

ANNUAL REPORT - 2020

New Jersey Law Revision Commission





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

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The New Jersey Law Revision Commission

Vision:

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

Mission:

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



Statement of the Executive Director

2020 was not the year anyone anticipated. It was not the year any of us planned. It was a year of unforeseen challenges.

I want to take this moment, and this page, to express my thanks to our Commissioners, our Staff, and everyone with whom any of us worked during this year. I appreciate the efforts of all who persevered in the face of the personal and professional challenges that the events of this year forced upon them.

I am grateful for the dedication and resolve shown by the Governor, Legislators, Legislative Staff, the Office of Legislative Services, and Partisan Staff, all of whom did their part to ensure that the work of the State of New Jersey could continue. I am also grateful for the generosity of the individuals from government entities, the legal profession, the academic community, the private sector, and various members of the public, who provided comments and suggestions on Commission projects throughout this challenging year. It is, as always, our hope that the quality of the Commission's work reflects the breadth and the caliber of these contributions.

The work of the Commission continued unabated and without interruption in 2020. We transitioned to working remotely, continued to engage with members of the public who wished to comment on our work, and enabled public participation in our monthly public meetings using videoconferencing.

As in prior years, students from the Rutgers School of Law, the Seton Hall University School of Law, the New Jersey Institute of Technology, and other schools both within and outside the State, participated in the Commission's work as paid legislative law clerks, credit-earning externs, interns, and also for pro bono credit.

Commission Staff members also participated in bar association panel discussions, programs in association with New Jersey's law schools, and published a journal article highlighting some of the work of the Commission, in the hope that doing so would make members of the public and the Bar aware of the opportunity to add their voices to the discussion of the various important issues under consideration by the Commission each year.

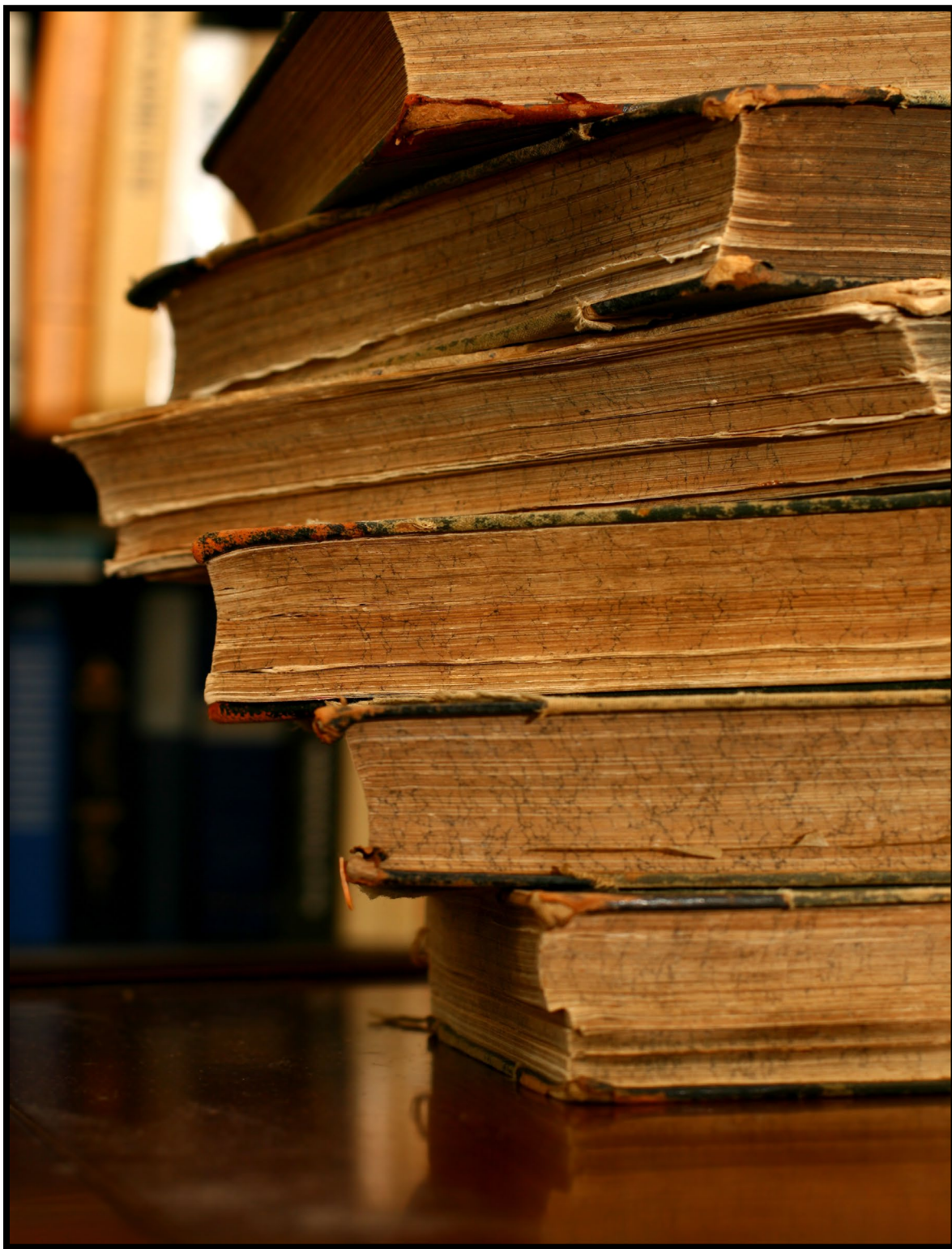
As the Executive Director of the New Jersey Law Revision Commission, I am pleased to present the 2020 Annual Report of the Commission for the consideration of the Legislature, as called for by N.J.S. 1:12A-9. I wish everyone a healthy and safe 2021.

Laura C. Tharney
Executive Director
New Jersey Law Revision Commission

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1. – Overview of the Work of the NJLRC in 2020



1. – Overview of the Work of the NJLRC in 2020

General Overview:

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

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

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

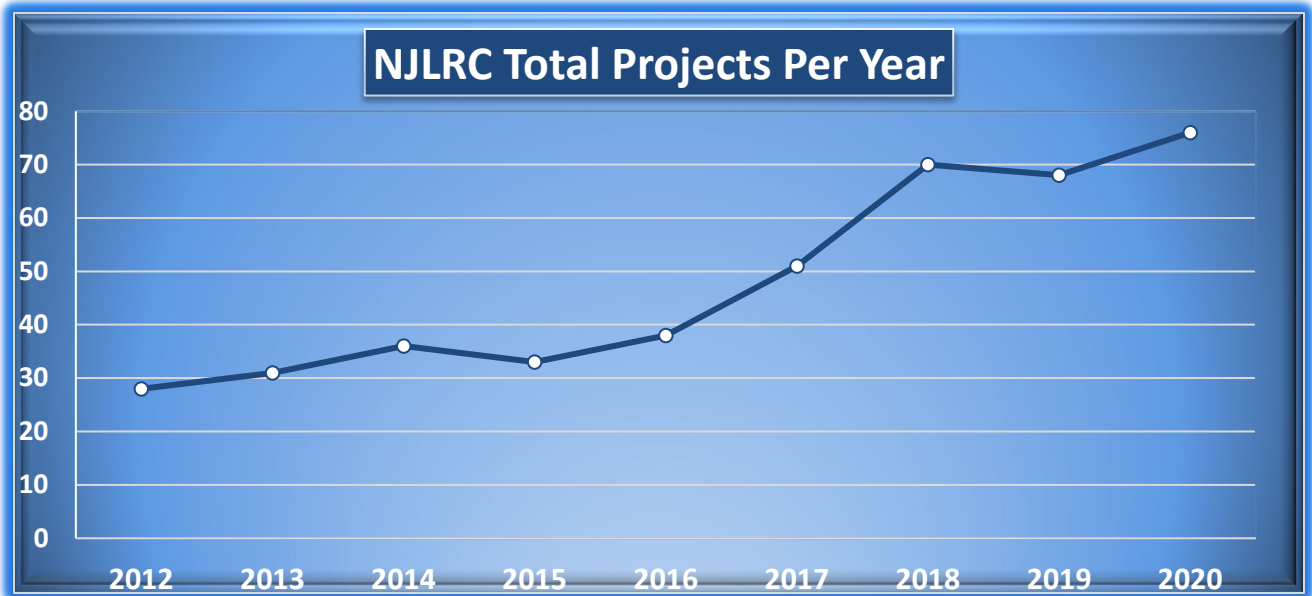
Bills Introduced Based on NJLRC Work:

The following NJLRC projects were the subject of bills introduced in 2020, or represent subject areas in which the NJLRC provided information and support to the Legislature:

- Adverse Possession
- Anachronistic Statutes
- Common Interest Ownership Act
- Equine Activities Liability Act
- Filial Responsibility
- (Revised Uniform) Law on Notarial Acts
- Oaths and Affidavits
- Standard Form Contracts
- Supplemental Needs Trusts
- (Uniform) Voidable Transactions Act

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

Assemblyman Robert Auth
 Assemblyman Nicholas Chiaravalloti
 Assemblyman Herb Conaway, Jr.
 Assemblyman Joe Daniels
 Assemblywoman BettyLou DeCroce
 Assemblyman Christopher P. DePhillips
 Assemblywoman Joann Downey
 Assemblywoman Aura K. Dunn
 Assemblyman Roy Freiman
 Assemblyman Eric Houghtaling
 Assemblyman Gordon M. Johnson
 Assemblyman Sean T. Kean
 Assemblywoman Yvonne Lopez
 Assemblyman John F. McKeon
 Assemblywoman Pamela R. Lampitt
 Assemblyman Raj Mukherji
 Assemblywoman Carol A. Murphy
 Assemblyman Erik Peterson
 Assemblyman Gary S. Schaer
 Assemblywoman Lisa Swain
 Assemblyman Jay Webber
 Senator James Beach
 Senator Vin Gopal
 Senator Linda R. Greenstein
 Senator Nellie Pou
 Senator Troy Singleton
 Senator Shirley K. Turner
 Senator Joseph F. Vitale



The NJLRC Would Like to Thank:

In addition to the individuals named elsewhere in this Annual Report, the Commission extends its thanks to the following individuals and organizations for their valuable suggestions, input, and support for various projects on which the NJLRC worked in 2020.

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

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

Administrative Office of the Courts, New Jersey

American Bar Association

The American Law Institute

Mark Anderl, Esq., Anderl & Oakley, PC

Peter Andreyev, New Jersey State Patrolmen's Benevolent Association

Carl G. Archer, Esq., Vice-Chair, NJSBA Elder and Disability Law Committee

Michael Ashton, Live2Inspire

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

Julius Bailey, New Jersey Senate Majority Office

Theodore E. Baker, Counsel, Cumberland County

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

Beth L. Barnhard, Esq., Stark & Stark

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

Lindsay Beaver, Legislative Counsel, Uniform Law Commission

Howard Bell, Assistant Prosecutor, Hudson County

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

Joanne Blyton, President, Towing and Recovery Association of America, Inc.

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

Galen W. Booth, Esq., Law Office of Galen W. Booth

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

Lori Borgen, Esq., Director of the Externships and Pro Bono Service Program, Seton Hall University School of Law

Debbie Bozarth, New Jersey Association for Justice

Kyle Buchoff, Seton Hall Law School

Burlington County Prosecutor's Office

John J. Burns, Esq., Counsel, New Jersey School Boards Association

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

Veronica L. Calder, Archivist, New Jersey State Archives

Maeve E. Cannon, Esq., Stevens & Lee on behalf of Mitchell International Inc.

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

Andrew C. Carey, Prosecutor, Middlesex County

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

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

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

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

Matt Clark, County Tax Administrator, Monmouth County Tax Board

Roger S. Clark, Rutgers School of Law

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

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

Constitutional Officers Association of New Jersey

County Prosecutor's Association of New Jersey

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Department of the Treasury, New Jersey

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

David Dileo, New Jersey State Parole Board

Division of Commercial Recording, New Jersey

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

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

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

David Ewan, Esq., New Jersey Land Title Association

Katie Eyer, Professor, Rutgers Law School

Todd Feldman, Editorial Coordinator, The American Law Institute

James F. Ferguson, Atlantic County Counsel

James Ferguson, New Jersey Motor Vehicle Commission

Alexander Fineberg, Direct Operations Counsel, Fidelity National Title Group

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

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Jennifer A Loheac, Esq., Community Associations Institute

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

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Carol McWilliams, Government Relations, New Jersey Education Association

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New Jersey Department of Corrections

New Jersey Department of Transportation

New Jersey Governor's Highway Traffic Safety Policy Advisory Council

New Jersey Motor Vehicle Commission

New Jersey Police Traffic Officers Association

New Jersey State Bar Association

New Jersey State Library

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Robert Vivian, Legislative Liaison, Department of Agriculture

Rachel Wainer Apter, Executive Director, Division of Civil Rights

Catherine M. Ward, Stradley Ronan Stevens & Young

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

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

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

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Michael Williams, Acting Hunterdon County Prosecutor

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

Alyssa Wolfe, Bureau Chief, Division of Alcoholic Beverage Control

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

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



2. – Enacted Reports and NJLRC Case and Journal References



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

Since the NJLRC began work in 1987, the New Jersey Legislature has enacted 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:

2019

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

Enactment Reflecting Work of the Commission:

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

2017

- *Bulk Sale Notification Requirements (L.2017, c.307)* -- The Commission’s Report recommended changes to clarify that when more than one individual, trust, or estate jointly own real property, including a home, non-commercial dwelling unit, or seasonal rental, the sale of such property is exempt from the bulk sale notification requirements as it would be if a single individual, trust, or estate owned it.
- *Millers of Grain (L.2017, c.227)* – Derived from a more expansive Final Report of the Commission issued in 2012 and largely enacted in 2014, the portion of the Report enacted in 2017 recommended repeal of the law regulating charges that could be assessed by a miller for grinding grain.
- *Overseas Residents Absentee Voting Law (L.2017, c.39)* – The Report recommended revision of Overseas Residents Absentee Voting Law to recognize the rights of overseas citizens who were not previously covered by existing New Jersey law, to clarify the existing law, and to make certain technical changes to the law.
- *Pejorative Terms 2017 (L.2017, c.131)* – The Report recommended changes to eliminate demeaning, disparaging, and archaic terminology used when referring to persons with a physical or sensory disability or a substance use disorder. The Report was consistent with the Legislative goal expressed in P.L. 2010, c.50 to ensure that the statutes and regulations of the State do not contain language that is outdated and disrespectful to persons

with a disability and it expands the scope of prior NJLRC Reports (two earlier Reports were released dealing with this terminology as it related to persons with developmental, cognitive or psychiatric disabilities (in 2008, and in 2011 - the latter Report was the basis of A-3357/S-2224, which received bipartisan support, passed both houses of the Legislature unanimously, and was signed into law by the Governor)).

- *Uniform Fiduciary Access to Digital Assets Act* (L.2017, c.237) – Although the Commission did not issue a Final Report concerning this Act, Commission Staff had the opportunity to work with Legislators, Legislative Staff, Staff members from the Office of Legislative Services, and Staff members from the Uniform Law Commission in order to review and revise the Act for enactment in New Jersey.
- *Uniform Foreign Country Money-Judgment Recognition Act* (L.2017, c.365) – This, too, was an area of the law on which the Commission did not issue a Final Report, but engaged in work and provided support for the bills underlying the Act.

2016

- *Uniform Interstate Family Support Act* (L.2016, c.1.) – The Report recommended enactment of the latest version of the Uniform Interstate Family Support Act with some minor modifications to reflect New Jersey-specific practice. The latest version of the Act changes state law to allow enforcement of foreign support orders.

2015

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

2014

- *New Jersey Declaration of Death Act* (L.2013, c.185) – The Report proposed removal of the statutory authority of the Department of Health and the State Board of Medical Examiners over medical standards governing declarations of death on the basis of neurological criteria.
- *New Jersey Family Collaborative Law Act* (L.2014, c.69) – The Report recommended enactment of new statutory language designed to create a consistent framework for the use of the collaborative process in family law matters that is intended to provide important consumer protections and an enforceable privilege between parties and non-attorney collaborative professionals during the negotiation process.
- *General Repealer (Anachronistic Statutes)* (L.2014, c.69) – The Report recommended repeal of assorted anachronistic or invalid statutes including: some that are invalid because they have been found unconstitutional or have been superseded; some that may be legally enforceable but which have ceased to have any operative effect with the passage of time; some that are anachronistic because they relate to offices or institutions which no longer

exist; some that are anachronistic because they deal with problems which were important at one time but which have ceased to be relevant to modern society; and others that deal with problems that still have relevance but which do so in a way that has become unacceptable.

- *Uniform Interstate Depositions and Discovery Act* (R. 4:11-4 and R. 4:11-5) – The Report recommended adoption of the UIDDA in New Jersey, with modifications to accommodate New Jersey practice but, although the Commission ordinarily makes recommendations to the Legislature, the better course of action in this case was a revision to the Court Rules to provide a simple and convenient process for issuing and enforcing deposition subpoenas.

2013

- *Pejorative Terms* (L.2013, c.103) – The Report proposed elimination of demeaning, disrespectful, and archaic terminology used in the New Jersey statutes when referring to persons with developmental, cognitive, or psychiatric disabilities.

- *Uniform Commercial Code – Article 1 – General Provisions* (L.2013, c.65) – The Report proposed updates to Article 1 of the Uniform Commercial Code that contains definitions and general provisions which, in the absence of conflicting provisions, apply as default rules covering transactions and matters otherwise covered under a different article of the UCC.

- *Uniform Commercial Code – Article 4A – Funds Transfers* (L.2013, c.65) – The Report proposed updating Article 4A of the Uniform Commercial Code to address what would otherwise have been a gap in the law since 4A does not cover a fund transfer governed by federal Electronic Funds Transfer Act (EFTA). Among the changes brought about by the Dodd-Frank Act, the Wall Street Reform and Consumer Protection Act, is an amendment to the EFTA so that the law will govern “remittance transfers” (the electronic transfer of funds to a person located in a foreign country requested by a consumer and initiated by a person or financial institution that provides remittance transfers for consumers in the normal course of its business), whether or not those remittance transfers are also “electronic fund transfers” as defined in EFTA. When the federal law changed in February 2013, without the modification to Article 4A, a fund transfer initiated by a remittance transfer would have been entirely outside the coverage of Article 4A, even if the remittance transfer is not an electronic fund transfer, and would not have been covered by either law.

- *Uniform Commercial Code – Article 7 – Documents of Title* (L.2013, c.65) – The Report proposed modifications to Article 7 of the Uniform Commercial Code to accomplish two primary objectives: (1) allowance of electronic documents of title, and (2) introduction of provisions to reflect trends at the state, federal, and international levels.

- *Uniform Commercial Code – Article 9 – Secured Transactions* (L.2013, c.65) – The Report proposed changes to Article 9 of the Uniform Commercial Code, which governs security agreements where the property is not real estate. These arrangements are the basis of an important part of commercial finance and many involve interstate transactions, so it is important that the state laws governing them are as nearly uniform as possible. The most significant change proposed concerns specification of the name of debtors who are natural persons.

2012

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

2011

- *Married Women’s Property* (L.2011, c.115) – The Report proposed the elimination from the statutes of laws enacted between the mid-19th century and the early 20th century in order to alter the old common law rules that limited a married woman’s legal capacity and power to own and control property. While these laws served a purpose when enacted, they came to be viewed as demeaning relics.
- *New Jersey Trade Secrets Act* (L. 2011, c.161) – The Report proposed the enactment of a Uniform Law Commission Act that codifies the basic principles of common law trade secret protection, preserving the essential distinctions from patent law and the remedies for trade secret misappropriation as developed in case law.
- *Title Recordation* (L.2011, c.217) – The Report recommended the revision of the statutes pertaining to the recording of title documents following the enactment of the federal Electronic Signatures in Global and National Commerce Act (E-sign), 15 U.S.C. §7001 *et seq.*, and New Jersey’s enactment of the Uniform Electronic Transactions Act (UETA), L.2001, c.116; it required the acceptance of electronic alternatives to paper documents.

Historical Enactments:

The remaining projects enacted since the Commission began work are:

- Anatomical Gift Act (L.2001, c.87)
- Cemeteries (L.2003, c.261)
- (Uniform) Child Custody Jurisdiction and Enforcement Act (L.2004, c.147)
- Civil Penalty Enforcement Act (L.1999, c.274)
- Construction Lien Law (L.2010, c.119)
- Court Names (L.1991, c.119)
- Court Organization (L.1991, c.119)
- Criminal Law, Titles 2A and 24 (L.1999, c.90)
- (Uniform) Electronic Transactions Act (L.2001, c.116)
- Evidence (L.1999, c.319)
- (Uniform) Foreign-Money Claims Act (L.1993, c.317)
- Intestate Succession (L.2001, c.109)
- Juries (L.1995, c.44)
- Lost or Abandoned Property (L.1999, c.331)
- Material Witness (L.1994, c.126)

- (Uniform) Mediation Act (L.2004, c.157)
- Municipal Courts (L.1993, c.293)
- Parentage Act (L.1991, c.22)
- Probate Code (L.2001, c.109)
- (Uniform) Prudent Management of Institutional Funds Act (L.2009, c.64)
- Recordation of Title Documents (L.1991, c.308)
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- 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)
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Institutional Collaborations:

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

In 2018, the Commission was contacted as a result of its work in the area of criminal law and presented with the opportunity to work as a Collaborating Organization with individuals affiliated with the Birmingham

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

3. – History and Purpose of the Commission



3. – *History and Purpose of the Commission*

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

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

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

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

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

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

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

4. – Final Reports and Recommendations



4. – Final Reports and Recommendations

Aggravated Assault

The Commission authorized a project to clarify the level of intent required for an aggravated assault on law enforcement officers in light of the Appellate Division’s decision in *State v. Majewski*, 450 N.J. Super. 353 (App. Div. 2017).

In that case, the Court was asked to determine whether the word “purposely” in N.J.S. 2C:12-13 applied only to conduct that subjects the officer to contact with bodily fluids or whether it also applied to the throwing of bodily fluids. Given the lack of case law construing this provision, the Appellate Division examined the Model Criminal Jury Charge, and the legislative history, and held that “purposely” applies to both throwing and otherwise subjecting an officer to contact with bodily fluids.

The Commission released a Final Report in July of 2020, recommending the modification of the statute to make it clear that purposeful conduct is required for a defendant to be found guilty of aggravated assault when throwing bodily fluid at certain enumerated law enforcement employees. In addition, the Commission suggested modifications to the statute to address those who place, or attempt to place, another person in reasonable fear of contracting a contagious disease.

Clarification of Tenure

In July 2014, the Commission authorized work on a project intended to clarify N.J.S. 18A:17-2 regarding the manner in which the movement or transfer of tenured clerical, secretarial, and other non-teaching employees affects their tenure. This project arose from the application of the statute in three separate cases involving school secretaries attempting to retain tenure rights under different circumstances.

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

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

After releasing a Tentative Report, the Commission considered comments that it received and updated its work, authorizing the release of a Revised Tentative Report in July 2017 and seeking additional comment on the proposed revisions. Based on input from various stakeholders, in February 2020 the Commission released a Revised Final Report proposing amendments to the statute that would clarify the terms under which secretaries, assistant secretaries, school business administrators, business managers, and secretarial and clerical employees may obtain and maintain tenure.

Games of Chance

In September of 2002, the Commission Released a Final Report after conducting an in-depth review of the laws regulating bingo, raffles, and amusement games. The law regarding these games of chance comprise Title 5, Chapter 8, of the New Jersey Statutes. In its current form the law is repetitive, self-contradictory, and overly detailed. At the time, the Report recommended the simplification of the substance of the law regulating these “legalized games of chance.”

Nearly two decades later, Commission Staff re-examined this area of law to consider the impact of new technological advances and to better adapt this area of law to present social needs.

In June of 2020, the Commission released a Revised Final Report containing recommendations to modify the current statutes to bring the law into harmony with current community expectations. The proposed revisions seek to make the law easy to understand by the individuals who use it, and those who regulate it. The revised statutes are an attempt to state the law in clear, concise language.

“Harassment” in the Criminal Code - Definition of

A Final Report recommending extensive revisions to N.J.S. 2C:33-4, Harassment, was released in March 2020. The project began in response to *State v. Burkert*, in which the Court considered whether the creation of lewd flyers that seriously annoyed the subject they portrayed was constitutionally protected free speech, or criminal harassment under N.J.S. 2C:33-4(c).

State v. Burkert was not the first case to address issues posed by N.J.S. 2C:33-4. Although the language defining the substantive offense of harassment survived constitutional attack in *State v. Hoffman*, the statutory language caused the Court difficulty in that case. New Jersey courts have emphasized that many protected forms of speech are intended to annoy the persons to whom they are directed. Courts have focused on the requirement of a purpose to harass as protecting the statute from constitutional attack on vagueness rather than overbreadth grounds.

The problem identified in *State v. Burkert* is only part of the difficulty presented by the statute in question. Other parts of it have caused problems, including those of constitutional dimension. Courts have used various limiting techniques to avoid these issues. The solution lies in a substantial rewriting of the statute.

In connection with this Report, Staff sought comments from several knowledgeable individuals and organizations. No objection was received in response to the Commission’s recommended modifications. The revisions proposed by the Final Report are designed to enhance the clarity of N.J.S. 2C:33-4 in a manner consistent with the New Jersey Supreme Court’s decision in *State v. Burkert* and with other New Jersey cases.

Hearsay Exception in Title 9 and Title 30

A Final Report on Hearsay Evidence in Child Abuse and Neglect Proceedings was released in March 2020. The project was initiated in response to the case of *New Jersey Division of Child Protection and Permanency v.*

T.U.B., in which the Appellate Division considered the special evidentiary provision for Title 9 cases established in N.J.S. 9:6–8.46(a)(4). This provision allows the admission of certain hearsay statements by children about allegations of abuse or neglect. The issue in *T.U.B.* was whether the provision applies in Title 30 cases involving the termination of parental rights. The Court recognized that the provision had been applied to Title 30 actions in prior cases, but found that it applied only in Title 9 cases. In response to that opinion, the Legislature enacted N.J.S. 30:4C-15.1a which specified that the evidentiary provision applied in both Title 9 and Title 30 cases.

The Commission had released a Final Report on 2014 relating to Title 9 Child Abuse and Neglect. In that Report, the Commission included the provision interpreted in *T.U.B.* without substantive change. As the result of the enactment of N.J.S. 30:4C-15, the Commission reconsidered its earlier Report.

In addition, cases have held that the special rule (3) relating to business records is substantively identical to the to the ordinary business record exception in the rules of evidence, N.J.R.E. 803(c)(6). As applied to child abuse and neglect proceedings, that identity is further supported by Court Rule 5:12-4(d) which applies specifically to reports of the Division of Child Protection and Permanency. The Rule is applicable to termination of parental rights cases as well as proceedings to establish child abuse or neglect. The evidentiary standard supports replacing the bulk of special rule (3) with a reference to the applicable Rule of Evidence. As a result, the Commission’s 2020 Final Report makes changes to its 2014 Final Report relating to Title 9 Child Abuse and Neglect.

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

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

Inheritance from a Child

The Commission authorized a project based on two Appellate Court decisions that examined the circumstances under which a parent may be precluded from inheriting from a child. In *In re Estate of Fisher*, 443 N.J. Super. 180 (App. Div. 2015), the Court examined the issue of abandonment as a disqualifier, and in *In re Estate of Acerra*, 2017 WL 6048117, the Court considered whether a psychological parent may inherit from a child.

Staff engaged in research, including a fifty-state survey that looked at parental abandonment of a child and how that may result in a parent’s disqualification from inheritance, and the case law to date.

In light of New Jersey’s existing statutory provision regarding abandonment, and the lack of any case law regarding psychological parentage and inheritance subsequent to *Acerra*, the Commission released a Final Report in October 2020 concluding work in this area without a recommendation.

Interpretive Statement

N.J.S. 19:3-6 does not designate the municipal actor with 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 Appellate Division determined that the Home Rule Act and the common law addressing municipal actions make it clear that an interpretive statement may be drafted by a clerk, administrator, or other individual, but that it must be passed by resolution or ordinance voted upon by the governing body of the municipality. Further, it must fairly interpret the public question and sets forth the true purpose of the ordinance.

A Final Report was released by the Commission in December of 2020 recommending modifications to the statute so that it more closely aligns with the intent of the Legislature and the determinations of the courts in this area, including the Appellate Division decision in *Desanctis v. Borough of Belmar*.

Kidnapping

In the cases of *State v. Sherman*, 367 N.J. Super. 324 (App. Div.), *certif. denied*, 180 N.J. 356 (2004) and *State v. Nunez-Mosquea*, 2017 WL 3623378 (App. Div. Aug. 24, 2017), the Appellate Division considered the meaning of the term “harm” in the context of New Jersey’s kidnapping statute.

To this date, N.J.S. 2C:13-1 does not explicitly set forth the type of harm necessary to find a defendant guilty of first-degree kidnapping.

In December of 2020, the Commission issued a Final Report that recommends numerous structural changes to New Jersey’s kidnapping statute, as well as clarification that the word “harm” includes physical, emotional, or psychological harm.

Mandatory Refund of Taxes Paid in Error

The Commission authorized work concerning the issue of refunds of property taxes paid in error that was raised in *Hanover Floral Co. v. East Hanover Township*, 30 N.J. Tax 181 (2017), *as corrected* (February 13, 2018). The *Hanover* court noted that despite the permissive language of N.J.S. 54:4-52, a municipality does not have discretion to issue a refund to the taxpayer. Instead, it is required to do so. The Court also noted that it was constrained in requiring the refund of the plaintiff taxpayer by a three-year statute of limitations, as per an unrelated Appellate Division decision.

Outreach to county tax assessors and private practitioners showed support for the project. After additional research to confirm that the proposed modifications do not conflict with any other statutory provision, the Commission released a Final Report in September 2020.

Magistrate

An examination of the New Jersey statutes confirmed the continuing use of the anachronistic term “magistrate.” The term magistrate is defined a total of six times, in four titles, and those definitions are not uniform. Within the 88 statutes that use the term, there are references to six distinct types of magistrates, none of which are defined in New Jersey’s body of statutes.

In July of 2020, the Commission released a Final Report recommending the removal of the term where doing so is appropriate, and the revision of statutes that use the term in order to identify the judicial officer responsible for carrying out the designated duties.

Pending Tenure Charges and Back Pay

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 what impact an appellate remand has on a suspended educator’s entitlement to back pay while the remand was pending.

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

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

The Appellate Division indicated 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 noted that vacating an order is “akin to an order granting a new trial” and held that the tenured teachers were statutorily entitled to back pay from 121st day of suspension without pay until date of arbitrator’s final decision on remand.

In July of 2020, the Commission issued a Final Report that recommended modifying the language in the tenure statute to address the effect of a vacatur and/or remand of an arbitrator’s decision by a reviewing court.

“Physical Examination” and Public Entity Immunity

The Commission authorized a project to clarify the definition of “physical examination” under the New Jersey Tort Claims Act (TCA), based on the New Jersey Supreme Court decision in *Parsons ex rel. Parsons v. Mullica Tp. Bd. Of Educ*, 226 N.J. 297 (2016). In that case, the Court considered whether N.J.S. 59:6-4 immunizes public entities and their employees for failure to report the results of a preventative public health examination. The parents of the plaintiff alleged that the school district failed to timely notify them of the results of their child’s visual acuity test pursuant to N.J.A.C. 6A:16-2.2(1)(6). The school district asserted immunity to the claims under the TCA.

The Court considered the legislative history of N.J.S. 59:6-4 to determine whether visual acuity tests fall under the definition of “physical examination”, and inferred that it was the legislative intent that those tests do fall within that statutory definition. The Court also looked to extrinsic sources to determine whether an “adequate

physical examination” included the communication of results to either the patient or the patient’s guardians because “[t]he TCA does not expressly define a ‘physical examination’ or its components.”

A Final Report was released by the Commission in February of 2020 recommending the modification of N.J.S. 59:6-4 to clarify the effect of the failure to report the results of a physical examination in the context of public immunity in order to better assist those who consult this provision.

Predatory Towing Prevention Act

The question of whether or not the victim of a non-consensual towing ordered by a municipal actor must first exhaust administrative remedies before filing a lawsuit is not explicitly addressed by the statutory text of the Predatory Towing Act, specifically N.J.S. 56:13-21.

After examining the history of the Predatory Towing Act and its amendments, the New Jersey Supreme Court in *Pisack v. B&C Towing, Inc.*, 240 N.J. 360 (2020), determined that the victims of non-consensual towing need not exhaust their administrative remedies before instituting a lawsuit in the Superior Court of New Jersey.

In December of 2020, in order to make the statute clearer for practitioners, the general public, and pro se litigants, the Commission recommended the modification of the statute to reflect the principles set forth in *Pisack v. B&C Towing, Inc.*

Satisfactory Completion of Probation

In *Matter of E.C.*, 454 N.J. Super. 48 (App. Div. 2018) the Superior Court of New Jersey, Appellate Division, considered the meaning of the term “satisfactory” in the context of the state’s expungement statute N.J.S. 2C:52-2 et. seq.

In that case, the State alleged that the defendant had failed to *satisfactorily* complete her probationary term and therefore opposed her application for an expungement. Since there was no definition of term satisfactory within the statute, the Appellate Division looked at the Legislature’s intent in enacting the expungement statute, and applied the dictionary definition of the term “satisfactorily.” The Court held that even 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.

In May of 2020, the Commission released a Final Report that recommended the modification of the statute to include a definition of “satisfactory completion” in the context of N.J.S. 2C:52-2(a) and N.J.S. 2C:52-2(a)(2) so that those who refer to the statute, including pro se litigants, will more easily understand the language.

Statute of Limitations – PIP Claims

An insurer that has provided personal injury protection (“PIP”) benefits must bring suit seeking reimbursement from a tortfeasor before the conclusion of the two-year statute of limitation or lose the ability to bring such an action. The two-year period begins upon “the filing of a claim” for such benefits. A question

regarding the commencement of the statute of limitations arises, however, when multiple PIP applications are filed.

In *Abdulai v. Casabona et al.*, 2016 WL 1334539 (App. Div. 2016), the Appellate Division was asked to determine the date on which a PIP claim was “filed” because the insured and his health care provider each submitted a PIP application on separate dates, and used separate forms for their submissions. The Court recognized that the language in N.J.S. 39:6A-9.1(a) is ambiguous regarding the date on which a PIP claim is deemed to be “filed” for purposes of calculating the statute of limitations.

In March of 2020, the Commission released a Final Report recommending modifications to N.J.S. 39:6A-9.1(a) to clearly identify the event that initiates the commencement of the applicable time period, while preventing potential abuses by insurance companies.

5. – Tentative Report



5. – Tentative Reports

Accidental Disability and Pension Benefits

The Commission authorized a project to conduct further research regarding the “traumatic event” standard in the accidental disability pension statute, N.J.S. 43:16A-7, in light of the opinions in *Moran v. Board of Trustees, Police and Firemen's Retirement System*, 438 NJ Super. 346 (App. Div. 2014) and *Mount v. Board of Trustees, Police and Firemen's Retirement System*, 233 N.J. 402 (2018).

The statute does not define the term “traumatic event” and, based on Staff’s preliminary research and the decisions of both the Appellate Division and the New Jersey Supreme Court, the plain meaning of the existing statute does not indicate whether a “traumatic event” is meant to reserve pensions for those who are injured through an unexpected event, or to preclude those with a pre-existing injury from collecting.

In September 2020 the Commission released a Tentative Report and sought comment from stakeholders. Staff expects to work closely with stakeholders in anticipation of a Final Report in 2021.

Anachronistic Statutes

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

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

Some of those statutory provisions were complicated by references, in other statutes, to the potentially anachronistic statutes. Commission Staff engaged in additional research and outreach to assess the impact and confirm whether or not any of the statutes under consideration were in current use. A Final Report is anticipated in early 2021.

Child Endangerment

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

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

In November of 2020, the Commission released a Tentative Report on this subject. Staff anticipates working closely with stakeholders to determine whether the statute would benefit from modification to clarify that the “harm” component includes the exposure of a child to imminent danger and a substantial risk of harm.

Collateral Consequences of Criminal Convictions

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

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

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

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

Due to legislative action in this area during prior legislative sessions, the Commission refrained from pursuing its work on this project. In 2021, however, the Commission anticipates renewing its work in this area so that it can be brought to a conclusion.

Confinement

The Commission authorized a project to consider defining “confinement” as used in N.J.S. 2C:44-3(a). The ambiguity created by the lack of a definition for this term was discussed in the matter of *State v. Clarity*, 454

N.J. Super. 603 (App. Div. 2018), in the context of whether an individual could be deemed a persistent offender for purposes of sentencing.

On July 26, 2003, the defendant in *State v. Clarity* committed a criminal act in the state of Florida. He entered a guilty plea and was sentenced to probation. In August 2013, while in New Jersey, Clarity was arrested for child endangerment and thereafter pled guilty. The defendant was sentenced to an extended term as a “persistent offender”, on the basis that he committed two crimes within a ten-year period or was last released from confinement within ten years of committing a subsequent crime. In *Clarity*, the commission of the two crimes took place ten years and three weeks apart. The Appellate Division determined that the trial court erroneously interpreted “crime” as “conviction” and also erroneously interpreted Clarity’s Florida probation as “confinement.” The Court recognized that the absence of a definition of “confinement” could lead to future confusion.

A Tentative Report was released in November of 2020 proposing changes to clarify the meaning of “confinement” in New Jersey’s persistent offender statute, N.J.S. 2C:44-3(a), and as discussed in *State v. Clarity*. A Final Report is anticipated to be released in early 2021.

Expungement

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

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

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

During the course of this project, the Commission has monitored the legislative activity and court decisions involving the statutes governing expungements. Work in this area included a trio of bills aimed at easing the process for expunging juvenile adjudications and adult convictions that were signed into law in a prior

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

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

legislative session. The Commission is reviewing this area of the law to identify any additional recommendations that may be appropriate and anticipates delivering a Final Report in 2021.

Franchise Practices Act

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

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

After considering the application of state and federal decisions discussing forum-selection clauses and arbitration provisions, the Commission chose to narrow the scope of the project concerning the FPA to the issues involving the gross sales threshold. Staff anticipates presenting a Final Report to the Commission in 2021.

Guardianship

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

The Commission is in the process of comparing corresponding sections of the UGCOPAA, Title 3B and Title 30 of the New Jersey statutes, to identify substantive differences and those provisions which could benefit from revision or adoption. The Commission identified numerous areas meriting further research such as person-centered planning to incorporate an individual's preferences and values into a guardianship order and requiring courts to order the least-restrictive means necessary for protection of persons who are unable to care for themselves. A Final Report is expected in 2021.

Local Land and Building Law – Bidding

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

In July of 2020, the Commission released a Revised Tentative Report seeking comment to ascertain whether the LPCL bidding process applies to government contracts with private persons that require the construction or repair of capital improvements as a condition of acquisition, pursuant to N.J.S. 40A:12-5(a)(3) and, if so, whether some modification to the statute might be appropriate. Staff has been working closely with stakeholders and anticipates the completion of a Final Report in 2021.

Parentage

A Tentative Report recommending a new Parentage Act for New Jersey was released in November 2020. The recommendations constitute a substantial revision of N.J.S. 9:17-38 et seq., and are intended to update the Commission's 2010 Report on this subject. It Report reflects the many scientific and social changes that have occurred since 1983 when the current statutes were enacted, particularly concerning determinations of genetic parentage and parentage based on spousal relations or operation of other law.

The Report also reflects the most current advances in genetic testing as it relates to determinations of genetic parentage. In addition, it deals more comprehensively with the rights and obligations of spouses independent of biological parentage, and seeks to clarify situations involving donations of eggs and sperm and gestational carrier agreements. Also included are provisions concerning psychological parentage, specifying the basis for determinations of psychological parentage and the rights of psychological parents. Staff looks forward to working with knowledgeable commenters in this area, and releasing a Final Report before the end of 2021.

Posse - Use of the Word

The Commission released a Tentative Report regarding the use of the word “posse” in N.J.S. 532:2-1 in October 2020. That term is used only once in New Jersey's body of statutes, and the relevant statute provides that the State Police may be used as a “posse” in a municipality on order of the Governor after the municipality requests assistance.

Staff has reached out to stakeholders to request their input to determining whether the presence of the term “posse” complicates the statute in which it appears and, if so, whether it should be removed from the body of New Jersey's statutory law. A Final Report is anticipated in 2021.

Property Liability Insurance Guaranty Association Act (PLIGAA)

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

Staff released a Tentative Report in July 2020 and contacted various stakeholders for their input. A Final Report, incorporating any comments received, is expected to be released in 2021.

Standard Form Contract

The New Jersey Law Revision Commission published a Report on Standard Form Contracts in 1998. The

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

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

Report recognized that the overwhelming majority of contracts are not negotiable and recommended replacement of the current law applicable to those contracts with a statute that more accurately reflects their nature. While the Commission’s 1998 Report gained some academic recognition, a bill to enact it was not introduced until a number of years after it was released. A bill to do so has been reintroduced in the last several legislative sessions. With these introductions, the issues in the Report assumed renewed importance.

In the last 20 years, the common law has changed and much of what seemed innovative when the Report was released now reflects the judicial authority recognized by the American Law Institute in its proposed Restatement of the Law of Consumer Contracts. Accordingly, the Commission decided to reconsider the Report and revise it to bring it up to date. As a result, new Reports representing total revisions of the 1998 Report have been prepared and released for comments in 2018 and 2019. These Reports have benefitted from

comments submitted.

The Commission engaged in significant work on the Report in 2020. It considered extensive comments from a variety of academic and consumer advocates, and made significant changes in response to those comments. A Final Report is expected early in 2021.

Statute of Limitations for Medical Provider Claims in Workers’ Compensation Cases

Since 2012, the Division of Workers’ Compensation has maintained jurisdiction over all disputed claims brought by medical providers for the payment of services rendered to injured employees. Complaints before the Division are subject to a two-year statute of limitations. Suits predicated on contracts, however, have traditionally been subject to a six-year statute of limitations.

Although exclusive jurisdiction for disputed claims by medical providers has been vested with the Division, the legislative history regarding the 2012 Amendment to the Workers’ Compensation statutes is silent regarding which statute of limitations applies in these types of actions. The absence of any clear direction on this topic resulted in the Appellate Division consideration of *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, 457 N.J. Super. 565 (App. Div. 2019), *certif. granted*, 238 N.J. 30, (2019) and *certif. granted*, 238 N.J. 31, (2019) and *certif. denied*, 238 N.J. 57 (2019); 241 N.J. 112 (2020) and the basis for the Commission’s work in this area.

In June of 2020, the Commission issued a Tentative Report to elicit comments from stakeholders to determine whether N.J.S. 34:15-15 and N.J.S. 34:15-51 would benefit from the addition of the language that clearly sets forth the statute of limitations in contested medical-provider claims. A Final Report is expected in 2021.

Temporary Disability Benefits to Certain Volunteers

The efforts and risks borne by volunteer firefighters have long been recognized by certain protections and exemptions in New Jersey’s employment law. The Workers’ Compensation Act provides workers’ compensation benefits for those voluntary services. In *Kocanowski v. Twp. of Bridgewater*, 237 N.J. 3 (2019), the New Jersey Supreme Court identified specific language contained in the Act that it considers to be unclear.

Although extrinsic evidence suggests a history of legislative expansion for the protections afforded volunteer firefighters, N.J.S. 34:15-75 does not reflect the intent of the Legislature. In October 2020, the Commission released a Tentative Report containing language to make it clear that for certain volunteers, pre-injury, outside employment is not a necessary condition for an award for disability under this statute. A Final Report is expected in 2021.

6. – Work in Progress



6. – *Work in Progress*

Alimony Modification

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

Work on this project is ongoing as Staff reaches out to interested parties to determine whether and how any proposed modification to the statute should be approached. Staff anticipates providing the Commission with the preliminary research in Spring of 2021.

Ante-mortem Probate

The Commission authorized a project based upon the New Jersey Law Journal article entitled "Ante-Mortem Probate: Why Wait Until It's Too Late," Glen R. Kazlow et al., *Ante-Mortem Probate: Why Wait Until It's Too Late?*, 214 N.J.L.J. 1051 (2013), which described a policy approach adopted in the states of Alaska, Ohio, Arkansas and North Dakota.

In contrast to New Jersey, these States permit a testator to preemptively validate a will during his or her lifetime by petitioning the court for ante-mortem probate. While the process and effect varies in each jurisdiction, the existence of ante-mortem probate provides an opportunity for testators in those jurisdictions (especially those making unconventional bequests) to prevent a will contest after their death. Such an approach is beneficial in that it obviates the evidentiary problem inherent to traditional post-mortem probate and permits the realization of the testator's intent. However, detractors warn that raising probate matters during the testator's lifetime could lead to family disturbances and could potentially waste judicial resources.

In 2015, the Seton Hall Legislative Law Journal published an article, written by Susan Thatch, who was a member of the Commission Staff at the time, called "Ante-Mortem Probate in New Jersey – An Idea Resurrected?", 39 SETON H. LEG. J. 332 (2015). This article detailed the historical and statutory background of ante-mortem probate legislation and evaluated the potential for this type of legislation in New Jersey. Staff anticipates a Tentative Report after obtaining feedback from knowledgeable parties.

Books and Records of Account

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

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

The Court determined that “books and records of account” does not encompass all records, books, and documents of a corporation,” but it also noted that the phrase is not defined within the statute. Work is ongoing on this project to assess whether revisions to the statute would be of use, and a Revised Tentative Report is anticipated in early 2021.

Citizen’s Arrest

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

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

The Commission, in November of 2020, directed Staff to conduct additional research in order to determine how best to modify the shoplifting statute to address present social concerns. A Tentative Report is expected in the Spring of 2021.

Communications Data Warrants and Electronic Communications

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

Under the existing law, it is unclear whether communications sent via social media are to be considered communications for purposes of the Wiretapping and Electronic Surveillance Control Act. The Commission authorized Staff to engage in outreach to various stakeholders to determine the resources that would be necessary to complete the Commission’s analysis. The case law in this area has continued to develop.

Staff is currently engaging in research in preparation for discussions with knowledgeable individuals from New Jersey’s law schools, and other interested parties.

Consumer Fraud Act

The Commission began work on a project relating to New Jersey’s Consumer Fraud Act (CFA) several years ago. Although the basic intention of the CFA is to expand protections for New Jersey customers, it has been subject to hundreds of amendments in the fifty years since its enactment. Additionally, the CFA has spawned extensive litigation in New Jersey courts. As a result, the Act now consists of more than 200 statutory sections, some of which contains ambiguities and redundancies.

Staff prepared a Memorandum identifying some of the more litigated provisions of New Jersey’s CFA: (1) mandatory treble damages for violations; (2) attorney fees for technical violations; (3) overuse by out-of-state litigants; and (4) reliance as a component of a CFA claim. The Memorandum also proposed an alternative organizational structure for the Commission’s consideration.

Work on this project is ongoing as Staff reaches out to interested parties as a part of its consideration of how best to revise and restructure the CFA to ensure better clarity, excise redundancy, and address ambiguities that have been identified by case law and scholars.

Definition of “Legal Representative” in the Law Against Discrimination

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

In *Tompkins v. Thomson*, 2017 WL 2730256 (App. Div. June 26, 2017), in an action brought by a city police officer, the Appellate Division was confronted with a “Supersession Order” issued by the Attorney General to the Camden County Prosecutor’s Office to take control of the Camden City Police Department. In addition to this Order, the County Freeholders had executed a consulting agreement with a third-party contractor. As a result, the Court determined that an employment relationship did not exist between the plaintiff, a city police officer, and the defendant, the Camden County Prosecutor.

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

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

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

Definition of “Under the Influence”

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

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

Staff is expanding its research efforts to define the term “under the influence” to include issues pertaining to cannabis and anticipates presenting a Tentative Report to the Commission in 2021.

Frivolous Litigation

In 2017, the Commission considered an editorial published in the New Jersey Law Journal entitled, “Clarify Frivolous Litigation Rule’s Applicability to Appeals.” The statute to which the article referred, New Jersey’s Frivolous Litigation Statute, *N.J.S. 2A:15-59 et seq.*, was enacted to protect parties from baseless litigation.

The statute permits a court to award litigation costs and reasonable attorney fees to the prevailing party when they have met certain conditions precedent. As currently drafted, the statute applies only to complaints, counterclaims, cross-claims, or defenses that have been filed in an action and that the court has found to be frivolous in nature. To be considered frivolous, one of the enumerated pleading must have been filed in “bad faith, solely for the purpose of harassment, delay or malicious injury.” The New Jersey Supreme Court, which has exclusive jurisdiction to regulate attorneys, has refused to apply this statute to anyone other than non-lawyer parties.

There is presently no statute in New Jersey that addresses frivolous litigation in appellate matters. Work on this project is ongoing as Staff reaches out to interested parties to determine whether such statutory language would be of assistance in addressing appellate filings.

Household Member - Definition of

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

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

In November of 2020, the Commission directed Staff to engage in outreach to various stakeholders to determine whether the PDVA, specifically N.J.S. 2C:25-19(b), would benefit from the addition of a definition of the term “household member.” A Tentative Report on this subject is anticipated in the Spring of 2021.

Indemnification of Non-State Personnel by the State

The New Jersey Tort Claims Act and the statutes concerning Municipalities and Counties both address the identity of the party required to provide a defense for an employee against whom legal action is brought in connection with their employment. The Tort Claims Act states that the Attorney General shall, upon the request of a current or former employee of the State, provide for the defense of any action brought against the employee on account of an act or omission in the scope of their employment. The governing body of a county is required to provide a member of the county police or park police with the necessary means for the defense of any action or legal proceeding arising out of or incidental to the performance of the officer’s duties.

County employees are, with some frequency, called to act as an ‘arm of the State’ in criminal cases. The services that these individuals perform does not arise from, nor is it incidental to, the performance of their duties as county employees. Instead, the services are provided for the sole benefit of, and at the exclusive direction of, the State. The statutes do not address what happens when a county officer is called upon to participate in a State criminal prosecution, and is subsequently sued in a civil action by the criminal defendant.

In *Kaminskas v. Ofc. of the Attorney Gen.*, 236 N.J. 415 (2019) the New Jersey Supreme Court considered the Attorney General’s denial of the requests by two county police officers to indemnify them in a civil action brought against them for alleged misconduct that occurred while they performed services to aid in the prosecution of a criminal case. In September 2020, the Commission authorized Staff to engage in outreach to various stakeholders to determine whether N.J.S. 59:10A-1 or N.J.S. 40A:14-117 would benefit from modification to address the circumstances found in *Kaminskas*.

Inmate Call Services

In New Jersey, inmate call services (ICS) in State or county correctional facilities provide the exclusive means for inmates to communicate via telephone with their families and friends. In order to provide ICS, telecommunications companies frequently invest monies in infrastructure improvements to the existing communications systems at correctional facilities.

In *Securus Tech., Inc. v. Murphy*, 2019 WL 1244802 (App. Div. 2019), the service provider challenged the constitutionality of the RCL claiming that it amounted to a taking. Although the statute prohibits the ICS provider from billing any party a “service charge” or “additional fee”, it does not mention infrastructure improvements.

In February 2020, the Commission authorized Staff to conduct research regarding the rate a qualified vendor of inmate call services may charge an inmate, whether there is any litigation in this area, and the involvement of the Federal Communications Commission. An update is expected in 2021.

Local Government Ethics

The Local Government Ethics Law (LGEL) was enacted to provide local government officials and employees with uniform, state-wide ethical guidance. To further this objective, a statutory code of ethics (the “Code”) was enacted within the LGEL.

In *Mondsini v. Local Fin. Bd.*, 458 N.J. Super. 290 (App. Div. 2019) the Appellate Division considered whether the Executive Director of a regional sewerage authority, in the wake of an epic storm emergency caused by Super Storm Sandy, violated the LGEL section prohibiting the use of one’s official position to secure unwarranted privileges. N.J.S. 40A:9-22.5 does not clearly state whether a violation of the statute may be predicated on public perception of impropriety, or whether a violation requires proof that the public official intended to use their office for a specific purpose.

The Commission, in December of 2020, authorized Staff to conduct additional research and outreach to determine whether it would be appropriate to modify N.J.S. 40A:9-22.5 to make it clear that a governmental actor only violates the statute if they intentionally use, or attempt to use, their official position improperly. A Tentative Report is expected early in 2021.

Mistaken Imprisonment Act

In *Kamienski v. State Department of Treasury*, 451 N.J. Super. 499 (App. Div. 2017), the Appellate Division considered the Mistaken Imprisonment Act, N.J.S. 52:4C-1 to -7, as it relates to eligibility, the burden of proof, damages, and reasonable attorney fees recoverable under the Act. The Appellate Division determined that the plaintiff was eligible, and that the habeas corpus decision did not satisfy plaintiff’s burden of proof. It also clarified the calculation of damages for guidance on remand. There were, however, issues that the Court did not decide.

Work is ongoing in this area to draft revisions to the statute that reflect the Court decision and clarify issues that the Court did not reach. A Tentative Report is expected in 2021.

Model Entity Transactions Act (META)

The Commission authorized research and outreach concerning the Model Entity Transaction Act (META), completed by the Uniform Law Commission in 2007, then amended in 2011 and 2013. META provides a common set of provisions applicable to all transactions involving all forms of business associations and permits: the conversion of one kind of business organization to another; the merger of two or more business organizations into one organization; an interest exchange between two entities so that one of them is controlled

by the other without actually merging the two entities; and, the domestication of an entity originally organized in another state.

To complete each kind of transaction, a plan must be approved by the interest holders of each participating entity, though the requirements of the plan itself and the approval process differ based on the type of entity and transaction. While there are areas in which META and current New Jersey law overlap, there are also dissimilarities between META and the existing New Jersey law, with many of them being small technical differences.

Eight states have adopted META to this time. Staff is in the process of reviewing the New Jersey statutes governing corporations with a goal of identifying modifications that would be useful.

Municipal Vacancies

New Jersey offers municipalities a choice of twelve forms of government, eleven of which are in use, to varying degrees. As a result, there is substantial variation in the composition of local governments, limiting the ability to have a uniform process to address a governmental vacancy.

The Legislature attempted to remedy this problem in 1979, when it approved the Municipal Vacancy Law, but the problem of filling vacancies in a consistent and timely manner persists.

The Commission reviewed an initial Memorandum providing information about the governance of municipalities and an outline of the process set forth in the Municipal Vacancy Law, and authorized Staff to engage in additional research and outreach to identify potential changes to the Municipal Vacancy Law that could improve its organization and effectiveness. A Tentative Report is expected in 2021.

Nonprofit Organizations

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

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

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

anticipates working closely with this organization in the preparation of a Tentative Report anticipated to be released in 2021.

Notice by Publication

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

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

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

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

Open Public Records Act – Redaction

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

Staff was authorized to conduct additional research and outreach regarding the issues identified in *Paff v. Bergen County* to determine whether any modification to the statute could be of use in achieving predictable and consistent outcomes in the cases that arise moving forward. Work on this project is ongoing as Staff reaches out to interested parties and endeavors to revise and restructure the OPRA to provide more clarity as to what documents are exempt from production under the Act.

Open Public Records Act – Catalyst Theory

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

The Commission is in the process of reviewing the large number of New Jersey cases dealing with the “catalyst theory.” Staff was also authorized to engage in additional research and outreach to determine whether clarity can be brought to this area of the law by modifying the relevant statutes.

Post-adjudication Incarceration of Juveniles

The Commission authorized review and analysis of pending legislation to determine if any bills remedy the unconstitutional aspect of the Juvenile Justice Code (N.J.S. 2A:4A-43) as discussed by the Court in *State in the Interest of T.C.*, 454 N.J. Super 189 (App. Div. 2018). In this case the Appellate Division considered the constitutionality of subjecting some developmentally disabled juveniles to short term, post adjudication, incarceration, while other similarly situated juveniles were being released from custody simply based upon the county in which they had committed their crimes. The juvenile with a developmental disability in *T.C.* was adjudicated in Ocean County and sentenced to a period of incarceration. If, however, he had been adjudicated delinquent in any of New Jersey’s nine counties without an approved facility, he would not have been incarcerated.

The Court concluded that a plain reading of the Juvenile Justice Code violated New Jersey’s constitutional guarantee of equal protection. The Court in *T.C.* held that juveniles with developmental disabilities may not be held in county detention facilities as long as there was no certified, short-term incarceration program in every county.

Staff presented the analysis of pending legislation to the Commission in April 2020 and is currently working on a Tentative Report recommending potential language to address to the issue.

Prerequisites for Recording

In early 2016, a member of the public contacted the Law Revision Commission to propose a project regarding a minor structural change to N.J.S. 46:26A-3, which details the requirements for recording deeds and other instruments. The member of the public suggested that the emphasized “subdivision” language contained in subsection (d) of the enacted law was a potential typesetting error. It appears that upon adding the two additional requirements to state the name of the person preparing the deed and the mailing address of the grantee, the subdivision language was separated from where it originally resided in subsection (b) and retained at the end of subsection (d).

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

Property Tax

The Commission authorized the re-establishment of a project to revise provisions on the assessment of

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

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

Public Health – Definitions

In reviewing Title 26 Health and Vital Statistics, it was determined that there were two potentially duplicative definition sections. A preliminary examination revealed that both sections, N.J.S. 26:1-1 and 26:1A-1, define the same terms, and do so with similar wording. As a result, the two statutory sections are nearly indistinguishable, and might benefit from consolidation.

Although this project was initially limited in scope, the Commission authorized the review of Title 26 in its entirety to find additional duplicate definitions. Upon this review, over 100 duplicate definitions were identified and catalogued. Staff anticipates the release of a Tentative Report proposing the consolidation of the various definition sections in 2021.

Public Health and Safety – Seatbelt Usage

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

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

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

predicate offenses may exceed the expectations of the Legislature. Work is ongoing and expected to conclude in 2021.

Reasonable Cause in the Context of a Domestic Violence Search Warrant

In July 2020, the Commission authorized a project relating to the “reasonable cause” standard which the statutorily prescribed standard a court must consider when ordering the search and seizure of weapons pursuant to a temporary restraining order.

In *State v. Hemenway*, the New Jersey Supreme Court determined that the statutory standard of reasonable cause for issuing a domestic violence warrant for a search for weapons does not comport with either the Fourth Amendment of the United States Constitution or Article I, Paragraph 7 of the New Jersey Constitution. The standard of “reasonable cause” in such circumstances does violate the requirement that in the absence of exigent circumstances, all warrants must be based on probable cause.

In conjunction with the consideration of the reasonable cause standard, Staff was asked to examine New Jersey’s relinquishment laws. A Tentative Report on this subject is expected in 2021.

Rent Security Deposit Act

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

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

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

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

School District of Residence

In New Jersey, the Commissioner of Education approves charter schools under the Charter School Program Act, or CSPA, N.J.S. 18A:36A-12. The CSPA states that the school district of residence shall pay the

charter school for each student enrolled. The meaning of the term “school district of residence” was disputed in the recent Appellate Division case *Bd. of Educ. of Twp. of Piscataway v. New Jersey Dept. of Educ.*, 2019 WL 2402545 (App. Div. Jun. 07, 2019).

In that case, Piscataway argued that the term refers to the district in which a charter school is physically located, citing a definition of district of residence in N.J.A.C. 6A:11-1.2 and N.J.A.C. 6A:23A-15.1. The Department of Education argued that the term refers to the district in which a student resides. The Appellate Division held that the Department of Education properly implemented the funding requirements by obligating Piscataway to provide funding for students enrolled in charter schools located outside its school district. The Court made a specific finding that the definition in the Administrative Code is not applicable to student funding, and that school district of residence refers to the student’s residence.

At its December 2020 meeting, the Commission authorized a project to determine whether the term “school district of residence” as used in N.J.S. 18A:36A-12 can be clarified. Staff anticipates the release of a Tentative Report in 2021.

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

In the Matter of the Civil Commitment of D.Y., 218 N.J. 359 (2014) the New Jersey Supreme Court addressed, for the first time, the issue of whether a convicted sex offender who was competent to stand trial had a constitutional right to self-representation during an involuntary commitment proceeding. Four years later, in *N.J. Div. of Child Prot. & Perm. v. R.L.M.*, 236 N.J. 123 (2018) the Court was faced with the question of self-representation in the context of the termination of an individual’s parental rights.

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

Neither the SVPA nor the parental rights statutes address what procedures a litigant or a court must follow in when individuals wish to represent themselves in these types of proceedings. So that the parties may have the benefit of clear statutory language, in March of 2020, the Commission authorized Staff to work in this area. A Tentative Report is expected in 2021.

Theft of Immovable Property

In the case of *State v. Kosch*, 444 N.J. Super. 368 (App. Div. 2016), the Appellate Division considered the definition of the word “transfer” in N.J.S. 2C: 20-3(b) and determined that the term in the statute, and the legislative intent regarding its meaning, are unclear. N.J.S. 2C:20-3(b) reads as follows: “A person is guilty of theft if he unlawfully transfers any interest in immovable property of another with purpose to benefit himself or another not entitled thereto.” The *Kosch* Court explained that “there is no question these three properties were owned by others and, although, as the ostensible contract purchaser, defendant may have possessed a partial

interest... he never lawfully acquired the interest he was charged with taking. We, thus, turn to whether a ‘transfer’ occurred within the meaning of *N.J.S.A. 2C:20-3(b)*.”

New Jersey’s Criminal Code does not define the term “transfer” and the court looked to a variety of sources to find an appropriate definition. As a result of legislative initiatives, Staff discontinued work in the area, and will reassess and either re-engage or formally conclude this project in 2021 as appropriate.

Tort Claims Act Notifications

In 2017, the Commission authorized work on a project to determine whether the Tort Claims Act (TCA) should be modified as concerns bystander liability claims and the TCA’s notice requirements pursuant to the decision in *Alberts v. Gaeckler*, 446 N.J. Super. 551 (Law Div. 2014).

The Court determined that a plaintiff asserting bystander liability claims against a public entity has to comply with the notice requirements of the TCA, and the filing date of an amended complaint alleging bystander liability damages may not relate back to the date of the original filing of the complaint. Staff is assessing the comments received to determine whether it is appropriate to await additional judicial clarification before recommending changes to the statute.

Unemployment Benefits when an Offer of Employment is Rescinded

The grounds upon which an employee is disqualified from receiving unemployment benefits are governed by N.J.S. 43:21-5. In 2015, subsection a. of the statute was amended to specify that disqualification does not extend to an employee who voluntarily leaves employment and begins new employment within seven days. The statute is silent on whether disqualification extends to an employee who was scheduled to start new employment but could not because the offer of new employment was rescinded.

In 2019, the New Jersey Supreme Court decided in *McClain v. Bd. of Review, Dep’t of Labor*, 237 N.J. 445 (2019) that a plaintiff is entitled to unemployment benefits if “(1) they qualified for [unemployment insurance] benefits at their former employment at the time of their departure, (2) they were scheduled to commence their new jobs within seven days of leaving their former employment, and (3) their new job offers were rescinded through no fault of their own before the start date.”

At the October 2020 Commission meeting, the Commission authorized staff to engage in preliminary outreach to determine whether or not it would be useful to modify the statutory language of N.J.S. 43:21-5(a) to exempt from disqualification employees who leave their current job upon receipt of an offer of employment with a new employer, scheduled to begin within seven days, which is subsequently rescinded by the new employer through no fault of the employee. Work on this project is ongoing as Staff reaches out to interested parties to determine whether such an amendment would be of assistance to unemployment insurance claimants and practitioners.

Unemployment Insurance Benefits

In *Anderson v. Bd. of Review*, No. A-1353-14T3, 2016 WL 4446160 (App. Div. 2016), the Appellate Division considered whether an employee who held two jobs with a single employer could avail himself of unemployment benefits when he resigned from one position and was fired from the other.

The Appellate Division held that the employee could properly claim benefits in response to his termination, but not after voluntarily resigning. Work is ongoing as Staff considers whether the existing statutory language of N.J.S. 43:21-5 might benefit from clarification.

Uniform Powers of Appointment Act

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

Uniform Power of Attorney Act (UPOAA)

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

Uniform Probate Code

The Commission began work on a project to consider the possible enactment of the Uniform Probate Code (UPC) in New Jersey. New Jersey’s probate law, Title 3B, is modeled on the 1969 version of the UPC and was revised in 1990 to reflect subsequent amendments. Since then, the UPC has been modified a number of times, most recently in 2019.

The promulgation of the Uniform Parentage Act of 2017 has necessitated amendments to the UPC’s intestacy and class-gift provisions. The 2019 amendments provide a more consistent formula for determining intestate shares within blended families, remove outdated terminology, and incorporate the concept of de facto parentage. The intestacy formula also accounts for the possibility that a child may have more than two parents, and therefore more than two sets of grandparents.

Another area of the UPC under consideration relates to the concept of a notarized will, which, if adopted in New Jersey, would eliminate the requirement for witnesses at the time a will is signed by the testator. Work is ongoing on this large, and important, project.

Workhouse

The Commission previously undertook an examination of the criteria necessary to sentence a persistent offender to an extended term of imprisonment pursuant to N.J.S. 2C:44-3. As a result of that work, the Commission examined the New Jersey institutions in which a defendant may be imprisoned. That examination confirmed the prevalence of the term “workhouse” in New Jersey’s statutes. Amid a statewide, and national, move to reexamine statutory terms rooted in systemic racism, the presence this term in New Jersey’s body of statutes is of concern since it ties back to the oppressive ideals of its colonial-era origins, which supports a recommendation for its elimination from the statutes.

In December of 2020, the Commission authorized outreach to determine whether it would be appropriate to update the statutes by removing the term workhouse. A Tentative Report is expected early in 2021.

7. – No Action Recommended



7. – *No Action Recommended*

Autonomous Motor Vehicles

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

In 2019 the Governor signed Joint Resolution #2, creating the New Jersey Advanced Autonomous Vehicle Task Force. The purpose of this Task Force is to thoroughly examine this area of law and make recommendations on laws, rules and regulations to the Governor and the Legislature. Further, the New Jersey Legislature is actively working in this area. The Commission concluded its work in this area without making a formal recommendation.

Bias Intimidation

New Jersey’s Bias Intimidation statute, N.J.S. 2C:16-1(a)(3) permits the victim’s perception of the alleged offense to serve as the basis of a conviction for a defendant charged pursuant to this statute.

In *State v. Pomianek*, 216 N.J. 363 (2013), the New Jersey Supreme Court determined that section (a)(3) of N.J.S. 2C:16-1 was unconstitutional. As written, that provision violates the Due Process Clause of the Fourteenth Amendment because it focuses on the victim’s perception and not the defendant’s intent. The statute does not give a defendant sufficient guidance as to how to conform to the law.

Shortly after the *Pomianek* decision, the New Jersey Legislature began working in the area of bias intimidation once again. During the 2020-2021 legislative session, seven bills were introduced regarding the Bias Intimidation Statute – five in the Assembly and two in the Senate. Based on legislative awareness of, and action in, this area, the Commission concluded its work without a recommendation.

Federal Pre-emption of New Jersey’s Alternative Minimum Assessment

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

In 2019, the Commission authorized Staff to proceed with further research and outreach in this area of law to determine how a modification to the statute should be approached. Additional research revealed that the

Legislature addressed the constitutional defect in the statute and repealed it effective July 31, 2019. Accordingly, the Commission concluded its work in this area.

Retroactivity of Amendments to the Alimony Statute

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

Further research revealed that New Jersey Courts have contrasting views regarding the retroactivity of these amendments to settlements finalized before the amendments were passed into law. An updated memo was presented in September 2020, and after consideration, the Commission determined that any change in the area of law should be made in the first instance by the Legislature and concluded its work in this area of law.

Open Public Meetings Act

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

Given the legislative activity regarding the OPMA, in July of 2018, the Commission authorized that Staff engage in outreach to the sponsors of the pending legislation to discuss the impact of the Supreme Court’s holding in *Kean Federation of Teachers v. Morrell*. During the 2020-2021 legislative session, legislation was introduced on this subject. Based on legislative awareness of, and action in, this area, the Commission chose to conclude its work without a recommendation.

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

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

Overdose Prevention Act

In April 2019, the Commission considered a project based on the Appellate Division decision in *State v. W.S.B.*, 453 N.J. Super. 206 (App. Div. 2018). In that case, the Court examined the definition of the term “drug overdose” and the application of the Overdose Prevention Act (OPA). The Court determined that the defendant qualified for immunity under the Act, however, it noted that a more detailed explication of what forms of “physical illness” qualified as an “acute condition” under the OPA would result in a more easily applied statute.

Given the lack of legislative history for the OPA, the Commission authorized Staff to conduct additional research to determine whether clarifying the term “acute condition” as used in the Act might provide a remedy for this statutory deficiency. Additional research suggested that there are many varied signs and symptoms of a drug overdose, and the manifestation of an overdose depends on the person, and the substance they have consumed. A fifty-state survey indicated that New Jersey, like most states, defined the term “drug overdose” broadly and in a manner that highlights some, but not all, of the physical illnesses attributed to drug overdose. Based on the additional research performed by the Staff, the Commission determined that it would conclude its work in this area.

Spill Compensation and Control Act

The Commission authorized research and outreach regarding the Spill Compensation and Control Act as a result of the Supreme Court’s decision in *Magic Petroleum v. Exxon Mobile Corp.*, 218 N.J. 390 (2014). In that case, the Court addressed two issues pursuant to the Act: (1) whether claims for contribution under the Spill Act must be deferred under the doctrine of primary jurisdiction until a final resolution by the Department of Environmental Protection; and (2) whether it is necessary to obtain written consent of the Department of Environmental Protection before proceeding with a contribution claim.

In an Update Memorandum presented in November 2020, Staff noted that *Magic Petroleum* was decided without the need to consult extrinsic sources. Since that decision, the Legislature has worked consistently in this area over the course of several sessions, up to the present. As a result, the Commission chose to discontinue work in this area.

Uniform Act on Prevention of and Remedies for Human Trafficking

When the Commission initially began considering work in this area, the Rutgers School of Law – Newark’s International Human Rights Clinic submitted a detailed Memorandum identifying potential ways in which New Jersey’s stringent anti-human trafficking laws could be strengthened. The Clinic suggested: (1) the amendment of New Jersey law to provide immunity for human trafficking victims, particularly minors, from prosecution for prostitution-related offenses; (2) revision of New Jersey law to establish business entity liability for human trafficking crimes; (3) expansion of the New Jersey Human Trafficking Commission’s duties to include oversight of a broader anti-trafficking public awareness campaign; and (4) clarification of some inconsistent and confusion language existing in current New Jersey anti-trafficking laws.

In June 2016, the Commission released a Final Report recommending that forced sexually explicit performances be specifically included as a prohibited human trafficking crime. In January 2020 the Commission was presented with an Update Memorandum summarizing recent legislative activity in this area of law. The Update Memorandum noted the sustained legislative activity over several sessions. Based on the pace of legislative activity, and the existence of a state Commission on Human Trafficking, the Commission agreed to conclude its work in this area.

8. – Commissioners and Staff of the NJLRC 2020



8. – Commissioners and Staff of the NJLRC in 2020

The members of the Commission are:

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

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

Andrew O. Bunn, Attorney-at-Law

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

Hon. Virginia Long, Associate Justice, New Jersey Supreme Court (Retired), Counsel to Fox Rothschild

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

Louis N. Rainone, Attorney-at-Law

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

Raj Mukherji, Chair, Assembly Judiciary Committee, Ex officio

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

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

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

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

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

Represented by **Professor John Kip Cornwell**

Professor Cornwell received his A.B., with honors, from Harvard University, his M.Phil. in International Relations from Cambridge University, and his J.D. from Yale Law School where he was an Editor of the Yale Law Journal. He clerked for the Honorable Mariana R. Pfaelzer of the United States District Court for the Central District of California and the Honorable Dorothy W. Nelson of the United States Court of Appeals

for the Ninth Circuit. After his clerkships, he served as a senior trial attorney for the Civil Rights Division of the U.S. Department of Justice, and as an adjunct professor at the National Law Center of George Washington University. He has written in the areas of criminal law and procedure, mental health law and federal civil rights law, including writings concerning laws pertaining to sexual predators, exploring the constitutional limits on states' authority to confine this population for purposes of public safety and psychiatric rehabilitation.

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

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

Represented by **Professor Bernard Bell**

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

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

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

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

The managing partner of Bertone Piccini, Grace Bertone is a graduate of Fairleigh Dickinson University, summa cum laude, and Rutgers University School of Law, Camden, where she served as Editor-in-Chief of the Rutgers Law Journal. She was admitted to the bars of New Jersey and Pennsylvania and related federal districts in 1984. From 1984 to 1985, Ms. Bertone served as Law Clerk to The Honorable Phillip A. Gruccio, Superior Court of New Jersey (Assignment Judge, Atlantic and Cape May Counties). Before founding Bertone Piccini, she was a partner at the firm of McElroy, Deutsch, Mulvaney & Carpenter, LLP. Ms. Bertone has substantial experience in the areas of business acquisitions, general corporate and business counseling, commercial and residential real estate, zoning and land use, banking and commercial lending, foreclosure litigation, estate planning, probate administration, and probate litigation. She also has substantial experience in the analysis and implementation of internal investigations and legal audits.

The Staff of the Commission is:**Laura C. Tharney**, Executive Director

Laura Tharney is the Executive Director of the Commission. She joined the Commission as a staff attorney in February 2002 and was named Deputy Director in January 2008 and Executive Director in October 2012. Laura has been a licensed attorney since 1991 and is admitted to practice in New Jersey and New York. Before she began her work with the Commission, Laura engaged in appellate practice at her central-New Jersey law firm, which included appeals to the Supreme Court of the United States, New Jersey Supreme Court, New Jersey Appellate Division, New York appellate courts, administrative agencies and municipal boards and bodies. She received her B.A. from Rutgers University in 1987 and graduated from Rutgers School of Law - Newark in 1991.

Samuel M. Silver, Deputy Director

Samuel Silver joined the Commission as a staff attorney in March of 2017 and was named Deputy Director in March 2019. He has been a licensed attorney since 1994 and is admitted to practice in New Jersey. As a solo practitioner, Sam engaged in civil and criminal litigation as well as appellate practice. Sam litigated matters before the Superior Court, Law Division, and Municipal Courts throughout New Jersey. In addition, he argued appellate matters before both the Appellate Division and the Supreme Court of New Jersey. Sam also practiced before the United States District Court. He earned a degree in Political Science from the University of Wisconsin's Madison Campus. Sam graduated from the Washington College of Law – American University in 1994. In 2016, he earned a Master's Degree in trial advocacy from Stetson University College of Law.

Arshiya M. Fyazi, Counsel

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

Jennifer D. Weitz, Counsel

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

Mark D. Ygarza, Legislative Fellow (through July 2020)

Mark Ygarza joined the Commission as a postgraduate Legislative Fellow in August of 2019. He is a newly-licensed attorney in New Jersey. Mark received his B.A. from Hunter College, City University of New York, and graduated from Seton Hall University School of Law. As a law student, he participated as a student attorney for Volunteers

Lawyers for Justice and Seton Hall Law School’s Civil Litigation Clinic. He also interned for the Attorney General’s Office Consumer Fraud Division.

Christopher J. Mrakovcic, Legislative Law Clerk

Christopher Mrakovcic joined the Commission as a Legislative Law Clerk in August 2020, having worked with the Commission on a pro bono basis in 2019 and 2020. He became a licensed attorney in New York in January 2020. Chris received his B.A. from New York University and his J.D. from Seton Hall University School of Law. As a law student, he was Comments Editor of the Seton Hall Legislative Journal.

Veronica V. Fernandes, Executive Assistant

Veronica Fernandes transitioned to the legal field in 2018 after nearly a decade of work in the service industry with an emphasis on food service management, most recently at Pronto Café, in Newark, New Jersey, where she handled the day-to-day administrative aspects of the business. Prior to that, Veronica worked in the healthcare field, with a focus on administration, after graduating from Bellville High School in 2004.

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

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

Student Legislative Law Clerks and Externs:

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

The Commission was fortunate to have the assistance this year, as in past years, of bright, motivated, and dedicated students with excellent research and writing skills whose efforts have increased the Commission’s ability to work in numerous different areas of the law. The students who worked with the NJLRC in 2020 are:

Julianna F. Dzwierzynski, Seton Hall University School of Law – Legislative Extern – Summer 2020

Other Assistance by Students:

During the Spring semester of 2020, research and drafting assistance was provided to the NJLRC by pre-law student intern **Marissa Soistman**, and in the Fall semester of 2020 by NJIT student **Rabiya Khan** through a cooperative relationship with the New Jersey Institute of Technology and Alison Lefkovitz, Assistant Professor and Director of NJIT’s Law, Technology & Culture program.

Research and drafting assistance were also provided this year by **Benjamin M. Cooper**, an undergraduate pre-law student at Seton Hall University, **Nicholas Tharney**, graduate of Rutgers University, and **Rachael Segal, Esq.**

In addition, pro bono legal research and drafting assistance was provided to the NJLRC by law students: **Lauren Bonanno, Julianne Darius, Marie Michel, Jennifer Nairn, Kayvon Paul, Morgan Pyle, and Ryan Slocum** in cooperation with Jill Friedman, Associate Dean, Pro Bono & Public Interest, and Sarah E. Ricks, Distinguished Clinical Professor of Law, at Rutgers Law School – Camden. Pro bono legal research and drafting were also provided by **Mark R. Mikhael, Melissa E. Sungela, and Mark K. Svensson** in cooperation with Lori Borgen, Esq., Director of the Externships and Pro Bono Service Program, at Seton Hall University School of Law.

9. – Looking Ahead to the Work of the NJLRC in 2021



9. – Looking Ahead to the Work of the NJLRC in 2021

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

Efforts to enhance outreach, transparency, and the use of electronic media and communications are ongoing. The meetings of the Commission are open to the public, as are the records of its work, and the Commission actively solicits public comments on its projects, which are widely distributed to interested persons and groups. A website upgrade was largely completed in 2019, with additional resources being made available on an ongoing basis throughout 2020. A primary goal of the website modifications was to increase the accessibility of the Commission’s work.

Throughout 2020, Staff worked to increase and improve the effectiveness of the Commission’s outreach efforts in order to increase public participation in the work of the Commission, and this will continue into 2021.

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

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