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February 4, 2011

Re: Report of the County Prosecutor Study Commission

Dear Governor Christie:

I am pleased to provide you with the report of the County Prosecutor Study Commission, which was established by your Executive Order 33. The report includes a number of specific, practical recommendations to improve the way in which county prosecutors' offices are funded. Our guiding principle has been to enhance efficiency and conserve taxpayer resources without in any way sacrificing the quality of prosecution services that the citizens of New Jersey have come to expect, and rightfully demand.

The Study Commission has provided a unique opportunity for our members to share ideas. Although I had spent many years as the Essex County Prosecutor, I did not until recently fully appreciate the concerns and frustrations of county officials, and I am told by those officials that they too benefitted from hearing from the county prosecutors during the course of our deliberations. It has been a rewarding experience, and we recognize that the collaboration has just begun in that some of our most important recommendations will require considerable effort to implement fully. If you adopt these recommendations, I intend to continue the collaborative effort started by your Executive Order by establishing an *ad hoc* committee to advise me on how best to develop the formulae and other methodologies we will use to inform the process for setting the county prosecutors' budgets.

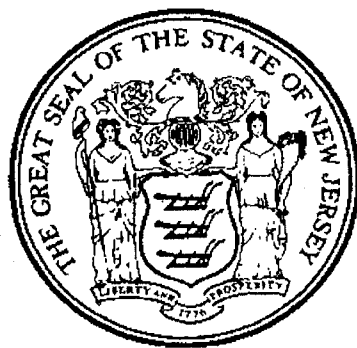
I note, finally, that during the course of our work, one of our members passed away. I know from your poignant eulogy that Cary Edwards had asked you whether this project was real, and whether it would be worth the effort. I hope and believe that Cary would see this report as confirmation of this Administration's commitment to public safety, and that he would agree that our recommendations for reform are both substantive and substantial.

Respectfully submitted,

Paula T. Dow, Attorney General
Chair of the Commission



REPORT OF THE COUNTY PROSECUTOR STUDY COMMISSION



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REPORT OF THE COUNTY PROSECUTOR STUDY COMMISSION

DEDICATION

This Report is dedicated to the memory of our colleague, mentor, and friend, W. Cary Edwards. As Attorney General, Cary Edwards almost single-handedly changed the face of New Jersey's law enforcement landscape. His extraordinary tenure gave new meaning and import to the notion that the Attorney General serves as the State's chief law enforcement officer, and his leadership made it possible for county prosecutors to emerge as the chief law enforcement officers within their respective jurisdictions. Attorney General Edwards' influence on New Jersey's law enforcement community, and on the work of this Study Commission, cannot be overstated. His energy, his compassion, his insights into how government works, and how it ought to work, and his unfailing commitment to "doing the right thing" will serve as an inspiration and example for everyone in public service for generations to come.

INTRODUCTION

On July 16, 2010, Governor Chris Christie issued Executive Order 33, creating a County Prosecutor Study Commission to evaluate the current structure of the county prosecutors' offices and to determine whether it would be feasible and advisable for the State to take over all or a portion of the prosecution function. The Commission has also been asked to explore potential alternatives to a State takeover of the prosecutors' offices, and to identify and address concerns about redundancies, inefficiencies, and inequities that may exist in the current system. Executive Order 33 further directs the Study Commission to make findings and recommendations concerning the current mechanisms for funding the county prosecutors' offices, including but not limited to an examination of the viability of the County Prosecutor Funding Initiative Pilot Program.

The Commission recognized at the very outset of its work that funding and fiscal concerns are central to the task assigned to us by the Governor. While the scope of our review goes beyond questions of dollars and cents, we recognize that given the acute fiscal crisis that State, county, and local governments are currently facing, our primary mission is to propose practical ideas for conserving taxpayer resources. In pursuing our assignment, we have strived to ensure that all citizens of this State have the right to be safe, and to know that when a crime is committed, it will be prosecuted effectively, efficiently, and fairly. *See State v. Bisaccia*, 58 N.J. 586, 590 (1971) ("The first right of the individual is to be protected from attack. That is why we have government ..."). The paramount goal of protecting the public from crime and its effects cannot be achieved unless every prosecutor's office is adequately staffed and funded. The Study Commission has therefore identified two distinct but inter-related objectives: first, the need to address inequities and inefficiencies in the current system for funding prosecutors' offices, and second, the need to maintain the highest standards of performance and professionalism in the exercise of the prosecution function. Ultimately, both of these critical objectives must be addressed in order to ensure public safety through the uniform and efficient enforcement of the criminal laws.

Given the scope of the project spelled out in Executive Order 33, the Study Commission assigned specific preliminary research tasks to several subcommittees. These committees reported on: differences in labor agreements, salaries, and employee benefits among county prosecutors' offices; redundancies and inefficiencies; the possibility for a unified appeals system; regionalization possibilities, and an analysis of the Prosecutor Funding Initiative Pilot Program. The Study Commission also considered correspondence received from several organizations commenting on pending legislation calling for the statewide unification of the prosecution function.

This Final Report is divided into three sections. Part I provides background information and a general overview of the current prosecution system, explaining the present and historical roles of the county prosecutors, and their place within the hierarchy of New Jersey's criminal justice system. Part II identifies some of the problems confronting our current prosecution system, and discusses ways in which those challenges might be addressed. Part III presents a synopsis of our findings and recommendations.

The Study Commission would note as a prefatory matter that, given our charge under Executive Order 33, our analysis, findings, and recommendations are focused entirely on New Jersey's prosecution system. We did not examine the functions of other law enforcement agencies that are funded by county governments, such as the county sheriffs, county corrections agencies, county police, and county park police, even though many of the funding-related issues that apply to the county prosecutors apply as well to these other law enforcement agencies. All of these budgets are driven by personnel costs, and therefore the importance of recently-enacted arbitration reform cannot be overstated, as it is critical to controlling budget growth. We mention these other county-funded law enforcement agencies at this point because they are an important part of the fiscal mosaic in which county prosecutors are embedded. The outcomes of salary negotiations with the collective bargaining units that represent sheriff's officers, for example, had often set the bar for negotiations and arbitration awards for the bargaining units that represent employees of the county prosecutors' offices. While an examination of the functions of these other county agencies and their amenability to consolidation is beyond the scope of our mission, we note that it is not possible to control the growth of the county prosecutors' budgets in isolation from more comprehensive efforts to control the growth of the budgets of these other county-funded law enforcement agencies.

It also bears noting, finally, that some of the Study's Commission's recommendations concerning new funding sources and enhancements to the process for developing county prosecutor budgets, if accepted by the Governor and the State Legislature, will require significant effort to implement. We therefore view the issuance of this Report not as the completion of our assignment under Executive Order 33, but rather as part of an ongoing process of collaboration and cooperation between county executives and administrators, the county prosecutors, and the Attorney General. The Study Commission has provided an unprecedented forum for members to share ideas, concerns, and perspectives, and, as a result, we now have a better understanding of the challenges our State faces in protecting the public from crime in a time of economic hardship. The lessons we have learned in this deliberative process will prove to be invaluable not only in addressing the current fiscal crisis, but also in meeting the State's public safety needs in the years and decades to come.

PART I. OVERVIEW OF NEW JERSEY'S PROSECUTION SYSTEM

1. *Constitutional and Statutory Authority of the County Prosecutors and Their Relationship to the Attorney General*

Our State Supreme Court has recognized that “in New Jersey, the county prosecutor is constitutionally created¹ and statutorily endowed with powers that arm him or her to perform wide ranging duties.” Yurick v. State, 184 N.J. 70, 78-79 (2005). See also State v. Wright, 169 N.J. 422, 437 (2001) (noting that the county prosecutor is a “constitutionally established office”). Because the county prosecutors are constitutional officers, certain important features in our current prosecution system, such as the number of county prosecutors, or the scope of their geographic jurisdiction, cannot be altered without first amending the State Constitution.

This does not mean, however, that the current system is carved in stone, or that it can only be changed through the difficult and time-consuming process of a constitutional amendment. While county prosecutors are constitutional officers, their functions and duties are established by statute. As the Supreme Court noted in State v. Wright, “the specific powers and authority of the county prosecutor are fully set forth in Title 2A of the New Jersey Revised Statutes.” 169 N.J. at 437 (citation to federal precedent omitted). Thus, for example, N.J.S.A. 2A:158-5 provides that:

Each county prosecutor shall be vested with the same powers and be subject to the same penalties, within his county, as the attorney general shall by law be vested with or subject to, and he shall use all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the laws.

The powers and responsibilities of county prosecutors must therefore be viewed in light of

Article VII, Sec. II, Para. 1 of the State Constitution provides that:

County prosecutors shall be nominated and appointed by the Governor with the advice and consent of the Senate. Their term of office shall be five years, and they shall serve until the appointment and qualification of their respective successors.

The constitutionally-prescribed appointment process and term of office for county prosecutors is restated and amplified in N.J.S.A. 2A:159-1, which provides that:

There shall be appointed, for each county, by the governor with the advice and consent of the senate to serve for a term of 5 years and until the appointment and qualification of his successor, some fit person who shall have been admitted to the practice of law in this state for at least 5 years, who shall be known as the county prosecutor and who, except as otherwise provided by law, shall prosecute the pleas of the state in such county and shall have all of the powers and perform all of the duties formerly had and performed by the prosecutor of the pleas of such county.

the powers and responsibilities of the Attorney General, who is also a constitutional officer. The Attorney General's criminal enforcement authority is comprehensively set forth in the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq. Of critical importance to the Study Commission's work, that statute also defines the relationship between the Attorney General and county prosecutors. N.J.S.A. 52:17B-109 provides in this regard that:

Except as provided in this act, the powers and duties conferred upon or required of the Attorney General by this act shall not be construed to deprive the county prosecutors of any of their authority in respect to criminal prosecutions, or relieve them from any of their duties to enforce the criminal laws of the State (emphasis added to show that the Act does impose limits on the authority of the county prosecutors, establishing a hierarchy within the State's integrated prosecution system).

Most notably, the Criminal Justice Act directs the Attorney General to "maintain a general supervision over" the county prosecutors. N.J.S.A. 52:17B-103. See also N.J.S.A. 52:17B-112 ("It shall be the duty of the several county prosecutors to cooperate with and aid the Attorney General in the performance of his duties.") The Supreme Court of New Jersey commented on this hierarchal scheme, noting in Yurick v. State, *supra*, that "[t]here is no ordinary chain of command between the attorney general and the county prosecutors... and the State is not responsible for the daily functioning of the prosecutor's office." 184 N.J. at 79 (citation to quoted precedent deleted). The Court in Yurick nonetheless observed that a "county prosecutor's law enforcement function remains at all times subject to the supervision and supersession power of the State." *Ibid.*

As a general matter, county prosecutors operate autonomously. While the Attorney General has the statutory authority to "supercede a county prosecutor in any investigation, criminal action or proceeding whenever in the opinion of the Attorney General the interests of the State will be furthered by doing so," see N.J.S.A. 52:1B-107, or even to supercede an entire prosecutor's office in certain circumstances, see N.J.S.A. 52:17B-106,² the Attorney General's supersession authority

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N.J.S.A. 52:17B-106 provides that:

Whenever requested in writing by the Governor, the Attorney General shall, and whenever requested in writing by a grand jury or the board of chosen freeholders of a county or the assignment judge of the Superior Court for the county, the Attorney General may supersede the county prosecutor for the purpose of prosecuting all of the criminal business of the State in said county, intervene in any investigation, criminal action, or proceeding instituted by the county prosecutor, and appear for the State in any court or tribunal for the purpose of conducting such investigations, criminal actions or proceeding as shall be necessary for the protection of the rights and interests of the State.

Whenever the Attorney General shall have superseded a county prosecutor as aforesaid, the county prosecutor, the assistant county prosecutors and other members of the staff of the county prosecutor shall exercise only such powers and perform such duties as are required of them by the Attorney General.

is exercised infrequently, and in most instances, at the request of a county prosecutor to avoid a conflict of interest. In the absence of any such supersession, county prosecutors have independent authority to prosecute the crimes that are committed within their jurisdictions, and they enjoy considerable discretion in exercising that authority.³

The Attorney General's powers and duties are also established by statute, and she exercises her criminal enforcement authority through the New Jersey Division of Criminal Justice, which was created by the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq. The Criminal Justice Act establishes the Attorney General as the State's chief law enforcement officer, giving her the authority not only to investigate and prosecute any case, whether through her original jurisdiction or by superseding a county prosecutor, but also to issue directives, guidelines, and policies that county prosecutors and every other law enforcement agency must follow. The Attorney General in this way has both the authority and the duty to establish and enforce uniform statewide policies, practices, and procedures to ensure the most efficient and effective use of the law enforcement resources of all other police and prosecuting agencies throughout the State.

2. *The Evolution of the Professionalism and Capacities of the County Prosecutors*

The present roles and responsibilities of the county prosecutors and their relationship to the Attorney General cannot be understood in a historical vacuum. In many important respects, the current prosecution system is quite different from and much better than the system that had precipitated the reforms brought by the Criminal Justice Act. The Division of Criminal Justice had been created in 1970 to fill what had been a conspicuous void in New Jersey's law enforcement community. Notably, the Division was established to handle significant cases that could not be successfully investigated or prosecuted by any other non-federal prosecuting agency, focusing especially on the criminal activities of organizations and enterprises, such as *La Cosa Nostra*, that operate without regard to municipal or county borders, and thus beyond the jurisdictional reach of local police departments and any one county prosecutor's office.

Important developments since 1970 must be taken into account in order to understand the evolving roles and responsibilities of the county prosecutors and the Division of Criminal Justice. In 1970, many of the county prosecutors' offices were headed by and comprised of part-time

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State law provides that certain types of criminal cases may only be handled by a county prosecutor with the Attorney General's express permission. For example, a county prosecutor is not authorized to investigate or charge the offense of racketeering, or of the offense of financial facilitation of criminal activity (*i.e.*, money laundering), without first obtaining written approval from the Attorney General. See N.J.S.A. 2C:41-1(g) and N.J.S.A. 2C:21-24. Similarly, a county prosecutor does not have the legal authority to petition a court to confer "use and fruits" immunity upon a witness claiming the right against self-incrimination without the Attorney General's express authorization. See N.J.S.A. 2A:81-17.3.

prosecutors. Today, in contrast, all county prosecutors and all of their assistants are full-time employees who devote their entire attention to the performance of their prosecution duties. *See N.J.S.A. 2A:158-15.1b.* Furthermore, the county prosecutors have made great strides in the retention and professional development of their assistants. The average length service of assistant prosecutors is now greater than ten years. *See Table 4.* Gone are the days when it was common for young attorneys to join a prosecutor's office after graduating law school, stay for a couple of years to gain trial experience, and then leave for greener pastures in the private sector. Today, prosecutors' offices are staffed with experienced and skilled lawyers who are dedicated to public service.

It is also important to note that in 1970, few county prosecutor offices had the capacity to pursue sophisticated investigations. In the intervening decades, the State has witnessed a significant enhancement in the resources dedicated to prosecuting cases involving conspiracies and sophisticated criminal organizations. Our late colleague, Cary Edwards, is largely responsible for this salutary development. He was among the first Attorneys General to recognize the need for county prosecutors to undertake and coordinate large-scale investigations, as well as the need for county prosecutors to set enforcement priorities and to harness local law enforcement resources by exercising leadership as the chief law enforcement officers within their county jurisdictions.

In 1988, as Attorney General, Cary Edwards issued the Statewide Narcotics Action Plan – a comprehensive drug enforcement strategy that became the prototype for the exercise of the Attorney General's authority to ensure the uniform and efficient enforcement of the criminal laws. The Action Plan made drug enforcement the top law enforcement priority for every prosecutor's office and police department. The Action Plan required, among other things, that every county prosecutor form and directly oversee a countywide narcotics task force to attack the problem of sophisticated drug distribution enterprises. Those task forces were comprised of local as well as county law enforcement officers. By adopting a regional, multijurisdictional approach, Attorney General Edwards was able to re-deploy *existing* resources to address the State's emerging "crack" cocaine epidemic, and in this way, his strategy served to enhance public safety without imposing new financial burdens on county and local taxpayers.

The countywide task forces established under Attorney General Edwards' Statewide Narcotics Action Plan have since evolved, pursuant to more recent Attorney General directives, to focus on the problem of criminal organizations that are involved in gun violence, including, most notably, violent street gangs. The resiliency and effectiveness of these multijurisdictional task forces are a tribute to Attorney General Edwards' foresightedness in his efforts to promote regionalization, interagency collaboration, and the sharing of resources (personnel and equipment) and intelligence information.

Furthermore, and again in large part due to the visionary efforts of Cary Edwards, under the Statewide Narcotics Action Plan, the county prosecutors became true chief law enforcement officers within their counties, exercising the policy-making and leadership role within their respective jurisdictions that Attorney General Edwards was exercising on a statewide basis. As a result of those groundbreaking efforts, today, New Jersey's integrated law enforcement system is truly unique among the States.

3. *Comparison of the New Jersey Prosecution System to the Systems in Other States and the Federal System*

In most other States, district attorneys (“DAs”) are generally constrained to prosecute the pre-packaged cases that are brought to them by local police departments. These district attorneys generally have no authority to set law enforcement priorities, much less issue law enforcement policies and directives that police are obliged to follow. Indeed, in most jurisdictions, the *prosecution* function is considered to be separate and distinct from the *police* function, whereas in New Jersey, both functions are integrated under the authority of the county prosecutors and the Attorney General.

This unusual consolidation of authority is critical to the Study Commission’s findings with respect to the advisability of complete unification, and especially with respect to the critical need for county prosecutors to maintain close ties with all of the local police departments they oversee, which would be much harder to accomplish if the prosecution function were to be shifted entirely to State control. *See* Part II, Section 2(A) (discussing the systemic benefits of maintaining a local perspective on crime issues).

New Jersey’s prosecution system is atypical in yet another important respect. In most other States, district attorneys, and attorneys general as well, are political officials who must run for elected office.⁴ Elected district attorneys are generally not accountable to any state-level agency within the executive branch of government. While district attorneys enforce state criminal laws enacted by a state legislature, elected DAs do not answer to and are not supervised by the elected Attorney General, and in fact, these officials may even be political rivals bent on pursuing very different crime enforcement agendas.

While the hierarchical nature of New Jersey’s law enforcement community is unusual if not unique among the States, the architecture of our prosecution system is well-recognized in that it is similar to, indeed was patterned after, the federal system. The United States Attorney’s Offices are the functional analog of the county prosecutors, handling the lion’s share of federal prosecutions just as our county prosecutors account for most prosecutions (approximately 96 to 98%) of indictable violations of State law. The United States Attorneys, who are appointed by the President, are overseen by the United States Attorney General and the Department of Justice, which in this respect is the federal counterpart to the Division of Criminal Justice in the Department of Law and Public Safety. Just as county prosecutors must get permission from the Attorney General to undertake certain kinds of cases, such as those involving racketeering or money laundering, certain federal prosecution decisions must be approved by the United States Attorney General or some other high-level Justice Department official.

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The stark contrast between those other state prosecution systems and the one that exists in New Jersey is shown by the specialized Code of Ethics that applies to all county prosecutors, assistant prosecutors, the Attorney General, and all assistant and deputy attorneys general in the Division of Criminal Justice. This Code of Ethics strictly prohibits all of these officials from participating in any political activities, including making political contributions to any candidate or party, or attending any political or partisan event. *See Code of Ethics for County Prosecutors*, Section 6.

While most federal prosecutions are handled by the United States Attorneys appearing in their respective District Courts, the Justice Department in Washington has specialized units that directly prosecute certain types of cases, such as, for example, major tax violations and human trafficking offenses. Correspondingly, the Division of Criminal Justice has prosecution units with specialized expertise, and Division deputies routinely appear in county courthouses spread across the State, just as Washington-based Department of Justice attorneys travel to federal courts around the country. And while most federal appeals in criminal matters are handled by the United States Attorneys, the Justice Department in Washington includes the Office of the Solicitor General, which oversees and coordinates federal appellate strategy. The Solicitor General's role and unsurpassed proficiency in Supreme Court advocacy is analogous to the role and reputation of the Division's Appellate Bureau within the State criminal justice system.

The Division of Criminal Justice also performs within the State system many of the functions that are undertaken in the federal system by what is colloquially referred to as "Main Justice," that is, the array of administrative, non-litigation units within the Department of Justice in Washington, D.C. The Justice Department is responsible, for example, for promulgating uniform federal prosecution policies, developing and maintaining the United States Attorneys Manual, training federal prosecutors, enforcing ethics rules and codes of conduct, awarding and administering grants to other law enforcement agencies, conducting empirical studies of complex criminal justice system issues, and developing legislative initiatives and commenting on legislation with a view toward enhancing the statutory tools that are used by all federal law enforcement and prosecuting agencies. The Division of Criminal Justice performs many of these same non-litigational functions within our state system.

While the drafters of the Criminal Justice Act of 1970 looked to the federal prosecution system as a model, there are some differences between the New Jersey and federal systems that are relevant to the Study Commission's analysis. The United States Attorneys are appointed by the President and confirmed by the Senate, much as county prosecutors are appointed by the Governor with the advice and consent of the New Jersey Senate. Federal prosecutors, however, are appointed for a four-year term, and it is customary for these appointees to submit their resignations when a new Administration comes into office. That practice that is not replicated in the State system. In New Jersey, the five-year term of office prescribed by the State Constitution ensures that a county prosecutor's tenure is not coterminous with the Governor who appointed him or her.

It also bears noting that the United States Attorneys and their assistants are federal employees in the Department of Justice. These officials thus answer through a direct chain of command leading ultimately to the United States Attorney General. Their base salaries, moreover, are determined by a uniform pay scale established by the Justice Department and that includes an adjustment to account for the cost of living in the various regions of the nation.

While the federal prosecution system served as a template for the drafters of the New Jersey Criminal Justice Act, there was and continues to be no need to replicate every feature and characteristic of the federal oversight scheme. It must be noted in this regard, even at the risk of stating the obvious, that the United States Attorneys and their assistants are employees of the Justice Department because in the federal government, there are no subordinate units of government that

are analogous to counties or municipalities. United States Attorneys and members of their staffs are federal employees, in other words, because they could not be anything else.

For reasons explained more fully in Part II, Section 1, the Study Commission is satisfied that the federal direct employment model is not fundamentally better than the "general supervision" scheme established in New Jersey's Criminal Justice Act. Indeed, we believe that in adapting the federal prosecution model to address New Jersey's unique needs, interests, and political traditions, including adherence to the general principle of "home rule," the framers of the Criminal Justice Act struck an appropriate balance of local autonomy and statewide uniformity. This conclusion is bolstered by our understanding, based on information provided to us by former federal prosecutors, that for *practical* purposes, the ninety-three United States Attorneys Offices that are spread out across the nation and its territories actually operate with considerable autonomy from "main Justice." This is true not only with respect to prosecution decisions in all but the most serious federal cases, but also with respect to day-to-day functions and employment-related decisions, such as recruiting, hiring, and employee management. The point is simply that while the United States Attorneys are federal employees who operate under the direct auspices of the Executive Office of United States Attorneys housed in Washington, D.C., routine prosecution and employment-related decisions are pretty much left to local control, just as they are in New Jersey's prosecution system.

PART II. IDENTIFYING AND ADDRESSING CHALLENGES TO NEW JERSEY'S CURRENT PROSECUTION SYSTEM

1. A State "Takeover" of the County Prosecutors' Offices is Neither Necessary, Nor Advisable

The county prosecutors and the New Jersey Division of Criminal Justice face serious challenges, especially given the State's current economic and fiscal condition. Despite those challenges, we think it is safe to say that the basic system for prosecuting crimes in New Jersey is not broken. In fact, New Jersey has one of the better prosecution systems in the country, considering such factors as independence from political influence, professional development of attorneys and the proportion of staff who become "career" prosecutors, and the goal of achieving an appropriate balance between the need to remain responsive to local crime threats and the need for the uniform enforcement of criminal laws. With respect to the latter circumstance, it bears repeating that New Jersey is unusual if not unique among the states in having a prosecution system in which local prosecutors are directly accountable to an Attorney General, thus achieving the benefits of statewide uniformity in the enforcement of criminal laws to a degree that is simply not possible in other jurisdictions.

For reasons set forth throughout this Report, we find that there is no compelling reason to embark upon a radical re-structuring of the county prosecutor's offices, or a major re-alignment of the relationship between those offices and the Attorney General.⁵ As we have already noted in Part I of this Report, the Study Commission believes that the current "general supervision" system reflects an appropriate balance of local autonomy and statewide uniformity, and there is no compelling reason to upset that balance.

That is not to suggest that New Jersey's prosecution system is perfect. Improvements can be accomplished, however, within the basic architecture of the current prosecution system, and certainly can be achieved without having to amend the State Constitution. Rather, meaningful reforms to address the problems identified in this Report can be accomplished more swiftly and efficiently by actions taken by the Legislature, and by actions taken by the Attorney General exercising the authority already granted to her by the State Constitution and the Criminal Justice Act of 1970.

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As noted below, the Study Commission's recommendations focus on problems with the systems for funding county prosecutors' offices. Some members maintain that the State should assume responsibility for directly overseeing and paying for the prosecution function, at least in those urban jurisdictions where, as a result of the combination of high crime rates and low tax rates, the cost burden of prosecution services imposed on county taxpayers is disproportionate as compared to the fiscal burden imposed on county taxpayers in less urban jurisdictions. This idea might be described as a "partial" takeover in that the Attorney General would directly run county prosecutors' offices only in one or more select urban jurisdictions with special needs. While the full Study Commission does not recommend that approach, some county officials believe that the statewide takeover issue should be revisited when the economy improves. The Study Commission would note that in the meantime, there will be an opportunity to determine whether and to what extent the alternatives to a State takeover that are recommended throughout this Report are effective in addressing the funding problems that the Study Commission has identified.

With respect to the funding of the county prosecutors' offices, which is the central focus of the Study Commission's work, any review of the current system must start with a recognition that the overall cost of prosecuting indictable crimes⁶ in this State is substantial. The twenty-one county prosecutors currently employ 3,416 assistant prosecutors, detectives, professionals, and clerical personnel. See Table 1. In 2010, the total costs of salaries and wages for these county prosecutor employees was \$291,104,104, and health care and other fringe benefits amounted to an additional \$144,462,169. See Table 2. This brings the total annual personnel expenses to \$435,566,273.⁷

The Study Commission quickly realized that given the State's current fiscal crisis, it would be unreasonable to expect that the State Treasury could today or in the foreseeable future assume the approximate half-billion dollar annual cost of operating the prosecutors' offices. The Study Commission recognizes that it has not been suggested that these costs could or should be assumed by the State in the next one or two budget cycles. Rather, it has been suggested that the State assumption of costs should be accomplished gradually over as much as a ten-year period, similar to the judicial unification in the early 1990s, which is discussed in Section 2, *infra*.

The Study Commission believes that there is no need at this time for the State to initiate the process of assuming the entire cost of the prosecution function, especially given the State's present fiscal situation, although some members have urged that this issue be revisited once the economy improves. See note 5, *supra*. A completely unified and centralized prosecution system would not necessarily perform more cost-effectively than the one that exists today, and shifting the entire cost burden from county treasuries to the State Treasury would not necessarily ensure that overall costs are reduced. A wholesale transfer of funding responsibility is not the only way to achieve efficiencies and economies of scale, to control and contain costs, or to improve the process by which the county prosecutors' budgets are determined, and therefore the Study Commission will propose throughout this Report alternatives to a complete state "takeover" of the prosecution function.

Aside from fiscal considerations, the Study Commission believes that shifting prosecution costs from county treasuries to the State Treasury would not necessarily lead to better prosecution services. In fact, for reasons more fully set forth in the next section of this Report, imposing the

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The Study Commission's findings and recommendations focus exclusively on the investigation and prosecution of indictable crimes by county prosecutors and the Division of Criminal Justice. The Study Commission did not examine New Jersey's system for prosecuting non-indictable offenses in municipal court. The prosecution of non-indictable matters (e.g., disorderly and petty disorderly persons offenses, traffic offenses, including driving while intoxicated, and municipal ordinance violations) are generally handled by municipal prosecutors, who are appointed and paid by municipal governments, although county prosecutors have authority to appear in municipal court, may supersede a municipal court prosecution, and handle *de novo* appeals of municipal court convictions heard in Superior Court.

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This cost estimate is based solely on current personnel expenses, and does not include operating expenses such as equipment costs, or "indirect costs" that are currently borne by counties, such as the cost of office space provided to prosecutors in county-owned or leased buildings, and other shared costs and services that are embedded within each county's budget.

State bureaucracy upon the prosecution function might actually have the opposite effect by making prosecutors less able to develop close working relationships with local police departments, to service and provide supervision and oversight of those departments, and to respond with agility to evolving local needs and conditions.

2. The Unification of the Judiciary Does Not Provide a Workable Model for the Prosecution Function

A. *Some of the Justifications and Motivation for Statewide Unification of the Superior Courts Do Not Apply to Prosecuting Agencies*

The Study Commission carefully examined the consolidation of the Superior Courts that was achieved in the 1990s with the State Judicial Unification Act, N.J.S.A. 2B:10-1 et seq. That statute, which was adopted in 1993, provided that the State would pay for judicial costs and probation costs, that all judicial employees would be employees of the State, and that any judicial fees or probation fees collected would be paid to the State Treasury. N.J.S.A. 2B:10-4. The act's declaration of findings explained that the method of financing the State's judicial system that existed before unification had created undue hardships for both the counties and the courts. The Legislature found that counties before the takeover had to balance the financial needs of the judicial system with the need to provide essential county services, and that county officials had no role in the oversight of court operations. As a result of the differing funding bases among the counties, the act explained, the courts had varying levels of resources available to fulfill their responsibilities, and those differing bases and varying levels of available resources significantly hindered the development and implementation of a unified administrative system for the courts. N.J.S.A. 2B:10-2.

It is especially important to note for purposes of the Study Commission's analysis that among the various reasons for consolidation set forth in the unification act's declaration of findings, no mention is made of the goal of achieving a reduction in the overall administrative costs of the judicial system. The goal of the judicial unification initiative was to *shift* costs and tax burdens, *see* N.J.S.A. 2B:10-2f, and to achieve a more equitable allocation of resources within the judicial system. *See* N.J.S.A. 2B:10-2e. Neither the intent nor the result of unification was to reduce overall costs by eliminating redundancies or by sharing services.

The assumption of the costs of operating the Superior Court system was accomplished over the span of several years. The Unification Act provided for the certification by each county's chief financial officer of the total fiscal year 1993 expenditures for judicial costs and probation costs, less equipment costs and revenues for judicial and probation fees. The net monies expended by the counties in 1993 became the "base year amount." N.J.S.A. 2B: 10-5. The act prescribed a schedule for payment of the county share of costs so that the State assumption of those costs occurred gradually and predictably. The act specified that in 1995, counties would pay 87.5% of the base year amount, 62.5% in 1996, and 50% in 1997. The act finally provided that the State would pay *all* costs

beginning in local budget year 1998. N.J.S.A. 2B:10-6.

At first glance, the circumstances found by the Legislature as necessitating judicial unification may seem to apply as well to the prosecution function. As explained more fully in Section 3, county officials today likewise have to balance the needs of the county prosecutors with the need to provide other essential county services. The counties today face hardships in funding the county prosecutor offices, especially in the current economic crisis, and county officials have no role in the oversight of the law enforcement operations of the county prosecutors. Moreover, there are certainly differing funding bases among the counties, and thus varying levels of resources available for county prosecutors to fulfill their responsibilities. Notwithstanding these similarities between the judicial system before its unification and the current prosecution system, on closer examination, there are also very significant differences owing to the fundamental nature of a county prosecutor's responsibilities as compared to the role and functions of a neutral and detached judiciary.

The Study Commission wishes to express its gratitude to the Honorable Glenn A. Grant, J.A.D., Administrative Director of the Courts, and also to the Honorable Edward W. Beglin, Jr., A.J.S.C. (ret.), who explained to us how and why the Judiciary undertook the task of unifying the Superior Court system.⁸ We learned that this had been an enormously difficult and complex undertaking. Even ignoring for the moment that the State's current economic and fiscal climate would likely make implementing a comparable unification project that much more difficult at this time, and putting aside that any effort to consolidate the county prosecutors' offices would involve more collective bargaining units⁹ than had to be brought into the fold in the judicial unification project, more fundamentally, our examination of the judicial unification precedent suggests that the underlying reasons that gave impetus to the consolidation of the Superior Courts do not apply with equal force to the prosecution function. In fact, centralization of the prosecution function might unwittingly undermine rather than enhance the ability of prosecutors to perform some of their critical duties. Shifting direct oversight of all prosecution decisions to officials in Trenton could actually be detrimental to public safety if, as a result, prosecutors' offices were to become less agile in responding to changing local conditions, and less responsive to the needs of the myriad of local police departments that are responsible for the lion's share of the State's criminal caseload.

The consolidation of the courts and all court staff proceeded from a Chief Justice's vision and a firm belief in the goal of achieving statewide uniformity in the administration of justice. While statewide uniformity is a legitimate and important objective, the benefits of having a uniform system

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The Study Commission notes that no effort has been undertaken to achieve a comparable unification of the municipal courts, although the Supreme Court and the Administrative Office of the Courts in recent years have made great strides in enhancing the efficiency and professionalism of the municipal court system. We think it is instructive that these important enhancements in the quality of municipal court services were achieved without making all municipal court judges and court staff state employees.

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There are at present eighty-one collective bargaining units representing law enforcement and non-sworn employees of the county prosecutors' offices. See Table I.

throughout the State must be carefully weighed against the advantages of maintaining a local perspective on crime. The optimal balance of these competing interests is different for judges than for prosecutors, who have a very different mission. Unlike judicial officers, prosecutors and other law enforcement officers are advocates¹⁰ for their constituencies, and are neither neutral nor detached from the crime problems that confront our communities. Judges do not decide what cases ought to be investigated and indicted. Nor do they set enforcement priorities for local police departments. Prosecutors in this State do just those things.

The goal of uniformity is compelling to the Judiciary because a judge hearing a case should be expected to reach the same decision, for the same reasons, regardless where he or she is sitting within the State. After all, the criminal statutes that judges apply, the constitutional rights they interpret and safeguard, and the Rules of Court they implement are the same throughout the State. County prosecutors, in contrast, cannot ignore the idiosyncracies of the local jurisdictions they serve and operate within. Indeed, to be effective, a law enforcement executive, including especially a county prosecutor as the *chief* law enforcement officer within a local jurisdiction, must be aware of and remain responsive to local crime threats and other local conditions, and must set enforcement priorities and policies based on those conditions. In sum, while criminal statutes do not vary by county, local variations in criminal conduct and the needs of the community may dictate different enforcement and prosecution priorities and policies.

It is likewise imperative that prosecutors remain familiar with and account for the vicissitudes of local juries when exercising their case screening, charging, and plea negotiation discretion. Juries

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The Study Commission recognizes that the Office of the Public Defender is centralized in the sense that all assistant and deputy assistant public defenders are State employees. Even putting aside that many defense attorneys paid by the Office of the Public Defender are so-called "pool attorneys" who are not full-time governmental employees at all, the structure and reporting mechanisms of the Public Defender's Office is not a suitable model for prosecutors. Public defenders are assigned to represent individual clients in cases where the county prosecutor has decided that prosecution is warranted. Public defenders are concerned only with the fate of their present, individual client. They have no role in setting enforcement or prosecution policies, and unlike prosecutors, they do not need to respond to evolving crime threats and public demands and expectations. Nor do public defenders need to oversee and maintain working relationships with police departments. Thus, while public defenders, prosecutors, and judges are all part of a complex and dynamic system, and thus must work cooperatively to keep that system operating efficiently, the organizational structure of the Office of the Public Defender has no bearing on the question whether county prosecutors and their assistants should become State employees working directly for the Attorney General.

There is, however, one area where the structure and operations of the Public Defender's office provides a useful and cost-effective model that prosecutors could follow. In addition to employing a cadre of deputy assistant public defenders who are assigned full-time to its Appellate Section, the Public Defender's Office retains private counsel to handle a significant number of appeals filed on behalf of indigent defendants. In Section 5, the Study Commission recommends that the Attorney General should likewise retain private attorneys to research and write briefs under the auspices of the Division of Criminal Justice Appellate Bureau.

are drawn from county jury pools¹¹ and thus reflect local attitudes and opinions about crime, and about police. The undeniable truth is that those public attitudes and opinions are *not* uniform throughout the State. In some jurisdictions, for example, juries generally accept the credibility of police witnesses, whereas in other jurisdictions, regrettably, juries may view police testimony with more skepticism. As a result, a criminal prosecution that may be a strong case in one courthouse may be problematic if it were to be brought in another venue. That is the nature of the influence of demographics on our jury system, and those circumstances cannot be changed by any government edict calling for greater statewide uniformity.

In sum, while statewide uniformity is an important consideration, especially with respect to certain specific aspects of the prosecution function that we describe more fully in Section 5, the goal of achieving statewide uniformity in the administration of criminal laws does not warrant undertaking a major overhaul of our prosecution system. That is especially true when one considers that uniformity affords no fiscal benefit in terms of a reduction in overall costs, and that compared to other states, New Jersey already has a means to achieve an appropriate degree of statewide uniformity by the prudent exercise of our Attorney General's unique supervisory authority over county prosecutors as the State's chief law enforcement officer.

B. *The "Vicinage" Model Used by the Judiciary Would Provide No Benefit to the County Prosecutors' Offices in the Jurisdictions That Handle Relatively Higher Numbers of Criminal Prosecutions*

The Study Commission considered whether it would make sense to re-align the county prosecutors' offices to correspond to the fifteen vicinages that have been established by the Judiciary. The Study Commission quickly realized that even assuming for purposes of argument that there would be some cost savings in such a consolidation, the re-alignment and elimination of several county prosecutor positions would impact only those less populous counties with comparatively small criminal caseloads. See Table 3.

There are obvious practical and logistical difficulties that would attend any such reconfiguration of prosecutor jurisdiction, including the need to amend the State Constitution to convert at least some county prosecutors into "vicinage" or "district" prosecutors. These multi-county prosecutors would have to oversee and service the needs of a greater number of police departments operating within their expanded geographic jurisdiction. But even putting aside these important logistical and practical hurdles, a vicinage-based consolidation effort would do nothing to address the fiscal and workload problems that are being experienced in the densely-populated urban counties that account for most of the criminal cases in the State, and that also account for most

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See N.J.S.A. 2B:20-2 (names of persons eligible for jury service are selected from a single "juror source list" comprised of county residents). See also N.J.S.A. 2B:23-9 (explaining procedures for use of a foreign petit jury drawn from outside the county where the court is sitting).

of the taxpayer dollars that are expended on the prosecution function. The Study Commission believes that it would make no sense to undertake a complex, labor-intensive reconfiguration that would essentially ignore the vexing crime and funding problems extant in these urban counties.

3. The Process for Determining the County Prosecutors' Budgets, and for Supplementing Those Budgets With State Aid, When Needed, Can and Should be Improved

A. *Funding Disparities Among the Counties Need to be Addressed*

The process for determining a county prosecutor's budget varies in different counties. As a result of differing funding bases and various levels of available resources among the counties, the county prosecutors' budgets are not consistent throughout the State. The current prosecution system relies on no less than twenty-two separate funding entities: the State Treasury, which pays for the New Jersey Division of Criminal Justice in the Department of Law and Public Safety, and the twenty-one counties, which independently develop a budget for their own county prosecutor's office. This system allows if not invites local variations.

Not surprisingly, the budget process varies by local custom and tradition. In some counties, for example, the county administration essentially informs the prosecutor of a total allocated budget within which the prosecutor must operate. While the prosecutors in these counties may have some flexibility in deciding how monies will be spent within their assigned budget allowance, there is little opportunity for them to negotiate a higher budget. In other jurisdictions, in contrast, prosecutors may have greater influence in setting the total budget that is allocated to their offices.

Data collected on an annual basis by the Attorney General confirm that there are marked differences among the counties with respect to important budgetary benchmarks, such as the salaries paid to county prosecutor employees. With respect to assistant prosecutors, the median salary as of August 1, 2010 was \$87,418. The median salary in the highest-ranking county was \$130,029, while the median salary in the lowest-ranking county was \$68,854. While some of these discrepancies can be explained by differences in the average length of service, and differences in the average cost of living in regions within the State, as shown in Table 4, it is clear that even accounting for varying average levels of experience, assistant prosecutor salaries are by no means uniform across the State. Some counties simply pay assistant prosecutors better than other counties do. Similar disparities exist with respect to the salaries paid to detectives and investigators. See Table 5.

These marked variations reflect the fact that the budgetary process is complex, and in most instances, cannot be explained merely by plugging objective data into a mathematical formula. Rather, these variations may reflect different priorities that are attributed by local governing bodies to the prosecution function, and may also be influenced by intangible factors, such as a county

prosecutor's personal relationship with the county administration and members of the board of chosen freeholders. When one adds to the mix that some counties are more affluent than others, it is little wonder that there are significant differences among the county prosecutor offices in terms of staffing levels and attorney caseloads as well as variations in employee salaries and benefits. While the Study Commission does not recommend a totally unified system in which a single funding entity develops a single budget for all prosecutors across the State, the Study Commission believes that there are steps that should be taken to make the budgetary process more objective, better informed by reliable data concerning both public safety needs and prosecutor performance, and more transparent to public scrutiny. These steps are described more fully in Sections 3(D) and (E).

B. *County Officials Need New Tools to Control Budget Growth*

County officials represented on the Study Commission expressed frustration that they have comparatively little control over the county prosecutor's budget. For one thing, because the lion's share of each prosecutor's budget is dedicated to salaries and fringe benefits, these budgets are driven, ultimately, by the same forces that have caused other governmental budgets to grow uncontrollably. Members of the Study Commission reported that the laws governing contract negotiations and arbitration practices have unduly favored collective bargaining units, especially when law enforcement officers and agencies were involved. Negotiations with municipal and other county law enforcement collective bargaining groups have historically set the pace for the salary adjustments that are awarded to county prosecutor staff. In practical application and effect, every contract raise awarded to one bargaining unit has had a significant impact on the negotiations with other units in other jurisdictions.

The Study Commission quickly recognized that this problem has by no means been limited to county prosecutor budgets, and could only be addressed in the larger context of comprehensive reform of the State's collective bargaining and arbitration systems. The Study Commission commends the recent enactment of remedial legislation that will change the way that the interest arbitration process works and that will give county and local officials greater ability to control future spending. See P.L. 2010, c. 105. As noted at the end of the Introduction to this Report, the importance of arbitration reform cannot be overstated. Without it, our recommendations concerning fiscal matters would likely be ineffective at controlling budget growth. Indeed, the 2% cap on county spending mandated by P.L. 2010, c. 44 would have exacerbated the below-described challenges that county administrators and freeholder boards face in funding the county prosecutors' offices had the spending cap taken effect on January 1, 2011 without arbitration reform.¹²

Aside from the compelling need for comprehensive collective bargaining reform, some Study

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Major legislative developments occurred as the Study Commission was completing its work. Both houses of the Legislature passed arbitration reform legislation after our final meeting, and the Governor signed P.L. 2010, c. 105 on December 21, 2010. The Commission had been prepared to strongly urge swift adoption of arbitration reform of the type recommended in the Governor's "tool kit" and now codified in the new statute. This Final Report has been updated to reflect this significant and salutary development.

Commission members expressed frustration that they have less control over their county prosecutor's budget than they exercise over other county governmental operations for which they provide funding. These members cite, for example, to a State statute, N.J.S.A. 2A:158-7, that provides an unusual means by which a prosecutor may challenge his or her office's budget appropriation.¹³ County prosecutors are authorized by this statute to file a lawsuit in which the assignment judge is called upon to identify expenses that were not approved in the prosecutor's budget, but that are reasonably necessary for the prosecutor to fulfill his or her statutory obligation to use all reasonable and lawful diligence for the detection, arrest, indictment, and conviction of offenders against the laws. *See In re Bigley*, 55 N.J. 53 (1969). The court hearing the prosecutor's Bigley application may order the county to increase the prosecutor's budget to pay for those additional necessary expenses. *See also In re Taylor*, 196 N.J. 162 (2008) (confirming that the court may only order the county to pay for expenses that are found to be "reasonably necessary," and not those that are "appropriate" but not necessary).

County administrators note from their practical experience that while formal Bigley applications have only rarely been filed, the mere possibility that such a suit might be brought can have a significant impact on budget negotiations and, ultimately, on funding decisions. Just as county officials must consider what might ultimately happen if stalled contract negotiations were to be decided by arbitration, they must consider what might happen if a funding dispute with the prosecutor had to be resolved by the assignment judge in a Bigley action. The mere threat of a Bigley application, the county executives suggest, puts them at a disadvantage when negotiating the prosecutors' budgets. *See In re Mercer Freeholder Bd. v. Mercer County Pros'r*, 172 N.J. Super. 411, 414 (App. Div. 1980) (observing that the Bigley statute "indicates a legislative intent to place the prosecutor in a dominant position with relation to the freeholders for the purposes of maintaining his independence and effectiveness").

The Study Commission believes that the Bigley statute should be retained to serve as a backstop to ensure adequate funding of the prosecution function, although we are also convinced that this statutory device should only be used as a last resort when needed to ensure public safety. The Study Commission recognizes that the current system puts county executives and freeholder boards in an especially difficult position during times of fiscal crisis. The cap imposed on property tax levies and budget growth applies to the county's overall budget, and not to each line item or to the budget appropriated to a specific agency or department. Given the paramount importance of public

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The Bigley statute, N.J.S.A. 2A:158-7, which authorizes the assignment judge to approve expenses of the prosecutor that exceed the funds appropriated by the county, provides that:

All necessary expenses incurred by the prosecutor for each county in the detection, arrest, indictment and conviction of offenders against the laws shall, upon being certified by the prosecutor and approved, under his hand, by a judge of the Superior Court, be paid by the county treasurer whenever the same shall be approved by the board of chosen freeholders of such county. *The amount or amounts to be expended shall not exceed the amount fixed by the board of chosen freeholders in its regular or emergency appropriation, unless such expenditure is specifically authorized by order of the assignment judge of the Superior Court for such county* (emphasis added to show the distinctive Bigley provision).

safety, the statutorily-imposed duty to pay for all reasonably necessary prosecutor expenses means that other county-funded programs and services may need to be cut in order to fully fund the county prosecutor's office and yet stay within the cap. *Accord In re Application of Ruvoldt*, 187 N.J. Super. 81, 88-89 (App. Div. 1982) (holding that the trial court hearing the prosecutor's Bigley application should have limited the inquiry to whether additional funding was reasonably necessary without concern for the limits imposed on the overall county budget by the Local Government Cap Law).

It bears noting that a "baseline" cost-shifting system proposed by some county executives and described more fully in Section 3(C) implicitly recognizes that the demands of public safety may require growth in a county prosecutor's budget that exceeds 2% , which is the new cap on a county government's overall budget established by N.J.S.A. 40A:4-45.4. Indeed, if a county prosecutor's budget were to be treated in isolation and restricted to 2% annual growth by the cap law, then there would be no reason for having the baseline cost-shifting proposal, since in no event could the State's proposed obligation to assume costs over the growth adjustment ever be triggered. By the same token, it make no sense to impose a hard cap on the county prosecutor's isolated budget, while allowing other county-funded departments and agencies to experience greater growth provided that the county's overall budget stays within the cap. That would stand the Bigley statute and case law on their heads by eliminating any flexibility at all to increase the prosecutor's budget at the expense of some other county function or service.

What is needed, ultimately, is a balanced system that affirms that public safety is the highest funding priority, but that also acknowledges that there are other funding priorities that county budgets must account for. County officials have called in this regard for county prosecutors' budgets to be "restricted in the same manner as other budgets." The Commission believes that objective can be achieved if the holding in *In re Application of Ruvoldt*, *supra*, were to be re-examined to the extent that the case stands for the proposition that the assignment judge hearing a Bigley application should completely disregard the Local Government Cap Law. To address the frustrations expressed by county officials that Bigley jurisprudence creates an unlevel playing field – the "dominant position" alluded to in the *In re Mercer Freeholder Bd.* opinion – we recommend that the Attorney General issue a Directive explaining to county prosecutors the following procedures that must be followed and the criteria that must used in any Bigley application.

Specifically, the Directive should codify the current practice of requiring the Attorney General to review and approve a Bigley application before it may be formally submitted to the assignment judge. In deciding whether to approve a prosecutor's request to file a Bigley application, the Directive should make clear that the Attorney General must consider the impact that the prosecutor's request would have on the county's overall budget, taking into account the cap law. The Attorney General's determination of what expenses are "*reasonably necessary*," in other words, should not be done in artificial isolation of the economic and fiscal climate in which all budgets are fashioned. In this way, the Bigley approval process would embrace the arguments made by county officials on the Study Commission that despite the importance of the prosecution function, county prosecutors' budgets should not be immune from the fiscal constraints imposed on other government functions, and that county prosecutors must be prepared to share the pain of budget limitations that are uniformly imposed on all other government functions in a time of fiscal crisis.

Relatedly, the Attorney General Directive should make clear that a county prosecutor may not file a Bigley application unless he or she can show that the county had failed to dedicate an appropriate proportion of the county's overall budget to fund the county prosecutor's office. Absent extraordinary and compelling circumstances relating to public safety, a Bigley application should not be approved where, for example, the county has proposed a flat or reduced county prosecutor budget that is commensurate with funding reductions or limitations imposed on other county-funded agencies and departments (*i.e., e.g.*, where the percentage of the county budget dedicated to prosecutor expenses remains unchanged from past years, even though the amount of the county's total budget has been reduced). Rather, a Bigley application should be reserved for those rare occasions where the county has chosen to de-prioritize public safety by, for example, proposing cuts in a county prosecutor's budget that are greater than cuts made to other county-funded functions.¹⁴

The Attorney General Directive, moreover, should provide county officials with an opportunity to supply information and reasons for their budget decisions, including detailed information about funding levels for other county functions. By affording county officials input in the review and approval process, the Attorney General will have more information with which to determine not just whether the prosecutor's request for supplemental funding is needed for public safety reasons based on a traditional law enforcement analysis (*e.g.*, an examination of crime statistics and trends), but also whether the county prosecutor's request for supplemental funding is reasonable considering the larger context of the county's overall fiscal situation.

We see this approach as a logical extension of the principle that while counties should be expected to dedicate an appropriate proportion of their overall budget to fund the county prosecutor's office, as determined by historical experience in the subject county and current practice in other comparable counties, they should not be required by State law or by court order to dedicate a larger share than that. When a county appropriates a fair share of its overall budget to fund the county prosecutor's office and yet additional funding is needed to meet the reasonable needs of public safety, the Study Commission believes that the State should, to the greatest extent possible, assume responsibility for paying for this additional amount, and we propose to accomplish this cost-shifting by means of a State aid grant program described in Section 3(D). The Study Commission is thus proposing a significant change to the county prosecutors' funding system that would not only make Bigley applications even more rare, but would also fundamentally transform the Bigley analytical process into one that turns county administrators and county prosecutors into co-applicants rather than litigation adversaries. The proposed new way to supplement prosecutors' budgets, displacing a law suit with a grant application, essentially beats the sword of a Bigley action into a plowshare.

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The Bigley statute should therefore be retained as a public safety "backstop" to deal with instances where a county does not dedicate an appropriate percentage of its overall budget to fund the prosecutor's office.

C. *A "Baseline" Cost-Shifting System Proposed by Some County Executives Suggests an Opportunity for Significant Reform*

To address some of the above-described concerns with the current funding system, some of the county officials on the Study Commission proposed a new funding scheme whereby each county prosecutor's current budget would be used as a "baseline."¹⁵ In future years, the State would be responsible for paying increases over those baseline budgets after accounting for some annual adjustment (e.g., 2%).¹⁶ In this way, the State Treasury would hold counties harmless for future growth in the prosecutor's budget above the annual growth adjustment.

Precedent for this "baseline" approach can be found in the manner in which the costs of the county prosecutors' personal salaries are presently paid for. The salary of a county prosecutor is not subject to negotiation, but rather is fixed by statute. See N.J.S.A. 2A:158-10. The statutorily-prescribed annual salary for county prosecutors was \$100,000 on January 17, 1996, which was the effective date of the constitutional amendment that generally prohibits unfunded State mandates, known colloquially as the "State mandate, State pay" provision. See N.J. Const. Article VII, Sec. II, Par. 5. When N.J.S.A. 2A:158-10 was next amended to increase the prosecutors' salary, a clause was added that provided that, "[t]here is appropriated annually to the Department of Community Affairs for payment to each county for additional salary costs resulting from the increase in the salary of county prosecutors an amount equal to the amount by which the annual salary paid to the county prosecutor under this section exceeds \$100,000.00."¹⁷

The "baseline" cost-shifting approach advocated by some of the county executives on the Study Commission deserves careful consideration. This proposal would have the State assume prosecution costs gradually. It bears noting at this point that any such gradual shifting of the fiscal

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At first glance, the "baseline" used in the recent proposal might seem to be similar to the "base year amount" that was used in the State Judicial Unification Act. See N.J.S.A. 2B:10-2 and 5. The funding scheme recently proposed by some county executives, however, is significantly different from the judicial unification model in that their proposal would only shift to the State future costs above the baseline as augmented each year by an annual growth adjustment. Under the county executive's proposal, counties would remain responsible in perpetuity for paying all costs below the incrementally adjusted baseline. Under the State Judicial Unification Act, in contrast, the State after several years assumed the *entire* cost of operating the Superior Courts and probation departments.

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Linking the annual growth adjustment to the budget cap established in N.J.S.A. 40A:4-45.4, as amended by P.L. 2010, c. 44, would help to ameliorate the practical problem that county officials face when they are forced to cut other county programs and services to pay for all "reasonably necessary" increases in the prosecutor's budget and still stay within the limits of the cap imposed on the county's overall budget.

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It should be noted that while the State presently pays a significant share of each prosecutor's salary, the appointed prosecutors remain county employees, confirming that it is possible to address fiscal problems by transferring funds from one level of government to another without having to transfer personnel from county to state employment. Relatedly, it is not uncommon for a salary to be paid in whole or in part by a grant awarded by another level of government, in which event the grant-funded person is an employee of the agency that is receiving the grant, not the agency that is providing the grant funds.

burden from the counties to the State Treasury presupposes a long-term commitment by the State Legislature and the Governor. The Legislature, however, cannot appropriate monies for expenditure in future fiscal years. This means that at any time in the future, the State could decline to pay for expenses above the annual growth adjustment.

Putting aside the question of long-term commitment, which is an issue that applies as well to the current County Prosecutor Funding Initiative Pilot Program,¹⁸ there are two general concerns with the base-line cost shifting program. The first concern is that while the proposal addresses the problem of budget growth in future years – a problem that is now addressed by the recent enactment of arbitration reform – it does not deal with the *current* funding inequities and financial burdens. The baseline proposal would afford no financial relief to those counties that are currently receiving supplemental State appropriations under the County Prosecutor Funding Initiative Pilot Program.

The second concern with the baseline cost-shifting approach is that it would not be practicable unless it were to be implemented in conjunction with a requirement that the State control whether and to what extent the budget exceeds the prescribed growth adjustment (*e.g.*, by giving the Attorney General the authority to review and approve (or veto) county prosecutor budgets). This would go too far in injecting the Attorney General into local budget affairs. That level of Attorney General involvement in the budget process would be more consonant with a complete takeover of the prosecutors' offices, which is something that the Study Commission does not recommend. While we believe that the Attorney General should play a greater role in the process used to determine the county prosecutors' budgets by producing an objective analysis of data to inform local budgetary decisions, we do not believe that *de facto* unification of the budgetary process is necessary, or warranted.

To understand why it would be necessary as a practical matter for the Attorney General or some other State official to approve local prosecution budgets under the baseline cost-shifting scheme, it is instructive to examine the above-described model for defraying the costs of a portion of the county prosecutors' personal salaries. By periodically amending N.J.S.A. 2A:158-10, the Legislature and the Governor decide when and by how much to increase the county prosecutors' personal salary, and in this way, the State directly controls the amount of funds that it must pay to the counties to defray the statutorily-stipulated salary increases. Unless the Attorney General, State Treasurer, or some other State-level official exercises comparable control over any budget increases above the annual baseline adjustment, the supplemental funding system proposed by some county executives would make the State liable for paying for future budget increases that the State had neither directed nor approved, including prosecutor staff salary increases that will be awarded in contract negotiations in which the State does not even participate, much less control.¹⁹

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The State aid grant program discussed in Section 3(D), in contrast, would be funded by new revenue collected from convicted defendants or derived from the sale of forfeited assets that has been involved in criminal activity.

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It was suggested during our deliberations that the State might only be financially responsible for budget increases over the prescribed growth adjustment if the county had willingly negotiated for salary increases above the adjustment. In

Ironically, any such cost-shifting system could unwittingly weaken one of the built-in checks against budget growth by reducing the incentive for county officials to keep county prosecutor budgets as lean as the demands of public safety allow to the extent that county officials would be spending State, rather than county, taxpayer monies. As a general principle of fiscal management and accountability, the governmental entity that makes funding decisions should be the one to shoulder the fiscal implications of those decisions. Such accountability is an important part of a dynamic system of checks and balances. When government officials are allowed to spend money provided by taxpayers to whom those officials do not answer, there is a much greater potential for largesse, and thus a much greater need for close supervision of those expenditures.

The Study Commission believes that there is no need to erect a cumbersome new State bureaucracy to oversee and control the negotiation of the county prosecutors' budgets. While we do recommend that the Attorney General play a greater role in the budgetary process, *see* Sections 3(D) and (E), we do not think that the Attorney General should be tasked with the obligation to approve all county prosecutor budgets, especially when, as is most often the case, county administrators, freeholder boards, and county prosecutors are able to reach an accord on their own and without State-level intervention.

The Study Group also believes that it is important to retain a system in which local officials, who are accountable to the local electorate, have the authority to spend their own revenues on prosecution services that are above the level of some statewide "average." It would be inappropriate to establish a funding system that encourages counties to "regress to the mean" in terms of providing prosecution services to protect public safety. Consistent with the principle of "home rule," so long as they stay within the limits imposed by the Local Government Cap Law, local officials reacting to the expectations of their constituents should have the right to choose to spend more of their own revenues on public safety programs than an amount that is deemed by State officials to be minimally necessary to satisfy the Bigley standard.

Although it would not be feasible to implement the baseline cost-shifting model without ceding *de facto* funding control to the State, the county executives' creative proposal was not dismissed lightly by the Study Commission, since it suggested a variation²⁰ that might simultaneously shift some costs and achieve overall cost containment, while still preserving the

other words, under this more restrictive variation of the baseline proposal, the State's fiscal liability would attach only upon an *arbitration award* above the growth adjustment. It must be noted that this suggestion was made before P.L. 2010, c. 105 was enacted. The recent adoption of arbitration reform and imposition of a 2% cap on arbitration awards has the practical effect of rendering this variation of the baseline cost-shifting system superfluous.

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The Study Commission embraces one of the fundamental characteristics of the baseline proposal, that is, the notion that current and historical expenditures should be taken into account in determining an appropriate budget. These baselines should be used in determining what expenditures are "reasonably necessary" under the Bigley-like analysis that is described in Section 3(E) and that would be adapted to implement the State aid grant program we propose in Section 3(D).

critical statutory backstop that protects public safety by ensuring adequate funding of the prosecution function. Indeed, it is possible to adapt and reconfigure the Bigley analytical process so that it becomes a tool that benefits both county prosecutors' offices and county executives/freeholder boards, rather than a weapon that turns them into litigation adversaries. Specifically, the Study Commission proposes in Section 3(D) to replicate the fact-driven, analytical methodology that is used to resolve Bigley cases, but use that methodology as the foundation for a grant application to the Department of Law and Public Safety, rather than a lawsuit decided by a judge after an adversarial plenary hearing. Under this variation of a cost-shifting model, unfunded but reasonably necessary expenses might be paid from a state grant (provided that certain conditions are met, and State aid grant funds are available), rather than from the county budget.

D. *The State Should Establish a New System for Providing Financial Aid to Counties to Cover Reasonably Necessary Supplemental Expenses Through Special Needs Grants*

Since FY 2005, the State has provided financial assistance to several counties by means of the County Prosecutor Funding Initiative Pilot Program. Table 6 shows how much revenue has been provided to these select counties under the pilot program since its inception. The amount of financial aid provided under the current pilot program relies completely on annual appropriations, and as shown in Table 6, in the last funding cycle, that amount was reduced by half.

The viability of the current pilot program, or any other supplemental funding system, depends ultimately on the amount of funds that will be available to be distributed to eligible counties.²¹ The Study Commission thus recognizes the need to develop stable new sources of revenue to help cash-strapped counties to defray some of the costs of prosecution. In this Section of our Report, we describe how a proposed new financial assistance program might operate in terms of the fair allocation of supplemental funding. In Section 4, we offer specific recommendations concerning potential new sources of revenue that can help to make the supplemental funding system more sustainable and less dependent on fluctuations in State appropriations.

The Study Commission recommends that a new program be established that provides State aid based on an objective formula that accounts for need and performance information compiled by the Attorney General. This new State aid program should be used to provide financial assistance to counties that dedicate an appropriate proportion of their overall budget to fund the prosecutor's office (based upon peer-to-peer and historical analysis), but that are nonetheless unable to provide adequate funding for all reasonably necessary expenses based on an objective needs/performance

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As explained in note 5, *supra*, some members of the Study Commission would go further than funding the current pilot project, and urge that the State assume *all* of the costs of the prosecution function, at least in some of the State's most urban jurisdictions where crime rates are high and where county taxpayers bear a disproportionate burden of the costs of prosecution services.

formula that accounts for crime/arrest rates and other local public safety variables.

It must be noted at the outset that the proposed new supplemental funding system cannot be implemented immediately. It will take time to put in place the data-driven analytical system for determining grant awards to eligible counties we describe immediately below. Furthermore, to the extent that the new program will be funded through assessments imposed upon convicted offenders, *see* Section 4, it will take time for those assessments and successfully-collected revenues to accumulate, especially considering the prohibition against *ex post facto* penal laws that would apply to the imposition of any new cash penalty. Accordingly, the Study Commission recognizes that the Governor and the Legislature must in the mean time consider whether and to what extent the existing pilot program should be continued. Furthermore, the question whether the proposed new State aid grant program, once operational, replaces the current pilot program, or operates in addition to the pilot program, is a matter for the Governor and State Legislature to decide.

Under the new supplemental funding system that we propose, the Attorney General, in consultation with county prosecutors and county officials, would establish a process to review and score grant applications. As part of this analytical process, one or more multivariate formulae might be developed to determine what prosecutorial expenses are reasonably necessary,²² and to determine what proportion of the county's overall budget a county would reasonably be expected to dedicate to the prosecutor's budget. If the county appropriates the amount that it would be expected to dedicate and there is a difference between that amount and the amount deemed to be reasonably necessary for public protection, then an award from the State aid grant fund would be used to cover the difference.

Importantly, the proposed new grant-in-aid program would rely upon an objective analysis of an applicant county prosecutor's office budget patterned after the careful review process that is used today in a formal Bigley application, except that in this instance, the supplemental funding to defray unfunded expenses that are deemed reasonably necessary would be determined by the Attorney General rather than by an assignment judge, and would come from a State grant award, rather than from the county budget pursuant to a court order. A county prosecutor would be required to apply for a grant award from this State aid fund before resorting to a Bigley application, thus greatly reducing the need for, frequency, and perhaps magnitude of Bigley applications, even putting aside the new restrictions and criteria for approving such applications that we propose in Section 3(B) of this Report.

E. *All County Prosecutor Budgets Should be Developed Through a "Performance-Based" Budgeting Process That is Informed by Objective Data Compiled by the Attorney General*

While the Study Commission does not recommend statewide centralization of the process

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In Section 3(E), we describe in greater detail how this data-driven analytical process might work.

for allocating funds to pay for the costs of prosecution, the Commission does see the need at least for greater *standardization* of that process, so that prosecution budgets developed at the county level are based on appropriate criteria and informed by accurate data. While we do not recommend that the Attorney General be required to approve all county prosecutor budgets, we do believe that the Attorney General can and should play a greater role in the budgetary process by collecting and analyzing data needed to inform the budgetary decisions made by county officials. Specifically, State law should encourage and empower counties to adopt “performance-based” budgeting, that is, a system that relies upon accurate information about prosecutor performance and objectively demonstrated need.

Measuring the staffing needs and performance effectiveness of a county prosecutor’s office is a complex task; there is no one “magic formula” that can be applied to calculate a metaphysically ideal budget. There are, however, quantifiable benchmarks that can be used to inform the budgetary process. Two useful guides for determining the expenses that are reasonably necessary to ensure public safety are: 1) the level of funding that has been shown from past experience to be adequate for a particular county prosecutor’s office (*i.e.*, historical funding levels and performance measures, accounting for recently changed circumstances and environmental factors, such as changes in crime and case disposition rates), and 2) the current level of funding in “comparable” county prosecutor offices (*i.e.*, a “peer” analysis, accounting for variations in local conditions). As it turns out, both of these types of funding analyses are already being used to scrutinize prosecutor budgets, although on a sporadic basis.

Under current custom and practice, a county prosecutor must receive authorization from the Attorney General before filing a Bigley action.²³ If a county prosecutor anticipates that it may be necessary to challenge his or her budget through Bigley litigation, the prosecutor requests the Division of Criminal Justice to undertake a careful analysis of the prosecutor’s budget, comparing it to the budgets of neighboring or other comparable counties. This peer-to-peer comparison provides a benchmark for determining whether the funding approved by the freeholder board is adequate to address the county’s public safety needs. The Attorney General relies on this empirical analysis in deciding whether to authorize the county prosecutor to file a formal Bigley application, and in calculating the exact amount of additional funding that may be sought in the application to the assignment judge.

This analytical model should be adapted to inform the ordinary, routine budgetary process, rather than be used only on those rare occasions when Bigley litigation is being seriously contemplated. The Division of Criminal Justice should be provided with adequate resources to

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As more fully described in Section 3(B), the Study Commission recommends that the procedures and criteria used by the Attorney General to approve a county prosecutor’s request for permission to file a Bigley Action should be strengthened and codified in an Attorney General Directive.

perform this analysis for all county prosecutors' offices every year.²⁴ The Attorney General should develop the methodology used to conduct this analysis in consultation with the county prosecutors and county officials. Furthermore, county executives/administrators and boards of chosen freeholders should be provided with the results of the objective quantitative assessments of need at the beginning of the budgetary process, and also at the outset of contract negotiations with collective bargaining groups, so as to help inform budgetary decisions. The analysis should also be made available to the public so as to make the entire process more transparent and enhance the accountability of county administrations and freeholder boards for their funding decisions.

In addition, the Division of Criminal Justice, in consultation with the county prosecutors and county officials, should undertake a detailed and comprehensive analysis of all prosecutor budgets over time²⁵ to develop a formula or other methodology that can be used to determine basic prosecution staffing needs, accounting for all appropriate variables, including but not limited to crime rates, the volume of arrests and criminal complaints, controlling for type and seriousness of the charge, plea rates, and the number of trials. The analysis should also account for non-litigation prosecution activities that promote public safety, including but not limited to community outreach and law enforcement training activities. This research will help to identify and operationally define objective performance measures by studying the relationship between staffing levels (accounting for level of experience) and prosecutorial effectiveness (considering case outcomes such as conviction rates and time-to-disposition rates consistent with the speedy trial goals established by the Judiciary). Eventually, this evidence-based methodology could be used to help to standardize the budget process and, at a minimum, would serve as a useful starting point for making local budgetary decisions. This empirical methodology would also be used in determining awards under the State aid grant program proposed in Section 3(D).

The objective staffing level benchmarks developed by the Attorney General would not

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It must be noted that this research task will require a sophisticated analysis that recognizes that there may be complex and subtle feedback mechanisms at play. For example, the number of indictments, trials, and convictions by guilty plea – all variables typically used to measure prosecutorial workload and performance – may reflect case screening, charging, and plea negotiation decisions that were already influenced by staffing shortages, or by hard-to-quantify local variables (such as the perceived likelihood of convincing a local jury to convict in a certain type of case or involving certain types of witnesses). For this reason, it is conceivable if not likely that there cannot be one single, simple “formula” for determining “reasonably necessary” staffing levels for all counties. Rather, the analytical model will probably have to include adjustments that account for a wide range of local variables and unusual if not unique local circumstances.

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As noted above, recent county prosecutor budgets provide an important benchmark of the expenditures that are reasonably necessary to ensure adequate funding of the prosecution function. For this reason, the funding formulae developed by the Attorney General to inform the budgetary process and to implement the State aid grant program will incorporate many of the essential characteristics of the baseline cost-shifting system that had been considered by the Study Commission.

constitute a State mandate, but rather would be used to inform local budget decisions.²⁶ It is also important to note, in this regard, that consistent with the concept of “home rule” and the principle that local officials should be allowed to set funding priorities to address local needs and public expectations, especially with respect to local crime problems, county officials would be free to contribute more toward a prosecutor’s budget than that which is minimally required under the “reasonably necessary” standard. The proposed new process for determining objective staffing level benchmarks is intended to ensure that prosecution standards established by the Attorney General are met in every jurisdiction, not to require counties to “regress to the mean” in terms of prosecution services.

4. The State Should Find Additional Sources of Revenue to Help Counties Pay for Prosecution Services

The Study Commission has looked diligently for innovative sources of funding that might be used to help to pay for the costs of prosecution. We note in this regard that our recommendations described in Section 3(D) call upon the State to establish a new State aid grant program to provide financial assistance to counties with special needs. We anticipate that the Governor and State Treasurer will have expected us to try to identify new sources of revenue, or new uses of existing revenues, to pay for the new supplemental funding system that we are recommending.

A. *Certain Convicted Defendants Should be Required to Reimburse the Cost of Their Own Prosecutions*

So as to relieve at least some of the financial burden currently borne by both county and State taxpayers, legislation should be enacted to authorize a trial court, on application of the prosecutor, to impose an assessment upon a convicted offender to pay the costs of his or her prosecution. This reimbursement assessment or so-called “bill of taxed costs” would be the functional equivalent of attorney fees that can be awarded to prevailing parties in certain types of civil litigation. *Compare N.J.S.A. 2C:43-3.4* (authorizing restitution for costs incurred by a law enforcement agency in extraditing the defendant in certain circumstances). The trial court would determine the reasonable costs of investigation and prosecution based on information certified by the prosecutor, and would impose an assessment that accounts for the defendant’s ability to pay all or some of those actual costs.

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While the objective funding benchmarks would be advisory, and not binding, they would be relevant to the process of reviewing a prosecutor’s request to file a Bigley application. See Section 3(B), *supra*.

The Study Commission is mindful that many convicted offenders are indigent,²⁷ and all convicted criminals are already subject to a host of mandatory fines, fees, penalties, and other financial assessments.²⁸ Some of these assessments go largely uncollected, suggesting that we can only go to the well so often before it runs dry.²⁹ Even so, we suspect that there are at least some criminals who have been convicted of profit-minded crimes who could reasonably be expected to reimburse the costs of their own prosecution, and in this way contribute to the State aid grant fund proposed in Section 3(D).

B. *All Persons Convicted of an Indictable Crime or Disorderly Persons Offense Should be Assessed a Penalty to Help Fund the Proposed State Aid Grant Program*

The Study Commission recommends that State law should require the imposition of a fixed penalty against all persons convicted of an indictable crime or disorderly persons offense. By way of example, the mandatory penalty might be set at \$100.00 for a defendant who has been convicted in a single proceeding of an indictable crime, and \$50.00 for a defendant who has been convicted

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Current law authorizes the Office of the Public Defender to seek reimbursement for defense services provided to a defendant who "has or reasonably expects to have means to meet some part, though not all, of the costs of the services rendered to him..." See N.J.S.A. 2A:158A-16. While the statute that the Study Commission envisions for assessing prosecution costs might draw upon this feature of the public defender law, we expect that for the most part, the county prosecutors and Division of Criminal Justice would apply for assessed costs in cases where the convicted defendant has been represented by *privately-retained* counsel, since in those cases, defendants are much more likely to have the ability to pay a prosecution cost assessment.

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See e.g., N.J.S.A. 2C:43-3.1 (Victims of Crime Compensation Board penalty); N.J.S.A. 2C:43-3.2 (Safe Neighborhoods Services assessment); and N.J.S.A. 2C:43-3.3 (Law Enforcement Officers Training and Equipment Fund penalty). In addition to the foregoing assessments imposed upon convicted offenders without regard to the specific offense that had been committed, other monetary penalties and fees are imposed upon certain specified convictions. See e.g., N.J.S.A. 2C:35-15 (Drug Enforcement and Demand Reduction penalty); N.J.S.A. 2C:35-20 (forensic lab fee); N.J.S.A. 2C:43-3.5 (Drug Abuse Education Fund penalty); N.J.S.A. 2C:43-3.7 (surcharge for certain sex offenders); and N.J.S.A. 2C:43-3.8 (penalty for offenses involving computer criminal activity).

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This is especially likely to be true of defendants convicted in urban jurisdictions, where the proportion of offenders who are indigent is likely to be particularly high. It should be noted, however, that all or at least some portion of successfully-collected assessments could be deposited into the State aid grant fund proposed in Section 3(D), so that prosecution reimbursement revenues generated from a case involving an affluent defendant in one county, or in a case involving an affluent defendant prosecuted by the Division of Criminal Justice, may be used to provide financial assistance to the prosecutor's office in another county where assessment collection rates may be lower due to lower income levels. Such a system for re-distributing successfully-collected reimbursement assessments would also assuage concerns that prosecutors might make case decisions based on a defendant's willingness to pay an assessment that directly benefits the prosecutor's own budget. The legal and ethical issues posed by any such funding system are discussed more fully in Section 4(B) in the context of the re-distribution and use of forfeited assets.

in a single proceeding of a disorderly persons offense.³⁰ In 2009, 31,293 defendants in New Jersey were convicted of an indictable crime, and 36,913 were convicted of a disorderly persons offense.³¹ Based upon those annual conviction statistics, and assuming a 50% collection rate, approximately \$3.4 million in new revenues might thus be deposited each year in the proposed new State aid grant fund.

As noted in the preceding section, the Study Commission recognizes that there are limits on the amount of funds that can be collected from convicted criminals. We are also mindful that, depending on the order of collection, new mandatory assessments can reduce collections for existing fines, fees, and penalties. We nonetheless believe that it makes sense to require convicted offenders to help to shoulder at least some of the financial burden of prosecution that is today borne entirely by taxpayers.

C. *A Portion of County Prosecutor Forfeited Assets Could be Re-Distributed and Used to Help Fund the Proposed Supplemental State Aid Grant Program*

The Study Commission has carefully considered the feasibility of using revenues from the county prosecutors' asset forfeiture accounts to defray the costs of regular budgetary items and salaries. It is, after all, an attractive notion to suggest that ill-gotten assets that have already been taken from criminals should be used to pay for their own prosecutions. The Study Commission has concluded, however, that this approach is not viable, and would introduce a host of legal, ethical, and policy problems, not the least of which might be to render the entire civil forfeiture system constitutionally vulnerable.³²

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Recognizing the inherent difficulties in collecting monetary penalties imposed upon convicted offenders, the Study Commission does not recommend that the new prosecution fund penalty should be imposed on each charge or count that results in a conviction. Rather, a single penalty should be imposed on a defendant convicted at trial or by a guilty plea, regardless of the number of counts for which the defendant was convicted at that trial or as part of the negotiated guilty plea.

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These conviction statistics are derived from the Computerized Criminal History (CCH) database, which is supported by fingerprint identification. Because State law requires fingerprinting only for certain specified disorderly persons offenses (*i.e.*, drug offenses, shoplifting, prostitution, and domestic violence), the actual number of disorderly persons conviction incidents in 2009 is likely to be significantly higher than the figure presented above.

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The Study Commission is mindful in this regard that not long ago, New Jersey faced a lawsuit involving a due process challenge to the forfeiture law on the grounds that prosecutors have a direct stake in initiating asset forfeiture actions because prosecutors' offices directly benefit from forfeiture funds. The Appellate Division rejected that due process challenge, noting that "county prosecutors and the Attorney General cannot set budgets by anticipating forfeiture proceeds, or spend that money on regular salaries." *State v. One 1990 Thunderbird*, 371 N.J. Super. 228, 243 (App. Div. 2004), certif. den. 187 N.J. 83 (2006). The court went on to state that "the prohibitions against using forfeiture proceeds to fund regular salaries or normal operating needs, contained in the standards promulgated by the Attorney General and administered by that office, provide adequate generalized safeguards against use of the forfeiture process as a budget-

Aside from potential due process problems, the fact remains that forfeiture revenues are simply too unstable to be relied upon to pay recurring budget costs, such as salaries. In 2009, the combined forfeitures in all of the counties amounted to \$23.3 million. Just one year earlier, however, the statewide total was \$15.6 million. See Table 7. This instability is not surprising when one considers that forfeitures depend on seizures, which in turn may depend as much upon an element of luck as on the amount of effort expended by law enforcement in tracking down profit-minded criminals.

We are also struck by the wide variations in the amount of asset forfeitures among the counties. Those disparities suggest that the amount of forfeited assets may not necessarily reflect the extent of local criminal activity, or even the level of effort expended by county prosecutors in investigating and prosecuting the cases that result in forfeiture judgments. To some extent, rather, these stark disparities may be due to other extraneous factors, including the prevalence of interstate roadways within the county upon which some unplanned seizures happen to occur. We believe that there must be some way, besides happenstance, to fairly allocate forfeiture revenues garnered throughout the State in order to account for financial need so as to ensure that these monies are put to the best possible law enforcement use by those offices that need them the most.

While we are reluctant to suggest that forfeiture assets should ever be relied upon to support a county prosecutor's regular budget, there is one potential new use of forfeiture revenues that bears careful consideration. We believe that it might be possible to re-allocate some portion of county prosecutors' forfeiture accounts to defray at least some of the costs of the new State aid grant program that we propose in Section 3(D). While these monies would in that event be used to pay the costs of salaries, the grants administration program itself would provide a buffer between a prosecutor's decision to initiate a specific forfeiture action and the ultimate use of the proceeds of a successful forfeiture, thus attenuating the "bounty hunter" argument that rests at the heart of the due process challenge. As a general principle, were the State to implement the forfeiture re-distribution system that we envision, the prosecutor's office that is pursuing a forfeiture action would not have reason to believe that the proceeds of that civil action would wind up being used to pay for salaries or other regular budget expenses incurred by that office, since only a small portion of forfeited assets would be subject to re-distribution, and because it is more likely than not that re-distributed funds would ultimately be given to *other* prosecutors' offices via the State aid grant program.

We therefore recommend that the Attorney General and county prosecutors consider whether

increasing mechanism or any global incentive to proceed arbitrarily, capriciously, or unreasonably." Id. at 244.

In light of the Thunderbird court's reasoning, any relaxation of the current restrictions so as to allow forfeiture funds to be used to pay for regular prosecutorial salaries and budgets may substantially increase the likelihood that the entire forfeiture framework would be invalidated. This is especially true given that the constitutionality of civil forfeiture laws continues to be controversial. See Institute for Justice, Policing for Profit: The Abuse of Civil Asset Forfeiture (www.ij.org/PolicingForProfitPDF) (March 2010).

some portion of forfeited proceeds that today go the county prosecutor's forfeiture trust fund should instead be directed to the State aid grant fund proposed in Section 3(D) for distribution to eligible counties to defray the costs of funding county prosecutors' offices. The percentage of funds that are re-directed to the State aid grant fund should be based on the total amount of the county's annual forfeiture revenues, using a progressive scale that ensures that counties keep all of the forfeiture revenues they earn up to a prescribed amount. When forfeiture revenues exceed that base threshold amount, a varying percentage of the total would be re-directed to the State aid grant fund. The percentage would increase as the amount exceeds various thresholds, much like the brackets in a progressive tax system. In addition, there would be a maximum marginal contribution rate.

Merely by way of illustration, such a re-distribution scheme might provide that a county's forfeiture annual revenues under \$1,000,000.00 would be left intact; 10% of forfeiture revenues over \$1,000,000.00 but under \$2,000,000.00 would be re-directed to the State aid grant fund; 20% over \$2,000,000.00 but less than \$3,000,000.00 would be re-directed, and 30% of any amount greater than \$3,000,000.00 would be re-directed.³³

In designing any such forfeited asset re-allocation system, care should be taken not to effect the proportion of forfeiture assets that are distributed by prosecutors to police departments pursuant to N.J.S.A. 2C:64-6, especially when the award of so-called "contributive shares" is used as an inducement to encourage police departments to contribute personnel to regional multi-jurisdictional task forces. It would be ironic and unfortunate if a forfeited asset re-distribution system had the unintended effect of discouraging the consolidation and regionalization of law enforcement efforts.

5. Certain County Prosecutor Activities Could be Centralized or Regionalized in Order to Promote Efficiency and to Enhance the Quality of These Specific Prosecution Services

The Study Commission carefully examined a wide range of prosecution functions and activities to see which ones might be amenable to centralization, consolidation, or regionalization in order to make the best possible use of limited resources. The Commission fully accepts the need

Applying this hypothetical formulation to the 2009 annual forfeiture amounts presented in Table 7, approximately \$2.8 million would be re-directed to the proposed State aid grant fund for distribution to eligible counties. The Study Commission emphasizes that this formulation is merely provided as an illustration to show approximately how much money might be re-directed into the State aid grant fund. Any actual formulation should be carefully designed to take into account that county prosecutor's offices with larger caseloads would be expected to have a larger number of forfeiture actions, and thus more forfeiture revenues. Thus, the starting point for the progressive scale (*i.e.*, the amount of annual revenues that would be exempt from contribution to the State aid grant fund), might vary by county so as to ensure an equitable redistribution.

for government agencies to share services whenever feasible.³⁴ Executive Order 33, moreover, expressly directs the Study Commission to make findings and recommendations concerning “the viability of a total *or partial takeover* of the county prosecutors’ offices,” and “alternatives to a State takeover that can achieve cost savings and efficiencies, including but not limited to regional consolidation and shared services” (emphasis added).

In addressing this part of our assignment, we came to the conclusion that, with respect to the county prosecutors’ core function to investigate and prosecute offenders against the law, the reasons that militate against a full State takeover also tend to weigh against any other kind of structural reorganization. As was more fully explained in our discussion of the unification of the Judiciary in Section 2, county prosecutors’ offices must react to local conditions, and to local juries, and any restructuring or alteration of the chain-of-command could unwittingly result in delay, confusion, inconsistency, and reduced effectiveness.

The Study Commission believes that many prosecution activities, therefore, do not lend themselves to regional or statewide consolidation. By way of example, the current system for investigating and prosecuting cases that involve victims, such as sexual assault³⁵ and child abuse

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The Study Commission would note that significant progress has already been made in sharing services with respect to the functions of the county medical examiners’ offices. The State Medical Examiner Act of 1968 provides for each county to appoint its own medical examiner to investigate and report the cause and manner of death in certain specified cases. In 1996, the Northern Regional Medical Examiner Office (NRMEO) was created pursuant to a contractual agreement between the State Medical Examiner and the counties of Essex, Hudson, Passaic, and Somerset. Pursuant to the contract, the four counties in the region reimburse the state for all costs associated with performing the statutorily mandated medical examiner functions.

In 2003, the Southern Regional Medical Examiner Office (SRMEO) was created after the resignation of the Cape May/Cumberland Inter-County Medical Examiner. The two counties opted not to appoint their own separate medical examiners and instead worked cooperatively with the Department of Law and Public Safety to form the regional office. As with the NRMEO, the counties reimburse the state for costs incurred in the operation of the medical examiner facility.

In 2006, a tri-county medical examiner system was formed when the Camden County Medical Examiner Office was merged with the Gloucester/Salem Medical Examiner Office. An additional independent region is set to be created on January 1, 2011 between Morris, Sussex and Warren counties. Under this arrangement, the two current medical examiners in Morris County will retain jurisdiction over all cases in the three counties. The Sussex and Warren County Medical Examiner positions will be eliminated. It is expected that each county will save about 25% of its current costs.

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The Attorney General has promulgated statewide standards for investigating sexual assault cases and providing services to these victims. County prosecutors have established Sexual Assault Response Teams (“SART”) that includes a nurse practitioner who completes a sexual assault forensic exam kit at a suitable location (*i.e.*, a hospital that has an affiliation agreement with the county prosecutor’s office), a police department or county prosecutor detective, and a rape crisis counselor. Given differing crime rates, the number of SART activations varies markedly among the counties. The Study Commission therefore carefully examined whether it would make sense to regionalize SART services for Sussex, Warren,

crimes,³⁶ is working well, and would not be improved in any way by establishing either direct State control or by creating regional prosecution units. To the contrary, such consolidation would make it more difficult for prosecutors to establish a rapport with crime victims, and to provide them with the services to which they are statutorily and constitutionally entitled.

With respect to the investigation of cases involving guns, gangs, and drugs, it bears repeating that New Jersey has probably gone further than any other State in regionalizing its enforcement efforts by reason of the countywide task forces that have operated under the direct command of the county prosecutors since the promulgation of the Statewide Narcotics Action Plan in 1988. These multijurisdictional task forces are working well, and there is no reason to complicate the current "unity of command" by merging them into larger collectives. This is especially so given that prosecutors already have the capacity to establish so-called "situational" task forces to handle specific investigations involving criminal organizations or activities that are occurring in two or more counties, and the Division of Criminal Justice and the State Police work closely with the county prosecutors in cases that have statewide significance.

Relatedly, New Jersey is at the leading edge of state jurisdictions in centralizing and standardizing the critical function of collecting and analyzing criminal intelligence information, as shown by the establishment of the State Police Regional Operations Intelligence Center (ROIC). Many law enforcement agencies throughout the State have embraced the concept of "intelligence-led policing," which relies upon the painstaking analysis of data to inform the deployment of police patrol resources as well as to facilitate criminal investigations. Every department should be expected to collect and transmit to the ROIC information about guns and gang-related criminal activity, and the ROIC, in turn, is responsible for using that information to develop analytical workproducts that are provided back to the agencies that contributed data. The critical point for purposes of the Study Commission's work is that while the State has moved in the direction of centralizing the intelligence function, county prosecutors and local police departments must still maintain their own intelligence

and Hunterdon Counties. Our analysis showed that such regionalization would not only reduce the quality and promptness of services, but would also actually *increase* financial costs, rather than result in cost savings. The SART nurse examiners are paid based in part on an hourly rate, so that the added travel time were their service area to be enlarged to encompass all of these three rural counties would result in higher reimbursement payments. In this instance, therefore, there are no marginal savings that might be balanced against the intangible cost of delay in treating rape victims and collecting forensic evidence.

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Many county prosecutors have established "child advocacy centers" to address the special needs of young crime victims. These facilities, which are located away from the courthouses where the prosecutors' main offices are typically housed, provide a non-threatening, child-friendly environment where children of tender years can be interviewed and can be provided with a wide range of services from multi-disciplinary teams of counselors, psychologists, physicians, child welfare officials, and other professionals. Any effort to regionalize these satellite facilities would undermine their effectiveness, not only by making these sites less convenient for child victims and their families, but also by defeating one of the principal reasons for having a child advocacy center in the first place, which is to provide services in a small, uncrowded facility where privacy and a calm, peaceful environment can be assured.

analytical capacity to ensure that the information is actually used to address local³⁷ crime problems and enforcement opportunities by the “boots on the ground.”

Although the above-described prosecution functions would not benefit from, indeed might be undermined by, a restructuring of the county prosecutors’ offices, certain other prosecution activities *do* lend themselves to statewide consolidation. There are some important prosecution functions, in other words, where the benefits of statewide centralization trump the benefits of having a local perspective. This is most likely to be true in situations where the outcome of a case will directly impact the operations of other law enforcement agencies, such as appellate litigation, where published Appellate Division and Supreme Court opinions become statewide precedent affecting *all* prosecutors and police departments.

A. *The New Jersey Division of Criminal Justice Should Handle a Greater Proportion of the Criminal Appellate Workload, Relieving Some of the Burden That Has Recently Been Shifted to County Prosecutors*

When the Criminal Justice Act of 1970 was adopted, it was assumed that the newly-created Division of Criminal Justice would handle all significant appeals. This was one of the Division’s *charter* functions. In fact, the Court Rules adopted by the New Jersey Supreme Court provide in this regard that all appeals from final judgments in criminal matters automatically go to the Division of Criminal Justice for handling. *See R. 2:5-1(a)*. However, the Division’s Appellate Bureau is forced to re-assign most cases to the county prosecutors. Today, upwards of 80% of all direct criminal appeals are handled by the county prosecutors’ offices, rather than by the Division. The situation has worsened significantly in recent years.³⁸ In 2005, the Division of Criminal Justice referred 609 appeals briefs to the county prosecutors. In 2009, that number had jumped to 896. In addition, more of the appeals that are now being referred to county prosecutors involve lengthy trial transcripts or complex legal issues.

The shifting of the appellate caseload burden has had a direct fiscal impact on county prosecutors, shifting costs from the State to the counties. As a direct result of the downsizing of the Division of Criminal Justice Appellate Bureau during the last Administration, county prosecutors have been forced to pick up the slack by retaining more appellate attorneys above the staffing level

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Various intelligence products, including geospatial crime mapping and predictive crime trend analysis, take the concept of reacting to “local” crime problems to a whole new level of resolution, focusing on specific neighborhoods, street corners, and even individual building lots. Such information is critical to effective local policing operations, but would lose context and practical relevance at the perspective of a regional or statewide agency.

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In January 2006, thirty-four deputy attorneys general were assigned to the Division of Criminal Justice Appellate Bureau. Today, there are only sixteen attorneys assigned to the Bureau.

that would be needed to handle the interlocutory and collateral appeals.³⁹ While the State in the last Administration freely exercised its discretion to shift appellate workload costs to counties, the counties have no similar opportunity to re-direct these costs, and so have had no recourse but to shoulder this additional workload. It should be noted in this regard that when a prosecutor is the respondent in a final appeal filed by a convicted defendant, the prosecutor generally does not have the option to “screen out” or “plea bargain” the case.⁴⁰ Rather, unless the prosecutor’s office concedes the appeal, it must prepare and file a responding brief.

Aside from questions about fairness and equity in the distribution of the appellate prosecution workload between the State and county levels of government, the practice of referring most appeals back to the counties also results in less consistency in appellate advocacy. This is true not only with respect to the overall quality of the briefs that are filed on behalf of the State, but also with respect to the substantive arguments made before the Appellate Division and the Supreme Court. When a single appellate unit handles multiple cases involving the same legal issue, the State’s position with respect to that issue will be consistent in all cases, since all of the briefs will have been reviewed through a unified system of supervision. In contrast, when multiple independent prosecutors’ offices are involved, there is a far greater chance that inconsistent legal theories and positions will be developed, and that these inconsistencies will not be detected or rectified before being presented to a State-level court. This means that the most cogent and persuasive brief discussing a point of law may not be the brief that was filed in a case that ends up setting binding precedent for all future cases on that legal issue.

For those very reasons, in 2002, a working group comprised of several former Attorneys General issued a report recommending that the Division of Criminal Justice Appellate Bureau be staffed at a level that would allow it to handle all direct appeals. More recently, the Chief Justice and the Presiding Judge of the Appellate Division have had discussions with the Attorney General on the need to increase the staffing levels of the Division’s Appellate Bureau so that it could at least handle a greater proportion of the State’s appellate caseload.

The Study Commission recommends that the Division of Criminal Justice be provided

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Some counties addressed the new appellate workload burden by assigning a greater number of assistant prosecutors on a full-time basis to handle appellate cases. Other counties assigned appeals to assistant prosecutors who had other responsibilities, or to interns. A recent survey of the county prosecutors’ offices showed that the number of assistant prosecutors assigned on a full-time basis to handle appeals increased from forty-one in 2005 to fifty-three in 2010. The number of assistant prosecutors assigned on a part-time basis to handle appeals increased from thirty-four in 2005 to thirty-nine in 2010.

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The Division of Criminal Justice is working on a project that is designed to reduce the criminal appeals workload. Specifically, the Attorney General is developing a proposal to the Supreme Court’s Criminal Practice Committee to amend the Court Rules so as to allow a defendant to waive the right to appeal an adverse ruling in a motions to suppress hearing as part of the plea negotiation process. This reform might significantly reduce the number of appeals that raise a search and seizure issue. Such revisions to the Court Rules are generally beyond the purview and expertise of this Study Commission, and we would only note in this regard that serious consideration should be given to any proposal that would reduce, not just shift, the prosecutors’ overall workload, thus producing taxpayer savings.

additional funding to hire deputy attorneys general to handle more direct appeals. County prosecutors should continue to handle interlocutory appeals, and post-conviction relief and habeas corpus petitions. (The latter types of so-called "collateral" appeals are less likely to result in published decisions that set new statewide precedent because, by definition, the legal issues raised in these petitions would have already been litigated on direct appeal). At a minimum, the Division's Appellate Bureau staffing should be restored to its January 2006 level, which was thirty-four attorneys. This would mean adding eighteen deputy attorneys general to the Appellate Bureau's current all-time-low complement of sixteen attorneys. Any such restoration of the Appellate Bureau's staffing would relieve some of the workload burden that has been thrust in recent years upon the county prosecutors, which would in turn allow county prosecutors to cut their own staffing levels, or at least free up resources that could be assigned to perform other duties.

B. *The Attorney General Should Be Allowed to "Privatize" the Handling of Some of Selected Criminal Appeals by Retaining Private Lawyers to Research and Write Briefs for the Division of Criminal Justice Appellate Bureau on an Hourly or Per Diem Basis*

As a general proposition, the job of prosecuting offenders against the law is not amenable to "privatization." There is one aspect of the prosecution function, however, that is well-suited to cost-effective delegation: the handling of criminal appeals. Reading transcripts of court proceedings comprising the record on appeal, researching legal precedent by means of a computerized search engine, and drafting appellate briefs are all activities that can be done effectively by privately-retained counsel, and need not be done only by full-time deputy attorneys general. The Office of the Public Defender, it should be noted, retains the services of "pool attorneys" to handle criminal appeals that are not handled by the assistant deputy public defenders assigned to the Office's Appellate Section. *See* note 9, *supra*.

The Study Commission recommends that as a way to reduce overall costs and to help to further relieve the appellate workload burden on the county prosecutors' offices, the Division of Criminal Justice should be authorized and funded to retain private lawyers to research and draft briefs in selected criminal appeals. Because these designated counsel would be paid on an hourly, per case, or per diem basis, and would not be State employees, they would not be entitled to fringe benefits. Thus, their services could be provided at relatively low cost. The quality of the work done by these designated private counsel would be assured, moreover, since the briefs they draft would be reviewed and approved by the Division of Criminal Justice Appellate Bureau.

C. *The Attorney General and Police Training Commission Should Study the Benefits of Closing Existing Police Academies and Establishing Regional Police Academies in Their Stead*

At present, there are a total of eighteen police academies certified by the Police Training Commission (PTC) to provide "basic" (*i.e.*, pre-service) training to police recruits. Thirteen of these

academies are funded by counties,⁴¹ and these academies generally operate under the auspices of the county prosecutors.⁴² County and municipal academies across the State are presently underutilized as a result of the paucity of recent police hires owing to the State's current economic climate. During the past few years, six police academies ceased to provide basic police training due to declining enrollments,⁴³ and some of the academies that remain in existence have no basic police classes scheduled in the foreseeable future. The extent of the statewide reduction in enrollment in basic training courses is shown by the PTC's recent decision to reduce the minimum number of trainees required to attend a basic course in order for the course to be certified from twenty-five to six. Classes smaller than that would lose the ability to foster team-building skills that are so essential to effective policing.

The function of providing pre-service training to police recruits lends itself to the economies of consolidation because all new officers must be trained pursuant to uniform standards and detailed curricula approved by the PTC. The basic course for police officers provides that recruits must also receive so-called "agency training" from their own departments before graduating from the academy. This agency training segment of the basic course thus provides the opportunity for recruits to learn the policies, practices, and procedures of their own departments, providing a local perspective to police training as a supplement to the uniform statewide training curricula. Consequently, there would seem to be no sound educational reason why police academies could not be consolidated into regional academies.

The Study Commission recommends that the Attorney General, in consultation with the Police Training Commission, the county prosecutors, and county officials, study the feasibility and economic benefits of consolidation. In conducting this study, the Attorney General and PTC should take into account that the current utilization of police academies (*i.e.*, the number of recruits presently undergoing basic⁴⁴ training) is anomalously low due to hiring freezes imposed on local police departments as a result of the State's current economic condition. Policymakers and planners must anticipate that at some point, the economic situation will change and that there will come a time when new officers must be hired and trained (ostensibly after police officers who are now being laid off across the State have been re-hired). The Attorney General and PTC must therefore carefully

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The cities of Newark and Paterson continue to operate their own police academies.

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The budgets for these academies may be separate and distinct from the county prosecutor's budget, even though the prosecutor oversees the academy's daily operations.

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These are: Burlington County Police Academy; Jersey City Police Academy; Old Bridge Police Academy; State Police Training Center (for municipal police officer classes); Trenton Police Academy, and Vineland Police Academy.

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The Study Commission recognizes that police academy facilities also provide *in-service* training to law enforcement officers and continuing legal education (CLE) courses for assistant prosecutors, and that the demand for in-service training has in no way abated as a result of the current economic crisis.

consider whether closing/consolidating existing police academies makes sense as a long term strategy if the remaining regional facilities do not have the physical capacity to provide training to all of the recruits that may be enrolled in future police training classes.

As noted throughout this Report, the Study Commission believes as a general proposition that counties should have the right to spend their own funds on public safety-related programs and services that exceed any statewide "average." However, in developing a formula to be used to gauge what expenses are reasonably necessary to ensure that prosecutors' offices are adequately staffed and funded, monies spent by a county on an underutilized police academy should be taken into consideration should that county apply for supplemental funding under the State aid grant program proposed in Section 3(D). In other words, should county officials elect to spend their public safety dollars on an under-utilized police academy, the State should not be expected to subsidize that decision by providing supplemental funds to pay for reasonably necessary items in the county prosecutor's budget that could have been funded by the county had county officials chosen to divert funds that are being used to maintain an under-utilized academy.

D. *The Attorney General and the County Prosecutors Should Study the Feasibility of Establishing Secure Regional Facilities to Store Archived Records and Evidence*

County officials and county prosecutors note that significant resources are expended storing case files and physical evidence. The Division of Archives and Records Management (DARM) in the Department of State has promulgated records retention schedules that law enforcement agencies are required to implement. The Study Commission recommends that the Attorney General and county prosecutors continue to work with DARM to ensure the most efficient and cost-effective way to store case files and other documentary records, taking advantage of electronic storage systems whenever possible. In addition, the Attorney General and the county prosecutors should study the feasibility of consolidating archived documents in regional facilities.

The retention schedules promulgated by DARM apply only to documentary records such as case files, log books, etc. The DARM retention schedules do not apply to criminal case evidence. Until very recently, there had been little guidance provided by the State on the retention of criminal case evidence, and most law enforcement agencies have mechanically applied the retention schedules designed for paper and electronic documents to the retention of physical evidence. This has become increasingly problematic, however, because as a result of dramatic improvements in the field of criminal forensic science, the volume of evidence that is collected at crime scenes has grown exponentially.⁴⁵

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The DARM documentary records retention schedule for law enforcement agencies provides that homicide records are "permanent." If law enforcement agencies elect to keep such physical evidence indefinitely after the case is completed and all appeals are exhausted, they will eventually face severe evidence storage problems.

The Attorney General and the county prosecutors have been developing uniform guidelines for the retention of evidence. The Study Commission commends that ongoing effort, and urges the Attorney General and county prosecutors to consider not only the time frames for retaining and destroying various typed of physical evidence, but also the feasibility of establishing regional facilities to securely store evidence in closed criminal cases so as to reduce the cost burdens on individual counties.

E. *The State Should Follow Federal Law in Implementing Reforms to "Megan's Law" So as to Reduce the Costs to County Prosecutors*

The federal Sex Offender Registration and Notification Act (SORNA) requires every State to conform its laws and administrative procedures to guidelines for sex offender registration that have been adopted by the United States Department of Justice. Failure to substantially comply with the federal guidelines will result in a loss of ten percent of the federal funds allocated to New Jersey law enforcement agencies under the Edward Byrne Memorial Justice Assistance Grant Program. (The FY 2009 federal "JAG" funding appropriation for New Jersey was \$11,616,254.)

As it turns out, the procedures required by federal law are less burdensome and costly than the sex offender notification procedures currently used by county prosecutors' offices and local police departments. SORNA requires states to classify sex offenders based solely on the crime for which they were convicted. In contrast, under current New Jersey law, sex offenders are placed into one of three "tiers" after an offender-specific risk assessment is undertaken by the county prosecutor's office. These individualized risk assessments require a significant commitment of time and effort by assistant prosecutors, and the prosecutors' tiering decisions can be challenged by defendants, resulting in costly post-conviction litigation.

Furthermore, under current New Jersey law, for certain offenders, prosecutors and police must deliver door-to-door public notifications, which is time-consuming and costly. In contrast, under SORNA, community notifications are made via electronic transmission to designated agencies, community organizations, and members of the public who register their email addresses. In addition, under SORNA, *all* sex offender registrants, other than juveniles, are published on the Internet, regardless of their tier classification. In this way, the SORNA system is not only less costly to implement than New Jersey's current sex offender notification system, but also makes available to the public identifying information about more convicted sex offenders.

New Jersey has already submitted to the Department of Justice a letter of intent to substantially comply with SORNA, and was granted a one-year implementation extension to July 2011. The Study Commission urges that all necessary steps be taken to fully implement SORNA so as not only to safeguard the State's Byrne/JAG grant award, but also to reap the cost-saving benefits of a more uniform sex offender registration and notification system.

6. County Prosecutors Must Follow the Personnel, Purchasing, Travel and Expense Reimbursement Policies and Procedures Established by Their County

While it is generally assumed that county prosecutors and their assistants and detectives are county employees, for some purposes at least, they are actually treated under State law as if they were State employees, notwithstanding that counties pay their salaries. In Wright v. State, supra, the Supreme Court explained that prosecutors occupy a unique “hybrid status” with respect to their functions and responsibilities. 169 N.J. at 449. In that case, the Court considered whether the State rather than the county was responsible for paying the damages awarded in a civil lawsuit. The Court interpreted the Tort Claims Act to distinguish lawsuits involving the exercise of a prosecutor’s law enforcement function from those that involve claims of employment discrimination and other employment matters that do not involve the exercise of law enforcement authority. The Court concluded that when prosecutors perform their law enforcement function, they are discharging a State responsibility that the Legislature has delegated to them, thus making the State liable for the tortious exercise of law enforcement powers. The Court based this distinction on its determination that county prosecutors are uniquely subject at all times to the Attorney General’s statutory power to supervise and supersede them. Id. at 451-52 and 455.

County officials have urged that prosecutors’ offices be required to adopt, implement, and adhere to the personnel, purchasing, and travel and expense reimbursement policies and procedures of their respective counties. The Study Commission agrees with that recommendation. After all, such policies and procedures are designed, among other things, to limit exposure to civil liability and the costs of defending the county in litigation. Since a county is responsible under the Tort Claims Act, as interpreted by Wright v. State, for civil claims involving non-law enforcement matters such as employment discrimination, sexual harassment, and hostile work environments, it is only fair that the county have the ability to minimize its liability exposure through carefully-drafted and consistently-applied management policies.

Accordingly, the Study Commission urges the Attorney General to make clear to all county prosecutors that if they are not already doing so, they must as soon as possible adopt, implement, and adhere to the personnel, purchasing, and travel and expense reimbursement policies and procedures established by their respective county governments. If for any reason a county prosecutor believes that a particular county policy or procedure is inconsistent with the prosecutor’s statutory or ethical responsibilities, or contradicts an Attorney General directive or guideline, the prosecutor should alert the Attorney General and seek guidance on how to resolve the conflict.

7. County Prosecutors Must Generally Rely Upon the Legal Advice of County Counsel When Terminating an Employee

County officials on the Study Commission have suggested that the State should relieve some of the financial burden on counties by assuming responsibility for defense and liability

indemnification costs associated with administrative and personnel decisions made by the county prosecutor, and not just those liability costs that pertain to the county prosecutor's law enforcement decisions as required by Wright v. State, *supra*. County officials expressed frustration that they have no authority with respect to a prosecutor's decision, for example, to terminate an employee, and that in at least some instances, prosecutors decided not to consult with or heed the legal advice provided by county counsel, resulting in litigation-related expenses.⁴⁶ The county officials recognize that there is a compelling need for prosecutors to maintain their independence on matters of hiring and firing, but they object to having to pay civil awards and litigation expenses related to decisions over which they had exercised no control and had no opportunity to limit the county's liability exposure.

The concept of holding the State financially liable for a prosecutor's employment-related decisions presupposes that the Attorney General exercises the same degree of supervisory control over those decisions as the Attorney General presently exercises with respect to the exercise of law enforcement discretion. The tort doctrine of *respondeat superior*, after all, presupposes the authority to control the management decisions that might lead to a civil liability.

The Study Commission does not believe that the Attorney General should routinely exercise day-to-day control of office management decisions for many of the same reasons why we do not recommend a full "takeover" of the prosecutors' offices. We nonetheless recognize the need to address the civil liability and defense cost concerns expressed by county officials, especially with respect to the decision to terminate an employee, since that decision can often lead to litigation.⁴⁷ Accordingly, the Study Commission recommends that the general rule be that a county prosecutor must consult with county counsel, or with independent counsel approved by county counsel, regarding the decision to terminate an employee. An exception to this general rule should be permitted only if there is a specific *law enforcement* reason not to consult with county counsel.⁴⁸ In those circumstances, the county prosecutor must consult instead with the Attorney General or her designee.

If the Attorney General agrees with the county prosecutor that there is a specific law enforcement reason not to consult with county counsel, then the employee termination decision would be considered to be the exercise of the county prosecutor's law enforcement authority for purposes of assigning responsibility for defense and liability costs under Wright v. State. If the

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County prosecutors on the Commission report that most prosecutors routinely consult with and follow the advice given by county counsel before terminating an employee.

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It bears noting that an increasing number of county prosecutor employees, including assistant prosecutors, are becoming members of collective bargaining units. For this growing proportion of employees, collective bargaining agreements will often spell out the procedures that must be following for terminating employment.

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Such a situation might arise, for example, where county counsel's review of the circumstances justifying the county prosecutor's termination decision would require inappropriate disclosure of confidential law enforcement information.

Attorney General does not agree that there is a specific law enforcement reason to justify an exception to the general rule, then the county prosecutor must rely on county counsel for legal advice concerning the employee termination decision.

The Study Commission could not reach consensus on whether a county prosecutor should be required to adhere to county counsel's legal advice where, for example, county counsel recommends against terminating an employee in a case where the county prosecutor believes that termination is absolutely necessary based on the employee's misconduct. County prosecutors assert their need for independence, while county officials assert their need to minimize civil liability. The Study Commission concludes that such disagreements between county counsel and county prosecutors have been extremely rare, *see* note 46, *supra*, and are likely to become even more rare as an increasing proportion of termination decisions are made in the context of standardized procedures spelled out in collective bargaining agreements. *See* note 47, *supra*. The Study Commission is thus confident, based on the good will shown throughout our deliberations, that the consultation policy recommended in this subsection will be implemented by all parties in good faith.

PART III. SYNOPSIS OF FINDINGS AND RECOMMENDATIONS

1. Evaluation of Current Organizational Structure of New Jersey's Prosecution System

Preservation of Basic Structure and Chain of Command. The State should not eliminate the county prosecutors' offices. Nor should the State assume direct oversight of the daily operations of those offices, although some members of the Study Commission have urged the State to take over the prosecution function – for *fiscal* reasons – in certain urban jurisdictions with high crime rates and a correspondingly high demand for prosecution services. The Study Commission concludes that while State unification of the prosecution function would shift costs, it would not produce significant overall cost savings, and would unwittingly undermine the quality and effectiveness of prosecution services. The State's current prosecution system, and the current relationship between the county prosecutors and the Attorney General, strikes an appropriate balance between the need for statewide uniformity in the overall enforcement of the criminal law and the benefits of local autonomy in making prosecution decisions in individual cases. *See* Part I, Section 3; Part II, Sections 1 and 2.

State Assumption of Prosecution Costs. The Study Commission recognizes that given the State's current fiscal condition, the State is not able to assume the costs of operating the county prosecutors' offices. Some members of the Study Commission have urged that the Governor and Legislature revisit the assumption-of-cost issue once the economy improves. In the mean time, we suggest specific ways to relieve at least some of the financial burden on counties that have special needs by means of a new supplemental funding system described in Part II, Section 3(D). Because the proposed new supplemental funding system cannot be implemented and funded immediately, especially to the extent that it relies on new monetary penalties and assessments imposed on convicted offenders, the Governor and Legislature must consider whether, for how long, and to what extent the current County Prosecutor Funding Initiative Pilot Program should be continued. *See* Part II, Section 3(A).

Alternatives to a State "Takeover." Counties face serious challenges in funding the county prosecutors' offices, especially given the current economic climate. Those problems should be addressed through alternatives to a State takeover that are described in the following recommendations.

2. Improving the Budgetary Process

Collective Bargaining Reform. As the Study Commission was completing its work, the Governor signed legislation to reform the State's interest arbitration system. This reform is essential to the goal of controlling the future growth of the personnel expenses that constitute the major

portion of the county prosecutors' budgets. This recent legislative development is critical to the Study Commission's analysis and recommendations, since the 2% cap on county tax levies that took effect on January 1, 2011 would have exacerbated the current fiscal problems identified by the Study Commission had that cap not been accompanied by significant changes to the arbitration award system pursuant to P.L. 2010, c. 105. See Part II, Section 3(B). With arbitration reform now in place, our recommendations for improving the budgetary process can be effective at managing budget growth and addressing funding disparities.

Standardized Data and Analysis to Inform Local Budget Decisions. The Attorney General should be provided resources with which to undertake a comprehensive empirical study of prosecution needs and expenses. The Attorney General, in consultation with the county prosecutors and county officials, should develop one or more formulae or some other objective methodology to determine the staffing levels of a county prosecutor's office that are reasonably necessary for the office to perform its functions. This benchmark for "reasonably necessary" staffing levels should account for all relevant local variables, including but not limited to crime rates, volume of arrests and complaints (controlling for type and seriousness of offense), plea rates, number of trials, and compliance with speedy trial goals established by the Judiciary. In addition, the funding level benchmark should account for non-litigation prosecution activities that promote public safety, including but not limited to community outreach and law enforcement training activities. This formula/methodology should be used to help to standardize the process by which county officials determine the county prosecutor's budget, and to make that process more objective and transparent. The Attorney General should each year provide to county officials an objective analysis of the prosecution staffing/funding needs of each county prosecutor's office. This analysis should be made available to the public. See Part II, Section 3(E).

Uniform Procedures and Criteria Limiting Bigley Applications. The Attorney General should issue a Directive setting forth specific procedures and criteria that will be used to obtain Attorney General approval to file a Bigley application. The Directive should make clear that the Attorney General will solicit input and information from county officials, and that the county's economic and fiscal situation will be taken into account in determining what prosecution expenses are "reasonably necessary." In deciding whether to authorize a county prosecutor to file a Bigley application, and the amount of supplemental funding the prosecutor is authorized to apply for, the Attorney General must consider the impact of the prosecutor's request on the county's overall budget, taking into account the Local Government Cap Law. The Attorney General must also determine whether the county has dedicated an appropriate proportion of its overall budget to fund the county prosecutor's office, taking into account whether and to what extent other county-funded functions have experienced comparable reductions or funding limitations. In the absence of compelling and extraordinary circumstances relating to public safety, the Attorney General should not approve a Bigley application where the county has dedicated an appropriate percentage of its overall budget to fund the prosecutor's office. Furthermore, the Attorney General should not authorize a county prosecutor to file a Bigley application unless the prosecutor and county have exhausted the option of pursuing a grant award under the State aid program recommended by the Study Commission. See Part II, Section 3(B).

3. Addressing Fiscal Problems by Means of an Objective System for Providing State Financial Assistance and by Establishing New Sources of Revenue to Defray the Costs of Prosecution Services

State Financial Aid to Counties. The State should establish a grant program to provide financial aid to eligible counties based on a formula that accounts for financial need and objective performance measures. When a county dedicates an appropriate proportion of its overall budget to fund the county prosecutor's office, but that amount is not sufficient to meet "reasonably necessary" staffing level benchmarks established by the Attorney General, then the county should be eligible to apply for a State aid grant award to help to cover the difference between what the county appropriated and what is reasonably necessary to ensure public safety. This State aid grant program should be funded with new sources of revenue collected from convicted offenders. *See Part II, Section 3(D).*

Assessment of Actual Prosecution Costs. State law should authorize a sentencing court to impose a case-specific bill of taxed costs, requiring a convicted defendant to reimburse the government for the reasonable costs of his or her successful prosecution, subject to the court's determination of the defendant's ability to pay any such assessment. Successfully collected assessments should be deposited in the State aid grant fund for re-distribution to eligible counties. *See Part II, Section 4(A).*

Mandatory Prosecution Fund Penalty. State law should require the imposition of a fixed penalty against all persons convicted of an indictable crime or disorderly persons offense (*e.g.*, \$100.00 upon conviction of one or more indictable crimes in a single prosecution, and \$50.00 upon conviction of one or more disorderly persons offenses in a single prosecution). Successfully collected prosecution fund penalties should be deposited in the State aid grant fund for distribution to eligible counties. *See Part II, Section 4(B).*

Equitable Re-Distribution of Forfeiture Proceeds. The Attorney General and county prosecutors should consider the feasibility of an amendment to State law to provide that a percentage of forfeited assets would be re-directed to the State aid grant program for distribution to eligible counties to help to defray the costs of funding these prosecutors' offices. The percentage of forfeited assets that are re-directed to the State aid grant fund should be determined based on a progressive scale so as to ensure the most equitable distribution of forfeited funds. *See Part II, Section 4(C).*

4. Cost Savings by Reducing Redundancies and Inefficiencies Through Consolidation and Shared Services

Restoration of Consolidated Appeals. To relieve workload burdens that have recently been shifted by the State to the county prosecutors, and to enhance the consistency of appellate advocacy in criminal matters, the budget of the New Jersey Division of Criminal Justice should be increased to restore the Bureau's staffing complement to its 2006 level, allowing the Division to handle more

direct appeals and correspondingly reducing the number of appeals that must be referred to the county prosecutors' offices. *See* Part II, Section 5(A).

Privatization of Selected Criminal Appeals. The Division of Criminal Justice should be authorized and funded to retain qualified private attorneys on an hourly or per diem basis to research and write appellate briefs for and subject to the supervision of the Division's Appellate Bureau. *See* Part II, Section 5(B).

Consolidation of Police Academies. The Attorney General in consultation with the Police Training Commission, county prosecutors, and county officials, should study the feasibility of closing underutilized police academies and establishing a system of regional academies in their stead. *See* Part II, Section 5(C).

Regional Storage of Archived Records and Evidence. The Attorney General and county prosecutors should study the feasibility of establishing regional archives to store files, and should take advantage of digital scanning technology to reduce storage costs and to enhance efficiency in records management and retrieval. The Attorney General should consider the need to recommend changes to statutes and rules governing records retention and storage policies. In addition to considering the benefits of regional facilities to store records and documents, the Attorney General and county prosecutors should study the feasibility and cost-effectiveness of establishing secure regional facilities to store evidence. *See* Part II, Section 5(D).

Implementation of "SORNA." The Attorney General, the Governor's Office, and the State Legislature should take steps to ensure the prompt implementation of the federal Sex Offender Registration and Notification Act (SORNA) so as to ensure that the State does not forfeit federal grant monies, and to conserve county prosecutor resources by simplifying the system for "tiering" convicted sex offenders and for notifying the public about their whereabouts. *See* Part II, Section 5(E).

5. Clarifying the Authority of County Governing Bodies

General Compliance with County Policies. County prosecutors' offices must follow the personnel, purchasing, and travel and expense reimbursement policies, practices, and procedures established by county government. If for any reason a county prosecutor believes that compliance with a county policy in a particular instance would be inappropriate for a specified law enforcement reason, the county prosecutor must seek advice from the Attorney General. *See* Part II, Section 6.

Legal Advice on Employee Termination Decisions. A county prosecutor must consult with county counsel regarding the decision to terminate an employee unless there is a specific law enforcement reason not to consult with county counsel, in which event the prosecutor must instead consult with the Attorney General or her designee. If the Attorney General agrees with the county prosecutor that there is a specific law enforcement reason not to consult with county counsel, the

employee termination decision would be considered to be the exercise of the county prosecutor's law enforcement authority for purposes of assigning responsibility for defense and liability costs under Wright v. State, 169 N.J. 422 (2001). If the Attorney General does not agree that there is a specific law enforcement reason to justify an exception to the general rule, then the county prosecutor must rely on county counsel for legal advice concerning the employee termination decision. *See* Part II, Section 7.

TABLES*Table 1***2010 EMPLOYEE AND BARGAINING UNIT DATA**

COUNTY	NUMBER OF EMPLOYEES	NUMBER OF BARGAINING UNITS
Atlantic	180	6
Bergen	164	3
Burlington	150	3
Camden	235	5
Cape May	82	6
Cumberland	114	3
Essex	438	4
Gloucester	94	4
Hudson	305	2
Hunterdon	55	4
Mercer	173	5
Middlesex	196	4
Monmouth	279	6
Morris	171	3
Ocean	174	4
Passaic	187	3
Salem	50	4
Somerset	N/A	2
Sussex	49	2
Union	260	5
Warren	60	3
TOTALS	3416	81

Table 2

2010 SALARY, WAGE, AND BENEFITS DATA

COUNTY	2010 SALARIES AND WAGES	HEALTH AND FRINGE BENEFITS
Atlantic	\$ 12,694,512.00	\$ 7,433,006.09
Bergen	\$ 26,237,536.00	\$ 17,782,757.00
Burlington	\$ 9,867,615.00	\$ 5,320,380.00
Camden	\$ 21,659,432.00	\$ 11,537,979.00
Cape May	\$ 5,461,666.83	\$ 2,328,018.52
Cumberland	\$ 11,100,071.00	\$ 3,667,817.00
Essex	\$ 36,142,166.00	\$ 14,740,720.00
Gloucester	\$ 7,221,988.00	\$ 4,205,944.00
Hudson	\$ 19,518,311.00	\$ 8,611,857.00
Hunterdon	\$ 3,953,898.00	\$ 2,765,538.00
Mercer	\$ 13,316,502.00	\$ 6,913,228.08
Middlesex	\$ 16,109,646.00	\$ 8,673,433.41
Monmouth	\$ 22,244,866.00	\$ 9,452,711.33
Morris	\$ 13,124,060.00	\$ 6,710,073.00
Ocean	\$ 14,373,585.00	\$ 6,785,862.35
Passaic	\$ 16,794,291.83	\$ 9,062,861.80
Salem	\$ 3,646,000.00	\$ 1,748,439.00
Somerset	\$ 9,308,714.00	\$ 4,447,704.00
Sussex	\$ 4,089,792.00	\$ 3,067,010.00
Union	\$ 19,934,556.00	\$ 7,451,462.00
Warren	\$ 4,304,911.00	\$ 1,755,367.00
TOTALS	\$ 291,104,119.66	\$ 144,462,168.58

Table 3

CURRENT JUDICIAL VICINAGES

1. Atlantic County Cape May County	9. Monmouth County
2. Bergen County	10. Morris County Sussex County
3. Burlington County	11. Passaic County
4. Camden County	12. Union County
5. Essex County	13. Somerset County Hunterdon County Warren County
6. Hudson County	14. Ocean County
7. Mercer County	15. Gloucester County Cumberland County Salem County
8. Middlesex County	

Table 4

SALARIES OF FULL-TIME ASSISTANT PROSECUTORS

(As of August 1, 2010)

COUNTY	NUMBER EMPLOYED	MEAN SALARY	MEDIAN SALARY	AVG. LENGTH OF SERVICE	AVG. LENGTH NJ BAR ADMISSION
Atlantic	41	\$ 90,694	\$ 91,540	13.5	16.5
Bergen	51	\$ 115,234	\$ 119,917	14.4	18.8
Burlington	32	\$ 74,903	\$ 70,183	10.0	12.9
Camden	60	\$ 97,410	\$ 100,877	10.3	13.1
Cape May	12	\$ 85,039	\$ 80,909	8.9	13.9
Criminal Justice	122	\$ 92,079	\$ 90,476	10.8	17.7
Cumberland	26	\$ 75,506	\$ 63,273	6.3	12.5
Essex	129	\$ 75,763	\$ 72,525	9.3	13.7
Gloucester	17	\$ 68,854	\$ 66,625	11.3	16.6
Hudson	67	\$ 74,634	\$ 65,500	9.1	10.8
Hunterdon	8	\$ 96,957	\$ 102,000	8.3	17.2
Mercer	36	\$ 89,142	\$ 88,589	11.4	15.9
Middlesex	45	\$ 96,662	\$ 93,330	11.0	18.1
Monmouth	56	\$ 90,756	\$ 82,750	10.2	13.7
Morris	35	\$ 83,641	\$ 82,000	6.8	10.9
Ocean	40	\$ 100,266	\$ 102,118	9.9	16.4
Passaic	46	\$ 117,862	\$ 130,029	12.8	16.5
Salem	7	\$ 81,779	\$ 69,538	7.1	11.3
Somerset	21	\$ 93,668	\$ 95,130	13.6	16.2
Sussex	9	\$ 100,924	\$ 97,298	10.0	18.2
Union	62	\$ 95,600	\$ 92,031	11.7	14.1
Warren	11	\$ 87,854	\$ 83,182	11.5	16.9
TOTALS	933	\$ 90,157	\$ 87,418	10.6	15.0

Table 5

SALARIES OF COUNTY DETECTIVES AND INVESTIGATORS

(As of August 1, 2010)

COUNTY	NUMBER EMPLOYED	MEAN SALARY	MEDIAN SALARY	AVG. LENGTH OF SERVICE	AVG. LENGTH SWORN LAW ENFORCEMENT OFFICER
Atlantic	75	\$ 87,291	\$ 94,020	11.6	14.9
Bergen	111	\$ 119,849	\$ 121,108	12.6	17.1
Burlington	43	\$ 84,538	\$ 88,500	10.7	16.4
Camden	88	\$ 96,486	\$ 98,099	12.9	17.2
Cape May	37	\$ 77,300	\$ 79,203	5.6	12.3
Criminal Justice	187	\$ 86,889	\$ 87,581	11.5	17.1
Cumberland	39	\$ 78,352	\$ 75,154	6.5	13.3
Essex	147	\$ 90,897	\$ 90,171	11.3	17.0
Gloucester	34	\$ 88,401	\$ 87,212	7.8	15.7
Hudson	98	\$ 72,747	\$ 77,000	11.0	13.5
Hunterdon	24	\$ 74,381	\$ 75,825	8.3	14.3
Mercer	51	\$ 90,677	\$ 90,804	12.1	15.0
Middlesex	77	\$ 103,317	\$ 98,841	12.8	17.6
Monmouth	79	\$ 118,273	\$ 117,328	9.7	18.6
Morris	63	\$ 91,359	\$ 90,546	11.1	14.6
Ocean	78	\$ 93,182	\$ 94,627	9.9	14.6
Passaic	79	\$ 82,249	\$ 84,080	11.2	12.2
Salem	21	\$ 88,951	\$ 84,043	9.9	12.9
Somerset	52	\$ 107,980	\$ 98,704	9.2	15.8
Sussex	20	\$ 83,522	\$ 81,301	10.1	19.9
Union	73	\$ 102,780	\$ 96,184	11.1	18.8
Warren	21	\$ 89,313	\$ 86,143	10.7	22.6
TOTALS	1497	\$ 93,119	\$ 92,240	10.9	16.1

Table 6

COUNTY PROSECUTOR FUNDING INITIATIVE PILOT PROGRAM

State Fiscal Year/County Calendar Year						
County	FY05/CY05	FY07/CY06	FY08/CY07	FY09/CY08	FY10/CY09	FY11/CY10
Camden	\$ 1,730,000	\$ 1,790,000	\$ 1,790,000	\$ 1,790,000	\$ 1,790,000	\$ 895,000
Essex	\$ 3,500,000	\$ 3,622,000	\$ 3,622,000	\$ 3,622,000	\$ 3,622,000	\$ 1,811,000
Hudson	\$ 1,550,000	\$ 1,605,000	\$ 1,605,000	\$ 1,605,000	\$ 1,605,000	\$ 802,500
Mercer	\$ 950,000	\$ 983,000	\$ 983,000	\$ 983,000	\$ 983,000	\$ 491,500
Total	\$ 7,730,000	\$ 8,000,000	\$ 8,000,000	\$ 8,000,000	\$ 8,000,000	\$ 4,000,000

Notes:

In FY06, \$8 million was appropriated, but it was lapsed back to the General Fund. The aid payment date was shifted forward so that it would occur in FY07 instead but still within the same County calendar year budget. Thus, the counties saw no interruption in aid.

Table 7

TOTAL VALUE OF PROPERTY FORFEITED
2008 AND 2009

COUNTY	TOTAL FORFEITED 2009	TOTAL FORFEITED 2008
Atlantic	\$ 403,823.00	\$ 474,409.00
Bergen	\$ 6,020,045.00	\$ 4,702,310.00
Burlington	\$ 875,439.00	\$ 372,700.00
Camden	\$ 2,138,548.00	\$ 444,645.00
Cape May	\$ 93,878.00	\$ 464,741.00
Cumberland	\$ 96,385.00	\$ 151,215.00
Essex	\$ 1,766,138.00	\$ 1,235,180.00
Gloucester	\$ 97,868.00	\$ 189,746.00
Hudson*	\$ 814,284.00	\$ 747,210.00
Hunterdon	\$ 19,308.00	\$ 109,988.00
Mercer	\$ 540,294.00	\$ 854,705.00
Middlesex	\$ 577,845.00	\$ 1,158,986.00
Monmouth	\$ 6,436,954.00	\$ 679,888.00
Morris	\$ 379,944.00	\$ 180,620.00
Ocean	\$ 448,668.00	\$ 294,955.00
Passaic*	\$ 1,517,927.00	\$ 2,269,686.00
Salem	\$ 33,023.00	\$ 87,431.00
Somerset	\$ 179,195.00	\$ 134,811.00
Sussex	\$ 76,063.00	\$ 10,178.00
Union	\$ 762,121.00	\$ 964,495.00
Warren	\$ 40,839.00	\$ 91,018.00
STATEWIDE	\$ 23,318,589.00	\$ 15,618,917.00

*Total does not include value of "other property" forfeited, (i.e., property other than cash and seized motor vehicles) in Passaic 2009, Hudson 2008 and 2009

EXECUTIVE ORDER NO. 33

WHEREAS, there are currently twenty-one county prosecutor's offices in the State of New Jersey, each serving its specific county with its own dedicated offices and support infrastructure; and

WHEREAS, declining revenues at the state and local levels have exacerbated the burden on county governments to provide for the funding of these offices; and

WHEREAS, because of the separate structure and administration of the county prosecutor's offices under the current system, potential redundancies may exist in purchasing, administration positions, and special service units, and significant discrepancies may exist concerning caseloads and salaries paid to employees among the different county prosecutor's offices, leading to further inefficiency in the use of limited available resources; and

WHEREAS, as Governor, I have the responsibility and the authority to ensure that State government and its various agencies and instrumentalities operate as efficiently and as effectively as possible; and

WHEREAS, consistent with that responsibility, it is appropriate to conduct a review of the current system governing the county prosecutor's offices to determine whether efficiencies, cost savings and a more equitable allocation of resources can be achieved;

NOW, THEREFORE, I, CHRIS CHRISTIE, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby created a County Prosecutor Study Commission ("Study Commission"). The Study Commission shall consist of thirteen (13) members as set forth in this paragraph. The Governor hereby appoints the Attorney General to serve as the chairperson of the Study Commission. The Governor shall select the other twelve (12) members of the Study Commission, which shall be comprised of members of the law enforcement community, including but not limited to current or former county prosecutors and attorneys general; current or former county executives, freeholders or administrators; and the Treasurer or his designee. All members of the Study Commission shall serve without compensation.

2. The Study Commission shall be responsible for evaluating the current structure of the county prosecutor's offices; determining the feasibility of the State taking over all or a portion of the county prosecutor's offices; and other potential alternatives to address concerns about redundancies, inefficiencies, and inequities which may exist in the current system. In making its recommendations, the Study Commission shall carefully consider the State's short-term and long-term economic interests. The Study Commission's charge shall include, but not be limited to, making findings and providing recommendations to the Governor regarding:

- a. The viability of a total or partial State takeover of the county prosecutor's offices;
- b. Potential areas of waste, redundancy and inefficiency in the county prosecutor's offices;
- c. Alternatives to a State takeover that can achieve cost savings and efficiencies, including but not limited to regional consolidation and shared services;

- d. Current funding of county prosecutor's offices and whether the current funding mechanisms are appropriate, including but not limited to the viability of the County Prosecutor Funding Initiative Pilot Program; and
- e. Such other matters as may be referred to the Study Commission by the Governor.

3. The Department of Law and Public Safety shall provide staff support to the Study Commission. The Study Commission shall be authorized to call upon any department, office, division, or agency of this State to supply it with any information, personnel, or other assistance the Study Commission deems necessary to discharge its duties under this Order. Each department, office, division, and agency of this State is hereby required, to the extent not inconsistent with law, to cooperate fully with the Study Commission within the limits of its statutory authority and to furnish the Study Commission with such assistance on as timely a basis as is necessary to accomplish the purposes of this Order.

4. The Study Commission may consult with experts or other knowledgeable individuals in the public or private sector on any aspect of its mission, including but not limited to individuals who were involved in the State's assumption of the costs and administration of the judicial system, including but not limited to the development and implementation of the State Judicial Unification Act and the Judicial Employees Unification Act.

5. The Study Commission may report to the Governor from time to time and shall issue a final report to the Governor setting forth its recommendations pursuant to this Order no later December 15, 2010. The final report of the Study

Commission shall be provided to the Legislature and shall be made available to the public. The Study Commission shall expire immediately upon issuance of its final report

6. This Order shall take effect immediately.

GIVEN, under my hand and seal this
16th day of July
Two Thousand and Ten, and
of the Independence of the
United States, the Two
Hundred and Thirty-Fifth.

/s/ Chris Christie

Governor

[seal]

Attest:

/s/ Jeffrey S. Chiesa

Chief Counsel to the Governor