

MINUTES OF COMMISSION MEETING

February 18, 2021

Present at the New Jersey Law Revision Commission meeting, held via video conference, were: Chairman Vito A. Gagliardi, Jr.; Commissioner Andrew O. Bunn; Commissioner Virginia Long; Commissioner Louis N. Rainone; Professor Bernard W. Bell, of Rutgers Law School, attending on behalf of Commissioner David Lopez; Professor John K. Cornwell, of Seton Hall University School of Law, attending on behalf of Commissioner Kathleen M. Boozang; and, Grace Bertone, of Bertone Piccini, LLP, attending on behalf of Commissioner Kimberly Mutcherson.

Minutes

Commissioner Bell proposed modifications to the text of the Minutes involving the County Committee presentation at the January 21, 2021, meeting of the Commission. At the top of page twelve, Commissioner Bell asked that the sentence beginning “[h]e questioned” be replaced with the following text, “However, he expressed concern regarding whether the modification of the statute might have an adverse impact on female participation and whether such participation will decrease.” In addition, he asked that in the third paragraph, on the same page, that the text be amended to reflect that Staff has been authorized to prepare a report designed to bring the various constitutional concerns raised in the project to the attention of the Legislature.

Subject to the modifications proposed by Commissioner Bell, the Minutes from the January 21, 2021 meeting were unanimously approved by the Commission on the motion of Commissioner Bunn, which was seconded by Commissioner Long.

Child Endangerment

Samuel Silver discussed a Draft Final Report proposing changes to N.J.S. 2C:24-4 subsection a. to clarify the standard of harm required to convict a defendant of child endangerment. This project came to the Commission’s attention as a result of the New Jersey Supreme Court decision in *State v. Fuqua*, 234 N.J. 583 (2018).

New Jersey’s Child Endangerment statute, in N.J.S. 2C:24-4 subsection a.(2), provides that any person who has a legal duty to care for a child, and who causes the child harm that would make the child an abused or neglected child, is guilty of a crime of the second-degree.

In *State v. Fuqua* the New Jersey Supreme Court considered whether the State must prove that a child suffered “actual harm” in order to convict a defendant under the State’s child endangerment statute. The Court determined that actual harm is not required and that a child’s exposure to an “imminent danger and a substantial risk of harm” is sufficient to convict a defendant of second-degree child endangerment.

This matter was last discussed at the November 19, 2020, Commission meeting. At that time, the Commission authorized the release of a Tentative Report with an Appendix that reflected

more clearly the incorporation of Title 9 provisions into the statute, acknowledged 30 years of judicial precedent, and included the required mental element rather than rely upon the gap-filler that is provided in the Code of Criminal Justice. Mr. Silver noted that the Appendix also restructured the statutory language to make it easier to read.

The Tentative Report was distributed to several stakeholders which included, Attorney General of New Jersey; the New Jersey Administrative Office of the Courts; Association of Criminal Defense Lawyers; the Office of the Public Defender; the Criminal Law Section of the New Jersey State Bar Association; the County Prosecutor's Association of New Jersey (CPANJ) and numerous County Prosecutors; private criminal defense attorneys; the New Jersey State League of Municipalities; the New Jersey Association of Counties; New Jersey State Association of Chiefs of Police; and the New Jersey Police Traffic Officers Association.

No objections were received to the proposed statutory modifications, and Mr. Silver indicated that support for the proposed amendments was provide by the County Prosecutor's Association of New Jersey (CPANJ). The CPANJ advised the Commission that the proposed modifications to N.J.S. 2C:24-4 subsection a. more closely align the New Jersey statute with similar statutes in the majority of other states and more accurately represent New Jersey's commitment to protecting its children.

Commissioner Long expressed her support for this project and Chairman Gagliardi stated that he believed that the project will be well received. On the motion of Commissioner Bell, seconded by Commissioner Long, the Commission unanimously voted to release the Final Report on this subject.

Confinement

In New Jersey, a judge may sentence a defendant who has been convicted of at least two separate prior crimes to an extended prison term. In *State v. Clarity*, 454 N.J. Super. 603 (App. Div. 2018), the Appellate Division considered whether a defendant's probationary term for a prior crime was the equivalent of "confinement" for the purposes of sentencing him to an extended term as a persistent offender.

The *Clarity* Court observed that N.J.S. 2C:44-3 subsection a. does not define "confinement." The Court indicated that the absence of a definition created potential uncertainty about the scope of the statute. After reviewing the legal dictionary definitions, and the definitions used in other states, the Court determined that "confinement" means that a person is "imprisoned or restrained." The *Clarity* Court noted that the definition of "confinement" found in the statutes of Missouri and Wisconsin are consistent with the law of New Jersey. Probation and parole are not considered confinement, and to be considered confined, an individual must be removed from society pursuant to an arrest or order of a court.

Arshiya Fyazi explained that the proposed modification to the statute concerns subsection a., which is proposed to be divided into additional subsections to make the statute more accessible. In addition, two subsections were added to clarify the definition of "confinement." Subsection

a.(2) defines “confinement” and subsection a.(3) clarifies what does not constitute confinement. These modifications were made pursuant to the Court’s analysis in *State v. Clarity*, suggestions received from the County Prosecutor’s Association of New Jersey (CPANJ), and guidance received from the Commission.

Individuals and organizations with knowledge of this area of law were contacted by Commission Staff, including: the County Prosecutors Association of New Jersey (CPANJ); the New Jersey Attorney General’s Office; the New Jersey State Municipal Prosecutors’ Association; the Association of Criminal Defense Lawyers; the Office of the Public Defender; the leadership of the Criminal Practice Section of the New Jersey State Bar Association; the New Jersey State League of Municipalities; the New Jersey Association of Counties; each of the twenty-one County Prosecutors; and several private practitioners.

The CPANJ provided the Commission with insight and recommendations regarding the persistent offender statute in response to the Staff outreach. In subsection a.(2), the CPANJ proposed that, after the phrase “constrained pursuant to an order of a court,” the Commission add “for criminal behavior.” This is consistent with the holding in *Clarity*, in which the Court said “[w]e are satisfied that the persistent-offender statute applies to confinement for criminal behavior, not the mere incident of an individual being held briefly in custody.” Additionally, in subsection a.(3), the CPANJ recommended that the Commission include the phrase “civil commitment, or sentences for Not Guilty by Reasons of Insanity” after “temporary or otherwise.” The CPANJ reasoned that this addition would narrow the scope of the “types of confinement that would qualify a person for an extended term of imprisonment.”

The phrase “temporary or otherwise” that was shown in earlier drafts of subsection a.(3)(A) is not used elsewhere in New Jersey’s statutes, and its meaning is unclear. It is found in the Missouri statute, where it defines confinement, and was later mentioned approvingly by the *Clarity* Court. Ms. Fyazi recommended striking this phrase to avoid creating a statutory ambiguity where one previously did not exist.

Commissioner Long stated that she is fine with the recommended changes, and Commissioner Bell agreed. Commissioner Cornwell stated that he liked the exclusion of civil commitment from the statute. On the motion of Commissioner Long, seconded by Commissioner Bell, the Commission voted unanimously to release the Report as a Final Report on this subject.

PLIGAA

The New Jersey Property-Liability Insurance Guaranty Association (NJPLIGA) acts as a safety net for claimants and policyholders of insolvent insurance companies by providing statutory benefits to insureds and claimants whose policies no longer provide protection against loss. The offset provision contained in the applicable Act (PLIGAA), found at N.J.S. 17:30A-1 *et seq.*, and as discussed in *Oyola v. Xing Lan Liu*, 431 N.J. Super. 493 (App. Div. 2013), served as the basis of Jennifer Weitz’s presentation.

In *Oyola*, the Appellate Division considered the interpretation of the statutory language of N.J.S. 17:30A-5. The statute provides that “[t]he amount of a covered claim payable by the association shall be reduced by the amount of any applicable credits.” Ultimately, the Court determined that workers’ compensation and other payments should be offset only against the insured’s total damages in calculating the NJPLIGA’s obligation to pay a claim. The Appellate Division in *Oyola* relied in large part on the decision of the New Jersey Supreme Court in *Thomsen v. Mercer-Charles* in reaching its decision.

The Supreme Court described the issue in *Thomsen* as: “whether the setoff applies to the entire amount payable on the person's loss...or whether the solvent insurer's payment is applied directly to the statutory maximum that the Association may pay on a ‘covered claim.’” The Supreme Court further stated that, “[u]nder the latter interpretation, the amount of the claimant's damages claim is only relevant to the extent it is less than the \$300,000 statutory cap. Thus, the latter interpretation substantially minimizes tort victims' ability to recover their damages.” The Legislature amended PLIGAA in 2004, but since the incident in *Thomsen* occurred prior to the amendment, it was the pre-2004 statute that controlled.

The 2004 amendments moved the statutory phrase at issue in *Oyola* and *Thomsen*, from N.J.S. 17:30A-12 to 17:30A-5 and revised the phrase from “[a]n amount payable on a covered claim” to “the amount of a covered claim payable.” The Court determined that “[t]he two phrases are virtually indistinguishable, and the language in the amendment in no way indicates that it was intended to overrule *Thomsen*.” Both the Appellate Division and the Supreme Court rejected NJPLIGA’s argument to the contrary.

Outreach for this project included private practitioners in the New Jersey State Bar Association’s insurance law section and the automobile and no-fault section, and counsel for NJPLIGA. Ms. Weitz advised the Commission that Cynthia Borrelli, counsel for NJPLIGA, interposed an objection to this project. Ms. Borelli noted the lack of case law in the area, and raised concerns that any codification of the decision in *Oyola* could be interpreted in an overbroad manner, negatively impacting NJPLIGA’s ability to deduct legitimate set-offs, such as coverage available under health insurance policies, against its statutory cap. She also said that since the decision in *Oyola*, NJPLIGA has acted in a manner consistent with the Court’s determination.

In light of the concerns raised by NJPLIGA and the lack of case law subsequent to *Oyola* addressing the issue of set-offs, Ms. Weitz recommended that the Commission conclude its work in this area without making a recommendation to the Legislature.

Commissioner Cornwell advised the Commission that he agreed with the recommendation. Commissioner Bell questioned whether the deduction for workers compensation would be from the total award to the plaintiff, and Ms. Weitz said that it would. She added that there are exceptions, or set-offs, but NJPLIGA will still be liable up to the statutory maximum in most instances in which the award exceeds three hundred thousand dollars. On the motion of Commissioner Long, seconded by Commissioner Cornwell, the Commission unanimously voted to discontinue work on this project.

Inhabitant

Alyssa Brandley, Legislative Law Clerk with the Commission, discussed her Memorandum proposing a project to clarify the term “inhabitant” in New Jersey’s Law Against Discrimination N.J.S. 10:5-1 *et seq.* as discussed in *Calabotta v. Phibro Animal Health Corp.*, 460 N.J. Super. 38 (App. Div. 2019).

The preamble of the New Jersey Law Against Discrimination (NJLAD) provides that practices of discrimination against any inhabitants of this State are matters of concern to the State government. The Court considered the scope of the coverage of the NJLAD in *Calabotta*, examining whether the NJLAD was intended to apply exclusively to job applicants and employees who reside in New Jersey.

Ms. Brandley explained that the plaintiff in *Calabotta* was an Illinois resident and former employee of the defendant, whose headquarters was located in New Jersey. The plaintiff brought suit for failure-to-promote and wrongful discharge in violation of the NJLAD. The Appellate Division considered two issues in *Calabotta*. The first concerned the meaning of the term “inhabitants,” which the Court noted was not defined anywhere in the statute. The second issue concerned the apparent inconsistency of that term with other provisions of the statute.

Ultimately, the Appellate Division reversed the trial court’s decision and extended the protection of the NJLAD to the plaintiff who resided outside of New Jersey. The Court reasoned that, as a remedial statute, the NJLAD should be construed liberally. The Court also indicated that when a preamble is inconsistent with the clear language of the statute, the preamble must give way. Ms. Brandley advised the Commission that the preamble of the NJLAD had been modified four times, though the use of the term “inhabitants” has remained unchanged.

Commissioner Bunn questioned whether New Jersey has a rule of statutory interpretation regarding preambles. Ms. Brandley answered that according to this case, the preamble should be consistent with the other provisions of the statute and, where it is not, it must give way. Commissioner Bell stated that according to *A Dictionary on Statutory Interpretation*, by William D. Popkin, the location of a preamble, whether it is before or after an enacting clause, will determine whether it is substantive or merely explanatory. Commissioner Rainone asked whether the language in question was actually a preamble or a legislative finding. Laura Tharney responded that Staff would be happy to provide the Commission with answers to each of these questions at an upcoming meeting. Commissioner Bunn said that the Commission should address the inconsistencies and the answer to the question about New Jersey’s rule of construction concerning preambles, and asked that information concerning both be included in the next memorandum; Chairman Gagliardi concurred.

School District of Residence

In *Bd. of Educ. of Twp. of Piscataway v. New Jersey Dept. of Educ.*, 2019 WL 2402545 (App. Div. Jun. 07, 2019), the Appellate Division considered whether a municipal government was obligated to provide funding for its students who were enrolled in charter schools located in

other school districts. Christopher Mrakovic, Legislative Law Clerk with the Commission, explained that the decision of the Appellate Division turned on the meaning of “school district of residence,” which is not defined in the Charter School Program Act (CSPA). The trial court determined that the term was ambiguous, noting that the phrase “district of residence”, which is found in the New Jersey Administrative Code, is frequently confused with “school district of residence” and served to complicate this issue.

In response to Commission recommendations, the Appendix to the Revised Tentative Report defines “school district of residence” as the district in which a student is domiciled. Other proposed statutory modifications include the elimination of subsections a. and c., which have already been repealed by the Legislature, and the re-lettering of the remaining subsections. N.J.S. 18A:36C-7.1 includes proposed modifications to reflect the re-lettered order of the CSPA. Finally, the preamble to the CSPA is proposed to be reworded to begin “for each student who is domiciled within a district, and who is enrolled in a charter school,” and to clarify that each subsection functions only where applicable.

Commissioner Bell noted the improvements to subsection a. and proposed additional language to clarify the substance of the statute. First, he recommended that the word “district” be replaced with the term “jurisdiction” in the first part of the sentence. In addition, he suggested that the phrase “of residence” be removed from the sentence and that, after the word “shall,” the following language be inserted: “be the child’s district of residence and shall...” He explained that with the addition of this language, the proposed definition set forth in subsection b. can be eliminated from the statute.

With the modifications proposed by Commissioner Bell, and on his motion, seconded by Commissioner Bunn, the Commission unanimously voted to release the Tentative Report.

Household Member - PDVA

Samuel Silver discussed with the Commission a Draft Tentative Report proposing replacement of the term “household member” in the Prevention of Domestic Violence Act (PDVA), N.J.S. 2C:25-19(b). The PDVA protects individuals eighteen years of age or older who have been subject to domestic violence by a present or former household member. The term “household member” is not defined in the PDVA. This issue was raised in *E.S. v. C.D.*, 460 N.J. Super. 326 (Ch. Div. 2018).

In *E.S. v. C.D.*, the defendant was a full-time, live-in, nanny for the plaintiff for approximately seven months. The defendant was fired for assaulting the plaintiff’s minor child. Thereafter, the defendant sent threatening and harassing texts to the plaintiff. As a result of this behavior, the plaintiff sought a final restraining order against the defendant under the PDVA. The basis of the relationship between the parties, in this case, was purely economic.

Mr. Silver explained that New Jersey courts have liberally interpreted the term household member. Although traditionally used to define a familial, sexual, or romantic relationship between

various persons, it has been expanded to include a houseguest employed as a bookkeeper and college suitemates who were not roommates.

A fifty-state survey of this subject confirmed that all states have domestic violence statutes that identify who may seek a court order of protection. Nine states use but do not define the term “household member”, including New Jersey. In thirteen states that use and define the term “household member”, the definition is restricted to persons related by either consanguinity or affinity, or who are involved in an intimate dating relationship. These thirteen states omit individuals who may cohabit but are not related by blood or marriage. Twenty-eight states define “household member” by including references to blood or marriage, but also extending domestic violence protection to unrelated members who reside or have resided together.

A number of statutes limit the definition of “household member” by age, underlying relationship, or time. In Iowa, household member does not include children under 18 years of age. In Illinois and Michigan, a casual acquaintanceship, or ordinary fraternization in business or social settings are excluded from the definition. In Hawaii, roommates, or cohabitants whose relationship is based on economic or contractual bases, are also excluded. In Colorado, Rhode Island, and Virginia, the individuals involved in the domestic violence action must reside or must have resided with one another for a specified period of time.

Mr. Silver stated that that proposed modification in the Appendix incorporates language from Assembly Bill 2516, and that subsection d. was restructured for ease of access. Proposed section d.(1)(C) eliminates the term “household member” to clarify that domestic violence can occur between persons who reside together or who have resided together in the past, and those persons can seek protection of the Court.

Commissioner Cornwell asked how the proposed statutory language was synthesized since the fifty-state survey indicated that there is not universally accepted definition of the term “household member.” Mr. Silver responded after looking at different state statutes, two criteria were found across states - to be considered a “household member” the individuals must have resided together at some point or have had a relationship. In its current form, the statute provides protection to people who are in relationships, or where once in a relationship. The proposed modification expands protections to individuals who reside or have resided with each other regardless of a blood or marital relationship. Commission Cornwell agreed with expanding the protection to others who resided with each other, regardless of the reason.

Commissioner Bunn asked Mr. Silver to clarify the meaning and origin of section d.(4) regarding adoptive parents, and suggested that there was no reason to designate a child as an adopted child. Mr. Silver explained that language is from Assembly Bill 1767, and would extend domestic violence protection to parents of adopted children from an individual whose parental rights had terminated. Commissioner Bunn asked that the language of the subsection be reworded

to make it easier to read and understand. Commissioner Bell asked whether subsection d.(4) covers any situations not covered by other provisions of the statute.

Laura Tharney asked if only subsection d.(4) would cover instances in which a parent who adopts a child is attacked by the person whose parental rights were terminated and these two people, the attacker and the victim neither resided together nor had a relationship with each other. Commissioner Bunn said that such an attack would be considered a battery which is a crime. Chairman Gagliardi agreed with Commissioner Bunn. Commissioner Bell observed that this section may provide protection to individuals who were former couples and will cover scenarios described by Ms. Tharney. Commissioner Cornwell said he would like greater clarity regarding who is covered by subsection d.(4) and agreed with Commissioner Bunn that the wording is ambiguous. He recommended that the Report not be released until Staff has the opportunity to engage in additional research and provide additional information.

Commissioner Bell raised concern with the term “have resided in the past”, as proposed in subsection d.(1)(C). He noted that some states have established a minimum time for which people must have resided together, and questioned whether such a time limitation was appropriate. He questioned whether an individual who temporarily lived briefly with someone in the past should be the subject of a domestic violence order twenty years later. Mr. Silver responded that, as enacted by the Legislature, the statute did not have a time qualifier and it extended domestic violence protection to a person who “was **at any time** a household member”. While drafting to address the ambiguity, Staff did not intend to otherwise modify the impact of the statute.

Commissioner Bell questioned whether “residing with” or being a member of a household is different than living with someone temporarily. Commissioner Long suggested that it is important to understand the reasoning of the court in *ES v. CD*, noting that the Court indicated that residing together rendered the plaintiff vulnerable, because of the defendant’s insights into plaintiff’s life. Following that logic, a person resides with another even temporarily may be experience the vulnerability that the statute is intended to protect.

Ms. Tharney mentioned that cases in New Jersey have been moving in the direction of applying the statute’s protection in a larger group of people, as shown by decisions providing protection to adults who have shared common living quarters and students who were suitemates but not roommates. Commissioner Rainone agreed, suggesting it would not likely matter to the Legislature if the act of domestic violence occurred on the first night you resided in the household or twenty years later. Instead, he said it is the fact that you were in residence with the attacker at some point that made you vulnerable. He noted that there is no limitation based on how long it has been since the victim and the attacker were in a domestic relationship, and the Commission should not impose restrictions that the current law does not. Chairman Gagliardi asked Mr. Silver to conduct additional research regarding subsection d.(1)(C) and provide the Commission with background concerning the language used in subsection d.(4) for a Revised Tentative Report to be considered at a future meeting.

Unemployment Benefits

The grounds upon which an employee is disqualified from receiving unemployment benefits are governed by the Unemployment Compensation Law, N.J.S. 43:21-5. In 2015, subsection a. was amended to specify that disqualification does not extend to an employee who voluntarily leaves employment and begins new employment within seven days. Chris Mrakovic advised that the statute is silent, however, regarding whether disqualification extends to an employee who was scheduled to start new employment but could not because the offer of new employment was rescinded before the employee began work. This question was examined by the New Jersey Supreme Court in *McClain v. Bd. of Review, Dep't of Labor*, 237 N.J. 445 (2019).

In *McClain*, the Court determined that each plaintiff was entitled to unemployment benefits because: “(1) they qualified for UI benefits at their former employment at the time of their departure, (2) they were scheduled to commence their new jobs within seven days of leaving their former employment, and (3) their new job offers were rescinded through no fault of their own before the start date.”

Mr. Mrakovic advised the Commission that he sought input from several knowledgeable individuals and organizations regarding the propriety of modifying N.J.S. 42:21-5, and that responses were received from the Employers Association of New Jersey, the National Employment Lawyers' Association – New Jersey, and the New Jersey State Bar Association's Labor and Employment Law Section.

The Employers Association of New Jersey advised the Commission that they support modification of the existing statute to address the concerns raised by the court in *McClain* and that codification of its holding makes sense.

The National Employment Lawyers' Association also supported the clarification of the statute pursuant to *McClain*. The NELA also suggested that the timeframe for benefit eligibility be increased from seven to ten days to allow an employee to end work with a prior employer on a Friday and accept work with a new employer set to begin the second Monday following. The organization further recommended that the statute expressly state that an employer's unemployment account will not be charged if the employee leaves for another job.

The New Jersey State Bar Association's Labor and Employment Law Section similarly supported the codification of the Court's determination in *McClain*. Unlike the NELA, the NJSBA recommended the preservation of the seven-day timeframe currently included in the statute. The NJSBA also proposed modification of N.J.S. 43:21-7(c)(1) to make clear that neither the first nor second employer's unemployment accounts would be charged in a situation like that in *McClain*.

The proposed amendatory language to N.J.S. 43:21-5 in the Appendix adds a subsection to exempt from disqualification employees who leave their current job upon receipt of an offer of employment with a new employer, scheduled to begin within seven days, which is subsequently rescinded by the new employer through no fault of the employee. The proposed amendatory

language to N.J.S. 43:21-7 clarifies that the employer's unemployment insurance account should not be charged when an employee voluntarily leaves employment.

Commissioner Cornwell asked whether the seven-day period included in the statute is the proper length of time. Commissioner Rainone said that an employee who leaves a job voluntarily is not entitled to unemployment benefits. Commissioner Bunn added that benefits are contingent on whether the employee quit or was fired the job. Commissioner Bell suggested that the new employer should have to pay the unemployment benefits, since they induced the employee to leave a job. Commissioner Bunn noted that a job offer could be rescinded for a number of reasons, including for cause, and Ms. Tharney said that the draft uses the phrase "through no fault of their own" to address that circumstance.

Commissioner Rainone stated that the cost of unemployment benefits cannot be charged to the account of an employer who never employed the individual trying to collect. He interpreted the NJSBA's position as charging neither the former nor the would-be employer, leaving the costs to be borne by the State. Commissioner Bunn commented that the issue is which employer will be liable for paying unemployment benefits. Commissioner Long pointed out that an employee must work for eight weeks before they are eligible to collect unemployment. Commissioner Bunn added that the situation this project addresses is not currently covered by the statute.

Commissioner Bell proposed language modifying the "Comment" that follows the proposed statutory language in the Appendix. In the third sentence of the comment, Commissioner Bell recommended eliminating "[a]lthough" and ending that same sentence with the word "days." He also proposed the elimination of the following sentence, and replacing it with "Because the proposal represents an express change in the statute's substance and is not merely a codification of the New Jersey Supreme Court's holding in *McClain v. Bd. of Review, Dep't of Labor* or a clarification of an ambiguity, and we are uncertain about the ramifications of such a substantive revision, we leave consideration of the proposal to the Legislature."

On motion of Commissioner Cornwell, seconded by Commissioner Bell, the Commission voted unanimously to release the Report as a Tentative Report, with the inclusion of the modifications proposed by Commissioner Bell.

Uniform Faithful Presidential Electors Act (UFPEA)

In 2010, the Uniform Law Commission approved the Uniform Faithful Presidential Electors Act (UFPEA). John Cannel discussed with the Commission the incorporation of the substance of the Uniform Act into existing New Jersey law in a way that preserves the "Agreement Among States to Elect the President by National Popular Vote" that is part of existing New Jersey Law.

Almost all presidential electors in this country's history have voted for their parties' candidates. In a few instances, however, electors have not voted as directed by their voters. To this time, the occasional "faithless" elector has not changed the outcome of a presidential election.

The UFPEA addresses the problem of an elector who chooses to vote inconsistently with the vote of the people of the state. It creates a procedure that helps maintain the sanctity of the electoral process.

Mr. Cannel stated that the Draft Tentative Report proposes the acceptance of most of the UFPEA and advised that the language in the Appendix was modified to address “non-party” candidates. New Jersey is a signatory of the “Agreement Among the States to Elect the President by National Popular Vote.” That Agreement, if adopted by states with a majority of electoral votes, requires electors in each state to vote for the candidate who has the majority of popular votes nationally. As a result, he proposed modifications of the Uniform Law to reflect the Agreement.

While New Jersey does not have laws that address the purposes of the Uniform Law, it does have statutes that overlap with some of its provisions. The Appendix identifies which New Jersey Statutes are recommended for preservation and which are recommended for repeal.

Commissioner Rainone stated that this project may be perceived as overly political, and that he does not believe that the Commission should place itself in the middle of a political debate. Commissioner Cornwell stated that he agrees with the substance of the project, but can appreciate that the reaction to work in this area may not focus on its intended purpose. Commissioners Bunn and Long concurred with Commissioner Cornwell regarding the substance of the project. Commissioner Bell expressed concern about the UFPEA conflicting with the popular vote compact. Chairman Gagliardi noted that Mr. Cannel may wish to bring the project to the attention of the Legislature in his role as a Uniform Law Commissioner. It was the consensus of the Commission not to undertake a project in this area of the law.

Miscellaneous

Ms. Tharney advised the Commission that bills concerning notarial acts, based in large part on the work of the Commission, had been scheduled for consideration by the Senate Committee on February 11, 2021, but were held to permit further consideration of the fee that an individual must pay to become a notary. She added that the Commission, in its Report, took no position on this issue.

Adjournment

The meeting was adjourned on the motion of Commissioner Long, which was seconded by Commissioner Bunn.

The next Commission meeting is scheduled for March 18, 2021, at 4:30 p.m.