

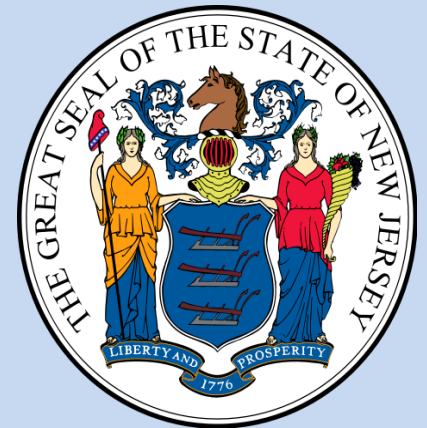
OLS CLE Presentation

New Jersey Law Revision Commission

Case Study: Three Potential Projects

Presented by:

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Case Study: Three Potential Projects

Case Study: Three Potential Projects



- New Jersey AIDS Assistance Act



- Skate Park Act



- Uniform Electronic Recordation of Custodial Interrogations Act

Case Study: Three Potential Projects

When does the Commission decline work in a particular area?

- Legislature already working in the area
- Policy considerations

Case Study: Three Potential Projects

Generally, project declined if **Legislature is already working** in a particular area, *unless*:

- Specifically requested by a legislator, or
- Commission work could be of assistance to the Legislature

Case Study: Three Potential Projects

Generally, project declined if it involves making **policy determinations**, *e.g.:*

- Commission conducts extensive research and outreach, *but*
- Still no basis on which to make a recommendation, so
- Legislature must first make policy determinations

Case Study: Three Potential Projects

Generally, project declined if it involves making **policy determinations**, *unless*:

- Specifically requested by a legislator, or
- Commission can gather and provide info useful to Legislature's policy determination

Case Study: Three Potential Projects

- New Jersey AIDS Assistance Act
 - Origin: case law search (1/3*)
- Skate Park Act
 - Origin: member of the public (1/3*)
- Uniform Electronic Recordation of Custodial Interrogations Act
 - Origin: Uniform Law Commission (1/3*)

* Division of project sources for past several years

Case Study: Potential Project No. 1

New Jersey AIDS Assistance Act

N.J.S. 26:5C-1 et seq.



New Jersey AIDS Assistance Act Background

NJAAA enacted to:

- Educate the public and promote testing for HIV/AIDS
- Provide early detection, counseling, social services, & referrals



New Jersey AIDS Assistance Act Background

Both HIPAA (federal) and NJAAA protect patient privacy, with exceptions.

New Jersey AIDS Assistance Act

Background

State of New Jersey v. C.M.

- HIV-positive defendant fails to disclose his status to two women with whom he had sexual relationships
- Charged with two counts of “third-degree diseased person committing an act of sexual penetration” *N.J.S. 2C:34–5(b)*
- Trial judge denies prosecutor’s application to obtain medical records under NJAAA
- Appellate Division affirms

New Jersey AIDS Assistance Act Background

State argues: both HIPAA and NJAAA authorize disclosure.

New Jersey AIDS Assistance Act Background

State relied on *N.J.S. 26:5C-9(a)*:

“The record of a person who has or is suspected of having AIDS or HIV infection **may be disclosed** by the order of a court of competent jurisdiction which is granted pursuant to an application showing good cause...”

New Jersey AIDS Assistance Act Background

But the next section, *N.J.S. 26:5C-9(b)*, applies to criminal prosecution:

“A court may authorize disclosure of a person's record for the purpose of conducting an investigation of or a **prosecution** for a crime of which the person is suspected, **only if the crime is a first degree crime...**”

A woman with dark hair tied back is looking at a book in a library aisle. The shelves are filled with books, and the scene is brightly lit. The text is overlaid on the top half of the image.

New Jersey AIDS Assistance Act Preliminary Research

- Some citing references to NJAAA
- Possible remedy of adding statutory language
- Request for approval to conduct additional research (including legislative history/intent) and outreach

A woman with dark hair in a ponytail, wearing a dark blue top, is looking at a book in a library aisle. The aisle is filled with tall shelves of books, and the scene is dimly lit with a blue tint. The title text is overlaid on the top half of the image.

New Jersey AIDS Assistance Act

Subsequent Developments

- Introduction of A-4380 by Assemblyman Jack Ciattarelli
- Introduction of S-2979 by Senator Christopher Bateman (with language identical to A-4380)

New Jersey AIDS Assistance Act

Subsequent Developments

Assembly Bill 4380 & Senate Bill 2979:

b. A court may authorize disclosure of a person's record for the purpose of conducting an investigation of or a prosecution for a crime of which the person is suspected, only if the crime is a first degree crime **or the crime of a diseased person committing an act of sexual penetration set forth under subsection b. of N.J.S.2C:34-5,** and there is a reasonable likelihood that the record in question will disclose material information or evidence of substantial value in connection with the investigation or prosecution.

New Jersey AIDS Assistance Act Disposition

- No action recommended
- Status: completed
- 215th Legislative Session: each bill referred to its respective Judiciary Committee with no recorded votes
- 216th Legislative Session: On 1/16/2014, Assemblyman Jack Ciattarelli and others introduce A-1163, referred to Judiciary

Case Study: Potential Project No. 2

Skate Park Act



Skate Park Act Background

Comparison of Ski, Roller Skate, & Equine Acts during a Commission meeting.

Ski Act – N.J.S. 5:13-6:

The assumption of risk set forth in section 5 shall be a complete bar of suit and shall serve as...

Roller Skating Act – 5:14-7:

The assumption of risk set forth in section 6 of this act shall be a complete bar of suit and shall serve as...

Equine Act – 5:15-5:

The assumption of risk set forth in section 3 of this act shall be a complete bar of suit and shall serve as...

Skate Park Act

Background

Questions raised during Commission meeting:

- ✓ “Is there a Skate Park Act?”
- ✓ “If not, should the Commission take up the project?”

Skate Park Act

Preliminary Research

- Skateboarding addressed in Title 39, **not** Title 5
- N.J. law silent re skate park duties & obligations
- No legal definition of “skate park” in N.J.

N.J.S. 39:4-10.10

39:4-10.10. Rights and duties of roller skaters and skateboarders

Every person operating any roller skates or skateboard upon a roadway shall be **granted all of the rights and shall be subject to all of the duties** applicable to the driver of a vehicle by chapter four of Title 39 of the Revised Statutes and all supplements thereto, except as to those provisions thereof which by their nature can have no application.

Skate Park Act

Preliminary Research

Threshold questions:

- What is the law in New Jersey?
- What are other states doing?

Skate Park Act

Preliminary Research

- At least 58 operational N.J. skate parks
- Mix of public and private operation
- Rules vary widely re protective gear, fees, & signed waiver requirements

Skate Park Act

Preliminary Research

At least 9 other states have enacted laws

- Policy of government immunity over liability
- Liability a major deterrent to private park operation

Skate Park Act

Consideration and Discussion

The majority of N.J. parks are publicly operated and fall under Title 59, Claims against public entities.

N.J.S. 59:2-1

59:2-1. Immunity of public entity generally

- a. Except as otherwise provided by this act, a **public entity is not liable for an injury**, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.
- b. Any liability of a public entity established by this act is subject to any immunity of the public entity and is subject to any defenses that would be available to the public entity if it were a private person.

Skate Park Act

Consideration and Discussion

Tort and contract law already address this area

- N.J. courts enforce liability waivers at skate parks and other recreational activities if they do not violate public policy.
- *Hojnowski v. Vans Skate Park* (2005) – waiver enforced as to arbitration clause, but invalid as to right of the child to sue in tort.

Skate Park Act

Consideration and Discussion



Public Policy considerations:

- Designating public skate parks to draw skateboarders away from inappropriate areas
- No known economic policy to protect skateboard industry (as with Ski, Equine, etc.)

Skate Park Act

Staff Recommendation

“No action required at this time, in light of Title 59 and existing contract law protections.”

Case Study: Potential Project No. 3

Uniform Electronic Recordation of Custodial Interrogations Act



Uniform Electronic Recordation of Custodial Interrogations Act Special Considerations

Commission has a statutory obligation to consider the work of the ULC:

“Receive and consider suggestions and recommendations from the American Law Institute, [the National Conference of Commissioners on Uniform State Laws](#), and other learned bodies and from judges, public officials, bar associations, members of the bar and from the public generally...” *N.J.S. 1:12A-8c*

Uniform Electronic Recordation of Custodial Interrogations Act **Special Considerations**

The Commission examines ULC proposals to:

- Determine state of existing NJ law
- Determine what other states are doing
- Determine NJ law's date of enactment or modification
- Assess whether existing law is a better fit for the State of NJ
- Determine whether NJ law is enhanced by including ULC's provisions

UNIFORM ELECTRONIC RECORDATION OF CUSTODIAL INTERROGATIONS ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-NINETEENTH YEAR
IN CHICAGO, ILLINOIS
JULY 9-16, 2010

* * *

Uniform Electronic Recordation of Custodial Interrogations Act

Preliminary Research

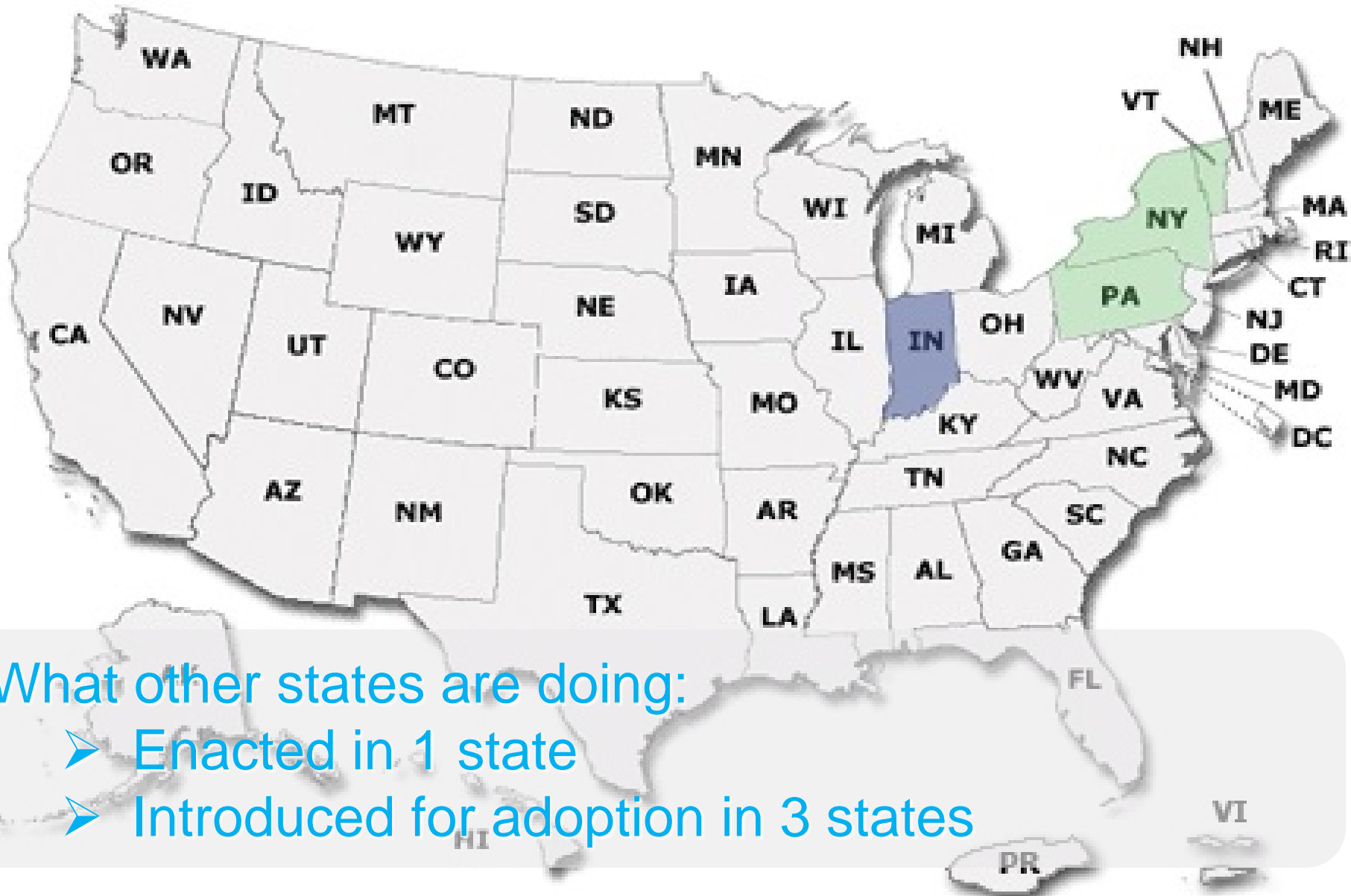
Purpose of the UEROICIA:

- Address use of audio and video to record law enforcement interviews of criminal suspects in custody
- Mandate electronic recording; defer to states' discretion re video and specific exceptions
- Improve investigations, accuracy, fairness
- Protect constitutional rights (avoid false confessions)

Uniform Electronic Recordation of Custodial Interrogations Act Preliminary Research

Law in New Jersey:

- NJ “at the forefront of advancing the cause sought to be served by the UEROICIA”
- Criminal Practice Rule 3:17 (2005) mandates electronic recording of specific crimes in “places of detention” with exceptions



What other states are doing:

- Enacted in 1 state
- Introduced for adoption in 3 states

■ = Enacted

■ = Introduced this Year

Uniform Electronic Recordation of Custodial Interrogations Act Consideration and Discussion

Issues re UEROCIA:

- At odds with *Winberry v. Salisbury* determination re: separation of powers in NJ
- NJ's existing law successfully covers the matters in the Uniform Act with Rule 3:17
- Not likely to accomplish uniformity due to high degree of variation in each state

Uniform Electronic Recordation of Custodial Interrogations Act **Disposition**

Enactment of the UEROCIA *not* recommended by the Commission.



NEW JERSEY LAW REVISION COMMISSION

Final Report

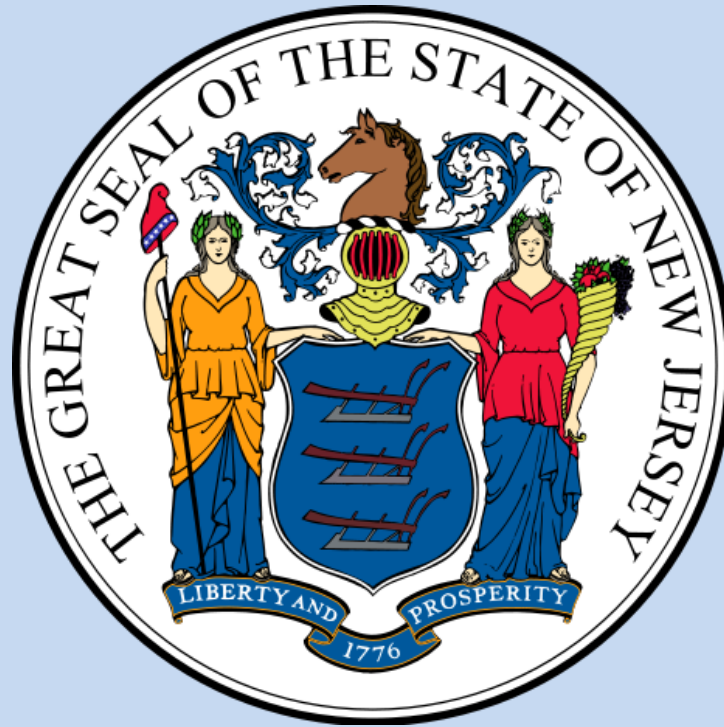
Relating to

Uniform Electronic Recordation of Custodial Interrogations Act

July 18, 2013

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New Jersey Law Revision Commission



NJAAA References

- New Jersey AIDS Assistance Act (NJAAA), *N.J.S.* 26:5C-1 et seq.
- Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d-9
- *State of New Jersey v. C.M.*, 2013 WL 3582074

Skate Park Act References

- Ski Act, *N.J.S. 5:13-1 et seq.*
- Roller Skating Rink Act, *N.J.S. 5:14-1 et seq.*
- Equestrian Activities Liability Act, *N.J.S. 5:15-1 et seq.*
- *N.J.S. 39:4-10.10*. Rights and duties of roller skaters and skateboarders
- *N.J.S. 59:2-1*. Immunity of public entity generally
- *Hojnowski v. Vans Skate Park*, 375 N.J.Super. 568 (2005)

Uniform Electronic Recordation of Custodial Interrogations Act

References

- *N.J.S. 1:12A-8. Powers and duties*
- Uniform Electronic Recordation of Custodial Interrogations Act (www.uniformlaws.org)
- *N.J. Court Rules 3:17. Electronic Recordation*
- *Winberry v. Salisbury*, 5 N.J. 240 (1950)

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