); N.J. STAT. ANN. § 2C:20-11 (West 2020) and N.J. STAT. ANN. § 2C:20-14 (West 2020).

⁴ L. 1898, c. 239 §36, p. 953. In 1937, the arrest of disorderly persons without process was codified as N.J. STAT. ANN. § 2:206-2 (1937). The current section, N.J. STAT. ANN. § 2A:169-3 (West 2020) was included in N.J. STAT. ANN. § 2C:98-2, which repealed all sections listed in it, by L.1978, c.95, N.J. STAT. ANN. § 2C:98-2 eff. Sept. 1, 1979, but was deleted from N.J. STAT. ANN. § 2C:98-2, and listed in N.J. STAT. ANN. § 2C:98-3, which allocated N.J. STAT. ANN. § 2A:169-3, by L.1979, c. 178, §§145, 146, eff. Sept. 1, 1979.

⁵ *Levine v. State*, 110 N.J.L. 467, 468-469 (1933).

The only statute in Title 2A that authorizes the apprehension of a disorderly person by civilians⁶, provides:

Whenever an offense is committed in his presence, any constable or police officer shall, and **any other person may**, apprehend without warrant or process any disorderly person, and take him before any magistrate⁷ of the county where apprehended.^{8,9} [emphasis added]

This statute permits private individuals to detain another who commits an offense in their presence.¹⁰

As it has for more than 100 years, the current statute permits a person to effectuate the arrest of another without a warrant or process.¹¹ Although not required by the statute, these procedural protections are mandated by the New Jersey Rules of Court. Citizen complaints are also subject to judicial review pursuant to the New Jersey Rules of Court.¹²

The statute presents additional interpretive challenges since it does not provide any guidance regarding the probable cause required to make an arrest, the length of detention that is legally permitted, or the appropriate amount of force that may be used to effectuate the arrest.¹³

Title 2A is not the only Title that addresses the topic of a citizen's arrest. The Code of Criminal Justice (the Code), found in Title 2C, also contains two statutes that do so.

- *The Shopkeeper's Privilege - A Fifty-State Survey*

One form of citizen's arrest is commonly referred to as the "shopkeeper's privilege."¹⁴ This privilege allows a merchant to detain a suspected shoplifter in an attempt to recover

⁶ As used in this Report, "civilian" denotes an individual who is not currently employed as a trained, law enforcement officer for the federal government, state, county, or municipality.

⁷ For the Commission's work regarding the elimination of the term "magistrate" from the New Jersey Statutes, see the Final Report from Samuel M. Silver, "Addressing the use of the Term Magistrate in the New Jersey Statutes" to the New Jersey Law Revision Commission 1 (Jul. 30, 2020) (on file with the Commission and available at <https://www.njlrc.org/projects/2020/1/13/use-of-magistrate-in-the-new-jersey-statutes?rq=magistrate>).

⁸ N.J. STAT. ANN. § 2A:169-3 (West 2020). Chapter 169, General Provisions, originally contained 11 provisions. With the exception of N.J. STAT. ANN. § 2A:169-3 (West 2020), the other 10 provisions contained in this Chapter were repealed by N.J. STAT. ANN. § 2C:98-2 (West 1978).

⁹ In 1983, the arrest of an individual within New Jersey by federal law enforcement officers was considered a "citizen's arrest." This was remedied with the passage of N.J. STAT. ANN. § 2A:154-5. Federal law enforcement officers empowered to arrest offenders against laws of state.

¹⁰ *Id.*

¹¹ *Id.* But see New Jersey Rules of Court, R. 3:2-1(a)(1) and (2) (Content of Complaint; Citizen complaints for Indictable Offenses); R. 7:2-2(b) (Authorization for Process of Citizen Complaints).

¹² See New Jersey Rules of Court, R. 7:2-2(b) (Authorization for Process of Citizen Complaints).

¹³ For an in-depth treatment of citizen's arrest, see Robbins, *supra* note 2, at 557.

¹⁴ *Id.*

willfully concealed, unpurchased merchandise.¹⁵ Historically, the privilege “arose as a result of a dilemma faced by merchants: whether to absorb the loss by [ignoring] the suspected shoplifter or to apprehend the suspect, risking a lawsuit if the shopkeeper’s reasonable beliefs turned out to be erroneous or [could] not be proven in court.”¹⁶ New Jersey, like the rest of the country, has codified this privilege.¹⁷

The “shopkeeper’s privilege” is found in the Code at N.J.S. 2C:20-11. That statute authorizes a merchant to detain an individual, under certain circumstances, if the shopkeeper believes that the individual has stolen or is attempting to steal store merchandise.¹⁸ The statute provides, in relevant part:

e. A law enforcement officer, or a special officer, **or a merchant, who has probable cause** for believing that a person has willfully concealed unpurchased merchandise and that he **can** recover the merchandise by taking the person into custody, may, for the purpose of attempting to effect recovery thereof, **take the person into custody and detain him in a reasonable manner for not more than a reasonable time**, and the taking into custody by a law enforcement officer or special officer or merchant shall not render such person criminally or civilly liable in any manner or to any extent whatsoever [...]¹⁹

• *Level of Suspicion*

¹⁵ N.J. STAT. ANN. § 2C:20-11(e) (West 2020).

¹⁶ Robbins, *supra* note 2, at 585.

¹⁷ N.J. STAT. ANN. § 2C:20-11(e) (West 2020). *See* ALA. CODE § 15-10-14 (West 2020); ALASKA STAT. ANN. § 11.46.230 (West 2020); ARIZ. REV. STAT. ANN. § 13-1805 (West 2020); ARK. CODE ANN. § 5-36-116 (West 2020); CAL. PENAL CODE § 490.5 (1976) (West 2020); COLO. REV. STAT. ANN. § 18-4-407 (West 2020); CONN. GEN. STAT. ANN. § 53A-119A (West 2020); D.C. CODE ANN. § 22-3213 (West 2020); DEL. CODE ANN. TIT. 11, § 840 (West, 2019-20); FLA. STAT. ANN. § 812.015 (West 2020); GA. CODE ANN. § 51-7-60 (West 2020); HAW. REV. STAT. ANN. § 708-833.5 (West 2020); IDAHO CODE ANN. § 48-705 (West 2020); 720 ILL. COMP. STAT. ANN. 5/16-26 (West 2020); IND. CODE ANN. § 35-33-6-2 (1981) (West 2020); IOWA CODE ANN. § 808.12 (1976) (West 2020); KAN. STAT. ANN. § 21-5411 (2011) (West 2020); KY. REV. STAT. ANN. § 433.236 (West 2020); LA. CODE CRIM. PROC. ANN. ART. 215 (West 2020); ME. REV. STAT. TIT. 17, § 3521 (West 2020); MD. CODE ANN., CTS. & JUD. PROC. § 5-402 (West 2020); MASS. GEN. LAWS ANN. CH. 231, § 94B (West 2020); MICH. COMP. LAWS ANN. § 600.2917 (West 2020); MINN. STAT. ANN. § 629.366 (West 2020); MISS. CODE ANN. § 97-23-95 (West 2020); MO. ANN. STAT. § 537.125 (West, 2018); MONT. CODE ANN. § 46-6-506 (West, 2019); NEB. REV. STAT. ANN. § 29-402.01 (West 2020); NEB. REV. STAT. ANN. § 29-402.03 (West 2020); NEV. REV. STAT. ANN. § 597.850 (West 2020); N.H. REV. STAT. ANN. § 627:8-A (West 2020); N.J. STAT. ANN. 2C:20-11 (West 2020); N.M. STAT. ANN. § 30-16-23 (West 2020); N.Y. GEN. BUS. LAW § 218 (McKINNEY, 2020); N.C. GEN. STAT. ANN. § 14-72.1 (West 2020); N.D. CENT. CODE ANN. § 12.1-23-14 (West, 2019); OHIO REV. CODE ANN. § 2935.041 (West, 2019-2020); OKLA. STAT. ANN. TIT. 22, § 1343 (West 2020); OR. REV. STAT. ANN. § 131.655 (West 2020); 18 PA. STAT. AND CONS. STAT. ANN. § 3929 (West 2020); 11 R.I. GEN. LAWS ANN. § 11-41-21 (West 2020); S.C. CODE ANN. § 16-13-140 (West 2020); S.D. CODIFIED LAWS § 22-30A-19.2 (West 2020); TENN. CODE ANN. § 40-7-116 (West 2020); TEX. CIV. PRAC. & REM. CODE ANN. § 124.001 (West, 2019); UTAH CODE ANN. § 78B-3-108 (West 2020); VT. STAT. ANN. TIT. 13, § 2576 (West 2020); VA. CODE ANN. § 8.01-226.9 (West 2020); WASH. REV. CODE ANN. § 4.24.220 (West 2020); W. VA. CODE ANN. § 61-3A-4 (West 2020); WIS. STAT. ANN. § 939.49 (West 2020); and, WYO. STAT. ANN. § 6-3-405 (West 2020).

¹⁸ 35 C.J.S. False Imprisonment § 11 (Glenda K. Harnad, J.D.) (June 2020 Update).

¹⁹ N.J. STAT. ANN. § 2C:20-11(e) (West 2020) (emphasis added).

The New Jersey Statute authorizes a shopkeeper to “...effect the arrest of a suspected shoplifter based upon probable cause, regardless of whether the offense occurs in [his or her] presence.”²⁰ Not every state requires a merchant to have probable cause before detaining a suspected shoplifter, but the probable cause requirement is also found in New Jersey’s shoplifting statute, and in the statutes of twenty-three other states as well as the District of Columbia.²¹

Other states rely on a standard other than probable cause. Some use the standard of “reasonable belief.”²² Others, the standard of “reasonable cause.”²³ Arkansas does not articulate any particular level of suspicion in its shoplifting statute.²⁴ The remaining states employ a “reasonable grounds” standard.²⁵ All of these standards are grounded in the assumption that “...shopkeepers have an in-depth knowledge of their premises and inventory, have a financial motivation to thwart potential shoplifters, and generally have no concurrent motivation to wrongfully detain a customer.”²⁶

Merchants authorized to act pursuant to the New Jersey statute are not engaged in state action. Thus, they are free to engage in “unreasonable searches and seizures from the person of detained individuals without fear that the objects seized will be subject to suppression in a

²⁰ *Id.* See 51 N.J. PRAC., MUNICIPAL COURT PRAC. § 43:10 (Robert Ramsey) (2019-2020 ed.). See *State v. Ferraro*, 81 N.J. Super. 213 (Cnty. Ct. 1963).

²¹ ALA. CODE § 15-10-14 (West 2020); ALASKA STAT. ANN. § 11.46.230 (West 2020); CAL. PENAL CODE § 490.5 (1976) (West 2020); COLO. REV. STAT. ANN. § 18-4-407 (West 2020); DEL. CODE ANN. TIT. 11, § 840 (West, 2019-20); D.C. CODE ANN. § 22-3213 (West 2020); FLA. STAT. ANN. § 812.015 (West 2020); IND. CODE ANN. § 35-33-6-2 (1981) (West 2020); KAN. STAT. ANN. § 21-5411 (2011) (West 2020); KY. REV. STAT. ANN. § 433.236 (West 2020); ME. REV. STAT. TIT. 17, § 3521 (West 2020); MD. CODE ANN., CTS. & JUD. PROC. § 5-402 (West 2020); MICH. COMP. LAWS ANN. § 600.2917 (West 2020); MISS. CODE ANN. § 97-23-95 (West 2020); MO. ANN. STAT. § 537.125 (West, 2018) (uses both reasonable grounds and probable cause); NEB. REV. STAT. ANN. § 29-402.01 (West 2020); N.M. STAT. ANN. § 30-16-23 (West 2020); N.C. GEN. STAT. ANN. § 14-72.1 (West 2020); OHIO REV. CODE ANN. § 2935.041 (West, 2019-2020); OKLA. STAT. ANN. TIT. 22, § 1343 (West 2020) (uses both reasonable grounds and probable cause); OR. REV. STAT. ANN. § 131.655 (West 2020); 18 PA. STAT. AND CONS. STAT. ANN. § 3929 (West 2020); TENN. CODE ANN. § 40-7-116 (West 2020); and VA. CODE ANN. § 8.01-226.9 (West 2020).

²² GA. CODE ANN. § 51-7-60 (West 2020) (reasonably thought); MONT. CODE ANN. § 46-6-506 (West, 2019) (on belief of shoplifting); NEV. REV. STAT. ANN. § 597.850 (West 2020); TEX. CIV. PRAC. & REM. CODE ANN. § 124.001 (West, 2019); UTAH CODE ANN. § 78B-3-108 (West 2020); WIS. STAT. ANN. § 939.49 (West 2020); and LA. CODE CRIM. PROC. ANN. ART. 215 (West 2020).

²³ ARIZ. REV. STAT. ANN. § 13-1805 (West 2020); IDAHO CODE ANN. § 48-705 (West 2020); MINN. STAT. ANN. § 629.366 (West 2020); N.D. CENT. CODE ANN. § 12.1-23-14 (West, 2019); S.C. CODE ANN. § 16-13-140 (West 2020); VT. STAT. ANN. TIT. 13, § 2576 (West 2020); and WYO. STAT. ANN. § 6-3-405 (West 2020).

²⁴ ARK. CODE ANN. § 5-36-116 (West 2020).

²⁵ CONN. GEN. STAT. ANN. § 53A-119A (West 2020); HAW. REV. STAT. ANN. § 708-833.5 (West 2020); 720 ILL. COMP. STAT. ANN. 5/16-26 (West 2020); IOWA CODE ANN. § 808.12 (1976) (West 2020); MASS. GEN. LAWS ANN. CH. 231, § 94B (West 2020); N.H. REV. STAT. ANN. § 627:8-A (West 2020); N.Y. GEN. BUS. LAW § 218 (McKINNEY, 2020); 11 R.I. GEN. LAWS ANN. § 11-41-21 (West 2020); S.D. CODIFIED LAWS § 22-30A-19.2 (West 2020); WASH. REV. CODE ANN. § 4.24.220 (West 2020); and W. VA. CODE ANN. § 61-3A-4 (West 2020).

²⁶ Robbins, *supra* note 2, at 586.

motion to suppress evidence,” or that liability for erroneous detentions and searches will follow.²⁷

- *Level of Force*

The New Jersey statute does not provide any guidance regarding the level of force that a merchant may employ to detain a suspected shoplifter.²⁸ Rather, a merchant is authorized to detain a suspected shoplifter “in a reasonable manner.”²⁹ The “arrestor may use force to ensure the detainment of the arrestee, but only such force as is required to prevent the arrestee’s escape.”³⁰ A court will, on a case-by-case basis, assess whether the force used by the merchant was reasonable under the circumstances.³¹

- *Duration of Detention*

New Jersey’s shoplifting statute also does not specify how long a detained individual may be held.³² N.J.S. 2C:20-11(e) says only that an individual suspected of shoplifting may be held “for not more than a reasonable time.”³³ “Reasonable time” language is used in the statutes of thirty-seven other states and the District of Columbia.³⁴ Generally, “[c]ourts are hesitant to

²⁷ 51 N.J. PRAC., MUNICIPAL COURT PRAC. at § 43:10. *See State v. Ferraro*, 81 N.J. Super. 213 (Cnty. Ct. 1963).

²⁸ N.J. STAT. ANN. § 2C:20-11(e) (West 2020). All but four states utilize “reasonableness” when discussing the detention of a person suspected of shoplifting. *See* CONN. GEN. STAT. ANN. § 53A-119A (West 2020); IOWA CODE ANN. § 808.12 (1976) (West 2020); MD. CODE ANN., CTS. & JUD. PROC. § 5-402 (West 2020); and WIS. STAT. ANN. § 939.49 (West 2020).

²⁹ *Id.*

³⁰ Robbins, *supra* note 2, at 587.

³¹ *Id.*

³² Compare, with IND. CODE ANN. § 35-33-6-2 (1981) (West 2020) (detention may not extend beyond the arrival of a law enforcement officer or two hours, whichever comes first); LA. CODE CRIM. PROC. ANN. ART. 215 (West 2020) (detention may not exceed 60 minutes unless a longer detention is reasonable under the circumstances); ME. REV. STAT. TIT. 17, § 3521 (West 2020) (detention may not exceed 30 minutes); MINN. STAT. ANN. § 629.366 (West 2020) (detention may last one hour unless the merchant is awaiting law enforcement or the parent of a minor); MONT. CODE ANN. § 46-6-506 (West, 2019) (detention may last until the purpose of the stop has been accomplished or 30 minutes, whichever occurs first); VA. CODE ANN. § 8.01-226.9 (West 2020) (detention may not exceed one hour); and, W. VA. CODE ANN. § 61-3A-4 (West 2020) (detention may not exceed 30 minutes).

³³ N.J. STAT. ANN. § 2C:20-11(e) (West 2020).

³⁴ ALA. CODE § 15-10-14 (West 2020); ALASKA STAT. ANN. § 11.46.230 (West 2020); ARIZ. REV. STAT. ANN. § 13-1805 (West 2020); ARK. CODE ANN. § 5-36-116 (West 2020); CAL. PENAL CODE § 490.5 (1976) (West 2020); CONN. GEN. STAT. ANN. § 53A-119A (West 2020); DEL. CODE ANN. TIT. 11, § 840 (West, 2019-20); D.C. CODE ANN. § 22-3213 (West 2020); FLA. STAT. ANN. § 812.015 (West 2020); GA. CODE ANN. § 51-7-60 (West 2020); HAW. REV. STAT. ANN. § 708-833.5 (West 2020); IDAHO CODE ANN. § 48-705 (West 2020); 720 ILL. COMP. STAT. ANN. 5/16-26 (West 2020); IOWA CODE ANN. § 808.12 (1976) (West 2020); KAN. STAT. ANN. § 21-5411 (2011) (West 2020); KY. REV. STAT. ANN. § 433.236 (West 2020); MASS. GEN. LAWS ANN. CH. 231, § 94B (West 2020); MICH. COMP. LAWS ANN. § 600.2917 (West 2020); MO. ANN. STAT. § 537.125 (West, 2018); NEB. REV. STAT. ANN. § 29-402.01 (West 2020); NEV. REV. STAT. ANN. § 597.850 (West 2020); N.M. STAT. ANN. § 30-16-23 (West 2020); N.Y. GEN. BUS. LAW § 218 (McKinney, 2020); N.C. GEN. STAT. ANN. § 14-72.1 (West 2020); N.D. CENT. CODE ANN. § 12.1-23-14 (West, 2019); OHIO REV. CODE ANN. § 2935.041 (West, 2019-2020); OKLA. STAT. ANN. TIT. 22, § 1343 (West 2020); OR. REV. STAT. ANN. § 131.655 (West 2020); 18 PA. STAT. AND CONS. STAT. ANN. § 3929 (West 2020); 11 R.I. GEN. LAWS ANN. § 11-41-21 (West 2020); S.C. CODE ANN. § 16-13-140 (West 2020); S.D. CODIFIED LAWS § 22-30A-19.2

enunciate precisely what constitutes a reasonable amount of time, but it is generally considered to be the amount of time it takes to sufficiently investigate the suspect and determine whether he or she has committed a crime.”³⁵

- *Mistaken Detention*

In New Jersey, a merchant who erroneously detains an innocent customer will not be “criminally or civilly liable in any manner or to any extent whatsoever.”³⁶ This level of immunity is not found in any other statute in the country. In its current form, the liability of the shopkeeper is based on the reasonableness of their actions under the circumstances, and not the guilt or innocence of the customer.³⁷

- *The Library Employee Privilege*

Shopkeepers are not the only individuals in New Jersey who may detain someone suspected of willfully concealing items with the intent to steal them. To “... help combat the theft of library materials,” N.J.S. 2C:20-14 authorizes,

... [a]n employee of a library facility who has probable cause for believing that a person has willfully concealed library material and that he can recover the material by taking the person into custody, may, for the purpose of attempting to recover the material, take the person into custody and detain him in a reasonable manner for a reasonable time.³⁸

Like the shoplifting statute, this statute is silent regarding any requirement that a library employee actually witness the concealment of the depository’s materials before detaining an

(West 2020); TENN. CODE ANN. § 40-7-116 (West 2020); TEX. CIV. PRAC. & REM. CODE ANN. § 124.001 (West, 2019); UTAH CODE ANN. § 78B-3-108 (West 2020); VT. STAT. ANN. TIT. 13, § 2576 (West 2020); WASH. REV. CODE ANN. § 4.24.220 (West 2020); and WYO. STAT. ANN. § 6-3-405 (West 2020).

³⁵ Robbins, *supra* note 2, at 586.

³⁶ N.J. STAT. ANN. § 2C:20-11(e). Although twenty-three other states and the District of Columbia provide immunity from both civil and criminal liability, only New Jersey provides protection from “criminal[] or civil[] liabil[ity] in any manner or to any extent whatsoever.” *Compare, with* ALA. CODE § 15-10-14 (West 2020); ALASKA STAT. ANN. § 11.46.230 (West 2020); ARIZ. REV. STAT. ANN. § 13-1805 (West 2020); ARK. CODE ANN. § 5-36-116 (West 2020); COLO. REV. STAT. ANN. § 18-4-407 (West 2020); D.C. CODE ANN. § 22-3213 (West 2020); DEL. CODE ANN. TIT. 11, § 840 (West, 2019-20); FLA. STAT. ANN. § 812.015 (West 2020); GA. CODE ANN. § 51-7-60 (West 2020); HAW. REV. STAT. ANN. § 708-833.5 (West 2020); IDAHO CODE ANN. § 48-705 (West 2020); IOWA CODE ANN. § 808.12 (1976) (West 2020); MINN. STAT. ANN. § 629.366 (West 2020); MO. ANN. STAT. § 537.125 (West, 2018); NEB. REV. STAT. ANN. § 29-402.01 (West 2020); N.M. STAT. ANN. § 30-16-23 (West 2020); N.Y. GEN. BUS. LAW § 218 (MCKINNEY, 2020); N.D. CENT. CODE ANN. § 12.1-23-14 (West, 2019); OKLA. STAT. ANN. TIT. 22, § 1343 (West 2020); OR. REV. STAT. ANN. § 131.655 (West 2020); 18 PA. STAT. AND CONS. STAT. ANN. § 3929 (West 2020); TENN. CODE ANN. § 40-7-116 (West 2020); UTAH CODE ANN. § 78B-3-108 (West 2020); and WYO. STAT. ANN. § 6-3-405 (West 2020).

³⁷ See generally, 35 C.J.S. False Imprisonment § 11 (Glenda K. Harnad, J.D.) (June 2020 Update).

³⁸ See N.J. STAT. ANN. § 2C:20-12, *Governor’s statement to Senate, No. 722, L. 1985, c. 373.*

individual. The detention of a suspected individual must be based on probable cause, meaning “less than legal evidence necessary to convict though more than mere naked suspicion.”³⁹

A library employee who erroneously detains a patron will not be “civilly or criminally liable where the employee has probable cause for believing that the person arrested committed the offense of theft of library material.”⁴⁰ New Jersey and six other states are the only ones that provide this type of immunity to library employees.⁴¹ In New Jersey, liability is based upon the reasonableness of the library employee’s actions under the circumstances and not the guilt or innocence of the patron.⁴²

The library statute, again like the shoplifting statute, does not set forth the level of force a library employee may employ to detain a someone suspected of concealing library materials. The case law is devoid of any reference that might clarify this statute.

Further, it is noted that the statute authorizes **any** employee of the library to detain those suspected of concealing library material. Thus, a custodian, an audio-visual specialist, a paraprofessional, an administrative assistant, and a librarian are all authorized to confront and detain a person suspected of stealing library materials. It has been recognized that, “[p]lacing such power in the hands of ordinary, untrained individuals creates the possibility that citizens will misuse or abuse the privilege, sometimes with serious consequences....”⁴³ Proposed statutory modifications to eliminate the ability of library employees to detain persons suspected of stealing from the library are set forth in the Appendix to this Report, *infra*.

- *Executive Orders – Face Masks*

The Coronavirus disease 2019 (“COVID-19”) is a contagious, and at times fatal respiratory disease caused by the SARS-CoV-2 virus. On March 9, 2020, as part of New Jersey’s coordinated response to address COVID-19, Governor Phil Murphy declared a State of Emergency and a Public Health Emergency. Executive Order No. 103 declared that New Jersey was in a state of emergency as a result of a public health emergency across all 21 counties in New Jersey.

To further the State’s efforts to enforce social distancing and limiting public interactions Governor Murphy executed Executive Order No. 163⁴⁴, which provides that “... [w]hen it is not

³⁹ *State v. Gathers*, 234 N.J. 208 (2018).

⁴⁰ N.J. STAT. ANN. § 2C:20-14 (a) and (c).

⁴¹ CAL. PENAL CODE § 490.5 (1976) (West 2020); IOWA CODE ANN. § 808.12 (1976) (West 2020); MICH. COMP. LAWS ANN. § 600.2917 (West 2020); OHIO REV. CODE ANN. § 2935.041 (West, 2019-2020); UTAH CODE ANN. § 77-7-14 (West 2020); and WIS. STAT. ANN. § 939.49 (West 2020).

⁴² *See generally*, 35 C.J.S. False Imprisonment at § 11.

⁴³ Robbins, *supra* note 2, at 557.

⁴⁴ Exec. Order No. 163, (Jul. 08, 2020), _____ N.J.R. _____ (2020), available at <https://nj.gov/infobank/eo/056murphy/pdf/EO-163.pdf> (last visited Oct. 08, 2020).

practicable for individuals in outdoor public spaces to socially distance and keep a six-foot distance from others... all individuals shall wear face coverings.”⁴⁵

An individual who does not wear a mask in a situation in which one is required, is in violation of the Governor’s order. Pursuant to N.J.S. App. A:9-49(i), any person who violates an executive order “... shall be adjudged a disorderly person and shall be subject to imprisonment for a term not to exceed 6 months or shall pay a fine not to exceed \$1,000.00 or to both a fine and imprisonment, in the discretion of the court.” In addition, “[a]ny person who shall knowingly aid or abet another in the violation of any provision of this act shall also be adjudged a disorderly person and punishable in the same manner as the violation aided and abetted.”⁴⁶

The laws regarding face masks are, “new, confusing, and not entirely understood.”⁴⁷ The citizen’s arrest doctrine is complicated and its subtleties present challenges to individuals attempting to lawfully effectuate these types of arrests.⁴⁸ Criminal defense attorneys have observed that, “[b]ecause it is unclear what the actual penalties are for failing to wear a face mask are, no one should be effectuating citizen’s arrests for failing to wear one.”⁴⁹ When asked whether an individual should effectuate a citizen’s arrest against a person not wearing a mask, Governor Murphy responded, “[o]f course not.”⁵⁰ In addition, the Governor suggested that when a citizen observes another without a face mask, he or she should, “... go tell someone in authority as opposed to go[ing] to the individual directly.... Find a police officer....”⁵¹

Part II – Special Officers

During the course of its work in this area, Staff noted that two statutes in the Code authorize a “special officer” to effectuate the arrest of those believed to be engaged in shoplifting, or the theft of library materials.⁵² The use of that term is not limited to the Code.

In addition to the two shoplifting statutes, “special officer” appears in nine other statutes, spanning five titles.⁵³

⁴⁵ *Id.*

⁴⁶ N.J. STAT. App. A:9-49 (West 2020).

⁴⁷ See Jessica Remo, *Can you make a citizen’s arrest of someone who isn’t wearing a mask?* N.J. COM, Jul. 11, 2020, <https://www.nj.com/coronavirus/2020/07/can-you-make-a-citizens-arrest-of-someone-who-isnt-wearing-a-mask.html>.

⁴⁸ See Riley Brunch, *Bipartisan lawmakers push to do away with citizen’s arrest law*, VALDOSTA DAILY TIMES, Jun. 05, 2020, www.valdostadailytimes.com/news/ga_fl_news/bipartisan-lawmakers-push-to-do-away-with-citizens-arrest-law/article_eef06324-a739-11ea-84b1-4767d83ad0ca.html; AJ Willingham, *Citizen’s arrest laws aren’t cut and dry. Here’s what you need to know*, CNN, May 12, 2020, <https://amp.flipboard.com/@CNN/citizen-s-arrest-laws-aren-t-cut-and-dry-here-s-what-you-need-to-know/a-Bsp3nxJ4TL6bdezV5A79PA%3Aa%3A132361178-c31d9cd2b6%2Fcnn.com>; Editorial Board, *Citizens should not be emboldened to make arrests*, May 12, 2020, <https://www.bostonglobe.com/2020/05/13/opinion/citizens-should-not-be-emboldened-make-arrests/>.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² See N.J. STAT. ANN. § 2C:20-11 (West 2020) and N.J. STAT. ANN. § 2C:20-14 (West 2020).

Analysis

The term “special officer” is a vestige of a bygone era. Nevertheless, it is still found in numerous New Jersey statutes. A discussion of each statutory reference of this undefined term follows.

- Title 2A - *Prosecutor’s Offices*

In 1952, the Legislature enacted N.J.S. 2A:157-23, concerning the use of the term “special officers.” The purpose of this statute was to “...make consistent throughout the state the law as it applies to the office or position of county detective and county investigator....”⁵⁴ From that point forward, county detectives were to be in the classified service of the civil service, and county investigators in the unclassified service.⁵⁵ The statute explicitly discontinued the use of the term “special officer” as the title of any office in the offices of prosecutors.⁵⁶

New Jersey’s county pension and retirement statute, however, still defines “county detectives” as “...persons appointed by the prosecutors of the pleas as special officers for the detection, apprehension, arrest, indictment and conviction of offenders against the law.”⁵⁷ Repealing N.J.S. 43:10-19 would be consistent with the requirements of N.J.S. 2A:157-23.

- Title 4 - *Agricultural Fairs and Exhibitions*

In 1896, the directors of an “association” were vested with the authority to appoint as many fit persons as they deemed proper, to serve as “special officers.”⁵⁸ The associations referred to in this statute were “...all corporations organized for the purpose of holding agricultural fairs and exhibitions.”⁵⁹ These special officers “may, without process, arrest all persons there found who shall: “[v]iolate any of the laws of this state; [...] [c]onduct themselves in a disorderly manner; [...] [d]isturb or wrongfully interfere with the fair and exhibition or the exhibitors or visitors; or, [v]iolate any of the rules and regulations of the association.”⁶⁰ The power to appoint “special officers” is not limited solely to the directors of associations.

The owner of a stud farm who holds a fair or exhibition may also appoint one or more fit persons as “special officers.”⁶¹ Persons appointed as special officers by the owner of a stud farm

⁵³ See N.J. STAT. ANN. § 2A:157-23 (West 2020); N.J. STAT. ANN. § 4:15-4 (West 2020); N.J. STAT. ANN. § 4:15-5 (West 2020); N.J. STAT. ANN. § 4:15-8 (West 2020); N.J. STAT. ANN. § 4:15-9 (West 2020); N.J. STAT. ANN. § 12:6-6 (West 2020); N.J. STAT. ANN. § 30:4-116 (West 2020); N.J. STAT. ANN. § 30:4-118 (West 2020); and N.J. STAT. ANN. § 43:10-19 (West 2020).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ N.J. STAT. ANN. § 43:10-19 (West 2020).

⁵⁸ N.J. STAT. ANN. § 4:15-4 (West 2020).

⁵⁹ N.J. STAT. ANN. § 4:15-1 (West 2020).

⁶⁰ N.J. STAT. ANN. § 4:15-5 (West 2020).

⁶¹ N.J. STAT. ANN. § 4:15-8 (West 2020).

“may, without process arrest all persons who: [...] [v]iolate any of the laws of the state; [...] [c]onduct themselves in a disorderly or immoral manner; [...] [d]isturb or wrongfully interfere with the meetings and exhibitions or visitors thereto; [...] [v]iolate any of the rules and regulations of the owner which are plainly printed and posted in a conspicuous manner about the farm and exhibition grounds.”⁶²

One hundred and twenty-four years after its enactment, the authority of directors and stud farmers to appoint “special officers” whose fitness to serve in such a capacity is based upon the subjective evaluation of the director, or farmer, appear to be anachronistic, and appropriate for repeal.

- Title 12 – *Powers of a Harbor Master*

A harbor master has the power to act as a “special officer”, to enforce the laws of the State “pertaining to power and other vessels, their operation and maintenance, and the enforcement and observance of the rules and regulations of the board.”⁶³ A harbor master also has the authority “[t]o arrest [another], without [a] warrant, for violations of this title (§ 12:7-1 et seq.) and any other laws of this state, committed in their presence.”⁶⁴ In addition, a harbor master may, “act as special officer[] for the detection and arrest of those who violate or infringe upon the provisions of chapter 7 of this title (§ 12:7-1 et seq.) and other laws relating or pertaining to the operation of vessels on the inland waterways and for the violation of the rules and regulations of the board.”⁶⁵ Although N.J.S. 12:7-1 et seq. was repealed in 1954, a harbor master may still arrest, without warrant, any individual who violates the State law in his or her presence.⁶⁶

The enforcement of the laws on the waters of the State and the land areas contiguous thereto, however, is vested with the New Jersey State Police, Bureau of Marine Law Enforcement.⁶⁷ In addition, the New Jersey State Police also have the power to stop and board a vessel in the waters of the State to determine whether the vessel complies with State and federal boating safety laws.⁶⁸ The authority of a harbor master to engage in police activity has been superseded by the authority granted to the State Police for this purpose⁶⁹, so it appears that N.J.S. 12:6-6 is appropriate for repeal.

- Title 30 – *Institutions and Agencies*

⁶² N.J. STAT. ANN. § 4:15-9 (West 2020).

⁶³ N.J. STAT. ANN. § 12:6-6 subsection e. (West 2020).

⁶⁴ N.J. STAT. ANN. § 12:6-6 subsection c. (West 2020) (§ 12:7-1 et seq. was repealed by L.1954, c. 236, p. 880, § 35, eff. Dec. 8, 1954).

⁶⁵ N.J. STAT. ANN. § 12:6-6 subsection d. (West 2020).

⁶⁶ *Id.*

⁶⁷ N.J. STAT. ANN. § 53:1-11.4 (West 2020).

⁶⁸ *Id.* at subsection d.

⁶⁹ N.J. STAT. ANN. § 53:1-11.4 (West 2020).

The term “special officer” is also used in two statutes that deal with the apprehension of escaped inmates.⁷⁰ The first, N.J.S. 30:4-116, authorizes the chief executive officer of any state institution to appoint, in writing, “any subordinate officer or employee of the institution” to act as a “special officer.” That special officer has the “...the power to arrest without warrant any inmate committed thereto by order of any court” if the inmate leaves the institution without first obtaining parole or discharge.⁷¹ The special officer is entrusted to return the escapee to the institution from “any place either within or without this state, where the escaped inmate may be.”⁷²

The second statute, N.J.S. 30:4-118, provides that a warrant that has been issued for an institutional inmate who has left the institution without parole or discharge, or whose parole has been revoked may be served by a “special officer.”⁷³ This special officer has the authority to apprehend any paroled person and cause him or her to be detained in a city or county jail or returned to the institution.⁷⁴

Although the term special officer appears in Title 30, it is not defined in the Title. Of particular concern is the ability of the chief executive to appoint “any employee of the institution” as a special officer. As written, the statute would permit the chief executive officer to appoint a groundskeeper, a custodian, or an administrative assistant to serve as a special officer. It is unclear from the statute whether a “special officer” is required to have any law enforcement training or is authorized to carry a weapon. The duration of the appointment is also unclear.

The lack of a definition and details regarding the powers for the special officers discussed above, is of concern, as is the potential for confusion with the term “special law enforcement officer”.

- Title 40A – *Municipalities and Counties*

New Jersey’s Special Law Enforcement Officer’s Act (the Act), N.J.S. 40a:14-146.8 et seq., defines the term “special law enforcement officer”⁷⁵ as a temporary officer who performs duties similar to those performed by the members of a police force.⁷⁶ These officers may also “...provide assistance to a police force during unusual or emergency circumstances, or at individual times or during regular seasonal periods in resort municipalities...”⁷⁷

⁷⁰ See N.J. STAT. ANN. § 30:4-116 (West 2020) and N.J. STAT. ANN. § 30:4-118 (West 2020).

⁷¹ See N.J. STAT. ANN. § 30:4-116 (West 2020).

⁷² *Id.*

⁷³ See N.J. STAT. ANN. § 30:4-118 (West 2020).

⁷⁴ *Id.*

⁷⁵ See N.J. STAT. ANN. § 40A:14-146.8 (West 2020). See also N.J. STAT. ANN. § 40A:14-146.9 (West 2020).

⁷⁶ N.J. STAT. ANN. § 40A:14-146.9h. (West 2020). See also N.J. STAT. ANN. § 40A:14-146.15 (West 2020) (setting forth the powers and authority of a special law enforcement officer); and N.J. STAT. ANN. § 40A:14-146.16 (West 2020) (enumerating the number of hours a special law enforcement officer may be employed).

⁷⁷ *Id.*

Prior to being appointed as a special law enforcement officer, the applicant must undergo an extensive vetting process.⁷⁸ A special law enforcement officer may not commence his or her duties unless they have successfully completed a commission-approved training course.⁷⁹ The Act also sets forth when, and if, a special law enforcement officer may be issued a firearm and may carry a firearm.⁸⁰ Every special law enforcement officer is also required to wear a uniform that identifies the officer's function.⁸¹ A special law enforcement officer's term may not exceed one year, and may be revoked by the local governing body.⁸² During a special law enforcement officer's tenure, he or she may be authorized by the chief of police to act with the same powers and authority as permanent, regularly appointed police officers while on duty.⁸³

Removing references to "special officer" from the statutes discussed above would eliminate the potential for confusion between "special officers" and "special law enforcement officer".

Conclusion

The doctrine of citizen's arrest is a vestige of a time when citizens were called upon to keep the peace. The evolution of organized law enforcement agencies, however, has rendered the doctrine virtually obsolete. The doctrine presupposes that the average citizen is familiar with the probable cause requirement set forth in the statute and places significant burdens on individuals without training or experience. These statutes also presume that members of the public will know how long they may detain a suspect and the amount of force they may use. The misapplication of this doctrine could have disastrous results.

The Appendices, on the pages that following, sets forth the proposed modifications to the citizen's arrest and special officer statutes.

⁷⁸ N.J. STAT. ANN. § 40A:14-146.10 (West 2020) (requiring a candidate to be a high school graduate, to undergo the same psychological testing that is required of a full-time police officer, to have fingerprints analyzed by both the State Police and the Federal Bureau of Investigation; to have his or her application reviewed by the chief of police who shall ascertain the eligibility and qualifications and report these determinations to the appointing authority in writing).

⁷⁹ N.J. STAT. ANN. § 40A:14-146.11 (West 2020)

⁸⁰ N.J. STAT. ANN. § 40A:14-146.11a. (West 2020) and N.J. STAT. ANN. § 40A:14-146.11a.(3).

⁸¹ N.J. STAT. ANN. § 40A:14-146.12 (West 2020).

⁸² N.J. STAT. ANN. § 40A:14-146.14 (West 2020).

⁸³ N.J. STAT. ANN. § 40A:14-146.15 (West 2020).

Appendix I – Citizen’s Arrest

The proposed modifications to N.J.S. 2A:169-3, Arrest of disorderly person without process; N.J.S. 2C:20-11, Shoplifting; N.J.S. 2C:20-14, Taking person into custody for probable cause for belief of willfully concealing library material; arrest without warrant; probable cause for belief of theft; immunity from liability (shown with ~~strike through~~, or underlining), follow:

N.J.S. 2A:169-3. Arrest of disorderly person without process

~~Whenever an offense is committed in his presence, any constable or police officer shall, and any other person may, apprehend without warrant or process any disorderly person, and take him before any magistrate of the county where apprehended.~~⁸⁴

A law enforcement officer may apprehend, without warrant or process, any disorderly person who commits an offense in his or her presence. The officer shall process the defendant pursuant to the procedures set forth in the New Jersey Rules of Court, including R. 7:3-1 et seq.

Credits: L.1898, c. 239, § 36, p. 953 [C.S. p. 1937, § 36]. This section was included in § 2C:98-2, which repealed all sections listed in it, by L.1978, c. 95, § 2C:98-2 eff. Sept. 1, 1979, but was deleted from § 2C:98-2, and listed in § 2C:98-3 which allocated § 2A:169-3, by L.1979, c. 178, §§ 145, 146, eff. Sept. 1, 1979.

Comment

The dangers associated with the allowing untrained individuals to effectuate an arrest of another likely outweigh the benefits of vesting citizens with quasi-police power. Thus, the term “any other person” has been removed from statute. The references to the term “constable” and “police officer” have also been removed from the statute. These terms have been replaced with “law enforcement officer” to cover other law enforcement agencies.

When a “custodial arrest” is made by a law enforcement officer without warrant, the defendant must be taken without unnecessary delay before nearest available magistrate, a complaint filed, and a warrant issued.⁸⁵ The New Jersey Rules of Court, specifically R. 7:3-1(c), provide that “[a] law enforcement officer making a custodial arrest without a Complaint-Warrant (CDR-2) shall take the defendant to the police station where a complaint shall be immediately...prepared on a Complaint-Summons form (CDR-1 or Special Form of Complaint and Summons) unless the law enforcement officer determines that one or more of the factors in R. 7:2-2(f) applies. Upon such determination, the law enforcement officer may prepare a Complaint-Warrant (CDR-2) rather than a Complaint-Summons.”

If a law enforcement officer elects not to arrest the defendant, he or she may “personally serve a Complaint-Summons [...] at the scene of the arrest without taking the defendant into custody” pursuant to R. 7:3-1(d).

The discretion afforded law enforcement officers to effectuate either a “custodial” or “non-custodial” arrest contradicts the mandatory “shall” in the statute, replacing it with the permissive “may” would address that issue.

⁸⁴ See note 7, *supra*.

⁸⁵ *State v. Ferraro*, 81 N.J. Super. 213 (1963). See also ROBERT RAMSEY, MUNICIPAL COURT PRACTICE, 17A N.J. Pract., §46:9 Police Arrest Powers (3rd ed. 2019 update) (generally, a New Jersey law enforcement officer may arrest a person for a petty offense committed in the officer’s presence without an arrest warrant).

The term magistrate is anachronistic and has been removed from the statute.

The proposed changes to the statute also reflect gender neutrality and incorporate the procedures set forth in the New Jersey Rules of Court.

N.J.S. 2C:20-11. Shoplifting

[...]

e. (1) A law enforcement officer, ~~or a special officer⁸⁶~~, or a merchant 18 years of age or older⁸⁷, who has probable cause ~~for believing to believe~~ that a person has willfully concealed unpurchased merchandise ~~and that he can recover the merchandise by taking the person into custody, may, for the purpose of attempting to effect recovery thereof, take the person into custody and detain him in a reasonable manner for not more than a reasonable time, and the taking into custody by a law enforcement officer or special officer or merchant shall not render such person criminally or civilly liable in any manner or to any extent whatsoever. may do any, or all, of the following:~~

(A) take the person into custody;

(B) detain the person on, or in the immediate vicinity⁸⁸ of, the premises of the retail establishment, and afford the person the opportunity to be detained in a place out of public view, if available;

⁸⁶ The term “special officer” is not defined in either N.J. STAT. ANN. 2C:20-11 (West 2020) or N.J. STAT. ANN. § 2C:20-14 (West 2020). Although the term appears in nine other statutes, it not defined in these statutes. *See* N.J. STAT. ANN. § 2A:157-23 (West 2020); N.J. STAT. ANN. § 4:15-4 (West 2020); N.J. STAT. ANN. § 4:15-5 (West 2020); N.J. STAT. ANN. § 4:15-8 (West 2020); N.J. STAT. ANN. § 4:15-9 (West 2020); N.J. STAT. ANN. § 12:6-6 (West 2020); N.J. STAT. ANN. § 30:4-116 (West 2020); N.J. STAT. ANN. § 30:4-118 (West 2020); and N.J. STAT. ANN. § 43:10-19 (West 2020). It is unclear whether this statutory reference was meant to identify “special law enforcement officers” pursuant to N.J. STAT. ANN. § 40A:14-146.8 et seq. (West 2020) (the “Special Law Enforcement Officers’ Act). A discussion of the term “special officer” is contained in Part II, *infra*.

⁸⁷ *See* DEL. CODE ANN. TIT. 11, § 840 (West, 2019-20).

⁸⁸ New Jersey, 28 states, and the District of Columbia do not set forth a geographic limit in the shopkeepers’ privilege portion of their statutes. *See* ALA. CODE § 15-10-14 (West 2020); ALA. CODE § 15-10-14 (West 2020); ARIZ. REV. STAT. ANN. § 13-1805 (West 2020); ARK. CODE ANN. § 5-36-116 (West 2020); CAL. PENAL CODE § 490.5 (1976) (West 2020); COLO. REV. STAT. ANN. § 18-4-407 (West 2020); CONN. GEN. STAT. ANN. § 53A-119A (West 2020); D.C. CODE ANN. § 22-3213 (West 2020); GA. CODE ANN. § 51-7-60 (West 2020); IDAHO CODE ANN. § 48-705 (West 2020); IND. CODE ANN. § 35-33-6-2 (1981) (West 2020); IOWA CODE ANN. § 808.12 (1976) (West 2020); MD. CODE ANN., CTS. & JUD. PROC. § 5-402 (West 2020); MICH. COMP. LAWS ANN. § 600.2917 (West 2020); MINN. STAT. ANN. § 629.366 (West 2020); MISS. CODE ANN. § 97-23-95 (West 2020); MONT. CODE ANN. § 46-6-506 (West, 2019); NEB. REV. STAT. ANN. § 29-402.01 (West 2020); N.M. STAT. ANN. § 30-16-23 (West 2020); N.D. CENT. CODE ANN. § 12.1-23-14 (West, 2019); OKLA. STAT. ANN. TIT. 22, § 1343 (West 2020); OR. REV. STAT. ANN. § 131.655 (West 2020); 18 PA. STAT. AND CONS. STAT. ANN. § 3929 (West 2020); TENN. CODE ANN. § 40-7-116 (West 2020); TEX. CIV. PRAC. & REM. CODE ANN. § 124.001 (West, 2019); UTAH CODE ANN. § 78B-3-108 (West 2020); W. VA. CODE ANN. § 61-3A-4 (West 2020); WIS. STAT. ANN. § 939.49 (West 2020); WYO. STAT. ANN. § 6-3-405 (West 2020). Compare, with DEL. CODE ANN. TIT. 11, § 840 (West, 2019-20); FLA. STAT. ANN. § 812.015 (West 2020); LA. CODE CRIM. PROC. ANN. ART. 215 (West 2020); ME. REV. STAT. TIT. 17, § 3521 (West 2020); NEV. REV.

(C) request that the person identify themselves or otherwise verify their identity;^{89, 90}

(D) make reasonable inquiry to determine whether the person is in possession of unpurchased merchandise taken from the store or retail establishment;⁹¹

(E) recover, or attempt to recover, merchandise taken from the mercantile establishment by such person;⁹²

(F) in the case of a minor, inform the parent or parents, guardian or other person having supervision of the minor of their detention, and surrender custody of the minor to that person.⁹³

(G) notify the appropriate law enforcement officers of the detention of the person and surrender that person to their custody; and,⁹⁴

~~Any law enforcement officer may arrest without warrant any person he or she has probable cause for believing has committed the offense of shoplifting as defined in this section.~~

STAT. ANN. § 597.850 (West 2020); N.H. REV. STAT. ANN. § 627:8-A (West 2020); and 11 R.I. GEN. LAWS ANN. § 11-41-21 (West 2020) (requiring that the detention of the suspected shoplifter occur “on [the] premises” of the mercantile establishment); and, ALA. CODE § 15-10-14 (West 2020); HAW. REV. STAT. ANN. § 708-833.5 (West 2020); 720 ILL. COMP. STAT. ANN. 5/16-26 (West 2020); KAN. STAT. ANN. § 21-5411 (2011) (West 2020); KY. REV. STAT. ANN. § 433.236 (West 2020); MASS. GEN. LAWS ANN. CH. 231, § 94B (West 2020); MO. ANN. STAT. § 537.125 (West, 2018); N.Y. GEN. BUS. LAW § 218 (McKINNEY, 2020); N.C. GEN. STAT. ANN. § 14-72.1 (West 2020); OHIO REV. CODE ANN. § 2935.041 (West, 2019-2020); S.C. CODE ANN. § 16-13-140 (West 2020); S.D. CODIFIED LAWS § 22-30A-19.2 (West 2020); VT. STAT. ANN. TIT. 13, § 2576 (West 2020); VA. CODE ANN. § 8.01-226.9 (West 2020); and WASH. REV. CODE ANN. § 4.24.220 (West 2020) (permitting the detention to occur on or in the immediate vicinity of the premises).

⁸⁹ See 720 ILL. COMP. STAT. ANN. 5/16-26 (West 2020); IND. CODE ANN. § 35-33-6-2 (1981) (West 2020); KY. REV. STAT. ANN. § 433.236 (West 2020); ME. REV. STAT. TIT. 17, § 3521 (West 2020); MINN. STAT. ANN. § 629.366 (West 2020); 18 PA. STAT. AND CONS. STAT. ANN. § 3929 (West 2020); S.D. CODIFIED LAWS § 22-30A-19.2 (West 2020); TENN. CODE ANN. § 40-7-116 (West 2020); and VT. STAT. ANN. TIT. 13, § 2576 (West 2020).

⁹⁰ See 720 ILL. COMP. STAT. ANN. 5/16-26 (West 2020); IND. CODE ANN. § 35-33-6-2 (1981) (West 2020); KY. REV. STAT. ANN. § 433.236 (West 2020); ME. REV. STAT. TIT. 17, § 3521 (West 2020); MINN. STAT. ANN. § 629.366 (West 2020); 18 PA. STAT. AND CONS. STAT. ANN. § 3929 (West 2020); S.D. CODIFIED LAWS § 22-30A-19.2 (West 2020); and VT. STAT. ANN. TIT. 13, § 2576 (West 2020).

⁹¹ See 720 ILL. COMP. STAT. ANN. 5/16-26 (West 2020); ME. REV. STAT. TIT. 17, § 3521 (West 2020); 18 PA. STAT. AND CONS. STAT. ANN. § 3929 (West 2020); S.D. CODIFIED LAWS § 22-30A-19.2 (West 2020); and VT. STAT. ANN. TIT. 13, § 2576 (West 2020).

⁹² See KY. REV. STAT. ANN. § 433.236 (West 2020); ME. REV. STAT. TIT. 17, § 3521 (West 2020); 18 PA. STAT. AND CONS. STAT. ANN. § 3929 (West 2020); and VT. STAT. ANN. TIT. 13, § 2576 (West 2020).

⁹³ See 720 ILL. COMP. STAT. ANN. 5/16-26 (West 2020); IND. CODE ANN. § 35-33-6-2 (1981) (West 2020); KY. REV. STAT. ANN. § 433.236 (West 2020); ME. REV. STAT. TIT. 17, § 3521 (West 2020); S.D. CODIFIED LAWS § 22-30A-19.2 (West 2020); TENN. CODE ANN. § 40-7-116 (West 2020); and VT. STAT. ANN. TIT. 13, § 2576 (West 2020).

⁹⁴ See IND. CODE ANN. § 35-33-6-2 (1981) (West 2020); KY. REV. STAT. ANN. § 433.236 (West 2020); ME. REV. STAT. TIT. 17, § 3521 (West 2020); MINN. STAT. ANN. § 629.366 (West 2020); S.D. CODIFIED LAWS § 22-30A-19.2 (West 2020); TENN. CODE ANN. § 40-7-116 (West 2020); and VT. STAT. ANN. TIT. 13, § 2576 (West 2020).

(2) A merchant who either takes a person into custody as set forth in subsection e.(1), or causes the arrest of a person for shoplifting, as provided for in this section, shall not be criminally or civilly liable in any manner or to any extent whatsoever where:

(A) the merchant has probable cause ~~for believing~~ to believe that the person ~~arrested~~ committed the offense of shoplifting;

(B) the person is detained in a reasonable manner; and,

Option #1

(C) the person is detained for nor more than a reasonable period of time [which may not extend beyond the arrival of a law enforcement officer or [X] hour(s), whichever occurs first.]⁹⁵

Option #2

(C) the person is detained for [X] hour(s) or until the arrival of law enforcement officers, whichever is longer.

[...]

Comment

- *Special Officer*

The term “special officer” appears in a total of nine statutes.⁹⁶ This term is undefined in New Jersey’s statutes.⁹⁷ This term, and the nine statutes in which it appears are discussed in Part Two of this Report, and proposed modifications to the statutes in which it is mentioned are shown below.

- *Arrest Without Warrant – Law Enforcement Officer*

When a “custodial arrest” is made by a law enforcement officer without a warrant, the defendant must be taken without unnecessary delay before nearest available magistrate, a complaint filed, and a warrant issued.⁹⁸ The

⁹⁵ The length of time that a person may be detained by a merchant ranges from 30 minutes to 2 hours. *See* IND. CODE ANN. § 35-33-6-2 (1981) (West 2020) (detention may not extend beyond the arrival of a law enforcement officer or two hours, whichever occurs first); LA. CODE CRIM. PROC. ANN. ART. 215 (West 2020) (detention may not exceed 60 minutes, unless it is reasonable under the circumstances to detain the person for a longer period of time); MINN. STAT. ANN. § 629.366 (West 2020) (detention may last one hour unless awaiting surrender to a peace officer or in the case of a minor until he or she is received by a peace officer, parent or guardian); MONT. CODE ANN. § 46-6-506 (West, 2019) (until the purpose of the stop has been accomplished or 30 minutes, whichever occurs first); VA. CODE ANN. § 8.01-226.9 (West 2020) (detention may not exceed 30 minutes); and W. VA. CODE ANN. § 61-3A-4 (West 2020) (a reasonable length of time not to exceed 30 minutes).

⁹⁶ *See* n. 87 *supra*.

⁹⁷ *Id.*

⁹⁸ *State v. Ferraro*, 81 N.J. Super. 213 (1963). *See also* ROBERT RAMSEY, MUNICIPAL COURT PRACTICE, 17A N.J. Pract., §46:9 Police Arrest Powers (3rd ed. 2019 update) (generally, a New Jersey law enforcement officer may arrest a person for a petty offense committed in the officer’s presence without an arrest warrant).

New Jersey Rules of Court, specifically R. 7:3-1(c), provides that “[a] law enforcement officer making a custodial arrest without a Complaint-Warrant (CDR-2) shall take the defendant to the police station where a complaint shall be immediately prepared. The complaint shall be prepared on a Complaint-Summons form (CDR-1 or Special Form of Complaint and Summons) unless the law enforcement officer determines that one or more of the factors in R. 7:2-2(f) applies. Upon such determination, the law enforcement officer may prepare a Complaint-Warrant (CDR-2) rather than a Complaint-Summons.”

If a law enforcement officer elects not to arrest the defendant, he or she may “personally serve a Complaint-Summons [...] at the scene of the arrest without taking the defendant into custody” pursuant to R. 7:3-1(d).

Thus, the language regarding the ability of a law enforcement officer to arrest a person for shoplifting without a warrant is not necessary.

- *Shopkeeper’s privilege*

The modifications set forth in subsection e(1)-(2) are based on the requirements found in the shopkeeper’s privilege statutes referenced in the corresponding footnotes.

- *Immunity from Civil or Criminal liability*

The language “in any manner or to any extent whatsoever” has been removed from the statute for two reasons. First, this statutory language does not appear in any other statute in the country. Second, if the merchant adheres to the statutory requirements, they are entitled to immunity from civil liability and criminal liability. Since the immunity portion of the statute is drafted in mandatory terms, the words “in any manner or to any extent whatsoever” are surplusage.

- *Length of Detention*

The current statute provides that an individual may be detained for “not more than a reasonable time.” Several states provide a specific amount of time for which a person may be detained.⁹⁹ This language has been bracketed to allow the Commission and stakeholders with the opportunity to provide Staff with guidance regarding whether the statute would benefit from the inclusion of such a limitation.

N.J.S. 2C:20-14. Taking person into custody for probable cause for belief of willfully concealing library material; arrest without warrant; probable cause for belief of theft; immunity from liability

a. A law enforcement officer, ~~a special officer,~~¹⁰⁰ ~~or an employee of a library facility~~ who has probable cause ~~for believing~~ to believe that a person has willfully concealed library material and that he or she can recover the material by taking the person into custody, may, for the purpose of attempting to recover the material, take the person into custody and detain him or her in a reasonable manner for a reasonable time. Taking the person into custody shall not render the law enforcement officer, ~~or the special officer, or the employee of a library facility~~ civilly or criminally liable.

⁹⁹ See note 96, *supra*.

¹⁰⁰ See note 87, *supra*.

b. Any law enforcement officer who has probable cause ~~for believing~~ to believe that a person has committed the offense of theft of library material may arrest the person without warrant.

~~c. An employee of a library facility who causes the arrest of a person for theft of library material, as provided for in this act, shall not be civilly or criminally liable where the employee has probable cause for believing that the person arrested committed the offense of theft of library material.~~

Credits: L.1985, c. 373, § 3, eff. Nov. 26, 1985.

Comment

The proposed modifications in section a. eliminates the ability of library employees from taking a person into custody who they believe has willfully concealed library materials.

Appendix II – Special Officer

N.J.S. 2A:157-23. Construction; “special officer” discontinued

It is the intention that this chapter be so construed as to make consistent throughout the state the law as it applies to the office or position of county detective and county investigator, to provide that county detectives shall be in the classified service of the civil service, and county investigators in the unclassified service and to discontinue the term “special officer” as the title of any office in the offices of prosecutors.

Comment

Although this statute contains a reference to the term “special officer” it should be retained to make clear that the Legislature has expressly discontinued the use of this term.

N.J.S. 43:10-19. “County detectives” defined

~~The words, “county detectives”, as used in this article, shall mean and include persons appointed by the prosecutors of the pleas as special officers for the detection, apprehension, arrest, indictment and conviction of offenders against the law.~~

Comment

The State of New Jersey no longer appoints “the prosecutor of the pleas.”¹⁰¹ As the term of the prosecutor of the pleas of any county expired, “county prosecutor” were appointed in their “place and stead.”¹⁰²

Pursuant to N.J.S. 2A:157-23, the term special officer is no longer in use. This statute is therefore anachronistic.

N.J.S. 4:15-4. Appointment and qualification of special officers

~~The directors of an association, or a majority of them, may appoint from time to time, as many fit persons as they may deem proper, as special police officers. Each such officer, before entering upon his duties, shall take and subscribe an oath that he will well and truly serve the State, and will perform all his duties to the best of his knowledge and ability. The oath shall be filed forthwith in the office of the county clerk who shall indorse thereon the date of filing and shall be paid the sum of twenty cents (\$0.20) for each oath so filed.~~

Comment

When read in conjunction with N.J.S. 4:15-5, this statute vests corporations authorized to hold agricultural fairs and exhibitions with the power to deputize any individuals of their choosing to arrest all persons whom they

¹⁰¹ N.J. STAT. ANN. § 2A:158-1 (West 2020).

¹⁰² *Id.*

believe have violated “any of the laws of this state” upon the grounds and for a distance of one -quarter mile from the boundaries of the grounds of a fair or exhibition. This statute appears to be both anachronistic and overbroad.

N.J.S. 4:15-5. Powers and duties of special officers

~~Special officers so appointed and sworn shall possess, so long as the directors choose to retain them, the powers and authority, on the grounds and within the limits fixed in section 4:15-3 of this title, vested in constables in criminal cases in this state. They may, without process, arrest all persons there found who shall:~~

- ~~a. Violate any of the laws of this state;~~
- ~~b. Conduct themselves in a disorderly manner;~~
- ~~c. Disturb or wrongfully interfere with the fair and exhibition or the exhibitors or visitors;~~
- ~~d. Violate any of the rules or regulations of the association.~~

or

~~Any person so arrested shall be taken, as soon as conveniently may be, before a magistrate of the county in which the fair and exhibition is held, there to be dealt with according to law.~~

Comment

See comment following N.J.S. 4:15-4 supra.

N.J.S. 4:15-8. Appointment and qualification of special officers

~~The owner of a stud farm who shall hold a fair or exhibition as provided in this article, may appoint from time to time, one or more fit persons as special police officers, each of whom, before entering upon his duties, shall qualify as provided in section 4:15-4 of this title relative to special officers appointed thereunder.~~

Comment

See comment following N.J.S. 4:15-4 supra.

N.J.S. 4:15-9. Powers and duties of special officers

~~Persons appointed and sworn as provided in section 4:15-8 of this title shall possess the authority and powers on the stud farm and exhibition grounds, and on the lands and premises adjacent thereto, within the limits named in section 4:15-7 of this title, which constables possess in criminal cases in this state. They may, without process, arrest all persons there found who shall:~~

- ~~a. Violate any of the laws of this state;~~
- ~~b. Conduct themselves in a disorderly or immoral manner;~~

~~e. Disturb or wrongfully interfere with the meetings and exhibitions or visitors thereto;~~

~~d. Violate any of the rules and regulations of the owner which are plainly printed and posted in a conspicuous manner about the farm and exhibition grounds.~~

~~The persons so arrested shall be taken, as soon as conveniently may be, before a magistrate of the county, there to be dealt with according to law.~~

Comment

See comment following N.J.S. 4:15-4 supra.

N.J.S. 12:6-6. Powers with respect to power and other vessels using inland waterways

~~Such harbor masters shall have power:~~

~~a. To stop any vessel using any of the inland waterways of the state and to examine the same to see that it complies with the requirements of the law, whether in the matter of equipment, identification or otherwise;~~

~~b. To require the production of permits and licenses;~~

~~c. To arrest, without warrant, for violations of chapter 7 of this title (§ 12:7-1 et seq.)¹ and any other laws of this state, committed in their presence;~~

~~d. To act as special officers for the detection and arrest of those who violate or infringe upon the provisions of chapter 7 of this title (§ 12:7-1 et seq.) and other laws relating or pertaining to the operation of vessels on the inland waterways and for the violation of the rules and regulations of the board; and~~

~~e. Generally to act as special officers for the enforcement of the laws of this state pertaining to power and other vessels, their operation and maintenance, and the enforcement and observance of the rules and regulations of the board.~~

Comment

The enforcement of laws on the waters of the State and the land areas contiguous thereto falls within the jurisdiction of the New Jersey State Police, Bureau of Marine Law Enforcement.¹⁰³ In addition, the New Jersey State Police also have the power to stop and board a vessel in the waters of the State to determine whether the vessel complies with State and federal boating safety laws.¹⁰⁴ The authority of a harbor master to engage in police activity is superseded by the authority vested in the State Police for this purpose.

N.J.S. 30:4-116. Retaking persons leaving without discharge

~~The chief executive officer of any state institution, or any subordinate officer or employee of the institution appointed by him in writing as a special officer, shall have power to~~

¹⁰³ N.J. STAT. ANN. § 53:1-11.4 (West 2020).

¹⁰⁴ *Id.* at § d.

arrest without warrant any inmate committed thereto by order of any court, who shall leave such institution, without first obtaining a parole or discharge, and return him or her to the institution. For purpose of retaking, the chief executive officer or any subordinate officer ~~special officer~~ may go to any place either within or without this state, where the escaped inmate may be.

Comment

Enacted in 1918, and revised in 1924, this 100-year-old statute does not define “special officer.” In its current form, the statute authorizes the chief executive officer of a state institution to appoint as a special officer an individual who lacks law enforcement training.¹⁰⁵ The anachronistic nature of the term, and the broad power of appointment set forth in this statute have been stricken.

N.J.S. 30:4-118. Warrant for arrest

A warrant for the arrest of any institutional inmate who shall have left the institution without parole or discharge or whose parole has been revoked, may be served by the chief executive officer, or ~~his special officer~~ subordinate officer, or the regularly appointed parole officer or any person authorized to serve criminal process, in any county of this state. If the person for whom such warrant has been issued is confined elsewhere in this state, the service of the warrant upon the warden or chief executive officer of the institution wherein such person is confined, shall require him or her to facilitate the return of the person named in the warrant upon the expiration of the pending confinement. The chief executive officer, or the parole officer ~~or special officer~~, when so directed by the chief executive officer, may without warrant apprehend any paroled person and cause him or her to be detained in any city or county jail or returned to the institution, to await the determination of the board of managers as to the revocation of parole.

Comment

The anachronistic term, special officer, has been removed from the statute. The statute has also been made gender neutral.

The statutory authority for a subordinate officer to effectuate the arrest of any institutional inmate is derived from N.J.S. 30:4-116 in which the Legislature grants a subordinate officer with the power to arrest an inmate who leaves an institution without being paroled or discharged.

¹⁰⁵ Compare N.J. STAT. ANN. § 30:4-14 (West 2020) (providing for the appointment of “police officers for the Department of Human Services”); and N.J. STAT. ANN. § 30:4-14.2 (West 2020) (setting forth the training requirements of Human Services police officers). Cf. 1979 N.J. Op. Att’y Gen. 92 (1979) (confirming that “...special policemen have the incidental authority to patrol the perimeter and roads contiguous to those institutions as a necessary means to preserve order on the institutional premises and to further the apprehension and return of escapees and wanderers.”)