

2A:158-1.1
AND 15.1a

LEGISLATIVE HISTORY CHECKLIST

NJSA 2A:158-1.1; 2A:158-15.1a

Laws of 1976 Chapter 15

Bill No. S1001

Sponsor(s) Russo

Date Introduced January 19, 1976

Committee: Assembly Judiciary, Law, Public Safety & Defense
Senate -

Amended during passage Yes No

Date of passage: Assembly February 19, 1976

Senate January 26, 1976

Date of approval April 5, 1976

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

For Background:

974.90

c929

1970

Lacey, Frederick.

Recommendations to the 1970 Legislature concerning legislation which might be enacted to curb the power and influence of organized crime in N.J. 1/20/70

Pages 49-53 enclosed.

(over)

Do Not Remove From Library
DEPOSITORY COPY

10/4/76
JF 1977

974.90
c929
1970a

New Jersey. Commission of Investigation.
Report on County Prosecutor system. February, 1970.
Pages 8-9 enclosed-recommends L.1970, c.6(S448)

SENATE, No. 1001

STATE OF NEW JERSEY

INTRODUCED JANUARY 19, 1976

By Senator RUSSO

(Without Reference)

AN ACT to amend and supplement "An act concerning county prosecutors and assistant county prosecutors of certain counties and supplementing chapter 158 of Title 2A of the New Jersey Statutes," approved February 9, 1970 (P. L. 1970, c. 6).

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

1 1. Section 1 of P. L. 1970, c. 6 (C. 2A:158-1.1) is amended to
2 read as follows:

3 1. Any person appointed on or after January 20, 1970 to the
4 office of county prosecutor of any of the following counties shall
5 devote his entire time to the duties of his office and shall not engage
6 in the practice of law or other gainful employment:

7 a. Counties of the first class;

8 b. Counties of the second class;

9 c. Counties of the third class having a population between 61,000
10 and 72,000 under the 1970 Federal census;

11 d. Counties of the third class having a population in excess of
12 175,000 under the 1970 Federal census; and

13 e. Counties of the fifth class [having a population in excess of
14 150,000 under the 1960 Federal census].

15 Any county prosecutor of any of the aforementioned counties in
16 office on the effective date of this amendatory act who shall elect
17 to devote his entire time to the duties of such office for the remain-
18 der of his term may elect so to do by filing a written election with
19 the Governor, the Attorney General, the Secretary of State and the
20 clerk of the board of chosen freeholders.

1 2. (New section) The provisions of P. L. 1970, c. 6, s. 3
2 (C. 2A:158-15.1) shall not apply to any assistant prosecutor in a
3 county of the fifth class having a population of less than 150,000

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

4 under the 1960 Federal census; provided, however, that the county
5 prosecutor of any such county, where there appears to be a reason-
6 able necessity therefor and where approved by order of the assign-
7 ment judge, may direct that any assistant prosecutor devote his
8 entire time to the duties of such office and not engage in the practice
9 of law or other gainful employment.

1 3. This act shall take effect immediately.

STATEMENT

This bill would require that any future prosecutor appointed in Ocean county serve full-time. The other fifth class counties, Monmouth and Atlantic, already have full-time prosecutors.

Concern has been expressed that an adequate number of full-time assistant prosecutors will not be available in Ocean county to staff that office in conformity with the provisions of P. L. 1970, c. 6, s. 3 (C. 2A:158-15.1). The bill allows part-time assistant prosecutors to be employed, but permits the prosecutor with the concurrence of the assignment judge, to require full-time service.

VII. ROBBERY, THEFT, FRAUDS AND CHEATS, EMBEZZLEMENT, EXTORTION AND BRIBERY

In my recommendations concerning suggested labor legislation, I have discussed revisions in the laws relating to extortion, bribery and embezzlement which are needed to combat abuses in the labor theatre. My comments on loan-sharking embody suggested legislative changes in that area which track the federal Extortionate Credit Transactions legislation. 18 U.S.C., Secs. 891, *et seq.* Additionally, my comments concerning criminal infiltration of "legitimate" businesses include the suggestion that N. J. S. A. 2A:105-4 be amended or supplemented to interdict the "strong-arm" business practices characteristic of Organized Crime.

Aside from these areas, however, and after a careful review of the pertinent sections of Title 2A, N. J. S. A., it seems clear that the general statutory laws of this State concerning the crimes of robbery, theft, frauds and cheats, embezzlement, extortion and bribery are substantially in line with the laws of other jurisdictions, as to both the scope of criminal acts covered and the penalties imposed. Therefore, I make no recommendation for substantive statutory changes in these areas other than those previously made concerning labor, business and loansharking legislation.

As noted in my prefatory remarks, however, I fully endorse the objectives of the Criminal Law Revision Commission, one of which is to recodify New Jersey's criminal law in its entirety. Rewording, reorganization and reindexing of even those laws which have adequate substance are very much needed.

97490
C929
1970
Lacy, Frederick
Recommendations to
the 1970 Legislature concerning
legislation which might be
enacted to curb the power
and influence of organized
crime in N.J. 1/20/70

VIII. THE REORGANIZATION OF THE PROSECUTIONAL SYSTEM OF THE STATE OF NEW JERSEY

I agree with the position taken by the New Jersey Joint Legislative Committee to Study Crime and Criminal Justice, Governor-elect Cahill, and those members of the 1969 Legislature who have introduced such bills as S-649, S-650, A-463 and A-801: it is time to reorganize and alter the prosecutorial system in New Jersey. Such changes are particularly needed to enhance the prosecution by state authorities of offenses committed by the higher-echelon members of Organized Crime. These cases are invariably complex, require many man hours of investigation, and demand of a prosecutor intense, thorough preparation.

Much has been said concerning increased participation by the Attorney General, or a State Division of Criminal Justice, in the prosecution of crime in this State. The question of whether or not County Prosecutors and Assistant Prosecutors should be required to relinquish completely their private law practices has also been discussed actively by members of the executive, legislative and judicial branches of New Jersey government. I shall relate my observations and suggestions on these issues to the general theme of my presentation: what new legislation can best equip the State of New Jersey to combat Organized Crime?*

DIVISION OF CRIMINAL JUSTICE:

I recommend legislation establishing within the Department of Law and Public Safety, and subject to the supervision of the Attorney General, a Division of Criminal Justice ("the Division") (or Division of Prosecution as described by Governor-elect Cahill in his pre-election *Position Paper: The Prevention of Crime—The Enforcement of Law*). Supervision of the prosecution of all state criminal cases and of the offices of the County Prosecutor would be lodged in this Division. It should be headed by an Assistant

*I thank Manuel Carballo, counsel to Governor Hughes, and Assistant Attorney General Donald M. Altman for supplying this office with legislative materials and their observations on the present subject.

Attorney General, and staffed by Deputy Attorneys General and its own investigatory personnel (perhaps obtained by assignment from the New Jersey State Police).*

A Division within the Department of Law and Public Safety is preferable to a separate Department of Criminal Justice with cabinet rank, for several reasons. The Attorney General should remain the primary legal official of the State, directing the State's efforts in all aspects of law and public safety. Creation of a Department to which there would be delegated jurisdiction over all aspects of criminal prosecutions would remove these matters from the supervision of the Attorney General. Such a severance would invite problems of reassignment, coordination of operations and added expense that should be avoided. The Divisional arrangement should minimize such administrative difficulties, thus insuring the efficient, organized law enforcement and prosecution so indispensable to combat criminal elements.

The Legislature should establish the Division so as to enable the Attorney General to sever from the ordinary prosecutorial process, and thereafter treat specially, offenses in which there is reason to believe members of Organized Crime are involved. Because of the clandestine nature of most of these offenses and the insulated position of the highly placed professional criminals, such cases present problems of investigation and prosecution which the County Prosecutors (even if serving on a full-time basis, *infra*) should not be required to bear alone.** Therefore, the implementing legislation should require the respective County Prosecutors to inform the Attorney General of all cases which appear to have Organized Crime implications. It should further provide that the Attorney General, on his own initiative, may assume control of such cases and organize the investigation and prosecution thereof, through the use of the State Grand Jury and otherwise. This latter

* I agree with Governor-elect Cahill that the State Police should be part of a separate Division, of parallel status, whose efforts are to be coordinated with the Division. *Position Paper, supra.*

** An informal survey by this office has revealed that the case load of the offices of most County Prosecutors is staggering. It is unrealistic to expect an Assistant Prosecutor carrying a load of more than 200 "ordinary" criminal cases to prosecute a complex loansharking or public corruption case with the complete attention and exhaustive preparation which such a matter requires.

power should be delegable by the Attorney General (either wholly or partially) to the Assistant Attorney General in charge of the Division.

In organizing the state's efforts in an organized crime case, the Attorney General should have the greatest possible flexibility. He should be able to assign the investigative function either to local, county or state investigative personnel, or to direct that there be a coordinated effort among two or more such units. He should be empowered to assign prosecution of the case to one or more of the following: Deputy Attorneys General in the Division, the County Prosecutor or Assistant County Prosecutor in a County where the crime took place, County Prosecutors or Assistants from other counties, or specially retained counsel. The use of Deputy Attorneys General in such cases is particularly advisable because such persons could specialize in Organized Crime cases, unencumbered by the case loads borne by county prosecutors, thus developing an expertise therein.

Under the system outlined above, organized, thorough prosecution of Organized Crime cases should be possible to an extent not presently realized in this State.

FULL-TIME PROSECUTORS:

It has been particularly gratifying to me to see that Governor-elect Cahill has maintained the position that County Prosecutors in certain counties should relinquish their private law practices and devote full attention to that public office. It is to be noted that in 1953 President Eisenhower and Attorney General Herbert Brownell took similar constructive action concerning the office which I presently hold. I heartily endorse Mr. Cahill's initial step of demanding that the men whom he will soon appoint as prosecutors in five large counties (Union, Bergen, Hudson, Mercer, Passaic) accept the job on a full-time basis.* There should be a legislative basis for this action so that it may not be allowed to lapse should there at some future date be a chief executive less dedicated to this important policy. The amendments to N. J. S. A. 2A:158-1 proffered in Senate

* See *Newark Evening News*, December 24, 1969; *Newark Star Ledger*, December 28, 1969.

Bill No. 650 and Assembly Bill No. 801 introduced in the last session contain appropriate language.

One qualification to the plan for full-time prosecutors should be explored. Study might well reveal that a full-time prosecutor is not warranted in the less populated counties of the State. Senator Dumont indicated to our office that he felt this might well be the case in the three counties which he represents.* Governor-elect Cahill has also acknowledged this, indicating that the County Prosecutor whom he will appoint in Burlington County need not (at least initially) devote his entire time to that position.**

On a permanent, legislated basis, two possibilities for establishing Prosecutors for the smaller counties come to mind. Each such County could continue to have its own Prosecutor, serving on a part-time basis unless changing conditions in population and case load demanded a change to full-time status. Alternatively, two or more small counties could be consolidated under the jurisdiction of one full-time Prosecutor. The pattern of consolidation used to establish State Senatorial Districts could serve as a model.*** For a permanent, long-range solution I favor this latter approach of regionalization because it insures that all County Prosecutors will be devoting their entire efforts to this public office, free from potential conflicts, and at the same time does not burden the taxpayers of a small county (or the State at large) with the expense of supporting a full-time Prosecutor where the work load does not require it.

If the State of New Jersey is to increase its efforts to combat Organized Crime, the offices of the County Prosecutors must be staffed with a sufficient number of Assistant Prosecutors to handle such prosecutions when directed to do so by the Attorney General (*supra*). Assistant Prosecutors should also be called upon to relinquish their private practices. The Legislature should establish salary levels which will insure to these full-time Assistants adequate compensa-

* Hunterdon, Warren and Sussex Counties.

** *Newark Evening News*, December 24, 1969; *Newark Star Ledger*, December 28, 1969.

*** One rather clear exception would be the Third District (Camden, Gloucester and Salem Counties). Camden County is of sufficient size to warrant a full-time Prosecutor. Gloucester and Salem combined might warrant one.

tion. There should be some legislation providing tenure for Assistants so that they may be induced to spend more than one or two years in that position. It is particularly important in complex, protracted Organized Crime investigations and prosecutions that Assistant Prosecutors be men of some experience when they assume responsibility for such a case and that they remain on the case for its duration. To enhance cooperation and agreement between the Attorney General and the County Prosecutors, the Assistants should be appointed by the Prosecutors, subject to the approval of the Attorney General.* As noted earlier, the Attorney General should have the authority to reassign Assistant Prosecutors to other counties, particularly for the prosecution of organized crime cases.

Such a program for full-time Prosecutors and Assistants will be substantially more expensive than the present system. It is inaccurate to assume that the number of Assistant Prosecutors can be sharply reduced when such positions are filled by full-time personnel. Inquiries by this office have disclosed that offices of County Prosecutors are substantially under-manned at present. If an increased number of prosecutions in the Organized Crime theatre develop, the pressure on these offices will be increased even if Deputy Attorneys General are used extensively in such matters. Undoubtedly the cost of prosecution in this State will rise, and it would seem necessary for the State as a whole to bear the major part of such increase. Indeed, increased centralization of prosecution costs would seem advisable in light of the recent difficulties encountered by the County Prosecutor of Camden County concerning appropriations from that county's Board of Chosen Freeholders. *In Re A. Donald Bigley, Camden County Prosecutor; Board of Chosen Freeholders of Camden County, Appellant*, N. J. (December 1, 1969).

CONCLUSION

I recommend legislation to accomplish the following:

- (1) Creation of a Division of Criminal Justice (or Prosecution) within the Department of Law and Public Safety

* See Assembly Bill No. 801, Para. 2 (1969 Session).

and thus under the jurisdiction of the Attorney General, charged with the authority and obligation to direct and supervise criminal prosecutions brought in the name of the State of New Jersey.

(2) Establishment of full-time County (or, in some instances, regional) Prosecutors and Assistant Prosecutors.

(3) Assumption by the State as a whole of the increased cost resulting from the adoption of this system of full-time prosecutorial personnel.

IX. SOME OBSERVATIONS CONCERNING UNANNOUNCED ENTRY TO ARREST OR SEARCH; AND SENTENCING

The basic purpose of this memorandum has been to explore some possibilities for substantive legislation calculated to curb the influence of Organized Crime in New Jersey. In concluding my presentation, however, I should like to discuss briefly two topics which are more in the nature of criminal practice or procedure, namely: (1) the unannounced entry to arrest or search; (2) the sentencing of a member of Organized Crime.*

It is often necessary for an arresting or searching officer of the law to obtain access to premises without announcing his presence or purpose. Several cases which are the product of the activities of Organized Crime are included in this category. Gambling records or paraphernalia at a book maker's premises could be quickly destroyed or secreted if the officer announced himself. Narcotics can be similarly disposed of. Money, cards or dice can be swept off the table or floor. Any "top hood" whose arrest is sought may be in the company of several of his henchmen who are likely to be armed.

New York has sought to codify a rule permitting unannounced entry by means of the following statute, enacted in 1964:

"The officer may break open an outer or inner door or window of a building, or any part of the building, or any thing therein to execute the warrant . . . (b) without notice of his authority and purpose, if the judge, justice or magistrate issuing the warrant has inserted a direction therein that the officer executing it shall not be required to give such notice. The judge, justice or magistrate may so direct only upon proof under oath to his satisfaction, that the property sought may be easily and quickly destroyed or disposed of, or that

* My thanks to Professors Robert E. Knowlton and John G. Graham Rutgers University Law School for having given my office the benefit of their valuable observations on some of the issues discussed in this chapter.

Source: New Jersey Commission of Investigation
Report on County Prosecutor system
February, 1970

-8-

III. RECOMMENDATIONS

1. An Executive Office for County Prosecutors Should Be Created Under The Direction of The Office of The Attorney General and Be Headed by an Assistant Attorney General.

This office would be similar in scope and operation to the Executive Office of the United States Attorneys.

The Executive Office for County Prosecutors would perform the following functions: (A) It would conduct a periodic evaluation of each county prosecutor's office in the State, and (B) would co-ordinate the efforts and activities of all county prosecutors and their assistants in order to maximize the use of experienced personnel notwithstanding county border limitations, especially in the fight against organized crime.

2. Each County Prosecutor, and all Assistant Prosecutors, Should Serve on a Full Time Basis.

In every county, regardless of size, there should be a full time prosecutor responsible for the detection, arrest, indictment and conviction of offenders against the laws, as set forth in Section 2A:158-5 of the New Jersey Statutes.

Even in the smallest counties of the State, those engaged in prosecutorial functions should be full time in order to eliminate any possible conflict between their public duties and the interests of private clients. Such conflicts can arise inadvertently, or may even be intentionally created by unscrupulous individuals who wish to compromise a law enforcement official in the performance of his duties.

C6 L1970
5448

To accomplish a reasonable transition to the stage where each county will have a full time prosecutor, it is conceivable that for a time a given individual might be appointed as prosecutor for several counties, with one or more full time assistants in each of these counties to assist him.

Full time prosecutors and assistant prosecutors will also ensure a more co-ordinated effort and continuity in the internal administration of the county prosecutor's office and in the trial of criminal cases. This has been a serious deficiency under the existing part-time system, a factor which has severely handicapped the effective trial of alleged criminals.

The number of assistant prosecutors in a given county should depend not only upon its population, but also upon the particular needs of the county. The determination of the number of assistants should be made by the Attorney General, based upon the recommendations of the county prosecutor.

3. The Term of Each County Prosecutor Should Be The Same as The Governor.

This recommendation will require an amendment to the New Jersey Constitution. However, it would be an important factor in delineating the responsibility for law enforcement since the Governor, as Chief Executive of the State, appoints the Attorney General, who is the principal law enforcement officer of the State, and whose term is the same as the term of the Governor. In order to provide a sensible chain of responsibility, the terms of county prosecutors, who are vested with the same powers and duties within their respective counties as the Attorney General is for the State as a whole, should also be the same as the term of the Governor.