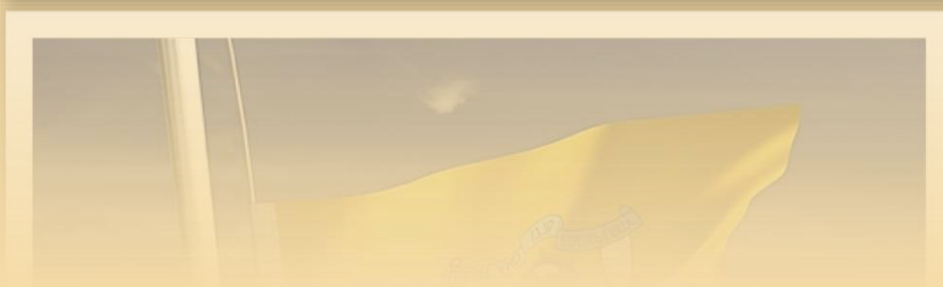


ANNUAL REPORT - 2022

New Jersey Law Revision Commission





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This Report is prepared for submission to the Legislature pursuant to N.J.S. 1:12A-9.
The Report can also be found on the website of the NJLRC at: <https://www.njlrc.org/annual-reports>

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The New Jersey Law Revision Commission

Vision:

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

Mission:

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



Statement of the Executive Director

As the Executive Director of the New Jersey Law Revision Commission, I am pleased to present the 2022 Annual Report of the Commission for the consideration of the Legislature.

This year was my tenth as the Executive Director of the Commission and, to mark that milestone, I looked back with appreciation on the Commission's accomplishments during its 36 years of continuous operation. During that time, the Legislature enacted 77 of the Commission's 227 recommendations. The Commission's work was also referenced in more than 30 New Jersey judicial opinions, in nearly 80 journal articles and other scholarly materials, and was featured in the news media. In our experience, each reference to the Commission's work increases the possibility that the Commission will receive input from members of the public.

In 2022, Commission Staff looked forward and focused with renewed energy on continuing to enhance the work of the Commission, and its accessibility and transparency. To support those goals, the Commission maintained its practice of facilitating public participation in its monthly public meetings using videoconferencing.

The Commission examined its entire list of ongoing projects this year and concluded work in selected areas as it deemed appropriate. This was done to ensure that the Commission is making the best use of its resources and that its website clearly identifies projects on which it is actively working. The Commission also implemented the practice of making available, each year, information about its consideration of the work of The American Law Institute and the Uniform Law Commission pursuant to its statutory mandate.

Consistent with the Commission's mandate, this year members of the Commission Staff participated in a bar association panel discussion, a continuing judicial education presentation, programs in association with New Jersey's law schools, and jointly published a journal article highlighting some of the work of the Commission. It is our hope that these activities will help increase awareness of the Commission's work among members of the public, so they know that they are encouraged to add their voices to our discussion of various important issues.

I am grateful for the attention paid to the work of the Commission by Legislators, Legislative Staff, and the Office of Legislative Services. I also appreciate the generosity of the individuals from government entities, the legal profession, the academic community, the private sector, and other members of the public, who provided comments and suggestions on Commission projects throughout the year. It is our hope that the quality of the Commission's work reflects the breadth and the caliber of these contributions.

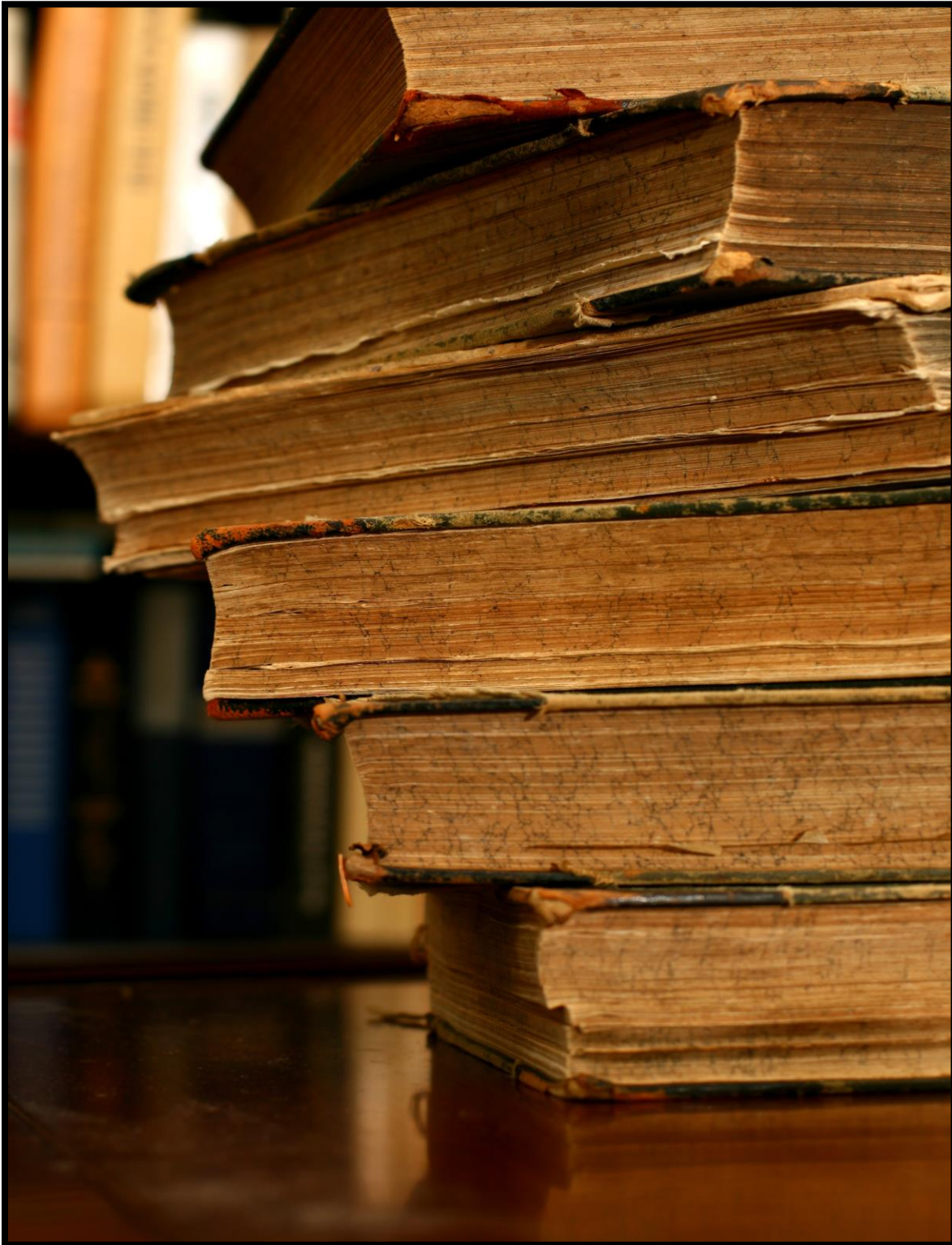
My thanks, as always, to our Commissioners, my colleagues, and the students who worked with us as paid legislative law clerks, credit-earning externs, interns, and also for pro bono credit. I look forward to an enjoyable and productive 2023, and to engaging with individuals throughout the State who share our goal of improving the laws that govern us all.

Laura C. Tharney
Executive Director
New Jersey Law Revision Commission

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1. – Overview of the Work of the NJLRC in 2022



1. – Overview of the Work of the NJLRC in 2022

General Overview:

The New Jersey Law Revision Commission is an independent legislative commission. It 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. Some recommend a change to a single subsection of a statute; others propose the revision of an entire title or changes to multiple titles. 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 recommendations 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. The Commission Reports provide the Legislature with a record of the outstanding issues and identify policy choices that may warrant consideration during the Legislative process. NJLRC Staff members include detailed comments in Commission Reports, identifying the recommendations made by commenters during the process, and the reasons for the drafting choices made by the Commission.

Bills Introduced Based on NJLRC Work

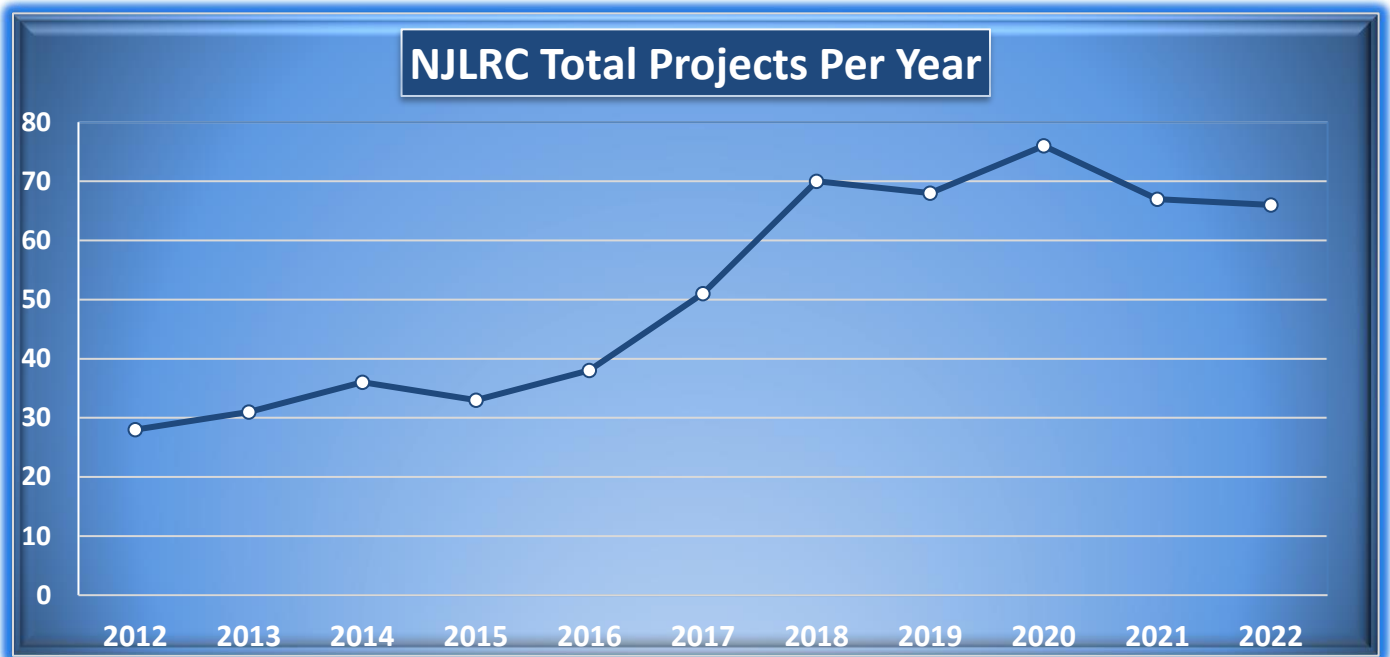
The following NJLRC projects were the subject of bills introduced in 2022, or represent subject areas in which the NJLRC provided information and support to the Legislature:

- Adverse Possession
- Anachronistic Statutes
- Elective Spousal Share
- Mandatory Refund of Property Taxes Paid in Error
- Oaths and Affidavits
- Temporary Disability Benefits
- Unemployment Benefits When Offer is Rescinded

The NJLRC would like to thank the sponsors of the bills, and other Legislators who assisted with the progress of the bills, for their willingness to bring these important issues to the attention of their colleagues in the Legislature:

Assemblyman Reginald W. Atkins
Assemblywoman Victoria A. Flynn

Assemblyman Louis D. Greenwald
Assemblyman Sean T. Kean
Assemblywoman Angela V. McKnight
Assemblyman Raj Mukherji
Assemblywoman Carol A. Murphy
Assemblywoman Ellen J. Park
Assemblywoman Annette Quijano
Assemblyman William B. Sampson, IV
Senator Linda R. Greenstein
Senator Patrick J. Diegnan, Jr.
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 2022.

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

Kelsey Allen, Law Librarian, New Jersey State Library

Lynne E. Allsop, Deputy Clerk, Tax Management Office

Mona Alpert

American Bar Association

The American Law Institute

Anthony M. Anastasio, President, New Jersey Civil Justice Institute

Peter Andreyev, New Jersey State Patrolmen's Benevolent Association

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Burlington County Prosecutor's Office

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James Ferguson, New Jersey Motor Vehicle Commission

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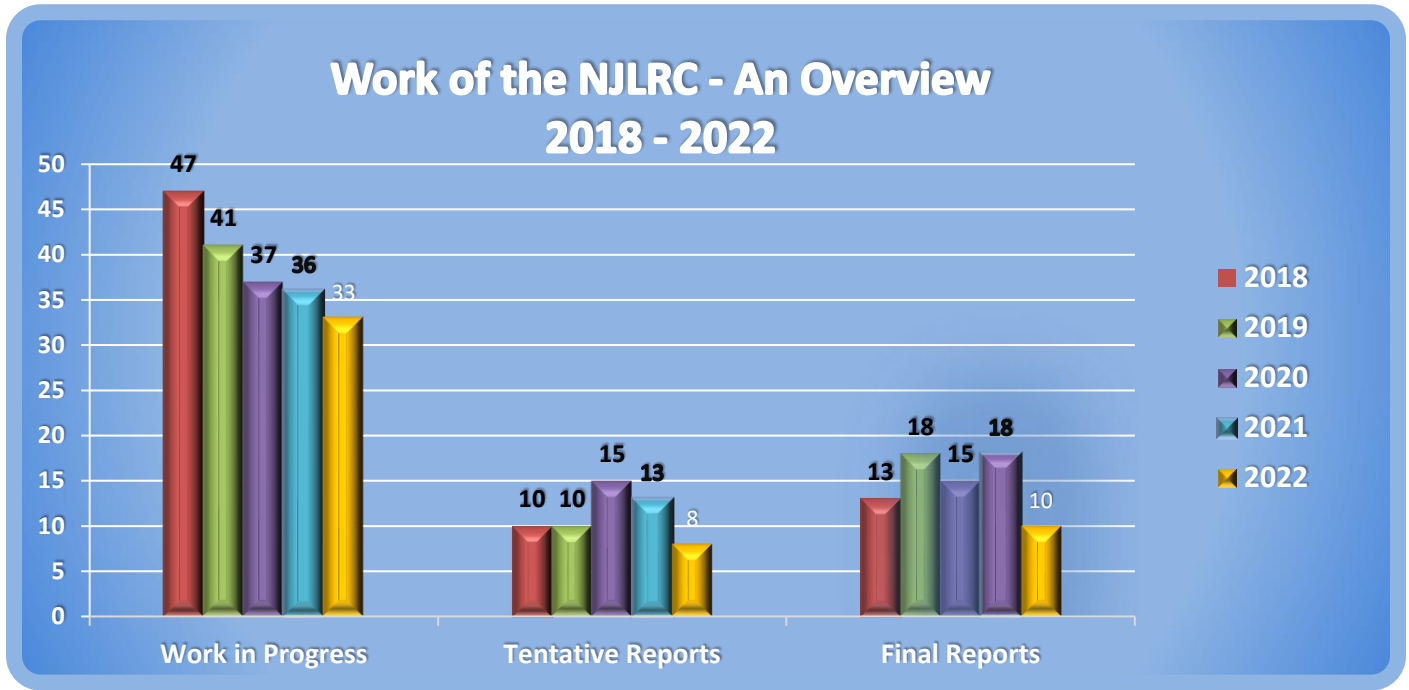
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Leslie Witko, Reference Law Librarian, New Jersey State Law Library

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Kate Millsaps Wolfinger, Research Associate, Senate Democratic Office

David Wolfsgruher, Executive Director, New Jersey State Parole Board

William M. Yarzab, Street Smart Coordinator, North Jersey Transportation Planning Authority

Kimberly Yonta, Esq., President, New Jersey State Bar Association

2. – Enacted Reports and NJLRC Case and Journal References



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

Since the NJLRC began work in 1987, the New Jersey Legislature has enacted 58 bills based upon 77 of the 227 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:

2021

- *Revised Uniform Law on Notarial Acts (L.2021, c.179)* – The Commission’s Report recommended changes to the New Jersey Notaries Public Act to enhance the integrity of the notarial practice in New Jersey. The Report recommended changes to the law to harmonize the treatment of tangible and electronic records, and to provide standards for obtaining a commission, notarization, and record-keeping. The Report also recommended changing the law to provide that the State Treasurer may deny an application and decline to renew, suspend, revoke, or limit the commission of a notary public for an act or omission demonstrating a lack of honesty, integrity, competence, or reliability.

- *Uniform Voidable Transactions Act (L.2021, c.92)* – The Report of the Commission recommended changes to New Jersey’s Uniform Fraudulent Transfer Act, recommending that the Act be renamed to more accurately reflect the nature of the transactions to which it applies, and modifying the definition of insolvency to be more consistent with the United States Bankruptcy Code and the Uniform Commercial Code. The Report also recommended the establishment of a preponderance of evidence standard for the Act and making changes to provide simple and predictable guidance on conflict/choice of law issues.

In addition to the two Reports mentioned above, the Legislature also considered the Commission’s Report recommending a change to New Jersey law based on the Uniform Common Interest Ownership Act and tailored to reflect conditions specific to New Jersey. The Report proposed a new chapter of the law pertaining to common interest communities. New Jersey’s existing law in this area does not provide a comprehensive approach to these communities, and it is outdated and fragmented. The bills based on the work of the Commission (A4265/S2261) passed both houses of the Legislature but were the subject of an absolute veto by the Governor.

2019

- *Sexual Assault (L.2019, c.474)* – The Report of the Commission recommended changes to the statute concerning sexual assault 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 reflect 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.

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

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

Historical Enactments:

The remaining projects enacted since the Commission began work are:

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

- Uniform Commercial Code Article 9 – Secured Transactions (L.2001, c.117)

New Jersey Cases that Mention the NJLRC:

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

- *Smith v. Vieceli*, 2021 WL 866998 (App. Div. 2021)
- *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 Envtl. 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)
- *Alampì 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)
- *Gebroee-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:

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

- Matthew Digan, *Lessons from UCAPA: Why Recent Domestic-Focused Anti-Abduction Legislation Has Largely Remained Unsuccessful*, 100 TEX. L. REV. ONLINE 104 (2022)
- Laura C. Tharney, Samuel M. Silver, Whitney G. Schlimbach, and Karyn L. White, *Tenure, Unemployment, and Workers' Compensation: Illuminating Rights and Responsibilities in New Jersey's Employment Law*, 45 SETON HALL LEGIS. J. 2 (2022)
- Robert Ramsey, 40 NEW JERSEY PRACTICE SERIES, *Jurisdiction of Municipal Court* §§24.1 (2022)
- Laura C. Tharney, Samuel M. Silver, Arshiya M. Fyazi, Jennifer D. Weitz, Christopher Mrakovic & Rachel M. Segal, *On the Path Toward Precision: Responding to the Need for Clear Statutes in the Criminal Law*, 45 SETON HALL LEGIS. J. 2 (2021)
- Charles F. Kenny, Esq., and Scott G. Kearns, Esq., FIFTY STATE CONSTRUCTION LIEN AND BOND LAW § 31.02 *New Jersey Construction Lien Law*, 1 JW-CLBL § 31.02 (2020; 2021; 2022)
- Laura C. Tharney, Samuel M. Silver, Arshiya M. Fyazi, Jennifer D. Weitz, and Mark D. Ygarza, *Canons or Coin Tosses: Time-Tested Methods of Interpreting Statutory Language*, 44 SETON HALL LEGIS. J. 285 (2020)
- Peter J. Mazzei, Laura C. Tharney, Samuel M. Silver, Jennifer D. Weitz, Joseph A. Pistritto & Rachael M. Segal, *Legislative Archeology: "It's Not What You Find, It's What You Find Out"*, 43 SETON HALL LEGIS. J. 2 (2019)
- CCH Incorporated, LAW OF ELECTRONIC COMMERCE, *Formal Requirements Including Statute of Frauds* §5.03 (2019; 2020; 2021; 2022)
- CCH Incorporated, LAW OF ELECTRONIC COMMERCE, *Non-uniform State Law Approaches* §5.07 (2019; 2020; 2021; 2022)
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- 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; 2020; 2021; 2022)
- James H. Walzer, James W. Kerwin, 16A NEW JERSEY PRACTICE SERIES, *Legal Forms* § 56.14 (2019; 2020; 2021; 2022)
- 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; 2020; 2021; 2022)
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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; 7.23 (2017; 2020)

- Edwin F. Chociey, Jr., Jonathan P. Vuotto & Edward A. Zunz, 40 NEW JERSEY PRACTICE SERIES, *Appellate Practice and Procedure – Appeals from Municipal Court Determinations* §24:1 (2017; 2019; 2020; 2021)
- Laura C. Tharney & Samuel M. Silver, *Legislation and Law Revision Commissions: One Option for the Management and Maintenance of Ever-Increasing Bodies of Statutory Law*, 41 SETON HALL LEGIS. J. 329 (2017)
- 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; 2020; 2021)
- 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
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- John M. Cannel & Laura C. Tharney, *Children in Need Of Services: Toward A More Coherent Approach to Protecting New Jersey’s Children and Families*, 40 SETON HALL LEGIS. J. 1 (2016)
- Susan G. Thatch, *Ante-Mortem Probate in New Jersey – An Idea Resurrected?*, 39 SETON HALL LEGIS. J. 332 (2015)
- Vito J. Petitti, *Assuming the Risk After Hubner: New Jersey Supreme Court Opinion Spurs Revision of the Equestrian Activities Liability Act*, 39 SETON HALL LEGIS. J. 59 (2015)
- Laura C. Tharney & Jayne J. Johnson, *All Hands on Deck: New Jersey Law Revision Commission Recommends Modified Uniform Laws to Safeguard the Public and Address Disasters and Their Aftermath*, 38 SETON HALL LEGIS. J. 339 (2014)
- Sharon Rivenson Mark & Mary Wanderpolo, 45 NEW JERSEY PRACTICE SERIES, *Elder Law—Guardianships and Conservatorships* §§22:28, 32:1 (2014)
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- Regina M. Spielberg, *The Powerful Power of Attorney*, 265- AUG N.J. LAW. 41 (2010)
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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)
- Steven J. Eisenstein & Kevin J. O'Connor, *Enforceability of Oral Agreements and Partial Writings for the Sale of Land under the Revised Statute of Frauds*, 250-FEB N.J. LAW. 37 (2008)
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- Darryl K. Brown, *Democracy and Decriminalization*, 86 TEX. L. REV. 223 (2007)
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- Larry T. Garvin, *The Changed (and Changing?) Uniform Commercial Code*, 26 FLA. ST. U. L. REV. 285 (1999)

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- John J.A. Burke & John M. Cannel, *Leases of Personal Property: A Project for Consumer Protection*, 28 HARV. J. ON LEGIS. 115 (1991)
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In addition to the items referenced above, the Commission was pleased to be mentioned in articles by: Charles Toutant in the New Jersey Law Journal entitled *Commission Calls for Indemnification of County Employees Who Help State Fight Crime* (December 17, 2021); Charles Toutant in the New Jersey Law Journal entitled *Panel Upholds Threat of Imprisonment for Debtors’ Discovery Violations* (October 9, 2019); and 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).

The work of the Commission was also mentioned nationally, in an article concerning unusual divorce laws in effect in various states by Daniel Thomas Mollenkamp, “*Most Surprising Divorce Laws by State*” on Investopedia (September 22, 2021) as well as 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).

There were additional mentions of the work of the Commission in the popular press in 2022, including Business Insider, New Jersey Monitor, NJ.com, Patch.com, and in an article and a television clip featured on NBC Universal Media, LLC’s News 4 New York.

Institutional Collaborations:

The Commission finds that consideration of the work of other states, and other countries, can be useful to help inform its work on projects in various areas of the law, and it is not unusual for the NJLRC to engage in 50-state surveys, and to review studies, findings, and 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 because of its work in the criminal law area and offered 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



3. – *History and Purpose of the Commission*

New Jersey has a tradition of law revision. The first New Jersey Law Revision Commission was the first such commission in the nation. It 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, the functions of the Commission 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 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. Its statutory mandate is 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 Commission 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 Commission 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.*

The Commission 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, one full-time Counsel, 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 existing statutes. When the preliminary research and drafting is finished, the Commission issues a Tentative Report that it makes available to the public for formal comments. The Commission reviews all comments received and incorporates them into the Tentative Report as appropriate. When a revision is completed, a Final Report and Recommendation is prepared and submitted to the New Jersey Legislature for consideration.

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

4. – Final Reports and Recommendations



4. – Final Reports and Recommendations

Autobus

In New Jersey, certain transportation services are exempt from paying taxes on the fuel that they purchase. Both the Petroleum Products Gross Receipts Tax Act and the Motor Fuel Tax Act contain provisions to exempt specific bus services from the tax on fuel. While both Acts utilize the term “autobus,” neither defines the term. The term “autobus” is, however, defined three times in the Public Utilities statutes.

In *Senior Citizens United Community Services, Inc. v. Director, Division of Taxation*, 32 N.J. Tax 381 (Tax 2021), the Tax Court considered whether the Title 48 (Public Utilities) definition of “autobus,” has been incorporated into Title 54 (Taxation) and thereby excludes non-profit corporations operating “special paratransit vehicles” from the exemptions set forth in the Motor Fuel Tax and Petroleum Products Gross Receipts Acts. The Court identified specific language in the Act it considered to be unclear.

In December of 2022, the Commission issued a Final Report that recommends modifications to N.J.S. 54:39-112 and N.J.S. 54:15B-2.1 to make both statutes easier to read and clarify that the term “autobus” in Title 48 does not apply to the motor fuel tax exemption in Title 54.

Disability Benefits After Leaving Public Employment

The Commission examined the issue of whether Public Employees’ Retirement System (PERS) members applying for ordinary disability benefits pursuant to N.J.S. 43:15A-42, must be working in public service to be eligible. The Appellate Division addressed this issue in *Murphy v. Bd. of Tr., Pub. Emp.’s Ret. Sys.*, 2019 WL 1646371 (App. Div. 2019).

In *Murphy*, the Appellate Division considered whether a PERS member who became disabled after leaving public sector employment was eligible for ordinary disability pursuant to N.J.S. 43:15A-42. After reviewing the statute’s legislative history, the Court concluded that the Legislature intended eligibility for ordinary disability benefits to be limited to PERS members working in the public sector.

In April 2022, the Commission released a Final Report recommending that the language in N.J.S. 43:15A-42 be modified to reflect that an eligible PERS member must be “currently employed” in a PERS position at the time of the disability to receive ordinary disability benefits.

Inmate, Use of the Term in New Jersey Statutes

In New Jersey, there is no uniform definition for the term inmate. A person who has been sentenced to imprisonment or ordered into pretrial or investigative detention in a state prison or county correctional facility is an “inmate.” A person confined in a correctional facility is an inmate. A person who has been sentenced as an adult to a term of incarceration is an inmate.

A shift to person-first language has begun in the field of criminal justice, with advocates recommending a change from terms characterized as “dehumanizing” and “stigmatizing” to those that focus on an individual’s

identity and their capacity for growth. New Jersey statutes include the use of person-first language to refer to persons who are incarcerated, but its use in this context is not uniform.

In June of 2022, the Commission issued a Final Report that recommends the removal of the term “inmate” from the New Jersey statutes and the replacement of this term with a uniform, person-first reference to those lodged in correctional facilities, as appropriate.

Interpretation of the Receivership Act

The Commission considered a court’s discretion to appoint a receiver pursuant to N.J.S. 2A:42-117 in the Multifamily Housing Preservation and Receivership Act, based on the Appellate Division’s holding in *Mfrs. and Traders Tr. Co. v. Marina Bay Towers Urban Renewal II, LP*, No. A-5879-17T2, 2019 WL 5395937 (App. Div. 2019).

The Court in *Manufacturers* considered whether a court has discretion to deny the appointment of a receiver if one or both statutory conditions are met, despite ambiguous language in N.J.S. 2A:42-117. The Court reviewed the legislative history of the statute and the Multifamily Housing Preservation and Receivership Act as a whole and concluded that a court has discretion to appoint or deny the appointment of a receiver. In February 2022, the Commission authorized the review of additional language in N.J.S. 2A:42-117, which implied that a judge was authorized to consider *only* the plaintiff’s evidence when determining whether to appoint a receiver.

A Final Report was released in October 2022, recommending that the mandatory language describing the court’s power to appoint a receiver be replaced with permissive language, and the elimination of language that seems to indicate that the determination of whether to appoint a receiver may be based solely on the plaintiff’s evidence.

Personal Conveyance

Pursuant to N.J.S. 39:4-92.4, when the operator of a motor vehicle approaches a pedestrian, bicycle, low-speed electric bicycle, low-speed electric scooter, or any other lawful personal conveyance, they are required to do so with “due caution.” The statute defines the terms bicycle, low-speed electric bicycle, low-speed electric scooter, and pedestrian. The term “lawful personal conveyance,” however, is not defined in N.J.S. 39:4-92.4 or anywhere else in the New Jersey statutes.

Without clarification, the term “lawful personal conveyance” is subject to multiple interpretations. In October of 2022, after a nationwide examination of this subject, the Commission issued a Final Report that recommends the modification of N.J.S. 39:4-92.4 to provide a definition for the term “personal conveyance.” The presence of such a definition is intended to educate the operators of vehicles about their responsibilities when approaching vulnerable road users, and to provide those responsible for enforcing the statute with guidance to uniformly enforce the law.

PERS Re-Enrollment as a Critical Need Employee

The Commission considered the scope of the “critical need” exception to re-enrollment in the Public Employees’ Retirement System (PERS), pursuant to N.J.S. 43:15A-57.2, in light of the Appellate Division’s decision in *Yamba v. Bd. of Tr., Pub. Emp.’s Ret. Sys.*, 2019 WL 2289209 (App. Div. 2019). In that case, the Court was asked to determine whether a retired member of the PERS was exempt from re-enrolling under the “critical need” exception contained in the statute.

In January 2022, the Commission authorized review of the “teaching role” exception to re-enrollment in N.J.S. 43:15A-57.2, which applies to retirees returning to qualifying teaching staff positions, regardless of compensation. Although the “teaching role” exception does not set a yearly salary limit, the statute refers to a \$10,000 salary. The reference is to the original yearly salary limit contained in a third exception to re-enrollment – the “salary cap” exception – permitting retirees who return to work to earn up to a certain amount each year. After the enactment of the “teaching role” exception, the yearly salary limit in the “salary cap” exception was increased to \$15,000, rendering the reference in the “teaching role” exception outdated and unclear.

“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)*

In September 2022, the Commission released a Final Report recommending that the reference to the \$10,000 salary limit be eliminated from the “teaching role” exception, to clarify that the “teaching role” exception applies to all retired members in qualifying teaching staff positions, regardless of the amount of compensation. The Final Report also noted that the \$15,000 salary limit in the “salary cap” exception has not been increased since 2001 but declined to recommend a modification to the salary requirement since doing so involves policy determinations best suited to the Legislature.

Public Health – Definitions

A review of Title 26 Health and Vital Statistics revealed two potentially duplicative definition sections. A preliminary examination revealed that both sections, N.J.S. 26:1-1 and 26:1A1, define the same terms, and do so with similar wording.

Although this project was initially limited in scope, in January 2019, the Commission authorized the review of Title 26 in its entirety to identify additional duplicate definitions. More than 100 duplicate definitions were identified and catalogued.

In April of 2022, the Commission released a Final Report recommending the consolidation of two definition sections in Title 26, as well as the addition of eighteen new defined terms, and the deletion of 149 duplicative definitions of these terms from other sections of the Health Act.

Rescue Doctrine

The rescue doctrine permits a civilian rescuer to recover damages for injuries they sustained because a culpable party placed themselves in a perilous position that invited rescue. In New Jersey, the common law application of the doctrine has been limited to injuries sustained in an attempt to rescue another person – not property.

In *Samolyk v. Berthe*, 251 N.J. 73 (2022), the New Jersey Supreme Court considered the rescue doctrine in the context of a rescuer who voluntarily chooses to expose themselves to significant danger in an effort to safeguard the property of another. Although the Court declined to expand the rescue doctrine to include injuries sustained to protect property, it did recognize that an exception should be made in settings in which the plaintiff has acted to shield human life.

In December of 2022, the Commission issued a Final Report that recognizes that the codification or expansion of the rescue doctrine to include injuries sustained to protect property, or a determination that the development of this doctrine should be left to the common law, involve policy determinations that are best suited to the Legislature. The Commission’s Report brings the New Jersey Supreme Court’s treatment of the rescue doctrine in *Samolyk v. Berthe* to the attention of the Legislature for such action as it deems appropriate.

Roll-back Taxes in the Farmland Preservation Act

The Farmland Assessment Act of 1964 (“Act”) was enacted to preserve family farms by providing farmers with some measure of economic relief. The Act permits land that is “actively devoted to agricultural or horticultural use” to receive special tax treatment provided that the minimum gross sales requirement set forth in the statute is met. The Act also provides separate and independent financial consequences if the land “is ‘applied’ to a use other than agriculture or horticulture, subjecting the landowner to “roll-back taxes.”

“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)

In *Balmer v. Twp. of Holmdel*, 2019 WL 6716716 (Tax 2019), the Tax Court examined whether a farmer who was unable to resume farming activity but did not apply the land to a use other than agriculture was subject to roll-back taxes. The absence of a statutory definition for the term “applied to a use other than agricultural or horticultural” has led the Tax Courts to develop a common law definition for the term that is not readily apparent from a plain reading of the statute and appears to deviate from the intent of the Legislature.

In April of 2022, the Commission issued a Final Report that recommends the modification of N.J.S. 54:4-23.8 through the addition of language to clarify that the cessation of agricultural or horticultural activity is not, by itself, considered a change in the use of the land sufficient to impose roll-back taxes against the landowner.

Self-Representation in Involuntary Commitment and Termination of Parental Rights Matters

In the Matter of the Civil Commitment of D.Y., 218 N.J. 359 (2014) is the case in which the New Jersey

Supreme Court addressed, for the first time, the issue of whether a convicted sex offender who was competent to stand trial had a constitutional right to self-representation during an involuntary commitment proceeding. Subsequently, in *N.J. Div. of Child Prot. & Perm. v. R.L.M.*, 236 N.J. 123 (2018), the Court was faced with the question concerning the right to self-representation in the context of the termination of an individual's parental rights.

An individual facing involuntary commitment, pursuant to the Sexually Violent Predator Act (SVPA), is statutorily prohibited from appearing before the court without counsel. A parent in an action concerning the termination of their parental rights must be advised of the right to retain and consult with legal counsel. The principal statute that sets forth the right to legal representation in such matters is silent on the issue of self-representation.

Neither the SVPA nor the parental rights statutes address the procedures a litigant or a court must follow when individuals wish to represent themselves in these types of proceedings. In December of 2022, the Commission released a Final Report that recommends the modification of N.J.S. 30:4-27.29 and N.J.S. 30:4C-15.4 to provide clear statutory language to address an individual's right to self-representation.

5. – Tentative Reports



5. – Tentative Reports

Accidental Disability Retirement Benefits – Traumatic Event

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 opinions in *Moran v. Board of Trustees, Police and Firemen’s Retirement System*, 438 NJ Super. 346 (App. Div. 2014) and *Mount v. Board of Trustees, Police and Firemen’s Retirement System*, 233 N.J. 402 (2018).

The statute does not define the term “traumatic event” and based on Staff’s preliminary research and a review of the decisions of both the Appellate Division and the New Jersey Supreme Court, the plain 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.

In September 2020 the Commission released a Tentative Report and sought comment from stakeholders. Update Memoranda incorporating commenter feedback were presented to the Commission in March and July of 2021. Research and outreach are ongoing, and a Revised Draft Tentative Report is expected in 2023.

Endangering the Welfare of a Child – Morals

The term “sexual conduct” is not defined in New Jersey’s child endangerment statute. The term, however, does appear in the context of behavior “which would impair or debauch the morals of the child.”

Forty-two years after N.J.S. 2C:24-4 was enacted, in *State v. Johnson*, 460 N.J. Super. 481 (Law Div. 2019) the New Jersey Superior Court, Law Division, considered whether sexually suggestive messages sent to a minor by way of social media constituted they type of sexual conduct that would impair or debauch the morals of a child.

Since the Commission’s release of its Tentative Report on this subject, Staff has been working closely with commenters to determine whether it is appropriate to remove references to the anachronistic and undefined terms and to replace them with language that clearly sets forth the prohibited conduct. A Final Report is anticipated in the Spring of 2023.

Impact of Mail-In Ballots

The Commission authorized a project regarding the impact of N.J.S. 19:63-26, prohibiting invalidation of an election on the basis of defective mail-in ballots, on an election contest claim pursuant to N.J.S. 19:29-1, as addressed by *In the Matter of the Election for Atl. Cnty. Freeholder Dist. 3 2020 Gen. Election*, 468 N.J. Super. 341 (App. Div. 2021).

The Appellate Division determined that N.J.S. 19:29-1 is applicable to elections conducted by mail-in ballot. The Court further held that N.J.S. 19:63-26 operates as a “rebuttable presumption” when one of the grounds for contesting an election in N.J.S. 19:29-1 is asserted.

In October 2022, the Commission released a Tentative Report and sought comment from stakeholders. The Tentative Report proposes modifications clarifying the impact of N.J.S. 19:63-26 on election contest claims brought pursuant to N.J.S. 19:29-1. A Final Report is anticipated in early 2023.

Local Land and Building Law – Bidding

The New Jersey Local Lands and Buildings 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 principal 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).

The Commission engaged in research and outreach 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 was released in February of 2020 and a Revised Tentative Report was released in July of 2020. Staff anticipates the completion of a Final Report in 2023.

Misrepresentation of a Material Fact in the New Jersey Gross Income Tax Act

The New Jersey Gross Income Tax Act (the “Act”) specifies the statute of limitations for tax assessments. The Act requires the Division of Taxation (the “Division”) to assess any tax within three years after a taxpayer has filed a tax return unless the taxpayer has filed a false or fraudulent return. The Division is also authorized to issue an assessment for a deficiency arising out of an erroneous refund within three years from the issuance of such a refund. This statute of limitations is extended to five years when “it appears that any part of the refund was induced by fraud or misrepresentation of a material fact.”

In *Malhotra v. Director, Division of Taxation*, 32 N.J. Tax 443 (Tax 2021), the Tax Court considered the meaning of the term “misrepresentation” as used in N.J.S. 54A:9-4(c)(4). In the absence of a statutory definition and the lack of legislative history regarding the level of intent, the Court determined that misrepresentation must include some level of intent that is more than a mistake.

“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)*

The Division, pursuant to N.J.S. 54A:9-4(c)(1)(B), is authorized to issue a deficiency assessment at any time if a taxpayer files a false or fraudulent return with the intent to evade tax. If, however, a fraudulent return yields a refund to the taxpayer the Division is required to make its deficiency assessment within five-years from the issuance of that refund. Neither a plain reading of the statute, nor the *Malhotra* Court’s decision, provides an explanation for what appears to be a disparity in treatment.

In December of 2022, the Commission Released a Revised Tentative Report on this subject. Staff anticipates working closely with commenters to determine whether it is appropriate to remove the five-year statute of limitations on assessments for erroneous refunds induced by fraud, to eliminate the apparent conflict between the two fraud exceptions contained in this statutory section, and to eliminate the phrase “misrepresentation of a material fact” from subsection (c)(4) to remove the ambiguity created by this undefined term. A Final Report is anticipated in 2023.

Workers Compensation - “Intentional Wrong” Exception

The Commission authorized a project addressing the scope of the “intentional wrong” exception to workers’ compensation coverage in N.J.S. 34:15-8, in light of the Appellate Division decision in *Bove v. AkPharma Inc.*, 460 N.J. Super. 123 (App. Div. 2019), *cert. denied*, 240 N.J. 7 (2019), and *cert. denied*, 240 N.J. 2 (2019).

The statute does not define the term “intentional wrong,” but numerous decisions in the Appellate Division and the New Jersey Supreme Court have addressed the scope of the exception using a two-pronged standard that takes into consideration both the conduct that led to the workers’ compensation claim and the context in which the conduct took place.

A Tentative Report was released in September 2022 proposing to incorporate the two-pronged standard into N.J.S. 34:15-8. There has been extensive feedback and comment regarding the proposed modifications. Staff have been working closely with stakeholders and anticipates the completion of a Final Report in 2023.

Workers Compensation - “Recreational or Social Activities”

The New Jersey’s Workers’ Compensation Act, in N.J.S. 34:15-7, sets forth various defenses to compensation, including that an injury or death arose from an employee’s participation in “recreational or social activities.” The Commission authorized a project to determine whether N.J.S. 34:15-7 would benefit from a modification clarifying the definition of the phrase “recreational or social activities,” in light of the New Jersey Supreme Court decisions in *Goulding v. N.J. Friendship House, Inc.*, 245 N.J. 157 (2021) and *Lozano v. Frank DeLuca Constr.*, 178 N.J. 513 (2004). The *Goulding* and *Lozano* decisions limited the “recreational or social activities” defense to injuries arising from voluntary activities that an employee is not helping to facilitate.

The Commission released a Tentative Report in November 2022, proposing modifications to N.J.S. 34:15-8 which clarify the definition of the phrase “recreational or social activities,” consistent with the New Jersey Supreme Court decisions, and seeking input from interested organizations and individuals. A Final Report is anticipated in early 2023.

Wrongful or Mistaken Imprisonment and NERA

In New Jersey, the term of parole supervision for persons who were convicted of certain violent crimes begins upon the completion of the sentence of incarceration imposed by the Court. At the time that the statute

was enacted, it did not address the circumstance of a defendant wrongfully or mistakenly compelled to remain in prison beyond their prescribed sentence, and then mandated to serve the entire period of parole supervision.

In *State v. Njango*, 247 N.J. 533 (2021), the New Jersey Supreme Court considered whether the period of parole supervision the defendant was required to serve under the No Early Release Act (NERA) should be reduced when the defendant's time in prison exceeded the permissible custodial term authorized by his sentence. The Court determined that a defendant who is kept in prison beyond their release date, without credit for such time, would serve more time in custody than is authorized by their sentence. Therefore, the Court held that in such instances the excess time that is erroneously served in prison must be credited to reduce the period of parole supervision.

The Commission released a Tentative Report in July 2022, proposing modification of N.J.S. 2C:43-7.2 to address the constitutional infirmity discussed by the Court in *State v. Njango* and to make the statute more accessible. A Final Report is anticipated in early 2023.

6. – Work in Progress



6. – *Work in Progress*

Additional Rents

Pursuant to New Jersey eviction statutes, a tenant may be subject to eviction for failure to pay rent. “Rent” is not defined in the State statutes. Throughout the State there are legal limits on the maximum allowable monthly rent set by federal, State, and local authorities.

In *Opex Realty Mgmt v. Taylor*, 460 N.J. Super. 287 (Law. Div. 2019), the Court considered whether non-payment of late fees and legal fees, deemed “additional rent” in the lease, may form the basis of an eviction when the “additional rent” would cause the total rent to exceed the maximum rent allowed by local ordinance. The Court found that fees may not be imposed on tenants as “additional rent” for the purposes of eviction if they would raise the total rent above the legal limit.

The Commission directed Staff to engage in outreach to various stakeholders to ascertain whether the issue is prevalent throughout the state. Staff anticipates providing the Commission with the preliminary research in 2023.

Anachronistic Statutes

The Commission periodically works to identify potentially anachronistic statutes. Statutes may be deemed anachronistic for a variety of reasons. In some cases, they have been deemed unconstitutional or superseded by more recently enacted statutes. Other statutes may still be legally enforceable but, in practical terms, their operative effect may have ceased with the passage of time. Still others 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 most recent work on anachronistic statutes, done in 2018, 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.

Proposing the elimination of some of those statutes was complicated by the fact that they were referred to by other 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. The issuance of a Final Report is anticipated in mid-2023.

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 an 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. Although the process and effect vary by jurisdiction, the existence of an ante-mortem probate option offers testators in those jurisdictions an opportunity to prevent a will contest after their death. This 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 matters during the testator’s lifetime could lead to family disturbances and potentially waste judicial resources.

The Seton Hall Legislative Law Journal published the article, “Ante-Mortem Probate in New Jersey – An Idea Resurrected?”, 39 SETON H. LEG. J. 332 (2015), written by Susan Thatch, a member of the Commission staff at the time. This article reviewed the historical and statutory background of ante-mortem probate legislation and evaluated the potential of this type of legislation in New Jersey. Additional work in this area is anticipated in 2023.

Audit Adjustments Involving Returns from Closed Years

A deficiency assessment for corporate business taxes is governed by the State Tax Uniform Procedure Law provided for in the Taxpayer’s Bill of Rights. The Director of the Division of Taxation is authorized and empowered with broad discretion to adjust and redetermine the tax returns to make a fair and reasonable determination of the amount of tax payable under the act. The Director is not permitted to assess additional tax after the expiration of more than four years from the date of filing of a return.

During the course of an audit, the Director may determine that a corporate taxpayer has carried forward items, such as net operating losses. The tax statutes do not address a situation in which the Director adjusts an “open filing” and eliminates the net operating loss carryover from tax years that were never audited and were accepted as filed by the Director. In *R.O.P. Aviation, Inc. v. Director, Division of Taxation*, 32 N.J. Tax 346 (Tax 2021), the Tax Court determined that the Director may not perform an audit adjustment to current filings that eliminated a plaintiff’s carried forward net operating losses from closed filings.

In June of 2022, the Commission authorized Staff to conduct a nationwide examination of this issue. Work is ongoing and expected to continue in 2023.

Biometric Data

As a routine part of daily life, biometric data is being collected by mobile devices, internet searches, security screenings, employee attendance devices, video doorbells, and home security systems. The rate at which this data is collected and the possibility of it being stolen and used for nefarious purposes led many states to consider its regulation.

In *McDonald v. Symphony Bronzeville Park, LLC*, No. 126511 slip op. at 2 (Ill. Feb. 3, 2022), the Illinois Supreme Court considered the language of the State’s Compensation Act and the Privacy Act to determine whether the Compensation Act’s exclusivity provisions bar an employee’s claim filed in circuit court for statutory damages under the Privacy Act.

To this time New Jersey has no comprehensive data privacy laws. Although an “Invasion of Privacy” statute is found in the New Jersey Criminal Code, this statute does not address data privacy. The statutes that mandate the reporting of data breaches and the security of social security numbers do not address the collection of personal identifiers.

In October of 2022, the Commission authorized Staff to examine the work of the Uniform Law Commission in this area. Work is ongoing in this area and is expected to continue in 2023.

Books and Records of Account

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

“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)*

In *Feuer*, the plaintiff sought the production of twelve broad categories of documents from Merck. In response, Merck’s Board appointed a “Working Group” to evaluate the demands, retain counsel, investigate, and recommend a response related to the acquisition of the pharmaceutical firm. The Working Group rejected all of the plaintiff’s demands. 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 all records, books, and documents of a corporation,” but it also noted that the phrase is not defined within the statute. Work is ongoing on this project to assess

whether revisions to the statute would be of use, and an Update Memorandum is anticipated in early 2023.

Citizen’s Arrest

New Jersey has recognized the doctrine of “citizen’s arrest” since before the turn of the twentieth century. Under certain circumstances, this doctrine authorizes a private person to detain another without a warrant or process and bring them before a statutorily designated member of the judiciary.

During the past century, organized police forces have become the norm and the necessity for the “citizen’s arrest” doctrine has waned. Relying on a statute enacted over a century ago also raises questions regarding the level of suspicion necessary to detain another individual, the amount of force that may be used to effectuate such an arrest, the length of detention that is legally permitted, and the breadth of the immunity granted to those who act pursuant to these statutes.

The Commission, in November of 2020, directed Staff to conduct additional research to determine how best to modify the shoplifting statute to address present social concerns. A Tentative Report is expected in the Spring of 2023.

Driving While Intoxicated Statute - Applicability to Bicycles

A person who operates a motor vehicle while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit producing drugs,” or operates a motor vehicle with a blood alcohol concentration over an enumerated limit, may be found guilty of driving while intoxicated. A conviction for driving under the influence carries with it: a fine; a period of detainment; the possibility of imprisonment; and the requirement of an ignition interlock device. Over the past four decades, a conflict has developed in the case law concerning the applicability of N.J.S. 39:4-50 to those who operate bicycles while intoxicated.

The Commission has been asked to consider whether the DWI statute applies to persons who operate bicycles while intoxicated. It appears that in the absence of an Appellate Division decision on this subject, the conflict in the common law has caused confusion about the applicability of N.J.S. 39:4-50 to bicyclists.

In November of 2022, the Commission authorized Staff to conduct additional research to include motorized conveyances. A Tentative Report is anticipated in the Spring of 2023.

Exception to Publication in Central Sex Offender Registry

Pursuant to N.J.S. 2C:7-13, if an offender’s “sole sex offense” meets the requirements for one of the exceptions in subsection (d), the individual’s registration records “shall not be made available to the public on the Internet registry.” The Commission authorized research and outreach to determine whether the statute would benefit from a modification clarifying the exception for an offense involving victims related by blood or affinity to the offender, or to whom the offender stood *in loco parentis*, in light of the New Jersey Supreme Court decision in *In re N.B.*, 222 N.J. 87 (2015).

In that case, the Court considered whether an offender whose conviction, which otherwise qualified under the exception, but involved multiple acts of sexual contact, was a “sole sex offense,” as defined in N.J.S. 2C:7-13. The *N.B.* Court concluded that the exception is applicable when a single conviction involves more than one sexual contact with a single victim in the same household as the offender.

Staff continues to conduct research and outreach to determine whether and how N.J.S. 2C:7-13 can be clarified to reflect the Supreme Court’s holding in *In re N.B.* A Tentative Report is anticipated in 2023.

Expungement – Meaning of Closely Related Circumstances

Subject to certain enumerated exceptions, New Jersey’s expungement statute allows a person to present an expungement application to the Superior Court for more than one indictable offense. Crimes, or a combination of crimes and offenses, that were interdependent or closely related in circumstances and committed

as part of a sequence of events within a comparatively short period of time, colloquially referred to as a “crime spree,” may be eligible for expungement under certain circumstances.

In the Matter of C.P.M., 461 N.J. Super. 573 (App. Div. 2019) is a case in which the Appellate Division analyzed the term “closely related in circumstances” to determine whether the offenses committed by a petitioner who was under the influence of drugs during the three-month period in which the offenses occurred were sufficiently related to grant his petition for an expungement.

Staff was authorized to examine this area to assess whether it would be useful to clarify “interdependent,” “closely related in circumstances,” and “comparatively short period of time” in N.J.S. 2C:52-2 and a Tentative Report is anticipated in 2023.

Guardianship

Work continues on a project to consider the Uniform Guardianship, Conservatorship, and other Protective Arrangements Act (UGCOPAA) and its interplay with existing New Jersey law. The UGCOPAA is a comprehensive guardianship and conservatorship statute that overlaps with portions of New Jersey’s probate law, Title 3B.

The Commission compared sections of the UGCOPAA, Title 3B, and Title 30 of the New Jersey statutes to assess the substantive differences and identify provisions that 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 unable to care for themselves.

A Final Report is expected in 2023.

Household Member - Definition of in Prevention of Domestic Violence Act

The New Jersey Legislature considers domestic violence a serious crime against society. The Legislature enacted the Prevention of Domestic Violence Act (PDVA) to assure victims of domestic violence the maximum protection from abuse that the law can provide.

The PDVA protects any individual eighteen years of age or older who has been subjected to domestic violence by a present or former household member. The term household member is not defined in the PDVA.

In November of 2020, the Commission directed Staff to engage in outreach to various stakeholders to determine whether the PDVA, specifically N.J.S. 2C:25-19(b), would benefit from the addition of the term “household member.” A Tentative Report on this subject is anticipated in the Spring of 2023.

Interest Rates in Eminent Domain Actions

The Eminent Domain Act of 1971 (Act) was enacted to establish uniformity in condemnation actions and contains a “general repealer” applicable to agencies and organizations able to exercise the power of eminent domain. A statute in the Act, N.J.S. 20:3-32, sets forth the procedure for calculating interest on just

compensation awards. An older statute, N.J.S. 27:7-22, provides that a six percent interest rate is applicable to all just compensation awards.

The Commission authorized a project to address the conflict between these two statutes, as discussed by *State by Comm’r of Transp. v. St. Mary’s Church Gloucester*, 464 N.J. Super. 579 (2020). The Appellate Division held, based on the legislative history of N.J.S. 20:3-50, the dates of enactment, and the general repealer language, that the Act’s goal of creating uniformity in the area of eminent domain “include[d] interest rates” on just compensation awards. The Commission also authorized Staff to expand the scope of the project to include other eminent domain statutes which might be affected by the holding in *St. Mary’s*.

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

*Andrew O. Bunn, Esq.,
BDO USA, LLP*

Staff continues to conduct research into the nearly 300 other eminent domain statutes to determine whether any statutes in addition to N.J.S. 27:7-22 would benefit from a modification clarifying the impact of the general repealer language in the Act.

Landlord/Tenant

The Commission previously engaged in a substantial project concerning New Jersey’s Landlord and Tenant law and released a Final Report in 2012. The Commission’s prior Report in this area incorporated the New Jersey Safe Housing Act (“SHA”). Staff later reviewed the 2015 Revised Uniform Residential Landlord and Tenant Act with an emphasis on Article 11 of that Act, to determine whether New Jersey is employing the “best practices” in this area of law. The review included information from the Uniform Law Commission (“ULC”), New Jersey’s statutes and pending legislation in this area, and a preliminary review of relevant New Jersey case law.

Based on Staff’s comparison of the Uniform Act with the SHA, it appears that modifying the SHA to recognize psychological harm would align it with both the Uniform Act and the Prevention of Domestic Violence Act. A Tentative Report is anticipated in Spring of 2023.

Law Against Discrimination - Definition of “Legal Representative”

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. June 26, 2017), the Appellate Division was confronted with a “Supersession Order” issued by the Attorney General to the Camden County Prosecutor’s Office to take control of the Camden City Police Department. This Order was then coupled with the County Freeholder’s execution of a consulting agreement with a third-party contractor. The Court ultimately decided

that an employment relationship did not exist between the plaintiff, a city police officer, and the defendant, the Camden County Prosecutor.

Under the existing law, it is unclear whether third parties should be considered “legal representatives” subject to liability under the LAD. The term “legal representative” is not defined in the LAD. The Commission authorized Staff to engage in outreach to various stakeholders to determine whether including a definition for the term “legal representative” would be of assistance in furthering the purpose of the LAD in instance such as those in *Tomkins v. Thomson*. Work on this project will continue in 2023.

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 authorized a project to identify potential changes to the Municipal Vacancy Law that could improve its organization and effectiveness. Staff continues to engage in research and outreach on this project.

Nonprofit Organizations

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

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

Staff is in the process of reviewing the Nonprofit Act and comparing it to the Business Act, with a goal of identifying Business Act modifications that would be similarly useful in the Nonprofit Act. This project has received the support of New Jersey’s Center for Non-Profits, and Staff anticipates working closely with this organization in the preparation of a Tentative Report anticipated to be released in 2023.

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 and how updating the statute would facilitate compliance with the notice provision and anticipates presenting its recommendations to the Commission in 2023.

Open Public Records Act

The Commission began work concerning various aspects of the Open Public Records Act (OPRA), and the work has been consolidated into a single project including the following aspects.

- *Catalyst Theory*

In *Grieco v. Borough of Haddon Heights*, 449 N.J. Super. 513 (Law Div. 2015) a governmental agency voluntarily produced requested records after a lawsuit was filed following an OPRA request. Pursuant to OPRA, to qualify for counsel fees, a plaintiff must be a “prevailing party” in a suit brought to obtain access to government records. The plaintiff must therefore prove that the legal action was the “catalyst” that induced the defendant’s compliance with the law.

- *Meaning of Name and Identity*

The OPRA exception for records of an ongoing investigation was considered by the New Jersey Supreme Court in *North Jersey Media Group, Inc. v. Township of Lyndhurst*, 229 N.J. 541 (2017). In that case, the Court assessed how to interpret two exceptions in OPRA. Among the Court’s determinations was that Section 3(b) of OPRA uses “name” and “identity” interchangeably. Staff sought authorization to conduct additional research and outreach to determine whether editing Section 3(b) regarding “name” and “identity,” or modifying the statute in some other limited way, would aid in interpreting the provision.

- *Redaction*

In *Paff v. Bergen County*, 2017 WL 957735 (App. Div. 2017), the Appellate Division considered several issues pertaining to the OPRA. One was whether the County violated OPRA by denying the requestor access to redacted information.

Work on these issues is expected to continue in 2023.

Parentage

The New Jersey Parentage Act, based on the Uniform Parentage Act, was enacted in 1983 to address issues concerning children born to unmarried parents. The goal of the Act was to establish that all children and parents have equal rights with respect to each other regardless of the marital status of the parents, and to provide

a procedure for establishing parentage in disputed cases.

The work of the Commission in this area is intended to deal with the rights and obligations between parents and children, and to address the scientific and social changes that have occurred since 1983 when the current statutes were enacted, particularly concerning determinations of genetic parentage and parentage based on spousal relations or operation of other law.

In October of 2022, the Commission paused its active work in this area at the request of commenters, who advised that they were actively working with the New Jersey State Bar Association on a comprehensive update of New Jersey’s law concerning parentage, including policy matters beyond the scope of the Commission’s project.

Parental Rights – Voluntary Relinquishment

Title 9 of the New Jersey statutes “Children – Juvenile and Domestic Relations Courts” and Title 30

“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)*

“Institutions and Agencies” both contain provisions concerning the voluntary relinquishment of parental rights and use the term “surrender” to refer to that relinquishment. The term “surrender” appears in twenty-one statutory sections across Title 9 and Title 30, 19 of which concern parental rights.

The New Jersey State Bar Association requested, pursuant to N.J.S. 1:12A-8, that the New Jersey Law Revision Commission review the use of the term “surrender” in the context of voluntary relinquishments of parental rights and consider replacing the term to accurately describe the “nature of the issue.”

A Tentative Report is expected in 2023.

Prerequisites for Recording

In 2016, a member of the public contacted the 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 “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).

The Commission had included the “subdivision” language in subsection (b) when initially recommending the enacted mortgage recording statute. Staff will reach out to the Legislature in an effort to correct the language.

Public Hearing on Tenure Charges

Under the Tenured Employee Hearing Law, N.J.S. 18A:6-11, the “consideration and actions” of a board of education as to a tenure charge made against an employee “shall not take place at a public meeting.” The statute, however, does not address the Open Public Meetings Act, N.J.S. 10:4-12(b)(8), which states that a “public body may exclude the public” from a portion of an otherwise public meeting when the public body discusses a matter involving specified matters concerning employment unless “the individual employees...whose rights could be adversely affected request in writing that the matter... be discussed at a public meeting.” The interplay of these two statutes was discussed in *Simadiris v. Paterson Public School District*, 466 N.J. Super. 40 (App. Div. 2021).

In December 2021, the Commission authorized work in this area and a Draft Tentative Report is anticipated in the Spring of 2023.

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 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, 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.” Staff is assessing whether this issue should remain a stand-alone project or be combined with the Commission’s previous work in the Landlord-Tenant area.

Tax Assessment Jurisdiction

The Commission authorized a project to conduct research and outreach regarding modifications to N.J.S. 54:3-21, which contains the jurisdictional and procedural requirements for appealing a property assessment. In *30 Journal Square Partners, LLC v. City of Jersey City*, 32 N.J. Tax 91 (N.J. Tax 2020), the Tax Court discussed the lack of a statutory mechanism for transferring jurisdiction to the Tax Court when there are dual filings in the Tax Court and the County Board by opposing parties.

Staff provided an Update Memorandum to the Commission in March 2022, following preliminary outreach to the Administrative Office of the Courts. The Commission then authorized continued work in this area. Staff continues to conduct research and outreach to determine how best to incorporate such a procedural mechanism in the statute. A Tentative Report is anticipated in early 2023.

Time for Furnishing Medical, Surgical, and Other Treatment to an Injured Worker

The New Jersey Workers' Compensation Act provides a no-fault system of compensation for workers who are injured during employment. Since 1911, these remedial statutes relieve injured employees from the burden of paying for their own medical care and replace lost wages. New Jersey courts have liberally construed these statutes to accomplish their humanitarian ideals.

The Workers' Compensation Statutes require the employer to furnish an injured worker with medical, surgical, and other treatment, and hospital service as necessary to cure and relieve the worker of the effects of the injury and to restore the injured worker to the extent possible. The duty to provide adequate medical treatment to an injured worker is absolute.

The "medical and hospital service" provision set forth in N.J.S. 34:15-15 does not set forth a time within which an employer must furnish the medical treatment called for in that section. The Commission has authorized Staff to conduct the research and outreach necessary to determine whether work in this area would be useful. Additional work is expected in 2023.

Tort Claims Act Notifications

The Commission authorized work on a project to determine whether the Tort Claims Act (TCA) should be modified to address the intersection of bystander liability claims and the TCA's notice requirements pursuant to *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 whether it is appropriate to await additional judicial clarification before recommending changes to the statute.

"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)*

Tort Claims and Wrongful Imprisonment Claims

The New Jersey Tort Claims Act (TCA), N.J.S. 59:1-1 et seq., provides procedural and substantive requirements for bringing a tort claim against public entities and public employees. The TCA renders public employees liable for an act or omission to the extent that a private person would be liable unless an immunity attaches.

In *Nieves v. Off. of the Pub. Def.*, 241 N.J. 567 (2020), the New Jersey Supreme Court considered whether legal malpractice claims are exempt from the TCA and whether the plaintiff's 'loss of liberty' damages claim is subject to the verbal threshold of the TCA. The Court considered whether N.J.S. 59:9-2(d) is clear regarding whether loss of liberty damages are a subset of pain and suffering damages. Staff was authorized to engage in

additional research and outreach to determine whether it would be appropriate to modify N.J.S. 59:9-2 in response to the issues raised by *Nieves*.

Unemployment Compensation for the Wrongfully Incarcerated

The New Jersey Unemployment Compensation Law (“Act”) provides that an individual who voluntarily leaves work “without good cause attributable to such work” is “disqualified for benefits” until certain conditions have been met. An individual’s separation from work as a result of incarceration is reviewed, pursuant to the applicable regulations, as if the individual voluntarily left their employment.

In *Haley v. Board of Review, Department of Labor*, 245 N.J. 511 (2021), the New Jersey Supreme Court examined whether pretrial detention premised on charges that are subsequently dismissed is, automatically, a disqualifying separation from work within the meaning of the Act. The absence of statutory language to address the loss of employment due to wrongful incarceration leaves open the possibility that individuals who are wrongfully detained may be precluded from receiving unemployment benefits.

Staff was authorized to engage in additional research and outreach to determine whether it would be appropriate to modify N.J.S. 43:21-5. A Tentative Report is anticipated in early 2023.

Uniform Power of Attorney Act

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 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 released in 2013 by the Uniform Law Commission to establish a national standard of statutes regarding powers of appointment. New Jersey has a patchwork of statutes and common law governing powers of appointment, with most of the case law dating from the early to mid-1900s. It appears that the existing body of law could benefit from a codification of the law regarding powers of appointment in line with the UPAA to bring the existing standards into a modern and accessible form. 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. Since then, the UPC has been modified a number of times, most recently in 2019. The promulgation of the Uniform Parentage Act of 2017 necessitated amendments to the UPC's intestacy and class-gift provisions. The 2019 amendments provide a more consistent formula for determining intestate shares within blended families, remove outdated terminology, and incorporate the concept of de facto parentage. The intestacy formula also accounts for the possibility that a child may have more than two parents, and therefore more than two sets of grandparents.

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.

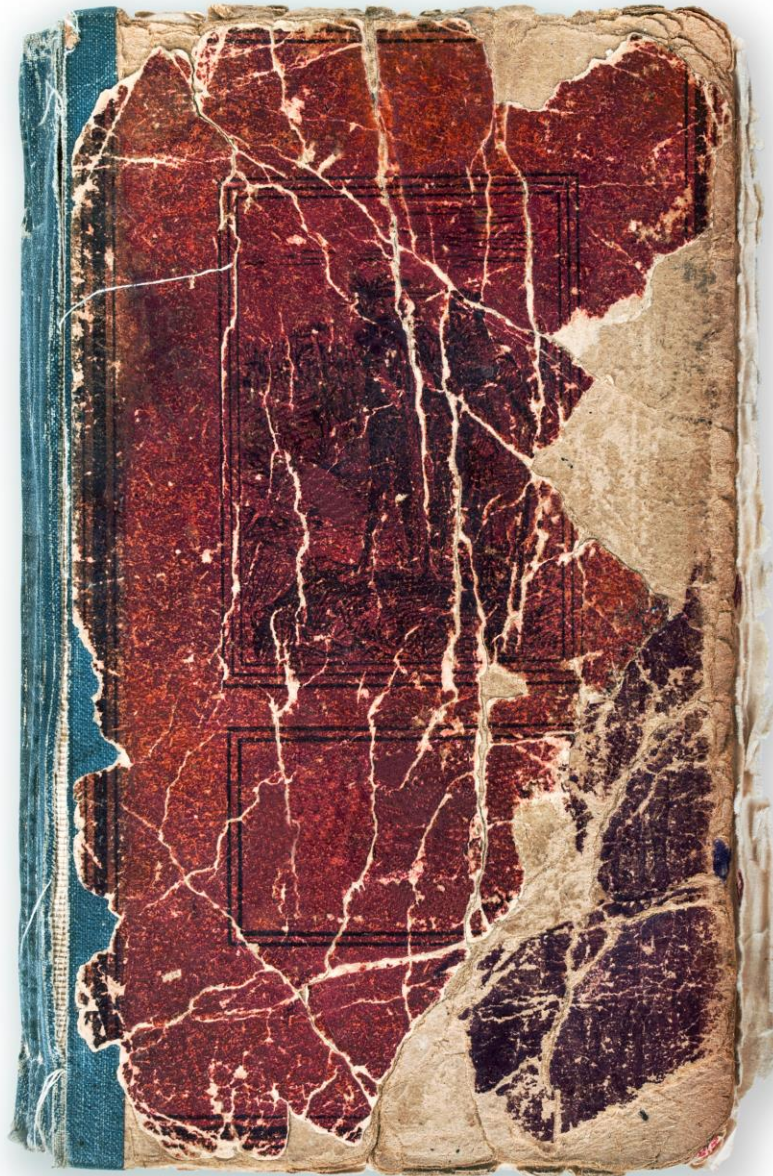
Use of Civilian Monitors in Wiretap Investigations

The New Jersey Wiretapping and Electronic Surveillance Control Act (the Act) regulates the process that the state and local law enforcement must follow when intercepting communication for the purposes of a criminal investigation. The Act contains a section intended to reduce the intrusion on individual privacy rights.

In *State v. Burns*, 462 N.J. Super. 235 (App. Div. 2020) certif. den. 241 N.J. 477, the Appellate Division considered, as a matter of first impression, whether the State's use of "federally-contracted civilian monitors" to intercept communications was lawful under the Act. N.J.S. 2A:156A-12 concerns the requirements and limitations placed on an order under the Act. This section allows "investigative or law enforcement officers" to participate in wiretap investigations, but it is silent on whether the State may utilize civilian monitors.

The Court determined that because the civilian contractors had been deputized and sworn in as "special county investigators," they were "investigative or law enforcement officers." As a result, the Court declined to review whether the Act permits non-deputized civilian personnel to monitor intercepted communication. Instead, the Court said that the Legislative and Executive branches of government would be better suited to address whether N.J.S. 2A:156A-12 includes non-deputized civilians. Work will continue in this area in 2023.

7. – Concluded or No Action Recommended



7. – *Concluded or No Action Recommended*

Collateral Consequences of Criminal Conviction

Begun in 2011 as a three-part project in response to *In re D.H.*, 204 N.J. 7 (2010), the Commission’s work in the area of collateral consequences of conviction was broad in scope. The parts of the project as initially identified by Staff were: (1) update the Rehabilitated Convicted Offenders Act (RCOA), N.J.S. 2A:168A-1 et seq.; (2) coordinate treatment of the statutes dealing with forfeiture after conviction; and (3) address the impact of conviction on public office.

Staff began with an effort to revise the RCOA, which was enacted in two sections, to synthesize its provisions so that they formed a more coherent whole. With the assistance of Legislative Law Clerks, progress was made on this aspect of the project.

In addition to the work done concerning the RCOA, Staff (including the Legislative Law Clerks) also engaged in a review of the collateral consequences resulting from criminal convictions that are imposed by state law. The Criminal Justice Section of the American Bar Association, fulfilling the terms of a Congressional grant, identified 1,051 New Jersey statutes or regulations imposing ancillary sanctions – legal disabilities imposed or authorized that flow from, but are not part of, an individual’s criminal sentence.

Work was also done to identify statutes authorizing or imposing collateral consequences on the basis of “moral turpitude” or a lack of “good moral character” to assess whether it would be possible and useful to craft definitions for those phrases so that provisions concerning similar situations are interpreted and applied in a consistent manner. The third part of this project focused on an analysis of the statutory language and cases that concerning the forfeiture of public office, and a determination about whether it would be useful to distinguish between different types of public employees and different types of offenses, and to treat them differently for purposes of forfeiture.

Bills substantially modifying the RCOA were introduced in the 2016-2017 legislative session. Consistent with Commission practice, Staff discontinued active work in this area in deference to the legislative activity. Ultimately, the bills were not enacted, but competing demands on Staff time made it difficult to devote resources to this large project, and the passage of time means that much of the earlier work would have to be duplicated to bring the research current. Although this project focused on important issues, it does not appear that the Commission will have the resources to devote to a project of this scope in the near future.

The Commission concluded its work in this area in September 2022.

Communications Data Warrants and Electronic Communications

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. When this potential project was presented to the Commission in January 2018, the law in this area did not appear to reflect relatively recent technological advances. Staff suggested that the Legislature might wish to consider whether the outcome of this case matches the intent behind the statute. At the time that the Commission considered and authorized Staff to engage difficult and complex area of law, it recognized that due to frequent technological advancements and changes, it would be important to consider the resources that the Commission wishes to devote to this task before delving too deeply into this area.

Staff was directed to include, in a future submission to the Commission, information about the resources that would be necessary to complete the Commission’s analysis of this area. The Commission’s concerns about resources were well-founded. Competing demands on Staff time made it challenging to devote resources necessary to even begin this large project. Although this project focused on important issues, it does not appear that the Commission will have the resources to devote to it in the near future.

The Commission concluded its work in this area in September of 2022.

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. It has also 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.

In an effort to target its work effectively, Staff prepared a Memorandum identifying some of the more frequently litigated provisions of New Jersey’s CFA, including: (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. These challenging issues resulted in a number of bills pending in the Legislature as the Commission began its work. During its early work on this project, Staff also proposed for Commission consideration an alternative organizational structure for the CFA.

Although the Commission does not generally work in areas that are a current focus of the Legislature, the legislative proposals under consideration during active Commission work on the CFA did not comprehensively address the issues that the NJLRC identified for possible revision. Even with a limited focus on the sprawling CFA, Staff found it difficult to devote the resources to engage in the work necessary to meaningfully assess the changes to the law and the large number of relevant cases.

Since it does not appear that the Commission will have the resources to focus on this project in the near future, the Commission concluded its work in this area in September 2022.

DNA Evidence, Statute of Limitations

In July 2022, the Commission authorized a project addressing ambiguous language in N.J.S. 2C:1-6, which contains the statute of limitations in criminal cases involving DNA evidence. In *State v. Thompson*, 250 N.J. 556 (2022), the New Jersey Supreme Court considered whether the statute of limitations should be tolled until the State obtains a match between physical evidence from the crime scene and a sample from a matching suspect, rather than when the State is in possession of these two essential pieces of evidence. The *Thompson* Court held that N.J.S. 2C:1-6 “requires the statute of limitations in cases involving DNA evidence to begin when the State possesses the physical evidence from the crime as well as the DNA sample from the defendant, not when a match is confirmed.”

On September 15, 2022, Assembly Bill 4418 was introduced in the New Jersey General Assembly. This bill directly addresses the issue raised by the Court in *Thompson*, proposing an amendment to N.J.S. 2C:1-6 to start the statute of limitations when “a match between the physical evidence and DNA . . . evidence has been confirmed.” After it was made aware of this information, the Commission suspended its work in this area.

Expungement

The Commission began work on a project in 2015 pertaining to the expungement of juvenile adjudications, codified at N.J.S. 2C:52-4.1 after 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 adult convictions.

The Commission drafted proposed revisions to clarify N.J.S. 2C:52-4.1 and simplify the statutory language to assist individuals in filing pro se expungement provisions. A Tentative Report incorporated these revisions and proposed the elimination of subsections of N.J.S. 52-4.1 that 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. A Revised Tentative Report was released in 2016. Commenters on the project, including prosecutors, were generally supportive of the Commission work in this area.

In 2017, expungements were the focus of considerable legislative activity as well as several appellate decisions in New Jersey. The Legislature, in a bipartisan effort led by the Governor to extend the “Opportunity to Compete” — also known as the “Ban the Box” measure — crafted a trio of bills aimed at easing the process for expunging juvenile adjudications and adult convictions. Staff efforts to engage with the Legislature did not result in interest in the work of the Commission in this area and, in response to the Legislature’s work in this area, Staff discontinued its active work. It did begin a project regarding the meaning of “closely related circumstances” in the expungement context in 2021. Staff formally concluded its work on the larger expungement project in September of 2022.

Franchise Practices Act

In April 2014, the Commission authorized work on the New Jersey Franchise Practices Act (NJFPA) as a

result of the decision of the District Court in *Navraj Rest. Group, LLC v. Pancho's Franchise Corp.*, 2013 WL 440837 (D.N.J. Aug. 15, 2013).

Staff work in this area resulted in the preparation of a Draft Tentative Report in 2014, and Revised Tentative Reports in 2015, 2016, and 2017, during which time the scope of the project was narrowed to focus on the gross sales threshold and forum-selection issues.

Legislative activity in this area, ultimately resulting in changes to the NJFPA, caused Staff to pause the Commission's work, and competing demands on the Commission's time meant that work did not thereafter resume. The Commission formally concluded its work in this area in September of 2022.

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. 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." The New Jersey Supreme Court, which has exclusive jurisdiction to regulate attorneys, has refused to apply this statute to anyone other than non-lawyer parties.

There is presently no statute in New Jersey that addresses frivolous litigation in appellate matters. Competing demands on Staff time meant that work on this project did not progress beyond preliminary research, and the Commission formally concluded its project in this area in September of 2022.

Model Entity Transactions Act (META)

In March of 2017, the Commission authorized Staff to engage in additional research and outreach regarding the Model Entity Transactions Act (META), which represents a collaborative effort between the Uniform Law Commission (ULC) and the American Bar Association to address business issues that fall within their shared areas of expertise. META was released by the ULC in 2007, and subsequently revised in 2011 and 2013.

The Commission requested that Staff determine whether states with economies and demographics similar to New Jersey had enacted or considered the Act, and whether Staff could identify issues considered by other jurisdictions when determining whether or not to adopt the Act or parts of it. Consistent with the direction provided by the Commission, Staff engaged in detailed research and began outreach in this area. During the legislative session encompassing Staff's work, however, a bill was introduced in the Legislature that addressed much of the substance of META. Similar bills were introduced in subsequent legislative sessions, and Staff deferred substantive work in this area as a result.

Since the bill that substantially addressed the substance of META received legislative attention and moved forward in the 2022-2023 legislative session, the Commission concluded its work in this area in September of 2022.

Property Taxation

The Commission originally began this project in 1997 at the suggestion of Lawrence Lasser, who was then a recently-retired Chief Judge of the Tax Court. Judge Lasser indicated at the time that the current law was not well organized or expressed. In addition, he advised that some of the statutes contain language not in accord with court decisions or settled practice. Judge Lasser’s role was critical and, with his untimely death in 1998, the project was suspended.

When Staff presented to the Commission a request for authorization to re-establish the project, Staff explained that it anticipated that the project would be based on the drafts of eight chapters comprising the first two articles of the law that were produced in 1998. That material deals with what property is taxable, and how it is to be assessed. Staff acknowledged at the time that even with the old draft as a starting point, this would not be a small project. The 1998 draft would have to be brought up to date to reflect the statutory changes and the numerous judicial decisions since that time.

The focus of the project was to establish a clear assessment process. It was not clear at the time whether the Legislature would be interested in considering Commission work in this area, and Staff was directed to reach out to potentially interested parties to assess the viability of the project. Commission Staff began work to update the older Commission work and engaged in efforts to identify experts to review drafts. The Taxation Committee of the New Jersey State Bar Association expressed preliminary interest in the project and brief early discussions were held with the New Jersey League of Municipalities.

Despite its best efforts at the time, Staff was unable to identify individuals with expertise in this area who were available and willing to assist with, and comment on, Commission work in this area. The last active work by the Commission in this area was in January 2017.

Since that time, the Commission has worked on other projects concerning taxation. Given the challenges associated with finding knowledgeable individuals willing to participate in the Commission’s work in this area, and the resources required to successfully bring a project in this area to conclusion, it does not realistically appear that Commission Staff will be able to focus on this project in the near term. The Commission concluded its work in this area in March of 2022.

“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
(2015)*

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. The 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.

A 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.

Informal outreach to the Legislature at the direction of the Commission in September 2017 did not result in any response and competing demands on Staff time meant that work on this project did not move beyond the Memorandum stage. The Commission formally concluded its work in this area in September of 2022.

Termination of Alimony

The Commission authorized a project in early 2022 involving N.J.S. 2A:34-23(n), which allows for the termination of alimony on the basis of cohabitation by one party. In *Temple v. Temple*, 468 N.J. Super. 364 (App. Div. 2021), the Appellate Division addressed whether the statute requires a movant to present evidence on each of the statutory factors listed in N.J.S. 2A:34-23 to establish a *prima facie* showing of cohabitation, and entitle the movant to discovery and a hearing on the issue. The *Temple* court held that a *prima facie* showing of cohabitation does not require a movant to provide evidence on each statutory factor.

Further research in this area revealed that subsequent Appellate Division decisions have approvingly cited the principle articulated in *Temple* when determining whether a movant has made a *prima facie* case of cohabitation. In addition, the holdings of several Appellate Division decisions issued prior to *Temple* confirmed that a *prima facie* showing of cohabitation does not require evidence on all six statutory factors. After reviewing the updated information in November of 2022, the Commission concluded its work in this area.

Theft of Immovable Property

In *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, 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... 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. In January of 2018, the Commission authorized a project concerning the definition of the word “transfer” in N.J.S. 2C:20-3(b) as it pertains to the theft of immovable property.

At the time of the initial presentation of this potential project to the Commission, it did not appear that any bills were pending that addressed the issue raised for Commission consideration. As a result of subsequent legislative initiatives, however, Staff held off substantive work in the area. In light of the ongoing legislative attention to this issue, the Commission formally concluded its work in this area in September of 2022.

“Under the Influence” - Definition of

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

The Appellate Division explained that the motion to vacate guilty pleas was not time barred since they could be vacated to correct a manifest injustice but noted that no manifest injustice existed. The Court agreed that the pleas rested on adequate factual bases but noted that New Jersey’s DWI statute does not define the phrase “under the influence.” Case law has interpreted this term to mean a diminution of physical or mental faculties. The Appellate Division recognized that if the municipal judge had inquired about Defendant’s physical or mental condition while operating his vehicle, subsequent litigation on this issue might have been avoided and that a clear statutory definition of that term could potentially avoid similar litigation in the future.

When it authorized work on this project, the Commission directed Staff expand its research and outreach to address issues relating to cannabis. The Commission’s work continued over a period of years and, during that time, there were significant changes in the law regarding the use of marijuana. After the Commission began its work, the Legislature, the Executive Branch, and the New Jersey Judiciary were all working to address a host of issues. Given the work being done across the State, and the experience and expertise of those working in the area, it did not appear that there was a meaningful role for the Commission to play, and active work was discontinued in 2021. The Commission formally concluded its work in this area in September 2022.

Uniform Act on Prevention of and Remedies for Human Trafficking

In June 2016, the Commission released a Final Report recommending that forced sexually explicit

performances be specifically included as a prohibited human trafficking crime. In January 2020, the Commission considered a Memorandum in January 2020 that summarized the legislative activity in this area of the law between 2010 and 2020. The Commission considered the current law, the legislative awareness of the pertinent issues - as evidenced by the bills introduced on the topic of human trafficking - and the existence of a Commission on Human Trafficking with specialized knowledge on this subject matter. Staff was directed to contact the CHT to ask if there was anything that the NJLRC could do to be of assistance and, if not, to formally conclude the Commission's work in this area.

A discussion with a CHT Commissioner revealed that, at this time, the CHT is not actively working on recommendations for statutory change but is focusing on non-law enforcement initiatives to combat human trafficking. On behalf of the CHT, the Commissioner indicated that she appreciated the outreach, and will contact the NJLRC if, moving forward, the CHT would like the NJLRC to consider work on a particular aspect of the human trafficking statutes, or if an opportunity to work collaboratively presents itself. She said the CHT had no objection to the NJLRC concluding its work in this area and would be happy to hear from the NJLRC in the future if an issue arises concerning the human trafficking statutes that identifies a potential area for NJLRC work. The Commission concluded its work in this area in February 2022.

Vehicular Homicide Sentencing

In New Jersey, it is not a defense to a prosecution for vehicular homicide that the decedent contributed to their own death by reckless or negligent conduct. In *State v. Pascucci*, 463 N.J. Super. 203 (App. Div. 2020), the Court considered the interplay between the vehicular homicide statute, N.J.S. 2C:11-5.3, and N.J.S. 2C:44-1b.(5), which concerns mitigating factors that may be considered at the time of sentencing. Evidence of a victim's contributing conduct is not permitted to establish a defense to prosecution under the strict liability vehicular homicide statute, but it is not clear whether it is properly considered as a mitigating factor at sentencing.

Additional research in this area revealed that the Appellate Division has affirmed sentencing court reliance on mitigating factor five when dealing with other strict liability crimes, and no other New Jersey case appears to have construed the language in N.J.S. 2C:11-5.3. After reviewing the updated information in January of 2022, the Commission concluded its work in this area.

8. – Commissioners and Staff of the NJLRC 2022



8. – Commissioners and Staff of the NJLRC in 2022

The members of the Commission are:

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

The managing principal of Porzio, Bromberg & Newman, P.C., Vito A. Gagliardi, Jr. co-chairs the firm's Employment and Education Law Team. He is certified by the New Jersey Supreme Court as a Certified Civil Trial Attorney and he represents school districts in numerous matters and handles employment law matters for public and private sector clients in state and federal courts, before state and federal agencies, and before arbitrators. Mr. Gagliardi litigates and counsels clients in every area of labor and employment law, including issues of restrictive covenants, harassment, discrimination, and whistleblowing. He represents management in labor grievances and before PERC. Mr. Gagliardi regularly advises 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, Vice-Chairman, 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.

Honorable 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.

Brian P. Stack, Chair, Senate Judiciary Committee, Ex officio

A member of the Senate since 2004, Senator Stack has served as the Mayor of Union City, New Jersey, since 2000. He has also served the public as a Commissioner, from 1997-1998 and a member of the Hudson County Board of Freeholders from 1998-2004. He is the Chair of the Senate Judiciary Committee and the Vice-Chair of the Community and Urban Affairs Committee.

Raj Mukherji, Chair, Assembly Judiciary Committee, Ex officio

A member of the Assembly since 2014, Deputy Speaker Pro Tempore since 2020; and Majority Whip from 2018-2019, Assemblyman Mukherji is an attorney and investor. He is the Chair of the Assembly Judiciary Committee, and a member of the Science, Innovation and Technology, the Telecommunications and Utilities, and the Joint State Leasing and Space Utilization Committees. Assemblyman Mukherji is also a Sergeant in the United States Marine Corps Reserve.

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.

Rose Cuison-Villazor, Interim Co-Dean, Rutgers School of Law – Newark, Ex officio (*beginning July 2021*)

Rose Cuison-Villazor is Interim Dean, Professor of Law and Chancellor's Social Justice Scholar. She served as Vice Dean from 2019 and 2021. Dean Cuison-Villazor teaches and writes in the areas of Asian Americans and the law, critical race theory, equal protection law, and immigration and citizenship law, and her writing has appeared in top law journals throughout the country.

David Lopez, Co-Dean, Rutgers School of Law – Newark, Ex officio (*through June 2021*)

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 includes:

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 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. He litigated matters before the Superior Court, Law Division, and municipal courts throughout New Jersey. Sam argued appellate matters before the Appellate Division and the Supreme Court of New Jersey and practiced before the United States District Court. He received a B.A. from the University of Wisconsin's Madison Campus, and 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.

Whitney G. Schlimbach, Counsel

Whitney Schlimbach joined the Commission as a staff attorney in September of 2021. She has been a licensed attorney since 2012 and is admitted to practice in New Jersey and New York. Prior to joining the Commission, Ms. Schlimbach worked as an associate in a small New York City criminal defense firm, practicing in New York State and Federal trial and appellate courts. Ms. Schlimbach received her B.A. from Bryn Mawr College in 2007 and graduated from Brooklyn Law School in 2011.

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

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. 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 Commission 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 Commission.

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 Commission in 2022 are:

James M. Finnegan (Seton Hall University School of Law) – Legislative Law Clerk – Summer 2022

Mara Pohl (Seton Hall University School of Law) – Legislative Law Clerk – Summer/Fall 2022

Thevuni Athalage (Rutgers Law School) – Legislative Law Clerk – Spring 2022

Farida Shawkat (Seton Hall University School of Law) – Legislative Law Clerk – Spring 2022

Other Assistance by Students and Recent Graduates:

During the Fall semester of 2022, research and drafting assistance was provided to the NJLRC by student intern **Alex Obertan** 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.

In addition, pro bono legal research and drafting assistance was provided to the NJLRC by law students: **Zahira Sabir**, and **Kaleigh Sisco**, 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 law students and recent graduates **Christopher Mrakovcic, Esq.**, **Drew Jacobs, Esq.**, **Cameron T. Gourlay**, and **Kayla Toomer** in cooperation with Lori Borgen, Esq., Director of the Externships and Pro Bono Service Program, at Seton Hall University School of Law.

9. – Looking Ahead to the Work of the NJLRC in 2023



9. – Looking Ahead to the Work of the NJLRC in 2023

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. Each year, however, the Commissioners and Staff endeavor to improve the Commission's process, product, and communications, and are always receptive to suggestions from interested parties regarding how to 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. The Commission actively solicits public comments on its projects, which are widely distributed to interested persons and groups. A website upgrade was largely completed in 2019, with additional resources being made available online on an ongoing basis. A primary goal of the website modifications was to increase the accessibility of the Commission's work.

Throughout 2022, Staff worked to increase and improve the effectiveness of the Commission's outreach to increase public participation in the work of the Commission, and this will continue. Part of this effort involves the use of video communication to enable remote public participation in Commission meetings.

Within the State government, the work done by the Commission is complementary to that of the Office of Legislative Services. Each entity has a different role in the legislative process, and the Commission works collaboratively with the Office of Legislative Services to support the Legislature by bringing issues to the attention of Legislators that might not otherwise receive consideration. Commission Staff always appreciate 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 based on the Commission's work. The Commission looks forward, as always, to increased interaction with Legislators, and those who staff the legislative offices throughout the State, to better support the Legislature and to facilitate the implementation of Commission recommendations.