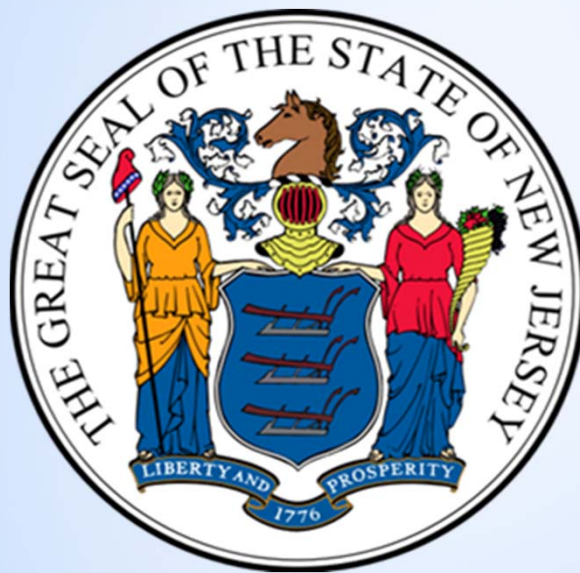


New Jersey Law Revision Commission

An Overview of the
History & Work of the
New Jersey Law
Revision Commission.

September 19, 2019





NJLRC History

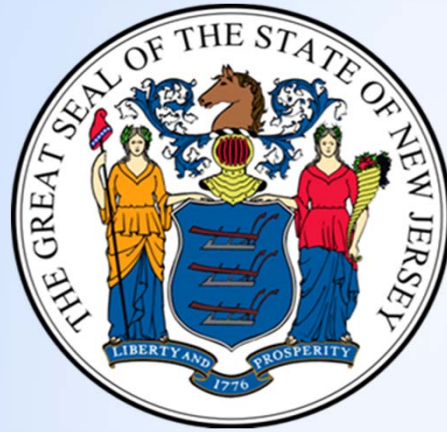
History

- New Jersey has a tradition of law revision
- 1925 – first law revision commission in the nation
- Produced New Jersey's Revised Statutes of 1937 (focus was largely recompilation, not substantive change)
- Legislature intended that revision and codification continue after 1937
- First LRC continued in operation until 1939
- Afterward, early Commission functions were transferred to successor agencies:
- Advisory Commission on Revision of Statutes
- Legislative Commission on Statute Revision
- Office of Legislative Services

New Jersey created the first law revision commission in the nation in 1925, and it remained in operation until 1939.

Why Do We Need A Law Revision Commission?

- Before the current Commission, law revision in New Jersey conducted on an as-needed basis
- No continuous review
- No general revision and consolidation after 1937
- 1985 – A determination that the members of the legal community responsible for and users of statutory law should oversee general revision and continuous review



A 21st Century Law Revision Commission

NJLRC

- Created in 1985, statute effective in 1986, Commission began working in 1987
- N.J.S. 1:12A-8: Statutory Duty:
- Conduct continuous examination of the law
- And judicial decisions construing the law
- Discover defects and anachronisms
- Prepare and submit bills to the Legislature
- Carry on scholarly research and work
- Bills submitted are designed to:
- Remedy defects
- Reconcile conflicting provisions
- Clarify confusing language and excise redundancies
- Designed to carry on continuous revision to maintain statutes in revised, consolidated, simplified form

The goal of the NJLRC is "the clarification and simplification of New Jersey's law, its better adaptation to present social needs, and the better administration of justice."

New Jersey Law Revision Commission

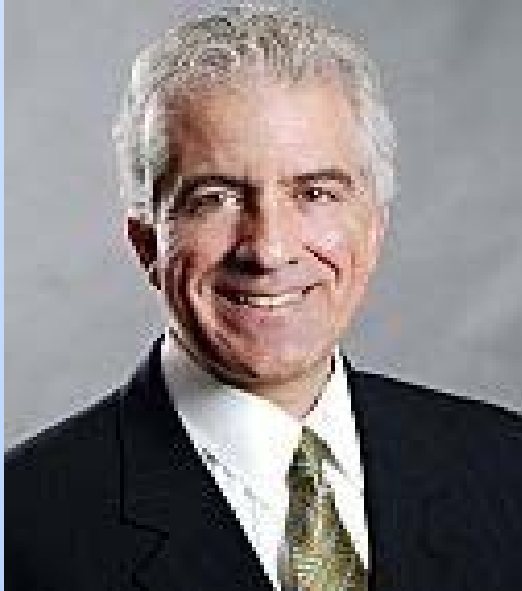
- Who makes up the Commission?
- What role do they play in its work?
- What is the vision of the Commission?
- How does the Commission describe its mission?

The vision of the NJLRC is “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.”

Commissioners

- Statute identifies required Commission composition
- 9 Commissioners
- Four practicing attorneys
- Chairs of Senate and Assembly Judiciary Committees
- Deans of NJ's three law school campuses
- 2 appointed by President of Senate (not more than one from same party)
- 2 appointed by Speaker of Assembly (not more than one from same party)

Four Practicing Attorneys



**Vito A. Gagliardi, Jr.,
Chairman**



Andrew O. Bunn



Hon. Virginia Long



Louis N. Rainone

CHAIRMAN

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

- A managing principal at the firm of Porzio, Bromberg & Newman, P.C.,
- Certified by the New Jersey Supreme Court as a Certified Civil Trial Attorney
- 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

Commissioner

Andrew O. Bunn,
Attorney-at-Law BDO USA, LLP

- 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

Commissioner

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

- Counsel to Fox Rothschild
- Joined the firm after 15 years on the Appellate Division and 12 years on the New Jersey Supreme Court
- Assists clients with ethics and appellate matters, corporate governance and governmental integrity investigations and to serves as a mediator and arbitrator providing dispute resolution alternatives as well as leading the firm's pro bono efforts in New Jersey

Commissioner

Louis N. Rainone, Attorney-at-Law

- Managing Partner at Rainone, Coughlin Minchello, LLC.
- Has served as counsel to several municipalities.
- Currently serves as the Director of Law for the City of Rahway, City Attorney for the City of Long Branch, Township Attorney for the Township of Franklin, Somerset County, the Director of Law for the Township of Marlboro and Counsel to the Middlesex County Improvement Authority. He is also Special Labor Counsel to the Township of Brick, Township of Piscataway, Borough of Somerville, and City of Trenton. He along with the firm's other members counsel's its municipal client's on significant redevelopment projects in Newark, East Brunswick and Burlington City.

Chairs of the Legislative Judiciary Committees



Nicholas P. Scutari



Annette Quijano

Commissioner

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

- Member of the Senate since 2004
- Attorney with the Law Offices of Nicholas P. Scutari
- Has also served the public as: the Prosecutor for the City of Linden, from 2003-present; a member of the Union County Planning Board, from 2000-2004; a member of the Union County Board of Freeholders from 1997-2004; and a member of the Linden Board of Education from 1994-1997.

Commissioner

Annette Quijano, Chairwoman, Assembly
Judiciary Committee, Ex officio

- A member of the New Jersey Assembly since 2008
- A member of the Financial Institutions and Insurance and the Oversight, Reform and Federal Relations Committees
- Serves as a Deputy Majority Leader and is a member of the New Jersey Legislative Latino Caucus.

Rutgers School of Law – Camden



Kimberly Mutcherson



Grace C. Bertone

Commissioner

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

- Co-Dean and Professor of Law in Camden.
- Teaches Family Law, Torts, South African Constitutional Law and Bioethics, Babies & Babymaking.
- Served as Senior Fellow/Sabbatical Visitor at the Center for Gender and Sexuality Law at Columbia Law School.
- A Visiting Scholar at the Center for Bioethics at the University of Pennsylvania.
- A fellow at the Institute for Research on Women at Rutgers University.
- Recipient of a Center for Reproductive Rights Innovation in Scholarship Award in 2013.
- Recipient of a Chancellor's Teaching Excellence Award in 2011.

Commissioner

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

- Managing partner of Bertone Piccini
- Substantial experience in the areas of business acquisitions, general corporate and business counseling, commercial and residential real estate, zoning and land use, environmental counseling and regulatory compliance, banking and commercial lending, foreclosure litigation, estate planning, probate administration, and probate litigation.
- Substantial experience in analysis and implementation of internal investigations and legal audits.

Rutgers School of Law - Newark



David Lopez



Bernard Bell

Commissioner

David Lopez, Co-Dean, Rutgers School of Law – Newark, Ex officio

- Became co-Dean of the Law School in 2018
- Longest serving General Counsel of the U.S. Equal Employment Opportunity Commission
- Prior to becoming the Public Advocate, Dean Lopez was a partner at Outten & Golden.
- A nationally-recognized expert in Civil Rights and Employment Law.

Commissioner

David Lopez is represented by
Professor Bernard Bell

- 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
- 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
- Practiced with Sullivan and Cromwell in New York before joining Rutgers in 1994
- Teaches: Torts, Legislation, Admin. Law, Con. Law, Law and Mass Communications, Privacy Law, Property, and Separation of Powers Law

Seton Hall University School of Law



Kathleen M. Boozang



John K. Cornwell

Commissioner

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

- 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

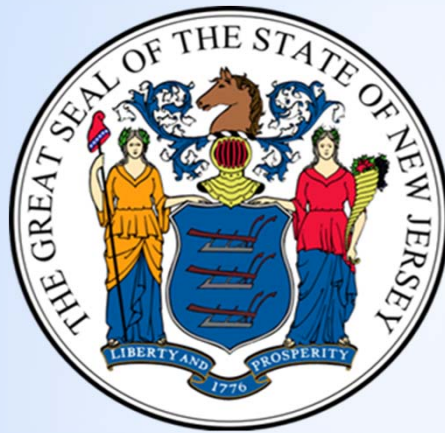
Commissioner

Kathleen M. Boozang is represented by
Professor John K. Cornwell

- A.B, with honors, from Harvard University, M.Phil. in International Relations from Cambridge University and J.D. from Yale Law School (Editor of the Yale Law Journal)
- 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 Civil Rights Division of the U.S. Dept. of Justice
- Served as an adjunct professor at the National Law Center of George Washington University
- Teaches: Criminal Law, Criminal Procedure, and Medical Malpractice

NJLRC Staff

- In addition to the Commissioners, the NJLRC is supported by Commission Staff
- Staff work year-round, and the office is staffed Monday through Friday
- A blend of full-and part-time staff:
 - 4 attorneys;
 - 1 reviser of statutes;
 - 1 legislative fellow;
 - 1 executive assistant; and,
 - students who assist as paid clerks, for-credit externs, and for pro bono credit



NJLRC and OLS

But Wait, Don't We Already Have an Entity that Does That?

Office of Legislative Services

- OLS office size: approximately 350 staff members total (including auditors), approximately 100 of those are involved in bill drafting (as attorneys, analysts, researchers)
- N.J.S. 52:11-54 *et seq.*
- Agency of the Legislature established by law to provide professional, nonpartisan staff support services to the Legislature and its officers, members, committees and commissions

NJLRC and OLS

■ Source

- NJLRC – multiple
- OLS – Legislator/staff

■ Speed

- NJLRC – varies by project
- OLS – Pace set by each Legislator

■ Input

- NJLRC – seeks comment throughout its process
- OLS – work is confidential, disclosure only with authorization (not generally able to seek input during process)

OLS

- OLS may only undertake bill drafting or research assignments upon the initiative of a legislator or committee.
- OLS will provide guidance for technical form and may offer suggestions as to content and legal or constitutional issues.
- The final decision regarding the bill's substantive provisions rests with the legislator.
- Office of Legislative Services: An Overview, <http://www.njleg.state.nj.us/legislativepub/oview.asp> (last visited May 16, 2017)

OLS

- All communications between legislators and OLS are confidential
- OLS will not disclose to a third party the nature of an assignment nor the name of the legislator requesting the information or research unless authorized by the legislator
- Drafts of bills and other research products will not be released except upon specific direction of the legislator
- Office of Legislative Services: An Overview, <http://www.njleg.state.nj.us/legislativepub/oview.asp> (last visited May 16, 2017)

OLS

Functions of OLS include:

- General, legal, and fiscal research and analysis;
 - Bill drafting;
 - Legal opinions;
 - Ceremonial resolution drafting;
 - Fiscal note preparation; and,
 - Committee staffing
-
- Office of Legislative Services: An Overview, <http://www.njleg.state.nj.us/legislativepub/oview.asp> (last visited May 16, 2017)

OLS

Functions of OLS (continued)

- District office rental and supply
 - Distribution of bills & legislative documents
 - Computer data-base management
 - Public information programs
 - General administrative services
 - Personnel program management
-
- Office of Legislative Services: An Overview, <http://www.njleg.state.nj.us/legislativepub/overview.asp> (last visited May 16, 2017)



NJLRC

Projects - Scope

NJLRC – Project Scope

What sort of projects does the Commission work on – any limitations?

- Civil
- Criminal
- Not “pure policy”

NJLRC – Project Scope

What is the scope of Commission projects,
any limitations?

- Single word or subsection of a statute
- Revision of an entire title or subject area
- Revision of more than one title

A Single Word – or a Comma and Three Zeros

Powers of THE DCA Commissioner

- Final Report 2010
- The Department of Community Affairs brought to NJLRC attention the fact that subsection d. of *N.J.S. 55:13A-6* includes an error in the penalty amount assessed
- Penalty should be \$100, it now reads “\$100,000” for failure to obey subpoena of Commissioner
- Legislative history for the 1987 amendment does not indicate any changes to the penalty amount

This project is an example of the NJLRC's work in the context of a single word, phrase, or in this case, a penalty amount.

An Entire (Large) Title

Title 39

- Final Report 2010
- Title 39 contains provisions concerning: the organization and structure of the MVC and motor vehicle requirements regarding licensing, registration, equipment and operation
- Also traffic regulation, enforcement, interstate operation of vehicles, motor vehicle insurance, motor vehicle inspection, the transfer of vehicles, junk yards and driving schools
- The focus of the revision was to: consolidate language, eliminate duplication and inconsistencies, and rearrange statutes so related provisions are grouped together
- Commission received requests to “rationalize” penalties
- Completed project exceeded 500 pages

This project is an example of NJLRC work organizing, restructuring, and modifying (in a limited way) an entire title.

More than One Title

Landlord and Tenant Law

- Final Report 2012; Bill: A3693
- Landlord-tenant law is scattered throughout titles - most is in titles 2A and 46, but in multiple, non-sequential chapters
- Different aspects of the law are discussed in different chapters or titles
- This law is used frequently, often by tenants and landlords who represent themselves *pro se*
- The goals of the revision include: collecting relevant law in one place, eliminating archaic terms, eliminating inconsistencies and confusing provisions, and Incorporating the holdings of key cases

This project demonstrates the scope of the NJLRC's work organizing, laws pertaining to a single subject area.

More than 25 Titles

Pejorative Terms

- (L.2013, c.103)
- Goal was to eliminate demeaning, disrespectful, and, in many cases, archaic terminology used in the statutes when referring to persons with developmental, cognitive, or psychiatric disabilities
- Another Final Report in 2013; Bill A926 / S2721
- Expands the scope of previous NJLRC Reports by identifying pejorative terminology relating to persons with a physical or sensory disability and substance use disorders

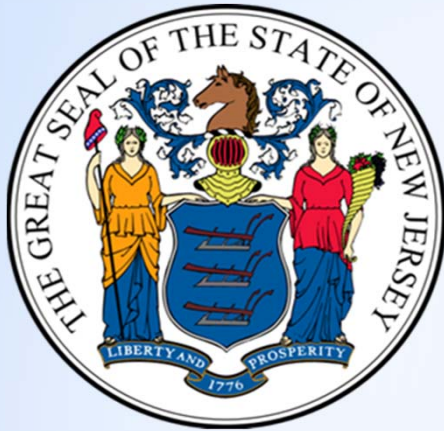
This project demonstrates the NJLRC's work on an issue that involves the language of multiple titles.

NJLRC – Project Duration

How long does the Commission work on a given project – is there a limit?

- The duration of a given project varies
- Although there are times when a project is time-sensitive, projects may otherwise run for
- 1-2 months; or,
- 1-2 years or more

The duration of a project is generally dictated by the project itself and its requirements, rather than external constraints.



NJLRC Projects - Sources

NJLRC – Project Sources

Where do Commission projects come from?

- As mandated by statute, the NJLRC considers suggestions from:
- American Law Institute;
- Uniform Law Commission (formerly NCCUSL);
- Other learned bodies;
- Judges;
- Public Officials (including Legislators);
- Bar Associations;
- Attorneys; and,
- Members of the public

Primary Sources of NJLRC Projects

What are the three primary sources of Commission projects:

- **Uniform Law Commission (ULC)**
 - Uniform acts, generally not model laws
- **Case law** (previously: word of mouth or computer-assisted searches)
 - Unconstitutional
 - Federally pre-empted
 - Court calls issue to attention of Legislature
 - Discussion of legislative intent
- **Members of the public**
 - Including staff and Commissioners

Consideration of ULC Projects

Questions to be asked:

- What is the problem to be solved?
- Does the problem exist in NJ?
- Does the uniform act adequately address the problem?
- Is modification of the act appropriate to tailor it to NJ, or is nationwide uniformity critical?

Consideration of Case Law Projects

- What is the issue identified by the Court?
- Can the issue be addressed with statutory language?
- What court decided the case?
- Is the decision reported or unreported?
- Is the issue appropriate for Commission action?

Examples on the September 19, 2019, Agenda:

- Residence for Sex Offender Registration
- Voided Election
- Definition of Marital Status
- Completion of Probation
- Definition of Confinement

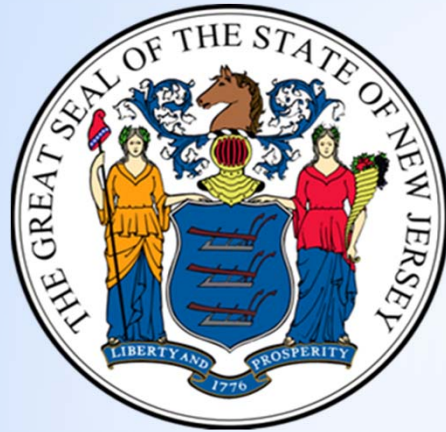
Consideration of Requests from Members of the Public

Questions to be answered:

- What is the issue?
- Does it fall within the scope of the Commission's statutory mandate?
- Not a request for an alternate forum
- Not a request for legal advice
- Is the area one in which the Legislature worked recently?
- Is it a policy issue?

Example on the September 19, 2019, Agenda:

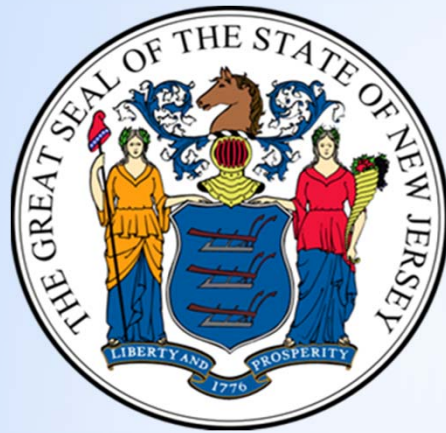
- **Local Lands and Building Laws**



NJLRC Projects - Role

Commission's Role Varies by Project

- Project may be instituted and completed by the Commission alone – with outreach done to obtain as much input as possible.
- Project may originate with another source – and Commission may be asked to participate in a particular aspect of the project.
- Commission role in project may be limited – legislator, legislative staff member, or OLS may request assistance in a single area later incorporated into a bill.



NJLRC Projects - Process

NJLRC Process – The “Memorandum.”

- Regardless of project source, what is the Commission’s process?
 - **Research**
 - Legal and general
 - Identification of Commenters
 - **Preparation of Presentation Memo**
 - Problem to be solved
 - Potential solution
- Presentation to Commission
- Commission determinations made at monthly public meetings
- Determination of Commission recorded in Minutes
- *Examples of Pitch Memoranda on the September 19, 2019, Agenda:*
 - **Local Lands and Building Laws**
 - **Completion of Probation and N.J.S. 2C:52-2(a)**
 - **Confinement (definition of)**
 - **Evidentiary Standard for Final Restraining Order under SASPA**

NJLRC Process

If authorized to proceed:

- Research
- Identify constituencies
- Draft
- Seek comments

NJLRC Process

Comment sought from various sources:

- NJSBA
- State or other governmental entities
- Those impacted by current law
- Those impacted by any change in the law
- Comments significantly impact the direction and ultimate recommendation of the NJLRC

NJLRC Process

A Tentative Report that was significantly impacted by comments:

- *Examples of Revised Draft Tentative Report on the September 19, 2019, Agenda:*
 - **Definition of "Marital Status."**

NJLRC Process – The Tentative Report

After preliminary research is done, and comments received, what is the next step?

- Tentative Report
- Mid-point of process
- First formal statement of Commission's position on issue
- Contains draft statutory language as well as narrative
- Posted on the NJLRC website
- Distributed to known commenters
- Comments on Tentative Report sought to revise and refine

Tentative Report

- Effort made to engage in consensus drafting
- If complete consensus is not possible, what are the points of agreement?
 - Consensus re: need for change
 - Consensus re: specific language
- If consensus is not possible on all issues, ultimately, the goal is to alert Legislators to potential issues and positions in advance

And Then What? The Final Report

- The Final Report concludes the Commission's active work on the project
- Contains a recommendation to the legislature
- Generally contains proposed statutory language
- Occasionally, however, it recommends that no action be taken
- *Examples of Draft Final Reports on the September 19, 2019, Agenda:*
 - Hearsay
 - Residence for Sex Offender Registration
 - Voided Election

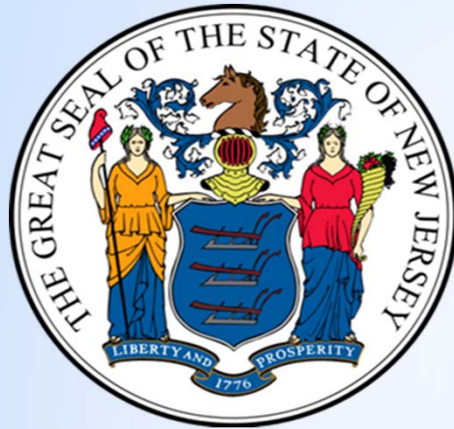
Final Report

Distribution:

- Chairs of Senate and Assembly Judiciary Committees
- Majority and Minority Leadership of both houses
- OLS
- Partisan Staff (4 offices)
- NJSBA
- Governor's Counsel
- Legal Services
- State Library
- Others on request

Final Report

- After release of the Final Report, the work of the Commission is not done
- Commission Staff works to identify a potential legislative sponsor demonstrating an interest in the area
- Sponsor recommended during NJLRC process
- Chair of relevant committee
- Final Report periodically updated thereafter
- Not every report enacted upon release
- Reports with continuing viability updated afterward
- Periodic distribution to Legislators and Staff



NJLRC

Questions?

Comments?

Questions?

- Always feel free to contact the NJLRC with questions or comments about ongoing projects, or ideas for potential projects:



www.njlrc.org



973-648-4575



Laura C. Tharney, Executive Director

lct@njlrc.org

- You are also welcome to attend the NJLRC's monthly public meetings to comment on projects, or to submit comments in writing

Commissioners

Vito A. Gagliardi, Jr.
Chairman

Kathleen M. Boozang
Andrew O. Bunn
Virginia Long
David Lopez
Kimberly Mutcherson
Annette Quijano
Louis N. Rainone
Nicholas P. Scutari



Staff

Laura C. Tharney
Executive Director

Samuel M. Silver
Deputy Director

Arshiya M. Fyazi
Jennifer D. Weitz
Counsel

Veronica V. Fernandes
Executive Assistant

John M. Cannel (Retired)
Reviser of Statutes

NEW JERSEY LAW REVISION COMMISSION

153 Halsey Street, 7th Floor, Box 47016, Newark, New Jersey 07102
973 648-4575 · fax: 973 648-3123 · njlrc@njlrc.org · http://njlrc.org

COMMISSION MEETING AGENDA

The New Jersey Law Revision Commission will meet on **Thursday, September 19, 2019, at 4:30 p.m.** in the:

Baker Courtroom at Rutgers Law School, 123 Washington Street, Newark, NJ 07102

1. Hearsay - Consideration of a Draft Final Report proposing the modification of a statute to clarify a hearsay evidence issue found in N.J.S. 9:6–8.46 pertaining to child abuse and neglect proceedings. [Memo Report](#)
2. “Residence” for Sex Offender Registration - Consideration of a Draft Final Report proposing the modification of N.J.S. 2C:7-2 to deal with the registration of secondary addresses for sex offenders in response to *State v. Halloran*, 446 N.J. Super. 381 (L. Div. 2014) and an additional change to the statutes in response to the determination of the New Jersey Supreme Court in *State In the Interest of C.K.*, 2018 WL 1915104 (2018). [Report](#)
3. Voided Election - Consideration of a Draft Final Report proposing the modification of Title 18A:9-1 et seq. to clarify the effect of voided election results on future ballot initiatives as discussed in *City of Orange Twp. Bd. of Educ. v. City of Orange Twp.*, ESX-L-6652-17 (Ch. Div. Oct. 20, 2017). [Report](#)
4. Definition of “Marital Status” - Consideration of a Revised Draft Tentative Report proposing modifications to the language of N.J.S. 10:5-5 and 10:5-2.1 to reflect the treatment of the term “marital status” by the New Jersey Supreme Court in *Smith v. Millville Rescue Squad*, 225 N.J. 373 (2016) and in response to comments received by stakeholders. [Report](#)
5. Evidentiary Standard for a Final Restraining Order Under the Sexual Assault Survivor Protection Act - Consideration of a Memorandum providing a status update to the Commission and requesting guidance regarding additional work in the area of Sexual Assault Survivor Protection Act of 2015 (SASPA), N.J.S. 2C:14-16. [Memo](#)
6. Local Lands and Building Laws – Bidding - Consideration of a Memorandum proposing a project to clarify whether the Local Public Contracts Law (N.J.S. 40A:11-1 et seq.) applies to the acquisition of real property, capital improvement, or personal property by a County or municipality, pursuant to the Local Lands and Building Laws, specifically N.J.S. 40A:12-5(a)(3). [Memo](#)
7. Completion of Probation and N.J.S. 2C:52-2(a) – Consideration of a Memorandum proposing a project to clarify the meaning of the term “satisfactory” as used in N.J.S. 2C:52-2(a) of the expungement statute and as discussed in *Matter of E.C.*, 454 N.J. Super. 48 (App. Div. 2018). [Memo](#)
8. Confinement – Consideration of a Memorandum proposing a project to clarify the meaning of the term “confinement” as used in N.J.S. 2C:44-3(a) and as discussed in *State v. Clarity*, 454 N.J. Super. 603 (App. Div. 2018). [Memo](#)

NOTE: All documents are available at: <http://www.njlrc.org> * Next meeting currently scheduled for October 17, 2019.