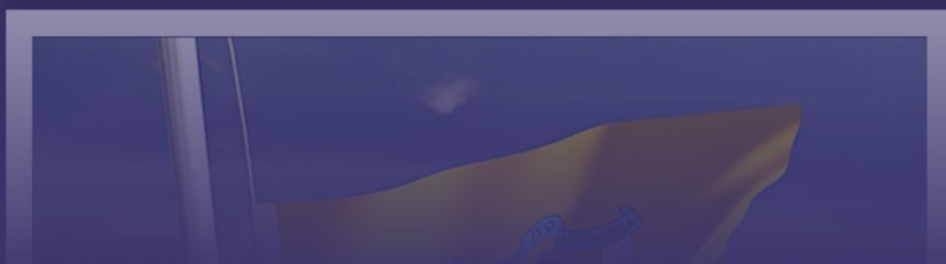


ANNUAL REPORT - 2019

# New Jersey Law Revision Commission



# THIRTY-THIRD ANNUAL REPORT

2019





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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: <https://www.njlrc.org/annual-reports>

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## The New Jersey Law Revision Commission

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### **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.



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## Statement of the Chairman

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As the Chairman of the New Jersey Law Revision Commission (“NJLRC”), I am pleased to present the 2019 Annual Report of the New Jersey Law Revision Commission for the Legislature’s consideration, marking the conclusion of the 33rd year of the Commission’s work.

A record 20 bills were introduced in the Legislature based on the work of the Commission in the 2018-2019 legislative session, and six of those bills moved through both houses of the Legislature before the conclusion of the session. The bills amending provisions of the sexual assault law to clarify the elements necessary for conviction were signed into law by the Governor.

The Commission’s focus continues to be the maintenance of a high standard of legal research and analysis. The publication of scholarly articles by Commission Staff members, and the citation of Commission reports by academic writers and judges continue to represent additional practical applications of the work of the NJLRC. In addition, in 2019 the Commission’s work was referenced in the New Jersey Law Journal, the New Jersey Lawyer, and, nationally, in an article concerning archaic laws published by Vox. Each reference to the Commission’s work increases the possibility for input from the broader community.

On behalf of the Commission, thanks to our Legislators, Legislative Staff, the Office of Legislative Services, and others whose attention to the work of the Commission allows us to improve the laws of the State. We appreciate the Legislature’s introduction of a record number of bills based on the work of the Commission this session. We also extend our appreciation to Legislative staff members and the staff of the Office of Legislative Services for their willingness to work cooperatively and collaboratively with us toward the goal of effectuating the intent of the Legislature and enhancing our body of statutory law.

My thanks as well to my fellow Commissioners for the volume of material that they review each month, and for the thoughtful and detailed recommendations that they provide in order to improve the work that we do. Thanks especially to the Staff of the Commission for striving to ensure that the Commission fulfills its statutory mandate and for seeking opportunities not only to improve our work, but also to increase its accessibility, efficiency, and transparency.

And, as always, our thanks to the numerous commenters from government entities, the legal profession, the academic community, the private sector, and various members of the public, whose generous contributions of time, experience, and expertise were of considerable assistance to the Commission in 2019. It remains our hope that the quality of the Commission’s work reflects the breadth and the caliber of these contributions. We look forward to continuing our work on several significant areas of the law and to the opportunity to engage with individuals throughout the State who share our goal of improving the laws which govern all of us.

Vito A. Gagliardi, Jr., Esq.  
Chairman  
New Jersey Law Revision Commission

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## 1. – Overview of the Work of the NJLRC in 2019

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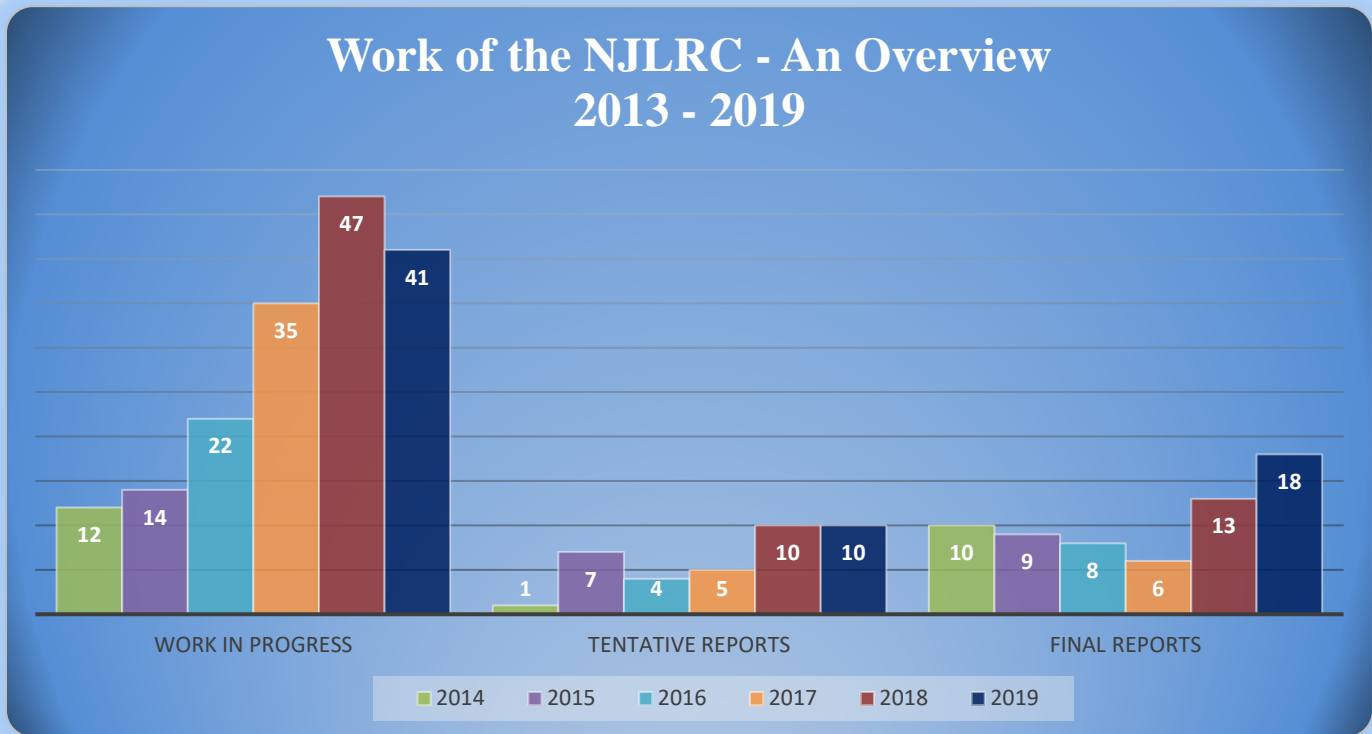
**1. – Overview of the Work of the NJLRC in 2019**

**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 individuals who have 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.





**Enactments for 2019:**

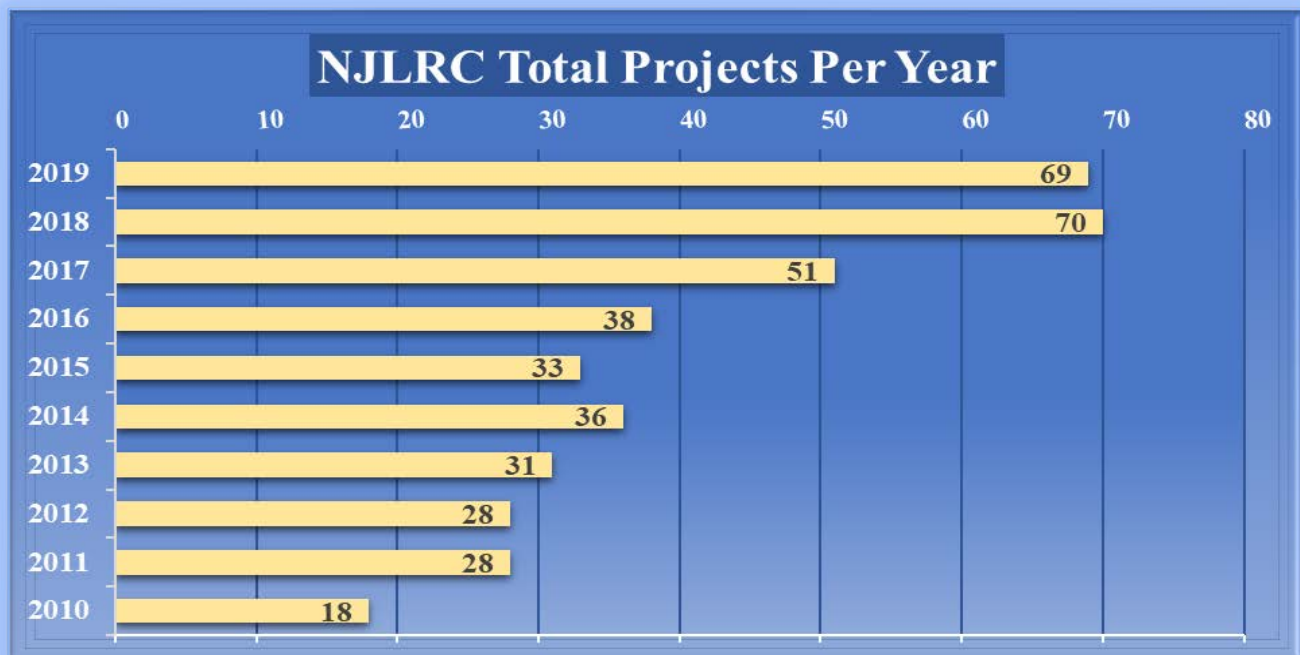
Sexual Assault (A2767/S2924) – The revisions proposed in the Commission’s Report were intended to better reflect the modern reality of New Jersey’s sexual offense prosecutions by making the statutory text consistent with the decisions of New Jersey’s courts, and with the instructions delivered to jurors during criminal proceedings. The Report proposed the removal of the outdated “physical force” requirement, incorporated the current standards regarding the capability of understanding and exercising the right to refuse, and other changes to the law reflecting decisions of the New Jersey Supreme Court.

*Enactment Reflecting Work of the Commission:*

Drunk Driving Penalties, Expanded Use of Ignition Interlock Devices (P.L.2019, c.248) – A Commission Report released in 2012 recommended modifications to the penalties associated with driving under the influence of alcohol based on research done in this area regarding the effectiveness of ignition interlock devices for all offenders, including those convicted of a first offense. Although the earlier Commission Report is not identical to the law as enacted, the Commission was pleased to see that some of the information contained in that Report may have been of use to the sponsors of the most recent legislation.

**Reports That Moved Through Both Houses of the Legislature During the 2018-2019 Legislative Session:**

Common Interest Ownership Communities (A3851/S2425) – The Commission’s Report recommended a new chapter be added to the law to consolidate provisions of the law pertaining to common interest communities (including homeowners associations, condominiums, and cooperatives) regarding: community creation and termination; the content of governing documents (declaration, bylaws); unit boundaries and common elements; taxation; the effect of local ordinances; and lender rights.



**Bills Introduced Based on NJLRC Work:**

In addition to the NJLRC projects discussed above, the following NJLRC projects were the subject of bills introduced in 2018 and 2019, 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
- Anachronistic Statutes
- Common Interest Ownership Act
- Equine Activities Liability Act
- Filial Responsibility
- Landlord-Tenant
- (Revised Uniform) Law on Notarial Acts
- Oaths and Affidavits
- Partnership and Trade Name Statutes
- Standard Form Contracts
- Subpoena v. Subpena
- Supplemental Needs Trusts
- (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 Daniel R. Benson  
Assemblyman Michael Patrick Carroll  
Assemblywoman Annette Chaparro  
Assemblyman Ronald S. Dancer  
Assemblyman Christopher P. DePhillips  
Assemblywoman Serena DiMaso  
Assemblywoman Joann Downey  
Assemblyman Roy Freiman  
Assemblyman Louis D. Greewald  
Assemblyman Jamel C. Holley  
Assemblyman Eric Houghtaling  
Assemblywoman Angelica M. Jimenez  
Assemblyman Robert J. Karabinchak  
Assemblyman Sean T. Kean  
Assemblyman James J. Kennedy  
Assemblyman Joseph A. Lagana  
Assemblywoman Pamela R. Lampitt  
Assemblywoman Yvonne Lopez  
Assemblyman John F. McKeon  
Assemblywoman Angela V. McKnight  
Assemblywoman Gabriela M. Mosquera  
Assemblywoman Nancy F. Munoz

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Assemblywoman Carol A. Murphy  
Assemblyman Erik Peterson  
Assemblywoman Annette Quijano  
Assemblywoman Verlina Reynolds-Jackson  
Assemblyman Gary S. Schaer  
Assemblywoman Lisa Swain  
Assemblyman Christopher P. Tully  
Assemblywoman Valerie Vanieri Huttle  
Assemblyman Andrew Zwicker  
Senator Bob Andrzejczak  
Senator James Beach  
Senator Gerald Cardinale  
Senator Sandra B. Cunningham  
Senator Patrick J. Diegnan, Jr.  
Senator Vin Gopal  
Senator Linda R. Greenstein  
Senator Joseph A. Lagana  
Senator Nicholas P. Scutari  
Senator Troy Singleton  
Senator Brian P. Stack  
Senator Shirley K. Turner  
Senator Jeff Van Drew  
Senator Joseph F. Vitale

### **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 2019.

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

Robert M. Adochio, Esq., Law Offices of Robert M. Adochio

American Bar Association

The American Law Institute

Mark Anderl, Esq., Anderl & Oakley, PC

Rachel Wainer Apter, Executive Director, Division of Civil Rights

Michael Ashton, Live2Inspire

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Jacqueline Augustine, Esq., Legislative Liaison, New Jersey Admin. Office of the Courts

Julius Bailey, New Jersey Senate Majority Office

Theodore E. Baker, Counsel, Cumberland County

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

Beth L. Barnhard, Esq., Stark & Stark

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

Lindsay Beaver, Legislative Counsel, Uniform Law Commission

Howard Bell, Assistant Prosecutor, Hudson County

Mike Benak, Esq., McCarter & English, LLP

Thierry Besancon, PhD, Assistant Professor and Extension Weed Specialist for Specialty Crops, Rutgers, at the Philip E. Marucci Center for Blueberry and Cranberry Research and Extension

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

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

Lori Borgen, Esq., Associate Director of the Center for Social Justice, Seton Hall University School of Law

Debbie Bozarth, New Jersey Association for Justice

Kyle Buchoff, Seton Hall Law School

Burlington County Prosecutor's Office

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

Thomas J. Cafferty, Director, Gibbons, P.C.

Veronica L. Calder, Archivist, New Jersey State Archives

Maria F. Capra, Recruiting Coordinator, Seton Hall University School of Law

Andrew C. Carey, Prosecutor, Middlesex County

David S. Carton, Esq., Mandelbaum Salsburg P.C.

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

Matt Clark, County Tax Administrator, Monmouth County Tax Board

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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 J. Darcy, CAE, Executive Director, New Jersey State League of Municipalities

Joseph DeCeglie, JDIT Consulting

Annette DePalma, Director, Community Development at Township of Maplewood

Department of the Treasury, New Jersey

Nick DeRose, LSRP, LANGAN

Frances De Simone, Esq., Assistant Director|Employer Outreach, Center for Career Development, Rutgers Law School

Peter DiGennaro, Public Information Officer, Morris County Prosecutor's Office

David Dileo, New Jersey State Parole Board

Division of Commercial Recording, New Jersey

Helen C. Dodick, New Jersey State Office of the Public Guardian

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

Katie Eyer, Professor, Rutgers Law School

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

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Todd Feldman, Editorial Coordinator, The American Law Institute

James F. Ferguson, Atlantic County Counsel

James Ferguson, New Jersey Motor Vehicle Commission

Alexander Fineberg, Direct Operations Counsel, Fidelity National Title Group

Lawrence J. Fineberg, Senior V.P. & Counsel, FNTG National Agency Operations

Christine Fitzgerald, Esq., Seiden Family Law, LLC

Jill Friedman, Associate Dean, Pro Bono & Public Interest, Rutgers Law School

Barry F. Gartenberg, Esq.

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

Daniela R. Geraldo, J.D. Candidate 2020, Seton Hall University School of Law

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

Casey Gillece, Legislative Counsel, Uniform Law Commission

Christopher Gramiccioni, Monmouth County Prosecutor

James B. Graziano, Acting Director, Division of Alcoholic Beverage Control

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

Ted Del Guercio, III, Esq., McManimon, Scotland & Bauman, LLC

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

Stacy Hawkins, Professor, Rutgers Law School


Douglas L. Heinold, Esq., Raymond Coleman Heinold, LLP

Larry Herrightly, Director, Dept. of Environmental Protection

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

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

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A FREQUENT SOURCE OF PROJECTS FOR THE COMMISSION IS CASE LAW IN WHICH A COURT CALLS AN ISSUE TO ATTENTION OF LEGISLATURE. COURTS HAVE DONE SO BY IDENTIFYING AN AMBIGUITY IN THE LANGUAGE, SUGGESTING THAT THE LEGISLATURE MIGHT WISH TO REVISIT A PARTICULAR AREA OF THE LAW, AND BY DETERMINING THAT A PARTICULAR PROVISION IS UNCONSTITUTIONAL OR HAS BEEN SUPERSEDED BY FEDERAL LAW. COMMISSIONERS, COMMISSION STAFF, AND MEMBERS OF PUBLIC ARE ALSO SOURCES OF COMMISSION PROJECTS. A THIRD CONSISTENT SOURCE OF PROJECTS IS THE “LEARNED BODIES” WHOSE WORK THE COMMISSION IS CALLED UPON TO CONSIDER.

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, 47-48 (2017)

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Laura C. Hoffman, Assistant Professor of Law, Faculty Researcher, Seton Hall University School of Law

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Hunterdon County Clerk's Office

William P. Isele, Esq., Archer & Greiner, P.C.

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

Frederic M. Knapp, Prosecutor, Morris County Prosecutor's Office

Andrew Kondor, Esq., Regulatory Officer, Department of Community Affairs

Joseph E. Krakora, Public Defender, Office of the Public Defender

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 for Assemblyman Louis D. Greenwald

Steve Lenox, Owner, Publisher and Editor of TAPinto Patterson in Passaic County

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

Jeanne LoCicero, Legal Director, American Civil Liberties Union (ACLU)

Jennifer A Loheac, Esq., Community Associations Institute

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David McMillin, Esq., Legal Services of New Jersey

Carol McWilliams, Government Relations, New Jersey Education Association

Mercer County Clerk's Office

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

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Benjamin J. Menasha, Esq., Pisciotta & Menasha, LLC

Morris County Clerk's Office

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 Department of Corrections

New Jersey Department of Transportation


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



THERE ARE CURRENTLY NINE STATE LAW REVISION COMMISSIONS IN THE UNITED STATES. NOT ALL OF THE COMMISSIONS ARE STAFFED, NOT ALL OPERATE IN THE SAME WAY...PRESENTLY, THE STATES WITH LAW REVISION COMMISSIONS ARE: CALIFORNIA, CONNECTICUT, LOUISIANA, MICHIGAN, NEW JERSEY, NEW YORK, OREGON, RHODE ISLAND, AND WASHINGTON.

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, 342 (2017)

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Aileen M. O'Driscoll, Esq., Managing Attorney, New Jersey Education Association

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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

Evelyn Padin, Esq., President, New Jersey State Bar Association

Clinton Page, Director of Legal Affairs, New Jersey Department of Children and Families

Mary Frances Palisano, Director, Commercial & Criminal Litigation

Joseph Paravecchia, Assistant Prosecutor, Mercer County Prosecutor's Office

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Susan Pigula, New Jersey Department of Transportation

Anthony Porto, County Tax Assessor, Hunterdon County Tax Board

Wayne Positan, Esq., Lum, Drasco & Positan LLC

Jonathan Pushman, Legislative Advocate, New Jersey School Boards Association

Rob Rakossay, Owner, Publisher and Editor of TAPinto East Brunswick

David Ramsey, Attorney, Becker & Poliakoff, PA

Michael Rappa, Supervising Assistant Prosecutor, Morris County

Sarah E. Ricks, Distinguished Clinical Professor of Law, Rutgers Law School

Kenneth Ritchie, Reference Law Librarian, New Jersey State Library

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Jon Romberg, Professor of Law, Seton Hall Law School

Jacob Hale Russell, Associate Professor of Law, Rutgers Law School

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

Colleen Schulz-Eskow, New Jersey Department of Education

Jennifer Sellitti, Public Defender, Office of the Public Defenders

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

Mitchell Sklar, Executive Director, New Jersey State Association of Chiefs of Police

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

Charles A. Sullivan, Professor of Law, Seton Hall Law School

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

Gwen Tolbert, Manager of Recruitment, Center for Career Development, Rutgers Law School

Uniform Law Commission

Robyn A. Veasey, Deputy Public Defender, Office of Parental Representation

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

Richard Vezza, Officer in the New Jersey Press Association and Publisher of Star Ledger

Valerie Villanueva, Legal Secretary, Office of Legislative Services

Robert Vivian, Legislative Liaison, Department of Agriculture

Paula B. Voos, Vice-Chair and Undergraduate Academic Program Director, Labor Studies and Employment Relations; Rutgers University School of Management and Labor Relations

Catherine M. Ward, Stradley Ronan Stevens & Young

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

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COMMISSION STAFF MEMBERS ALSO PARTICIPATE IN BAR ASSOCIATION MEETINGS, PANEL DISCUSSIONS, PUBLISH ARTICLES FOCUSING ON THE WORK OF THE COMMISSION, AND PRESENT INFORMATION ABOUT THE COMMISSION TO COMMUNITY GROUPS AND IN CONTINUING LEGAL EDUCATION SEMINARS. THIS IS DONE TO INCREASE AWARENESS OF THE COMMISSION'S WORK AMONG MEMBERS OF THE PUBLIC AND OF THE STATE BAR ASSOCIATION SO THAT THOSE AUDIENCES KNOW OF THEIR OPPORTUNITY TO ADD THEIR VOICES TO THE DISCUSSION OF THE IMPORTANT ISSUES UNDER CONSIDERATION BY THE COMMISSION EACH YEAR.



Harvey Weissbard, of Counsel, Genova Burns (Ret.)

Allen A. Weston, Director, New Jersey Association of Counties

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

Shirley B. Whitenack, Esq., Partner at Schenck Price Smith & King, LLP

Michael Williams, Acting Hunterdon County Prosecutor

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

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

Since the NJLRC began work in 1987, the New Jersey Legislature has enacted 56 bills based upon 75 of the more than 187 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:

### **2019**

- *Sexual Assault* (L.2019, c.474) – The Report of the Commission recommended changes to the statute concerning sexual assault in order to better reflect the modern reality of New Jersey's sexual offense prosecutions by making the statutory text consistent with the decisions of New Jersey's courts, and with the instructions delivered to jurors during criminal proceedings. The Report proposed the removal of the outdated "physical force" requirement, incorporated the current standards regarding the capability of understanding and exercising the right to refuse, and other changes to reflected decisions of the New Jersey Supreme Court.

### **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.

## 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.
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- *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.
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- *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)
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- 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 work of the New Jersey Law Revision Commission is mentioned:

- *Catalina Marketing Corp. v. Hudyman*, 459 N.J. Super. 613 (App. Div. 2019)
- *SDK Troy Towers, LLC v. Troy Towers, Inc.*, 2019 WL 612670 (App. Div. 2019)
- *Residential Mortgage Loan Trust 2013-TT2 by U.S. Bank National Association v. Morgan Stanley Mortgage Capital, Inc.*, 457 N.J. Super. 237 (App. Div. 2018)
- *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. Neppel*, 2007 WL 4118319 (App. Div. 2007)
- *Semenecz v. Borough of Hasbrouck Heights*, 2006 WL 2819813 (Law Div. 2006)
- *Warren County Bar Ass'n v. Board of Chosen Freeholders of County of Warren*, 386 N.J. Super. 194 (App. Div. 2006)
- *Gebroer-Hammer Associates, Inc. v. Sebbag*, 385 N.J. Super. 291 (App. Div. 2006)
- *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:**

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  - CCH Incorporated, LAW OF ELECTRONIC COMMERCE, *Formal Requirements Including Statute of Frauds* §5.03 (2019)
  - CCH Incorporated, LAW OF ELECTRONIC COMMERCE, *Non-uniform State Law Approaches* §5.07 (2019)
  - Alfred C. Clapp & Dorothy D. Black, 7A NEW JERSEY PRACTICE SERIES, *Wills and Administration — Payment of Devises and Distribution* §§1737, 4002 (2019)
  - 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 (2019)
  - James H. Walzer, James W. Kerwin, 16A NEW JERSEY PRACTICE SERIES, *Legal Forms* § 56.14 (2019)
  - 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, 10.3, 10.5, 10.6, 10.11, 10.15, 10.20 (2019)
  - Myron C. Weinstein, 30 New Jersey Practice Series, *Law of Mortgages* §§ 28.1A, 28.9A (2019)
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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 (2018)
  - Joseph A. Romano, *No “Dead Giveaways”: Finding a Viable Model of Ante-Mortem Probate for New Jersey*, 48 Seton Hall L. Rev. 1683 (2018)
  - Jeremy D. Morley, INTERNATIONAL FAMILY LAW PRACTICE, *International Child Custody* §7:22 (2017)
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  - Ben Nipper, *Legislating Death: A Review and Proposed Refinement of the Uniform Determination of Death Act*, 17 Houston J. Health L. & Pol’y 429 (2017)
  - Jacob Arthur Bradley, *Antemortem Probate is a Bad Idea: Why Antemortem Probate Will Not Work and Should Not Work*, 85 Miss. L. J. 1431 (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; 2019)
  - 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; 2019)
  - 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)
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- 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)
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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)
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- James R. Maxeiner, *Standard-Terms Contracting in the Global Electronic Age: European Alternatives*, 28 YALE J. INT’L L. 109 (2003)
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- 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 mentioned in an article by Adam J. Sklar and Gary M. Albrecht, in the *New Jersey Lawyer*, *Construction Liens Arising From Tenant Work - Commercial Landlord Concerns and Strategies*, vol. 319 at p. 58 (2019), in an article by Charles Toutant in the *New Jersey Law Journal* entitled *Panel Upholds Threat of Imprisonment for Debtors' Discovery Violations* (October 9, 2019), and, nationally, in an article concerning archaic laws by Michael Waters "Hundreds of wacky, obsolete laws still exist. Why don't more states remove them?" in *The Highlight*, by Vox (November 18, 2019).

### **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

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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. 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

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### **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 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 law revision commission 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, a full-time Deputy Director, two 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***

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## **4. – Final Reports and Recommendations**

### **Actor, Definition of**

In *State v. Twiggs*, 233 N.J. 513 (2018) the New Jersey Supreme Court was asked to determine whether the statute of limitations should be tolled when a DNA identification does not directly identify the defendant, but rather begins an investigation that ultimately inculpatates the defendant. As part of its analysis, the Court examined the Legislature’s use of the term “actor” as it appears in the DNA-tolling provision contained in N.J.S. 2C:1-6(c).

The term “actor” is not defined in N.J.S. 2C:1-6(c). As a result, the Court consulted the legislative history and the “general definitions” section of the Code of Criminal Justice. Ultimately, the Court concluded that pursuant to the DNA-tolling provision, a statute may only be “tolled” when the identification of the defendant is achieved *directly* by DNA evidence rather than DNA evidence in addition to other means.

In October of 2019, the Commission released a Final Report that recommended the modification of N.J.S. 2C:1-6(c) to make clear that for the DNA-tolling provision to apply, the State must have DNA evidence in its possession that establishes a direct link to the defendant it seeks to prosecute.

### **Bail Jumping**

In *State v. Emmons*, 397 N.J. Super. 112 (App. Div. 2007), the defendant argued that the affirmative defense in the bail jumping statute required proof of the same fact the State is required to prove as an element of the offense – knowingly -- and was therefore unconstitutional. Subsequently, in *State v. Morris*, 2018 WL 4701675 (App. Div. 2018) the Appellate Division addressed whether a defendant should be convicted of bail jumping if he appears in court on the date and time specified but leaves the courthouse before his matter has been addressed by the court.

In December 2019, the Commission released a Final Report in which it proposed modifications to the current bail jumping statute that expressly modify the statute to eliminate the constitutional infirmity associated with the affirmative defense contained therein and to clarify the consequences for leaving the courthouse before a matter has been addressed by the Court.

### **Charitable Registration and Investigation Act**

Currently, New Jersey’s Charitable Registration and Investigation Act (CRI) addresses the role of the Attorney General in protecting charitable assets. The Protection of Charitable Assets Act (PCAA) is a model act that was prepared by the Uniform Law Commission to provide the chief law enforcement officer in any state with an inventory of basic information about each charitable organization that operates in the state. The PCAA provides a basic platform so as not to overburden either the charitable organizations or the Attorney General.

To determine whether any, or all, of the PCAA would better protect the citizenry of New Jersey, the Commission compared the PCAA to the current New Jersey statutes that encompass this area of law.

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In December of 2019, the Commission released a Final Report containing recommendations to modify the CRI to include certain defined terms; additional exemptions for governmental entities and certain fiduciaries; the requirement that registrants report their involvement in criminal or civil proceedings to the Attorney General; and, modernization of the Act to account for technological advancements.

### **Definition of “Marital Status” in the Law Against Discrimination**

The Law Against Discrimination, found at N.J.S. 10:5 et seq. (LAD) in New Jersey prohibits an employer from imposing conditions of employment that are not related to the tasks assigned to, and expected of, an employee. It also prohibits employers from resorting to stereotypes to discipline, block from advancement, or terminate an employee due to life decisions, such as marital status.

In *Smith v. Millville Rescue Squad*, 225 N.J. 373 (2016), the Supreme Court of New Jersey decided that while the term “marital status” is not defined in the LAD, its inclusion in the statute and its use in previous cases point to it meaning one’s status as either “single, married, or transitioning from one to another.” In doing so, the Court noted that marital status as a term is not defined in the LAD, and that there is no legislative history to clarify the boundaries of the term. The Court identified examples of states with “marital status” in the anti-discrimination laws that also define what the term marital status means.

In November of 2019, after incorporating comments from those with expertise in this area of the law, the Commission released a Final Report recommending incorporation of language into the LAD that ensures that the broad protections of the Act are extended to members of every protected class, those transitioning among and between protected classes, and those associated with or perceived to be part of a protected class.

### **Definition of “Tumultuous” and “Public”**

In *State v. Finnemen*, 2017 WL 4448541 (App. Div. 2017), the Appellate Division considered whether the defendant engaged in “tumultuous” behavior as required for a conviction under N.J.S. 2C:33-2(a)(1), as well as whether the definition of “public” as described in N.J.S. 2C:33-2(b) applied to the entire statute.

The Appellate Division found the defendant’s behavior to be tumultuous. The Court reasoned that the “defendant’s conduct caused public inconvenience, annoyance or alarm and constituted overwhelming turbulence or upheaval ... and a violent agitation of mind and feelings.” The Court added that “for the present purposes,” the word “public,” as defined in N.J.S. 2C:33-2(b), also applied to subsection a. of N.J.S. 2C:33-2(a).

In December of 2019, the Commission issued a Final Report recommending the removal of the term “annoyance” and “tumultuous” from the disorderly conduct statute to eliminate the ambiguity surrounding these subjective and undefined terms. In addition, the Commission suggested that language prohibiting “excessive noise” be added to this statute. Finally, the Commission recommended that the unconstitutional, “offensive language” subsection be stricken from the statute.

### **De Minimis Quantity Exception**

In *R & K Assoc., LLC v. N.J. Dep’t of Env’tl. Prot.*, A-4177-14T1, 2017 WL 1316169 (App. Div. 2017), 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 examining the text of the Act and the underlying Legislative objectives, the Court noted that while a fair reading

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of the statute lends some support to the idea that standing for the exception only applies to current owners, the Court determined 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.

In December 2019, the Commission issued a Final Report in which it recommends the addition of language to N.J.S. 13:1K-9.7 to permit a qualified, prior owner or operator of an industrial establishment to pursue a DQE after the revocation of a “no further action letter” by the Department of Environmental Protection (DEP).

### **Imputing Negligence to a Public Entity**

The Commission authorized a project examining the Local Public Contracts Law (LPCL), N.J.S. 40A:11-1 et seq., and 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 public entity. The Appellate Division upheld the exculpatory clause absent a finding of negligence on the part of the public entity, noting that this was consonant with legislative intent.

The Commission authorized a proposed modification to the LPCL to make it consistent with N.J.S. 2A:58B-3, on which it was modeled. N.J.S. 2A:58B-3 specifically prohibits imputing the negligence of an agent to the public entity. The project also grew to include the Public Schools Contracts Law, as both it and the LPCL were intended to contain several identical provisions.

A Final Report was issued in June 2019 that recommended harmonizing all of the above statutes on the issue of imputed negligence.

*“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)*

### **Local Land and Building Law – Leases of Public Property**

The Local Lands and Buildings Law (LLBL) contains two separate statutes that each permit a governmental unit to lease, to private persons, public property “not needed for public use.” The two statutes, N.J.S. 40A:12-143 and N.J.S. 40A:12-244, are not consistent with one another regarding the leasing of real property and the necessity for compliance with the Local Public Contracts Law (LPCL).

In December of 2019, the Commission released a Final Report containing recommendations to modify the LLBL to unify N.J.S. 40A:12-14 and N.J.S. 40A:12-24 into a single statute that has been simplified and reorganized.



## **Mandatory Sentencing - Sentencing Factors Requiring Jury Findings**

The Commission authorized work 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 the 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 New Jersey Attorney General conceded that *Alleyne* rendered N.J.S. 2C:39-5(i) unconstitutional as written.

The United State Supreme Court 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. *Apprendi v. New Jersey* 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 *Apprendi* Court identified a 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 that must be submitted to the jury if it increases the punishment above what is otherwise legally prescribed.

In November of 2019 the Commission released a Final Report recommending changes to a number of statutes so that they are consistent with the Courts' determinations regarding constitutionality in these cases.

## **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 with regard to a refund of taxes paid in error. The Court also noted that it was constrained in requiring the refund of the plaintiff taxpayer by a three-year statute of limitations, as per a prior Appellate Division decision. In December of 2019, the Commission released a Final Report on this project recommending a change to the statutory language to confirm the mandatory nature of the refund, and the statute of limitations.

## **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 (the Code). For individuals unfamiliar with the Code, references to "misdemeanors" and "high misdemeanors" in non-code statutes serve only to complicate the law contained in each statutory title.

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In March of 2019, the Commission released a Final Report proposing revisions to the statutory language meant to eliminate virtually all references to the term “misdemeanor” and replace them, in most instances, with the contemporary, Code-based equivalent. In addition, the Commission recommended the elimination of statutes containing the word misdemeanor that duplicate a crime enumerated in the Code or are archaic by virtue of the subject matter expressed therein. The Commission’s Report recognized that certain references to the term misdemeanor, such as those discussing out-of-state criminal activity, are necessary and should therefore remain part of the Code.

### **“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 some 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.

*“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)*

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 and 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.

A Final Report was released by the Commission in September of 2019 with three recommendations. First, the proposed 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). Finally, the 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.*, 233 N.J. 44 (2018).

### **Voided Ballot Initiatives - 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 from 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. Oct. 20, 2017) the Superior Court of New Jersey addressed the impact of voided election results on subsequent ballot initiatives to reclassify a school district.

In September of 2019, the Commission released a Final Report recommending the modification of the reclassification statutes to eliminate the ambiguity regarding subsequent ballot initiatives that results when election results are voided.

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## ***5. – Tentative Report***

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## 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 deemed 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 2020.

### **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 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, the Commission refrained from pursuing its work in this area. In 2020, however, the Commission anticipates renewing its work to determine if there is something that it can do to be of assistance in this area.

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## Definition of “Harassment” 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 their 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.”

In November of 2019 the Commission released a Tentative Report on this subject and Staff anticipates working closely with stakeholders to determine whether proposed modifications can bring clarity to the statute in the interest of releasing a Final Report concerning this project in 2020.

## 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 worked 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 proposed 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.

When the Legislature crafted a trio of bills aimed at easing the process for expunging juvenile adjudications and adult convictions, and the bills were signed into law, the Commission discontinued its work in the area. The Commission will review the area to determine whether additional modifications may be appropriate and anticipates delivering a Final Report in 2020.



## **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. Pancho'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 2020.

## **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 would impact portions of New Jersey's probate law, Title 3B.

The Commission is in the process of comparing corresponding sections of the UGCOPAA, Title 3B, and Title 30 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. A Final Report is expected in 2020.

## **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 whether the special evidentiary provision for Title 9 cases 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. The Court 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 the relevant 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 regarding evidence in chapter 30 that either applies provisions similar to those in

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chapter 27 or denies their applicability. Thus, the Commission Report presents the same issue decided in the *T.U.B.* case.

There are policy reasons underlying 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 termination of parental rights is permanent and has broad consequences. While both kinds of cases have a Constitutional dimension, the implications of a termination of parental rights are so serious that those proceedings require special protections. In addition, it is noted that if the special child abuse provision does not apply, the narrower Evidence Rule N.J.R.E 803(c)(27) may be applicable.

In November of 2019 the Commission directed Staff to contact stakeholders and request their input regarding the proposed modifications set forth in this project. A Final Report is expected in the Spring of 2020.

*“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)*

### **“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 (TCA), 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 those tests do fall within the statutory definition of “physical examination.” The Court also looked to extrinsic sources 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.” A Final Report is expected in early 2020.

### **Standard Form Contract**

The New Jersey Law Revision Commission published a Report on Standard Form Contracts in 1998. That 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. It suggested that “consent” is a legal fiction since neither party has the power to vary the contract terms, regardless of the

perceived bargaining power of the party. The customer of a dry cleaner or parking lot may be more financially powerful than the dry cleaner or lot owner, but neither can vary the terms on the back of the receipt. Instead, the contract is effectively 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.

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 was also reintroduced in the current legislative session. After 20 years, the Commission decided to reconsider the Report and revise it to bring it up to date.

The draft act proposed 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 problem of whether the terms that they contain 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 a standard form contract is not based on consent, and does not result from bargaining. The judicial approach to the resolution of issues in this area of the law does not provide predictability as to which terms in a standard form contract are enforceable and which are not. Notions of "unconscionability" and "public interest" are vague and variable. In addition, the current judicial approach relies on assigning "unequal bargaining power" to one of the parties.

The Commission's updated proposal, like its predecessor, 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. After releasing a Tentative Report in this area of the law, the Commission considered comments received and updated its work. A Final Report is expected in early 2020.

### **Statute of Limitations – PIP Claims**

An insurer that has provided personal injury protection ("PIP") benefits must bring suit seeking reimbursement from a tortfeasor before the conclusion of the two-year statute of limitation or lose the ability to do so. The two-year period begins upon "the filing of a claim" for such benefits. A question regarding the commencement of the statute of limitations arises, however, when multiple PIP applications are filed. In *Abdulai v. Casabona et al.*, 2016 WL 1334539 (App. Div. 2016), the Appellate Division was asked to determine the date on which a PIP claim was "filed" because both the insured and his health care provider each submitted a PIP application on separate dates, using separate forms. The Court recognized that the language in N.J.S. 39:6A-9.1(a) is ambiguous regarding the date on which a PIP claim is deemed to be "filed" for purposes of calculating the statute of limitations.

In November of 2019, the Commission released a Tentative Report recommending modifications to N.J.S. 39:6A-9.1(a) to clearly identify the event that starts the clock for purposes of the statute of limitations, while simultaneously preventing potential abuses by errant insurance companies. The Commission anticipates the release of a Final Report in the Spring of 2020.

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## 6. – Work in Progress



## **6. – Work in Progress**

### **Accidental Disability and Pension Benefits**

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. Work is ongoing and a Tentative Report is anticipated in 2020.

### **Aggravated Assault**

The Commission authorized a project 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).

In that case, the Court was asked to determine whether the word “purposely” in N.J.S. 2C:12-13 applied only to conduct that subjects the officer to contact with bodily fluids or whether it also applied 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. A Tentative Report is anticipated in the Spring of 2020.

### **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 since 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. Work continues on this project as Staff conducts outreach to determine whether 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 may be beneficial in that it obviates the evidentiary problem inherent in traditional post-mortem probate and permits the realization of the testator’s intent. Detractors, however, warn that raising probate

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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. Staff anticipates a Tentative Report after obtaining feedback from knowledgeable parties.

### **Autonomous Motor Vehicles**

The Commission approved the ongoing monitoring of this area of the law to assess whether work by Commission Staff would be of assistance to the Legislature. Work on this project began in response to a request by a Commissioner to determine whether, and if, New Jersey is employing the “best practices” in this area. Staff will continue its work and prepare periodic updates for the Commission.

### **Books and Records of Account**

The Commission authorized a project to consider clarification of “books and records of account” as used in N.J.S. 14A:5-28. The underlying issue raised by *Feuer v. Merck & Co., Inc.*, 455 N.J. Super. 69 (App. Div. 2018), is whether a shareholder is entitled to all records pertaining to a transaction of a corporation, or only the financial records.

In *Feuer*, the plaintiff sought the production of twelve broad categories of documents from Merck. The Board appointed a “Working Group” to evaluate these demands, retain counsel, investigate, and recommend a response related to the acquisition of the pharmaceutical firm. The Working Group rejected all of plaintiff’s demands, and, in response, the plaintiff demanded documents pertaining generally to the Working Group’s activities.

The Court determined that “books and records of account” does not encompass any and all records, books, and documents of a corporation” but noted that the phrase is not defined within the statute. Work is ongoing and a Tentative Report is anticipated in the Spring of 2020.

*“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)*

### **Child Endangerment**

In *State v. Fuqua*, 234 N.J. 583 (2018), the New Jersey Supreme Court considered whether actual harm to a child must be proven by the State in order to convict an individual under the child endangerment statute, N.J.S. 2C:24-4(a)(2).

As written, the statute provides that any person who has a legal duty to care for a child, who causes the child harm that would make the child an abused or neglected child, is guilty of child endangerment. The Supreme Court in *Fuqua* decided that exposing children to a “substantial risk of harm” is sufficient to convict an individual of endangering the welfare of a child. There was, however, disagreement among the Justices regarding the statutory definition of “harm.”



The Commission authorized Staff to engage in additional research to determine whether other jurisdictions have codified the term “substantial risk of harm.” Work is ongoing in this area and an update to this project is expected in early 2020.

### **Clarification of Tenure Issues**

In July 2014, the Commission authorized work on a project intended to clarify N.J.S. 18A:17-2 and the manner in which movement or transfer of tenured clerical, secretarial, and other non-teaching employees affects their 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 accordingly, authorizing the release of a Revised Tentative Report in July 2017 and seeking additional comment on the proposed revisions. A Final Report is expected in early 2020.

### **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, fall 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 currently engaging in research in preparation for discussions with individuals from New Jersey’s law schools, including both faculty and clinics.

### **Confinement**

The Commission authorized a project to consider defining “confinement” as used in N.J.S. 2C:44-3(a). The ambiguity created by the lack of a definition for this term was discussed in the matter of *State v. Clarity*, 454 N.J. Super. 603 (App. Div. 2018), in the context of whether an individual could be deemed a persistent offender for purposes of sentencing.

On July 26, 2003, the defendant in *State v. Clarity* committed a criminal act in the state of Florida. He entered a guilty plea and was sentenced to probation. In August 2013, while in New Jersey, Clarity was arrested

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for child endangerment and thereafter pled guilty. The defendant was sentenced to an extended term as a “persistent offender”, on the basis that he committed two crimes within a ten-year period or was last released from confinement within ten years of committing a subsequent crime. In *Clarity*, the commission of the two crimes took place ten years and three weeks apart. The Appellate Division determined that the trial court erroneously interpreted “crime” as “conviction” and also erroneously interpreted Clarity’s Florida probation as “confinement.” The Court recognized that the absence of a definition of “confinement” could lead to future confusion. Work is ongoing and a Tentative Report is anticipated in the early 2020.

## **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 “Legal Representative” in the Law Against Discrimination**

The New Jersey Law Against Discrimination, N.J.S. 10:5-1 *et seq.* (LAD), was enacted 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. 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. During this same time period, the County Freeholders executed 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. 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 stakeholders to determine whether including a definition for the term “legal representative” would be of assistance in furthering the purpose of the LAD.

## **Definition of “Under the Influence”**

In *State v. Siervo*, No. A-0989-16T2, 2018 WL 266734 (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 timely 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 and 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. Work is ongoing to define the term "under the influence" as it also pertains to cannabis and anticipates presenting a Tentative Report to the Commission in 2020.

### **Federal Pre-emption of New Jersey's Alternative Minimum Assessment**

In *Stanislaus Food Prod. Co. v. Director, Div. of Taxation*, 2019 WL 2720346 (N.J. Tax, June 28, 2019) the New Jersey Tax Court examined whether New Jersey's Alternative Minimum Assessment (AMA) is pre-empted by the Supremacy Clause of the United States Constitution, on the basis that it conflicts with the Congress' Commerce Clause powers to regulate interstate commerce. The Tax Court found that it was because it conflicted with the Interstate Income Act of 1959 (IIA).

The Stanislaus Food Products Company, the taxpayer, was based in California, and grew produce that was shipped to an independent distributor in New Jersey who then sold the vegetables directly to restaurants. Initially, the taxpayer filed its returns and paid the Corporation Business Tax (CBT) based upon its net income. The taxpayer subsequently filed amended returns and indicated that it qualified as an IIA taxpayer. The Director agreed and allowed a refund of the CBT, but imposed the AMA gross profits tax, which reduced the amount of the refund. The taxpayer appealed to the Tax Court and claimed protection under the IIA.

The Tax Court found that the AMA is preempted by the IIA because the AMA specifically targets IIA entities and the legislative intent makes it clear that the assessment was solely imposed to "effectively capture the value of the activities in New Jersey of out-of-state companies that receive exemption from a tax, like CBT." Work is ongoing as Staff proceeds with research and outreach to determine how a modification to the statute should be approached.

### **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 pleadings must have been filed in "bad faith, solely for the purpose of harassment, delay or malicious injury." There is presently no statute in New Jersey that addresses frivolous litigation in appellate matters. Work on this project is ongoing as Staff reaches out to interested parties to determine whether such a statute would be of assistance in addressing appellate filings. Staff anticipates the release of a Tentative Report in 2020.

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## **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. Staff will proceed with research and outreach in an effort to determine whether a recommendation from the Commission regarding statutory language could be of assistance in this area.

## **Interpretive Statement**

In *Desanctis v. Borough of Belmar*, 455 N.J. Super. 316 (App. Div. 2018), the Appellate Division considered whether the interpretive question that accompanies a public ballot question pursuant to N.J.S. 19:3-6 must be drafted by the governing body. The Appellate Division determined that “when the Legislature provided the option for an interpretive statement to ‘be added on the ballots to be used in voting upon [a public] question’” that “interpretive statement had to be approved by the Mayor and Council.” The Commission authorized a project to consider the ambiguity created by the absence of a designated individual authorized to draft such statements. Staff anticipates a Draft Tentative Report in 2020.

## **Local Land and Building Law – Bidding**

The New Jersey Local Land and Building Law (LLBL) allows a governmental unit to acquire property in a variety of ways. The LLBL permits a governing body to require the seller, or lessor, to construct or repair a capital improvement as a condition of acquisition. The statute that permits the inclusion of such a condition precedent is silent, however, regarding whether this method of acquisition requires the governing body to adhere to the public bidding requirements set forth in the New Jersey Local Public Contracts Law (LPCL).

In the absence of Legislative guidance regarding the application of the LPCL to the LLBL, the Commission authorized a project to ascertain whether the LPCL bidding process applies to government contracts with private persons that require the construction or repair of capital improvements as a condition of acquisition, pursuant to N.J.S. 40A:12-5(a)(3) and, if so, whether some modification to the statute might be appropriate. A Tentative Report is anticipated in 2020.

*“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.,  
DLA Piper LLP (US)  
(2013)*

## **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, and that the habeas corpus decision did not satisfy plaintiff’s burden of proof; it also clarified the calculation of damages for guidance on remand. The plaintiff argued that the trial court erred in multiplying the number of years of his incarceration by \$20,000 rather than by the amount he earned in the year prior to his incarceration. The Appellate Division found that since the phrase “for each year of incarceration” was not separated from \$20,000 with a comma, “the doctrine of last antecedent provides support for the interpretation that ‘for each year of incarceration’ applies only to \$20,000.” Work is ongoing in this area to determine if a proposed statutory revision might be of assistance in clarifying the statute.

### **Model Entity Transactions Act (META)**

Completed by the Uniform Law Commission in 2007, then amended in 2011 and 2013, 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. As a result, there is substantial variation in the composition of local governments, limiting the ability to have a uniform process to address 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 that could improve its organization and effectiveness. A Tentative Report is expected by in 2020.

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## **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 (Corporation 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 Corporation Act for the benefit of both the nonprofit and business communities, and practitioners within the legal community. While the Corporation 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 Corporation Act, with a goal of identifying Corporation 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 a Tentative Report in 2020.

## **Notice by Publication**

The Commission authorized a project to conduct research and outreach regarding statutes governing notice by publication for municipalities. Notice by Publication statutes mandate that a newspaper in which a notice may appear must be published and circulated either within the municipality, or in the county in which the municipality is located. The statutes' intent is to notify the largest number of people regarding municipal action. Historically, publication meant the actual location where the newspaper was printed and circulated to the public, however, developments in the publishing industry have changed the manner in which newspapers are published, distributed, and read. This raises the issue of how municipalities may comply with the statutory requirements.

Staff will continue to work with knowledgeable commenters familiar with the industry to consider whether updating the statute would facilitate municipal compliance with the notice provision.

## **Open Public Meetings Act**

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 considered the time period within 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.

Staff will assess the results of legislative activity in the area of the OPMA during the 2018-2019 legislative session to determine whether action by the Commission could be of assistance in this area.

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## **Open Public Records Act**

In *Paff v. Bergen County*, 2017 WL 957735 (App. Div. 2017), the Appellate Division considered several issues pertaining to the Open Public Records Act (OPRA), including whether the County violated OPRA by denying the requestor access to redacted information. Staff was authorized to conduct additional research and outreach regarding the issues identified in *Paff* and work is ongoing to revise and restructure the OPRA to improve clarity regarding documents that are exempt from production under the Act.

## **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. Staff will again reach out to the Legislature once the new session begins in an effort to correct 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. Staff is engaging in additional research and outreach in anticipation of concluding its work in this area in 2020.

## **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.

This re-established 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. Staff continues efforts to identify experts to review drafts.

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## 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 a result, the two statutory sections are nearly indistinguishable, and might benefit from consolidation. The Commission authorized this modest project to determine whether the sections could be consolidated, and a Final Report is expected in 2020.

## 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 do 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. Work is ongoing and expected to conclude in 2020.

*“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)*

## 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 retroactive application of these amendments to settlements finalized before the amendments were enacted. A Tentative Report is expected in spring of 2020.

### **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.

### **Satisfactory Completion of Probation**

In *Matter of E.C.*, 454 N.J. Super. 48 (App. Div. 2018) the Superior Court of New Jersey considered the meaning of the term “satisfactory” in the context of the state’s expungement statute N.J.S. 2C:52-2 et. seq. The State alleged that the defendant failed to *satisfactorily* complete her probationary term and therefore opposed her application for an expungement.

Since there was no definition of term “satisfactory” within the statute, the Appellate Court looked at the Legislature’s intent in enacting expungement statute and applied the dictionary definition of the term “satisfactorily”. After doing so, it held that an individual discharged from probation with an imperfect record, who has paid all outstanding fees and fines, has “satisfactorily completed probation” within the meaning of the expungement statute. Although the Appellate Division determination provided clarity on the subject, the Commission authorized the project so that *pro se* litigants may have the benefit of clarified statutory language.

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## 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) and determined that the term in the statute, and the legislative intent regarding its meaning, are unclear. N.J.S. 2C:20-3(b) 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 the court looked to a variety of sources to find an appropriate definition. As a result of legislative initiatives during the recently-concluded legislative session, Staff discontinued work in the area, and will reassess and either re-engage or formally conclude this project in 2020 as 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 must 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.

*“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)*

## 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 could properly claim benefits in response to his termination, but not after voluntarily resigning. Work is ongoing as Staff considers whether 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 will reach out to the Human Trafficking Commission in 2020 to assess whether there is additional work that the NJLRC can do to be of assistance in this area.

### **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 in order 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. Work is ongoing in this area.

### **Uniform Power of Attorney Act (UPOAA)**

The Commission authorized a project to incorporate certain 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, Title 3B, is modeled on the 1969 version of the UPC and was revised in 1990 to reflect subsequent amendments. Although New Jersey has not yet enacted the most recent amendments to the UPC, 17 states and the U.S. Virgin Islands have done so.

The Commission 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. Work is ongoing on this large, and important, project.

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## 7. – No Action Recommended

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## **7. – No Action Recommended**

### **Evidentiary Standard for a Final Restraining Order**

In *B.C. v. V.C.*, 2017 WL 2705443 (App. Div. 2017), a father was accused, under the Sexual Assault Survivor Protection Act (SASPA), of sexually assaulting his two daughters. The trial court found that the preponderance of evidence standard for granting a protective order under SASPA did not sufficiently guarantee the father's due process interest in maintaining a parental relationship with his children. The Appellate Division declined to address the constitutional issue because it found that SASPA does not apply retroactively, and it was not in effect when the alleged conduct occurred.

Outreach to county prosecutors and the Department of Children and Families indicated that recommending a change to the law to include a heightened evidentiary standard would not be helpful, as it would run counter to the manner in which courts currently decide protective orders of this sort, and it would be redundant in light of the investigations made by the Department of Children and Families in response to petitions filed under SASPA. Accordingly, the Commission decided that it would take no further action in this area of law at this time.

### **Definition of “Misconduct” in the Unemployment Compensation Act**

The Commission authorized initial outreach and research concerning 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 previous 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 in an effort to fill the gap between misconduct and gross misconduct. Although gross misconduct was defined explicitly, severe misconduct was not defined; instead, a non-exclusive list of behaviors that would constitute severe misconduct was provided.

Pursuant to the decision of the Appellate Division, the Department of Labor and Workforce Development amended N.J.A.C. 12:17-2.1 accordingly, modifying the definitions of “simple misconduct,” “malicious,” and “severe misconduct” to reflect the Court's ruling. The Legislature followed suit, approving a bill in 2018 that modified the definition of “misconduct.” In deference to the Legislature's action in this area, the Commission concluded its work.

### **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, considering the arguments made regarding the undefined terms of “widowhood” and “has not remarried”

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with respect to the veterans' exemption. The Court also addressed whether Plaintiff's subsequent marriage to Mr. Stevens permanently extinguished her "widowhood," thereby making her ineligible for the exemption.

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," and that the plaintiff qualified as a result. 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 were fourteen bills related to N.J.S. 54:4– 3.30 introduced in the recently-concluded legislative session. Based on legislative awareness of, and action in, this area, the Commission chose to conclude its work without a recommendation.

### **Police Captains as Managerial Executives**

The Appellate Division considered whether state police captains are managerial executives for the purpose of collective negotiations in *State, Div. of State Police, v. New Jersey State Trooper Captains Ass'n*, 411 N.J. Super. (App. Div. 2015). Pursuant to N.J.S. 34:13-3, the New Jersey Employer-Employee Relations Act, public employees are constitutionally entitled to engage in collective negotiations, and their representative organization is permitted to negotiate terms and conditions of employment. Managerial executives, however, 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.

*"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)*

In the above-mentioned case, the Appellate Division affirmed the findings of the Public Employment Relations Commission (PERC), holding that PERC did not act arbitrarily in utilizing a case-by-case approach before concluding that most state police captains were not "managerial executives" and thus able to join collective negotiation units. The Court also noted that the Legislature could have chosen to prohibit police captains from the collective bargaining process, but chose not to do so. Outreach was conducted to former and current members of PERC, as well as practicing attorneys. All commenters felt strongly that no change to the statute was necessary and, as a result, the Commission is not recommending modifications to the statute at this time.

### **Revised Uniform Athlete Agents Act**

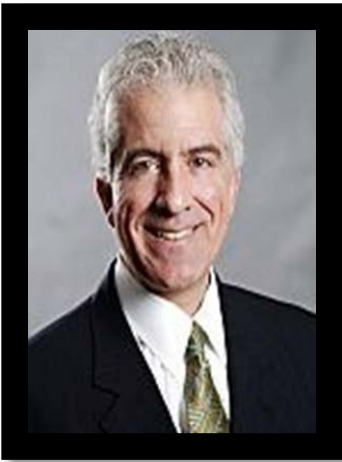
The Commission authorized research and outreach on the Uniform Athlete Agents Act (2000) and then the Revised Uniform Athlete Agent Act (2015), both drafted by the Uniform Law Commission. The UAAA and RUAAA propose to regulate the conduct of students and agents as that conduct relates to universities and the National Collegiate Athletics Association. The Legislature has considered this subject over the last decade, and during that time has not enacted either the model laws or any similar statute. Accordingly, given that the Legislature has examined the issue but declined to act, the Commission determined that it would take no further action in this area.

## 8. – Commissioners and Staff of the NJLRC in 2019

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**8. – Commissioners and Staff of the NJLRC in 2019****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**

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**



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.

**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.

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**Kimberly Mutcherson**, Dean, Rutgers School of Law - Camden, Ex officio

Kimberly Mutcherson was named the Co-Dean of the law school in 2018. She is an award-winning professor whose scholarship focuses on reproductive justice, bioethics, and family and health law. Dean Mutcherson presented her scholarship nationally and internationally, and has published extensively on assisted reproduction, families, and the law. She was a visiting scholar at the University of Pennsylvania Center for Bioethics and the Columbia Law School Center for Gender and Sexuality Law.

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

David Lopez joined Rutgers Law School as Co-Dean in 2018. He was the longest-serving General Counsel of the U.S. Equal Employment Opportunity Commission and was twice nominated to that position by President Barack Obama and confirmed by the United States Senate. Dean Lopez most recently worked as a partner at Outten & Golden in Washington D.C. and is a nationally-recognized expert in Civil Rights and Employment Law.

Represented by **Professor Bernard Bell**



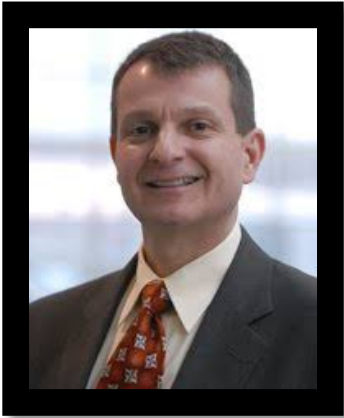
Professor Bell received a B.A. cum laude from Harvard and a J.D. from Stanford, where he was notes editor of the Law Review and a member of Order of the Coif. He clerked for Judge Amalya L. Kearse of the U.S. Court of Appeals for the Second Circuit and for U.S. Supreme Court Justice Byron R. White, and 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**



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.

### **The Staff of the Commission is:**

#### **Laura C. Tharney, Executive Director**

Laura 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 received her B.A. from Rutgers University in 1987 and graduated from Rutgers School of Law - Newark in 1991.

#### **Samuel M. Silver, Deputy Director**

Samuel Silver joined the Commission as a staff attorney in March of 2017 and was named Deputy Director in March 2019. 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.

#### **Arshiya M. Fyazi, Counsel**

Arshiya Fyazi joined the Commission as a staff attorney in June 2019. She has been a licensed attorney since 2004 and is admitted to practice in New Jersey and New York. Prior to joining the Commission, Arshiya worked as a part-time associate at Sheikh Partners PC., where she was engaged in commercial litigation and real estate matters. She earned a B.A. from Brooklyn College, in New York City, and graduated from Brooklyn Law School.

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**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 Jersey and New York. 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.

**Mark D. Ygarza, Legislative Fellow**

Mark Ygarza joined the Commission as a postgraduate Legislative Fellow in August of 2019. He is a newly-licensed attorney in New Jersey. Mark received his B.A. from Hunter College, City University of New York, and graduated from Seton Hall University School of Law. As a law student, he participated as a student attorney for Volunteers Lawyers for Justice and Seton Hall Law School's Civil Litigation Clinic. He also interned for the Attorney General's Office Consumer Fraud Division.

**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.

**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 2019 are:

**Elizabeth J. Brown**, Rutgers Law School – Newark, Legislative Law Clerk – Summer 2019

**Ryan J. Schimmel**, Gettysburg College, Legislative Law Intern – Summer 2019

***Other Assistance by Students:***

During the Spring semester of 2019, research and drafting assistance was provided to the NJLRC by pre-law student externs **Abhishek Bose** and **Katherine R. DeMottie** through a cooperative relationship with the



New Jersey Institute of Technology and Alison Lefkovitz, Assistant Professor and Director of NJIT's Law, Technology & Culture program.

Research and drafting assistance were also provided during the Summer of 2019 by **Benjamin M. Cooper** and **Myla E. Wailoo**, high school students with an interest in a pre-law course of study.

In addition, pro bono legal research and drafting assistance was provided to the NJLRC by law students: **Lauren C. Bateman**, **Sydney Groll**, **Suzanne J. Miller**, and **Marie Michel**, in cooperation with Jill Friedman, Associate Dean, Pro Bono & Public Interest, and Sarah E. Ricks, Distinguished Clinical Professor of Law,, at Rutgers Law School – Camden. Pro bono legal research and drafting were also provided by **Christopher Mrakovic** 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.

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**9. – Looking Ahead to the Work of the NJLRC in 2020**

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**9. – Looking Ahead to the Work of the NJLRC in 2020**

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 has been in progress since the summer of 2019, and we anticipate that the site will be completed in the early part of 2020. The scanning of older paper documents from the Commission office is also ongoing and has already improved Commission current workflow, and the accessibility to the Commission's 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 and District 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, and those who staff the legislative offices throughout the State, in order to better support the Legislature and to facilitate the implementation of Commission recommendations.

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