

public defender named Richard Archer, and a Toms River prosecutor named Laura Pierro. The SAC essentially alleges that Plaintiff was sexually assaulted by the John Doe defendant, and the prison failed to protect him from the assault. ECF No. 13 at 7-8.

2. A plaintiff can pursue a cause of action under § 1983 for certain violations of his constitutional rights. Section 1983 provides in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

42 U.S.C. § 1983. Thus, to state a claim for relief under § 1983, a plaintiff must establish, first, the violation of a right secured by the Constitution or laws of the United States and, second, that the alleged deprivation was committed or caused by a person acting under color of state law. *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50-1 (1999); *Morrow v. Balaski*, 719 F.3d 160, 166-67 (3d Cir. 2013).

3. To begin, the Court has already ruled that the NJDOC and the Trenton State Prison are not “persons” amendable to suit under § 1983. ECF No. 9 at 2. Likewise, neither is Toms River Prosecutor’s Office.¹ See *Mikhaeil v. Santos*, 646 F. App’x 158, 161 (3d Cir. 2016) (“Because [the Hudson County Prosecutor’s] Office is a state agency, not a local governmental body, it is not a person amenable to suit under § 1983.”).

4. Furthermore, public defenders are not state actors liable under § 1983, because they are not persons acting under the color of law. See *Vermont v. Brillon*, 556 U.S. 81, 91 (2009) (“[T]he

¹ The Court notes that there is no Toms River Prosecutor’s Office. The Ocean County Prosecutor’s Office is located in Toms River, so the Court construes the SAC as referring to that entity. Indeed, Defendant Pierro is the Chief Trial Attorney at the Ocean County Prosecutor’s Office. See <http://www.co.ocean.nj.us/GovtDirDepartmentPage.aspx?ID=200> (last visited Nov. 16, 2016).

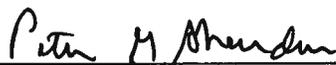
relationship between a defendant and the public defender representing him is identical to that existing between any other lawyer and client. Unlike a prosecutor or the court, assigned counsel ordinarily is not considered a state actor.”) (citation and quotation omitted); *Rieco v. Hebe*, No. 15-2323, 2015 WL 9583987, at *2 (3d Cir. Dec. 31, 2015) (“Public defenders are generally not considered state actors for § 1983 purposes when acting in their capacities as attorneys.”) (quoting *Polk Cty. v. Dodson*, 454 U.S. 312, 325 (1981)). Accordingly, Toms River Public Defender’s Office and Richard Archer are not proper defendants.

5. Moreover, the State of New Jersey is immune from suit. The Eleventh Amendment to the United States Constitution provides that, “[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by Citizens or Subjects of any Foreign State.” U.S. Const. amend. XI. As such, the Eleventh Amendment protects states and their agencies and departments from suit in federal court regardless of the type of relief sought. *Pennhurst State Sch. and Hosp. v. Halderman*, 465 U.S. 89, 100 (1984). Section 1983 does not override a state’s Eleventh Amendment immunity. *Quern v. Jordan*, 440 U.S. 332, 338 (1979). Therefore, the State of New Jersey is not a proper defendant.

6. Additionally, the John Doe inmate is not a proper defendant. To assert a proper party under § 1983, Plaintiff must name as defendant a person *acting under the color of state law*. It is hard to imagine how an inmate could have acted under the color of state law, and Plaintiff does not explain why the John Doe inmate was a state actor. Indeed, allegations in the SAC state that the John Doe inmate sexually assaulted Plaintiff—without any factual allegation to explain the circumstances, it is difficult to see how anyone could have acted under the color of state law by engaging in a sexual assault.

7. Finally, with regard to the last defendant—Prosecutor Laura Pierro—the Court fails to see how she could have violated Plaintiff’s constitutional rights. The basis of Plaintiff’s claims is that the prison failed to protect him from the sexual assault. However, Pierro was not responsible for Plaintiff’s safety; she was not even a prison official. To the extent Plaintiff’s theory is that he would not have been assaulted if Pierro did not prosecute him, *see* ECF No. 13 at 7, Plaintiff cites no authority to support such a theory as a viable claim. Indeed, if that theory is accepted, then every prosecutor everywhere could be a defendant in some failure-to-protect case filed by an inmate in every prison—certainly, every inmate is in prison because a prosecutor’s prosecution resulted in a criminal conviction. Plaintiff’s theory is simply untenable. Accordingly, the Court dismisses the SAC for failure to state a claim upon which relief may be granted.

8. In the interest of justice, the Court affords Plaintiff one last chance to amend the Complaint. Plaintiff must identify an *official* or *officer*, *i.e.* a “person”, who was responsible for Plaintiff’s safety, not a prison, a department, an office, or the state; § 1983 requires defendants who are actual persons, not abstractions based on their place of employment or employer. Failure to properly amend this time will result in the dismissal of the case with prejudice.



Peter G. Sheridan
United States District Judge

Date: