

SENATE, No. 1824

STATE OF NEW JERSEY

INTRODUCED JANUARY 27, 1997

By Senators GORMLEY, SINAGRA, Inverso, Martin, Matheussen, Bark, Kosco, Schluter, Cardinale, Palaia, Connors, Cafiero, Sacco, Rice, Kenny, Adler, Lesniak, Scott, Ciesla, LaRossa, Kyrillos, Lynch, O'Connor, Bryant, MacInnes, Littell, Bennett, Codey, Casey, Zane, McGreevey, Baer, Lipman, Singer, Ewing, McNamara and DiFrancesco

1 AN ACT establishing a code of ethics for county prosecutors and their  
2 employees and supplementing Title 2A of the New Jersey Statutes.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

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7 1. This act shall be known and may be cited as the "County  
8 Prosecutors' Code of Ethics."

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10 2. The Legislative finds and declares that:

11 a. In New Jersey's criminal justice system, county prosecutors and  
12 the employees of their offices perform vital and highly sensitive duties;

13 b. Public confidence in the criminal justice system is eroded  
14 whenever the public perceives that county prosecutors or their  
15 employees are not performing their duties in an impartial, professional  
16 manner or that the private interests of county prosecutors and their  
17 employees have an influence on the performance of those duties;

18 c. Government has a duty to provide their citizens with standards  
19 by which they may determine whether the functions of county  
20 prosecutors' offices are being properly performed and to apprise  
21 county prosecutors and their employees of the course of conduct  
22 which is expected of them while conducting their duties;

23 d. It is the purpose of this act in order to help to insure public  
24 confidence in the criminal justice system, by establishing a Statewide  
25 code of ethics for county prosecutors and the employees of county  
26 prosecutors' offices.

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28 3. As used in this act:

29 a. "employee of a county prosecutor" means any person who is  
30 either employed by or assigned to a county prosecutor's office.

31 b. "ethics code" means the code of ethics established by this act.

1       4. a. A county prosecutor or an employee of a county prosecutor  
2 shall not have any interest, financial or otherwise, direct or indirect, or  
3 engage in any business or transaction or professional activity which is  
4 in conflict with the proper discharge of his duties in the public  
5 interest.

6       b. An employee of a county prosecutor shall not engage, directly  
7 or indirectly, in any business, trade, profession, trade or occupation  
8 which is subject to licensing or regulation by any State, county or  
9 municipal agency without obtaining approval for that activity by the  
10 county prosecutor.

11       c. A county prosecutor or any employee of a county prosecutor shall  
12 not use his official position to secure unwarranted privileges or  
13 advantages for himself or others.

14       d. A county prosecutor or an employee of a county prosecutor  
15 shall not act in his official capacity in any manner wherein he has a  
16 direct or indirect personal financial interest that might reasonably be  
17 expected to impair his objectivity or independence of judgment.

18       e. A county prosecutor or an employee of a county prosecutor  
19 shall not undertake any employment or service, whether compensated  
20 or not, which might reasonably be expected to impair his objectivity  
21 and independence of judgment in the exercise of his official duties.

22       f. A county prosecutor or an employee of a county prosecutor shall  
23 not solicit, receive or accept any gratuity, gift or other thing of value,  
24 either directly or indirectly, under circumstances from which it might  
25 reasonable be inferred that such gift, gratuity, or other thing of value  
26 was offered or given for the purpose of influencing him in the  
27 discharge of his official duties.

28       g. A county prosecutor or an employee of a county prosecutor  
29 shall not knowingly and without justification act in any way that might  
30 reasonably be expected to create an impression or suspicion among the  
31 public having knowledge of his acts that he may be engaged in conduct  
32 violative of his trust as the county prosecutor or as an employee of a  
33 county prosecutor.

34       h. A county prosecutor or employee shall not attend any  
35 conference, convention or meeting relating to the duties and  
36 responsibilities of his position at the expense of any organization or  
37 agency other than the office of the county prosecutor unless the  
38 employee has the approval of the county prosecutor or in the case of  
39 a county prosecutor, the approval of the Attorney General.

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41       5. a. An assistant prosecutor shall not engage in other gainful  
42 employment except, with the prior written approval of the county  
43 prosecutor, for a part-time teaching position at an institute of higher  
44 education in a program of law enforcement education.

45       b. An employee of a county prosecutor other than an assistant  
46 prosecutor shall not engage in any outside employment without the

1 prior written approval of the prosecutor.

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3 6. An employee of a county prosecutor shall not disclose, other  
4 than to law enforcement personnel, any information concerning the  
5 operations, investigations or other business of the prosecutor's office  
6 which is not generally available to members of the public unless such  
7 disclosure is expressly authorized by the county prosecutor.

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9 7. An assistant prosecutor shall not, prior to the final resolution of  
10 a criminal proceeding, make any extra-judicial statement for public  
11 dissemination which is reasonably likely to interfere with the criminal  
12 proceeding.

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14 8. a. An employee of a county prosecutor shall not provide bail or  
15 bail costs to any person accused of a criminal offense without the  
16 approval of the county prosecutor.

17 b. An employee of a county prosecutor shall not testify as a  
18 character or reputation witness on behalf of any person accused of a  
19 criminal offense without the prior approval of the county prosecutor.

20 c. An employee of a county prosecutor shall not recommend,  
21 contact or assist in obtaining counsel to represent any person accused  
22 of a criminal offense.

23

24 9. A county prosecutor or an employee of a county prosecutor in  
25 making any judgment in his official capacity shall not consider his  
26 personal or political advantage, or his personal reputation.

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28 10. A county prosecutor and any employee of a county prosecutor  
29 shall insure that no conflict of interest or appearance of conflict is  
30 created when engaging any consultant, contract agent, independent  
31 contractor or other person to perform a service for the prosecutor's  
32 office.

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34 11. a. A county prosecutor or an employee of a county prosecutor  
35 shall not engage in any political activity or attend any affair for  
36 political purposes.

37 b. As used in this section, "political activity" includes;

38 (1) Any candidacy for elective public or political office;

39 (2) Any holding of an office in, or employment with or working on  
40 behalf of any political party, organization or club;

41 (3) Any participation in any political campaign;

42 (4) Any exhibiting of signs concerning political candidates on one's  
43 person, vehicle or home;

44 (5) Any use of one's name in connection with any political material;

45 (6) Any purchase, sale or distribution of tickets to any affair held  
46 for any political purpose whatsoever;

1 (7) Any contribution to a political party or candidate;

2 (8) Any soliciting or accepting of any contribution either directly  
3 or through a third person to or on behalf of any political organization  
4 or for any other political purpose whatsoever;

5 (9) Any use of one's official influence to modify the political action  
6 of another; and

7 (10) Any working at the polls during election time or as an election  
8 official at any time.

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10 12. a. An employee of a county prosecutor shall not serve as an  
11 officer, trustee, director or member of any charitable, civic or  
12 professional organization, association or committee without obtaining  
13 the prior approval of the county prosecutor.

14 b. An employee of a county prosecutor shall not serve on any  
15 public body or any governmental position without the prior written  
16 approval of the county prosecutor.

17 c. An employee of a county prosecutor shall not use his official  
18 title or his name in any written materials issued on behalf of any public  
19 body or charitable, civic, religious or professional organization,  
20 association or committee.

21 d. An employee of a county prosecutor shall not engage in any  
22 fund-raising activity without the prior written approval of the county  
23 prosecutor.

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25 13. a. A former assistant prosecutor shall not appear in any  
26 criminal matter in any capacity against the State in the county by  
27 which he was employed for a period of six months from the date of  
28 termination of his public employment. This prescription does not  
29 foreclose such appearances by a law firm with which the former  
30 assistant prosecutor is associated.

31 b. A former assistant prosecutor and any law firm with which he is  
32 associated shall not represent any person in any matter (1) in which he  
33 participated to any extent while an assistant prosecutor including but  
34 not limited to any aspect of investigation, trial preparation or trial; (2)  
35 for which he had any responsibility, whether exercised or not; or (3)  
36 about which he became aware of any facts or other information.

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38 14. An assistant prosecutor or a person employed by a county  
39 prosecutor as a detective or investigator shall not privately retain or  
40 be represented in his personal legal affairs by any attorney who  
41 maintains of active criminal practice within the county in which the  
42 person is employed.

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44 15. a. An employee of a county prosecutor's office shall not testify  
45 in any civil action as a fact witness without the prior approval of the  
46 county prosecutor, or without prior notification to the county

1 prosecutor when the testimony is given pursuant to an order of the  
2 court.

3 b. An employee of a county prosecutor shall not testify in any civil  
4 action as to his expert opinion on any matter without the prior  
5 approval of the prosecutor. The county prosecutor shall determine  
6 whether a fee shall be remitted to the county for such expert testimony  
7 by the litigant seeking to offer that testimony.

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9 16. With respect to the implementation of the provisions of the  
10 ethics code, the Attorney General shall have the following powers:

11 a. To initiate, receive, hear and review complaints and hold  
12 hearings with regard to possible violations of the ethics code;

13 b. To issue subpoenas for the production of documents and the  
14 attendance of witnesses with respect to its investigation of any  
15 complaint or to the holding of a hearing;

16 c. To render advisory opinions as to whether a given set of facts  
17 and circumstances would constitute a violation of the ethics code;

18 d. To enforce the provisions of the ethics code and to impose  
19 penalties for the violation thereof as are authorized by this act; and

20 e. To adopt rules and regulations pursuant to the "Administrative  
21 Procedure Act, P.L.1968, c. 410 (C.52:14B-1 et seq.) and to do other  
22 things as are necessary to implement the purposes of this act.

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24 17. A county prosecutor or employee of a county prosecutor may  
25 request and obtain from the Attorney General an advisory opinion as  
26 to whether any proposed activity or conduct would in its opinion  
27 constitute a violation of the provisions of the ethics code. Advisory  
28 opinions of the Attorney General shall not be made public, except  
29 when the Attorney General directs that the opinion be made public.  
30 Public advisory opinions shall not disclose the name of the requester  
31 unless the Attorney General in directing that the opinion be made  
32 public so determines.

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34 18. The Attorney General, upon receipt of a signed written  
35 complaint by any person alleging that the conduct of a county  
36 prosecutor or an employee of a county prosecutor is in conflict with  
37 the provisions of the ethics code, shall acknowledge receipt of the  
38 complaint within 30 days of receipt and initiate an investigation  
39 concerning the facts and circumstances set forth in the complaint. The  
40 Attorney General shall make a determination as to whether the  
41 complaint is within its jurisdiction or frivolous or without any  
42 reasonable factual basis. If the Attorney General shall conclude that  
43 the complaint is outside its jurisdiction, frivolous or without factual  
44 basis, it shall reduce that conclusion to writing and shall transmit a  
45 copy thereof to the complainant and to the county prosecutor or  
46 employee of a county prosecutor against whom the complaint was

1 filed. Otherwise the Attorney General shall notify the county  
2 prosecutor or employee of a county prosecutor against whom the  
3 complaint was filed of the nature of the complaint and the facts and  
4 circumstances set forth therein. The county prosecutor or an  
5 employee of an county prosecutor shall have a opportunity to present  
6 the Attorney General with any statement or information concerning the  
7 complaint which he wishes. Thereafter, if the Attorney General  
8 determines that a reasonable doubt exists as to whether a county  
9 prosecutor or employee of a county prosecutor is in conflict with the  
10 provisions of the ethics code. the Attorney General shall conduct a  
11 hearing in the manner prescribed by section 21 of this act concerning  
12 the possible violation and any other facts and circumstances which may  
13 have come to the attention of the Attorney General with respect to the  
14 conduct of the count prosecutor or employee of a county prosecutor.  
15 The Attorney General shall render a decision as to whether the  
16 conduct of a county prosecutor or employee of a county prosecutor is  
17 in conflict with the provisions of the ethics code. A final decision of  
18 the Attorney General may be appealed in same manner as any other  
19 final State agency decision.

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21 19. A county prosecutor or employee of county prosecutor found  
22 guilty by Attorney General of the violation of any provision of this  
23 ethics code, shall be fined not less than \$100.00 nor more than  
24 \$500.00, which penalty may be collected in a summary proceeding  
25 pursuant to "the penalty enforcement law" (N.J.S.2A:58-1 et seq.).  
26 The Attorney General may also recommend the person's removal,  
27 demotion, suspension or any disciplinary action which the Attorney  
28 General deems appropriate.

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30 20. A finding by the Attorney General that a county prosecutor or  
31 employee of the county prosector is guilty of violation of the ethics  
32 code shall be sufficient cause for his removal, suspension, demotion or  
33 other disciplinary action. When a person who is in the career service  
34 is charged with violating the provisions of the ethics code, the  
35 procedure leading to removal, suspension, demotion or other  
36 disciplinary action shall be governed by any applicable procedures of  
37 Title 11A of the New Jersey Statutes and the rules promulgated  
38 pursuant thereto.

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40 21. All hearings required pursuant to this act shall be conducted in  
41 conformity with the rules and procedures, insofar as they may be  
42 applicable, provided for hearings by a State agency in contested cases  
43 under the "Administrative Procedure Act," P.L.1968, c. 410  
44 (C52:14B-1 et seq.).

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46 22. This act shall take effect immediately.

## STATEMENT

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This bill would establish the "County Prosecutors' Code of Ethics." This code would apply both to county prosecutors and all persons employed in their offices. The code would generally prohibit county prosecutors and their employees from engaging in business or professional activities which conflict with the proper discharge of their duties.

The code would specially prohibit a county prosecutor and any employee of a county prosecutor from using their official position to secure unwarranted privileges for himself or others and from acting in an official capacity in matters in which he has a direct or indirect financial interest.

Other provisions of the bill would prohibit county prosecutors and their employees from accepting gifts and from engaging in political activities.

In addition, the code would establish restrictions on certain charitable and civic activities and establish post-employment restrictions for assistant prosecutors.

The bill provides that the Attorney General would be responsible for enforcing the ethics code. Violations would be punishable by a fine of between \$100.00 and \$500.00. The Attorney General could also recommendation further disciplinary action such as removal, suspension or demotion.

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Establishes the "County Prosecutors' Code of Ethics."