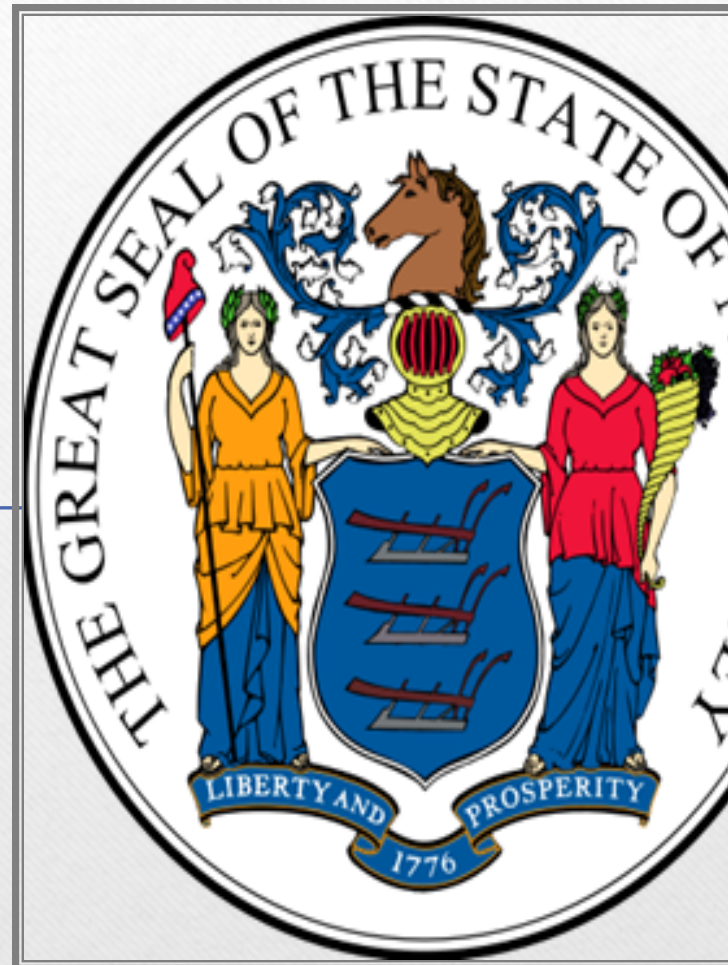
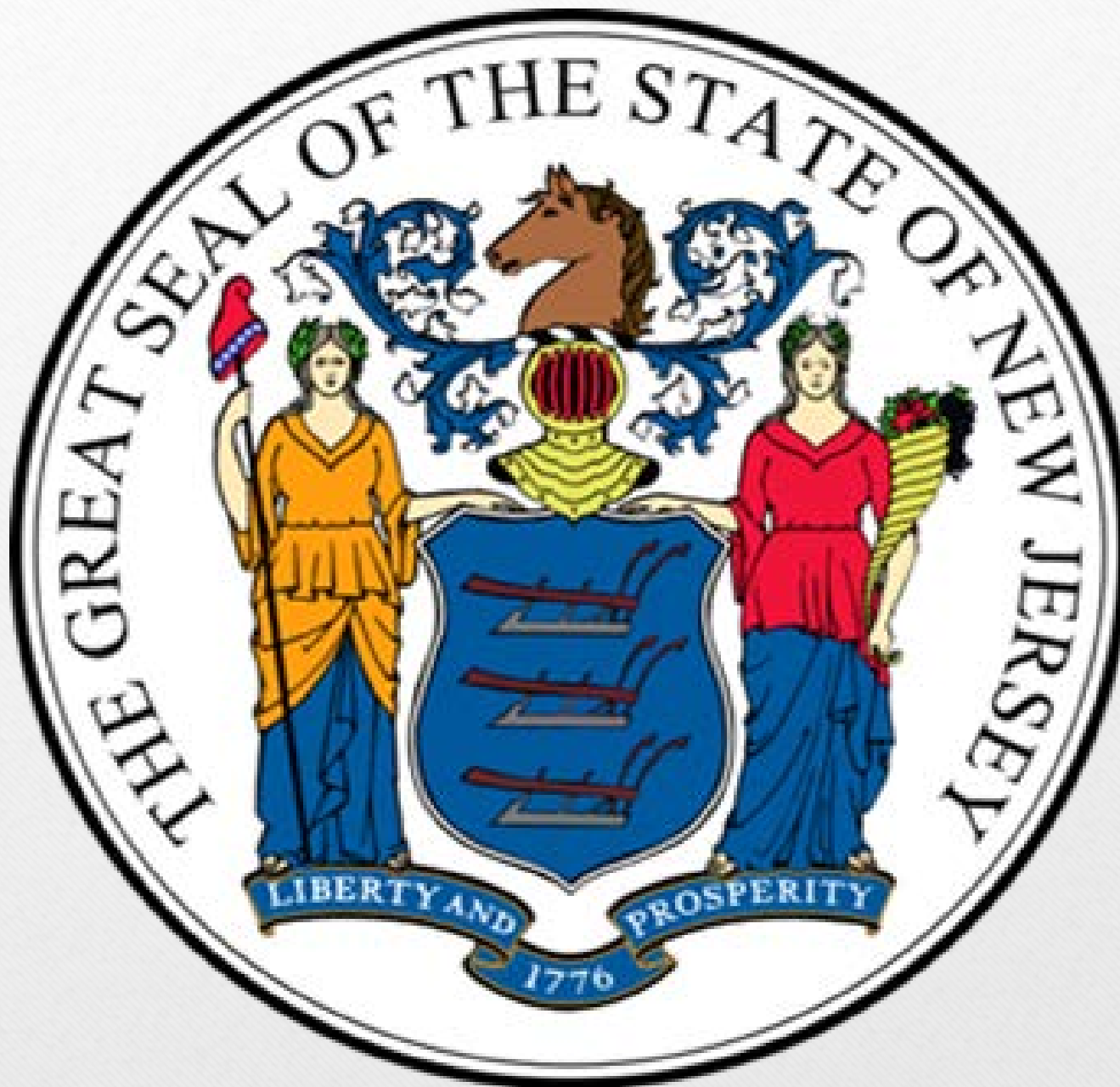


The Only Constant is
Change:
the Work of the New
Jersey Law Revision
Commission

June 11, 2021





NJLRC History

History

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

- 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 largely recompilation, not substantive change)
- Legislature intended that revision and codification continue after 1937
- First LRC continued in operation until 1939
- After that, Commission functions were transferred to successor agencies:
 - Advisory Commission on Revision of Statutes
 - Legislative Commission on Statute Revision
 - Office of Legislative Services

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 – Legislative determination that the members of the legal community responsible for and users of statutory law should oversee general revision and continuous review

NJLRC

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.”

- Created in 1985, statute effective in 1986, Commission began working in 1987
- N.J.S. 1:12A-8:
 - 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
- Submit bills 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

NJLRC

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.”

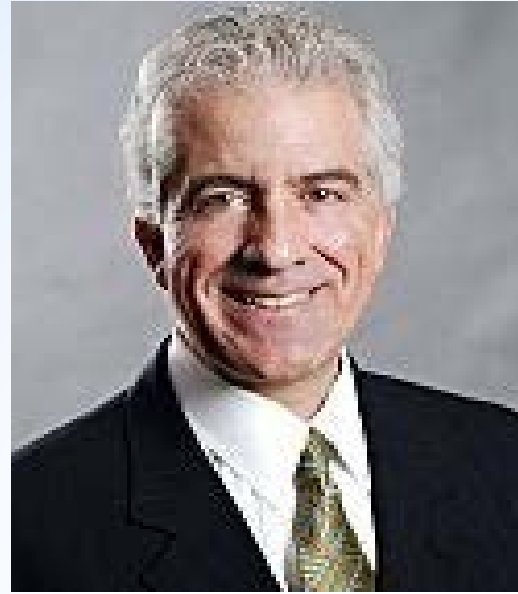
- Who makes up the Commission?
- What role do they play in its work?
- What is the vision of the Commission?
- How does the Commission describe its mission?

Commissioners

The statute creating the NJLRC identifies required Commission composition:

- 9 Commissioners
- Four practicing attorneys
 - 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)
- Chairs of Senate and Assembly Judiciary Committees
- Deans of NJ's three law school campuses

**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 Civil Trial Attorney
- Represents school districts 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

- Previously a partner at DLA Piper and McCarter & English
- 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

Chairs of the Legislative Judiciary Committees



Nicholas P. Scutari



Raj Mukherji

Commissioner

Nicholas P. Scutari,

Chair, 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:
 - Prosecutor for the City of Linden, from 2003-present
 - Member of the Union County Planning Board, from 2000-2004
 - Member of the Union County Board of Freeholders from 1997-2004
 - Member of the Linden Board of Education from 1994-1997

Commissioner

Raj Mukherji,
Chair, Assembly Judiciary Committee, Ex officio

- Member of the New Jersey General Assembly since 2014
- Healthcare lawyer and investor
- Has also served the public as:
 - Jersey City Housing Authority Chairman 2008-Present
 - Jersey City Deputy Mayor 2012-13
- U.S. Marine Corps Reserve, Sergeant

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 and a Chancellor's Teaching Excellence Award in 2011

Commissioner

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

- Managing partner of Bertone Piccini, LLP
- 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
- Also has 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, 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 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

**Past
Commissioners**

- Daniel F. Becht, Esq.
- Peter A. Buchsbaum, Esq.
- Albert Burstein, Esq.
- Bernard Chazen, Esq.
- John J. Degnan, Esq.
- Edward J. Kologi, Esq.
- Thomas N. Lyons, Esq.
- Hugo M. Pfaltz, Jr., Esq.
- Hon. Sylvia Pressler, P.J.A.D.
(Retired)
- Howard T. Rosen, Esq.

Past Ex-officio Commissioners

- Roger I. Abrams, Dean, Rutgers School of Law – Newark
- Senator John Adler
- Assemblyman Peter J. Barnes, III
- Elizabeth F. Defeis, Dean, Seton Hall University School of Law
 - Represented by Professor Robert A. Diab
- Roger Dennis, Dean, Rutgers School of Law – Camden
 - Represented by Hope Cone
- Stuart Deutsch, Dean, Rutgers School of Law – Newark
- John J. Farmer, Jr., Dean, Rutgers School of Law – Newark
 - Represented by Professor Bernard Bell

Past Ex-officio Commissioners

- Senator William L. Gormley
- Assemblywoman Linda R. Greenstein
- Assemblyman Walter M.D. Kern
- Assemblywoman Marlene Lynch Ford
- Eric Neisser, Acting Dean, Rutgers School of Law – Newark
 - Represented by Professor Robert Carter
- Senator Edward T. O'Connor
- Ronald J. Riccio, Dean, Seton Hall University School of Law
 - Represented by Professor William Garland
- Paul T. Robinson, Dean, Rutgers School of Law – Camden

Past Ex-officio Commissioners

- Assemblyman David C. Russo
- Senator Paul A. Sarlo
- Assemblyman Thomas J. Schusted
- Peter Simmons, Dean, Rutgers School of Law – Newark
- Richard G. Singer, Dean, Rutgers School of Law – Camden
- Rayman Solomon, Dean, Rutgers School of Law – Camden
- Assemblyman Gary W. Stuhltrager

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 retired attorney, “reviser of statutes”;
 - 1 executive assistant; and,
 - students who assist as paid clerks, for-credit externs, and for pro bono credit



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?

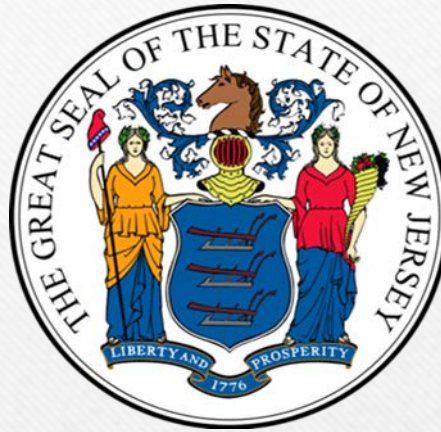
- Single word, subsection, or section of a statute
 - Sexual Assault (enacted 2019)
 - Bulk Sale Notification Requirements (enacted 2017)
- Revision of an entire title or subject area
 - Title 39
 - UCC Articles (enacted 2013)
- Revision of more than one title
 - Landlord and Tenant Law
 - Pejorative Terms (enacted 2013, 2017)

NJLRC – Project Duration

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

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



NJLRC Project - 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
- Members of the public

Primary Sources of NJLRC Projects

Primary sources of Commission projects:

- **Uniform Law Commission (ULC)**
 - Uniform acts (and, occasionally, model acts)
- **Case law**
 - 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:

- 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

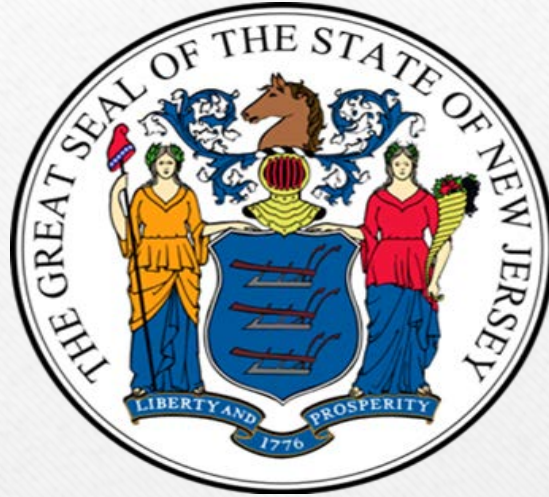
Questions:

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

Consideration of Requests from Members of the Public

Questions:

- 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?



NJLRC Projects

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
- Projects may also originate with another source – and the 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 or issue later incorporated into a bill

NJLRC Process

- Regardless of project source, what is the Commission's process?
 - **Research**
 - Legal and general
 - Identification of potential commenters
 - **Preparation of Presentation Memo**
 - Problem to be solved
 - Basic background and current state of law
- Presentation to Commission
- Commission determinations made at monthly public meetings and recorded in Minutes

NJLRC Process

If authorized to proceed:

- Research
- Drafting
- Outreach to identified potential constituencies

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 inform Commission consideration and significantly impact the direction and ultimate recommendation of the NJLRC

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 potentially interested commenters
- Comments on Tentative Report sought to revise and refine the work and suggested statutory drafting

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

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
 - Any commenters during the process
 - Any individuals who request distribution
 - 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 with an interest in the area covered by the Final Report
- Sponsor recommended during NJLRC process
- Chair of relevant committee
- Final Report may be updated thereafter
 - Not every report enacted upon release
 - Reports with continuing viability updated afterward
 - Periodic distribution to Legislators and Staff

Enactments of NJLRC Projects

Since the NJLRC began work in 1987, the New Jersey Legislature has enacted 56 bills based upon 75 of the more than 201 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:

-
- Sexual Assault (L.2019, c.474)
 - Bulk Sale Notification Requirements (L.2017, c.307)
 - Millers of Grain (L.2017, c.227)
 - Overseas Residents Absentee Voting Law (L.2017, c.39)
 - Pejorative Terms 2017 (L.2017, c.131)
 - Uniform Fiduciary Access to Digital Assets Act (L.2017, c.237)
 - Uniform Foreign Country Money-Judgment Recognition Act (L.2017, c.365)
 - Uniform Interstate Family Support Act (L2016, c.1.)
 - New Jersey Uniform Trust Code (L.2015, c.276)

Enactments of NJLRC Projects

- Recording of Mortgages (L.2015, c.225)
- New Jersey Declaration of Death Act (L.2013, c.185)

- New Jersey Family Collaborative Law Act (L.2014, c.69)
- General Repealer (Anachronistic Statutes) (L.2014, c.69)
- 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.
- Pejorative Terms (L.2013, c.103)
- Uniform Commercial Code – Article 1 – General Provisions (L.2013, c.65)
- Uniform Commercial Code – Article 4A – Funds Transfers (L.2013, c.65)

Enactments of NJLRC Projects

- Uniform Commercial Code – Article 7 – Documents of Title (L.2013, c.65)
- Uniform Commercial Code – Article 9 – Secured Transactions (L.2013, c.65)
- New Jersey Adult Guardianship and Protective Proceedings Jurisdiction Act (L. 2012, c.36)
- Revised Uniform Limited Liability Company Act (L. 2012, c.50)
- Married Women's Property (L.2011, c.115)
- New Jersey Trade Secrets Act (L. 2011, c.161)
- Title Recordation (L.2011, c.217)

Enactments of NJLRC Projects

- 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)

Enactments of NJLRC Projects

- 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)

Enactments of NJLRC Projects

- 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)

**Legislative
Sponsors
of Bills
Based on
NJLRC
Work (2019
and 2020)**

Assemblyman Robert Auth

Assemblyman Daniel R. Benson

Assemblyman Michael Patrick Carroll

Assemblywoman Annette Chaparro

Assemblyman Nicholas Chiaravalloti

Assemblyman Herb Conaway, Jr.

Assemblyman Joe Danielsen

Assemblyman Ronald S. Dancer

Assemblywoman BettyLou DeCroce

Assemblyman Christopher P. DePhillips

Assemblywoman Serena DiMaso

Assemblywoman Joann Downey

Assemblywoman Aura K. Dunn

**Legislative
Sponsors
of Bills
Based on
NJLRC
Work (2019
and 2020)**

Assemblyman Roy Freiman

Assemblyman Louis D. Greewald

Assemblyman Jamel C. Holley

Assemblyman Eric Houghtaling

Assemblywoman Angelica M. Jimenez

Assemblyman Gordon M. Johnson

Assemblyman Robert J. Karabinchak

Assemblyman Sean T. Kean

Assemblyman James J. Kennedy

Assemblyman Joseph A. Lagana

Assemblywoman Pamela R. Lampitt

Assemblywoman Yvonne Lopez

Assemblyman John F. McKeon

**Legislative
Sponsors
of Bills
Based on
NJLRC
Work (2019
and 2020)**

Assemblywoman Angela V. McKnight

Assemblywoman Gabriela M. Mosquera

Assemblyman Raj Mukherji

Assemblywoman Nancy F. Munoz

Assemblywoman Carol A. Murphy

Assemblyman Erik Peterson

Assemblywoman Annette Quijano

Assemblywoman Verlina Reynolds-Jackson

Assemblyman Gary S. Schaer

Assemblywoman Lisa Swain

Assemblyman Christopher P. Tully

Assemblywoman Valerie Vanieri Huttel

**Legislative
Sponsors
of Bills
Based on
NJLRC
Work (2019
and 2020)**

Assemblyman Jay Webber

Assemblyman Andrew Zwicker

Senator Bob Andrzejczak

Senator James Beach

Senator Gerald Cardinale

Senator Sandra B. Cunningham

Senator Patrick J. Diegnan, Jr.

Senator Vin Gopal

Senator Linda R. Greenstein

Senator Joseph A. Lagana

Senator Nellie Pou

Senator Nicholas P. Scutari

**Legislative
Sponsors
of Bills
Based on
NJLRC
Work (2019
and 2020)**

Senator Troy Singleton

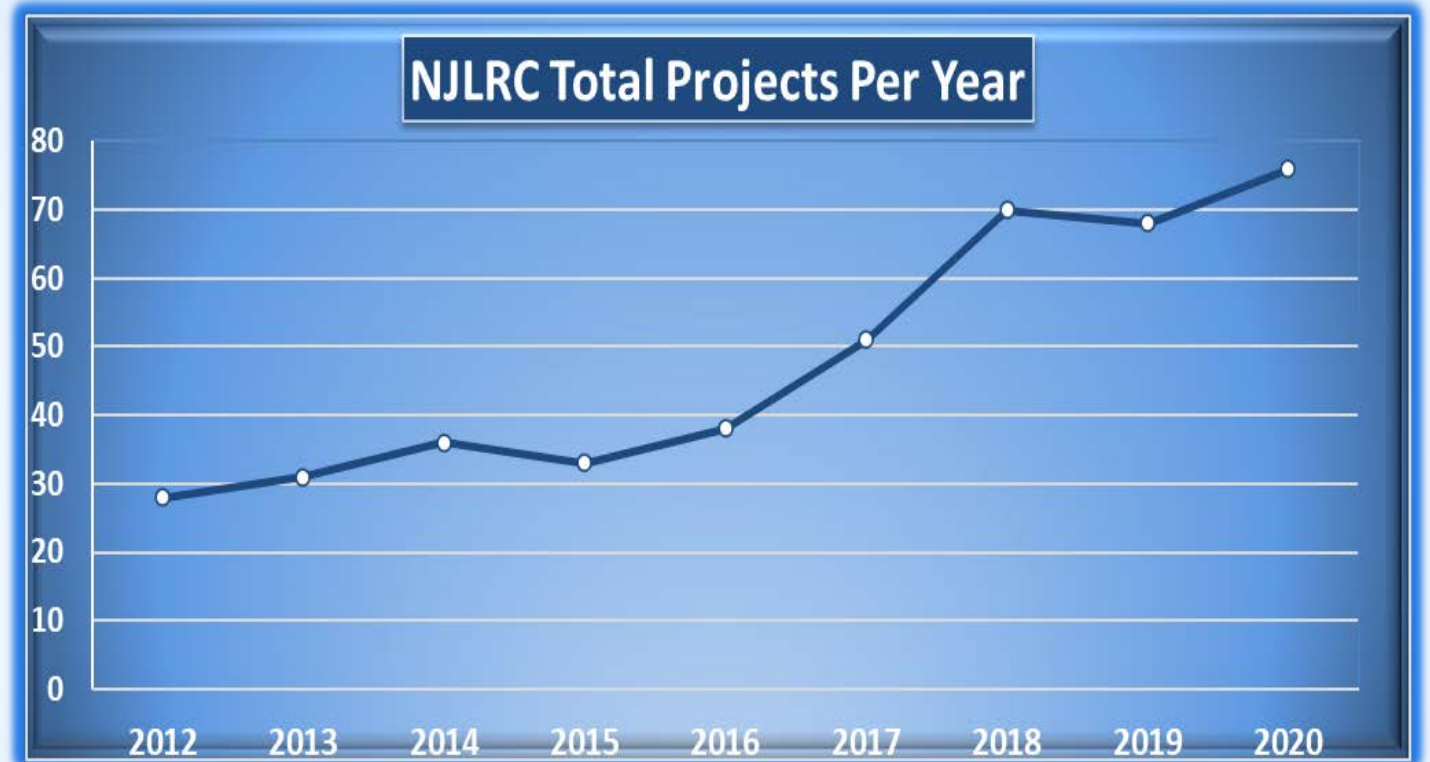
Senator Brian P. Stack

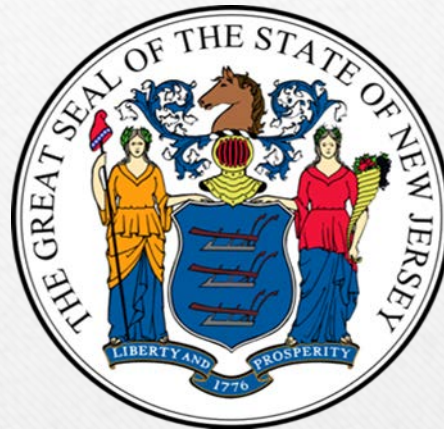
Senator Shirley K. Turner

Senator Jeff Van Drew

Senator Joseph F. Vitale

Projects from 2012 - 2020





NJLRC Recent Projects

NOTE: Unless otherwise noted, all information in this section is drawn from the NJLRC Final Report pertaining to the project under discussion.

Charitable
Registration
and
Investigation
Act
(December
2019)

- New Jersey's Charitable Registration and Investigation Act articulates the role of the Attorney General in protecting charitable assets (N.J.S. 45:17A-18 et seq.).
- The Protection of Charitable Assets Act is a model act prepared by the ULC to provide the AG with an inventory of basic information about each charitable organization that operates in a given state.
- The PCAA provides a minimalist platform designed not to overburden either the charitable organizations or the Attorney General.
- In New Jersey, there are over 34,000 organizations considered by the IRS to be public charities, private foundations, or private operating foundations commonly referred to as 501(c)(3) organizations.

Charitable
Registration
and
Investigation
Act
(December
2019)

- The annual expenditures of these organizations exceeds \$42 billion dollars.
- Each year, over 1.6 million individuals volunteer at New Jersey non-profit organizations, providing over 225 million hours of service valued at more than \$5.3 billion dollars.
- These organizations employ approximately 321,000 people or nearly 10% of the state's private sector work force.
- The success of the charitable sector is based on the public's confidence in the various charities.
- Charities that engage in abuse, fraud, or other types of misbehavior erode the public's confidence in this area.

Charitable Registration and Investigation Act (December 2019)

- If potential donors fear that their contribution will be misused, they will be reluctant to provide a donation.
- The New Jersey Legislature has taken steps to protect the public from fraud and deceptive practices.
- Under the Charitable Registration and Investigation Act (“CRI Act” or “Act”) the Attorney General was granted the powers necessary to obtain data concerning the fundraising practices of charitable organizations, professional fund raisers and solicitors.
- The Act vests the Attorney General with the authority to publish and disseminate to the public the data concerning the charities that operate in New Jersey.

Charitable Registration and Investigation Act (December 2019)

- Initially, New Jersey’s “Charitable Fundraising Act of 1971” regulated charitable fundraising and the solicitation of funds by law enforcement organizations.
- The CFA was repealed in 1994 and replaced with the “Charitable Registration and Investigation Act”.
- The purpose of this Act is to: (1) increase the Attorney General’s “ability to collect [and disseminate] information useful to New Jersey contributors and [(2)] take strong action against those individuals who would defraud or abuse the public’s generosity for their own personal gain.”
- The passage of the Charitable Registration and Investigation Act ushered in a new era of regulating charitable organizations conducting business in New Jersey.

Charitable
Registration
and
Investigation
Act
(December
2019)

- Attorney General was vested with a broad range of powers to preserve the integrity of New Jersey's charitable organizations and protect NJ citizens.
- In January 2018, the Center for Non-Profits conducted a survey. 15% of those surveyed said charitable registration/ solicitation laws and regulations were among the most important issues to maintain and improve the non-profit sector.
- Staff sought comments from: Department of Community Affairs; Office of the Attorney General; New Jersey State Bar Association – Business Law Section; Private Practitioners; and, the New Jersey Center for Non-Profits.
- No objection was received to the proposed modifications in the Report.

Imputing Negligence to a Public Entity (June 2019)

Imputing negligence of a third party to a public entity, as a means of expanding potential remedies in the context of a contract dispute, came to the attention of the Commission through *City of Perth Amboy v. Interstate Industrial Corp.*, 2017 WL 2152738 (App. Div. 2017).

In that case, the Appellate Division considered whether an agent or independent contractor's negligence could be imputed to a public entity when an exculpatory clause limited damages against the public entity to an extension of time for performance.

The Court found that “the Legislature did not intend to broaden a public entity's liability by permitting the negligence of its agents or independent contractors to be imputed to the public entity,” and, in the absence of negligence on the part of the public entity, the exculpatory clause was enforceable.

Imputing Negligence to a Public Entity (June 2019)

Initially, the LPCL allowed publicly bid, local government contracts to include exculpatory clauses that denied delay damages and limited a contractor's remedy to an extension of time. (L.1971, c. 198, § 19, eff. July 1, 1971)

A 2001 amendment voided such clauses in most cases, finding them repugnant to public policy.

The Appellate Division considered the plain wording of the statute, and the legislative intent. It found that the exculpatory clause was valid because there was no evidence that Perth Amboy was negligent. The Court said that the Legislature did not intend for a contractor's negligence to be imputed to the public entity (allowing a form of relief that otherwise would not exist).

The amendment was modeled on a 1994 amendment to N.J.S. 2A:58B-3, which also forbids exculpatory clauses for a public entity that exhibits "negligence, bad faith, active interference, or other tortious conduct."

Imputing Negligence to a Public Entity (June 2019)

In addition to harmonizing the two statutory provisions Staff engaged in outreach, including to Edward J. Buzak, Esq., a past Chairman of the Legislative Committee of the Association of Environmental Authorities.

He strongly suggested that the Public Schools Contracts Law be similarly amended, noting that a companion amendment to that statute, N.J.S. 18A:18A-41, was enacted to achieve the same objective as the 2001 amendment to the LPCL. (The Senate Committee Statement indicates that the bill prohibiting most “no damage for delay” clauses was intended to apply both to the LPCL and to the Public Schools Contracts Law.)

Since several other sections of the amendment applied to both statutes, Mr. Buzak suggested that any revision to the LPCL should be extended to Boards of Education.

Imputing Negligence to a Public Entity (June 2019)

The Commission recommends that both N.J.S. 40A:11-19 and N.J.S. 18A:18A-41 be revised to mirror the wording in N.J.S. 2A:58B-3(c) using the definition for “district” in N.J.S. 18A:18A-2 and “contracting unit” in N.J.S. 40A:11-2 when referencing the public entity.

N.J.S. 2A:58B-3(c) would also be revised to clarify that “the State” refers to the public entity.

All three statutory sections would specifically prohibit imputing the negligence of a third party to a public entity, providing consistency in interpreting contracts governed by these statutes, and potentially alleviating the type of sprawling and costly litigation that gave rise to this case.

Pending Tenure Charges and Back Pay (July 2020)

- In *Pugliese v. State-Operated School District of City of Newark*, 454 N.J. Super. 495 (App. Div. 2018), the New Jersey Superior Court, Appellate Division, was asked to construe N.J.S. 18A:6-14 and determine the impact of an appellate remand on a suspended educator's entitlement to back pay while remand is pending.
- The plain language of N.J.S. 18A:6-14 does not address a situation in which the Appellate Division vacates and remands an arbitrator's determination without dismissing the charges.
- The Appellate Division said that the Legislature's intent in enacting N.J.S. 18A:6-14 was to alleviate economic hardship endured by teachers suspended without pay pending outcome of their certified charges.
- The Court also noted that vacating an order is "akin to an order granting a new trial."

Pending Tenure Charges and Back Pay (July 2020)

- The Court determined that the tenured teachers were statutorily entitled to back pay from 121st day of suspension without pay until the date of arbitrator's final decision on remand.
- For a teacher suspended without pay, the statute provides that compensation is to resume after 120 days if: (1) the determination of the charge by the arbitrator is not made within that time; (2) the charges against the teacher are dismissed; or (3) the charges are initially sustained but reversed on appeal.
- The statute does not address what happens when the Appellate Division vacates and remands an arbitrator's determination without dismissing the charges.
- The *Pugliese* Court found no clarification in the statute's legislative history.

Pending Tenure Charges and Back Pay (July 2020)

- The Appellate Division addressed the Legislature's intent in enacting N.J.S. 18A:6-14.29 in *In re Grossman*, 127 N.J. Super. 13 (App. Div. 1974) and concluded that the purpose of the statute was to alleviate, "the economic hardship endured by teachers...suspended without pay pending the outcome of charges filed against them and certified for [a] hearing."
- For 44 years, the interpretation of the Court remained unaddressed by the Legislature, and the Court invoked "legislative acquiescence" in affirming its earlier interpretation of the Legislature's intent.
- The Appellate Division "summarized the impact of an order vacating and remanding an initial decisions [made by trial court or agencies] by analogizing it to the grant of a motion for a new trial."
- The Court said that its 2015 decision to reverse and remand the arbitrator's decisions meant that no final decision had been rendered as to the educator's tenure charges, and that Chavez and Pugliese were entitled to back pay from the 121st day of their suspension until the arbitrators reached their decision on remand from which the appellants did not appeal.

Pending Tenure Charges and Back Pay (July 2020)

- Staff sought comments from: the Attorney General of New Jersey; the New Jersey Education Association; the New Jersey Department of Education; the Employment Section of New Jersey State Bar Association; the New Jersey State Board of Education; the New Jersey School Board Association; Newark Teachers Union Local 481; and, the attorneys of record in *Pugliese v. State-Operated School District of City of Newark*.
- The New Jersey Education Association (NJEA) and Newark Teachers Union Local 481 had no objection to the proposed modification. They indicated that it will be “in the interest of all parties and consistent with the legislative intent that the holding of *Pugliese* be incorporated into the statutory language.”
- The New Jersey School Boards Association (NJSBA) supported the change to refine the statutory language to encompass remands, saying it will “provide greater certainty for boards of education and help reduce costs of tenure proceeding,” reduce litigation, and that “decisions will be rendered more expeditiously.”

Pending Tenure Charges and Back Pay (July 2020)

- The New Jersey Department of Education – Office of Controversies and Disputes (NJDOE) advised the Commission that it was not “necessary to modify the language contained in N.J.S. 18A:6-14, and suggested that the procedural history of *Pugilese* is not typical.
- The NJDOE also indicated that tenure charges that result in the removal of an employee are usually upheld on appeal and the arbitration awards that are vacated normally involve cases in which the employee is suspended or the charges are not sustained.
- Since the statute does not presently address a subset of circumstances that may occur – even if not frequently – the proposed modifications may be appropriate in the interest of addressing the full range of possible circumstances.

Tumultuous and Public (December 2019)

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

The Appellate Division found the defendant’s behavior to be tumultuous, reasoning that the “defendant’s conduct caused public inconvenience, annoyance or alarm and constituted overwhelming turbulence or upheaval... and a violent agitation of mind and feelings.”

The Court went on to find that “for the present purposes,” the word “public,” as defined in N.J.S. 2C:33-2(b), also applied to subsection a. of N.J.S. 2C:33-2(a).

The Commission recommends removal of the term “annoyance” and “tumultuous” from the disorderly conduct statute to eliminate the ambiguity surrounding these subjective and undefined terms. The Commission suggests that language prohibiting “excessive noise” be added to this statute, and recommends that the unconstitutional, “offensive language” subsection be stricken from the statute.

Tumultuous and Public (December 2019)

The defendant in *Finneman* was charged with disorderly conduct under N.J.S. 2C:33-2(a)(1).¹⁴ The State was required to prove that the defendant “acted with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof[,] ... [e]ngaged in fighting or threatening, or in violent tumultuous behavior.”

The defendant argued that he had not engaged in tumultuous behavior within the meaning of the statute, but his convictions were affirmed.

N.J.S. 2C:33-2(b) of the Disorderly Conduct statute is entitled “Offensive Language.” Directly beneath section b., a separate unlettered paragraph defines “public.”

The location of this definition caused the Appellate Court to consider whether it applied solely to subsection b. or whether it applied to subsection a. as well.

New Jersey’s Disorderly Conduct statute is based upon the Model Penal Code and a comparison of the two provides the basis for applying the definition of the term “public” to both subsections of the New Jersey statute.

Tumultuous and Public (December 2019)

The term tumultuous is not commonly used, nor is it defined in NJ's CCJ. The Finneman Court examined the Webster's New Collegiate Dictionary definition of this term as it appeared in 1978, the year N.J.S. 2C:33-2 was enacted. At the time, "tumultuous" was defined as "marked by tumult," "tending or disposed or cause to excite a tumult," and "marked by violent or overwhelming turbulence or upheaval."

New Jersey is one of 24 states that use the term tumultuous in its body of law.

Subsection b. of the NJ disorderly conduct statute prohibits the public use of coarse or abusive language uttered with the purpose of offending the sensibilities of a hearer, or in reckless disregard of the probability of so doing. It was enacted after both the United States and the New Jersey Supreme Courts invalidated convictions for the use of public and offensive language – eliminating it would be consistent with the case law.

Tumultuous and Public (December 2019)

Staff sought comments from: the Attorney General of New Jersey; the Appellate Section of the Attorney General's Office; the Legislative Liaisons at the Office of the Attorney General; the New Jersey Administrative Office of the Courts; the New Jersey State Municipal Prosecutor's Association; each of the twenty-one County Prosecutors; the New Jersey County Prosecutor's Association; the New Jersey Office of the Public Defender; the New Jersey Association of Criminal Defense Lawyers; the leadership of the Criminal Practice Section of the New Jersey State Bar Association; several criminal defense attorneys; the New Jersey State League of Municipalities; the New Jersey Association of Counties; the New Jersey State Association of Chiefs of Police; the New Jersey Police Traffic Officers Association.

The entities that responded generally supported the recommendations in this Report.

Tumultuous and Public (December 2019)

The Mercer County Prosecutor's Office agreed that "...clarifying the structure of the statute could eliminate the confusion noted by the Appellate Division in *Finneman*." The Office also said that, "[d]isorderly conduct remains one of the most frequently investigated and charged offenses in New Jersey." In 2016, "there were 13,021 arrests [in New Jersey] for disorderly conduct..." so there is an interest in "...ensuring that the offense of disorderly conduct is clearly defined, with the overall goal that actual unlawful behavior is being deterred and law enforcement are lawfully doing so."

The Monmouth County Prosecutor's Office said that, "replacing the term 'tumultuous' with 'other violence' and the new offense of 'excessive and unreasonable noise' would allow the same conduct to be prosecuted under the statute while using more readily understandable words." The Office noted that, "[t]he proposal to clarify that the definition of the word 'public' applies everywhere... removes any potential ambiguity." Deletion of the "offensive language" section "...would be helpful as its plain language was determined to be unconstitutional in 1985, and the constitutional infirmity has not yet been corrected."

Child Endangerment (February 2021)

- New Jersey’s Child Endangerment statute, N.J.S. 2C:24-4(a)(2), provides that, “[a]ny person who has a legal duty to care for a child...who causes the child harm that would make the child an abused or neglected child...is guilty of a crime of the second degree.”
- In *State v. Fuqua*, 234 N.J. 583 (2018) the New Jersey Supreme Court considered whether the State must prove that a child suffered “actual harm” in order to convict a defendant under the State’s child endangerment statute, N.J.S. 2C:24-4(a)(2).
- The Court determined that a child’s exposure to an “imminent danger and a substantial risk of harm” is sufficient to convict a defendant of second-degree child endangerment.
- The Commission recommends the modification of New Jersey’s Child Endangerment statute to clarify that the “harm” to which it refers includes the exposure of a child to imminent danger and a substantial risk of harm.

Child Endangerment (February 2021)

- The Court noted that “... the incorporation by reference of N.J.S. [] 9:6-8.21 in N.J.S. [] 2C:24-4(a)(2), does not require that any act or omission of the parent result in specific harm to the child.” Instead, “[t]he focus is on the conduct of the parent which exposes the child to a ‘substantial risk’ of death or physical harm”.
- The Court noted that state appellate courts over the last three decades have “unanimously held that the State is not required to prove actual harm to a child to convict under N.J.S.A. 2C:24-2(a)(2),” holding that a “substantial risk of harm is sufficient to sustain a conviction.”
- Since the Legislature is presumed to be aware of judicial constructions of statutory language, in the absence of Legislative action to address this issue (despite amendments to the statute on three occasions since 1992), the Court presumed legislative acquiescence to the judiciary’s interpretation.
- The New Jersey Supreme Court affirmed the Appellate Court’s conclusion that N.J.S. 2C:24-2(a)(2) punishes conduct exposing children to a substantial risk of harm and upheld defendant’s conviction.

Child Endangerment (February 2021)

- Justice Albin’s dissent, joined by Justice LaVecchia, opined that the Court’s decision ran contrary to the endangering statute’s text and legislative history, failed to apply the doctrine of lenity, and “erased all distinctions” between civil and criminal statutes.
- Writing separately in dissent, Chief Justice Rabner was unpersuaded that the legislative history cited by the majority and Justice Albin resolved the issue before the Court. He agreed that the Court was faced with two reasonable interpretations of a criminal statute, which required the Court to apply the rule of lenity.
- In his view, it was unclear “whether the Legislature intended a narrow definition of actual harm or a broader meaning that includes substantial risk of harm.” Given this ambiguity, the Chief Justice suggested defendant’s conviction could not stand.
- New Jersey courts are “adjured to follow an analytical approach by which the level of clarity required of the language of the enactment depends on the nature of the activity that is sought to be regulated.”

Child Endangerment (February 2021)

- Enactments with criminal penalties must be drafted with greater precision than their civil counterparts. The New Jersey Supreme Court has made it clear that, “[t]he test is whether the statute gives a person of ordinary intelligence fair notice that his conduct is forbidden and punishable by certain penalties.
- All fifty states, and the District of Columbia, have enacted statutes to punish those who either injure, or expose a child to the risk of injury.
- The statutory terminology for this offense is not nationally uniform, and there is not a commonly accepted “child endangerment” statute, so Staff reviewed state statutes involving child endangerment, abuse, neglect, cruelty, and the mistreatment of children.
- Of the fifty-one statutes examined, 25 use a form of the word “endanger”. Sixteen refer to the harm of a child as either abuse, neglect, or both. The statutes of four states, and the District of Columbia, recognize acts of “cruelty” committed against a child.

Child Endangerment (February 2021)

- The Commission sought comments from: the Attorney General of New Jersey; the New Jersey Administrative Office of the Courts; Association of Criminal Defense Lawyers; the Office of the Public Defender; the Criminal Law Section of the New Jersey State Bar Association; the County Prosecutor's Association of New Jersey (CPANJ) and numerous County Prosecutors; private criminal defense attorneys; the New Jersey State League of Municipalities; the New Jersey Association of Counties; New Jersey State Association of Chiefs of Police; and the New Jersey Police Traffic Officers Association.
- The County Prosecutor's Association of New Jersey indicated that it "...supports the NJLRC's proposed modifications of N.J.S. 2C:24-4(a)." It said that the statute is clear, but it "...supports the NJLRC's efforts to make what is already clear even clearer" and noted that the proposed changes "...would more closely align New Jersey's child endangerment statute with similar statutes in the majority of other states and more accurately reflect New Jersey's commitment to protecting its children."
- Seven bills have been introduced that involve N.J.S. 2C:24-4(a)(2), none address the issue discussed in this Report.

Marital Status in LAD (November 2019)

In the case of *Smith v. Millville Rescue Squad*, 225 N.J. 373 (2016), the New Jersey Supreme Court examined the phrase “marital status” in New Jersey’s Law Against Discrimination (LAD), N.J.S. 10:5 et seq., and determined that it includes those who are single, married, divorced, widowed, or are in transition between those states of being.

The term “marital status” is not defined in the LAD.

The Appellate Division found the comment “that [the Plaintiff] was being terminated because he was going to go through an ‘ugly divorce’ constituted direct evidence of discrimination that [Plaintiff] had established a prima facie case of discrimination based on a change in the status of his relationship “from married to soon-to-be-divorced[.]”

The Supreme Court affirmed, stating that “[b]ecause this case involves LAD, special rules of interpretation also apply,” and that “the LAD is a remedial legislation intended to ‘eradicate the cancer of discrimination’ in our society, and should therefore be liberally construed ‘in order to advance its beneficial purposes.’”

Marital Status in LAD (November 2019)

The Court noted that when LAD was initially enacted, it only protected individuals from discrimination based on “race, creed, color, national origin, or ancestry.”

Discrimination based on marital status did not appear in the LAD as a prohibited employment practice until 1970, part of a comprehensive amendment.

Twenty-one states and the District of Columbia bar discrimination based on marital status.

The Court concluded that “marital status should be interpreted to include those are single or married and those who are in transition from one to another” stating that no employee should fear that their marriage ceremony, a divorce, or the death of their spouse will lead to termination or disciplining at work, while at the same time ensuring that the interpretation doesn’t disrupt an “employer’s legitimate business judgment and policies regarding its workforce.”

Marital Status in LAD (November 2019)

Professor Stacy Hawkins, of the Rutgers University School of Law, noted that the New Jersey Supreme Court reached a decision in line with the purpose behind the enactment of the LAD. The Court's determination regarding the definition of "marital status" is currently the law in New Jersey, but codification could result in more consistent interpretations moving forward. Professor Hawkins also said that incorporating the definition in the statute could make the law more accessible to pro se litigants, or individuals who might not have ready access to the case law.

Representatives of the Labor and Employment Law Section of the New Jersey State Bar Association (LAELS) indicated that the LAELS considers the *Smith* decision clear and recommended against codification of this term.

The initial outreach did not result in a universal consensus regarding the codification of the definition of "marital status" in the LAD, and proposed language was transmitted to stakeholders for their consideration.

Marital Status in LAD (November 2019)

Professor Katie Eyer, of the Rutgers University School of Law, concurred with Professor Hawkins' perspective that "codification would be useful..." She opined that "if the state is going to codify a definition, it should probably expand the definition to include Civil Unions and Domestic Partnerships" to eliminate any ambiguity as to whether they were covered.

The Division on Civil Rights (DCR), the agency charged with enforcing the LAD, "agrees substantively that the definition of marital status proposed by the Commission is the appropriate way in which to define the term" but indicated that codification is not necessary.

The DCR observed, "[w]hile the proposed definition provides more examples of marital states, it does not substantively change the definition set out by the Court in *Smith*." DCR advised that it was "not aware of any confusion by the public in construing the term under the LAD" and cautioned that "if the Legislature codified a definition of marital status that incorporates the concept of transitioning between states, a court could make an improper inference that the Legislature intended this concept to apply to marital status only, and not [to] other protected classes."

Marital Status in LAD (November 2019)

Staff agreed with the concern expressed by the Director that, "...marital status is not the only LAD-protected class where an individual may transition from one state to another but stay within the protected class."

An individual may be of one religion (or none) and be in the process of transitioning to another religion. An individual may also transition between genders. In both instances, the individual is entitled to be protected by the LAD's prohibition against discrimination. Finally, LAD protection also extends to individuals who are associated with someone in a protected class or are perceived as part of a protected class and should be reflected in the LAD statutes.

The recommendations from the DCR were incorporated in a Tentative Report that was released by the Commission on September 19, 2019.

No objection was received to the proposed modifications.

Confinement (February 2021)

- In *State v. Clarity*, 454 N.J. Super. 603 (App. Div. 2018), the Appellate Division considered whether a probationary term for a defendant's last prior crime was the equivalent of "confinement" for purposes of sentencing him to an extended term as a persistent offender.
- The Court noted that N.J.S. 2C:44-3(a) does not define the term "confinement" and that the absence of a definition "...[generates] potential uncertainty about its scope when the State seeks a persistent-offender extended term."
- The Commission determined that this provision might benefit from the addition of language to clarify the meaning of "confinement" and the criteria for sentencing a defendant to an extended term of imprisonment as a persistent offender.
- In the absence of definitive statutory language, the Appellate Division examined the persistent offender statute and reviewed secondary sources to determine the Legislature's intent.

Confinement (February 2021)

- The purpose of N.J.S. 2C:44-3(a) is to “create the judicial discretion to impose an extended term on an individual incapable of living a law-abiding life for a significant period of time.”
- In *Clarity*, the Appellate Division said that the Legislature intended to “convey[] that an individual who is capable of residing in our communities for more than ten years without committing a crime should not be treated as a persistent offender.”
- The absence of a statutory definition for the term “confinement” created ambiguity. The Appellate Division consulted Black's Law Dictionary and Ballentine's Law Dictionary for a definition of “confinement.” Black's Law Dictionary defines confinement as a state in which an individual is “deprive[d] ... of ... liberty.” Ballentine's Law Dictionary defines it as being “place[d] in prison or jail.”
- Of the fifty states, only Wisconsin uses the term “actual confinement” in its persistent offender statute, defined as “connot[ing] a time when an individual is off the streets and is no longer able to wreak further criminal havoc against the community.”

Confinement (February 2021)

- Missouri and Washington define “confinement” in their criminal codes.
- Missouri defines a person as “in confinement” if they are “held in a place of confinement pursuant to arrest or order of a court” and specifically excludes probation or parole, temporary or otherwise.
- Washington defines “total confinement” as confinement inside the physical boundaries of a [governmental] facility or institution”.
- The Appellate Division in *Clarity* held that the trial court incorrectly concluded that the defendant’s “probation[ary sentence was] the same as being ‘confined.’”
- The Appellate Division determined that “confinement” meant that a person is “imprisoned” or “restrained.”
- In the absence of any legislative history, however, it is unclear whether the Legislature intended the term confinement to include probation, parole, or home confinement.

Confinement (February 2021)

- Staff sought comments from : the County Prosecutors Association of New Jersey (CPANJ); the New Jersey Attorney General's Office; the New Jersey State Municipal Prosecutors Association; the Association of Criminal Defense Lawyers; the Office of Public Defender; the leadership of Criminal Practice Section of the New Jersey State Bar Association; New Jersey State League of Municipalities; New Jersey Association of Counties; each of the twenty-one County Prosecutors and several private practitioners.
- The CPANJ noted that a recent Appellate Division's decision echoed *Clarity's* holding - that probation does not constitute "confinement" and found that it is useful to clarify the definition of the term confinement.
- The CPANJ suggested further modification to the proposed statutory language in subsection (2), after the phrase "constrained pursuant to an order of a court" CPANJ proposed the language "for criminal behavior," consistent with the holding in *Clarity* in which the Court said "[w]e are satisfied that the persistent-offender statute applies to confinement for criminal behavior, not the mere incident of an individual being held briefly in custody."

Confinement (February 2021)

- Additionally, in subsection (3), the CPANJ recommended that after “temporary or otherwise” the Commission include “civil commitment, or sentences for Not Guilty by Reasons of Insanity,” suggesting that this language would narrow the scope of the “types of confinement that would qualify a person for an extended term of imprisonment.”
- There is no legislation currently pending regarding N.J.S. 2C:44-3(a) that clarifies the meaning of “confinement” in the statute.

Misdemeanor and High Misdemeanor (March 2019)

This project originated as a result of a review of the Model Entity Transaction Act (META), which pointed out that it is presently a “misdemeanor” for a partnership to conduct business in New Jersey if the members of the entity have not filed the required paperwork with the County Clerk’s Office.

The Commission recommends a revision of the Code of Criminal Justice to eliminate virtually all references to the term “misdemeanor” and replace it, in most instances, with its contemporary, Code-based equivalent. The Commission also recommends elimination of non-Code statutes containing “misdemeanor” that duplicate a crime enumerated in the Code or are archaic. The Commission recognizes that certain references to “misdemeanor,” such as those discussing out-of-state criminal activity, are necessary and should therefore remain.

The Code was enacted in New Jersey “[t]o forbid, prevent and condemn conduct that unjustifiably and inexcusably inflicts or threatens serious harm to individual or public interests.” (N.J.S. 2C:1-2(a)(1))

Misdemeanor and High Misdemeanor (March 2019)

N.J.S. 2C:43-1(a), grades crimes as those of the first degree, second degree, third degree, and fourth degree. Crimes defined by the Code are no longer classified as misdemeanors or high misdemeanors.

The Code is not the only title in New Jersey that contains and defines criminal offenses.

Other titles define criminal activity and the crimes set forth in other statutes may not follow the scheme set forth in N.J.S. 2C:43-1(a), but the Code, is responsible for enumerating the penalties and sentences for criminal behavior set forth in other statutes.

Prior to the enactment of the Code, criminal offenses were classified as either a “high misdemeanor” or as a “misdemeanor.” The Code, provides, in relevant part, that “...a crime defined by any statute of this State other than this code and designated as a high misdemeanor shall constitute for the purpose of sentence a crime of the third degree.”

Misdemeanor and High Misdemeanor (March 2019)

Regarding misdemeanors, subsection b. provides, in relevant part, that “[e]xcept as provided in sections 2C:1-4(c) and 2C:1-5(b) and notwithstanding any other provision of law, a crime defined by any statute of this State other than this code and designated as a misdemeanor shall constitute for purpose of sentence, a crime of the fourth degree.”

Forty-four New Jersey titles and one appendix contain statutes that employ either the term misdemeanor or high misdemeanor – a total of 284 statutes that reference these terms.

Certain references to “misdemeanor” or “high misdemeanor,” like those referring to out-of-state criminal activity, for example, are necessary, and no change is recommended.

In other cases, the language in the statutes should be conformed to reflect the Code, which can be done by eliminating misdemeanor and high misdemeanor and replacing them with “indictable offense” or “crime” where appropriate.

Misdemeanor and High Misdemeanor (March 2019)

Non-Code offenses resulting in monetary penalties or injunctive relief, or which are declaratory or advisory in nature could be amended to remove references to misdemeanor or high misdemeanor and the associated penalties.

Some statutory references to the term misdemeanor are contained in titles outside of the Code. These could be amended to eliminate the term misdemeanor and set forth the degree of the crime as provided in the Code.

Numerous non-Code statutes contain similar, or identical, elements of offenses that are also set forth in the Code. It is not necessary to repeal them, but each should reference the appropriate crime as set forth in the Code.

Finally, some several non-Code statutes that are anachronistic, duplicative, or have been superseded by statutes contained in the Code. To avoid confusion, these should be repealed.

Misdemeanor and High Misdemeanor (March 2019)

Staff sought comments from: the Office of the Attorney General; the New Jersey Department of Corrections; the Division of Elections; the New Jersey Municipal Prosecutor's Association; the Association of Criminal Defense Lawyers; the leadership of the Criminal Practice Section of the New Jersey State Bar Association; the Office of the Public Defender; each of the twenty-one County Prosecutor; several criminal defense attorneys; The New Jersey Department of Agriculture; the New Jersey Agricultural Society; the Department of Community Affairs; the New Jersey Racing Commission; the Division of State Lottery; the Department of Transportation; the American Civil Liberties Union of New Jersey; the New Jersey Sports and Exposition Authority; the New Jersey Pinelands Commission; the New Jersey Department of Banking and Insurance; the Department of Education; the New Jersey Education Association; the Division of Law, Education and Higher Education Section; the Election Law Enforcement Commission; Community Affairs and Elections Section in the Department of Law; the New Jersey Election Commission; the Division of Fish and Wildlife; the Department of Health; the Division of Alcoholic Beverage Control in the Department of Law

Misdemeanor and High Misdemeanor (March 2019)

and Public Safety; the Department of Labor and Workforce Development; the Department of Military and Veterans' Affairs; the New Jersey Motor Vehicle Commission; the New Jersey League of Municipalities; the New Jersey Association of Counties; the Department of the Treasury; the Board of Dentistry; the New Jersey State Society of Auctioneers; the New Jersey State Police; Private Investigator Education; National Pawnbrokers Association; the Corrections and State Police Section of the Division of Law; the New Jersey State Association of Chiefs of Police; the New Jersey Police Traffic Officers Association; and the Office of Weights and Measures.

The Commission received an objection from the League of Municipalities to the modification of three statutes, stating that the recommendations “go beyond a mere administrative change and are instead a substantive change in law.”

The New Jersey Department of Transportation and the New Jersey Department of Corrections offered “no comment” on the Report.

Misdemeanor and High Misdemeanor (March 2019)

The State of New Jersey, Department of Law and Public Safety, Division of Alcoholic Beverage Control (the “ABC”) commented on 20 statutes proposed for modification pursuant to this project, but took “no position” on some, did not object to others, and opposed the repeal of N.J.S. 33:1-52, N.J.S. 33:3-9, and N.J.S. 33:3-10. N.J.S. 33:3-9 and N.J.S. 33:3-10 concern the manufacture and sale of poisoned liquors and the consequences for the serious bodily injury or death caused by such intoxicants.

The New Jersey Sports and Exposition Authority advised that the Hackensack Meadowlands Development Commission, set forth in N.J.S. 13:17-5, is “defunct,” so Staff recommends the repeal of this statute.

The Department of Community Affairs, the Director of Fire Safety, and a member of the criminal defense bar replied with support for this project. The New Jersey Division of Fish and Wildlife supported the modifications to N.J.S. 23:4-41; N.J.S. 23:3-15; and, N.J.S. 23:10-19.56 and offered suggestions on two other proposed modifications.

Recommendations received are included in the Appendix to the Report.

Kidnapping

(December 2020)

- The “unharmful release” provision of New Jersey’s kidnapping statute, N.J.S. 2C:13-1(c)(1), does not identify the type of harm required to find a defendant guilty of first-degree kidnapping.
- This provision was considered in *State v. Sherman*, 367 N.J. Super. 324 (App. Div.), cert. denied, 180 N.J. 356 (2004) overruled in part on other grounds, *State v. Dalziel*, 182 N.J. 494, 504 (2005) and *State v. Nunez-Mosquea*, 2017 WL 3623378 (App. Div. 2017).
- The Commission Report recommends clarifying that “harm” in the kidnapping statute includes physical, emotional, or psychological harm.
- On appeal, the defendant in *State v. Nunez-Mosquea* argued that the trial court “failed to properly instruct the jury on the “harm” element of the first-degree kidnapping charge [thereby depriving him] of his rights to a fair trial and due process.”
- New Jersey’s kidnapping statute contains a grading provision that provides that “kidnapping is a crime of the first degree... [but i]f the actor released the victim unharmed and in a safe place prior to apprehension, it is a crime of the second degree.”

Kidnapping

(December 2020)

- In *Sherman*, the Appellate Division rejected the defendant's argument that the victim's anxiety, nightmares, and fear constituted only minimal emotional or psychological harm insufficient to support first degree kidnapping. The Court held that "harm in the unharmed release provision of N.J.S. [] 2C:13-1(c), includes emotional or psychological harm suffered by the victim."
- In 2007, the Model Jury Charge for Kidnapping was amended in response to *State v. Sherman* to provide that the State must prove the defendant "knowingly harmed" or "knowingly did not release" the victim in a safe place prior to his apprehension. In addition, it clarified that the "harm" element can include physical, emotional, or psychological harm.
- In 2014, the Model Jury Charge for kidnapping was again revised to provide that: "[i]f the State is contending that the victim suffered emotional or psychological harm, it must prove that the victim suffered emotional or psychological harm beyond that inherent in a kidnapping. That is, it must prove that the victim suffered substantial or enduring emotional or psychological harm."

Kidnapping

(December 2020)

- The Appellate Division in *Nunez-Mosquea* observed that “[n]o New Jersey case of which we are aware has ever suggested that there is a difference between the physical harm sufficient to satisfy the released unharmed provision of the statute and ‘the type of harm inherent in every kidnapping.’” The Court recognized that, “[i]t may be possible that some types of injury would be of such trifling nature as to be excluded from the category of injuries which [the Legislature] had in mind...” in the kidnapping statute.
- Staff sought comments from: the Attorney General of New Jersey; the New Jersey Administrative Office of the Courts; the New Jersey Municipal Prosecutor’s Association; Association of Criminal Defense Lawyers; the Office of the Public Defender; the Criminal Law Section of the New Jersey State Bar Association; the New Jersey County Prosecutor’s Association and each of the County Prosecutors; private criminal defense attorneys; the New Jersey State League of Municipalities; the New Jersey Association of Counties; New Jersey State Association of Chiefs of Police; and the New Jersey Police Traffic Officers Association.

Kidnapping

(December 2020)

- The Division of Criminal Justice offered comments on the proposed modifications to the kidnapping statute and stated, “[o]verall, we find that the proposed revisions capture the case law’s guidance and adaptations in a way that will provide greater comprehension and clarity.”
- There are no bills currently pending regarding N.J.S. 2C:13-1(c) regarding the use of “harm” in the statute.

De Minimus Quantity Exception (December 2019)

In *R & K Associates, LLC v. N.J. Dep't of Env'tl. Prot.*, 2017 WL 1316169 (App. Div. 2017), the Appellate Division held that former owners or operators of industrial establishments may, under certain circumstances, pursue a De Minimis Quantity Exemption (DQE).

The Commission recommends the addition of language to N.J.S. 13:1K-9.7 that permits a qualified prior owner or operator of an industrial establishment to pursue a DQE after the revocation of a “no further action letter” by the Department of Environmental Protection (DEP).

Among other issues presented to the Appellate Division was whether former owners have standing to claim a DQE under the Industrial Site Recovery Act.

The Court first acknowledged there was “some textual support” that ISRA’s DQE provision only applied to current owners.

“Owner” is defined in ISRA’s definitions section as “any person who owns the real property of an industrial establishment or who owns the industrial establishment.”

De Minimus
Quantity Exception
(December 2019)

The Court observed that the Legislature’s decision to use the present tense of ownership provides some indication that the statute was intended to only cover current owners of a subject property.

The Court also discussed the manner in which other parts of ISRA explicitly mention previous owners of a property while N.J.S. 13:1K-9 simply refers to owners and operators.

This variation, in addition to other sections of the Act similarly employing the term “owners”, appears to lend support to the idea that when the term “owner” is used, it only refers to current owners.

The Court also considered the policies advanced by ISRA, referencing a previous decision in which it noted that the Legislature decided, as a matter of policy, to “streamline the regulatory process” and “promote certainty.”

N.J.S. 13:1K-9.7 accomplishes this by ensuring efficient transfers of land when strict enforcement of existing environment laws and regulations would hold up a sale.

De Minimus
Quantity Exception
(December 2019)

Finally, the Court found the DEP has a right to rescind an NFA it previously issued whenever an applicant is no longer in compliance with ISRA.

In that case, the applicant is once again required to fulfill the requirements of N.J.S. 13:1K-9.

This indicated that a former owner could be considered an “owner” for purposes of the Act.

In light of the statutory text and the legislative history, the Appellate Division held that the term “owner” as used in N.J.S. 13:1K-9 and -9.7 referred to both current and former owners.

Holding otherwise seemed unfair to former owners since they could be held retrospectively liable for contamination at their sites, but would be unable to seek DQEs.

The Court expressed that avenues for securing an exemption should “equitably and logically extend ...to qualif[ying] former owners [] as well.

De Minimus
Quantity Exception
(December 2019)

Staff sought comments from: the New Jersey Department of Environmental Protection; the Office of the Attorney General – Enforcement (Environmental); the leadership of the New Jersey State Bar Association – Environmental Law Section; a well-known environmental remediation company; and, practitioners in the field of environmental law.

No objection was received to the proposed modifications included in this Report.

In the 2018-2019 legislative session, a bill addressing the De Minimis Quantity Exemption was introduced in the Assembly. It did address the issue raised in R&K and, if enacted, the bill would alter conditions under which a DQE is granted by the Department of Environmental Protection. Assembly Bill 3419 would require any owner or operator of an industrial establishment to certify they have no actual knowledge of site contamination which exceeds remediation standards. Three identical bills were introduced during prior legislative sessions without enactment.

Satisfactory Completion of Probation (May 2020)

- In *Matter of E.C.*, 454 N.J. Super. 48 (App. Div. 2018), the Superior Court of New Jersey considered the meaning of the term “satisfactory” in the context of the state’s expungement statute N.J.S. 2C:52-2 et. seq.
- The State alleged that the defendant failed to satisfactorily complete her probationary term and therefore opposed her application for an expungement.
- The Appellate Division determined that the trial court’s denial of the defendant’s application for an expungement did not comport with “the Legislature’s purpose in enacting the expungement statute” and that individuals discharged from probation with an imperfect record, who have paid all outstanding fees and fines, have “satisfactorily completed probation” within the meaning of the expungement statute.
- The Commission proposed modifications to the current expungement statute defining the term “satisfactory completion” to clarify the eligibility requirement for an expungement application.

Satisfactory Completion of Probation (May 2020)

- In 2002, E.C. was arrested for and convicted of third-degree possession of cocaine with intent to distribute. She pled guilty, and was sentenced to three years of probation.
- In 2005, E.C. pled guilty to a violation of probation for her failure to report to her probation officer and advise the officer that she had moved. E.C. was ultimately discharged from probation “without improvement” and paid all imposed fines by February 2010.
- In November 2015, E.C. filed a petition to expunge her 2002 arrest, conviction, and dismissed charges under the “early pathway” section of N.J.S. 2C:52-2(a).
- The Union County Prosecutor’s Office said she had not “satisfactorily completed” her term of probation within the meaning of N.J.S. 2C:52-2(a). The trial court held that E.C.’s imperfect completion of probation served as a permanent bar to obtaining the expungement of her criminal record. In June 2016, her petition to expunge her conviction was denied again. E.C. appealed.

Satisfactory Completion of Probation (May 2020)

- The Appellate Division said that it must look to the plain meaning of the words of the statute and it apply them with the intent of the Legislature in mind. The public policy objective of this statute was to provide relief to one-time offenders who subsequently dissociated themselves from “unlawful activity.” The statute’s purpose was to “address barriers that hinder offenders from obtaining employment and living law-abiding lives.” The Court explained that the legislative history indicated that reentry of ex-offenders is in the public interest since it improves those individuals’ lives and promotes public safety.
- The early pathway section of the expungement statute, N.J.S. 2C:52-2(a), provides that an applicant may apply for expungement if at least five years have passed since his or her conviction, and the applicant has paid all applicable fines and satisfactorily completed his or her probation.
- The trial court said that E.C. did not meet the standards of the statute because she was discharged from probation “without improvement.”

Satisfactory Completion of Probation (May 2020)

- The term “satisfactory” is not defined in N.J.S. 2C:52-2. The Appellate Division examined the plain meaning of the term as defined in The Oxford Dictionary, noting that it was defined there as “[f]ulfilling expectations or needs; acceptable, though not outstanding or perfect.”
- The Appellate Division indicated that an individual who has been discharged from probation, even with an imperfect record, and has paid all fines, has satisfactorily completed probation as contemplated by the expungement statute, and that probation violations are not an absolute bar to expungement.
- The Court observed that amendments to the statute in 2017 to reduce the waiting period for an expungement application and increase the number of offenses that may be expunged, suggest “an intent to expand rather than restrict the opportunities available to first offenders to obtain expungement.” The Court said that in light of the legislative history, the trial court’s and the Prosecutor’s restrictive reading of the expungement statute was at odds with the underlying public-policy objectives.

Satisfactory Completion of Probation (May 2020)

- New Jersey and 11 other states employ the term “satisfactory” in their probation and or expungement statutes. Of the 12, only California provides a statutory definition for this term.
- The bill enacted as P.L. 2019, c.269 revised expungement eligibility and procedures. The bill did not clarify the term “satisfactory” as discussed in *In Matter of E.C.* None of the four bills introduced in the Assembly to amend N.J.S. 2C:52-2, address the ambiguity of the term “satisfactory completion” in N.J.S. 2C:52-2(a) and 2(a)(2).
- Staff sought comments from: the Office of the Attorney General; the Administrative Office of the Courts; the New Jersey State Municipal Prosecutor’s Association; the Association of Criminal Defense Lawyers; the leadership of the Criminal Practice Section of the New Jersey State Bar Association; the Office of the Public Defender; each of the twenty-one County Prosecutor; several criminal defense attorneys; the New Jersey League of Municipalities; the New Jersey Association of Counties; the New Jersey State Association of Chiefs of Police; the New Jersey County Prosecutor Association; and the Probation Association of New Jersey. No objections were received.

Mandatory Refund of Taxes Paid in Error (December 2019)

This project arose as a result of the New Jersey Tax Court's decision in *Hanover Floral v. E. Hanover Twp.*, 30 N.J. Tax 181 (Tax 2017), in which the Tax Court addressed whether a municipality is required, pursuant to N.J.S. 54:4-54, to issue a property tax refund to a property owner who mistakenly overpays his or her property taxes.

Despite the use of the word “may” in the statute, the Tax Court ruled that such a refund is mandatory. Refunds, however, are subject to a three-year statute of limitations.

The Commission recommends a revision of the current language, which is permissive, to reflect the Tax Court's decision.

The Court held that a plain reading of N.J.S. 54:4-54 indicated that Plaintiff paid property taxes “by mistake,” as defined in the statute.

It quoted the American Heritage Dictionary definition of “mistake” for additional support that Plaintiff paid the property taxes of another—the developer—because it believed it was paying taxes on its own property.

Mandatory Refund of Taxes Paid in Error (December 2019)

Trying to determine whether Plaintiff had constructive notice of the discrepancy based on its annual tax bills from 1998 to 2003, the Court noted that Plaintiff's property taxes increased steadily.

There was no unusual increase between 2000 and 2001, when Plaintiff acquired part of Lot 100.31 Thus, the Court was satisfied that Plaintiff did not, and did not have reason to, know that it was paying the taxes of another taxpayer.

The Court held that N.J.S. 54:4-54 does not give a municipality discretion to provide a refund.

Although Plaintiff mistakenly paid taxes from 2001-2012, the Court was constrained in its authority to order a refund based on the Appellate Court's decision in *Cerame v. Township Committee of Tp. Of Middletown in County of Monmouth*, 349 N.J. Super. 486 (App. Div. 2002), requiring that N.J.S. 54:4-54 and N.J.S. 54:51A-7 be read together, since both statutes "correct the same wrongs."

Mandatory Refund of Taxes Paid in Error (December 2019)

The Court granted Plaintiff a refund of taxes paid in the year in which it filed its complaint, and the three years prior.

Staff sought input from: members of the New Jersey State Bar Association's Real Property Tax Practice and Procedure Committee; the New Jersey State League of Municipalities; the New Jersey Institute of Local Government Attorneys; the New Jersey Association of Counties; and the tax administrators in each of New Jersey's 21 counties.

Initial feedback from the Tax Administrators in both Somerset and Monmouth counties expressed support for the project, with the three-year statute of limitations as required by the *Cerame* Court.

One commenter noted that municipalities may face numerous instances of this sort, and in the aggregate, without any time limit, such mistakes would be costly for municipalities to absorb.

Another commenter, a lawyer and Officer of the New Jersey Institute of Local Government Attorneys, agreed with the Court's ruling, and emphasized the need for a three-year limitation, noting that a taxpayer bears some responsibility for ensuring that his or her bill is correct.

Temporary Disability Benefits (January 2021)

- The Workers' Compensation Act (the "Act") provides workers' compensation benefits for certain voluntary services.
- The New Jersey Supreme Court identified specific language contained in the Act that it considers to be unclear.
- The Commission proposed modifications to the current workers' compensation statute, N.J.S. 34:15-75, to clarify that regardless of their outside employment at the time of the injury, certain volunteer employees and other workers should be eligible to collect benefits for either injury or death that occurs during the course of performing their duties.
- In *Kocanowski v. Twp. of Bridgewater*, 452 N.J. Super. 476 (App. Div., 2017), the Supreme Court considered the provisions of the Act in the context of an unemployed volunteer firefighter injured in the line of duty who sought temporary disability benefits.
- Pursuant to N.J.S. 34:15-75, a volunteer firefighter may recover temporary disability benefits under the Act for injury and death, either or both.

Temporary Disability Benefits (January 2021)

- The statute further provides that the compensation award is “...based on a weekly salary or compensation conclusively presumed to be received by such person in an amount sufficient to entitle him [or her]... to receive the maximum compensation by this chapter authorized....”
- The *Kocanowski* Court examined extrinsic evidence, including the legislative history of the statute.
- Enacted in 1911, the Workers’ Compensation Act was amended in 1931 to require that every municipality and fire district provide compensation insurance for volunteer firefighters (N.J.S. 34:15-75.27).
- This requirement set forth explicit protection for “volunteer firefighters who did not have ordinary wages or salaries or who were unemployed at the time of their injury.”
- The New Jersey Supreme Court recognized both the important role of volunteer firefighters in New Jersey and the intent of the Legislature to encourage such work through protective legislation.

Temporary Disability Benefits (January 2021)

- The New Jersey judiciary has liberally construed the Workers' Compensation Act to provide coverage for volunteer firefighters in recognition of the protections and benefits created by the Legislature.
- After years of expanding the protections and exemptions for volunteer firefighters, the Court determined that it would be “incongruous and inconsistent... for the Legislature to abruptly limit the class of volunteers... who qualified for temporary disability from any volunteer firefighter who had ever been employed to only volunteer[s...] employed at the time of injury.”
- The Court concluded that N.J.S. 34:15-75 should not be used as a barrier to temporary disability coverage.
- The “method of calculating compensation for temporary disability” outlined in N.J.S. 34:15-38 contains language such as “unable to continue at work” and “able to resume work,” which the Defendant suggests limits coverage to firefighters with outside employment at the time of their accident.

Temporary Disability Benefits (January 2021)

- The *Kocanowski* Court determined that N.J.S. 34:15-38, was drafted as a general, all-purpose, statute that is not specific to firefighters. It existed at the same time as the pre-1952 version of N.J.S. 34:15-75.37. It did not serve as a bar to benefits prior to 1952, and the Court was unwilling to read the statute in such a way as to bar them in this case.
- The Court posited that volunteer firefighters injured while performing their duties “were at work, [are] unable to continue at work and... are unable to return to work.”
- Requiring outside employment, as suggested by N.J.S. 34:15-38, would lead to an absurd result because a firefighter, employed or unemployed, is required to take the same risk in their duties for the fire department.
- The New Jersey Supreme Court reversed the judgment of the Appellate Division decision and remanded the matter to the Division of Workers’ Compensation for the award of benefits consistent with the Court’s opinion.

Temporary Disability Benefits (January 2021)

- The Court concluded that “the Legislature’s amendment in 1952 creating the current version of N.J.S.[] 34:15-75 was intended to grant all volunteer firefighters the maximum compensation allowed, regardless of current or previous income.”
- Staff sought comments from: the Workers’ Compensation Section of the New Jersey State Bar Association; the Police and Firemen’s Retirement System of New Jersey; the New Jersey Council on Safety and Health; the New Jersey Compensation Association; the Department of Labor and Workforce Development; the Director of the Division of Workers’ Compensation; the New Jersey Self-Insurers Association; and, private practitioners.
- One commenter suggested that the N.J.S. 34:15-75 is not in need of clarification. *Cunningham v. Atlantic States Cast Iron Pipe Co.*, indicates that a claimant is only entitled to temporary disability benefits after termination for cause upon a showing of lost wages to injury has been applied inconsistently in workers’ compensation cases. The application of the *Cunningham* doctrine has “wreaked havoc in the Division of Workers['] Compensation” this issue, is of “great moment to the [W]orker’s [C]ompensation Bar.”

Temporary Disability Benefits (January 2021)

- The members of the Workers' Compensation Section of the New Jersey State Bar Association (NJSBA) “agree that changes to the Workers' Compensation Act are necessary to clarify the New Jersey Supreme Court's conclusion in *Kocanowski v. Twp. of Bridgewater*” and “the Legislature intended to grant volunteer workers the maximum compensation allowed, regardless of current or previous income.” The recommended changes, according to the NJSBA, “provide that clarification, consistent with the Court's decision.”
- Galen W. Booth, counsel for the appellant, Jennifer Kocanowski in the appeal before the New Jersey Supreme Court, furnished comments to the Commission regarding this Report. Mr. Booth said, “...I fully support the amendment of the statute[] [sic] in question to comport with the Supreme Court's landmark decision....”

Games of Chance (2002 – revised FR June 2020)

The Commission released a Final Report concerning Games of Chance in 2002. As a result of developments in the law in the years since 2002, the Commission reviewed the area and updated its Report, released in June 2020.

The 2020 Report recommends a thorough revision of the law regulating bingo, raffles and amusement games, collectively called “legalized games of chance.”

The law on these games now comprises Title 5, Chapter 8, of the New Jersey Statutes. The law is repetitive and, in some cases, self-contradictory. It is also overly detailed, including provisions better left to administrative regulations.

The practical effect is to make the law on legalized games of chance inaccessible to all but the experts who have puzzled through it frequently enough to understand its complexities.

It is important, however, that this law be understood by the people who are regulated by it: volunteers for charitable organizations that use bingo and raffles and the businesspeople who run amusement games.

Games of Chance
(2002 – revised FR
June 2020)

Officials who administer the law told the Commission that it often causes confusion as to what is required.

The proposed revisions are an attempt to put the law into clear, concise language. The Report also recommends simplification of the substance of the law regulating legalized games of chance.

At present, licensing is a two-step process, involving applications to, and approvals by, both the state regulatory commission and the municipality in which the game will take place. That is unnecessarily complicated for the person who must acquire a license.

This Report recommends, instead, that the Legalized Games of Chance Commission be responsible for all licensing and that no municipal license be required. A municipality retains the power to decide whether it will permit bingo, raffles, or amusement games to be permitted within its territory. A municipality is also given notice of applications for amusement games licenses. If the municipality objects, the license may not be granted without a hearing.

Games of Chance
(2002 – revised FR
June 2020)

The Commission recommends substantive changes to bring the law into harmony with current community expectations.

Present law has been held to restrict games designed primarily for children if the prize, however trivial, is affected by the child's success in playing the game. These games are found throughout the state in arcades designed primarily for children.

The law can also be interpreted to forbid merchandise promotions where certain purchasers are given free merchandise or prizes, but such promotions are common. For example, some soft drink companies give a free bottle where the label or cap of the bottle purchased so indicates.

The proposed statute would accept current practice and exempt children's games and merchandise giveaways from regulation.

Current law also limits amusement games to certain shore and resort localities, and to agricultural fairs and exhibitions, but these games are also found throughout the state at fairs and festivals. The proposed statute would allow amusement games at fairs of ten days duration or less.

Interpretive Statement (December 2020)

- N.J.S. 19:3-6 does not specify which municipal actor has the authority to draft and submit an interpretive statement with a referendum ballot.
- In *Desanctis v. Borough of Belmar*, 455 N.J. Super. 316 (App. Div. 2018), the Appellate Division considered whether the interpretive statement that accompanies a public ballot question must be drafted by the governing body.
- The Court determined that the governing body must approve the final wording of the interpretive statement, subject to “the requirement that it fairly interpret the public question and set forth its true purpose.”
- The Commission recommends several modifications to the current interpretive statement statute.
- First, to clarify that the interpretive statement must be approved by the governing body and that it fairly and accurately reflects the ballot question presented to the voters. Next, to make clear that approval of any interpretive statement shall not be unreasonably withheld. Finally, to modify the phrase “true purpose” so that voters have a better understanding of the consequences and scope of their vote for a public question.

Interpretive Statement (December 2020)

- N.J.S. 19:3-6 provides for the inclusion of a brief statement interpreting a public question under a variety of circumstances so that the public may understand and know the true purpose of that question.
- The Appellate Division examined N.J.S. 19:3-6 as well as its predecessor statute, to determine whether an interpretive statement submitted by the Borough Administrator, without a resolution by the Council and Mayor, was valid. Reversing the trial court, the Appellate Division determined that an interpretive statement must be passed by resolution or ordinance voted upon by the governing body of the municipality.
- The Court reviewed both N.J.S. 19:3-6 and N.J.S. 19:14-31 and did not find any legislative intent to vest a borough administrator or municipal attorney with the authority to prepare and submit an interpretive statement with a referendum ballot.
- The Attorney General may do so under limited circumstances, but that authority was deemed not applicable in this case.

Interpretive Statement (December 2020)

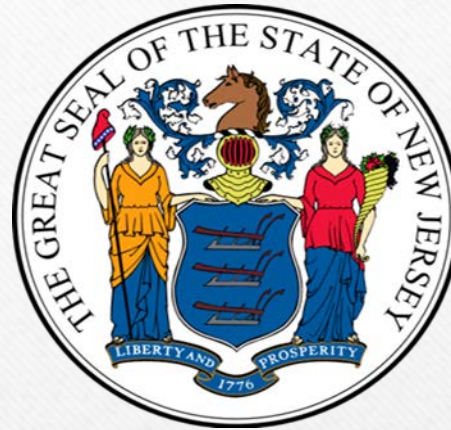
- The Appellate Division determined that the statutory scheme weighs against allowing a mayor and council to ‘outsource’ the approval of an interpretive statement.
- Pursuant to the Home Rule Act (Home Rule Act of 1917, now N.J.S. 40:42-1 et seq.), a clerk is required to submit a petition, once it is found sufficient, “to the governing body of the municipality without delay [so that they may approve it through a vote].”
- Various cases dealing with municipal actions, make it clear that a “board or body can act only by ordinance or resolution; these are the alternative methods. Any action of the body which does not rise to the dignity of an ordinance, is a resolution.”
- The enactment of the Home Rule Act and the common law addressing municipal actions, led the Appellate Division to conclude that “when the Legislature provided the option for an interpretive statement... [the]... interpretive statement had to be approved by the mayor and council.”

Interpretive Statement (December 2020)

- This procedure promotes government transparency which is one aim of the Open Public Meetings Act. The Appellate Division did “not see that submission of an interpretive statement to a county clerk without open approval of the governing body [was] consonant with the public spirit of the referendum laws.”
- Having examined *Gormley v. Lan*, the Court noted that the public should have the opportunity to “object or propose alternative language” to the wording of the interpretive statement.
- Responsibility for the final wording, however, rests with the governing body, subject to “the requirement that it fairly interpret the public question and set forth its true purpose [of the ordinance].”
- Of the 50 states, only four have statutory language specifically referencing interpretive statements.

Interpretive Statement (December 2020)

- Staff sought comments from knowledgeable individuals and organizations including: The New Jersey League of Municipalities; the New Jersey Association of Counties; the leadership of the Local Government Section of the New Jersey State Bar Association; the Municipal Clerk Association; and each of the twenty-one County Counsel Offices. In addition, members of the public were invited to view this report on the NLRC website.
- No objections were received to the modifications proposed by the Commission.
- A479 seeks to “require interpretive statements of State general obligation bond act public questions to include certain fiscal information” but does not address who is responsible for drafting the interpretive statement or whether the interpretive statement should be approved by a governing body.



NJLRC

Questions?

Comments?

Additional Impacts of NJLRC Work - Cases

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

- *Catalina Marketing Corp. v. Hudyman*, 459 N.J. Super. 613 (App. Div. 2019)
- *SDK Troy Towers, LLC v. Troy Towers, Inc.*, 2019 WL 612670 (App. Div. 2019)
- *Residential Mortgage Loan Trust 2013-TT2 by U.S. Bank National Association v. Morgan Stanley Mortgage Capital, Inc.*, 457 N.J. Super. 237 (App. Div. 2018)
- *Diamond Beach, LLC v. March Associates, Inc.*, 2018 WL 6729724 (App. Div. 2018)
- *NRG REMA LLC v. Creative Env'tl. Sols. Corp.*, 454 N.J. Super. 578, 583 (App. Div. 2018)
- *Gately v. Hamilton Memorial Home, Inc.*, 442 N.J. Super. 542 (App. Div. 2015)
- *State v. Tate*, 220 N.J. 393 (2015)
- *Booker v. Rice*, 431 N.J. Super. 548 (App. Div. 2013)

Additional Impacts of NJLRC Work - Cases

- *In re T.J.S.*, 419 N.J. Super. 46 (App. Div. 2011)
- *Pear Street, LLC, v. 818 Pear Street, LLC*, 2011 WL 9102 (App. Div. 2011)
- *Haven Savings Bank v. Zanolini*, 416 N.J. Super. 151 (App. Div. 2010)
- *Marino v. Marino*, 200 N.J. 315 (2009)
- *Tashjian v. Trapini*, 2009 WL 2176723 (App. Div. 2009)
- *New Jersey Div. of Youth and Family Services v. A.P.*, 408 N.J. Super 252 (App. Div. 2009)
- *State v. Broom-Smith*, 406 N.J. Super. 228 (App. Div. 2009)
- *Seaboard Towers Development Co., LLC v. AC Holding Corp., II*, 2008 WL 2340016 (App. Div. 2008)
- *Patel v. 323 Cent. Ave. Corp.*, 2008 WL 724052 (App. Div. 2008)
- *Alampi v. Pegasus Group, L.L.C.*, 2008 WL 140952 (App. Div. 2008)

Additional Impacts of NJLRC Work - Cases

- *Michael J. Wright Const. Co., Inc. v. Kara Homes, Inc.*, 396 B.R. 131 (D.N.J. 2008)
- *Loder v. Neppel*, 2007 WL 4118319 (App. Div. 2007)
- *Semenecz v. Borough of Hasbrouck Heights*, 2006 WL 2819813 (Law Div. 2006)
- *Warren County Bar Ass'n v. Board of Chosen Freeholders of County of Warren*, 386 N.J. Super. 194 (App. Div. 2006)
- *Gebroer-Hammer Associates, Inc. v. Sebbag*, 385 N.J. Super. 291 (App. Div. 2006)
- *L'Esperance v. Devaney*, 2005 WL 3092849 (App. Div. 2005)
- *Morton v. 4 Orchard Land Trust*, 180 N.J. 118 (2004)
- *Morton v. 4 Orchard Land Trust*, 362 N.J. Super. 190 (App. Div. 2003)

Additional Impacts of NJLRC Work - Cases

- *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)

Additional Impacts of NJLRC Work - Articles

Journal articles and other scholarly reference materials in which the New Jersey Law Revision Commission is mentioned:

- Laura C. Tharney; Samuel M. Silver; Arshiya M. Fyazi; Jennifer D. Weitz; Christopher Mrakovcic, and, Segal, Rachael M. *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)
- 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)
- CCH Incorporated, *Law of Electronic Commerce, Non-uniform State Law Approaches* §5.07 (2019; 2020)

Additional Impacts of NJLRC Work - Articles

- Alfred C. Clapp & Dorothy D. Black, 7A New Jersey Practice Series, *Wills and Administration — Payment of Devises and Distribution* §§1737, 4002 (2019; 2020)
- 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)
- James H. Walzer, James W. Kerwin, 16A New Jersey Practice Series, *Legal Forms* § 56.14 (2019; 2020)
- 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)
- Myron C. Weinstein, 30 New Jersey Practice Series, *Law of Mortgages* §§ 28.1A, 28.9A (2019)
- Myron C. Weinstein, 30A New Jersey Practice Series, *Law of Mortgages* § 32.10 (2019)

Additional
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Articles

- 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)
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Questions?



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