

# **2011 - 2012 Annual Report**



## **UNIT DESCRIPTIONS**

## LEGAL UNITS

### ➔ **Adult Trial Section**

The Adult Trial Section represents the State in the criminal proceedings that follow the filing of an indictable criminal complaint and/or arrest of a defendant. Trial Assistant Prosecutors present their cases to the Grand Jury and try those cases before a petit jury. These Trial Assistant Prosecutors are responsible for: bail review and bail source hearings; arraignment/status conferences; plea negotiations; motions; extradition waiver hearings; status reviews of civil commitments incident to criminal proceedings; jury and non-jury trials; sentencing hearings; hearings for probation violations; interlocutory appeals; municipal court appeals; and petitions for post-conviction relief.

Trial Assistant Prosecutors and Detectives assigned to the Trial Section work in teams consisting of three Prosecutors and two Detectives for each of the criminal trial courts in Essex County. The Trial Assistant Prosecutors work closely with their assigned Detectives who interview witnesses, prepare reports, take statements, schedule witness interviews, visit crime scenes, take photographs, locate evidence and reports from municipal police departments, serve subpoenas and take any other additional investigative steps as required.

Since 2004 the prosecution system for criminal cases has followed the “vertical” model which means each Trial Assistant Prosecutor handles each case from pre-indictment preparation through the Grand Jury process and remains primarily responsible for subsequent plea negotiations, trial presentation and sentencing. This process of having the same Trial Assistant Prosecutor and Detective continue with a case encourages efficiency, enhances accountability and permits a better response to victims and witnesses.

### **2011 - 2012 Accomplishments**

The Adult Trial Section continued to handle the largest and most serious caseload in the State. Essex County leads the State in the number of criminal filings and handles a higher-than-average proportion of first and second-degree offenses. All first and second-degree crimes of violence require mandatory periods of parole ineligibility, making disposition of these offenses more difficult.

In 2011, the Essex County Prosecutor’s Office successfully indicted or charged by accusations 3,947 defendants and resolved the cause of 4,050 defendants previously indicted or charged by accusation; 53 percent of those cases involved first or second degree charges.

In conjunction with the special crime squads, the Trial Section obtained 115 defendant dispositions by trial in 2011; the overall post-indictment/accusation conviction rate including pleas and trial was 75 percent. In conjunction with the special crime squads, the Trial Section obtained 81 defendant dispositions by trial in

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2012; the overall post-indictment/accusation conviction rate, including pleas and trial, was 78 percent in 2012.

The Trial Section will continue its emphasis on mentorship and training for its Trial Assistant Prosecutors. The Unit also will further its coordination with all elements of the investigation process, especially given the increasing levels of distrust and hesitancy to cooperate on the part of victims and witnesses stemming from intimidation and threats of violence from organized street crime elements. Increased and more effective use of forensic evidence is also a priority for the Trial Section to ensure that justice is achieved in Essex County.

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### ➔ Appellate Section

The Appellate Section of the Essex County Prosecutor's Office is the largest appellate practice of the 21 counties' prosecutor's offices in the State. The Section routinely initiates its own appeals from adverse pre-trial and post-trial rulings, often resulting in the successful re-instatement of prosecutions that were effectively terminated by adverse rulings. It also assists the Office's trial staff in handling some of the more difficult trial motions by serving in a capacity for trial attorneys, providing legal updates and case summaries and by distributing memoranda on significant legal issues. Additionally, the Section maintains a Network Brief Bank that is available to the entire staff via the Essex County Prosecutor's Office's computer network.

The ECPO's past practice was to include Appellate in assistant prosecutors' general Office rotation leading to a trial slot. Currently all attorneys assigned to the Section are career appellate lawyers. Consequently, the quality of work produced by the Section is increasingly high. Senior appellate attorneys supervise junior staff members, ensuring outstanding work and uniformity in legal positions taken in the Section. Every Supreme Court brief is read by at least two supervisors, and a moot court is conducted for arguments in the Supreme Court, the federal Court of Appeals for the Third Circuit and for every significant argument in the state's Appellate Division.

### Key Section Operations

- Trial Attorney Input – Trial attorneys are notified when their cases are on appeal. The trial attorneys are given copies of defendants' briefs and are encouraged to speak with the Appellate attorney who is assigned to the particular case.
- Trial Briefs/Legal Resource – Appellate Section attorneys are increasingly involved in drafting briefs on novel or complex issues and providing legal opinions to assistant prosecutors assigned to trial and investigative sections.
- Maintenance of the Brief Bank – The Section maintains an updated Network Brief Bank for the Essex County Prosecutor's Office staff.
- Petitions for Post-Conviction and Habeas Corpus Relief – The Section coordinates all petitions for post-conviction relief. It has also obtained dismissals or denials in a majority of petitions for habeas corpus relief filed in the District Court.
- Municipal Appeals – The Section coordinates all municipal appeals filed with the Law Division and for which appearance by the Office is required.

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- Review of Gun Permit, Reciprocal and Name Change Applications – The Appellate Section also reviews gun permit applications and represents the State in gun permit hearings. It also handles Reciprocal Witnesses applications and requests for telephone records under N.J.S.A. 2A:81-19. The Section also responds to applications for name changes.
- Internship Program – During the academic year and over the summer, interns from national colleges and law schools participate in an active internship program offered by the Appellate Section. Interns are assigned to units throughout the office and third year law students are allowed to appear in court.
- Continuing Legal Education – Training has long been a professional requirement for members of the Essex County Prosecutor’s Office. With the adoption and implementation of mandatory continuing legal education by the Supreme Court, attorneys participate in training sessions covering legal trends, trial advocacy, ethics and professionalism as well as forensic technology. The program has been recognized by the CLE Boards of New Jersey, Pennsylvania and New York, and Provider status has been approved in these jurisdictions. The program has grown in popularity and regular attendees include attorneys from the Office of the Essex County Counsel as well as Municipal Prosecutors from within Essex County.
- Working Responsibly – The Section continues its quest to become a paperless unit by scanning all documents received and sent from the Section.

### Significant 2011 Cases:

**State v. Dock** – Successfully prosecuted this homicide where the Supreme Court held that the use of restraints on defense witnesses does not apply with full retroactivity on post-conviction relief.

**State v. Alston** – Successfully prosecuted this homicide case where the Supreme Court held that defendant’s statements, given after he waived his right to counsel, when clarified, were not an assertion of his right to counsel, and police questioning did not exceed the scope of permissible clarification.

**State v. Wright-Stafford** – Successfully prosecuted this appeal where the defendant was convicted of insurance fraud after she set fire to her vehicle and then filed a claim for insurance proceeds.

**State v. Miller** – Successfully prosecuted this robbery case where the Supreme Court found no error in the trial court replaying a witness’ video-recorded testimony at the jury’s request.

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**State v. Regis** – Successfully prosecuted this case where the Supreme Court held that two separate offenses are committed when a driver fails to maintain a lane of travel to the extent practicable, and changes lanes without ascertaining the safety of the lane change.

**State v. Caldwell** – Successfully prosecuted this homicide case where defendant, after telling the victims that someone was going to die that night, shot the female victim in her head as she and her husband were walking to their apartment from the train station. The Appellate Division rejected defendant's claim that he was denied a fair trial because alleged inadmissible testimony was admitted at his trial and because the State lost evidence critical to his case.

**State v. Price and McRae** – Successfully prosecuted this case in the Appellate Division where defendant Price, a former East Orange police officer, and his then fiancée, were convicted of numerous counts of money laundering, theft, forgery, and official misconduct, after they established shell companies and defrauded the City of East Orange with respect to the City's upgrade of its police communications and dispatch center.

### Significant 2012 Cases:

The following cases were all affirmed by the Appellate Division and were pending in the Supreme Court:

**State v. Sowell** – In this drug distribution case occurring inside a correctional facility, the issue before the Court is whether the State's expert testimony responding to hypothetical questions concerning whether a drug deal took place constitute plain error warranting a new trial.

**State v. Parker** – In this robbery case, the issue before the Court is whether the prosecutor's references to defendant's prior use of aliases to impeach his credibility deprived the defendant of a fair trial.

**State v. Andrews** – In this attempted murder case, the issue before the Court is whether a trial court must discharge the entire jury panel and begin jury selection anew when defense counsel is found to have used peremptory challenges in an unconstitutionally discriminatory manner against potential jurors.

**State v. Porter** - In this attempted murder case, the issue before the Court is whether defendant was entitled to an evidentiary hearing on his petition for post-conviction relief based on ineffective assistance of counsel, failure of counsel to present an alibi witness and identification testimony.

## ➔ Forfeiture Unit

The Forfeiture Unit of the Essex County Prosecutor's Office is responsible for implementing New Jersey's forfeiture statute in Essex County. The statute, N.J.S.A. 2C:64-1 et seq., is designed to remove the profit motive from crime by seizing all proceeds of criminal activity and any property used to facilitate the commission of a crime. Examples of such property include money derived from the illegal sale of narcotics, vehicles used to transport such narcotics, or houses used to stash and/or sell such narcotics. While narcotics cases make up the large majority of these cases, the forfeiture statute applies to any indictable offense.

The Forfeiture Unit's day-to-day functions involve generating all civil "in rem" forfeiture complaints on property that is seized throughout Essex County by the various law enforcement agencies and police departments. This includes those cases prosecuted by the Essex County Prosecutor's Office that may involve federal or statewide agency participation. If, after reviewing a criminal case, the Forfeiture Unit determines that it is appropriate to seek forfeiture of any money or other property seized by the police agency, a civil forfeiture complaint must be filed within ninety days of the property's seizure.

The use of forfeiture funds obtained by the Prosecutor's Office is strictly regulated by law. Forfeited monies may only be used for law enforcement purposes as defined by Attorney General Guidelines. The funds cannot be used to defray normal operating expenses such as salaries, leases and other regularly incurred expenses. Training expenses, special equipment purchases, and forensic witness fees are examples of permitted forfeiture expenditures.

### **2011 - 2012 Accomplishments**

In 2011, the Forfeiture Unit generated \$1,940,498 in forfeitures from criminal defendants. Of that amount \$1,600,930 was in cash, \$329,535 was the value of motor vehicles, and \$10,033 was other property, including several flat screen televisions, an I-Phone and computers.

In 2012, the Forfeiture Unit generated \$1,336,676 in forfeitures from criminal defendants. Of that amount \$961,741 was in cash, \$369,225 was the value of motor vehicles, and \$5,710 was other property, including various items of electronics equipment recovered by the Cyber Crimes Unit.

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### ➔ Grand Jury Unit

The Grand Jurors make an independent determination to indict or formally charge persons accused of crimes based on their assessment of the evidence presented to them by an Assistant Prosecutor. After listening to witnesses, viewing physical evidence, if any, and discussing the case, the Grand Jury can vote:

- A True Bill, which formally charges the accused,
- A No Bill, which dismisses the charges, or
- A No Bill with Remand, which refers the case back to the municipal court on lesser charges.

The Grand Jury is an independent body consisting of 23 members of the community, with 12 affirmative votes needed to return an indictment. The proceedings are private, but a transcript is made for use by the Court, the Prosecutor's Office and the defendant. The defendant may or may not testify before the Grand Jury.

Grand Jurors in Essex County sit one day per week from fifteen to eighteen weeks. They hear approximately twenty-five to thirty cases per day between the hours of 9:00 a.m. and 4:00 p.m. To facilitate case scheduling, while respecting the wishes of most Grand Jurors to be released at the 4 p.m. closing time (given domestic and child care responsibilities), the Essex County Prosecutor's Office has developed a "weighting" system. Under this system, Grand Jury Clerks receive advance notification of the complexity of a given presentation, allowing more efficient and realistic scheduling of cases.

Under the present vertical prosecution system, Assistant Prosecutors from the Adult Vertical Trial Section present most cases before the Grand Jury. They remain assigned to their True Bill cases from initial pleading and bail setting through resolution.

#### **2011 - 2012 Accomplishments:**

In 2011, 4,011 cases were presented to the Grand Jury with True Bills being returned for 2,251 cases and an additional 15 cases being referred to the Remand Court or municipal courts for resolution.

In 2012, 4,944 cases were presented to the Grand Jury with True Bills being returned for 2,951 cases and an additional 35 cases being referred to the Remand Court or municipal courts for resolution.



Grand Jury Unit, from left to right: Staff member Monica Dupree-Holder, Grand Jury Manager Patricia C. Kelly, Staff members Shirley Byrd, Aida Herrera, Alyssa Morresi, Juliet Wood-Warren and Lisa Esposito.

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### ➔ Initial Screening Unit

All criminal complaints in Essex County charging indictable crimes are screened by the Essex County Prosecutor's Office. It is the primary function of the Essex County Prosecutor's Office's Initial Screening Unit (I.S.U.) to review criminal complaints with an emphasis on diverting those complaints not warranting prosecution on the Superior Court level to the municipal court level.

The initial screening for the majority of cases reviewed by the Essex County Prosecutor's Office is done at the municipal level. Thus, the I.S.U. reviews criminal complaints involving indictable offenses originating from all 22 of Essex County's municipal courts. This is accomplished by telephonically reviewing cases for all municipalities except Newark.

Since approximately 60 percent of the I.S.U.'s reviews originate from the City of Newark, the I.S.U. is headquartered adjacent to the Newark Municipal Court. Case screening is facilitated through a close working relationship with Newark Police personnel and the Newark Municipal Court.

The I.S.U. also pre-screens cases with Detectives of the Newark Police Department prior to the filing of criminal complaints. Complaints are also generated from the diverse law enforcement agencies operating throughout Essex County. These agencies include the Port Authority of NY/NJ; the New Jersey State Police; the New Jersey Transit Police; the Departments of Public Safety for Rutgers University, the New Jersey Institute of Technology, University of Medicine and Dentistry of New Jersey, Essex County College and the Essex County Sheriff's Department. Each of these agencies files their criminal complaints with the Newark Municipal Court. These cases are then screened by the I.S.U.

The I.S.U. also reviews matters referred by the New Jersey Department of Corrections and the New Jersey Division of Parole entities within the jurisdiction of Essex County. These cases involve escapes from correctional institutions (including halfway houses), violations occurring within these institutions and parole absconder cases.

The Unit also identifies and recommends certain cases for prosecution in the Special Remand Court (SRC) when circumstances indicate prosecution for disorderly person offenses, but the nature of the offense or the defendant's record warrants prosecution at the county level.

### **2011 - 2012 Accomplishments**

In 2011 the I.S.U. reviewed a total of 13,418 custodial and non-custodial cases. Of these, 6,714 cases were screened out and 6,704 cases were referred to Central Judicial Processing (CJP). The I.S.U. recommended that 644 of the cases referred

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to CJP be downgraded and prosecuted as disorderly person offenses in Special Remand Court.

In 2012, a total of 14,860 cases were referred to the Essex County Prosecutor's Office through the I.S.U. Of these the total number of cases that were screened out was 7,971. The total number of cases referred to CJP section from the I.S.U was 6,889. The I.S.U. recommended that 605 of the cases referred to CJP be downgraded and referred to the Special Remand Court. Of the 13,793 weekday referrals, 7,572 cases were screened out and 6,221 cases were sent to CJP—with 605 of these cases being recommended for downgrade to SRC.

In late 2012 the ISU began reviewing cases to determine if they were appropriate for referral to the newly established Mental Health Unit. Upon making such a determination, the case is referred to CJP with a directive that it be referred to the MHU.



Initial Screening Unit, left to right: County Investigator Stephen Masi, Assistant Prosecutor Tirsia Ocasio, ECPO Staff Member Anita Robinson, Assistant Prosecutor James R. Guziejewski and ECPO Staff Member Denise M. Wallace.

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### ➔ Parole Notification Function

In August of 2000, the Essex County Prosecutor's Office created a formal system for advising the New Jersey State Parole Board of its position regarding the release of parole eligible inmates.

As inmates become eligible for release, input regarding the appropriateness of the parole release is solicited from the assistant prosecutor who prosecuted the inmate. In any given week, of the 21 counties in the state, Essex County has the highest number of parole eligible inmates.

#### **2011 Accomplishments:**

Between January 1, 2011 and December 31, 2011, a total of 218 pre-parole packages were requested and reviewed by the Parole Notification Unit. Of those 218 packets requested, 177 letters objecting to parole releases were written to the Parole Board. Those 177 letters represented inmates convicted of the following crimes:

Murder:	30	inmates
Attempted Murder:	5	inmates
Manslaughter:	35	inmates
Assault:	10	inmates
Sexual Assault:	13	inmates
Robbery:	50	inmates
Endangering the Welfare of a Child:	5	inmates
Kidnapping:	6	inmates
Carjacking:	12	inmates
CDS Related:	1	inmate
Burglary:	1	inmate
Arson:	5	inmates
Eluding Police:	1	inmates
Racketeering:	3	inmates

#### **2012 Accomplishments:**

Between January 1, 2012 and December 31, 2012, a total of 214 pre-parole packages were requested and reviewed by the Parole Notification Unit. Of those 214 packets requested, 160 letters objecting to parole releases were written to the Parole Board. Those 160 letters represented inmates convicted of the following crimes:

Murder:	18	inmates
Attempted Murder:	5	inmates
Manslaughter:	10	inmates

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Assault:	9	inmates
Sexual Assault:	112	inmates
Robbery:	55	inmates
Endangering the Welfare of a Child:	6	inmates
Kidnapping:	6	inmates
Carjacking:	14	inmates
CDS Related:	5	inmates
Burglary:	7	inmates
Arson:	3	inmates
Eluding Police:	3	inmates
Racketeering:	5	inmates
Larceny:	2	inmates

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### ➔ Pre-Trial Intervention & Expungement Unit

The Pre-Trial Intervention (PTI) & Expungement Unit is responsible for the complete review and processing of all applications for the PTI Program. This program is similar to probation, but allows participants to avoid criminal conviction. Appropriate candidates are accepted into the program and required to fulfill certain conditions. At the end of the PTI term, an Assistant Prosecutor from the Unit reviews and signs a dismissal order.

If an applicant is deemed inappropriate for PTI, a letter outlining grounds for rejection is prepared, reviewed and disseminated by Unit personnel. Requests for reconsideration and appeals receive appropriate responses.

The Unit also reviews Expungement applications aimed at clearing an offender's criminal record. In 2010, the State Legislature eased many of the time limits and criteria for Expungements. The new statute also allows for "Early Pathway" or "Discretionary" applications which require significantly more preparation, court time, and has led to the filing of more appeals.

Expungement applications are typically prompted by employment concerns and require the Unit to extensively examine the applicant's full criminal history to determine eligibility (as provided for by statute). If eligible, Unit personnel prepare, review and submit appropriate orders for the Court's signature. If the applicant is deemed ineligible, orders for dismissal are prepared and forwarded to the Court.

#### **2011-2012 Accomplishments**

In 2011, the volume of applications to the PTI Unit remained extremely high as defendants filed a total of 412 applications for admission. Specifically, the Unit accepted 274 defendants into the program and rejected 138 applications.

One 2011 PTI case of note was State v. Robert Gonzales, where the former Seton Hall University Head Basketball Coach was admitted to the PTI Program for various theft offenses arising from a shop-lifting incident at the Short Hills Mall. The applicant successfully completed the PTI program.

The Unit also processed 863 Expungement applications. A noteworthy 2011 Expungement case was State v. Olivia Howard where the State successfully opposed the granting of an Expungement in a death by auto case.

In 2012, the volume of applicants increased to the PTI Unit as defendants filed a total of 468 applications for admission. Specifically, the Unit accepted 323 defendants into the Program and rejected 145 applicants.

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One PTI case of note was State v. Jay Helfgott where the State successfully opposed the PTI admission of a New York State constable who abused his legal authority and impersonated a law enforcement officer in a bizarre attempt to redoctrinate a young woman.

The Unit also processed 892 Expungement applications. A noteworthy 2012 Expungement case was the continuing case of State v. Olivia Howard in which the Appellate Division upheld the State's decision opposing the granting of an Expungement in a death by auto case

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### ➔ Remand / Central Judicial Processing Unit

The Remand Court Section of the Essex County Prosecutor's Office handles cases that have been referred from Central Judicial Processing, Vertical Courts and Special Squads. The Essex County Remand Court was established in June 1990 to address a significant backlog in the processing and prosecution of indictable offenses. The Remand Court acts as a municipal court, handling disorderly persons cases, while retaining county-wide jurisdiction. The expanded jurisdiction of the Remand Court gives the Prosecutor's Office the option of downgrading an indictable offense to a disorderly persons charge while retaining prosecutorial responsibility. Before the Remand Court was established, all disorderly persons cases had to be referred to the municipal level. Given the high volume of cases handled in Essex County, this represents an important option, as it combines the professional resources of the County Prosecutor with the procedural speed of a municipal court.

The Assistant Prosecutors assigned to the Remand Court craft plea bargains, address victim/witness concerns including restitution and counseling in addition to preparing cases for trial in a speedy manner. Dispositions include probation, offense specific treatment and counseling, fees and fines and/or jail time. Remand Court is not appropriate for more serious indictable cases or for typical Municipal Court cases, but for lower to middle-level criminal offenses. The court allows greater flexibility in the exercise of prosecutorial discretion, improves efficiency, maintains the protection of victims' rights as well as defendants' rights and imposes appropriate sentences in accordance with the offense(s) committed.

The Remand Court is a high volume court and designed to dispose of 200 or more cases per month, compared to the 50 cases per month in each of the post-indictment trial courts. The majority of cases calendared in the Remand Court are scheduled directly from Central Judicial Processing where all defendants are initially arraigned. The swift and certain punishment meted out in the Remand Court is reflected in a custodial sentencing rate continually in excess of 70 percent.

#### **2011-2012 Accomplishments**

During 2011, Assistant Prosecutors handled 6,194 charges in Remand Court involving 2,637 defendants. Fines in the amount of \$565,107 were imposed by the Courts.

In 2012 that trend continued with Assistant Prosecutors handling 5,942 charges against 2,545 defendants. Fines totaling \$520,198 were imposed.



## Remand/CJP

Assistant Prosecutor GERALYN INNEO, Assistant Prosecutor CAROLINE OLIVEIRA, Assistant Prosecutor CRYSTAL DOZIER, Assistant Prosecutor OLAJIDE ARAMONI, Assistant Prosecutor SARAH CHAMBERS, Chief Assistant Prosecutor KEITH HARVEST, County Investigator CHRISTIE ROYSTER.