



2021 Annual Report

UNIT DESCRIPTIONS

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Adult Trial Section

The Adult Trial Section (ATS) is the largest unit in the Essex County Prosecutor's Office and thus responsible for handling the largest caseload in the Office. Essex County continues to lead the State in the number of criminal filings and handles a higher-than-average proportion of first and second-degree offenses, the majority of which are prosecuted by the ATS. The ATS is comprised of 38 Assistant Prosecutors who represent the State in criminal proceedings upon the arrest of a defendant until final disposition of the case. The ATS is headed by a Deputy Chief Assistant Prosecutor as well as a Director and four Supervisors. The remaining Assistant Prosecutors are assigned to a Superior Court Criminal Judge and are responsible for all litigation functions that are critical to the operation of an effective criminal justice system.

Central to this role of the ATS Assistant Prosecutor is the preparation and prosecution of jury and non-jury trials. ATS Assistant Prosecutors also represent the State in a variety of other court proceedings including detention hearings, motions to revoke release, arraignment/status conferences, all pre-trial and post-trial motions, sentence hearings, hearings on violations of probation, appeals from the decisions of municipal courts, retraxit pleas of guilty to indictments and accusations and petitions for post-conviction relief. On occasion, they are responsible for presenting cases to a Grand Jury. Additionally, ATS Assistant Prosecutors handle Krol hearings, the periodic review of the status of persons committed to State psychiatric institutions incident to criminal proceedings, as well as determining the geographic scope of extradition efforts to be undertaken in the event a defendant absconds.

With the implementation of Criminal Justice Reform in January 2017, the burden of speedy trials has made the job of an ATS Assistant Prosecutor even more challenging due to the high volume of cases. Since many crimes require mandatory periods of parole ineligibility, rapid and effective disposition of these offenses has become more difficult. Hesitancy on the part of victims and witnesses to cooperate stemming from intimidation and threats of violence for testifying coupled with an increase in the distrust of law enforcement are additional hurdles that must be overcome. With the advancements in technology and social media, juries are demanding forensic evidence, video evidence, other forms of corroboration as well as eye-witness testimony to convict a defendant.

The ATS continues to place a strong emphasis on mentorship and training for the ATS Assistant Prosecutors and to instill a sense of justice to see that fairness and equity is achieved in Essex County.

To assist ATS Assistant Prosecutors with their voluminous duties and responsibilities are fifteen Detectives and three Investigative Aids who are overseen by a Captain, Lieutenant and two Sergeants. Together, all parties work closely to prepare cases for final disposition. Detectives perform a wide array of investigative tasks to support and supplement the prosecution of criminal cases. ATS Detectives locate and

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 necessary to ensure a successful prosecution. Furthermore, the Detectives also receive training and mentorship from their superiors.

In sum, the ATS Assistant Prosecutors and Detectives work closely to ensure that all criminal matters are brought to justice, strive to serve victims, witnesses, and the community at large and include victims and witnesses in all aspects of the criminal justice process.



Trial Team Supervisor Portia Downing

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2021 Accomplishments

In 2021, the Adult Trial Section of the Essex County Prosecutor's Office successfully indicted or charged by accusations 3,860 defendants and resolved 2,576 cases. The percentage of those cases that involved first or second-degree crimes was 42.6%. The ATS Assistant Prosecutors obtained 3 defendant dispositions by trial with an overall post-indictment/accusation conviction rate including pleas and trial of 67.9%.

The following cases highlight some of the significant cases handled by the ATS Assistant Prosecutors:

On March 9, 2021, following a bench trial before a Superior Court Judge, Kanisha Ferguson was found guilty of disorderly persons resisting arrest. Ferguson was sentence to one year of probation.

On May 27, 2021, Naadir Jones pled guilty to first-degree aggravated manslaughter and second-degree unlawful possession of a weapon – a handgun.

On July 20, 2021, Jones was sentenced to 10 years in New Jersey State Prison subject to the No Early Release Act.

On July 14, 2021, Tanya Spears pled guilty to first-degree attempted murder.

On August 10, 2021, after a trial by jury, defendant Harold Colbert was found guilty of murder, second-degree Unlawful Possession of a Weapon – a handgun, and second-degree possession of a weapon for an unlawful Purpose. Colbert was subsequently sentenced to 45 years in New Jersey State Prison subject to the No Early Release Act.

On December 2, 2021, Spears was sentenced to 10 years in New Jersey State Prison subject to the No Early Release Act.

Appellate Section

The Appellate Section of the Essex County Prosecutor's Office is the largest appellate practice of any County Prosecutor's office in New Jersey. It is comprised of career appellate lawyers, all of whom enjoy considerable experience in the state and federal appellate courts. In total, the Section's attorneys have argued dozens of cases in the Supreme Court of New Jersey, hundreds more in the Appellate Division, and have extensive oral argument and briefing experience in the United States District Court for the District of New Jersey, the United States Court of Appeals for the Third Circuit, and the Supreme Court of the United States.

The Section handles all litigation on behalf of the ECPO in the Appellate Division and the Supreme Court of New Jersey, whether it be pre-trial, during trial, or post-sentencing. It also 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. The Section also handles all petitions for habeas corpus in federal court, and oversees all municipal appeals, gun permit applications and appeals, name change applications, reciprocal witness applications, appeals of orders granting or denying pretrial detention, and all requests made under the Open Public Records Act and the common law right of access.

The Section also takes great pride in being an always-ready resource for ECPO's trial and specialized-unit prosecutors. Providing legal advice, second-chairing trials or motions, drafting jury instructions, handling some of the more difficult trial motions, providing legal updates, and teaching CLE courses are just a few of the ways the Section is integral to the ECPO's mission of seeking justice, serving justice, and doing justice, both on appeal and throughout the investigative and trial processes.

Significant 2021 Cases:

Supreme Court of the United States

Robert Andrews v. New Jersey - 141 S. Ct. 2623 (2021) – In this case of first impression, the Appellate Division (457 N.J. Super. 14 (2018)) agreed with the Section that compelling a suspect to disclose to law enforcement his cell phone password does not violate his federal or state constitutional rights to remain silent. The Supreme Court of New Jersey granted the defendant's petition for certification, and by a 4-3 vote affirmed the judgment of the Appellate Division, holding that: the Fifth Amendment privilege against self-incrimination did not protect defendant from the compelled disclosure of the passcodes; the passcodes were not "incriminating" within the meaning of statutes and evidence rules codifying the state law protection against compelled self-incrimination; and the state common law privilege against self-incrimination was not violated by an order compelling defendant to disclose the passcodes. 243 N.J. 447 (2020). Defendant sought certiorari in the United States

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Supreme Court, and the Section filed a Brief in Opposition. On May 17, 2021, that Court denied review, leaving in place this important case addressing the intersection between the Fifth Amendment and modern technology.

Supreme Court of New Jersey

State v. Kaneem Williamson - 246 N.J. 185 (2021) - The Section here convinced the Supreme Court to unanimously affirm defendant's murder conviction in the face of a challenge to the admission of the victim's dying declaration that Williamson was the shooter. The case also settles an issue that has been open for some time, which is whether dying declarations admissible under state evidentiary rules, whether testimonial or not, violate the confrontation clauses of either federal or state constitution. The Court held that they do not.

State v. David Chavies - 247 N.J. 245 (2021) - In this Mercer County case, the Supreme Court granted review to answer the questions, "Did defendant satisfy the medical predicates for relief under Rule 3:21-10(b)(2), and is a defendant barred from release under Rule 3:21-10(b)(2) while serving a mandatory period of parole ineligibility?" The Section, on behalf of amicus curiae County Prosecutors Association of New Jersey, filed a brief and participated in oral argument, and helped convince the Court that, on the broader issue, defendants serving mandatory periods of parole ineligibility are not entitled to relief under Rule 3:21-10(b)(2).

State v. Edwin Andujar - 247 N.J. 275 (2021) - After an Essex County jury convicted defendant of the murder of his wheelchair-bound roommate, the Appellate Division reversed the conviction on the theory that defendant was denied a fair trial when the prosecutor learned and disclosed that a prospective juror had a criminal history. 462 N.J. Super. 537 (2020). The Section successfully petitioned the Supreme Court of New Jersey to hear the case, 244 N.J. 170, but the Court subsequently affirmed the Appellate Division's decision. While not present in the facts of this case, the opinion brought to the legal forefront the issue of implicit bias in jury selection.

State v. Zakariyya Ahmad - 246 N.J. 592 (2021) - The Appellate Division (unpublished 2019) agreed with the Section and held that the motion court properly admitted the juvenile defendant's statement after finding that the police did not improperly conduct a custodial interrogation based on the record. In the Fall of 2020, the Section argued this case in the Supreme Court of New Jersey. While the Court ultimately disagreed with the Section's position, this opinion provides law enforcement critical guidance when interviewing juveniles.

State v. Michelle Paden-Battle & State v. Mark Melvin - 248 N.J. 321 (2021) - In these cases, Section APs represented the State in arguing that the sentencing court appropriately considered the entirety of the evidence in defendants' cases, including credible evidence related to those counts for which the jury did not return a guilty verdict. The Supreme Court issued a single opinion and remanded for resentencing

in both, finding that the judge's use of such probative evidence cannot be considered when it is related to counts which the jury found the defendants not guilty.

State v. Jose Carrion & State v. Tywaun Hedgespeth - 249 N.J. 253, 249 N.J. 234 (2021) - Section APs represented the State before the Supreme Court in these two cases in which several issues of first impression were considered and decided, namely: whether the Confrontation Clause permitted an affidavit from a non-testifying witness to be admitted to prove defendant did not have a permit to possess a handgun; whether the improper admission of defendant's prior convictions for impeachment purposes was subject to harmless error analysis; and whether defendant's second confession, given after Miranda warnings, was admissible when he had previously been subjected to unwarned questioning in which he confessed.

State v. Paulino Njango - 247 N.J. 533 (2021) - In this case with a tortuous procedural history, the Section represented the State in the Supreme Court, which ultimately held that the previous holding of Appellate Division as to correct number of service credits to which defendant was entitled was law of the case. The Court also answered a question of first impression and held that, pursuant to the fundamental-fairness doctrine, the excess time that defendant erroneously served in prison, due to miscalculation of service credits, was required to be credited to reduce defendant's parole supervision period under NERA.

State v. Rahee Lane - 248 N.J. 534 (2021) (granting certification) - The Section prevailed in the Appellate Division (unpublished order) in arguing that the new mitigating sentencing factor (14), defendant was 26 or under at the time of the offense, N.J.S.A. 2C:44-1b(14), was not retroactive to cases where the defendant had been sentenced before the effective date of that statute. In late 2021, the Supreme Court granted certification on the issue, and the Section filed its brief. The Court heard oral argument in early 2022.

State v. James Comer - 245 N.J. 484 (2021) (granting certification) – After defendant was resentenced pursuant to a 2017 Supreme Court opinion, 227 N.J. 422, defendant again challenged his sentence, arguing that sentencing defendants who were under 18 at the time they committed murder to a mandatory minimum sentence of 30 years without parole eligibility was unconstitutional. The Court heard oral arguments in October 2021. In early 2022, the Court agreed with the Section that the statute was not unconstitutional but added to the statute a lookback provision to allow eligible offenders to seek resentencing after having served 20 years of their sentences. 249 N.J. 359.

Appellate Division

State v. F.E.D. - 469 N.J. Super. 45 (2021) - The Section successfully represented the State in the first case to address New Jersey's "Compassionate Release" statute, enacted in 2021. The Appellate Division agreed with the State that this defendant, convicted of three murders, including one of a police officer was not entitled to

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release under the statute. The Supreme Court granted certification, 248 N.J. 481, and the Section filed its brief in 2021, with oral argument set for 2022.

State v. Josue Carrillo - 469 N.J. Super. 318 (2021) - Here the Appellate Division agreed with the Section's argument that police officers may conduct a second pat-down search when the totality of circumstances present justify the same safety goal that motivated the first search. Although the court remanded for additional fact-findings, the case is a major win in the area of Fourth Amendment jurisprudence.

State v. Julian Sanders - 467 N.J. Super. 325 (2021) - The Appellate Division affirmed the defendant's conviction for third-degree endangering an injured victim, rejecting defendant's argument on appeal that he was entitled to a self-defense instruction on that charge. The Supreme Court of New Jersey later denied certification, 248 N.J. 390, leaving this important decision of first impression in place.

State v. Andre Higgs - 2021 WL 1942537 (2021) - In this high-profile murder case in which the victim was a beloved East Orange schoolteacher, the Section successfully fended off claims of trial court and prosecutorial error, resulting in the court affirming defendant's convictions and sentence. In late 2021, the Supreme Court granted certification to review certain claims, 248 N.J. 595, with briefing and argument set for 2022.

State v. Dawan Ingram - 2021 WL 1235185 (2021) - After one of the Section's attorneys assisted in the homicide prosecution of this defendant, the attorney left and joined the defense bar. When the attorney appeared on behalf of the same defendant in a post-conviction relief proceeding, the State moved to disqualify him. The trial court disagreed, but the Section successfully sought leave to appeal in the Appellate Division, which agreed with the State and reversed the order denying disqualification.

Third Circuit Court of Appeals

Darius Murphy v. Admin., E.J. State Prison, et al. - 2021 WL 2822179 (3d Cir. 2021) - The U.S. District Court (unpublished 2018) denied defendant's petition for a writ of habeas corpus, rejecting among other issues his claim that a co-defendant gave law enforcement a statement exculpating defendant in the 1995 murder of Corey Davis. In 2019, the U.S. Court of Appeals for the Third Circuit agreed to hear the case, limited to that issue, and in 2021, affirmed the order of the District Court. The U.S. Supreme Court later denied certiorari. 142 S. Ct. 719 (2021).

Oscar Porter v. Admin. - N.J. State Prison, et al., 2021 WL 2910944 (3d Cir. 2021) - A jury convicted defendant of the 2003 murder of Rayfield Ashford and the attempted murder of David Veal. After defendant exhausted all avenues of state review, the U.S. District Court (unpublished 2020) denied defendant's petition for habeas corpus, holding, among other things, that defendant's trial attorney was not ineffective for electing not to pursue an alibi defense and appellate counsel was not

ineffective for failing to raise that issue on direct appeal. In 2020, the Court of Appeals agreed to hear this case limited to these issues, and in 2021, affirmed the District Court’s judgment. The U.S. Supreme Court later denied certiorari. 595 U.S. ___ (2022).

Misael Cordero v. Warren, et al. - 2021 WL 4075795 (3d Cir. 2021) - Defendant, convicted of murder, claimed that his lawyers prejudicially represented him during plea negotiations. After defendant exhausted all avenues of state review, the U.S. District Court (unpublished 2019) on habeas review held that defendant’s lawyers gave him wrong or no advice about how gap-time would apply to his sentence and how the statute of limitations barred his prosecution on some non-homicide charges, but, defendant could not establish that he was prejudiced by this shortcomings because there was no evidence that the State had extended a formal plea offer to defendant. In 2020, the U.S. Court of Appeals for the Third Circuit agreed to hear the case, and in 2021 affirmed the District Court’s judgment.



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Central Judicial Processing Unit

Under New Jersey Court Rule 3:4-2, and until the advent of the Criminal Justice Reform on January 1, 2017, all defendants charged with an indictable complaint (as opposed to disorderly-persons offenses) must appear before a judge to be informed of the charges against them and to arrange bail, if appropriate. In 1987, a Central Judicial Processing (“CJP”) Court was established in Essex County to handle this responsibility for all municipalities in the County. Other counties with a CJP Court include Union, Hudson, and Camden.

Essex County’s CJP Unit handles all first appearances. CJP also performs an important case screening function for custody and non-custody cases. All criminal complaints in Essex County charging an indictable crime are "screened" to separate indictable cases (those subject to prosecution in Superior Court) from cases that can be more quickly and appropriately resolved at another level. Cases can also be diverted to the Municipal Courts, Family Court, Special Remand Court, and Drug Court. Indictable cases are referred to any one of 13 Vertical Prosecution Courts or to a specialized prosecution squad.

The nature of the offense, surrounding circumstances, quality of evidence, and character and arrest/conviction history of the defendant are all considered when making the screening decision. By performing this type of early case screening, cases can be diverted before they enter the Grand Jury and trial stages, thereby conserving valuable judicial and prosecutorial resources.

2021 Accomplishments

In 2021, COVID continued to ravish the State of New Jersey and specifically the County of Essex. Despite the pandemic rearing its head with the Omicron variant, the Central Judicial Processing Courts never took one day off due to the Covid shutdowns nationwide. Detained defendants continued to be produced for their first appearance as dictated by the Criminal Justice Reform Act of 2017. CJP continued to be split into two virtual courts in 2021 with separate staff manning both courts. One Court handled Custody defendants exclusively wherein the defendants were produced at the Essex County Correctional Facility via Zoom for their First Appearance. The second first appearance court was continued for sole use of non-custody defendants who appeared in court via Zoom from their homes relying on electronic devices.

During the 2021 calendar year, CJP Custody Court handled 7,466 detained defendants in their first appearances and resulted in the filing of 2,606 detention motions on those matters. In order to maintain the safety of Court staff and the general public the Administrative Office of the Courts determined that non-custody matters would continue to be heard virtually in 2021. As such, in 2021 the CJP non-custody court had 2,949 matters listed for their first appearance virtually. The work of

the Central Judicial Processing Court has never faltered despite the pandemic's grip on our State, preserving all defendant's rights to be seen within 48 hours of being detained in custody.

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Drug Court Program

The Drug Court Program began in Essex County in 1999. The Essex County Drug Court Program was the original pilot program for the State of New Jersey. Judges, prosecutors, public defenders, court professionals, substance abuse evaluators, treatment facilitators and probation officers work together to assist participants in the program to accomplish their endeavors and to conquer their addiction. Our program links the criminal justice system with drug treatment and rehabilitative services promoting life skills. Our purpose is to break the cycle of addiction and recidivism among these non-violent offenders.

Participants receive intensive probation supervision and swift graduated sanctions for non-compliance as they undergo treatment and counseling for their drug and alcohol addictions. Public safety concerns are addressed through the close monitoring of each defendant by probation officers and the Drug Court Team. Our program involves a team approach on the part of Judges, court staff, attorneys, probation officers, substance abuse evaluators and treatment facilitators who support and monitor every participant's recovery. Our Drug Court Team discusses each participant weekly.

2021 Accomplishments

In 2021 COVID 19, proved to be challenging. In March 2020, due to the pandemic, the Courts closed and no longer held in person court hearings. Many of the services (such as counseling, meeting with probation officers, etc.) that was previously done on a person-to-person basis were done via cellphone and/or through the internet. Judicial hearings were held virtually.

The Court calendar's reporting year is from July 1 to June 30. However, for our purposes the numbers provided are extracted from 2 Court calendar years (2021 & 2022) are combined for this office's annual report for the year 2021.

From April 1, 2020 to June 30, 2021 there have been 2,423 Essex County Drug Court Admissions. For the 2021 calendar year, there was a total of 40 admissions into this program. Currently, there are approximately 412 active participants in the program.

Forfeiture Unit

The Forfeiture Unit of the of the Essex County Prosecutor's Office prosecutes all asset forfeiture actions brought pursuant to N.J.S.A. 2C:64-1 et. seq., the State's forfeiture statute. The primary mission of the Unit is to fairly and efficiently forfeit all property seized from defendants within Essex County that can be linked to criminal activity, either as proceeds of such activity or as property used to facilitate the commission of said activity. This is done primarily through the filing of civil "in rem" complaints against the seized property with notice to the defendants. The forfeiture complaints must be filed within 90 days of the 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.

2021 Accomplishments

In 2021, the Forfeiture Unit, through appropriate civil and criminal process, forfeited \$1,505,010.63 which was determined to be either proceeds or instrumentalities of crime. Of that amount, \$1,219,066.63 was in cash, \$242,108.00 was the value of motor vehicles, and \$43,836.00 was other property, including various items of electronics equipment.

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Grand Jury Unit

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 witness testimony, viewing physical evidence, if any, the Grand Jury can vote to either True Bill a matter, which formally charges the accused; to No Bill a matter, which dismisses the charges against the accused; or Amend and Remand the matter 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 actual proceedings are secret, but a transcript is made available for use by the Court, the Prosecutor's Office and the Defendant after the vote is taken. The defendant may or may not elect to testify before the Grand Jury. Grand Jurors in Essex County sit one day per week from 15 to 18 weeks, hearing approximately 20 to 25 cases on a typical day. To facilitate case scheduling, while respecting the wishes of most Grand Jurors to be released at closing time, 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 system, there are three Assistant Prosecutors assigned to the Grand Jury Unit who present cases assigned to the Adult Trial Section. Those matters are then returned to the Trial Assistant Prosecutor for resolution via plea or trial. Various specialized units have their own Assistant Prosecutors present their cases in a vertical prosecution system. They remain assigned to their cases from charging decision through indictment, to the final resolution of the matter.

2021 Accomplishments

In 2021, despite the United States being in the grips of the ongoing COVID pandemic, the work of the Essex County Grand Jury continued through the previously unfathomable use of a virtual Grand Jury. All Grand Jurors were chosen virtually via Zoom and in Essex County an agreement was made where the grand jurors could conduct their civic duty from the safety of their respective homes. Jurors were provided with iPads if they did not have the equipment at home to attend the virtual Grand Jury hearings. Those jurors who did have computers could use their personal property if it was equipped with video and audio. All prospective jurors had to agree to the secrecy requirements and agree to abide by same with the possibility of criminal punishment for failure to maintain same.

During the first trimester of 2021, Essex Virtual Grand Jury sat three days a week. In April 2021, to keep up with the growing number of matters Essex County added a 4th virtual panel thus making the Grand Jury presentments able to be heard four

days a week. Then in August of 2021 an in-person panel was added making it three virtual panels a week and one in person panel a week for the month of August. Finally, in September of 2021, as the Covid numbers in NJ continued to decline two more in-person panels making it three in-person and two virtual panels. From September till the end of the year in December of 2021 there were Grand Jury panels sitting five days a week.

After the start of virtual Grand Jury, Essex County Prosecutor's Office has calendared an incredible number of matters despite a global pandemic. There were 2,919 matters calendared for the year 2021. Of that number 2,456 resulted in indictments; 130 were no billed; 13 resulted in No Cause of Action and 23 were referred to municipal court. The remaining cases were either held over, withdrawn, pled out or consolidated with other cases.



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Juvenile Trial Unit

The primary function of the Essex County Prosecutor's Office Juvenile Justice Unit is to seek justice in the prosecution of complaints charging acts of juvenile delinquency as defined by the New Jersey Code of Juvenile Justice and Court Rules. The Unit has statewide jurisdiction over all complaints charging county juvenile residents with an act of delinquency. Juvenile matters are heard in Family Court by specifically assigned judges selected to preside over such matters. New Jersey law requires that juvenile cases are sealed due to the age of the juvenile. Except for limited circumstances, the proceedings are also closed to the public.

The goal of the juvenile justice system in New Jersey is to seek rehabilitation of the juvenile whenever possible with available resources. The Prosecutor's Office does so while also protecting the community from juveniles who pose a danger to themselves or others. The cases handled by the Unit run the gamut from first-time minor offenses to serious and violent crimes. Municipal courts do not have jurisdiction over juvenile delinquency cases, so all matters must be referred to the Prosecutor's Office for disposition. ECPO works hand-in-hand with municipal police departments juvenile units, where specifically assigned officers investigate and process juvenile offenders.

For minor or less serious matters, a range of dispositions are available, these include, but are not limited to: Station House Adjustment – a program where the local police departments work with the juvenile, their parents and any potential victim to come to an amicable resolution (e.g. apology, restitution, community service, etc.), in lieu of charging; Juvenile Justice Commission (provides programs where a group of trained, court appointed volunteers from the community work with the charged juvenile to provide some type of community service, apology, restitution or other remedy; and Consequences of Crime (a program conducted in the Essex County Youth House where first-time offenders spend a day at the Youth House as directed by the Court. Successful completion of these various programs will generally result in a dismissal of the charges.

For more serious matters, available dispositions are probation, various residential placements, and placement in one of New Jersey's secure facilities which includes educational services. Pre-disposition (i.e., Pre-Trial), a juvenile can be placed on a variety of release conditions: such as house arrest, electronic (GPS) monitoring, or housed in the Youth House if the Court deems that the juvenile poses a threat to themselves or others. The type of release a juvenile is subject to depends upon the seriousness of the offense, whether there has been a prior exposure to the criminal justice system, their family situation, and the potential danger to the community if released.

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In 2021, the Juvenile Justice Unit of the Essex County Prosecutor's Office handled 1,234 referred cases ranging in severity from disorderly persons offenses to homicides. Two judges handle the caseload in Essex County, a lead full-time judge and a second part-time judge, among their other duties. The Assistant Prosecutors, Detectives and Investigative Staff handle all necessary investigative and legal issues associated with the case including plea negotiations, motions, trials, and sentencing.

The Juvenile Justice Unit has made significant changes in light of the Attorney General's Law Enforcement Directive 2020-12, which established policies, practices, and procedures to promote Juvenile Justice Reform. Additional changes were also implemented. Instead of using the antiquated practice of charging juveniles on paper, now all juveniles are charged and processed through the Juvenile eCDR system. These changes necessitated the increased use of technology both within the Unit as well as when working with local police departments and other agencies. Currently, the Juvenile Justice Unit nearly operates in an all-electronic environment, save for certain legacy requirements of the judiciary.

While the CoVid-19 Global Pandemic resulted in nearly a total cessation of all hearings, motions and trials at the adult criminal level, its impact on the implementation of justice in the Juvenile Justice Unit was marginal. Within 7 days of the general shut down of the Courts, the Juvenile Justice Unit as well as the Family Court moved to virtual operations. All hearings, motions, and trials, including homicides, continued without interruption.

The aforementioned changes also necessitated that the Juvenile Justice Unit develop and then train all our local municipal, county and state law enforcement agencies on the new processes created in response to the implementation of Juvenile eCDR, new AG Guidelines, and common-sense handling of the pandemic. Despite all these changes, the Juvenile Justice Unit rose to the occasion and continued its operations without interruption.

Despite so many changes in 2021, the unit's Assistant Prosecutors and Detectives have developed a closer partnership with local police departments, especially when faced with serious matters such as carjacking, armed robbery, shootings, burglary, weapons, and assaults. The Juvenile Justice Unit also works closely with the other units within ECPO, including, but not limited to, the Homicide Unit, the SVU Unit, the Crash & Fire Unit, the Narcotic/Gang Unit, and the Special Prosecution Unit, which among its other duties, investigates social media crimes and school threats. This area of investigation has grown significantly and is especially relevant in juvenile matters.

The unit continues the work of increasing community involvement for the disposition of non-serious matters involving first-time offenders, including the use community-based programs such as the Juvenile Conference Committees (JCCs), a six- to nine-

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member citizen volunteer panel appointed by the Family Division Judge that hears and decides matters involving juveniles. The unit also supports the Newark Youth Court, a program run from the Newark Municipal Court. Juveniles who are first-time offenders are referred there to participate and, hopefully, be deterred from future involvement in the criminal justice system.



 **Mental Health Unit**

The Essex County Prosecutor's Office Mental Health Unit manages a diversion program focusing on defendants living with serious and persistent mental illnesses, such as bipolar disorder or Schizophrenia. The purpose of the Program is to combine community-based therapeutic treatment plans with traditional punishment-only oriented criminal case dispositions. The Program has been greatly enhanced over the past five (5) years as the Unit continued to develop. In 2015 ECPO was successful as one of only two county Prosecutor's Offices in New Jersey (the other is Ocean County) in obtaining a grant from the New Jersey Attorney General's Office, Division of Law and Public Safety, for \$150,000 to be distributed equally over a two-year period, and aides County Prosecutor-led Mental Health and Co-Occurring Substance Abuse diversion programs. Funded by the OAG grant, Essex County Hospital Center has hired a full-time case manager to work exclusively with the ECPO's Program participants. The Case Manager is responsible for linking participants to a treatment plan developed by a mental health professional and will also assist participants with applying for social entitlements, housing, education, vocation, and other benefits that contribute toward greater functioning in the community. The Unit works with a clinician hired by the County Hospital Center. The clinician screens and assess applicants for acceptance into the Program. The clinician, a Licensed Specialist Clinical Social Worker, or LCSW, has developed a comprehensive community-based therapeutic treatment plan for acceptable Program candidates.

In 2017 when grant funding expired with the State, the ECPO was able to maintain a relationship with the Essex County Hospital Center (ECHC) to retain this program. The ECHC absorbed the cost of the LCSW and the Case Worker which increased the lifeline of this program.

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During 2021, the Mental Health Unit reviewed 29 defendant applications for the program. There were 16 rejections. Of that number 4 were legally rejected and 12 were determined not to be clinically acceptable to this program. Seven defendants successfully graduated (Moved On), one application was pending acceptance to be done in 2022. Four defendants withdrew their applications to pursue their case through traditional prosecution.

Pre-Trial Intervention & Expungement Unit

The Pre-Trial Intervention (PTI) Unit is responsible for the complete review and processing of all applications for the PTI Program. This program is like 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, the Supervising Assistant Prosecutor from the Unit reviews and signs a dismissal order. If an applicant is deemed inappropriate for PTI, a letter outlining the grounds for rejection is prepared, reviewed and disseminated by Unit personnel. Requests for reconsideration and appeals receive appropriate responses.

Marijuana decriminalization has changed eligibility for PTI. Statutorily, applicants who have received a Conditional Discharge (CD) are barred from PTI, since a CD is a diversionary program, like PTI, but in Municipal Court. The courts have further found that being enrolled in and granted the benefit of a diversionary program via a CD, regardless of successful completion, makes the defendant ineligible for PTI. Marijuana decriminalization has resulted in legal proceedings determining whether those CDs for marijuana offenses that have been expunged via the new law remain a bar to PTI. The statute does not address the issue, nor has the Attorney General provided any guidance on the issue.

The Expungement Unit reviews Traditional Expungement applications aimed at clearing an offender's criminal record and is responsible for physically expunging those records and disseminating copies of the Orders to all involved agencies.

In recent years, there have been many changes to the Expungement law. Most recently, in December of 2019, Governor Murphy signed (A5981/S454) into law. The new law took effect on June 15, 2020. However, due to the pandemic, most changes became effective on February 15, 2021.

Of the many changes, the main one is the "clean slate" provision, where a petitioner's entire record of arrest and eligible convictions can be expunged after 10 years from the most recent conviction, meaning there is no limit as to the number of convictions. In addition, the law also provides for Municipal Court Judges to sign orders of expungements immediately upon the dismissal of municipal cases, removing the requirement for the petitioner to file for the expungement and the need for a Superior Court Judge to sign the order. These types of expungements are called Expedited Expungements. A part of the new changes to the statute has been the implementation of electronic filing for expungement petitions via eCourts.

Marijuana decriminalization also resulted in a dramatic increase in both Expedited Expungements and filed petitions for Regular Expungements. In addition, a number of marijuana cases were automatically expunged (removed from the system without an order) by the State of New Jersey. Those cases required review by each county for accuracy.

All these changes have resulted and will continue to result in significant increase in the number of filed petitions, more preparation, hearings, and 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, rejection letters or orders for dismissal are prepared and forwarded to the Court.

2021 Accomplishments

During 2021, 45 defendants were accepted into the PTI program, 28 were rejected, and 16 petitions were still pending.

Several challenges presented themselves in the Expungement Unit. The implementation and use of eCourts for expungement petitions resulted in an explosion of petitions. The system itself was not compliant with the statute; meaning the electronic process resulted in petitions being filed that were automatically deficient. The State of New Jersey has been attempting to resolve those issues by updating the system. In 2021, there were 89 new Traditional Expungement applications (non-drug court) manually filed, 368 petitions were resolved either via final order or dismissal, many of which had been filed in prior years. In 2021, 657 Regular Expungement petitions were filed electronically, 45 of which were either granted or dismissed. For Clean Slate petitions, 213 were filed electronically, 20 of which have been resolved. Marijuana had 22 petitions filed. Under Marijuana Decriminalization, 29,437 petitions were filed. All of this was handled by a unit staffed with only one attorney and one clerical for almost the entire 2021 year.

Remand Court Section

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 which have been downgraded. The Remand Court acts as a municipal court, handling disorderly and petty disorderly persons cases, while retaining countywide jurisdiction. The expanded jurisdiction of the Remand Court gives the Prosecutor's Office the option of downgrading an indictable offense to a disorderly person charge while retaining prosecutorial responsibility. Before the Remand Court was established, all disorderly person offenses 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 and 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 traffic court cases, but for low- to mid-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 offenses committed.

2021 Accomplishments

In 2021 the COVID pandemic continued to wreak havoc on the State of New Jersey and brought the slowdown of virtually every court in the State of New Jersey, including the Special Remand Court. During 2021 the Special Remand Court continued to conduct appearances virtually, with all defendants appearing via Zoom from the safety of their own homes. Despite the issues brought on by the pandemic, the Special Remand Court had 1,200 new matters referred to its Court in 2021. During this year the Special Remand Court was able to resolve 317 matters via guilty pleas and try two matters virtually. A total of 450 matters were ultimately dismissed upon further investigation.