

ANNUAL REPORT - 2018

New Jersey Law Revision Commission





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This Report is prepared for submission to the Legislature pursuant to N.J.S. 1:12A-9.

The Report can also be found on the website of the NJLRC at:

<http://www.lawrev.state.nj.us/annual.html>

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The New Jersey Law Revision Commission

Vision:

To enhance New Jersey's long tradition of law revision and to support the Legislature in its efforts to improve the law in response to the existing and emerging needs of New Jersey citizens.

Mission:

To work with the Legislature toward the clarification and simplification of New Jersey's law, its better adaptation to present social needs, and the better administration of justice. To carry on a continuous review and revision of New Jersey's body of law, and engage in scholarly legal research and work, in order to enhance the quality of our recommendations to the Legislature and to facilitate the implementation of those recommendations.



Statement of the Executive Director

As the Executive Director of the New Jersey Law Revision Commission, I am pleased to present the 2018 Annual Report of the Commission for the consideration of the Legislature, as called for by N.J.S. 1:12A-9. The Report reflects a productive year for the Commission, in which work continued on a number of substantial projects begun in prior years, and began in new areas of the law.

As in prior years, the Commission worked in 2018 to increase its interactions with the Rutgers School of Law, the Seton Hall University School of Law, and the New Jersey Institute of Technology (specifically, its Law, Technology and Culture program). Students from those schools, and others both within and outside the State, participate in the Commission's work as paid legislative law clerks, credit-earning externs, interns, and also for pro bono credit. While working with the Commission, the students have the opportunity to engage in legal research and drafting, to work with Staff members on a variety of projects in different subject-matter areas, and to present to the Commission at its public meetings. Students who participated in these programs have said that they found the experience to be a valuable one; and their work, energy, and enthusiasm has been a real benefit to the Commission.

In addition to its outreach to communities within the State, in 2018 the Commission also focused on ways in which it can increase its engagement with educational communities and law revision entities in other jurisdictions. The Commission looks forward to sharing the benefits of that outreach and engagement in the coming years.

Commission Staff members have also endeavored to increase awareness of the Commission's work, and the opportunities to participate in that work, among members of the New Jersey Bar. It is the hope of the Staff that by participating in bar association panel discussions, programs in association with New Jersey's law schools, publishing journal articles focusing on the work of the Commission, and providing continuing legal education presentations, more members of the Bar will become aware of the opportunity to add their voices to the discussion of the various important issues under consideration by the Commission each year.

On behalf of the Commission Staff, I extend my thanks to our Commissioners, for taking the time out of their busy schedules to contribute so much to the work of the Commission. On behalf of our Commissioners and Staff, I also thank the Governor, Legislators, Legislative Staff, the Office of Legislative Services, Partisan Staff, and others whose attention affords us the opportunity to participate in the improvement of New Jersey's law. I must also extend our thanks to the individuals who provide comments and suggestions throughout the year, including those from government entities, the legal profession, the academic community, the private sector, as well as various members of the public, whose generous contributions of time, experience, and expertise were so helpful to the Commission in 2018. It is always our hope that the quality of the Commission's work reflects the breadth and the caliber of these contributions.

Laura C. Tharney
Executive Director
New Jersey Law Revision Commission

In Memoriam



Albert Burstein, 1922 - 2018

The New Jersey Law Revision Commission was saddened by the loss of Albert Burstein in December 2018. Al retired from the Commission in 2014 as its longest-serving member, and its last original member, after 27 years of service.

A native of Jersey City, Al attended Columbia University for three years before entering the service in World War II in 1943 as a part of the 44th Infantry Division. He remained in service in the European theater through the end of the war and was discharged in 1946. Al received the Army Combat Infantryman Badge and the Bronze Star Medal for his service during the war. He was later appointed a Chevalier of the French Legion of Honor in 2010 in appreciation for his contribution to the liberation of France. After his discharge from the military, Al returned to Columbia to finish his last undergraduate year there and then entered the law school in 1947. He completed his law school education in two years by attending school year-round, including the summers, in an effort to make up for time lost to military service. Al graduated from law school in 1949,

completed the nine-month clerkship then required in New Jersey, and became a member of the New Jersey bar in 1950.

Al's career as an attorney in private practice resulted in a State-wide reputation for excellence in areas of law including estate planning, commercial real estate, and both transactional work and litigation in business matters generally. He helped found the firm of Herten, Burstein, Sheridan, Cevasco, Bottinelli, Litt & Hartz, L.L.C., in 1987, and continued to practice law until early 2018 as a partner with the successor firm of Archer & Greiner, P.C.

Engagement in local politics early in Al's career transitioned, in 1971, to his first election to membership in New Jersey's General Assembly. He served as a member of the Assembly for 10 years, including a term as Majority Leader. During his time as a member of the Legislature, Al played a significant role in the study, and enactment, of laws in the areas of capital budgeting and planning, education, employment law, ethics, probate reform, and tax.

In addition to his work as an attorney and a member of the Legislature, Al also served, throughout his career, as a member or chairman of commissions, committees, boards, and bodies at the local, state and federal levels. A New Jersey Law Revision Commissioner when the Commission began work in 1987, Al was the first Chairman of the Commission and he continued to serve in that capacity for nearly 20 years. During his time with the Commission, Al provided invaluable guidance based on his years as a member of New Jersey's Legislature, and as an attorney whose career spanned more than 60 years and included practice in various fields of law. Under his thoughtful leadership, the Commission pursued its mandate to "promote and encourage the clarification and simplification of the law...and its better adaptation to present social needs, secure the better administration of justice and carry on scholarly legal research and work."

Some of Al's other appointed positions included work as a member of the Election Law Enforcement Commission, the Chairman of the State Commission of Investigation Review Committee, Chairman of the Bergen County IIB District Ethics Committee, Chairman of the federal Model Adoption Legislation and Procedures Advisory Council, and a member of the Editorial Board of the New Jersey Law Journal. As the Archer Law firm noted on its website after Al's passing, his "many successes as an attorney and as a consummate professional were evidenced by his being named 'Lawyer of the Year' from the Committee on Professionalism in 1999 and by his receiving the prestigious Daniel J. O'Hern Professional Award from the New Jersey Bar Association in 2006."

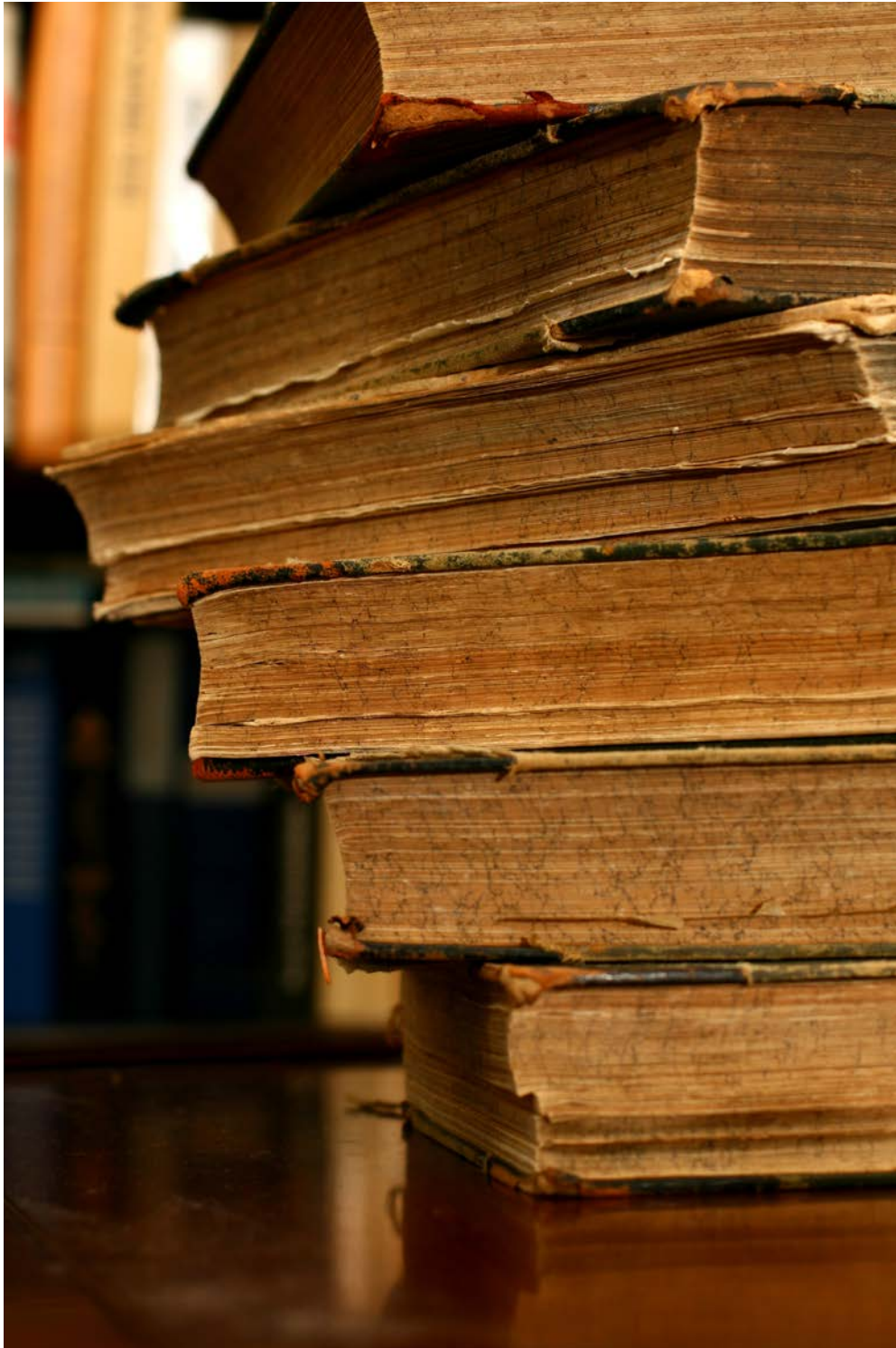
A loving husband to Ruth for 68 years, Al was a father of three, and a grandfather, whose involvement in many civic and charitable causes included time spent as the President of the Occupational Center of Hudson County, and as a Trustee of the Jewish Hospital and Rehabilitation Center of Jersey City.

At various points throughout his career, Al rightfully was lauded as a person of the highest integrity, someone who always took the high road and who never lost focus on his goal of improving the lives of New Jersey citizens. The New Jersey Law Revision Commission was inspired by Al's intellect and dedication, and his many years of service will be remembered with the utmost respect and with great fondness.

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1. – Overview of the Work of the NJLRC in 2018



1. – Overview of the Work of the NJLRC in 2018

General Overview:

The New Jersey Law Revision Commission, an independent Legislative commission, serves the citizens of New Jersey and all branches of the State government by identifying areas of New Jersey law that can be improved by changes to New Jersey's statutes. The independence of the Commission reflects the wisdom of the Legislature in creating an entity that focuses exclusively on the goals of improving New Jersey's law and identifying new ways to adapt the law to better meet the changing needs of New Jersey's citizens.

The projects on which the Commission works in any given year vary in size from recommending a change to a single subsection of a statute to the revision of an entire title. In recent years, approximately one-third of the projects on which the NJLRC worked resulted from consideration of the work of the Uniform Law Commission, about one-third from the NJLRC's monitoring of New Jersey case law, and about one-third from consideration of projects recommended by members of the public.

After a potential project has been identified, Commission Staff researches the area of the law and seeks input from those who are impacted by the law, as well as neutral individuals with expertise in the area under consideration. The goal of the NJLRC is to prepare and submit to the Legislature high quality proposals for revision that include consensus drafting whenever possible, and clearly identify any areas in which consensus could not be achieved. This provides the Legislature with a record of the outstanding issues and identifies policy choices that may warrant consideration during the Legislative process. NJLRC Staff members include detailed comments in all Reports identifying the recommendations made by commenters during the process, and the reasons underlying the drafting choices made by the Commission.

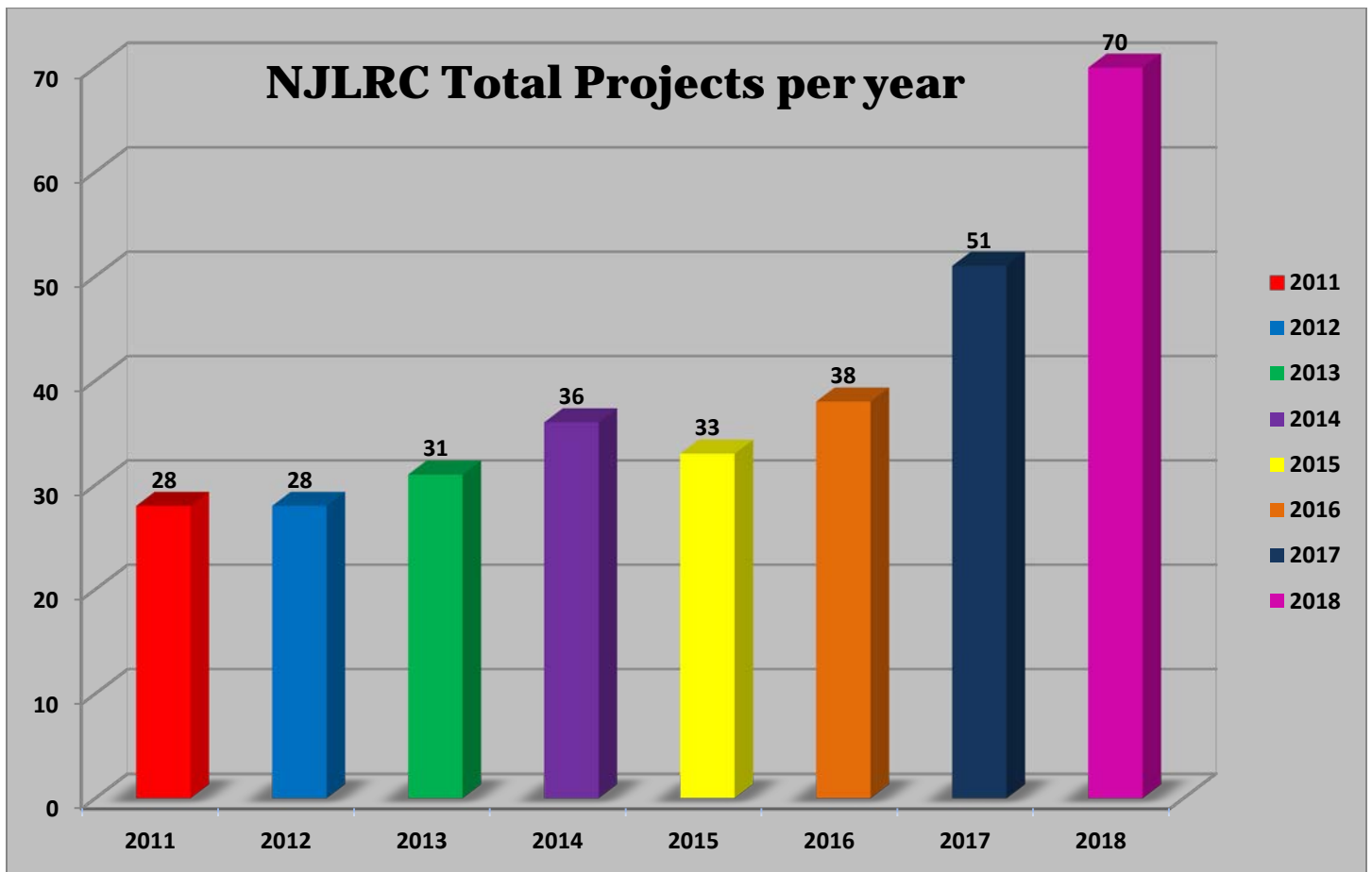
Bills Introduced Based on NJLRC Work:

The following NJLRC projects were the subject of bills introduced in 2018, or represent subject areas on which the NJLRC provided information and support to the Legislature:

- (Effect of) Abstentions
- Adverse Possession
- Alternative Procedure for Dispute Resolution Act (Modification)
- Anachronistic Law Prohibiting Transport of Indigent Persons
- Anachronistic Statutes Concerning "Present War" and Sleigh Bells
- (New Jersey) Common Interest Ownership Act
- Equine Activities Liability Act
- Landlord-Tenant
- (Revised Uniform) Law on Notarial Acts
- Partnership Trade Name Certification
- Sexual Assault
- Standard Form Contracts
- Subpoena vs. Subpena
- (Uniform) Voidable Transactions Act

The NJLRC would like to thank the following sponsors of the bills listed above for their willingness to bring these important issues to the attention of their colleagues in the Legislature:

Assemblyman Michael Patrick Carroll
Assemblyman Ronald S. Dancer
Assemblyman Roy Frieman
Assemblyman Louis D. Greenwald
Assemblyman Eric Houghtaling
Assemblyman Sean T. Kean
Assemblyman James J. Kennedy
Assemblyman John F. McKeon
Assemblywoman Angela V. McKnight
Assemblywoman Gabriela M. Mosquera
Assemblywoman Carol A. Murphy
Assemblyman Gary S. Schaer
Assemblywoman Lisa Swain
Assemblyman P. Christopher Tully
Assemblywoman Valerie Vainieri Huttle
Senator James Beach
Senator Patrick J. Diegnan, Jr.
Senator Troy Singleton
Senator Shirley Turner
Senator Jeff Van Drew



The NJLRC Would Like to Thank:

In addition to the individuals named elsewhere in this Annual Report, the Commission extends its thanks to the following individuals and organizations for their valuable suggestions, input, and support for various projects on which the NJLRC worked in 2018.

The work of the NJLRC benefits tremendously from the willingness of individuals and groups to contribute their time, experience, and expertise to assist the Commission. The NJLRC apologizes for any inadvertent omissions from the following list:

Jones Addo, Reference Law Librarian, New Jersey State Law Library

Administrative Office of the Courts, New Jersey

American Bar Association

The American Law Institute

Mark Anderl, Esq., Anderl & Oakley, PC

Michael Ashton, Live2Inspire

Julius Bailey, New Jersey Senate Majority Office

Sharon A. Balsamo, Esq., Assistant Executive Director / General Counsel, New Jersey State Bar Association

Miriam Bavati, Principal Counsel, Judiciary Section, Office of Legislative Services

Lindsay Beaver, Legislative Counsel, Uniform Law Commission

Howard Bell, Assistant Prosecutor, Hudson County

Nina D. Bonner, AAG, Counsel to the Acting Ins. Fraud Prosecutor

Kathleen M. Boozang, Dean, Seton Hall University Law School

Debbie Bozarth, New Jersey Association for Justice

Claude Brodesser-Akner, NJ.com and The Star-Ledger, Statehouse Bureau

Burlington County Prosecutor's Office

Edward J. Buzak, Esq., The Buzak Law Group, LLC

Thomas J. Cafferty, Gibbons, P.C.

Veronica L. Calder, Archivist, New Jersey State Archives

Andrew C. Carey, Prosecutor, Middlesex County

Stephen R. Cattuna, Legislative Liaison, New Jersey Sports and Exposition Authority

Lisa Chapland, Esq., Director of Government Affairs, New Jersey State Bar Association

Douglas D. Chiesa, Esq., New Jersey State Parole Board

Roger S. Clark, Rutgers School of Law

Dana M. Combs, New Jersey Office of Legislative Services Library

Richard R. Comerford, New Jersey Office of Legislative Services Library

Constitutional Officers Association of New Jersey

Marjorie E. Crawford, Head of Technical and Automated Services, Rutgers School of Law

Kathleen Cullen, New Jersey Department of Corrections

Linda Czipo, Executive Director, Center for Non-Profits

Michael Darcy, CAE, Executive Director, New Jersey State League of Municipalities

Joseph DeCeglie, JDIT Consulting

Department of the Treasury, New Jersey

David Dileo, New Jersey State Parole Board

Division of Commercial Recording, New Jersey

Joseph M. Donegan, Esq., Scarinci Hollenbeck, LLC, Uniform Law Commissioner for New Jersey

Rebecca Donington, Office of Legal and Regulatory Affairs, New Jersey Motor Vehicle Commission

Sgt. Ken Drost, Vice President, New Jersey Police Traffic Officers Association

Morgan H. Durr, J.D. Candidate, 2019, Seton Hall University School of Law

Edward Eastman, Esq., Executive Director, New Jersey Land Title Association

Barry Evenchick, Esq., Walder, Hayden, and Brogan, P.A., Uniform Law Commissioner for New Jersey

David Ewan, Esq., New Jersey Land Title Association

Mahlon L. Fast, J.S.C. (Ret.), Ehrlich, Petriello, Gudin & Plaza, P.C.

Todd Feldman, Editorial Coordinator, The American Law Institute

James Ferguson, New Jersey Motor Vehicle Commission

Alexander Fineberg, Counsel, Westcor Land Title Insurance Company

Jessica Formichella, J.D. Candidate, Seton Hall University School of Law

Timothy Franco, P.O. President, New Jersey Police Traffic Officers Association

Rafaela Garcia, Principal Counsel, Judiciary Section, Office of Legislative Services

Barry F. Gartenberg, Esq.

William Gephart, New Jersey Division of Revenue and Enterprise Services Registry & Collections Services Commercial Information Services Bureau

Noreen Giblin, Esq., Gibbons, P.C.

Casey Gillece, Legislative Counsel, Uniform Law Commission

Susan C. Green, First Assistant Deputy, Office of the Public Defender, Appellate Section

Steven R. Harris, Administrator, Department of Treasury - Unclaimed Property

Sandra Hawkins, Rutgers School of Law

Larry Herrighty, Director, Dept. of Environmental Protection

Robert Heym, Reference Law Librarian, New Jersey State Law Library

Christopher Jensen, Government News Network / GovNet

Marci Levin Hochman, First Assistant Legislative Counsel, Ethics Counsel, Office of Legislative Services

Hunterdon County Clerk's Office

Cynthia Jahn, Esq., General Counsel, Director of New Jersey School Boards Association

Barbara Johnson, Director of Advocacy, Mental Health Association in New Jersey

Alyson R. Jones, Esq., Legislative Liaison, Administrative Office of the Courts

Beatrice E. Kandell, Esq., Skoloff & Wolfe, P.C.

Alida Kass, Esq., Chief Counsel, New Jersey Civil Justice Institute

Kenneth Kettering, Esq., Professor, Brooklyn Law School, Reporter to the ULC Drafting Committee for the UVTA

Cynthia Lambert, New Jersey State Library

Alison L. Lefkovitz, Assistant Professor and Director of Law, Technology and Culture Program, New Jersey Institute of Technology

Legal Services of New Jersey

Jennifer Lehman, Legislative Director, Assemblyman Louis D. Greenwald

Eugene Lepore, New Jersey Senate Majority Office

Maria Lepore, Esq., Chief Counsel, New Jersey Association of School Administrators

Jessica Lewis Kelly, Esq., Civil Practice Division, Administrative Office of the Courts

Ronald G. Liberman, Esq., Cooper Levenson, P.A.

Christine F. Li, Esq., Greenbaum, Rowe, Smith & Davis, LLP

Jennifer A Loheac, Esq., Community Associations Institute

Nomi Lowy, Esq., Gibbons, P.C.

Thomas Lynch, Chief of Staff to Assemblyman Patrick Diegnan, Jr.

Susan Lyons, Reference Librarian/Associate Professor, Rutgers Law School

Raymond P. Martinez, Chair and Chief Administrator, New Jersey Motor Vehicle Commission

Peter J. Mazzei, Manager OLS Library Services, Office of Legislative Services (Retired)

Mark McCaslin, Fiscal Officer, Office of Legislative Services, Administrative Unit

David McMillin, Esq., Legal Services of New Jersey

Mercer County Clerk's Office

Deborah Mercer, New Jersey Collections Librarian, New Jersey State Library

Morris County Clerk's Office

Jim Moseley, President, Limousine Association of New Jersey

Lt. Dan Murray, Roxbury Police Department

Deirdre M. Naughton, Esq., Director, Office of Professional & Governmental Services, Administrative Office of the Courts

Gabriel R. Neville, Senior Legislative Counsel, Office of Legislative Services

New Jersey Governor's Highway Traffic Safety Policy Advisory Council

New Jersey Motor Vehicle Commission

New Jersey Police Traffic Officers Association

New Jersey State Bar Association

New Jersey State Library

David W. Opderbeck, Seton Hall University Law School

Benjamin Orzeske, Legislative Counsel, Uniform Law Commission

Dianne E. Oster, Serials/GovDocs Librarian, Rodino Archivist, Seton Hall University Law Library

Akshar Patel, J.D. Candidate, Seton Hall University School of Law

Melanie Payne, Esq., Criminal Practice Division, Administrative Office of the Courts

Elizabeth Petrick, Assistant Professor, New Jersey Institute of Technology

Susan Pigula, New Jersey Department of Transportation

Thomas H. Prol, Immediate Past President, New Jersey State Bar Association

Jonathan Pushman, Legislative Advocate, New Jersey School Boards Association

Joanne Rajoppi, Clerk, Union County

Michael Rappa, Supervising Assistant Prosecutor, Morris County

Kenneth Ritchie, Reference Law Librarian, New Jersey State Library

Sharon Rivenson Mark, Esq., The Law Office of Sharon Rivenson Mark, P.C.

Kevin M. Schatz, Sr. Deputy Attorney General, Chief, Enforcement Bureau

Rutgers School of Law – Newark, International Human Rights Clinic

Colleen Schulz-Eskow, New Jersey Department of Education

Bruce S. Shapiro, Local Government & Regulatory Affairs Manager, New Jersey Realtors®

Jeffrey Shapiro, Esq., Lowenstein Sandler, LLP

Jordan T. Shedlock, New Jersey Office of Legislative Services Library

State of New Jersey, Department of Law and Public Safety - Office of the Attorney General

Jacquelyn Suarez, Esq., Legislative Liaison, New Jersey Department of Community Affairs

Jeffrey H. Sutherland, Prosecutor, Cape May County

Kate Tasch, Administrative Practice Officer, Regulatory and Legislative Affairs, New Jersey Motor Vehicle Commission

Tracy M. Thomson, Esq., Assistant Attorney General, Chair-NJ Human Trafficking Task Force

Michael L. Ticktin, Director of Legislative Research for Senator Nilsa Cruz-Perez

Uniform Law Commission

Kenneth Vercammen, Esq., Kenneth Vercammen & Associates, P.C.

Kae M. Warnock, Policy Specialist, Legislative Management, National Conference of State Legislatures

Jeffrey L. Weinstein, Assistant Prosecutor, Appellate and PCR Unit, Hunterdon County Prosecutor's Office

Reid K. Weisbord, Vice Dean, Rutgers School of Law – Newark

Allen Weston, New Jersey Association of Counties

Wendy S. Whitbeck, Principal Counsel, Senate Law & Public Safety Committee Aide, Office of Legislative Services

Det. Joseph Williams, Berkeley Heights Police Department

Leslie Witko, Reference Law Librarian, New Jersey State Law Library

Alyssa Wolfe, Bureau Chief, Division of Alcoholic Beverage Control

Ellen T. Wry, Director, Central Appellate Research Staff, New Jersey Judiciary

Kimberly Yonta, Esq., Second Vice-President, New Jersey State Bar Association

John Zimmerman, Chief of Police, Kenilworth Police Department



2. – Enacted Reports and NJLRC Case and Journal References



2. – Enacted Reports and NJLRC Case and Other References; Institutional Collaborations

Since the NJLRC began work in 1987, the New Jersey Legislature has enacted 53 bills based upon 72 of the more than 170 Final Reports and Recommendations released by the Commission. The Commission's work also resulted in a change to the Court Rules in 2014. To this time, the projects enacted (or otherwise implemented) are:

2017

- *Bulk Sale Notification Requirements* (L.2017, c.307) -- The Commission's Report recommended changes to clarify that when more than one individual, trust, or estate jointly own real property, including a home, non-commercial dwelling unit, or seasonal rental, the sale of such property is exempt from the bulk sale notification requirements as it would be if a single individual, trust, or estate owned it.
- *Millers of Grain* (L.2017, c.227) – Derived from a more expansive Final Report of the Commission issued in 2012 and largely enacted in 2014, the portion of the Report enacted in 2017 recommended repeal of the law regulating charges that could be assessed by a miller for grinding grain.
- *Overseas Residents Absentee Voting Law* (L.2017, c.39) – The Report recommended revision of Overseas Residents Absentee Voting Law to recognize the rights of overseas citizens who were not previously covered by existing New Jersey law, to clarify the existing law, and to make certain technical changes to the law.
- *Pejorative Terms 2017* (L.2017, c.131) – The Report recommended changes to eliminate demeaning, disparaging, and archaic terminology used when referring to persons with a physical or sensory disability or a substance use disorder. The Report was consistent with the Legislative goal expressed in P.L. 2010, c.50 to ensure that the statutes and regulations of the State do not contain language that is outdated and disrespectful to persons with a disability and it expands the scope of prior NJLRC Reports (two earlier Reports were released dealing with this terminology as it related to persons with developmental, cognitive or psychiatric disabilities (in 2008, and in 2011 - the latter Report was the basis of A-3357/S-2224, which received bipartisan support, passed both houses of the Legislature unanimously, and was signed into law by the Governor)).
- *Uniform Fiduciary Access to Digital Assets Act* (L.2017, c.237) – Although the Commission did not issue a Final Report concerning this Act, Commission Staff had the opportunity to work with Legislators, Legislative Staff, Staff members from the Office of Legislative Services, and Staff members from the Uniform Law Commission in order to review and revise the Act for enactment in New Jersey.
- *Uniform Foreign Country Money-Judgment Recognition Act* (L.2017, c.365) – This, too, was an area of the law on which the Commission did not issue a Final Report, but engaged in work and provided support for the bills underlying the Act.

2016

- *Uniform Interstate Family Support Act* (L2016, c.1.) – The Report recommended enactment of the latest version of the Uniform Interstate Family Support Act with some minor modifications to reflect New Jersey-specific practice. The latest version of the Act changes state law to allow enforcement of foreign support orders.
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2015

- *New Jersey Uniform Trust Code* (L.2015, c.276) – The Report proposed the creation of a comprehensive set of statutory provisions in an area of the law now largely governed by case law.
- *Recording of Mortgages* (L.2015, c.225) – The Report recommended changes to the law regarding the duty to prepare a document showing that a mortgage has been satisfied, and clarify that the record mortgagee must sign the satisfaction of mortgage, in order to make the chain of title clear. The Report also proposed language to address fraud by persons claiming to be servicers of a mortgage.

2014

- *New Jersey Declaration of Death Act* (L.2013, c.185) – The Report proposed removal of the statutory authority of the Department of Health and the State Board of Medical Examiners over medical standards governing declarations of death on the basis of neurological criteria.
- *New Jersey Family Collaborative Law Act* (L.2014, c.69) – The Report recommended enactment of new statutory language designed to create a consistent framework for the use of the collaborative process in family law matters that is intended to provide important consumer protections and an enforceable privilege between parties and non-attorney collaborative professionals during the negotiation process.
- *General Repealer (Anachronistic Statutes)* (L.2014, c.69) – The Report recommended repeal of assorted anachronistic or invalid statutes including: some that are invalid because they have been found unconstitutional or have been superseded; some that may be legally enforceable but which have ceased to have any operative effect with the passage of time; some that are anachronistic because they relate to offices or institutions which no longer exist; some that are anachronistic because they deal with problems which were important at one time but which have ceased to be relevant to modern society; and others that deal with problems that still have relevance but which do so in a way that has become unacceptable.
- *Uniform Interstate Depositions and Discovery Act* (R. 4:11-4 and R. 4:11-5) – The Report recommended adoption of the UIDDA in New Jersey, with modifications to accommodate New Jersey practice but, although the Commission ordinarily makes recommendations to the Legislature, the better course of action in this case was a revision to the Court Rules to provide a simple and convenient process for issuing and enforcing deposition subpoenas.

2013

- *Pejorative Terms* (L.2013, c.103) – The Report proposed elimination of demeaning, disrespectful, and archaic terminology used in the New Jersey statutes when referring to persons with developmental, cognitive, or psychiatric disabilities.
 - *Uniform Commercial Code – Article 1 – General Provisions* (L.2013, c.65) – The Report proposed updates to Article 1 of the Uniform Commercial Code that contains definitions and general provisions which, in the absence of conflicting provisions, apply as default rules covering transactions and matters otherwise covered under a different article of the UCC.
-

- *Uniform Commercial Code – Article 4A – Funds Transfers* (L.2013, c.65) – The Report proposed updating Article 4A of the Uniform Commercial Code to address what would otherwise have been a gap in the law since 4A does not cover a fund transfer governed by federal Electronic Funds Transfer Act (EFTA). Among the changes brought about by the Dodd-Frank Act, the Wall Street Reform and Consumer Protection Act, is an amendment to the EFTA so that the law will govern “remittance transfers” (the electronic transfer of funds to a person located in a foreign country requested by a consumer and initiated by a person or financial institution that provides remittance transfers for consumers in the normal course of its business), whether or not those remittance transfers are also “electronic fund transfers” as defined in EFTA. When the federal law changed in February 2013, without the modification to Article 4A, a fund transfer initiated by a remittance transfer would have been entirely outside the coverage of Article 4A, even if the remittance transfer is not an electronic fund transfer, and would not have been covered by either law.
- *Uniform Commercial Code – Article 7 – Documents of Title* (L.2013, c.65) – The Report proposed modifications to Article 7 of the Uniform Commercial Code to accomplish two primary objectives: (1) allowance of electronic documents of title, and (2) introduction of provisions to reflect trends at the state, federal, and international levels.
- *Uniform Commercial Code – Article 9 – Secured Transactions* (L.2013, c.65) – The Report proposed changes to Article 9 of the Uniform Commercial Code, which governs security agreements where the property is not real estate. These arrangements are the basis of an important part of commercial finance and many involve interstate transactions, so it is important that the state laws governing them are as nearly uniform as possible. The most significant change proposed concerns specification of the name of debtors who are natural persons.

2012

- *New Jersey Adult Guardianship and Protective Proceedings Jurisdiction Act* (L. 2012, c.36) – The Report proposed enactment of a Uniform Law Commission Act, revised for use in New Jersey, to provide a uniform mechanism for addressing multi-jurisdictional adult guardianship issues that have become time-consuming and costly for courts and families.
- *Revised Uniform Limited Liability Company Act* (L. 2012, c.50) – The Report proposed enactment of a revised Uniform Law Commission Act that permits the formation of limited liability companies, which provide the owners with the advantages of both corporate-type limited liability and partnership tax treatment.

2011

- *Married Women’s Property* (L.2011, c.115) – The Report proposed the elimination from the statutes of laws enacted between the mid-19th century and the early 20th century in order to alter the old common law rules that limited a married woman’s legal capacity and power to own and control property. While these laws served a purpose when enacted, they came to be viewed as demeaning relics.
 - *New Jersey Trade Secrets Act* (L. 2011, c.161) – The Report proposed the enactment of a Uniform Law Commission Act that codifies the basic principles of common law trade secret protection, preserving the essential distinctions from patent law and the remedies for trade secret misappropriation as developed in case law.
-

- *Title Recordation* (L.2011, c.217) – The Report recommended the revision of the statutes pertaining to the recording of title documents following the enactment of the federal Electronic Signatures in Global and National Commerce Act (E-sign), 15 U.S.C. §7001 *et seq.*, and New Jersey’s enactment of the Uniform Electronic Transactions Act (UETA), L.2001, c.116; it required the acceptance of electronic alternatives to paper documents.

Historical Enactments:

The remaining projects enacted since the Commission began work are:

- Anatomical Gift Act (L.2001, c.87)
- Cemeteries (L.2003, c.261)
- (Uniform) Child Custody Jurisdiction and Enforcement Act (L.2004, c.147)
- Civil Penalty Enforcement Act (L.1999, c.274)
- Construction Lien Law (L.2010, c.119)
- Court Names (L.1991, c.119)
- Court Organization (L.1991, c.119)
- Criminal Law, Titles 2A and 24 (L.1999, c.90)
- (Uniform) Electronic Transactions Act (L.2001, c.116)
- Evidence (L.1999, c.319)
- (Uniform) Foreign-Money Claims Act (L.1993, c.317)
- Intestate Succession (L.2001, c.109)
- Juries (L.1995, c.44)
- Lost or Abandoned Property (L.1999, c.331)
- Material Witness (L.1994, c.126)
- (Uniform) Mediation Act (L.2004, c.157)
- Municipal Courts (L.1993, c.293)
- Parentage Act (L.1991, c.22)
- Probate Code (L.2001, c.109)
- (Uniform) Prudent Management of Institutional Funds Act (L.2009, c.64)
- Recordation of Title Documents (L.1991, c.308)
- Repealers (L.1991, c.59, 93, 121, 148)
- Replevin (L.1995, c.263)
- School Background Checks (L.2007, c.82)
- Service of Process (L.1999, c.319)
- Statute of Frauds (L.1995, c.36)
- Surrogates (L.1999, c.70)
- Tax Court (L.1993, c.403)
- Title 45 – Professions (L.1999, c.403)
- Uniform Commercial Code Article 2A – Leases (L.1994, c.114)
- Uniform Commercial Code Article 3 – Negotiable Instruments (L.1995, c.28)
- Uniform Commercial Code Article 4 – Bank Deposits (L.1995, c.28)
- Uniform Commercial Code Article 4A – Funds Transfers (L.1994, c.114)
- Uniform Commercial Code Article 5 – Letters of Credit (L.1997, c.114)
- Uniform Commercial Code Article 8 – Investment Securities (L.1997, c.252)
- Uniform Commercial Code Article 9 – Secured Transactions (L.2001, c.117)

New Jersey Cases that Mention the NJLRC:

The following is a list of New Jersey cases in which the New Jersey Law Revision Commission is mentioned:

- *Diamond Beach, LLC v. March Associates, Inc.*, 2018 WL 6729724 (App. Div. 2018)
- *NRG REMA LLC v. Creative Env'tl. Sols. Corp.*, 454 N.J. Super. 578, 583 (App. Div. 2018)
- *Gately v. Hamilton Memorial Home, Inc.*, 442 N.J. Super. 542 (App. Div. 2015)
- *State v. Tate*, 220 N.J. 393 (2015)
- *Booker v. Rice*, 431 N.J. Super. 548 (App. Div. 2013)
- *In re T.J.S.*, 419 N.J. Super. 46 (App. Div. 2011)
- *Pear Street, LLC*, 2011 WL 9102 (App. Div. 2011)
- *Haven Savings Bank v. Zanolini*, 416 N.J. Super. 151 (App. Div. 2010)
- *Marino v. Marino*, 200 N.J. 315 (2009)
- *Tashjian v. Trapini*, 2009 WL 2176723 (App. Div. 2009)
- *New Jersey Div. of Youth and Family Services v. A.P.*, 408 N.J. Super. 252 (App. Div. 2009)
- *State v. Broom-Smith*, 406 N.J. Super. 228 (App. Div. 2009)
- *Seaboard Towers Development Co., LLC v. AC Holding Corp., II*, 2008 WL 2340016 (App. Div. 2008)
- *Patel v. 323 Cent. Ave. Corp.*, 2008 WL 724052 (App. Div. 2008)
- *Alampi v. Pegasus Group, L.L.C.*, 2008 WL 140952 (App. Div. 2008)
- *Michael J. Wright Const. Co., Inc. v. Kara Homes, Inc.*, 396 B.R. 131 (D.N.J. 2008)
- *Loder v. Neopl*, 2007 WL 4118319 (App. Div. 2007)
- *Semencz v. Borough of Hasbrouck Heights*, 2006 WL 2819813 (Law Div. 2006)
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- *L'Esperance v. Devaney*, 2005 WL 3092849 (App. Div. 2005)
- *Morton v. 4 Orchard Land Trust*, 180 N.J. 118 (2004)
- *Morton v. 4 Orchard Land Trust*, 362 N.J. Super. 190 (App. Div. 2003)
- *Board of Chosen Freeholders of County of Morris v. State*, 159 N.J. 565 (1999)
- *James Const. Co., Inc. v. Director, Div. of Taxation*, 18 N.J. Tax 224 (1999)
- *Prant v. Sterling*, 332 N.J. Super. 369 (Ch. Div. 1999)
- *Wingate v. Estate of Ryan*, 149 N.J. 227 (1997)
- *State v. Storm*, 141 N.J. 245 (1995)

Journal Articles and Scholarly Reference Materials that Mention the NJLRC:

The following is a list of Journal articles and other scholarly reference materials in which the New Jersey Law Revision Commission is mentioned:

- Alfred C. Clapp & Dorothy D. Black, 7A NEW JERSEY PRACTICE SERIES, *Wills and Administration — Payment of Devises and Distribution* §§1737, 4002 (2018)
 - Michael D. Sirota, Michael S. Meisel & Warren A. Usatine, 44 NEW JERSEY PRACTICE SERIES, *Debtor-Creditor Law and Practice — Asset Sales by Distressed Companies* §6.2 (2018)
 - Myron C. Weinstein, 29 NEW JERSEY PRACTICE SERIES, *Law of Mortgages* §§ 7.2, 7.3, 7.5, 9.2, 9.3, 9.4, 10.0.30, 10.5, 10.6, 10.11, 10.15, 10.20 (2018)
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- James W. Kerwin, 16A NEW JERSEY PRACTICE SERIES, *Legal Forms — Sole Proprietorships* §56:14 (2018)
- Samuel M. Silver, *Hero or Villain: The New Jersey Consumer Fraud Act*, 42 SETON HALL LEGIS. J. 235 (2017)
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- Laura C. Tharney & Samuel M. Silver, *Legislation and Law Revision Commissions: One Option for the Management and Maintenance of Ever-Increasing Bodies of Statutory Law*, 41 SETON HALL LEGIS. J. 329 (2017)
- Laura C. Tharney, Jayne J. Johnson, Vito J. Petitti, & Susan G. Thatch, *Does the Uniform Fit?: The New Jersey Law Revision Commission's Review of the Acts of the Uniform Law Commission*, 41 SETON HALL LEGIS. J. 45 (2017)
- Susan Reach Winters & Thomas D. Baldwin, 10 NEW JERSEY PRACTICE SERIES, *Family Law and Practice — Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* §22:31 (2016)
- Bea Kandell & Christopher McGann, *How Deep is the Black Hole, and How Do We Dig Our Clients Out?*, NEW JERSEY FAMILY LAWYER, Vol. 36, No. 5 – April 2016
- Edward M. Callahan, Jr., 1 FIFTY ST. CONSTR. LIEN & BOND L., *New Jersey Construction Lien Law* § 31.02 (2016)
- Jayne J. Johnson, *Signing on the Dotted Line: Legislation to Revise New Jersey's Notaries Public Act*, 40 SETON HALL LEGIS. J. 247 (2015)
- John M. Cannel & Laura C. Tharney, *Children in Need Of Services: Toward A More Coherent Approach to Protecting New Jersey's Children and Families*, 40 SETON HALL LEGIS. J. 1 (2016)
- Susan G. Thatch, *Ante-Mortem Probate in New Jersey – An Idea Resurrected?*, 39 SETON HALL LEGIS. J. 332 (2015)
- Vito J. Petitti, *Assuming the Risk After Hubner: New Jersey Supreme Court Opinion Spurs Revision of the Equestrian Activities Liability Act*, 39 SETON HALL LEGIS. J. 59 (2015)
- Laura C. Tharney & Jayne J. Johnson, *All Hands on Deck: New Jersey Law Revision Commission Recommends Modified Uniform Laws to Safeguard the Public and Address Disasters and Their Aftermath*, 38 SETON HALL LEGIS. J. 339 (2014)
- Sharon Rivenson Mark & Mary Wanderpolo, 45 NEW JERSEY PRACTICE SERIES, *Elder Law—Guardianships and Conservatorships* §§22:28, 32:1 (2014)
- Elga A. Goodman, Kristina K. Pappa & Brent A. Olson, 50 NEW JERSEY PRACTICE SERIES, *Business Law Deskbook* §15:1 (2014)
- Henry C. Walentowicz & Matthew S Slowinski, 13 NEW JERSEY PRACTICE SERIES, *Real Estate Law and Practice* §14:4 (2014)
- Blake Sherer, *The Maturation of International Child Abduction Law: From the Hague Convention to the Uniform Child Abduction Prevention Act*, 26 J. AM. ACAD. MATRIMONIAL LAW 137 (2013)
- Clark E. Alpert, GUIDE TO NJ CONTRACT LAW § 4.1.2 (Clark E. Alpert et al. eds., 3rd ed. 2013)
- Marna L. Brown, *State of New Jersey Law Revision Commission: Final Report Relating to the Uniform Interstate Depositions and Discovery Act*, 37 SETON HALL LEGIS. J. 241 (2013)
- Keith P. Ronan, *Navigating the Goat Paths: Compulsive Hoarding, or Collyer Brothers Syndrome, and the Legal Reality of Clutter*, 64 RUTGERS L. REV. 235 (2011)
- Andrew A. Schwartz, *Consumer Contract Exchanges and the Problem of Adhesion*, 28 YALE J. ON REG. 313 (2011)
- Thomas J. Walsh, *Advancing the Interests of South Africa's Children: A Look at the Best Interests of Children under South Africa's Children's Act*, 19 MICH. ST. J. INT'L L. 201 (2011)

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 - Allen A. Etish, *Is History About to Repeat Itself?* 261-DEC N.J. LAW. 5 (2009)
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 - Ronald L. Carlson, *Distorting Due Process for Noble Purposes: The Emasculation of America's Material Witness Laws*, 42 GA. L. REV. 941 (2008)
 - Edith R. Warkentine, *Beyond Unconscionability: The Case for Using "Knowing Assent" as the Basis for Analyzing Unbargained-for Terms in Standard form Contracts*, 31 SEATTLE U. L. REV. 469 (2008)
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 - Joseph M. Perillo, *Neutral Standardizing of Contracts*, 28 PACE L. REV. 179 (2008)
 - Darryl K. Brown, *Democracy and Decriminalization*, 86 TEX. L. REV. 223 (2007)
 - Joseph A. Colquitt, *Using Jury Questionnaires; (Ab)using Jurors*, 40 CONN. L. REV. 1 (2007)
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 - Margaret L. Moses, *The Jury-Trial Right in the UCC: On a Slippery Slope*, 54 SMU L. REV. 561 (2001)
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 - Clemens Pauly, *The Concept of Fundamental Breach as an International Principle to Create Uniformity of Commercial Law*, 19 J.L. & COM. 221 (2000)
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 - John J.A. Burke, *Contract as Commodity: A Nonfiction Approach*, 24 SETON HALL LEGIS. J. 285 (2000)
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 - R. David Whitaker, *Rules Under the Uniform Electronic Transactions Act for an Electronic Equivalent to a Negotiable Promissory Note*, 55 BUS. LAW. 437 (1999)
 - Larry T. Garvin, *The Changed (and Changing?) Uniform Commercial Code*, 26 FLA. ST. U. L. REV. 285 (1999)
 - Richard F. Dole, Jr., *The Essence of a Letter of Credit Under Revised U.C.C. Article 5: Permissible and Impermissible Nondocumentary Conditions Affecting Honor*, 35 HOUS. L. REV. 1079 (1998)
 - Fred H. Miller, *Realism Not Idealism in Uniform Laws—Observations from the Revision of the UCC*, 39 S. TEX. L. REV. 707 (1998)
 - Margaret L. Moses, *The Uniform Commercial Code Meets the Seventh Amendment: The Demise of Jury Trials under Article 5?*, 72 IND. L. J. 681 (1997)
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- Albert J. Rosenthal, *Uniform State Laws: A Discussion Focused on Revision of the Uniform Commercial Code Moderator*, 22 OKLA. CITY U. L. REV. 257 (1997)
- Nancy S. Marder, *Deliberations and Disclosures: A Study of Post-Verdict Interviews of Jurors*, 82 IOWA L. REV. 465 (1997)
- Symposium, *Uniform State Laws: A Discussion Focused on Revision of the Uniform Commercial Code Moderator*, 22 OKLA. CITY U. L. REV. 257 (1997).
- John J.A. Burke, *New Jersey's New Material Witness Statute: Balancing the Rights of Prosecutors, Defendants, and Material Witnesses in Criminal Cases*, 19 SETON HALL LEGIS. J. 475 (1995)
- Fred H. Miller & Robert T. Luttrell, *Local Comments to Uniform Laws: A Winning Combination*, 48 CONSUMER FIN. L.Q. REP. 60 (1994)
- Shirley S. Abrahamson & Robert L. Hughes, *Shall we Dance? Steps for Legislators and Judges in Statutory Interpretation*, 75 MINN. L. REV. 1045 (1991)
- John J.A. Burke & John M. Cannel, *Leases of Personal Property: A Project for Consumer Protection*, 28 HARV. J. ON LEGIS. 115 (1991)
- Lawrence F. Flick, II, *Leases of Personal Property*, 45 BUS. LAW. 2331 (1990)

In addition to the items referenced above, the Commission was pleased to be favorably mentioned in an Op-Ed piece by Peter H. Lederman in the New Jersey Law Journal entitled *Spring Cleaning: It's time to Revamp New Jersey's Motor Vehicle Laws* (April 10, 2017), in another Op-Ed piece by Mahlon L. Fast, J.S.C. (Retired) in the New Jersey Law Journal entitled *It's Time To Revamp New Jersey's Landlord-Tenant Laws* (May 29, 2017), and in articles concerning archaic laws by Claude Brodesser-Akner in The Star Ledger (June 25, 2017) and (July 31, 2018).

Institutional Collaborations:

The Commission finds that consideration of the work of other states, and other countries, can be useful to help inform its work on projects in various areas of the law, and it is not unusual for the NJLRC to engage in 50-state surveys, and to review studies, findings, recommendations of other nations when assessing the potential impacts that might result from a proposed change to New Jersey's law.

In 2018, the Commission was contacted as a result of its work in the area of criminal law, and presented with the opportunity to work as a Collaborating Organization with individuals affiliated with the Birmingham Law School, University of Birmingham, UK. As a part of this new relationship, Commission Staff will periodically review materials produced by the Birmingham working group; provide comments, recommendations, and suggestions; provide access to relevant NJLRC materials compiled during work in the criminal law area; facilitate contact with individuals and organizations with relevant subject-matter knowledge and experience; and assist in gathering information to support the project.

The Commission looks forward to this collaboration because it has been the experience of Commission Staff that working with other individuals and organizations undertaking in-depth legal research and analysis: adds to the collective shared knowledge in a way that benefits ongoing and future NJLRC projects; enhances Staff's ability to engage in substantive cross-jurisdictional analysis, which improves the drafting and the recommendations provided to the Legislature; and expands the Commission's vision of the options available to address persistent challenges associated with maintaining the viability of a large, complex, body of statutory law.

3. – History and Purpose of the Commission



3. – History and Purpose of the Commission

New Jersey has a tradition of law revision. The first New Jersey Law Revision Commission, the first such commission in the nation, was established in 1925 and produced the Revised Statutes of 1937. Since the Legislature intended that the work of revision and codification continue after the enactment of the Revised Statutes, the Law Revision Commission continued in operation until 1939. After that time, the functions of the NJLRC were transferred to a number of successor agencies.

In 1985, the Legislature enacted 1:12A-1 et seq., effective January 21, 1986, to transfer the functions of statutory revision and codification to a newly created NJLRC in order to provide for a “continuous review of the statutory law of the State.” N.J.S. 1:12A-1, Introductory Statement.

The Commission began work in 1987 with a statutory mandate to “promote and encourage the clarification and simplification of the law of New Jersey and its better adaptation to social needs, secure the better administration of justice and carry on scholarly legal research and work.” N.J.S. 1:12A-8. It is the duty of the Commission to conduct a continuous review of the general and permanent statutes of the state, and the judicial decisions construing those statutes, to discover defects and anachronisms. *Id.* The NJLRC is also called upon to prepare and submit to the Legislature bills designed to remedy the defects, reconcile the conflicting provisions found in the law, clarify confusing provisions and excise redundancies. *Id.* In addition, the Commission is directed to maintain the statutes in a revised, consolidated, and simplified form. *Id.*

In compliance with its statutory obligations, the NJLRC considers recommendations from the American Law Institute, the Uniform Law Commission (formerly the National Conference of Commissioners on Uniform State Laws), “other learned bodies, and from judges, public officials, bar associations, members of the bar and from the public generally.” *Id.*

To carry out its work, the NJLRC consists of nine Commissioners including the Chair of the Senate Judiciary Committee, the Chair of the Assembly Judiciary Committee, designees of the Deans of New Jersey’s three law schools, and four attorneys admitted to practice in New Jersey (two appointed by the President of the Senate – no more than one of whom shall be of the same political party, and two appointed by the Speaker of the General Assembly – no more than one of whom shall be of the same political party). N.J.S. 1:12A-2. The members of the Commission serve without compensation and have declined to be reimbursed for the expenses that they incur in the performance of their duties, although the statute permits such reimbursement. N.J.S. 1:12A-5. The Staff of the Commission is a mix of full-time and part-time employees including a full-time Executive Director, one full-time Counsel, one part-time Counsel, a full-time Legislative Fellow, and a part-time Executive Assistant.

Once a project begins, the Commission examines New Jersey law and practice, and, when appropriate, the law of other jurisdictions. Throughout the drafting process, the Commission seeks input from individuals and organizations familiar with the practical operation of the law and the impact of the existing statutes. When the preliminary research and drafting is finished, the Commission issues a Tentative Report that it makes available to the public for formal comments. The Commission reviews all comments received and incorporates them into the Tentative Report as appropriate. When a revision is completed, a Final Report and Recommendation is prepared and submitted to the New Jersey Legislature for consideration.

The meetings of the Commission are open to the public and the Commission actively solicits public comment on its projects, which are widely distributed to interested persons and groups.

4. – Final Reports and Recommendations



4. – Final Reports and Recommendations

Aggravated Recklessness

The Criminal Code, at N.J.S. 2C:2-2b, defines four kinds of culpability: purposely, knowingly, recklessly, and negligently. The mental state of “aggravated recklessness”, recklessness under circumstances manifesting extreme indifference to human life, a fifth kind of culpability, is not defined in N.J.S. 2C:2-2b.

“Aggravated recklessness” is not derived from the Model Penal Code or from the 1971 Report of the Criminal Law Revision Commission. It was first added by L. 1979, c. 178, without reference to recklessness, with regard to the newly-added crime of aggravated manslaughter, which was defined as follows: “criminal homicide constitutes aggravated manslaughter when the actor other than purposely or knowingly causes death under circumstances manifesting extreme indifference to human life.”

The leading cases distinguish aggravated recklessness from ordinary recklessness in terms of the likelihood of the result. Thus, aggravated manslaughter has been interpreted as requiring a higher degree of recklessness than that required for ordinary manslaughter, in that the risk is of a probability or death rather than a possibility of death. *State v. Curtis*, 195 N.J. Super. 354, 366-367 (App. Div.) cert. den. 99 N.J. 212 (1984). See also, *State v. Bakka*, 176 N.J. 533, 549-550 (2003).

While the cases form a relatively coherent view of the requirements for finding aggravated recklessness, case law is not a substitute for a legislative standard. The Commission released a Final Report in December of 2018 recommending the modification of the statute to codify the mental state of aggravated recklessness.

Definition of “Material” in Insurance Fraud Statute

In *State v. Goodwin*, 224 N.J. 102 (2016), the Supreme Court analyzed the statute to determine if a defendant may be found guilty of insurance fraud if there was no actual inducement to pay a claim. The Court determined that the statute contained no requirement that criminal liability depend on an insurance company relying on the false statement and suffering a loss; instead it requires only a knowing submission of a false or fraudulent statement of material fact.

The Court also considered the definition of the term “material” which is not defined in 2C:21-4.6. The Court found that a constricted interpretation of “material fact” was inconsistent with the statute’s legislative intent and that allowing fraud to go unpunished due to a carrier’s thorough investigation resulting in the uncovering of false statements is not the intent of the statute.

In its current incarnation, New Jersey’s insurance fraud statute, N.J.S. 2C:21-4.6 lacks a definition for the word “material.” As a criminal statute, the insurance fraud provision would benefit from clarity. The Commission released a Final Report in October of 2018 that proposed codifying a definition of “material” consistent with the legislative intent of the statute and that does not allowed fraud to go unpunished due to a carrier’s thorough investigation to uncover fraud.

Driving after Suspension but Before Reinstatement

The Commission began work on a project arising from the New Jersey Appellate Division’s opinion in *State v. Torella*, 2015 WL 11391309 (App. Div. 2016). In *Torella*, the Defendant had been previously convicted

of a series of DWI offenses that led to a suspension of his license. After the suspension period ended, he was arrested twice for driving with a suspended license and charged with a violation of N.J.S. 2C:40-26(b).

The Appellate Division in *State v. Torrella* relying upon the holding in *State v. Perry*, 439 N.J. Super. 514 (App. Div.), *certif. den.*, 222 N.J. 306 (2015), explained that “[t]he statute is silent as to those driving without reinstatement beyond the court-imposed term of suspension” and that “[h]ad the Legislature intended to include those persons, the necessary language could have easily been included in both sections of the law.” The Court went on to hold that the statute does not criminalize the defendant’s conduct. In addition, the Court determined that finding otherwise “would [...] engraft additional terms onto the statute that the Legislature did not intend to include and to expand the list of potential prosecutions beyond the scope of the plain language.”

Outreach to various stakeholders and research did not lead to a uniform consensus on this issue. In June of 2018, the Commission released a Final Report on the subject with statutory language meant to clarify N.J.S. 2C:40-26 subsection (b) so that an individual who operates a motor vehicle beyond the determinate sentence of suspension, but before reinstatement, is not charged with a violation of the Code of Criminal Justice.

Mens Rea for Disorderly Persons Offenses

The Commission began work on a project resulting from the New Jersey Appellate Division’s opinion in *State v. Bessey*, 2014 WL 99282205 (App. Div. 2015). In *Bessey*, the Defendant was convicted of the petty disorderly persons offense of “obstructing highways and other public passages” in violation of N.J.S. 2C:33-7. The Defendant appealed on the basis that she did not “knowingly” disobey the officer’s command.

The applicable subsection of N.J.S. 2C:33-7 is silent as to the mens rea required for this offense. N.J.S. 2C:2-2 defines the various culpability requirements applicable to criminal prosecutions, and also addresses the construction of statutes lacking an express level of culpability. Both parties relied on the “default” standard of culpability set forth in N.J.S. 2C:2-2c(3), each maintaining that a violation of subsection b. of 2C:33-7 requires a “knowing” mental state.

The Appellate Division rejected the parties’ argument that N.J.S. 2C:2-2c(3) imposes a “knowing” mental element upon this disorderly person offense, stating “this provision is intended to apply only to a statute defining a crime. Defendant was charged and convicted of a petty disorderly persons offense, not a crime”.

The Court’s determination as to the appropriate mens rea requirement for this subsection relied on the Legislature’s statutory use of the word “refuses” and was guided by its dictionary definition as “an act of defiance” that is “both knowing and willful.” Although the court’s interpretation of the word “refuses” comports with the default standard of knowing culpability contained in N.J.S. 2C:2-2c(3), the opinion clarified that the gap-filler culpability established in 2C:2-2c(3) applies only to crimes and cannot be read into disorderly person offenses.

“The NJLRC is a jewel in our State’s crown. Independent in thought and deed, it is a legislative commission charged with a single mission - to assist New Jersey’s citizens and all of the branches of government by revising and improving our statutory law so that it better addresses the evolving issues facing the State in every new era. Its role is not to make policy but only to make sure that the policies of the Legislature are most effectively carried out. It is my honor to serve on the Commission.”

*Hon. Virginia Long, Justice (Retired)
Fox Rothschild, LLP
(2013)*

In December 2018, the Commission released a Final Report proposing a modification to the statute to clarify this area of the law by adding a mens rea default provision applicable to offenses.

Partnership and Trade Name Statutes

Originally enacted to protect persons from extending “credit” to fictitious entities, the New Jersey Partnership Trade Name statutes are no longer in step with the State’s view of corporate entities. Enacted in the early-20th century, N.J.S. 56:1-4 currently makes it a “misdemeanor” for a partnership to conduct or transact business in New Jersey if it has not filed the appropriate paperwork with the County Clerk’s Office.

Modifying N.J.S. 56:1-4 would serve three purposes. First, the amended language would prohibit non-compliant partnerships from becoming an LLP until they have properly registered their trade name. Next, the new language would permit a partnership to easily become an LLP by filing the required statutory trade name certificate with the County Clerk’s Office and thereafter refiling a *statement of qualification* with the Division of Commercial Recording. Finally, the revised statute would honor the original intent of the statute by protecting the rights of partnership creditors.

In April of 2018, the Commission released a Final Report recommending changes to the Partnership and Trade Name statutes. The proposed modifications reflect the State’s current view of business associations while preserving the original purpose of the statute.

Public Assistance Law (reflecting changes in Filial Responsibility Statutes)

In 2016, the Commission began a project to update an earlier report calling for the total revision of Title 44 of the statutes, the Poor Law, into a new Public Assistance law.

Many of the statutes in the earlier chapters of Title 44 (The Poor Law) were enacted in the nineteenth century. Others date from the 1920’s and before. They are archaic, in substance and in style, and do not reflect current reality and practice. There are many repealed, superseded or unconstitutional sections. It appears that as times and welfare programs changed, very little of the old law was repealed. Thus, when categorical relief was established in the 1930’s, new chapters were added but the old statutes on indoor and outdoor relief were left in place. When poverty programs were established in the 1960’s, more material was added. With welfare reform in the 1990’s, more was added, but very little was repealed or amended to bring it up to date. The result is that most of Title 44 completely anachronistic.

The modern parts of Title 44 also need revision. Two main laws with confusingly similar names govern assistance to the needy in New Jersey. One, the “Work First New Jersey” act, N.J.S. 44:10-55 et seq., L. 1997, replaced earlier programs including: aid to families with dependent children, general assistance, emergency assistance for recipients, and the Family Development Initiative. The Work First New Jersey General Assistance Act, N.J.S. 44:8-107 et seq., L. 1997, the second main law, replaced the State’s General Assistance law of 1947. The relationship between the two “Work First” laws is obfuscated by their statutory language.

In 2018, the Commission revisited a project previously presented by the Office of the Ombudsman for the Institutionalized Elderly and reviewed N.J.S. 44:4-100 to 44:4-103 and N.J.S. 44:1-139 to 44:1-142, that hold certain relatives responsible for payments made under old welfare laws. Although none of these statutes had been applied for more than 30 years, there was concern that their continued inclusion in the body of statutes might cause confusion as they had in other states.

The Commission incorporated the deletion of these anachronistic statutes in a Revised Final Report on the Public Assistance Laws that was released in December 2018.

Unclaimed Property

The Commission reviewed the Revised Uniform Unclaimed Property Act approved by the Uniform Law Commission in 2016 and enacted in four states. The Commission considered substantive differences between the new act and the older Uniform Unclaimed Property Act now in force in New Jersey, and issued a Tentative Report making recommendations for changes accordingly.

The Commission also considered, as a part of its work in this area, the issue of unclaimed real property. The expectation was that the work would produce a draft statute that would treat unclaimed real estate as much like other unclaimed property as possible, meaning that it should be sold and the proceeds put into the unclaimed property fund awaiting a claimant. Current law provides only for the escheat of real estate. Escheated property becomes the property of the State, and a later claimant has no right to it. The more modern approach of the Uniform Unclaimed Property Act gives control of property to the State but preserves a claimant's eventual rights. However, the Uniform Act does not cover realty.

After the Commission released a Tentative Report on this subject, it received a detailed response from the Office of the Administrator of Unclaimed Property. That Office explained that RUUPA did not contain substantive improvements to New Jersey law. All of the substantive changes in the recommended text of RUUPA as opposed to earlier Uniform Laws were already in place in New Jersey in statutes and regulations. As a result the Office said that there was nothing in RUUPA that would justify the effort of enactment.

However, the Office of the Administrator of Unclaimed Property found that the substantive provisions added by the Law Revision Commission would be useful additions to New Jersey Law. The first, simplifies handling of the contents of safe deposit boxes. The current unclaimed property law provides that the bank send the actual property in the unclaimed box to the Administrator. A few banks do that, requiring the Administrator to evaluate the property and to sell it if it has value. A simpler procedure is established by a New Jersey provision that allows banks to sell the contents of unclaimed safe deposit boxes. N.J.S. 17:14A-51. As a result of that statute, there is no need to provide for forwarding the contents of a safe deposit box to the Unclaimed Property Administrator. In fact, most banks already use this procedure as it allows them to recoup the unpaid safe deposit box charges.

In addition, as noted above, neither RUUPA nor its predecessors provides a remedy for abandoned real property. That omission leaves only the old remedy of escheat which makes the State the absolute owner of the property. The modern approach to abandoned property, the approach of all of the Uniform Unclaimed Property laws, is for the State to take custody of the property subject to the rights of a person who later demonstrates ownership.

In December of 2018, the Commission released a Final Report incorporating the recommendations that had met with the approval of the Office of the Administrator of Unclaimed Property.

5. – Tentative Reports



5. – Tentative Reports

Anachronistic Statutes

In 2018, as it does periodically, the Commission identified a number of potentially anachronistic statutes. Statutes may be deemed anachronistic for a variety of reasons. In some cases, statutes have become invalid because they have been deemed unconstitutional or have been superseded by more recently enacted statutes or regulations. Other statutes may be legally enforceable but, in practical terms, may have ceased to have operative effect with the passage of time. Still other statutes relate to offices or institutions which no longer exist, or they deal with problems important at one time but which have ceased to be relevant.

The Commission's 2018 work focused on New Jersey statutes in the following specific areas: (1) Definition of "Present War" in the New Jersey Statutes; (2) Transportation of the "Poor"; (3) Sleigh Bells on Horses Attached to a Sleigh; (4) Required Bicycle Bells - Audible Signal; and (5) Taking and Sale of Bittersweet.

Some of those statutory provisions were complicated by references, in other statutes, to the potentially anachronistic statutes. Commission Staff engaged in additional research and outreach to assess the impact, and confirm whether or not any of the statutes under consideration were in current use.

A Final Report is anticipated in early 2019.

Clarification of Tenure Issues

In July 2014, the Commission authorized work on a project to conduct research and possibly clarify the language of N.J.S. 18A:17-2, the statute by which certain New Jersey school employees obtain tenure. This project arose from application of the statute in three separate cases involving school secretaries attempting to retain tenure rights.

In the first case, a secretary was found to have forfeited tenure rights when she voluntarily transferred to a different tenurable position. In the second case, a tenured school district clerk accepted a separately tenurable secretary position and was subsequently involuntarily returned to her clerk position. She did not automatically obtain tenure as a secretary, but was found to have retained her tenure as a clerk. In the third case, a tenured secretary was found to have forfeited tenure rights when she voluntarily transferred to a different, non-tenurable position.

In its current state, N.J.S. 18A:17-2 does not address the tenure rights of clerks, secretaries, or certain other non-teaching school employees in voluntary transfer and promotion situations.

After releasing a Tentative Report in this area of the law, the Commission considered comments received and updated its work, authorizing the release of a Revised Tentative Report in July 2017 and seeking additional comment on the proposed revisions intended to clarify New Jersey law, N.J.S. 18A:17-2, regarding the movement or transfer of tenured clerical, secretarial, and other non-teaching employees.

Additional research and outreach is concluding, and a Final Report is expected in early 2019.

Collateral Consequences of Criminal Convictions

In September 2011, the Commission authorized a thorough review of New Jersey’s statutes and administrative code in order to compile a list of the collateral consequences of criminal convictions. The project was prompted by *In re D.H.*, 204 N.J. 7 (2010), a case which struggled to harmonize the statute regarding the effect of an order of expungement, N.J.S. 2C:52-27, with the statute mandating the forfeiture of public office upon a conviction for certain crimes, N.J.S. 2C:51-2. The *D.H.* Court held that the expungement statute had no effect on the forfeiture statute. Research continues on a project that now consists of three parts.

The first part involves proposed modifications to the language of the Rehabilitated Convicted Offenders Act (RCOA) to address the current “bifurcated” nature of the statute, which was enacted in 1968 and then modified in 2007. Although the result is a single statute, the component parts do not interact smoothly. Additional revision appears to be warranted to consolidate and make the interaction between the sections more coherent.

The second part of the project is the identification and classification of situations in which the issuance or denial of a license, employment, or other benefit is based on a determination of “moral turpitude” or “good moral character.” It appears that it would be useful to revise the statutory language so that provisions that concern similar situations are interpreted and applied in a consistent manner.

“The law is in constant evolution. The task of the NJLRC is to provide policy makers with tools to meet the challenges.”

*Albert Burstein, Esq.,
Archer & Greiner, P.C.
(2013)*

The third part of this project involves an analysis of the statutory language and the cases that concern the forfeiture of public office. That part of the project will require a determination about whether it is appropriate to distinguish between different types of public employees and different types of offenses, and to treat them differently for purposes of forfeiture.

Due to legislative action in this area of the law during the prior legislative session, the Commission discontinued its work in this area, but Commission Staff anticipates reviewing the current state of the law and assessing the need for further work by the Commission in the spring of 2019.

Expungement

In July 2015, the Commission began work on a project pertaining to New Jersey’s process for the expungement of juvenile adjudications, codified at N.J.S. 2C:52-4.1. The Commission’s work in this area arose from the New Jersey Supreme Court’s decision, *In re D.J.B.*, 216 N.J. 433 (2014), which clarified the manner in which an individual’s juvenile dispositions relate to the expungement of his or her adult convictions.

In *In re D.J.B.*, petitioner D.J.B.’s record consisted of three juvenile delinquency adjudications for various offenses, a conviction for the receipt of stolen property in the fourth degree, and conviction of two disorderly person offenses. After pursuing a law-abiding path for the required period of time, D.J.B. sought the expungement of both his juvenile adjudications and his adult convictions. Both the trial and appellate court held that the final paragraph of 2C:52-4.1(a) applied to the entirety of the expungement statute (both the juvenile and adult expungement provisions); this interpretation effectively converts a juvenile adjudication into a “prior or subsequent crime” barring the expungement of an adult conviction pursuant to N.J.S. 2C:52-2.

After analyzing the expungement law's legislative intent and history, as well as relevant rules of statutory construction, the New Jersey Supreme Court held that the final paragraph of N.J.S. 2C:52-4.1(a) was intended only to apply to the portion of the statute governing the expungement of juvenile adjudications. Accordingly, the Court found that D.J.B.'s juvenile adjudications did not constitute "prior crimes" which would automatically prevent the expungement of his adult conviction.

The Commission sought to draft revisions that would clarify N.J.S. 2C:52-4.1 to reflect the Court's holding and further simplify the statutory language in a manner beneficial to individuals filing pro se expungement provisions. Staff prepared a Tentative Report incorporating these revisions. The Tentative Report also proposes eliminating subsections b.(4) and b.(5) of N.J.S. 52-4.1 because these subsections do not accurately reflect New Jersey's current expungement process in which individuals petition for the expungement of both juvenile adjudications and adult convictions contemporaneously.

During the course of this project, the Commission has monitored the legislative activity and appellate decisions involving the statutes governing expungements. The Legislature crafted a trio of bills aimed at easing the process for expunging juvenile adjudications and adult convictions, and the Governor signed into law bills in this area. Commission Staff is reviewing this area of the law to identify any additional modifications that may be appropriate, and anticipates concluding its work in this area with the delivery of a Final Report in 2019.

Franchise Practices Act

The Commission began work in April 2014 on a project involving the New Jersey Franchise Practices Act (FPA) based on the District Court decision in *Navraj Rest. Group, LLC v. Panhero's Franchise Corp.*, 2013 WL 4430837 (D.N.J. Aug. 15, 2013). The Court, in *Navraj*, held that under the Franchise Practices Act (FPA) there are unconstitutional restrictions, in the provisions concerning motor vehicles and other franchises, which expand the presumption of invalidity regarding forum-selection.

An early Tentative Report proposed revisions to the statutory language identified by the Court, along with proposals to address other concerns raised by the Court regarding provisions that establish the gross sales threshold under the FPA. Commission Staff engaged in outreach and sought comment from interested stakeholders to prepare draft language in accord with the decision of the Supreme Court.

After considering the application of state and federal decisions discussing forum-selection clauses and arbitration provisions, the Commission chose to narrow the scope of the project concerning the FPA to the issues involving the gross sales threshold. Staff anticipates presenting a Final Report to the Commission in the summer of 2019.

Guardianship

The Commission began work on a project to consider the possible enactment of the Uniform Guardianship, Conservatorship, and other Protective Arrangements Act (UGCOPAA) in New Jersey. The UGCOPAA is a comprehensive guardianship and conservatorship statute that implicates portions of New Jersey's probate law, Title 3B.

The Commission compared corresponding sections of the UGCOPAA and Title 3B of the New Jersey statutes to identify substantive differences and those provisions which could benefit from revision or adoption. The Commission found numerous areas meriting further research such as person-centered planning to

incorporate an individual's preferences and values into a guardianship order, and requiring courts to order the least-restrictive means necessary for protection of persons who are unable to care for themselves. Commission Staff also engaged in a 50-state survey of guardianship law in order to determine how New Jersey's law on the subject compares to that in other states. A Tentative Report containing the results of Staff's comparisons of New Jersey law, the law of other states, and the Uniform Act was released in December 2018, and Staff looks forward to receiving comments from knowledgeable individuals.

Marital Status

In the case of *Smith v. Millville Rescue Squad*, 225 N.J. 373 (2016), the New Jersey Supreme Court examined the meaning of the phrase "marital status" in New Jersey's Law Against Discrimination (LAD), N.J.S. 10:5 et seq., and determined that the phrase included those who are single or married and those who are in transition from one state to another.

The New Jersey LAD prohibits discrimination based on, among other things, an individual's marital status. The term "marital status", however, is not defined in the LAD. In addition to prohibiting discrimination on the basis of an individual's marital status in the context of employment, the LAD contains separate statutory provisions which prohibit marital status discrimination in the context of labor organizations, employment agencies, businesses, real estate agents, lessees and lessors, and banking. These provisions impact a wide cross-section of the everyday life of a multitude of New Jersey residents.

Although the outreach by Commission Staff did not result in a universal consensus on the issue regarding the codification of the New Jersey Supreme Court's definition of "marital status" in the LAD, proposed language is expected to be included in a Final Report released in 2019.

Misdemeanor and High Misdemeanor

The terms "misdemeanor" and "high misdemeanor" are no longer used to designate criminal behavior in the State of New Jersey. There are, however, 271 statutory references to the term "misdemeanor" spanning 41 titles and 1 appendix. There are also 36 references to the term "high misdemeanor" extending across 18 New Jersey statutory titles.

The classification of an offense, for sentencing purposes, as a misdemeanor or a high misdemeanor is anachronistic. These terms are held over from a time prior to the codification of the New Jersey Code of Criminal Justice. Work on this project is ongoing as Staff conducts research in an effort to draft statutory language that effectuates the intent of the Legislature while modernizing the statutes and making sure that they are consistent.

With some modifications, the New Jersey statutes can be updated to reflect the State's current classification of criminal activity, while preserving the original purpose of the statute. A Tentative Report was released in June of 2018. Staff is awaiting feedback on the proposed modifications to the statutes and anticipates delivering a Final Report in early 2019.

“Residence” for Purposes of Sex Offender Registration

In the case of *State v. Halloran*, 446 N.J. Super. 381 (Law Div. 2014), the Superior Court of New Jersey considered whether, under Megan's Law, a convicted sex offender is required to register more than one residence, including any secondary residence the offender inhabits for a period of time. The Court concluded that the address of a secondary residence must be registered, and that a failure to do so is not a *de minimis* violation.

Staff conducted outreach to representatives of law enforcement across New Jersey. Currently, offenders register with local law enforcement according to the tier at which they are assessed after a Registrant Risk Assessment and are not monitored on a daily basis. They check in with their probation and/or parole officers on the dates specified and are given a date by which they must re-register as per the terms of their tier designation. Offenders have only one registered address at a time and are required to provide adequate verification of residence at the stated address.

Most individuals who are convicted of the most serious crimes of a sexual nature are subject to lifetime community supervision or lifetime parole supervision. These offenders are supervised by the New Jersey Parole Board. The offenders are subject to office reporting, home visits, and additional conditions of supervision. Offenders are presented with certificates which outline all of the conditions to which they are subject. There are, however some individuals required to register under N.J.S. 2C:7-2 who are not subject to lifetime monitoring.

“The Commission thrives on projects that will not make for splashy headlines, but that quietly improve the quest of judges, and lawyers, and citizens, for laws that are more readily understood and applied.”

*Vito A. Gagliardi, Jr., Esq.,
Porzio, Bromberg & Newman, P.C.
(2018)*

The Commission’s working draft of language suggests a number of days, either consecutively or in the aggregate over a calendar year, during which an offender could reside at a secondary residence before he or she would be required to register that address. The draft language also defines the term “secondary address” as used in N.J.S. 2C:7-2(a).

Additionally, draft language proposes the removal of language referring to adjudication of delinquency from N.J.S. 2C:7-2(g) in response to the New Jersey Supreme Court’s holding in *State In the interest of C.K.*, 2018 WL 1915104 (2018).

A Final Report is anticipated in the summer of 2019.

Standard Form Contracts

The New Jersey Law Revision Commission published a Report on Standard Form Contracts in 1998. The Report recognized that the overwhelming majority of contracts are not negotiable and recommended replacement of the current law applicable to those contracts with a statute that more accurately reflects their nature.

The Report rejected the common approach based on mutual consent or constructive consent mitigated by amorphous concepts of unconscionability based on differing bargaining power of the parties. Any consent is

entirely fictional as neither party has the power to vary the contract terms, regardless of the perceived bargaining power the party has. The customer of a dry cleaner or parking lot may be more financially powerful than the dry cleaner or lot owner, but neither party can vary the terms on the back of the receipt. Instead, the contract is part of the product purchased.

As a result, the Report treated the contract like any other aspect of the product. Terms are enforced generally unless commercially unreasonable as provided in current law. The approach is entirely different, but the results are more predictable and consistent and not radically different. The approach avoids issues that have been the subject of some statutes.

While the Commission's 1998 Report gained some academic recognition, a bill to enact it was not introduced until a number of years after it was released. A bill to do so has been reintroduced in the current legislative session. With this introduction, the issues in the Report assume renewed importance. After 20 years, the Commission decided to reconsider the Report and revise it to bring it up to date.

The Act provides a legislative solution to the legal problem posed by standard form contracts. These contracts, which represent the majority of contracts used in commerce, pose the legal problem of whether the terms that they contain, which are set beforehand and usually unread by the non-authoring party, are enforceable. Ordinarily, contract terms are enforced because they are the subject of consent and the result of mutual give and take between the parties. The formation of standard form contracts is not based on consent and does not result from bargaining. To negotiate and to read standard form contracts prior to their formation would be impractical and wasteful.

The judicial approach does not provide predictability as to which terms in a standard form contract are enforceable and which terms are not. Notions of "unconscionability" and "public interest" are vague and variable. In addition, the judicial approach relies on assigning "unequal bargaining power" to one of the parties. The buyer usually is considered the victim in the transaction because the buyer is assumed to be a consumer and the seller is assumed to be a large retail dealer or manufacturer. However, these assumptions do not always reflect commercial realities since the economic power of the buyer may exceed the seller's.

This Commission's proposal determines the enforceability of standard form contract terms by providing a framework of legislatively defined rules to measure the validity of non-negotiated terms. The objective is to introduce greater degrees of certainty, predictability and clarity into the law governing standard form contracts. A Final Report is anticipated in 2019.

6. – Work in Progress



6. – Work in Progress

Accidental Disability

The Commission authorized a project to conduct further research regarding the “traumatic event” standard in the accidental disability pension statute, N.J.S. 43:16A-7, in light of the Court’s determination in *Moran v. Board of Trustees, Police and Firemen's Retirement System*, 438 NJ Super. 346 (App. Div. 2014). Based on Staff’s preliminary research and the decision of the Court, the plain language meaning of the existing statute does not indicate whether a “traumatic event” is meant to reserve pensions for those who are injured through an unexpected event, or to preclude those with a pre-existing injury from collecting.

Aggravated Assault

The Commission authorized a project to conduct further research and outreach to clarify the level of intent required for an aggravated assault on law enforcement officers in light of the Appellate Division’s decision in *State v. Majewski*, 450 N.J. Super. 353 (App. Div. 2017). The Court was asked to determine whether use of the word “purposely” in N.J.S.A. 2C:12-13 applied only to conduct that subjects the officer to contact with bodily fluids or also to the throwing of bodily fluids. Given the lack of case law construing this provision, the Appellate Division examined the Model Criminal Jury Charge and legislative history and held that “purposely” applies to both throwing and otherwise subjecting an officer to contact with bodily fluids.

Alimony Modification

The Commission began a project based on the Court’s determination in *Mueller v. Mueller*, 446 N.J. Super. 582 (Ch. Div. 2016), in which the Court considered an application to terminate alimony based on the applicant’s prospective retirement. The Court held that as the obligor submitted his application to terminate alimony five years before actually retiring, it was too far in advance of his anticipated retirement date. Although the recently-amended alimony statute permits an application for modification of alimony in advance of retirement, it does not prescribe a time period for filing such an application. Staff is conducting outreach to determine if and how modification to the statute should be approached.

Ante-mortem Probate

The Commission authorized a project based upon the New Jersey Law Journal article entitled “Ante-Mortem Probate: Why Wait Until It’s Too Late,” Glen R. Kazlow et al., *Ante-Mortem Probate: Why Wait Until It’s Too Late?*, 214 N.J.L.J. 1051 (2013), which described a policy approach adopted in the states of Alaska, Ohio, Arkansas and North Dakota. In contrast to New Jersey, these States permit a testator to preemptively validate a will during his or her lifetime by petitioning the court for ante-mortem probate. While the process and effect varies in each jurisdiction, the existence of ante-mortem probate provides an opportunity for testators in those jurisdictions (especially those making unconventional bequests) to prevent a will contest after their death. Such an approach is beneficial in that it obviates the evidentiary problem inherent to traditional post-mortem probate and permits the realization of the testator’s intent. However, detractors warn that raising probate matters during the testator’s lifetime could lead to family disturbances and could potentially waste judicial resources.

The Seton Hall Legislative Law Journal published the Staff-authored article, “Ante-Mortem Probate in New Jersey – An Idea Resurrected?,” 39 SETON H. LEG. J. 332 (2015), detailing the historical and statutory background of ante-mortem probate legislation and evaluating the potential for this type of legislation in New Jersey. Work in this area continues.

Autonomous Motor Vehicles

The Commission approved the continued monitoring of this area of law to determine whether statutory modifications become appropriate in the future. Additionally, the Commission authorized Staff to contact the sponsors of the New Jersey automated vehicle legislation to ascertain whether it would be beneficial to share with them the information gathered by the Commission on this topic. Work on this project began in response to a request from a Commissioner to determine whether, and if, New Jersey is employing the “best practices” in this area of law.

Communications Data Warrants

In *In the Matter of the Application of the State of New Jersey for Communications Data Warrants to Obtain the Contents of Stored Communications from Twitter, Inc.*, 448 N.J. Super. 471 (App. Div. 2017), the Appellate Division was asked to consider whether the audio portions of a video camera, or video tape, falls within the “Wiretapping and Electronic Surveillance Control Act.”

Under the existing law, it is unclear whether communications sent via social media are to be considered communications for purposes of the Wiretapping and electronic Surveillance Control Act. The Commission authorized Staff to engage in outreach to various stakeholders to determine the resources that would be necessary to complete the Commission’s analysis. Staff is preparing to discuss this matter with knowledgeable individuals, including those associated with New Jersey’s law schools.

Consumer Fraud Act

The Commission began work on a project relating to New Jersey’s Consumer Fraud Act (CFA) several years ago. Although the basic intention of the CFA is to expand protections for New Jersey customers, it has been subject to hundreds of amendments in the fifty years since its enactment. Additionally, the CFA has spawned extensive litigation in New Jersey courts. As a result, the CFA now constitutes over one hundred pages of statutory language, some of which contains ambiguities and redundancies.

Staff prepared a Memorandum identifying some of the more litigated provisions of New Jersey’s CFA: (1) mandatory treble damages for violations; (2) attorney fees for technical violations; (3) overuse by out-of-state litigants; and (4) reliance as a component of a CFA claim. The Memorandum also proposed an alternative organizational structure for the Commission’s consideration. Work on this project is ongoing as Staff reaches out to interested parties and endeavors to revise and restructure the CFA to ensure better clarity, excise redundancy, and address ambiguities that have been identified by case law and scholars.

Definition of “Harrassment” in the Criminal Code

In *State v. Burkert*, 231 N.J. 257 (2017), the New Jersey Supreme Court considered whether the Legislature intended N.J.S. 2C:33-4(c) to criminalize as harassment the creation of lewd flyers that seriously annoyed its subject. The Court determined that the phrases “any other course of alarming conduct” and “acts with purpose to alarm or seriously annoy” as used in N.J.S. 2C:33-4(c) would be construed “as repeated communications directed at a person that reasonably put that person in fear for his safety or security or that intolerably interfere with that person’s reasonable expectation of privacy” when applied to cases based on “pure expressive activity.” In doing so, the Court suggested that “the Legislature may decide to amend subsection (c) with other language that conforms to the requirements of our free-speech clauses.”

Definition of “Legal Representative” in the Law Against Discrimination

The New Jersey Law Against Discrimination, N.J.S. 10:5 et seq. (“LAD”), was enacted in an attempt to eradicate discrimination in the workplace. The Law prohibits an employer from refusing to hire or to employ; to bar or to discharge; or, to unfairly compensate an individual based on their race, creed, color, national origin, ancestry, age or marital status. For those pursuing a claim under the LAD, however, the identity of their employer may be unclear.

In *Tompkins v. Thomson*, 2017 WL 2730256 (App. Div. June 26, 2017), the Appellate Division was confronted with a “Supersession Order” issued by the Attorney General to the Camden County Prosecutor’s Office to take control of the Camden City Police Department. This order was then coupled with the County Freeholder’s execution of a consulting agreement with a third-party contractor. The Court ultimately decided that an employment relationship did not exist between the plaintiff, a city police officer, and the defendant, the Camden County Prosecutor.

“The Law Revision Commission provides a unique opportunity for legal professionals with many varied perspectives to share our collective knowledge in the pursuit of improving the laws of our State. It is a privilege to participate and an honor to work with the dedicated and extraordinary Commissioners and Staff.”

*Grace C. Bertone, Esq.,
Bertone Piccini
(2013)*

Under the existing law, it is unclear whether third parties should be considered “legal representatives” subject to liability under the LAD. The term “legal representative” is not defined in the LAD. The Commission authorized Staff to engage in outreach to various stakeholders to determine whether including a definition for the term “legal representative” would be of assistance in furthering the purpose of the LAD in instances such as those in *Tomkins v. Thomson*.

Definition of “Misconduct” in Unemployment Compensation Act

In 2018 the Commission authorized initial outreach and research into the types of misconduct defined in N.J.S. 43:21-5, Disqualification for Benefits, based on the 2017 Appellate Division case, *In re N.J.A.C. 12:17-2.1*, 450 N.J. Super. 152 (App. Div. 2017). The original language of the statute included the categories of misconduct and gross misconduct regarding acts which might limit an employee’s eligibility for unemployment benefits. A 2010 amendment to the statute introduced the concept of “severe misconduct” to the statutory scheme as a gap-filler between the two prior types of misconduct. However, where gross misconduct was defined explicitly, severe misconduct was not defined; instead, a non-exclusive list of behaviors that would constitute severe misconduct was given. Consequently, there remains a question about what separates simple misconduct from severe misconduct.

Definition of “Tumultuous” and “Public”

The Commission authorized a project to conduct further research and outreach regarding statutory definitions of “tumultuous” and “public” in light of the Appellate Division’s decision in *State v. Finnemen*, 2017 WL 4448541 (App. Div. 2017). The issue before the Court was whether a defendant yelling obscenities and making inappropriate gestures outside of a store was engaged in “tumultuous” behavior. The Court held that defendant’s behavior was in fact tumultuous. Since there was no statutory definition for “tumultuous,” the Court applied the dictionary definition of the term “tumult” as it was used when the statute was passed (“tending or disposed to cause or excite a tumult” and “marked by violent or overwhelming turbulence or upheaval”). The Court also noted that it was not clear whether the definition of “public” in N.J.S.A. 2C:33-2(b) also applied to subsection (a), although the Court assumed a consistent meaning across these two subsections.

Definition of “Under the Influence”

The Commission authorized a project to conduct research and outreach pertaining to the statutory definition of “under the influence” in the New Jersey DWI statute as discussed in *State v. Siervo*, No. A-0989-16T2, 2018 WL 266734 at *1 (App. Div. 2018). The issues before the court were (1) whether the Defendant’s motion to vacate his previous guilty pleas for driving under the influence and refusal to submit to a Breathalyzer test were time barred, and (2) whether there were adequate factual bases for these convictions.

The Appellate Division affirmed denial of Defendant’s motion to vacate his convictions but for different reasons than the lower courts. The Appellate Division explained that the motion to vacate guilty pleas was not time barred since they could be vacated to correct a manifest injustice, but noted that in this case, no manifest injustice existed. As for the factual bases for the pleas, the Court agreed that the pleas rested on adequate factual bases but noted that New Jersey’s DWI statute did not define what “under the influence” means. Case law has understood this term to mean a diminution of physical or mental faculties, but if the municipal judge had inquired about Defendant’s physical or mental condition while he operated his vehicle, it may have avoided litigation on this issue.

De Minimis Quantity Exception

The Commission authorized a project to engage in further research and outreach to determine whether adding previous owners to the definition of “owners” in N.J.S. 13:1K-9 and 13:1K-9.7, the provisions of the Industrial Site Recovery Act (ISRA) granting standing to those who seek a De Minimis Quantity Exception and a description of the requirements for the exception itself, would help clarify who can rightfully claim this exception. This project came to the Commission’s attention in light of the Appellate Division’s decision in *R & K Assoc., LLC v. N.J. Dep’t of Env’tl. Prot.*, A-4177-14T1, 2017 WL 1316169 (App. Div. 2017). There, the Court was asked to decide whether a former owner of an industrial site could claim a De Minimis Quantity Exception after it was discovered that the land it sold was the source of ground water contamination. In looking to the text of the entire act and the underlying Legislative objectives, the Court noted that while a fair reading of the statute lends some support to the idea that standing for the exception only applies to current owners, it found that it would be inequitable and unfair to restrict the IRSA standing provision to current owners. The Court stated that the statute could benefit from additional language indicating N.J.S. 13:1K-9 and 13:1K-9.7 could apply to previous owners.

Evidentiary Standard for a Final Restraining Order

In *B.C. v. V.C.*, 2017 WL 2705443 (App. Div. 2017), the trial court found that the preponderance of evidence standard in SASPA was insufficient to guarantee the defendant father's due process liberty interest in maintaining a parental relationship with his children. The Appellate Division determined that it was unnecessary to decide the constitutional issue because SASPA does not apply retroactively, and it was not in effect when the alleged conduct occurred. The question remains, however, as to whether N.J.S. 2C:14-16, the Sexual Assault Survivor Protection Act of 2015 (SASPA), is unconstitutional because of the evidentiary standard applied in the consideration of a Final Restraining Order.

Frivolous Litigation

In 2017, the Commission considered an editorial published in the New Jersey Law Journal entitled, "Clarify Frivolous Litigation Rule's Applicability to Appeals." The statute to which the article referred, New Jersey's Frivolous Litigation Statute, *N.J.S. 2A:15-59 et seq.*, was enacted to protect parties from baseless litigation. The statute permits a court to award litigation costs and reasonable attorney fees to the prevailing party when they have met certain conditions precedent.

As currently drafted, the statute applies only to complaints, counterclaims, cross-claims, or defenses that have been filed in an action and that the court has found to be frivolous in nature. To be considered frivolous, one of the enumerated pleading must have been filed in "bad faith, solely for the purpose of harassment, delay or malicious injury." The New Jersey Supreme Court, which has exclusive jurisdiction to regulate attorneys, has refused to apply this statute to anyone other than non-lawyer parties. There is presently no statute in New Jersey that addresses frivolous litigation in appellate matters.

Hearsay Exception in Title 9 and Title 30

In the case of *New Jersey Division of Child Protection and Permanency v. T.U.B.*, 450 N.J. Super. 210 (App. Div. 2017), the Appellate Division considered the whether the special evidentiary provision for Title 9 cases as established in N.J.S. 9:6–8.46(a)(4), which allows the admission of certain hearsay statements by children about corroborated allegations of abuse or neglect, likewise applies in Title 30 guardianship cases involving the termination of parental rights. The Appellate Division found that it did not, after recognizing that it had been so applied in prior cases, and noted that the Legislature was empowered to adopt a curative amendment if it chose to do so.

In its 2014 Final Report relating to Title 9 Child Abuse and Neglect, the Law Revision Commission included this provision without substantive change. The opening language of that provision is, "In any hearing under this chapter." The chapter in question is chapter 27 which applies to actions relating to child abuse and neglect and child in need of services, not to termination of parental rights, which is the subject of chapter 30. There is no provision on evidence in chapter 30 either applying provisions similar to those in chapter 27 or denying their applicability.

Thus, the Commission Report presents the same issue decided in *Division of Child Protection and Permanency v. T.U.B.* The decision in that case presumably would control interpretation of the Commission provision. However, the case allows the Commission to reconsider the issue and either change or clarify its proposed provision.

There are policy reasons that support the *T.U.B.* limitation. While a finding of child abuse is very serious, any disposition of the case involves orders that are temporary and subject to revision with changed circumstances. A finding terminating parental rights is permanent and has broad consequences. While both kinds of cases have a Constitutional dimension, the implications of termination of parental rights are so serious that termination of parental rights proceedings require special protections. In addition, the implications of following T.U.B. are reduced by a provision in the ordinary evidence law. If the special child abuse provision does not apply, the narrower Evidence Rule N.J.R.E 803(c)(27) may be applicable.

Modification to the language contained in the Commission's earlier Report pertaining to this issue is anticipated in early 2019.

Imputing Negligence to a Public Entity

The Commission authorized a project examining the liability of a public entity for negligence of its agents or contractors in the wake of *City of Perth Amboy v. Interstate Industrial Corp*, 2017 WL 2152738 (App. Div. 2017). When a municipal construction project went awry, the contractor tried to circumvent an exculpatory clause limiting its remedies by imputing third party negligence to the City. Additional research and outreach is ongoing in anticipation of a potential revision of the Local Public Contracts Law, particularly N.J.S. 40A:11-19. A Tentative Report is expected for early 2019.

Inheritance from a Deceased Child

The Appellate Court examined, in a case of first impression, the circumstances under which a parent may be precluded from inheriting from a deceased child in *In re Estate of Fisher*, 443 N.J. Super. 180 (App. Div. 2015). By overturning the trial court's decision, the Appellate Court enunciated a new standard for resolving what the Commission recognized is an extremely fact-sensitive type of case.

Managerial Executives

The Commission authorized preliminary research and outreach regarding whether state police captains are considered managerial executives in the context of collective negotiations, a question addressed by the Appellate Division in *State, Div. of State Police, v. New Jersey State Trooper Captains Ass'n*, 411 N.J. Super. (App. Div. 2015). Under N.J.S. 34:13-3, public employees are constitutionally entitled to engage in collective negotiations, and their representative organization is permitted to negotiate terms and conditions of employment. However, managerial executives are excluded from participation in collective negotiations. Originally undefined in the statute, the Legislature defined "managerial executive" in 1974 and modified its definition in 2010. After the 2010 amendments, the statute defined "managerial executives" to include only personnel at or above the level of assistant commissioner.

Mandatory Refund of Taxes Paid in Error

The Commission authorized work on the issue of a mandatory refund of property taxes paid, raised in *Hanover Floral Co. v. East Hanover Township*, 30 N.J. Tax 181 (2017), *as corrected* (February 13, 2018). The *Hanover* court noted that despite the permissive language of N.J.S. 54:4-52, a municipality does not have

discretion to refund a taxpayer. The Court also noted it was constrained in requiring the refund of the plaintiff taxpayer by a three year statute of limitations, as per an Appellate Court decision.

Mandatory Sentencing – Sentencing Factors Requiring Jury Findings

The Commission authorized initial research and outreach in the area of Mandatory Sentencing after a review of the decisions in *State v. Grate*, 220 N.J. 317 (2015), *Alleyne v. United States*, 133 S. Ct. 2151 (2013), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

State v. Grate arose from defendants' convictions for "second-degree unlawful possession of a weapon and third-degree unlawful possession of a weapon at an educational institution." Having determined that defendants were likely involved in organized criminal activity, the court made both sentences subject to the mandatory five-year parole disqualifier under N.J.S. 2C:39-5(i). One defendant petitioned for certification, arguing that the mandatory sentence imposed under New Jersey law was unconstitutional, citing *Alleyne*. Both the State and the attorney general conceded that *Alleyne* rendered N.J.S. 2C:39-5(i) unconstitutional as written.

The Supreme Court of the United States held in *Alleyne v. United States* that any fact increasing the mandatory minimum sentence is an element that must be submitted to the jury, to be found beyond a reasonable doubt. In *Apprendi v. New Jersey*, which involved a New Jersey statute, subsequently amended as P.L.2001, c. 443, that increased the maximum term of imprisonment from 10 to 20 years, the Court identified a concrete limit on the types of facts that legislatures may designate as sentencing factors and held that a fact is, by definition, an element of the offense and must be submitted to the jury if it increases the punishment above what is otherwise legally prescribed.

Staff is conducting research to identify areas within the statutes which could be impacted by the decisions in *Alleyne* and *Apprendi*. A Tentative Report is anticipated for 2019.

Meaning of "Widow" for Taxation Purposes

The Exemption Statute of 1948 provided for a total property tax exemption for veterans who were declared permanently disabled as a result of their military service. This exemption was subsequently extended to a deceased veteran's widow in certain circumstances. Currently, the statute's definition of widow does not address whether a veteran's widow who remarries and is later widowed again is considered a widow under the statute, or whether widowhood ceases permanently upon a remarriage. In *Pruent-Stevens v. Twp. of Toms River*, 30 N.J. Tax 200, 203 (2017), the Tax Court addressed the definition of "widow" in the context of N.J.S. 54:4-3.30.

In *Pruent-Stevens*, the Court addressed the arguments regarding the undefined terms of "widowhood" and "has not remarried" with respect to the veterans' exemption. The Court also addressed whether Plaintiff's marriage to Mr. Stevens in 1993 permanently extinguished her "widowhood," thereby making her ineligible for the exemption.

The Court found that "both the Division of Taxation and the Office of Legislative Services have publicly disseminated information on the veterans' exemption and deduction, of which a fair reading would indicate that it is the present, not past, status of the surviving spouse that qualifies." Previously, the New Jersey Legislature "defined a widow as a person, not as a marital status."

Adopting this approach, the Court found that “a ‘widow’ is always the widow of her deceased spouse until she herself dies,” and that the benefit “terminates upon remarriage, not widowhood.” The Court found that Plaintiff qualified based on that language and determination. Finally, the Court found that no additional burden was created due to its determination of the meaning of widow. In dicta, it also noted that the Legislature could amend the statute and change its definition if its “policy is to provide the exemption during the periods when the surviving spouse is not married.” There are currently fourteen bills related to N.J.S. 54:4–3.30. These fourteen bills, however, do not define the terms widow, widower, widowhood, or widowerhood, and none appear to have been introduced based on the Tax Court’s decision in *Pruent-Stevens*.

Mistaken Imprisonment Act

In *Kamienski v. State Department of Treasury*, 451 N.J. Super. 499 (App. Div. 2017), the Appellate Division considered the interpretations of the Mistaken Imprisonment Act, N.J.S. 52:4C–1 to –7, relating to eligibility, the burden of proof, damages and reasonable attorney fees recoverable under the Act, specifically (1) whether plaintiff was ineligible under N.J.S. 52:4C–6 because he was not an “innocent person” due to his drug conspiracy conviction, and (2) whether the decision granting plaintiff’s *habeas corpus* petition satisfied his burden under N.J.S. 52:4C–3(b) to establish by clear and convincing evidence that “he did not commit the crime for which he was convicted” as a matter of law. The Appellate Division determined that plaintiff was eligible, that the *habeas corpus* decision did not satisfy plaintiff’s burden of proof, and clarified the calculation of damages for guidance on remand.

“The NJLRC receives guidance from all three branches of our government, as well as private groups, businesses, and individuals. This broad perspective gives us unique insight into the challenges and practical effects of the proposals we consider.”

*Andrew O. Bunn, Esq.,
BDO USA, LLP
(2013)*

Model Entity Transactions Act (META)

Released by the Uniform Law Commission in 2007, then amended in 2011 and 2013, the Model Entity Transaction Act (META) provides a common set of provisions applicable to all transactions involving all forms of business associations. META permits: the conversion of one kind of business organization to another; the merger of two or more business organizations into one organization; an interest exchange between two entities so that one of them is controlled by the other without actually merging the two entities; and, the domestication of an entity originally organized in another state.

To complete each kind of transaction, a plan must be approved by the interest holders of each participating entity, though the requirements of the plan itself and the approval process differ based on the type of entity and transaction. While there are areas in which META and current New Jersey law overlap, there are also various dissimilarities between META and the existing New Jersey law, with many of them being small technical differences. Eight states have adopted META to this time. Staff is in the process of reviewing the New Jersey statutes governing corporations with a goal of identifying modifications that would be useful; or, whether the model language of META could replace New Jersey’s existing statutory language.

Municipal Vacancies

New Jersey offers municipalities a choice of twelve forms of government, eleven of which are in use, to varying degrees. This presents a situation where there is substantial variation in the composition of local governments, limiting the ability to have a uniform process in the event of a governmental vacancy. The Legislature attempted to remedy this problem in 1979, when it approved the Municipal Vacancy Law, but the problem of filling vacancies in a consistent and timely manner persists. The Commission reviewed an initial Memorandum providing information about the governance of municipalities and an outline of the process set forth in the Municipal Vacancy Law, and authorized Staff to engage in additional research and outreach to identify potential changes to the Municipal Vacancy Law to improve its organization and effectiveness.

Nonprofit Organizations

The Commission authorized a project relating to New Jersey's Nonprofit Corporation Act (Nonprofit Act) as codified in N.J.S. Title 15A, and directed Staff to research and propose revisions that would harmonize the Nonprofit Act with New Jersey's Business Corporation Act (Business Act) as codified in N.J.S. Title 14A. This project originated from an inquiry by a member of the public who contacted the Commission to express concern that the Nonprofit Act had not been revised to reflect the realities of modern corporate governance.

The Legislature enacted Title 15A in 1983 on the recommendation of the Nonprofit Law Revision Commission. In a statement accompanying the enactment, the Nonprofit Law Revision Commission expressed an intention for the Nonprofit Act to closely track the Business Act for the benefit of both the nonprofit and business communities, and practitioners within the legal community. While the Business Act has been amended numerous times over the years, the Legislature has not similarly modified the Nonprofit Act.

Staff is in the process of reviewing the Nonprofit Act and comparing it to the Business Act, with a goal of identifying Business Act modifications that would be similarly useful in the Nonprofit Act and proposing the appropriate revisions. This project has received the support of New Jersey's Center for Non-Profits, and Staff anticipates working closely with this organization in the preparation of a Tentative Report.

Open Public Meetings Act - *Kean Federation of Teachers*

In *Kean Federation of Teachers v. Morrell*, 233 N.J. 566 (2018), the Supreme Court of New Jersey was confronted with issues arising from the Open Public Meetings Act (OPMA). The Court analyzed the OPMA's notice requirement in the context of personnel issues to be discussed by a public body. The Court also confronted the time constraints under which a public body was required to release its minutes, along with the appropriate remedy for a failure to make the minutes promptly available to the public.

Given the legislative activity regarding the OPMA, in July of 2018, the Commission authorized that Staff engage in outreach to the sponsors of the pending legislation to discuss the impact of the Supreme Court's holding in *Kean Federation of Teachers v. Morrell*. Staff will continue monitor this subject and prepare updates for the Commission to keep them apprised of the latest developments in this area of law.

Open Public Records Act – Catalyst Theory

In *Grieco v. Borough of Haddon Heights*, 449 N.J. Super. 513 (Law Div. 2015), the Superior Court of New Jersey considered the issue of whether the plaintiff was a prevailing party, entitled to attorney's fees under the Open Public Records Acts (OPRA) N.J.S. 47:1A-6. The Court determined that plaintiff was not a prevailing party, and therefore was not entitled to attorney's fees under the statute, because the plaintiff was not a catalyst for the release of the records. A plaintiff must prove that his or her legal action was the "catalyst" that induced the defendant's compliance with the law in order to obtain attorneys fees pursuant to the statute. Research and outreach are ongoing in an effort to determine whether clarity can be brought to this statute with regard to the catalyst theory.

Open Public Records Act – Security Camera Footage

In *Gilleran v. Township of Bloomfield*, 227 N.J. 159 (2016), the New Jersey Supreme Court considered the issue of whether a member of the public may obtain security camera footage from a public entity under the Open Public Records Act (OPRA). The Court held that there is no absolute right of public access to such footage; based on the security exceptions found in the law, OPRA allows public entities to bar the release of video that reveals security capacity for systems protecting public buildings.

"Physical Examination" and Public Entity Immunity

The Commission authorized a project to clarify the definition of "physical examination" under the New Jersey Tort Claims Act, based on the New Jersey Supreme Court decision in *Parsons ex rel. Parsons v. Mullica Tp. Bd. Of Educ*, 226 N.J. 297, 299 (2016). In *Parsons*, the Court considered whether N.J.S. 59:6-4 immunizes public entities and their employees for failure to report the results of a preventative public health examination. The parents of the plaintiff alleged that the school district failed to timely notify them of the results of their child's visual acuity test pursuant to N.J.A.C. 6A:16-2.2(l)(6). The school district asserted immunity to the claims under the TCA.

The Court considered the legislative history of N.J.S. 59:6-4 to determine whether visual acuity tests fall under the definition of "physical examination", and inferred that it was the legislative intent that visual acuity tests fall within the definition of "physical examination" pursuant to N.J.S. 59:6-4. The Court also turned to sources outside of the statutory language to determine whether an "adequate physical examination" included the communication of results to either the patient or the patient's guardians because "[t]he TCA does not expressly define a 'physical examination' or its components."

Prerequisites for Recording

In early 2016, a member of the public contacted the Law Revision Commission to propose a project regarding a minor structural change to N.J.S. 46:26A-3, which details the requirements for recording deeds and other instruments. The member of the public suggested that the emphasized "subdivision" language contained in subsection (d) of the enacted law was a potential typesetting error.

It appears that upon adding the two additional requirements to state the name of the person preparing the deed and the mailing address of the grantee, the subdivision language was separated from where it

originally resided in subsection (b) and retained at the end of subsection (d). As the Commission had included the “subdivision” language in subsection (b) when initially recommending the enacted mortgage recording statute, the Commission instructed Staff to see if the Legislature was willing to modify the language.

Property Liability Insurance Guaranty Association Act (PLIGAA)

The Commission authorized work on a project to clarify the language of the New Jersey Property-Liability Insurance Guaranty Association Act (PLIGAA), after considering the Appellate Division’s decision in *Oyola v. Xing Lan Liu*, 431 N.J. Super. 493 (2013). The purpose of the Act is to minimize financial loss to claimants or policyholders because of the insolvency of an insurer, and to administer and pay claims asserted against the Unsatisfied Claim and Judgment Fund. The Court found the relevant statutory language ambiguous, saying that it was susceptible to more than one interpretation.

Property Tax

The Commission authorized the re-establishment of a project to revise provisions on the assessment of Property Tax. The Commission originally began this project in 1997 at the suggestion of Lawrence Lasser, the then-recently retired Chief Judge of the Tax Court. He argued that the current law was not well organized or expressed. In addition, some of the statutes contain language not in accord with court decisions or settled practice. Judge Lasser’s role was critical and, with his death in 1998, the project was suspended.

“The reports of my retirement have been greatly exaggerated. I could not really leave; the work here is important and endlessly fascinating.”

*John M. Cannel, Retired
“Reviser of Statutes”
(2015)*

This project will be based on the drafts of eight chapters comprising the first two articles of the law that were produced in 1998. This material sets out what property is taxable and how it is to be assessed. With the old draft as a starting point, this is not a small project. It will be necessary to bring the 1998 draft up to date. There have been some statutory changes and many judicial decisions since 1998. It will also be necessary to find experts to review drafts.

Public Health – Definitions

In reviewing Title 26 Health and Vital Statistics it was determined that there were two potentially duplicative definition sections. A preliminary examination revealed that both sections, N.J.S. 26:1-1 and 26:1A-1, define the same terms, and do so with similar wording. As subsequent provisions were added to Title 26, more definitions sections were added which define some of the same terms from N.J.S. 26:1-1 and 26:1A-1. As a result, the Title may benefit from consolidation of these definitions sections. The Commission authorized this modest project to determine whether the sections could be consolidated, but, during the course of Staff’s research, additional duplicative language was identified, and Staff is seeking authorization from the Commission to expand the project to address these additional issues.

Public Health and Safety – Seatbelt Usage

As a result of the New Jersey Supreme Court's decision in *State v. Lenihan*, 219 N.J. 251 (2014), the Commission began a project concerning N.J.S. 2C:40-18, which establishes degrees of criminal responsibility for an individual who knowingly violates, or fails to perform a duty required by, a public health or safety law, and recklessly causes death or bodily injury as a result.

In *Lenihan*, the eighteen-year old defendant was driving with her sixteen-year old friend in the passenger seat and lost control of the vehicle, hitting a guardrail. Neither the defendant nor her passenger was wearing a seat belt as required by N.J.S. 39:3-76.2f. The passenger died as a result of the injuries she sustained and defendant was charged and found guilty of a third degree crime pursuant to N.J.S. 2C:40-18. Defendant appealed and argued that: (1) her violation of the seat belt statute could not serve as a predicate offense for conviction pursuant to N.J.S. 2C:40-18 because violations of the seat belt statute does not threaten “the public health and safety”; (2) she lacked notice that such a “minor violation” would result in third degree criminal charges; and (3) N.J.S. 2C:40-18 is unconstitutionally vague and should be narrowly interpreted. The New Jersey Supreme Court affirmed the defendant's conviction.

Preliminary examination of the legislative history and contemporaneous news articles indicated that the intent of N.J.S. 2C:40-18 was likely to focus on violations of New Jersey building codes by night clubs and similar establishments. Expansion of the scope of N.J.S. 2C:40-18 to include statutes such as N.J.S. 39:3-76.2f as predicate offenses may exceed the expectations of the Legislature.

Rent Security Deposit Act

The Commission authorized work on a project to determine whether modifying N.J.S. 46:8-19 et seq. to clarify the status of forum selection clauses would aid in interpreting the law and potentially eliminate the need for additional litigation regarding the propriety of forum selection clauses that allow a landlord to lock a tenant into litigation in a county of the landlord's choice under the terms of their lease agreements as a result of the Court's decision in *Baker v. La Pierre, Inc.*, 2016 N.J. Super. Unpub. LEXIS 472 (App. Div. 2016).

Baker examined whether a landlord could use a forum selection clause in a rental contract to force a tenant to pursue legal action regarding the return of a security deposit in a county chosen by the landlord. The statutory section provides limited guidance on the matter, stating only that such matters are handled either by the Small Claims or Special Civil divisions of the Superior Court. The Court determined that “where a residential tenancy was created by an adhesion contract, and the tenant has filed the action for return of a security deposit, in accordance with Rule 6:1-3, in the county where the rental property is located, a forum-selection clause requiring venue be laid in another county is against established legislative policy.”

Retroactivity of Amendments to the Alimony Statute

The Commission authorized outreach to matrimonial practitioners regarding the retroactivity of 2014 amendments added to the New Jersey Alimony Statute (N.J.S. 2A:34-23(j)-(n)). This issue came to the Commission's attention after the Appellate Court decided *Sloan v. Sloan*, No. A-2620-15T3, 2017 WL 1282764 (App. Div. 2017). There, the Court recommended that on remand, the trial court consider not only whether alimony payments should be modified because of changed circumstances, but also whether N.J.S. 2A:34-23(n), a provision providing for the termination or suspension of alimony if the payee cohabitates with another, applied to the case at bar. Further research by the Commission revealed that New Jersey Courts have

contrasting views regarding the retroactivity of these amendments to settlements finalized before the amendments were passed into law. Practitioner outreach is ongoing and a report is expected in early 2019.

Revised Uniform Athlete Agents Act

The Commission authorized research and outreach on the Uniform Athlete Agents Act (2000) drafted by the Uniform Law Commission. The New Jersey Legislature considered the UAAA from the 2006-2007 Legislative sessions through the 2012-2013 Legislative sessions, ultimately declining to advance the bill. Subsequently, the UAAA was revised in 2015. The UAAA and RUAAA propose to regulate the conduct of students and agents as that conduct relates to universities and the NCAA. The RUAAA does not address some structural factors which could impede the intended uniformity of the statute, and to the extent that each state may modify the RUAAA regarding penalties, registration fees, and registration provisions, the lack of uniformity is likely to persist. Additionally, a number of states which adopted the original Uniform Athlete Agents Act (UAAA) ultimately repealed it due to concerns over the cost of implementing the registration provisions of the Act, as well as the failure of significant numbers of agents to register. Staff will review the legislative initiatives in this area in anticipation of concluding the Commission's work in 2019.

School Board Reclassification

In New Jersey, the members of local Boards of Education may be appointed by the mayor or chief executive officer of the municipality constituting the district. Alternatively, the members of a Board of Education may be elected by the citizenry. The process by which board members are selected may be changed using the referendum process set forth in the New Jersey statutes.

Once the statutory requirements to place the question of reclassification on the ballot have been met, the issue is placed before the voters. The electorate may then vote "for" or "against" the reclassification initiative. Regardless of whether the initiative is accepted or rejected, the New Jersey statutes prohibit a municipality placing a similar referendum on the ballot, "year after year." In *City of Orange Twp. Bd. of Educ. v. City of Orange Twp.*, No. L-6652-17 (Ch. Div. 2017) the Superior Court of New Jersey addressed the impact of voided election results on subsequent ballot initiatives to reclassify a school district.

Spill Compensation and Control Act

The Commission requested that Staff engage in additional research and outreach regarding the Spill Compensation and Control Act as a result of the case of *Magic Petroleum v. Exxon Mobile Corp.*, 218 N.J. 390 (2014). In that case, the New Jersey Supreme Court addressed two issues that identified areas of the law in which statutory drafting might be able to provide clarity. Those are: (1) whether claims for contribution under the Spill Act must be deferred under the doctrine of Primary Jurisdiction until a final resolution by the Department of Environmental Protection; and (2) whether it is necessary to obtain written consent of the Department of Environmental Protection before proceeding with a contribution claim. This area of the law is highly specialized and Staff is engaging in outreach and a review of the role of administrative law in this area before proposing any statutory revisions.

Theft of Immovable Property

In the case of *State v. Kosch*, 444 N.J. Super. 368 (App. Div. 2016), the Appellate Division considered the definition of the word “transfer” in N.J.S. 2C: 20-3(b). In doing so, the Court determined that the term in the statute is unclear and uncovered questions of legislative intent regarding the meaning of the word. A key issue in the case involved the definition of “transfer” under N.J.S. 2C:20-3(b), which reads as follows: “A person is guilty of theft if he unlawfully transfers any interest in immovable property of another with purpose to benefit himself or another not entitled thereto.”

The *Kosch* Court explained that “there is no question these three properties were owned by others and, although, as the ostensible contract purchaser, defendant may have possessed a partial interest in 13 Tanglewood and 61 Greenhill, he never lawfully acquired the interest he was charged with taking. We, thus, turn to whether a ‘transfer’ occurred within the meaning of N.J.S.A. 2C:20–3(b).” New Jersey’s Criminal Code does not define the term “transfer” and in the instant case the court looked to a variety of sources to find an appropriate definition.

As a result of legislative initiatives in this area of the law, Staff discontinued work in the area, and will reassess and formally conclude this project in 2019 if appropriate.

Tort Claims Act Notifications

In 2017, the Commission authorized work on a project to determine whether the Tort Claims Act (TCA) should be modified regarding bystander liability claims and the notice requirements of the TCA, as per the decision in *Alberts v. Gaeckler*, 446 N.J. Super. 551 (Law Div. 2014). The Court determined that a plaintiff asserting bystander liability claims against a public entity has to comply with the notice requirements of the TCA, and the filing date of an amended complaint alleging bystander liability damages may not relate back to the date of the original filing of the complaint. Staff is assessing the comments received to determine whether it is more appropriate to await additional judicial consideration of this issue before recommending any changes to the statute.

Unemployment Insurance Benefits

In *Anderson v. Bd. of Review*, No. A-1353-14T3, 2016 WL 4446160 (App. Div. 2016), the Appellate Division considered whether an employee who held two jobs with a single employer could avail himself of unemployment benefits when he resigned from one position and was fired from the other. The Appellate Division held that the employee in question could properly claim benefits in response to his termination, but not after voluntarily resigning. The existing statutory language (N.J.S. 43:21-5) might benefit from clarification.

Uniform Act on Prevention of and Remedies for Human Trafficking

When the Commission initially began considering work in this area, the Rutgers School of Law – Newark’s International Human Rights Clinic submitted a Memorandum identifying some potential ways in which New Jersey’s stringent anti-human trafficking laws could be strengthened. The Clinic suggested: (1) the amendment of New Jersey law immunizing human trafficking victims, particularly minors, from prosecution for prostitution-related offenses; (2) revision of New Jersey law to establish business entity liability for human

trafficking crimes; (3) expansion of the New Jersey Human Trafficking Commission's duties to include oversight of a broader anti-trafficking public awareness campaign; and (4) clarification of some inconsistent and confusion language existing in current New Jersey anti-trafficking laws.

In June 2016, the Commission released a Final Report recommending that forced sexually explicit performances be specifically included as a prohibited human trafficking crime. Staff continues to work in conjunction with the Human Trafficking Commission to monitor and evaluate legislative efforts to combat human trafficking in New Jersey and to identify additional areas in which statutory modification could be of assistance.

Uniform Powers of Appointment Act

Powers of appointment allow “the owner of property to name a third party and give that person the power to direct the distribution of that property among some class of permissible beneficiaries.” This is a long-standing method of estate planning that allows an individual to pass the authority to distribute property without entirely ceding control over it, but it is generally governed by common law. The Uniform Powers of Appointment Act (UPAA) was created in 2013 by the Uniform Law Commission to establish a national standard of statutes regarding powers of appointment. New Jersey has a patchwork of statutes and common law governing powers of appointment, with most of the case law dating from the early to mid-1900s, and could benefit from a codification of the law on powers of appointment in line with the UPAA to bring the existing standards into a modern and accessible form.

Uniform Power of Attorney Act (UPOAA)

The Commission authorized a project to incorporate additional provisions of the Uniform Power of Attorney Act (UPOAA) into the New Jersey Statutes. Research by Staff revealed that New Jersey deviates from the UPOAA in several ways, and has fully adopted only a few UPOAA provisions while partially adopting others. Ten provisions of the Uniform Act have not yet been adopted in New Jersey, and Staff is preparing recommendations regarding this area of the law.

Uniform Probate Code

The Commission began work on a project to consider the possible enactment of the Uniform Probate Code (UPC) in New Jersey. New Jersey's probate law, found in Title 3B, is modeled on the 1969 version of the UPC and was revised in 1990 to reflect subsequent amendments. New Jersey has not yet enacted the most recent amendments to the UPC, although 17 states and the U.S. Virgin Islands have done so.

Staff compared corresponding sections of the UPC and Title 3B of the New Jersey statutes to identify substantive differences and those provisions which could benefit from revision or adoption. The Commission found numerous areas meriting further research, such as the UPC section explicitly abolishing dower and curtesy, which relate to a surviving spouse's right to receive a set portion of the deceased spouse's estate, and which concept New Jersey still retains, even though most states have abolished it. Another area of the UPC under consideration relates to the concept of a notarized will, which, if adopted in New Jersey, would eliminate the requirement for witnesses at the time a will is signed by the testator.

7. – No Action Recommended



7. – No Action Recommended

Affidavit of Merit

In *McCormick v. State*, 446 N.J. Super. 603 (App. Div. 2016), the Appellate Division considered a question not previously decided by the case law concerning affidavits of merit - whether an individual alleging negligence in a medical malpractice case may “avoid the need to obtain an AOM by suing only the public entity and not the professionals.” The Court determined that a litigant may not circumvent the affidavit of merit requirement by suing only the public entity, on the grounds that an AOM is required where a claim of vicarious liability against the State is based on “allegations of deviation from professional standards of care by licensed individuals who worked for” the State. The Commission did not propose a modification to the statutory language.

Out-of-State DWI

In July, 2016, the Commission considered the question of whether a conviction for driving while intoxicated (DWI) in another state qualifies as a predicate conviction that can support an in-state conviction for driving during a second license suspension for DWI under N.J.S. 2C:40-26. The project arose out of the Court’s decision in the case of *State v. Luzhak*, 445 N.J. Super. 241 (App. Div. 2016), an Appellate Division case which held that a conviction for DWI in another state qualifies as a predicate conviction that can support an in-state conviction for driving during a second license suspension for DWI.

Since Assembly Bill 2491, introduced in the 2018-2019 Legislative session, would clarify that a conviction for DWI in another state qualifies as a predicate conviction that can support an in-state conviction under N.J.S. 2C:40-26 for driving during a second license suspension for DWI., the Commission concluded its work in this area.

Sentencing of Graves Act Offenders

In *State v. Nance*, 228 N.J. 378 (2017), the New Jersey Supreme Court considered whether a sentencing court has discretion to sentence a defendant convicted of a Graves Act offense to probation without the prosecutor’s consent or the assignment judge’s approval, if either N.J.S. 2C:44–1(d) or section 6 suggests that a Graves Act waiver exempts a defendant convicted of a first or second-degree offense from the presumption of incarceration, and whether defendants in these consolidated cases were eligible for resentencing.

The Court reversed the Appellate Panel’s ruling that “sentencing judges have the discretion to elect one of the two alternative sentences set forth in section 6.2” and determined that only assignment judges have this discretion. Additionally, the Court found that “the assignment judge or designee must consider the presumption of incarceration prescribed by N.J.S. 2C:44–1(d) when he or she chooses between the probationary and one-year mandatory minimum sentences envisioned by section 6.2.”

Since the language of the statute did not appear to require modification for clarity after the Court’s decision, the Commission did not proceed with work in this area.

Sidewalk Tort Liability

The Commission authorized a project to determine whether statutory revisions will best address issues concerning the liability of property owners for injuries sustained on the abutting sidewalks of properties with hybrid forms of ownership or mixed use properties. The common law rule had been that commercial property owners had no duty to maintain abutting sidewalks. In 1981, the New Jersey Supreme Court established a distinction between the duty of commercial and residential property owners to maintain abutting sidewalks. The Court held that commercial property owners are liable for injuries on the sidewalks abutting their property when the injury results from the owner's negligent failure to maintain the sidewalks.

Cases involving properties with a hybrid form of ownership emerged over the three decades following the New Jersey Supreme Court decision. The Appellate Division called on the Supreme Court or the Legislature to clarify this "gray area" of properties which may be classified as commercial properties, residential properties, or both. After additional research and outreach, the Commission determined that creating a statutory provision in this area of law did not appear to be necessary or appropriate at this time.

"Being a member of the New Jersey Law Revision Commission has been an intellectually challenging and thought-provoking experience. In addition, the work we do has a positive impact on the residents of New Jersey."

*Anthony R. Suarez, Esq.,
Werner, Suarez & Moran, LLC
(2014)*

Special Improvement Districts

In *Friends of Rahway Business, LLC, v. Rahway Municipal Council*, 2017 WL 2854427 (App. Div. 2017), the Appellate Division considered whether the creation of a municipality-wide Special Improvement District (SID) was permitted under N.J.S. 40:56–65 to –89. The trial court found that it was not, and the Appellate Division reversed and vacated certain provisions of the trial court's order, affirmed the denial of counsel fees, and remanded the case for further proceedings.

Since this is an area of law in which sophisticated individuals are operating, and both the statute and the case law seem to be clear and accessible, the Commission agreed that this was not an area of law that would benefit from Commission work at this time.

Tax Exemption for Disabled Veterans

In *Galloway Township v. Duncan*, 29 N.J. Tax 520 (2016), the Tax Court considered the propriety and interpretation of a statute allowing veterans suffering permanent disabilities to claim a property tax exemption. The Court determined that the exemption is valid under the state constitution. Furthermore, the exemption may be claimed by any veteran who was 100% disabled if they served in "direct support" of a military conflict. Since the Legislature undertook action directly addressing the issues raised in the case, and had crafted a solution that appeared to address the issue identified by the case, no further action was taken by the Commission.

8. – Members and Staff of the NJLRC in 2018



8. – Members and Staff of the NJLRC in 2018

The members of the Commission are:

Vito A. Gagliardi, Jr., Chairman, Attorney-at-Law

The managing principal of Porzio, Bromberg & Newman, P.C., Vito A. Gagliardi, Jr. co-chairs the firm's Employment and Education Law Team. He is certified by the New Jersey Supreme Court as a Certified Civil Trial Attorney and he represents school districts in numerous matters and handles employment law matters for public and private sector clients in state and federal courts, before state and federal agencies, and before arbitrators. Mr. Gagliardi litigates and counsels clients in every area of labor and employment law, including issues of restrictive covenants, harassment, discrimination and whistleblowing. He represents management in labor grievances and before PERC. Mr. Gagliardi regularly counsels clients on reduction in force and on employment issues related to restructuring and consolidation. He also handles investigations by management into allegations of employee wrongdoing. Mr. Gagliardi received his undergraduate degree from the University of Notre Dame in 1986 and graduated from the Washington & Lee University School of Law cum laude in 1989, where he was a member of the Order of the Coif, and Captain of the National Moot Court Team.

Andrew O. Bunn, Attorney-at-Law

An Associate General Counsel at BDO USA, LLP, concentrating in litigation and regulatory investigations and disputes, Mr. Bunn was previously a partner at the firm of DLA Piper, and, before that, at McCarter & English, LLP, where he had a varied litigation practice representing companies in state and federal courts, arbitration and regulatory proceedings, in cases including individual and class-action claims in the areas of consumer complaints, business disputes, contract and policy interpretations, benefit entitlements, sales practices, ERISA, securities, financial instruments, telecommunications, managed care and regulatory disputes. His clients included some of the country's largest life and health insurance companies, financial institutions, telecommunications providers and manufacturers. Mr. Bunn has tried numerous jury and non-jury cases to verdict, and has extensive appellate experience. Mr. Bunn received his undergraduate degree from Kenyon College in 1984 and graduated from the Rutgers School of Law – Newark in 1990, where he served as Managing Editor of the Rutgers Law Review.

Hon. Virginia Long, Associate Justice, New Jersey Supreme Court (Retired)

Counsel to Fox Rothschild, retired New Jersey Supreme Court Justice Virginia Long joined the firm after 15 years on the Appellate Division and 12 years on the Supreme Court. Justice Long devotes her efforts to assisting clients with ethics and appellate matters, corporate governance and governmental integrity investigations and to serving as a mediator and arbitrator providing dispute resolution alternatives. She also spearheads the firm's pro bono efforts in New Jersey. Justice Long began her career as a Deputy Attorney General and later served as Director of the New Jersey Division of Consumer Affairs and as Commissioner of the former New Jersey Department of Banking. She also practiced law at the firm of Pitney, Hardin and Kipp. In 1978, she was appointed to the New Jersey Superior Court, where she presided over civil, criminal and family law cases in Union County. From 1983 to 1984, she was the General Equity judge for Mercer, Somerset, and Hunterdon counties. In 1984, Justice Long was elevated to the Appellate Division, where she became a presiding judge in 1995. She was appointed to the New Jersey Supreme Court in 1999 and was confirmed by the Senate for a second term and granted tenure in 2006, retiring in 2012 when she reached the mandatory retirement age. Justice Long received her undergraduate degree from Dunbarton College of Holy Cross in 1963 and graduated from the Rutgers School of Law – Newark in 1966.

Louis N. Rainone, Attorney-at-Law (*Commissioner beginning in April 2018*)

Managing partner at the firm of Rainone, Coughlin, Minchello, Louis Rainone has served as counsel for many of the state's largest municipalities, including: Newark, Edison, Trenton, Franklin, Marlboro, Long Branch, Perth Amboy, Clifton, Brick, Piscataway, Rahway, Sayreville, Bound Brook and Green Brook. He has also served as special counsel to the County of Essex, The Essex County Improvement Authority, The Bergen County Sheriff and the North Jersey District Water Supply Commission. In addition, Mr. Rainone has had an extensive and varied career in public service. He served as Legislative Assistant to the Chairman of the New Jersey General Assembly Committee on Taxation and in the same capacity to the Vice Chairman of the Senate Appropriations Committee. Mr. Rainone received his B.A. in Political Science from Rutgers University in 1977 and graduated from Seton Hall Law School in 1980, where he was a member of the Legislative Journal. Following law school, he served as a clerk in the Monmouth County Prosecutor's Office, as a legislative aide to State Senator Richard Van Wagner, and on the staff of Assembly Speaker Alan J. Karcher.

Anthony R. Suarez, Attorney-at-Law (*Commissioner until January 2018*)

A partner at Werner, Suarez & Moran, LLC, Anthony R. Suarez specializes in civil litigation, personal injury litigation, estate litigation, municipal government law, and wills. He is a Certified Civil Trial Attorney by the Supreme Court of New Jersey and holds a Diplomate in New Jersey Municipal Law. In addition to his law practice, Mr. Suarez has served as Mayor of Ridgefield for the past 11 years. He received his undergraduate degree from Saint Peter's College in Jersey City, summa cum laude in 1988 and graduated from Fordham University School of Law in New York City in 1993, serving on the Environmental Law Review, and volunteering time with the Fordham Law Community Service Project in New York City.

Nicholas P. Scutari, Chair, Senate Judiciary Committee, Ex officio

A member of the Senate since 2004, Senator Scutari is an attorney with the Law Offices of Nicholas P. Scutari and has also served the public as: the Prosecutor for the City of Linden, from 2003-present; a member of the Union County Planning Board, from 2000-2004; a member of the Union County Board of Freeholders from 1997-2004; and a member of the Linden Board of Education from 1994-1997. He is the Chair of the Senate Judiciary Committee and a member of the Joint State Leasing and Space Utilization Committee and the Commerce Committee.

Annette Quijano, Chair, Assembly Judiciary Committee, Ex officio

A member of the Assembly since 2008, and Deputy Majority Leader since 2012, Assemblywoman Quijano is an attorney and a municipal prosecutor. She is the Chair of the Assembly Judiciary Committee, and a member of the Financial Institutions and Insurance Committee and the Oversight, Reform and Federal Relations Committee.

Michael T. Cahill, Co-Dean, Rutgers School of Law - Camden, Ex officio

Michael Cahill joined the law school as Co-Dean and Professor of Law in 2016. Before that, he was a tenured faculty member at Brooklyn Law School, where he also served as associate dean for academic affairs (2010–13) and as vice dean (2013–15).

Represented by **Grace C. Bertone**, Attorney-at-Law

The managing partner of Bertone Piccini, Grace Bertone is a graduate of Fairleigh Dickinson University, summa cum laude, and Rutgers University School of Law, Camden, where she served as Editor-in-Chief of the Rutgers Law Journal. She was admitted to the bars of New Jersey and Pennsylvania and related federal districts in 1984. From 1984 to 1985, Ms. Bertone served as Law Clerk to The Honorable Phillip A. Gruccio, Superior Court of New

Jersey (Assignment Judge, Atlantic and Cape May Counties). Before founding Bertone Piccini, she was a partner at the firm of McElroy, Deutsch, Mulvaney & Carpenter, LLP. Ms. Bertone has substantial experience in the areas of business acquisitions, general corporate and business counseling, commercial and residential real estate, zoning and land use, banking and commercial lending, foreclosure litigation, estate planning, probate administration, and probate litigation. She also has substantial experience in the analysis and implementation of internal investigations and legal audits.

David Lopez, Co-Dean, Rutgers School of Law – Newark, Ex officio (*Commissioner beginning August 2018*)

David Lopez joined Rutgers Law School as Co-Dean in August 2018 and, before that, was the longest-serving General Counsel of the U.S. Equal Employment Opportunity Commission. Prior to joining the law school, he worked as a partner at Outten & Golden in Washington D.C.

Ronald K. Chen, Co-Dean, Rutgers School of Law – Newark, Ex officio (*Commissioner until August 2018*)

Ronald Chen became Acting Dean of the Law School in 2013. Dean Chen returned to the law school in January 2010 after serving for four years as the Public Advocate of New Jersey. Prior to becoming the Public Advocate, Dean Chen was the Associate Dean for Academic Affairs at the law school.

Represented by **Professor Bernard Bell**

Professor Bell received a B.A. cum laude from Harvard and a J.D. from Stanford, where he was notes editor of the Law Review and a member of Order of the Coif. He clerked for Judge Amalya L. Kearse of the U.S. Court of Appeals for the Second Circuit and for U.S. Supreme Court Justice Byron R. White, and then practiced with Sullivan and Cromwell in New York. Before coming to Rutgers in 1994, Professor Bell served as senior litigation counsel and, before that, as Assistant U.S. Attorney (Civil Division) in the U.S. Attorney's Office for the Southern District of New York. He has written numerous scholarly articles published in various journals. The courses that he teaches include Torts, Legislation, Administrative Law, Constitutional Law, Law and Mass Communications, Privacy Law, Property, and Separation of Powers Law.

Kathleen M. Boozang, Dean, Seton Hall University School of Law, Ex officio

Kathleen Boozang joined the Seton Hall Law faculty in 1990 as the founder of the Law School's now top-ranked Center for Health & Pharmaceutical Law & Policy. Prior to becoming Dean, she also established the Law School's graduate degrees, Division of Online Learning and global life sciences compliance training programs. She has been Dean of Seton Hall Law since July 2015 and, before that, she served in multiple administrative capacities, including Associate Dean for Academic Affairs for eight years and Vice Provost for two years.

Represented by **Professor John Kip Cornwell** (*Dean's representative beginning September 2018*)

Professor Cornwell received his A.B., with honors, from Harvard University, his M.Phil. in International Relations from Cambridge University, and his J.D. from Yale Law School where he was an Editor of the Yale Law Journal. He clerked for the Honorable Mariana R. Pfaelzer of the United States District Court for the Central District of California and the Honorable Dorothy W. Nelson of the United States Court of Appeals for the Ninth Circuit. After his clerkships, he served as a senior trial attorney for the Civil Rights Division of the U.S. Department of Justice, and as an adjunct professor at the National Law Center of George Washington University. He has written in the areas of criminal law and procedure, mental health law and federal civil rights law, including writings concerning laws pertaining to sexual predators, exploring the constitutional limits on states' authority to confine this population for purposes of public safety and psychiatric rehabilitation.

Represented by **Professor Edward A. Hartnett** (*Dean's representative until September 2018*)

Professor Hartnett received his A.B., magna cum laude, from Harvard and his J.D. from New York University, where he was elected to the Order of the Coif and received the highest award given to J.D. candidates. He clerked for Judge Frederick B. Lacey and Judge Robert E. Cowen of the United States District Court for the District of New Jersey, and for Chief Judge John J. Gibbons of the United States Court of Appeals for the Third Circuit. After his clerkships, he practiced with the Federal Public Defender and the law firm of Robinson, St. John & Wayne. He has published articles in the areas of federal jurisdiction and constitutional law. The courses that he teaches include Constitutional Law, Civil Procedure, Criminal Procedure, and Evidence.

The Staff of the Commission is:

Laura C. Tharney, Executive Director

Laura C. Tharney is the Executive Director of the Commission. She joined the Commission as a staff attorney in February 2002 and was named Deputy Director in January 2008 and Executive Director in October 2012. Laura has been a licensed attorney since 1991 and is admitted to practice in New Jersey and New York. Before she began her work with the Commission, Laura engaged in appellate practice at her central-New Jersey law firm, which included appeals to the Supreme Court of the United States, New Jersey Supreme Court, New Jersey Appellate Division, New York appellate courts, administrative agencies and municipal boards and bodies. She graduated from Rutgers School of Law - Newark in 1991.

Samuel M. Silver, Counsel

Samuel Silver joined the Commission as a staff attorney in March of 2017. He has been a licensed attorney since 1994 and is admitted to practice in New Jersey. As a solo practitioner, Sam engaged in civil and criminal litigation as well as appellate practice. Sam litigated matters before the Superior Court, Law Division, and Municipal Courts throughout New Jersey. In addition, he argued appellate matters before both the Appellate Division and the Supreme Court of New Jersey. Sam also practiced before the United States District Court. Prior to attending law school, he earned a degree in Political Science from the University of Wisconsin's Madison Campus. Sam graduated from the Washington College of Law – American University in 1994. In 2016, he earned a Master's Degree in trial advocacy from Stetson University College of Law.

Jennifer D. Weitz, Counsel

Jennifer Weitz joined the Commission as a staff attorney in August 2018. She has been a licensed attorney since 2013 and is admitted to practice in New York and New Jersey. Prior to joining the Commission, Jennifer worked at the New Jersey Attorney General's office, in the Torts Division. She earned a B.A. from The New School, in New York City, and graduated from Rutgers School of Law – Newark.

Joseph A. Pistritto, Legislative Fellow

Joseph Pistritto joined the Commission as its first postgraduate Legislative Fellow in August of 2018. He is a newly licensed attorney in New Jersey. Joe received both his J.D. and B.A. from Seton Hall University. During his time as a law student, he specialized in public interest law, served as an editor with the *Seton Hall Circuit Review*, and interned for Johnson & Johnson, the New Jersey Superior Court, and the Office of the Corporation Counsel for the City of Waterbury, Connecticut.

Veronica V. Fernandes, Executive Assistant

Veronica Fernandes transitioned to the legal field in 2018 after nearly a decade of work in the service industry with an emphasis on food service management, most recently at Pronto Café, in Newark, New Jersey, where she

handled the day-to-day administrative aspects of the business. Prior to that, Veronica worked in the healthcare field, with a focus on administration, after graduating from Bellville High School in 2004.

John M. Cannel, Retired, “Reviser of Statutes”

John Cannel joined the Commission as its first Executive Director when the Commission began work in 1987. He served in that capacity until he retired in October 2012. Although now retired, he continues to volunteer his time with the Commission. Prior to joining the Commission, John spent almost 20 years with New Jersey’s Office of the Public Defender, serving in a variety of positions involving appellate and trial representation and administration.

Timothy J. Prol, Counsel (Until May 2018)

Timothy Prol joined the Commission as a staff attorney in July of 2017. Tim has been a licensed attorney since 2014 and is admitted to practice in New Jersey and Pennsylvania. Prior to joining the Commission, Tim was the Director of Operations for the New Jersey Primary Care Association, where he also served as the organization’s Compliance Officer. He served as judicial law clerk for the Honorable Steven F. Nemeth of the Ocean County Superior Court. Tim is a graduate of Rutgers School of Law and was a Rutgers Eagleton Institute of Politics Raimondo Legislative Fellow with the New Jersey Assembly Majority Office. He is a graduate of Kean University. Prior to attending law school, Tim served as Director of Policy and Planning for New Jersey State Senator Nicholas P. Scutari.

Linda Woodards-French, Executive Assistant (Until August 2018)

Linda Woodards-French joined the Commission in 2013. She began her career in the legal field working as a Certified Legal Assistant for firms in New Jersey, New York, and Washington, D.C. After that, she served as a Team Leader for Judges in New Jersey’s Superior Court, Hudson County, for nearly a decade. Linda is a graduate of Pillar College, with a B.A. in Business Administration and Management, and in addition to her experience in the legal field she holds several certifications in theology.

Student Legislative Law Clerks and Externs:

In addition to the full- and part-time Commission Staff members, law students from New Jersey’s three law schools play a significant role in the work of the Commission. With the supervision and assistance of the NJLRC attorneys, law students are afforded the opportunity to conduct legal research and outreach to potential commenters, draft proposed statutory language and reports for submission to the Commission, and present their findings at public meetings of the NJLRC.

The Commission was fortunate to have the assistance this year, as in past years, of bright, motivated, and dedicated students with excellent research and writing skills whose efforts have increased the Commission’s ability to work in numerous different areas of the law. The students who worked with the NJLRC in 2018 are:

“It is a pleasure to be a part of a group of people who bring such skill, commitment, and enthusiasm to the work that they do.”

*Laura C. Tharney
Executive Director, NJLRC
(2013)*

Oyinkansola Lapite, Seton Hall University School of Law, Legislative Law Clerk – Summer 2018

Wendy L. Llewellyn, Seton Hall University School of Law, Legislative Law Clerk – Summer 2018

Justin Reilly, Rutgers Law School - Camden, Legislative Law Intern – Spring 2018

Rachael Segal, Rutgers Law School - Newark, Legislative Law Clerk – Summer 2018 – Fall 2018

Erik A. Topp, Seton Hall University School of Law, Legislative Law Clerk – Summer 2017 - Spring 2018

Renee Wilson, Seton Hall University School of Law, Legislative Law Clerk – Fall 2017 – Fall 2018

Other Assistance by Students:

During the Spring semester of 2018, research and drafting assistance was provided to the NJLRC by pre-law student externs Timothy Bott (who continued his work with the Commission in the Fall 2018 semester) and Andrew Edmonson through a cooperative relationship with the New Jersey Institute of Technology, Elizabeth Petrick, Assistant Professor, Federated History Department, and Alison Lefkovitz, Assistant Professor and Director of NJIT's Law, Technology & Culture program.

Research and drafting assistance was also provided during the summer of 2018 by Eileen Funnell, an undergraduate student at Boston University, and by Nicholas Tharney, an undergraduate student at Rutgers University. Hemani Marfatia, a high school student with an interest in a pre-law course of study, also completed an internship with the Commission during the summer of 2018.

In addition, pro bono legal research and drafting assistance was provided to the NJLRC by law students Kyle Buchoff, Harrison C. Clewell, Lauren Y. Kouser, and Olivia K. Plino, in cooperation with Lori Borgen, Esq., Associate Director of the Center for Social Justice, at Seton Hall University School of Law.

In 2017 the Commission created a new Fellowship position at the NJLRC. Modeled on judicial clerkships, the Commission Fellowship is available to a law school graduate who will work for the Commission on a full-time basis for a year after graduation. The Commission's first Legislative Fellow, Joseph A. Pistritto, began work in August 2018, and after outreach to students on New Jersey's three law school campuses, a second Fellow was selected who will begin working with the Commission in the summer of 2019.

9. – Looking Ahead to the Work of the NJLRC in 2019



9. – Looking Ahead to the Work of the NJLRC in 2019

Although the Commission's underlying mission and the nature of its work do not change from year to year, or from one legislative session to the next, the Commissioners and Staff strive to identify and implement ways in which the Commission can improve its process, product, and communication in the coming year and are always receptive to suggestions from interested parties regarding how it might do so.

Efforts to enhance outreach, transparency, and the use of electronic media and communications are ongoing. The meetings of the Commission are open to the public, as are the records of its work, and the Commission actively solicits public comments on its projects, which are widely distributed to interested persons and groups. A website upgrade, and the scanning of older paper documents are anticipated for 2019, and that should improve access to the Commission's current and historic work.

Within the framework of State government, the work done by the Commission is complementary to that of the Office of Legislative Services. Each entity has a different role to play with regard to legislation, and the NJLRC endeavors to work collaboratively with the Office of Legislative Services and to support the Legislature by bringing issues to the attention of Legislators that might not otherwise receive consideration. Commission Staff always appreciates the opportunity to cooperate with Staff members from the Office of Legislative Services, who have deep experience and expertise in various subject-matter areas, and with the Staff members in the Legislative Partisan Offices.

The release of a Final Report by the Commission is followed by outreach efforts to identify members of the Legislature who may be interested in sponsoring legislation in any given area. The Commission looks forward, as always, to increased interaction with Legislators in order to better support the Legislature and to facilitate the implementation of Commission recommendations.
