

2A:158-1.1 et seq.

December 11, 1970

LEGISLATIVE HISTORY OF R.S. 2A:158-1.1 et seq.
(Prosecutors & assistant prosecutors be full time)

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See: 974.90 Lacey.
C929 Recommendations to 1970 Legislature ...
1970 curb ... organized crime. p. 49-54 (cop. enc.)

974.90 N.J. State Commission of Investigation.
C929 Report on County Prosecutor System.
1970a

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L. 1970, Chapter 6 - S448
Introduced January 20 by Bateman [and 5 others].
Not amended during passage.
No statement.

Newspaper clippings - {V.F.-N.J.-
Prosecutors}

- "For full-time prosecutors" 12-24-69 NEN
- "Cahill wants 5 counties with full-time prosecutors" 12-24-69 S-L
- "Full-time prosecutors" 12-26-69 APP
- "Prosecutors bill ready Mon." 1-21-70 TET
- "Bill puts prosecutors on full-time schedule" 1-24-70 C-P
- "State Senate OKs prosecutors bill" 1-30-70 PI
- "Full-time prosecutors bill voted" 1-30-70 Newark NEN
- "Full-time prosecutors closer for 9 counties" 1-30-70 Record
- "Prosecutors: Senate approves 9 full-time primefighters" 1-30-70 NSL
- "Senate approves prosecutor bill" 1-30-70 APP
- "Status shift voted for 9 prosecutors" 2-3-70 APP
- "Assembly OKs restrictions on prosecutors" 2-3-70 PI
- "Assembly sends Cahill full-time prosecutors bill" 2-3-70 NSL
- "For full time prosecutors" 2-3-70 NEN
- "Prosecutor bill goes to Cahill" 2-3-70 Record
- "State asked to lead county prosecutors" 2-5-70 PI
- "The prosecutor: anti-crime weapon" 2-5-70 TET
- "Cahill views on prosecutors" 2-6-70 NEN
- "The step out of the mire" 2-5-70 TET
- "Full-time prosecutors may be hard to find" 2-8-70 SS-L
- "State should pay the bill" 2-9-70 Record
- "Cahill nominates new prosecutors" 2-10-70 APP
- "Cahill to name 'career men' prosecutors" 2-10-70 C-P
- "Cahill signs bill requiring prosecutors to work full time" 2-10-70 PI
- "Prosecutors are key" 2-13-70 C-P
- "Just one side at a time" 2-24-70 C-P
- "Prosecutors wary on bill" 3-22-70 NEN
- "SCI proposes reform for prosecutor system" 3-22-70 NSL

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NSL/PC

STATE OF NEW JERSEY

INTRODUCED JANUARY 20, 1970

By Senators BATEMAN, BEADLESTON, SEARS and MATTURRI

(Without Reference)

AN Act concerning county prosecutors and assistant county prosecutors of certain counties and supplementing chapter 158 of Title 2A of the New Jersey Statutes.

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

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

5 a. Counties of the first class;

6 b. Counties of the second class having a population in excess
7 of 265,000 under the 1960 Federal census; and

8 c. Counties of the fifth class having a population in excess of
9 265,000 under the 1960 Federal census.

10 Any county prosecutor of any of the aforementioned counties
11 in office on the effective date of this act who shall elect to devote
12 his entire time to the duties of such office for the remainder of his
13 term may elect so to do by filing a written election with the Gov-
14 ernor, the Attorney General, the Secretary of State and the clerk
15 of the board of chosen freeholders.

1 2. Notwithstanding the provisions of N. J. S. 2A:158-10 any
2 county prosecutor who is required or elects to devote his entire
3 time to the duties of his office pursuant to this act shall receive
4 an annual salary in the same amount as that payable to a full time
5 judge of the county court.

1 3. In any county in which the county prosecutor is required or
2 elects to devote his entire time to the duties of his office, assistant
3 prosecutors shall devote their entire time to the duties of such
4 office and shall not engage in the practice of law or other gainful
5 employment.

1 4. Notwithstanding the provisions of N. J. S. 2A:158-16 as-
2 sistant prosecutors required to devote their entire time to the
3 duties of their office shall receive annual salaries, to be fixed by
4 the board of chosen freeholders on recommendation of the county
5 prosecutor, as follows:

6 a. The first assistant prosecutor or the assistant prosecutor
7 serving as the county prosecutor's principal assistant, not less
8 than 50% nor more than 90% of the amount of the annual salary
9 of the county prosecutor; and

10 b. Other assistant prosecutors, not less than 40% nor more than
11 80% of the amount of the annual salary of the county prosecutor.

1 5. This act shall take effect immediately.

FISCAL NOTE TO
SENATE, No. 448

STATE OF NEW JERSEY

DATED: JANUARY 29, 1970

Senate Bill No. 448 is an Act concerning county prosecutors and assistant county prosecutors of certain counties and supplementing chapter 158 of Title 2A of the New Jersey Statutes.

The Division of Budget and Accounting in the Department of the Treasury, after consultation with the Administrative Office of the Courts, certifies that enactment of this bill will not require any additional expenditures on the part of the State because prosecutors are reimbursed completely by the various counties. It has been determined that prosecutors and their assistants presently receive salaries aggregating approximately \$1,700,000.00 and that it might reasonably be assumed that enactment of the bill would involve additional expenditures of approximately \$500,000.00 among the counties affected by this legislation.

In compliance with written request received, there is hereby submitted a fiscal estimate for the above bill, pursuant to P. L. 1962, c. 27.

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 prosecu- tional 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 Orga- nized Crime. These cases are invariably complex, require many man hours of investigation, and demand of a prosecu- tor 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 ques- tion 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 Depart- ment of Law and Public Safety, and subject to the super- vision 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 *Posi- tion 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

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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-

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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.

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