

SENATE, No. 3039

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED SEPTEMBER 22, 2022

Sponsored by:

Senator JOSEPH P. CRYAN

District 20 (Union)

Co-Sponsored by:

Senator Singer

SYNOPSIS

Eliminates immunity for State, county, and municipal prosecutors who fail to disclose exculpatory evidence in criminal cases.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/29/2022)

1 AN ACT concerning qualified and absolute immunity and amending
2 and supplementing various parts of the statutory law.

3

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

6

7 1. (New section) a. As used in this section, “Brady-Giglio
8 guidelines” means any guidelines, directives, policies, or
9 procedures, and any successor guidelines, directives, policies, or
10 procedures, promulgated by the Attorney General related to the
11 disclosure of exculpatory and impeachment evidence in criminal
12 cases in accordance with the United States Supreme Court decisions
13 in *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United*
14 *States*, 405 U.S. 150 (1972).

15 b. A court in this State shall notify the Office of Attorney
16 Ethics of the New Jersey Supreme Court upon a finding, by a
17 preponderance of the evidence, that a State, county, or municipal
18 prosecutor has failed to provide exculpatory or impeachment
19 evidence to a defendant or defendant’s counsel in violation of
20 Brady-Giglio guidelines promulgated by the Attorney General. The
21 court shall provide notice to the Office of Attorney Ethics, as well
22 as the defendant or defendant’s counsel, within 24 hours of the
23 court’s finding that a violation has occurred.

24

25 2. (New section) a. As used in this section, “Brady-Giglio
26 guidelines” means any guidelines, directives, policies, or
27 procedures, and any successor guidelines, directives, policies, or
28 procedures, promulgated by the Attorney General related to the
29 disclosure of exculpatory and impeachment evidence in criminal
30 cases in accordance with the United States Supreme Court decisions
31 in *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United*
32 *States*, 405 U.S. 150 (1972).

33 b. Notwithstanding the provisions of any other law, a State,
34 county, or municipal prosecutor shall be liable if the prosecutor
35 subjects or causes to be subjected any person to the deprivation of
36 any substantive due process or equal protection rights, privileges or
37 immunities secured by the Constitution or laws of the United States,
38 or any substantive rights, privileges or immunities secured by the
39 Constitution or laws of this State by failing to disclose exculpatory
40 or impeachment evidence to a defendant or defendant’s counsel in
41 violation of Brady-Giglio guidelines promulgated by the Attorney
42 General. The prosecutor shall not be immune from liability for a
43 violation of this subsection.

44 c. Notwithstanding the provisions of any other law, the State, a
45 county, or a municipality shall be liable if a State, county, or

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 municipal prosecutor, as appropriate, acting in the prosecutor's
2 official capacity subjects or causes to be subjected any other person
3 to the deprivation of any substantive due process or equal protection
4 rights, privileges or immunities secured by the Constitution or laws
5 of the United States, or any substantive rights, privileges or
6 immunities secured by the Constitution or laws of this State by
7 failing to disclose exculpatory or impeachment evidence to a
8 defendant or defendant's counsel in violation of Brady-Giglio
9 guidelines promulgated by the Attorney General. The State, county,
10 or municipality shall not be immune from liability for a violation of
11 this subsection.

12 d. An action brought pursuant to this section may be filed in
13 Superior Court. Upon application of any party, a jury trial shall be
14 directed.

15 e. In addition to any damages, civil penalty, injunction, or
16 other appropriate relief awarded in an action brought pursuant to
17 this section, the court shall award the prevailing party reasonable
18 attorney's fees and costs.

19

20 3. R.S.59:2-10 is amended to read as follows:

21 59:2-10. a. As used in this section, "Brady-Giglio guidelines"
22 means any guidelines, directives, policies, or procedures, and any
23 successor guidelines, directives, policies, or procedures,
24 promulgated by the Attorney General related to the disclosure of
25 exculpatory and impeachment evidence in criminal cases in
26 accordance with the United States Supreme Court decisions in
27 Brady v. Maryland, 373 U.S. 83 (1963), and Giglio v. United
28 States, 405 U.S. 150 (1972).

29 b. A public entity is not liable for the acts or omissions of a
30 public employee constituting a crime, actual fraud, actual malice, or
31 willful misconduct.

32 c. Nothing in this section shall exonerate a State, county, or
33 municipality for liability for damages resulting from a State,
34 county, or municipal prosecutor's failure to disclose exculpatory or
35 impeachment evidence to a defendant or defendant's counsel in
36 violation of Brady-Giglio guidelines promulgated by the Attorney
37 General.

38 (cf: P.L.1972, c.45, s.10)

39

40 4. R.S.59:3-2 is amended to read as follows:

41 59:3-2. a. A public employee is not liable for an injury resulting
42 from the exercise of judgment or discretion vested in **him** the
43 employee;

44 b. **A** Except as otherwise provided in subsection e. of this
45 section, a public employee is not liable for legislative or judicial
46 action or inaction, or administrative action or inaction of a
47 legislative or judicial nature;

1 c. A public employee is not liable for the exercise of discretion
2 in determining whether to seek or whether to provide the resources
3 necessary for the purchase of equipment, the construction or
4 maintenance of facilities, the hiring of personnel and, in general, the
5 provision of adequate governmental services;

6 d. A public employee is not liable for the exercise of discretion
7 when, in the face of competing demands, **[he]** the employee
8 determines whether and how to utilize or apply existing resources,
9 including those allocated for equipment, facilities and personnel
10 unless a court concludes that the determination of the public
11 employee was palpably unreasonable.

12 e. Nothing in this section shall exonerate:

13 (1) a public employee for negligence arising out of **[his]** the
14 employee's acts or omissions in carrying out **[his]** ministerial
15 functions; or

16 (2) a State, county, or municipal prosecutor for liability for
17 damages resulting from or caused directly or indirectly by the
18 prosecutor's failure to disclose exculpatory or impeachment
19 evidence to a defendant or defendant's counsel in violation of
20 Brady-Giglio guidelines promulgated by the Attorney General.
21 Upon a finding, by a preponderance of the evidence, that a
22 prosecutor committed a violation, the court shall award reasonable
23 counsel fees and costs to the defendant.

24 As used in this section, "Brady-Giglio guidelines" means any
25 guidelines, directives, policies, or procedures, and any successor
26 guidelines, directives, policies, or procedures, promulgated by the
27 Attorney General related to the disclosure of exculpatory and
28 impeachment evidence in criminal cases in accordance with the
29 United States Supreme Court decisions in Brady v. Maryland, 373
30 U.S. 83 (1963), and Giglio v. United States, 405 U.S. 150 (1972).

31 (cf: P.L.1972, c.45, s.2)

32

33 5. R.S.59:3-3 is amended to read as follows:

34 59:3-3. a. As used in this section, "Brady-Giglio guidelines"
35 means any guidelines, directives, policies, or procedures, and any
36 successor guidelines, directives, policies, or procedures,
37 promulgated by the Attorney General related to the disclosure of
38 exculpatory and impeachment evidence in criminal cases in
39 accordance with the United States Supreme Court decisions in
40 Brady v. Maryland, 373 U.S. 83 (1963), and Giglio v. United
41 States, 405 U.S. 150 (1972).

42 b. A public employee is not liable if **[he]** the employee acts in
43 good faith in the execution or enforcement of any law.

44 c. Nothing in this section **[exonerates]** shall exonerate:

45 (1) a public employee from liability for false arrest or false
46 imprisonment; or

1 (2) a State, county, or municipal prosecutor who fails to disclose
2 exculpatory or impeachment evidence to a defendant or defendant's
3 counsel in violation of Brady-Giglio guidelines promulgated by the
4 Attorney General.

5 (cf: P.L.1972, c.45, s.3)

6
7 6. R.S.59:3-8 is amended to read as follows:

8 59:3-8. a. As used in this section, "Brady-Giglio guidelines"
9 means any guidelines, directives, policies, or procedures, and any
10 successor guidelines, directives, policies, or procedures,
11 promulgated by the Attorney General related to the disclosure of
12 exculpatory and impeachment evidence in criminal cases in
13 accordance with the United States Supreme Court decisions in
14 Brady v. Maryland, 373 U.S. 83 (1963), and Giglio v. United
15 States, 405 U.S. 150 (1972).

16 b. A public employee is not liable for injury caused by [his]
17 the employee instituting or prosecuting any judicial or
18 administrative proceeding within the scope of his employment.

19 c. Nothing in this section shall exonerate a State, county, or
20 municipal prosecutor who fails to disclose exculpatory or
21 impeachment evidence to a defendant or defendant's counsel in
22 violation of Brady-Giglio guidelines promulgated by the Attorney
23 General.

24 (cf: P.L.1972, c.45, s.8)

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26 7. This act shall take effect on the first day of the second month
27 next following the date of enactment.

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30 STATEMENT

31
32 This bill eliminates qualified immunity for State, county, and
33 municipal prosecutors who fail to disclose exculpatory evidence in
34 criminal cases.

35 Under current law, as articulated in the United States Supreme
36 Court's holdings in Brady v. Maryland, 373 U.S. 83 (1963) and
37 Giglio v. United States, 405 U.S. 150 (1972), prosecutors are
38 required to disclose exculpatory and impeachment evidence to
39 defense counsel in criminal matters. In order to ensure uniformity
40 in compliance with these requirements, the Attorney General has
41 issued guidelines and directives outlining the responsibilities of
42 prosecutors in this State to disclose exculpatory and impeachment
43 evidence. The bill defines these guidelines and directives, and any
44 successor guidelines and directives promulgated by the Attorney
45 General related to the disclosure of exculpatory and impeachment
46 evidence in criminal cases, as "Brady-Giglio guidelines."

47 Prosecutors are granted qualified immunity under the State's
48 Tort Claims Act (TCA) and absolute immunity under the State's

1 Civil Rights Act (CRA). Under the TCA, public employees,
2 including prosecutors, are granted immunity unless the employee's
3 conduct is outside the scope of employment or constituted a crime,
4 actual fraud or malice, or willful misconduct. Under the CRA,
5 prosecutors are entitled to absolute immunity if the prosecutor
6 failed to disclose this evidence while functioning in the prosecutor's
7 official capacity.

8 This bill amends current law to eliminate prosecutorial immunity
9 under both the CRA and TCA if the prosecutor fails to disclose
10 exculpatory or impeachment evidence to a defendant or defendant's
11 counsel in violation of Brady-Giglio guidelines promulgated by the
12 Attorney General.

13 The Office of Attorney Ethics (OAE) acts as the investigative
14 and prosecutorial arm of the New Jersey Supreme Court in
15 discharging the court's constitutional responsibility to supervise and
16 discipline attorneys in this State. The provisions of the bill require a
17 court to notify the OAE upon a finding, by a preponderance of the
18 evidence, that a State, county, or municipal prosecutor has failed to
19 provide exculpatory or impeachment evidence to a defendant or
20 defendant's counsel in violation of Brady-Giglio guidelines. The
21 court is required to provide this notice to the OAE and to defendant
22 or defendant's counsel within 24 hours of its finding that a violation
23 has occurred.