

TRANSPORTATION (74 PA.C.S.) - SPECIAL PROSECUTOR FOR MASS
TRANSIT

Act of Dec. 14, 2023, P.L. 369, No. 40

Cl. 74

Session of 2023

No. 2023-40

SB 140

AN ACT

Amending Title 74 (Transportation) of the Pennsylvania Consolidated Statutes, in metropolitan transportation authorities, providing for special prosecutor for mass transit.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 74 of the Pennsylvania Consolidated Statutes is amended by adding a section to read:

§ 1786. Special prosecutor for mass transit.

(a) **Special prosecutor.**--Within 30 days of the effective date of this section, the Attorney General shall appoint a special prosecutor to investigate and institute criminal proceedings for a violation of the laws of this Commonwealth occurring within a public transportation authority that serves as the primary provider of public passenger transportation in the county of the first class in accordance with this section. The following shall apply to the special prosecutor:

(1) The special prosecutor must:

(i) Be a member in good standing of the bar of this Commonwealth for a minimum of 10 years.

(ii) Have a minimum of five years of experience in criminal prosecutions in this Commonwealth.

(iii) Not have been employed by the district attorney's office in a county of the first class or the Office of Attorney General within six years of the effective date of this section.

(iv) Possess the character and fitness compatible with the standards expected to be observed by members of the bar of this Commonwealth.

(v) Be a resident of the county in which the special prosecutor shall serve.

(2) Notwithstanding any other provision of law or regulation, a special prosecutor shall have the authority to investigate and prosecute, and has jurisdiction over, any criminal matter involving an alleged violation of the laws of this Commonwealth occurring within a public transportation authority that serves as the primary provider of public passenger transportation in the county of the first class. The special prosecutor's prosecutorial jurisdiction shall include the power and independent authority to exercise all investigative and prosecutorial functions and powers of an office of the district attorney of a county of the first class and any other officer or employee of the office of the district attorney in the county of the first class. The special prosecutor's authority shall include, but not be limited to, the following:

(i) Investigative and prosecutorial functions and powers shall include the following:

(A) Conducting proceedings before grand juries and other investigations.

(B) Participating in court proceedings and engaging in any litigation, including civil and criminal matters, that the special prosecutor considers necessary.

(C) Initiating and conducting prosecutions in any court of competent jurisdiction, appealing any decision of a court in a proceeding in which the special prosecutor participates and handling all aspects of any case in the name of the Commonwealth.

(D) Reviewing all documentary evidence available from any source.

(E) Making applications to a State court for a grant of immunity to a witness, consistent with applicable statutory requirements, or for warrants, subpoenas or other court orders.

(ii) (Reserved).

(3) For the purposes of carrying out the duties of the Office of Special Prosecutor, a special prosecutor may use facilities, resources and personnel of the Attorney General, including investigators, attorneys and necessary experts, to assist with a criminal investigation or prosecution. A special prosecutor may request assistance from the Pennsylvania State Police or any law enforcement agency with appropriate jurisdiction in carrying out the functions of the special prosecutor. The Pennsylvania State Police or any law enforcement agency with appropriate jurisdiction may provide assistance, which may include the use of resources and personnel necessary to perform the duties of the special prosecutor.

(4) A special prosecutor may assert preemptive prosecutorial jurisdiction over any criminal actions or proceedings involving alleged violations of the laws of this Commonwealth occurring within a public transportation authority that serves as the primary provider of public passenger transportation in the county of the first class. The following shall apply:

(i) An assertion of preemptive prosecutorial jurisdiction under this section shall be within the sole discretion of the special prosecutor.

(ii) In cases in which a special prosecutor asserts preemptive prosecutorial jurisdiction under this section, no other prosecuting entity for the Commonwealth shall have authority to act, except as authorized by the special prosecutor.

(iii) A special prosecutor may not assert preemptive prosecutorial jurisdiction under this section in a case where jurisdiction also exists in a county other than a county of the first class unless the special prosecutor requests in writing to the district attorney in the county other than the county of the first class to assert preemptive prosecutorial jurisdiction and the district attorney in the county other than the county of the first class accepts the request in writing.

(iv) When a special prosecutor asserts preemptive prosecutorial jurisdiction under this subparagraph, the office of the district attorney in a county of the first class shall suspend all investigations and proceedings regarding the matter and shall turn over to the special prosecutor all materials, files and other data relating to the matter.

(v) Notwithstanding any other law or court rule, prior approval of the district attorney of a county of the first class or an employee of the district attorney of a county of the first class shall not be required prior to the filing of any criminal complaint or arrest warrant affidavit, or both, involving any violation of the laws of this Commonwealth occurring within a public transportation authority that serves as the primary provider of public passenger transportation in the county of the first class.

(5) No person charged with a violation of the law by a special prosecutor shall have standing to challenge the authority of the special prosecutor to prosecute the case. If a challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of this Commonwealth to the individual making the challenge.

(6) If a vacancy in office arises by reason of the resignation, death or removal for any other reason of a special prosecutor, the Attorney General shall appoint a replacement within 30 days.

(7) Each law enforcement agency with jurisdiction in a county of the first class shall notify a special prosecutor of any arrest or other criminal action or proceeding involving an alleged violation of the laws of this Commonwealth occurring within a public transportation authority that serves as the primary provider of public passenger transportation in the county of the first class within 48 hours of the arrest or of instituting the action or proceeding.

(8) No new action or proceeding may be initiated by a special prosecutor under this section after December 31, 2026. Notice of final disposition of the last remaining action or proceeding initiated under this section prior to December 31, 2026, shall be transmitted to the Legislative Reference Bureau for publication in the next available issue of the Pennsylvania Bulletin.

(9) The special prosecutor shall compile reports related to the criminal activity and administrative proceedings within a public transportation authority that serves as the primary provider of public passenger transportation in the county of the first class, to which the following shall apply:

(i) An initial report shall be submitted no later than 90 days following appointment of the special prosecutor. Following the initial report, annual reports shall be submitted to the General Assembly.

(ii) Reports shall be submitted to the following:

(A) The President pro tempore of the Senate.

(B) The Speaker of the House of Representatives.

(C) The chairperson and minority chairperson of the Judiciary Committee of the Senate.

(D) The chairperson and minority chairperson of the Judiciary Committee of the House of Representatives.

(E) The chairperson and minority chairperson of the Transportation Committee of the Senate.

(F) The chairperson and minority chairperson of the Transportation Committee of the House of Representatives.

(iii) Each report shall contain the following information for the period of time between each report:

(A) The total number of arrests for alleged criminal activity within a public transportation authority that serves as the primary provider of public passenger transportation in the county of the first class.

(B) The total number of bills of information filed for alleged violations within a public transportation authority that serves as the primary provider of public passenger transportation in the county of the first class.

(C) The total number of convictions resulting from prosecutions by the special prosecutor.

(D) Each sentence imposed for each conviction for a crime committed within a public transportation authority that serves as the primary provider of public passenger transportation in the county of the first class.

(10) A county of the first class in which a special prosecutor is appointed under this section shall reimburse the special prosecutor and the Office of Attorney General for any expenses incurred while investigating or prosecuting an alleged violation of the laws of this Commonwealth occurring within a public transportation authority that serves as the primary provider of public passenger transportation in the county of the first class. For reimbursement, the special prosecutor shall submit an itemized statement of expenses of the special prosecutor and Office of Attorney General to the treasurer of the county of the first class, who shall pay the expenses from the general funds of the county of the first class within 30 days of receipt of the itemized statement. Reimbursement under this section may not exceed actual expenses incurred in prosecuting any action, including the amount necessary to compensate the special prosecutor.

(11) A special prosecutor appointed under this section shall receive compensation to be paid by the Office of Attorney General at the per diem rate equal to the annual rate of compensation payable to the district attorney of a county of the first class. A special prosecutor shall be entitled to the payment of travel expenses within this Commonwealth.

(12) Notwithstanding section 1401(p) of the act of August 9, 1955 (P.L.323, No.130), known as The County Code, during the period in which a special prosecutor serves in a county of the first class, the Commonwealth may not reimburse that county for the salary of the district attorney of that county. An amount equal to the reimbursement that would have been made if no special prosecutor had been appointed shall be used to reimburse the Office of Attorney General for the compensation of the special prosecutor and any expenses incurred for the purpose of carrying out the duties of the special prosecutor.

(13) This section shall expire upon publication of the notice under paragraph (8).

(14) The Attorney General, the county of the first class, the district attorney of the first class and the public transportation authority that serves as the primary provider of public passenger transportation in the county of the first class must comply with this section until this section expires under paragraph (13).

(15) Notwithstanding any other provision of law, a governing body of a political subdivision or public official

may not enact or enforce an ordinance, executive order or directive or take any other official action that would be inconsistent with the provisions of this section or direct a law enforcement agency with appropriate jurisdiction to not assist the special prosecutor if able. An ordinance, executive order or directive or any other official action in violation of this section shall be null and void.

(b) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Law enforcement agency." Any of the following:

(1) A public agency of a political subdivision having general police powers and charged with making arrests in connection with the enforcement of the criminal or traffic laws.

(2) A campus police or university police department, as used in section 2416 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, certified by the Office of Attorney General as a criminal justice agency under the definition of "criminal justice agency" in 18 Pa.C.S. § 9102 (relating to definitions).

(3) A railroad or street railway police department formed with officers commissioned under 22 Pa.C.S. Ch. 33 (relating to railroad and street railway police) or any prior statute providing for the commissioning.

(4) An airport authority police department.

(5) A county park police force under section 2511(b) of The County Code.

Section 2. This act shall take effect immediately.

APPROVED--The 14th day of December, A.D. 2023.

JOSH SHAPIRO