

# APPENDIX E

## MUNICIPAL PROSECUTOR LAW

### Chapter 25. Municipal Prosecutors

#### *Section*

- 2B:25-1 Findings, declarations relative to municipal prosecutors.
- 2B:25-2 Definitions relative to municipal prosecutors.
- 2B:25-3 Exemptions for municipal prosecutor currently serving.
- 2B:25-4 Appointment, qualifications for municipal prosecutor; compensation.
- 2B:25-5 Duties of municipal prosecutor; use of private attorneys.
- 2B:25-5.1 Municipal prosecutors, review of motor vehicle abstracts of certain offenders for repeat offenses; transmission to judge.
- 2B:25-6 Vacancies, filling, alternative representation.
- 2B:25-7 Superseding by Attorney General, county prosecutor.
- 2B:25-8 Reimbursement to Attorney General, county prosecutor.
- 2B:25-9 Removal from office, procedure.
- 2B:25-10 Training programs, certification.
- 2B:25-11 Acceptance of plea to lesser offense.
- 2B:25-12 Motion to amend original charge.

**2B:25-1. Findings, declarations relative to municipal prosecutors.** The Legislature finds and declares that municipal prosecutors are a critical component of New Jersey's system for the administration of justice, that the role of municipal prosecutor is not statutorily defined, and that in order to ensure the uniform and proper administration of justice in this State, it is necessary to define the duties of municipal prosecutors.

**Adopted.** L. 1999, c. 349, §1, effective April 13, 2000.

**2B:25-2. Definitions relative to municipal prosecutors.** As used in this act:  
a. "Municipal prosecutor" means a person appointed to prosecute all offenses over which the municipal court has jurisdiction.

b. "Governing body" of a county or municipality means the officer or body that is the appropriate appointing authority for county counsel, municipal attorney or corporation counsel under the laws applicable to the form of county or municipal government established in the county or municipality pursuant to law, provided that the municipal corporation counsel shall be the appointing authority in any city of the first class with a population greater than 270,000, according to the latest federal decennial census and in any city of the second class with a population of greater than 30,000 but less than 43,000, according to the latest decennial census, which city of the second class is located in a county of the first class with a population less than 600,000 according to the latest federal decennial census.

c. "Municipal court" means any municipal or joint municipal or central municipal court established pursuant to statute.

d. "Attorney General" includes the Attorney General of New Jersey and any assistants or deputies who may be designated to carry out the responsibilities conferred on the Attorney General by this act or the laws of this State.

e. "County prosecutor" shall mean the prosecutor of the county in which the municipal court is situated and any assistant prosecutors of that county who may be designated by this act.

**Adopted.** L. 1999, c. 349, §2, effective April 13, 2000.

**2B:25-3. Exemptions for municipal prosecutor currently serving.** Any person serving as a municipal prosecutor on the effective date of this act shall be exempt from its requirements for a period of either one year or for the expiration of his or her current term of office, whichever is shorter, except that the provisions of the act pertaining to supersession (section 7) and removal (section 9) shall be in full force on the effective date of this act.

**Adopted.** L. 1999, c. 349, §3, effective April 13, 2000.

**2B:25-4. Appointment, qualifications for municipal prosecutor; compensation.** a. Each municipal court in this State shall have at least one municipal prosecutor appointed by the governing body of the municipality, municipalities or county in accordance with applicable laws, ordinances and resolutions.

b. A municipal prosecutor shall be an attorney-at-law of this State in good standing, and shall serve for a term of one year from the date of his or her appointment, except as determined by the governing body of a county or a city of the first class with a population greater than 270,000, according to the latest federal decennial census, or the governing body of a city of the second class with a population of greater than 30,000 but less than 43,000, according to the latest decennial census, which city of the second class is located in a county of the first class with a population less than 600,000 according to the latest federal decennial census, and may continue to serve in office pending re-appointment or appointment of a successor. A municipal prosecutor may be appointed to that position in one or more municipal courts. The provisions of this act shall apply to each such position held.

c. (1) A municipal prosecutor of a joint municipal court shall be appointed upon the concurrence of the governing bodies of each of the municipalities in accordance with applicable laws, ordinances or resolutions.

(2) A municipal prosecutor of a central municipal court shall be appointed by the governing body of the county.

d. Municipal prosecutors shall be compensated either on an hourly, per diem, annual or other basis as the county, municipality or municipalities provide. In the case of a joint municipal court, municipalities shall, by similar ordinances, enter into an agreement fixing the compensation of the municipal prosecutor and providing for its payment. In the case of a central municipal court, the county shall fix the compensation of the municipal prosecutor and provide for its payment.

The compensation of municipal prosecutors shall be in lieu of any and all other fees; provided, however that when a municipal prosecutor is assigned to prosecute a de novo appeal in the Superior Court, the prosecutor shall be entitled to additional compensation unless the municipality expressly provides otherwise at the time the compensation is fixed.

e. In accordance with applicable laws, ordinances and resolutions, a municipality may appoint additional municipal prosecutors as necessary to administer justice in a timely and effective manner in its municipal court. Such appointments shall be subject to this act. This subsection also applies to joint municipal courts and central municipal courts.

f. Any municipal court having two or more municipal prosecutors shall have a "chief municipal prosecutor" who shall be appointed by the governing body of the county or the municipality. The chief municipal prosecutor of a joint municipal court shall be appointed upon the concurrence of the governing bodies of each

municipality. The chief municipal prosecutor shall have authority over other prosecutors serving that court with respect to the performance of their duties.

g. (1) Nothing in this act shall affect the appointment of municipal attorneys in accordance with N.J.S.40A:9-139; provided, however, that a person appointed to the positions of both municipal prosecutor and municipal attorney shall be subject to all of the provisions of this act while serving in the capacity of municipal prosecutor.

(2) In addition to any other duties proscribed by the provisions of this act, a person serving as both a municipal prosecutor and a municipal attorney may prosecute county or municipal ordinance violations.

**Adopted.** L. 1999, c. 349, §4, effective April 13, 2000.

**2B:25-5. Duties of municipal prosecutor; use of private attorneys.** a. A municipal prosecutor, except as provided by subsection b. of this section and sections 6 and 7 of this act, shall represent the State, the county or the municipality in the prosecution of all offenses within the statutory jurisdiction of the municipal court as defined by law; including municipal ordinance and municipal code violations pertaining to zoning, land or property use regulation, property maintenance, building or construction. Such other local officials as may be deemed appropriate may be called by the municipal prosecutor in such prosecutions. Nothing contained herein shall prohibit a municipality from hiring special counsel to act as municipal prosecutor for these types of offenses. A municipal prosecutor shall be responsible for handling all phases of the prosecution of an offense, including but not limited to discovery, pretrial and post-trial hearings, motions, dismissals, removals to Federal District Court and other collateral functions authorized to be performed by the municipal prosecutor by law or Rule of Court. As used in this subsection, the term “post-trial hearing” shall not include de novo appeals in Superior Court.

b. A municipal prosecutor may, with the approval of the court and pursuant to the Rules of Court, authorize private attorneys to prosecute citizen complaints filed in the municipal court. A municipal prosecutor may, with the approval of the court, decline to participate in municipal court proceedings in which the defendant is not represented by counsel. The court shall afford the citizen complainant an opportunity to be heard prior to determining whether to approve a municipal prosecutor’s decision to authorize a private attorney to prosecute a citizen complaint or to decline to participate in a municipal court proceeding in which the defendant is not represented by counsel. When the municipal prosecutor declines to prosecute, the prevailing complainant may make an application to the court for counsel fee reimbursement to be paid out of applicable fines, but such reimbursement shall not exceed the amount of the applicable fines. Upon a finding that a conflict of interest precludes a municipal prosecutor from participating in a proceeding, the court shall excuse the municipal prosecutor and may, in such a case, request the county prosecutor to provide representation in accordance with section 6 of this act unless the municipality has provided for alternative representation.

c. A municipal prosecutor may at any time move before the municipal court to amend or dismiss any complaint for good cause shown in accordance with the Rules of Court.

**Adopted.** L. 1999, c. 349, §5, effective April 13, 2000. **Amended.** L. 2000, c. 178, §1, effective April 13, 2000.

**2B:25-5.1. Municipal prosecutors, review of motor vehicle abstracts of certain offenders for repeat offenses; transmission to judge.** Whenever a person is charged with a violation of R.S.39:3-40, R.S.39:4-50, section 2 of P.L.1981, c.512 (C.39:4-50.4a) or R.S.39:4-129, a municipal prosecutor shall contact the New Jersey Motor Vehicle Commission by electronic or other means, for the purpose of obtaining an abstract of the person's driving record. In every such case, the prosecutor shall:

a. Determine, on the basis of the record, if the person shall be charged with enhanced penalties as a repeat offender; and

b. Transmit the abstract to the appropriate municipal court judge prior to the imposition of sentence.

**Adopted.** L. 2004, c. 95, §1, effective October 1, 2004. **Amended.** L. 2004, c. 185, §1, effective December 30, 2004.

**2B:25-6. Vacancies, filling, alternative representation.** a. Appointments to fill vacancies in the position of municipal prosecutor shall be made in accordance with the provisions of section 4 of this act as soon as practicable.

b. Unless the municipality has provided for alternative representation, the Attorney General or the county prosecutor, with notice to the Attorney General, may designate, at the request of the municipal prosecutor or municipal court, one or more assistant or deputy attorneys general or assistant prosecutors to prosecute the business of any municipal court if there is a vacancy in the office of the municipal prosecutor or the municipal prosecutor is temporarily unavailable and the municipal prosecutor or the municipal court has requested such designation.

**Adopted.** L. 1999, c. 349, §6, effective April 13, 2000.

**2B:25-7. Supersedure by Attorney General, county prosecutor.** Whenever in the opinion of the Attorney General or a county prosecutor the public interest of the State will be promoted by so doing, the Attorney General or county prosecutor, with notice to the Attorney General, may supersede a municipal prosecutor by prosecuting any offense against the laws of this State within the jurisdiction of a municipal court, or by intervening in any prosecution before a municipal court.

**Adopted.** L. 1999, c. 349, §7, effective April 13, 2000.

**2B:25-8. Reimbursement to Attorney General, county prosecutor.** Whenever the Attorney General or county prosecutor shall prosecute in a municipal court of this State pursuant to section 6 of this act, the Attorney General or county prosecutor shall, upon demand, be promptly reimbursed by the county, municipality or municipalities for costs, including the compensation of any assistants or deputies attorney general or assistant prosecutors.

**Adopted.** L. 1999, c. 349, §8, effective April 13, 2000.

**2B:25-9. Removal from office, procedure.** In addition to any of the other means provided by law for the removal from office of a public official, a municipal prosecutor may be removed by the governing body of a county or municipality, or as provided by the agreement entered into between two or more municipalities participating in a joint municipal court, for good cause shown and after a public hearing, and upon due notice and an opportunity to be heard.

**Adopted.** L. 1999, c. 349, §9, effective April 13, 2000.

**2B:25-10. Training programs, certification.** a. (1) The Attorney General, in consultation with the county and municipal prosecutors, shall develop curricula

for training programs for all municipal prosecutors which shall include, but not be limited to, domestic violence training and include topics regarding the dynamics of domestic violence, the impact of domestic violence on children, the impact of trauma on survivors, risks for lethality in domestic violence cases, offenders accountability, safety planning and services for survivors of domestic violence, the impact of racial bias and discrimination on survivors and marginalized communities.

(2) Participation in such training programs shall be voluntary, except that participation in the domestic violence training program shall be mandatory. An attorney successfully completing a training program shall receive such certification or recognition as deemed appropriate by the Attorney General.

b. The domestic violence training course and curriculum shall be reviewed at least every two years and modified by the Division of Criminal Justice from time to time as need may require.

The Attorney General shall be responsible for ensuring that all new municipal prosecutors appointed after the effective date of P.L.2021, c.378 who have not previously served as a municipal prosecutor for a municipality attend an initial domestic violence training within 90 days of appointment or transfer and annual in-service training of at least four hours as described in paragraph (3) of subsection b. of section 4 of P.L. 1991, c.261 (C.2C:25-20). The training shall not be required for any municipal prosecutor who was appointed to that office prior to the effective date of P.L.2021, c.378 who is subsequently re-appointed to that office or appointed as a municipal prosecutor for another municipality after that effective date..

**Adopted.** L. 1999, c. 349, §10, effective April 13, 2000. **Amended.** L. 2021 c. 378 §1, effective January 18, 2022.

**2B:25-11. Acceptance of plea to lesser offense.** Acceptance of plea to lesser offense. a. In accordance with the Rules of Court adopted by the Supreme Court of New Jersey or procedures promulgated by the Administrative Office of the Courts, a municipal prosecutor may recommend to the court to accept a plea to a lesser or other offense.

b. (1) The Administrative Office of the Courts has developed and shall administer a Municipal Case Resolution Program that would allow a defendant charged with a matter falling within the jurisdiction of the municipal court to engage in online:

- (a) plea negotiations with a municipal prosecutor;
- (b) entry of a guilty plea; and
- (c) payment of a fine or penalty.

(2) A municipal prosecutor shall use the Municipal Case Resolution Program developed by the Administrative Office of the Courts.

c. Nothing in this section shall be construed to alter or limit the authority or discretion of the Supreme Court to regulate the practice of plea agreements in municipal court, or to alter or limit the authority or discretion of a prosecutor.

**Adopted.** L. 2000, c. 75, §2, effective July 24, 2000; L. 2021 c. 293 §1, effective February 1, 2022.

**2B:25-12. Motion to amend original charge.** In accordance with the Rules of Court adopted by the Supreme Court of New Jersey, a municipal prosecutor may move before the municipal court to amend the original charge.

**Adopted.** L. 2000, c. 75, §3, effective July 24, 2000.