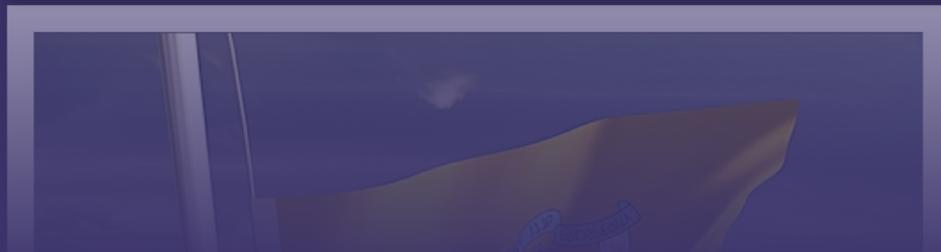


ANNUAL REPORT - 2021

New Jersey Law Revision Commission



THIRTY-FIFTH ANNUAL REPORT

2021





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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.



Clarify

Simplify

Remedy

Statement of the Chairman

As the Chairman of the New Jersey Law Revision Commission, I am pleased to present the 2021 Annual Report of the New Jersey Law Revision Commission for the Legislature's consideration, marking the conclusion of the 35th year of the Commission's work.

The work of the Commission continued without interruption in 2021, as it did in 2020. We worked remotely as needed, engaged with members of the public for comments on our work, and enabled public participation in our monthly public meetings using videoconferencing. In addition, Commission staff members communicated with legislators, attended legislative committee hearings in support of the Commission's work, and offered a Continuing Legal Education presentation in association with the Office of Legislative Services. We also continued to host students from the Rutgers School of Law, the Seton Hall University School of Law, and the New Jersey Institute of Technology as paid legislative law clerks, credit-earning externs, interns, and also for pro bono credit.

The Commission completed work on 18 recommendations to the Legislature in a variety of subject-matter areas in 2021, and work is ongoing on approximately 50 other projects that address a wide range of statutes. Of the bills introduced in the Legislature based on the work of the Commission during the 2020-2021 legislative session, six moved through both houses of the Legislature before the conclusion of the session. The bills amending provisions of the Revised Uniform Law on Notarial Acts and the Uniform Voidable Transaction Act were signed into law by the Governor.

The Commission's focus continues to be the maintenance of a high standard of legal research and analysis. The publication of scholarly articles by Commission staff members, and the citation of Commission reports by academic writers and judges, represent additional practical applications of our work. In 2021 the Commission's work was also referenced in the New Jersey Law Journal and, nationally, in an article concerning unusual divorce laws that was published by Investopedia. Each reference to the Commission's work increases the possibility for input from the broader community.

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

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

Finally, as always, our thanks to the numerous commenters from government entities, the legal profession, the academic community, the private sector, and various members of the public, whose generous contributions of time, experience, and expertise were of considerable assistance to the Commission in 2021. It

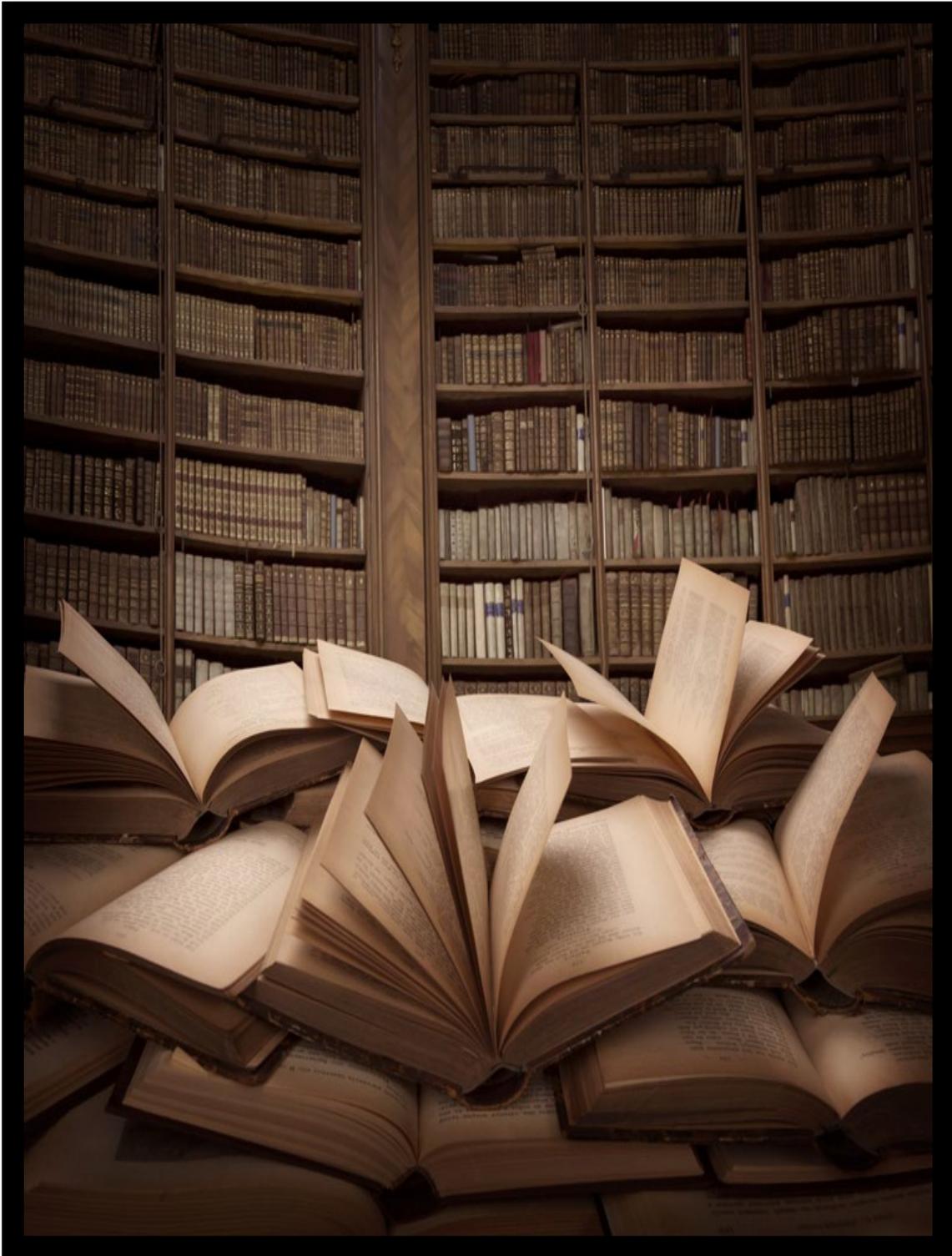
remains our hope that the quality of the Commission's work reflects the breadth and the caliber of these contributions. We look forward to continuing our work on several significant areas of the law and to the opportunity to engage with individuals throughout the State who share our goal of improving the laws which govern all of us.

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

Table of Contents

	Page
1. Overview of the Work of the NJLRC in 2021	8
2. Enacted Reports and NJLRC Case and Journal References	22
3. History and Purpose of the Commission	33
4. Final Reports and Recommendations 2021	35
5. Tentative Reports	44
6. Work in Progress	51
7. No Action Recommended	65
8. Commissioners and Staff of the NJLRC in 2021	68
9. Looking Ahead to the Work of the NJLRC in 2022	75

1. – Overview of the Work of the NJLRC in 2021



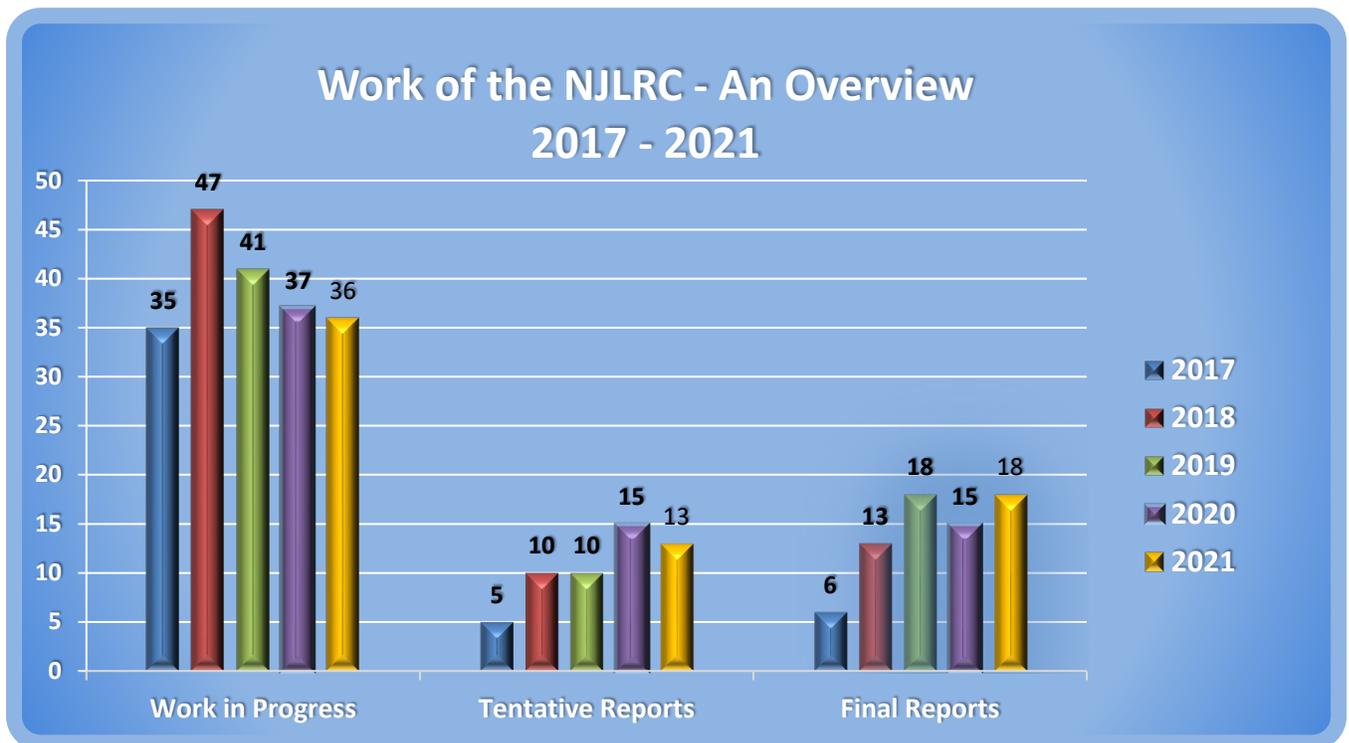
1. – Overview of the Work of the NJLRC in 2021

General Overview:

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

The projects on which the Commission works in any given year vary in size. Some recommend a change to a single subsection of a statute; others propose the revision of an entire title or changes to multiple titles. In recent years, approximately one-third of the projects on which the NJLRC worked resulted from consideration of the work of the Uniform Law Commission, about one-third from the NJLRC’s monitoring of New Jersey case law, and about one-third from recommendations by members of the public.

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



Bills Introduced Based on NJLRC Work

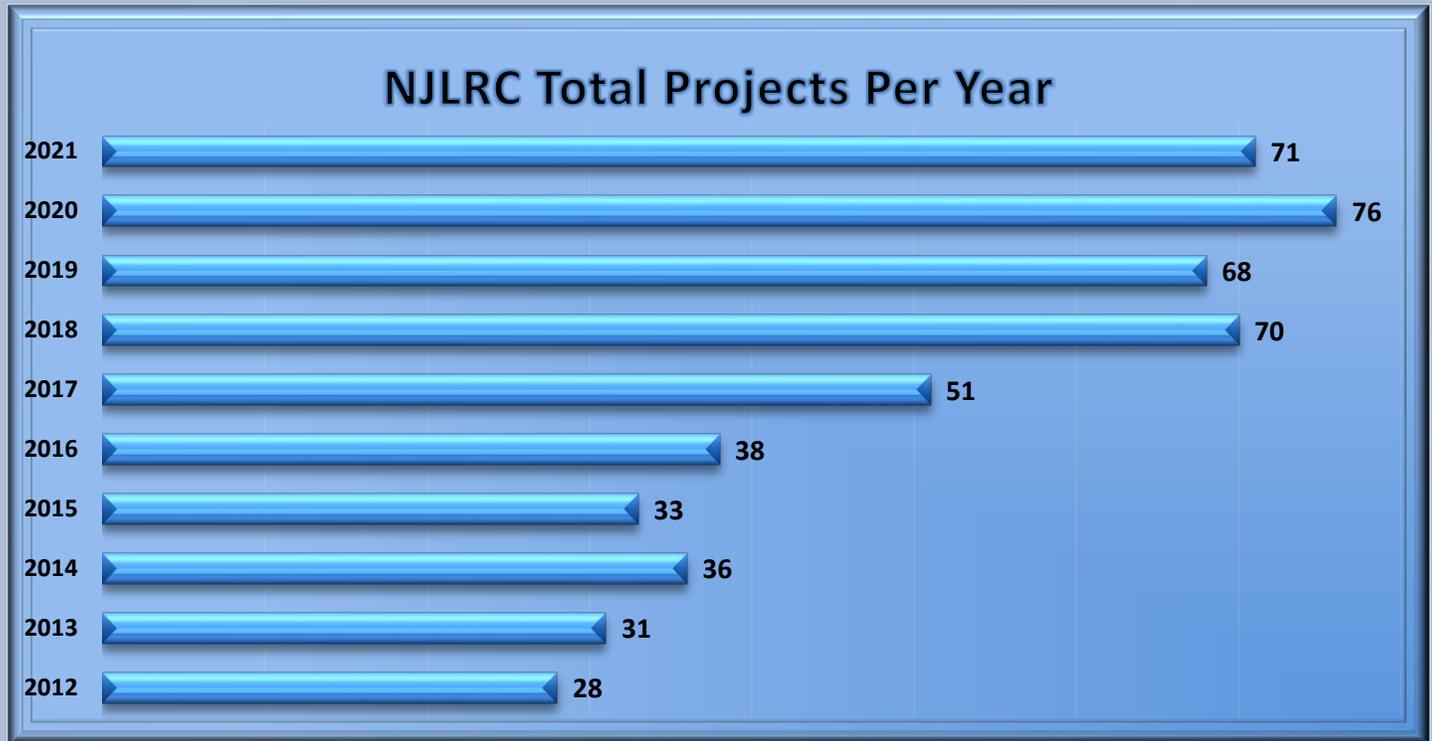
The following NJLRC projects were the subject of bills introduced in 2020, or represent subject areas in which the NJLRC provided information and support to the Legislature:

- Adverse Possession
- Anachronistic Statutes
- Common Interest Ownership Act
- Equine Activities Liability Act
- Filial Responsibility
- (Revised Uniform) Law on Notarial Acts
- Oaths and Affidavits
- Return of Property Taxes Paid in Error
- Standard Form Contracts
- Supplemental Needs Trusts
- Unemployment Benefits When Offer is Rescinded
- (Uniform) Voidable Transactions Act
- Workers Compensation for Volunteers and Others with No Outside Employment

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 Louis D. Greenwald
Assemblyman Eric Houghtaling
Assemblyman Gordon M. Johnson
Assemblyman Sean T. Kean
Assemblywoman Pamela R. Lampitt
Assemblywoman Yvonne Lopez
Assemblyman John F. McKeon
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 2021.

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

Jodi Argentino, Esq., Argentino Fiore Law & Advocacy, LLC

Martin Aron, Esq., President, Academy of New Jersey Management Attorneys

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

Shania Brenner, Esq., Assistant Sussex County Prosecutor

Kyle Buchoff, Senton Hall Law School

Karin M. Burke, Esq., Asst. Dir., Office of Compliance & Strategic Planning, New Jersey Department of Corrections
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

John Carr, Cumberland County Counsel

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Matt Clark, County Tax Administrator, Monmouth County Tax Board

Roger S. Clark, Rutgers School of Law

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

Constitutional Officers Association of New Jersey

County Prosecutor’s Association of New Jersey

Marjorie E. Crawford, Criminal Justice and Reference Librarian, Rutgers Law School

Patience Crozier, Senior Staff Attorney, GLBTG Legal Advocates & Defenders

Kathleen Cullen, New Jersey Department of Corrections



“STATUTES INFORM INDIVIDUALS OF THEIR RIGHTS AND RESPONSIBILITIES. CLARITY OF LANGUAGE IS CRUCIAL TO THE TRANSMISSION OF THIS INFORMATION.”

Laura C. Tharney, Samuel M. Silver, Arshiya M. Fyazi, Jennifer D Weitz, Christopher Mrakovcic, and Rachael M. Segal, *On the Path Toward Precision: Responding to the Need for Clear Statutes in the Criminal Law*, 45 Seton Hall Legis. J. 2 (2021)

Richard Cushing, Esq., President, NJ Inst. of Local Gov't Attorneys, Gebhardt & Kiefer, P.C.

Linda Czipo, Executive Director, Center for Non-Profits

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

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Joseph DeCeglie, JDIT Consulting

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Annette DePalma, Director, Community Development at Township of Maplewood

Department of the Treasury, New Jersey

Nick DeRose, LSRP, LANGAN

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

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Division of Commercial Recording, New Jersey

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

Casey Gillece, Legislative Counsel, Uniform Law Commission

John Glass, President, Conference of Northeast Towing Associations

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

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Craig S. Gumpel, Esq., Law Offices of Craig S. Gumpel LLC, Counsel to New Jersey Firefighters Mutual Benevolent Association

Debra E. Guston, Esq., Guston & Guston, L.L.P.

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

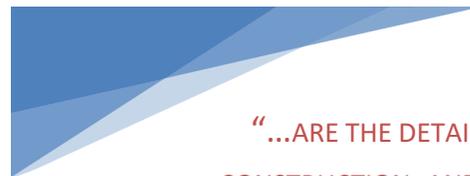
Stacy Hawkins, Professor, Rutgers Law School

Larry Herrighty, Director, Dept. of Environmental Protection

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

Rawan Hmoud, Esq., Offit Kurman, Attorneys at Law

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



“...ARE THE DETAILS OF STATUTORY CONSTRUCTION, AND THE CANONS OF STATUTORY INTERPRETATION, OF INTEREST ONLY TO THOSE TOILING IN THE RELATIVE OBSCURITY OF STATUTORY DRAFTING?”

Laura C. Tharney, Samuel M. Silver, Arshiya M. Fyazi, Jennifer D. Weitz, and Mark D. Ygarza, *Canons or Coin Tosses: Time-Tested Methods of Interpreting Statutory Language*, 44 *Seton Hall Legis. J.* 2 (2020),

Gerard Hughes, Director, Department of Human Services

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

Cynthia Jahn, Esq., General Counsel, Director of New Jersey School Boards Association

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Barbara Johnson, Director of Advocacy, Mental Health Association in New Jersey

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Margaret Jurow, Resident Practitioner, Seton Hall Law School

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Jennifer A Loheac, Esq., Community Associations Institute

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David McMillin, Esq., Legal Services of New Jersey

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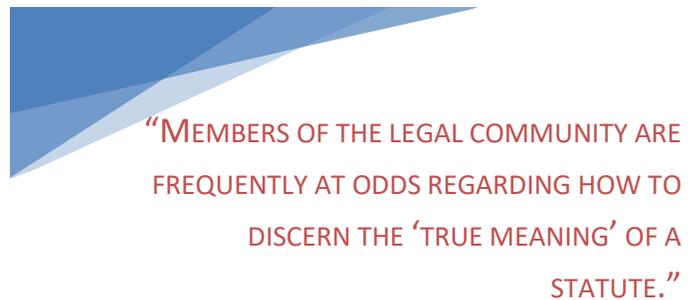
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“MEMBERS OF THE LEGAL COMMUNITY ARE FREQUENTLY AT ODDS REGARDING HOW TO DISCERN THE ‘TRUE MEANING’ OF A STATUTE.”

Laura C. Tharney, Samuel M. Silver, Jennifer D. Weitz, Joseph A Pistrutto, and Rachael M. Segal, *Legislative Archaeology: It’s Not What You Find, It’s What You Find Out*, 43 Seton Hall Legis. J. 2 (2019)

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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 Bar Association, Workers' Compensation Section

New Jersey State Library

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

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Catherine Sakimura, Esq., Deputy Director & Family Law Director, National Center for Lesbian Rights

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Eliyahu S. Scheiman, Esq., Porzio, Bromberg & Newman, P.C.

Alan H. Schorr, Leg. Liaison, National Employment Lawyers' Association

Colleen Schulz-Eskow, New Jersey Department of Education

Jennifer Sellitti, Public Defender, Office of the Public Defenders

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Jeffrey Shapiro, Esq., Lowenstein Sandler, LLP

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Steven Stadtmauer, Esq., Celentano, Stadtmauer & Walentowicz, LLP

State of New Jersey, Department of Law and Public Safety - Office of the Attorney General

Jessica M. Stookey, Seton Hall Legislative Journal, Executive Editor, Vol. 45

Susan Stryker, Esq., Bressler, Amery & Ross, on behalf of the Insurance Council of New Jersey

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Esther Suarez, Prosecutor, Hudson County

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

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Paul Tractenberg, Professor Emeritus, Rutgers Law School

Stephen E. Trimboli, Esq.

Uniform Law Commission

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

Valerie Villanueva, Legal Secretary, Office of Legislative Services

Robert Vivian, Legislative Liaison, Department of Agriculture

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

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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 58 bills based upon 77 of the more than 216 Final Reports and Recommendations released by the Commission. The Commission’s work also resulted in a change to the Court Rules in 2014. To this time, the projects enacted (or otherwise implemented) are:

2021

- *Revised Uniform Law on Notarial Acts (L.2021, c.179)* – The Commission’s Report recommended changes to the New Jersey Notaries Public Act to enhance the integrity of the notarial practice in New Jersey. The Report recommended changes to the law to harmonize the treatment of tangible and electronic records, and to provide standards for obtaining a commission, notarization, and record-keeping. The Report also recommended changing the law to provide that the State Treasurer may deny an application and decline to renew, suspend, revoke, or limit the commission of a notary public for an act or omission demonstrating a lack of honesty, integrity, competence, or reliability.
- *Uniform Voidable Transactions Act (L.2021, c.92)* – The Report of the Commission recommended changes to New Jersey’s Uniform Fraudulent Transfer Act, recommending that the Act be renamed to more accurately reflect the nature of the transactions to which it applies, and modifying the definition of insolvency to be more consistent with the United States Bankruptcy Code and the Uniform Commercial Code. The Report also recommended the establishment of a preponderance of evidence standard for the Act and making changes to provide simple and predictable guidance on conflict/choice of law issues.

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

2019

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

Enactment Reflecting Work of the Commission:

Drunk Driving Penalties, Expanded Use of Ignition Interlock Devices (P.L.2019, c.248) – A Commission Report released in 2012 recommended modifications to the penalties associated with driving under the influence of

alcohol based on research done in this area regarding the effectiveness of ignition interlock devices for all offenders, including those convicted of a first offense. Although the earlier Commission Report is not identical to the law as enacted, the Commission was pleased to see that some of the information contained in that Report may have been of use to the sponsors of the most recent legislation.

2017

- *Bulk Sale Notification Requirements* (L.2017, c.307) -- The Commission's Report recommended changes to clarify that when more than one individual, trust, or estate jointly own real property, including a home, non-commercial dwelling unit, or seasonal rental, the sale of such property is exempt from the bulk sale notification requirements as it would be if a single individual, trust, or estate owned it.
- *Millers of Grain* (L.2017, c.227) – Derived from a more expansive Final Report of the Commission issued in 2012 and largely enacted in 2014, the portion of the Report enacted in 2017 recommended repeal of the law regulating charges that could be assessed by a miller for grinding grain.
- *Overseas Residents Absentee Voting Law* (L.2017, c.39) – The Report recommended revision of Overseas Residents Absentee Voting Law to recognize the rights of overseas citizens who were not previously covered by existing New Jersey law, to clarify the existing law, and to make certain technical changes to the law.
- *Pejorative Terms 2017* (L.2017, c.131) – The Report recommended changes to eliminate demeaning, disparaging, and archaic terminology used when referring to persons with a physical or sensory disability or a substance use disorder. The Report was consistent with the Legislative goal expressed in P.L. 2010, c.50 to ensure that the statutes and regulations of the State do not contain language that is outdated and disrespectful to persons with a disability and it expands the scope of prior NJLRC Reports (two earlier Reports were released dealing with this terminology as it related to persons with developmental, cognitive or psychiatric disabilities (in 2008, and in 2011 - the latter Report was the basis of A-3357/S-2224, which received bipartisan support, passed both houses of the Legislature unanimously, and was signed into law by the Governor)).
- *Uniform Fiduciary Access to Digital Assets Act* (L.2017, c.237) – Although the Commission did not issue a Final Report concerning this Act, Commission Staff had the opportunity to work with Legislators, Legislative Staff, Staff members from the Office of Legislative Services, and Staff members from the Uniform Law Commission in order to review and revise the Act for enactment in New Jersey.
- *Uniform Foreign Country Money-Judgment Recognition Act* (L.2017, c.365) – This, too, was an area of the law on which the Commission did not issue a Final Report but engaged in work and provided support for the bills underlying the Act.

2016

- *Uniform Interstate Family Support Act* (L2016, c.1.) – The Report recommended enactment of the latest version of the Uniform Interstate Family Support Act with some minor modifications to reflect New Jersey-specific practice. The latest version of the Act changes state law to allow enforcement of foreign support orders.

2015

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

2014

- *New Jersey Declaration of Death Act (L.2013, c.185)* – The Report proposed removal of the statutory authority of the Department of Health and the State Board of Medical Examiners over medical standards governing declarations of death on the basis of neurological criteria.
- *New Jersey Family Collaborative Law Act (L.2014, c.69)* – The Report recommended enactment of new statutory language designed to create a consistent framework for the use of the collaborative process in family law matters that is intended to provide important consumer protections and an enforceable privilege between parties and non-attorney collaborative professionals during the negotiation process.
- *General Repealer (Anachronistic Statutes) (L.2014, c.69)* – The Report recommended repeal of assorted anachronistic or invalid statutes including: some that are invalid because they have been found unconstitutional or have been superseded; some that may be legally enforceable but which have ceased to have any operative effect with the passage of time; some that are anachronistic because they relate to offices or institutions which no longer exist; some that are anachronistic because they deal with problems which were important at one time but which have ceased to be relevant to modern society; and others that deal with problems that still have relevance but which do so in a way that has become unacceptable.
- *Uniform Interstate Depositions and Discovery Act (R. 4:11-4 and R. 4:11-5)* – The Report recommended adoption of the UIDDA in New Jersey, with modifications to accommodate New Jersey practice but, although the Commission ordinarily makes recommendations to the Legislature, the better course of action in this case was a revision to the Court Rules to provide a simple and convenient process for issuing and enforcing deposition subpoenas.

2013

- *Pejorative Terms (L.2013, c.103)* – The Report proposed elimination of demeaning, disrespectful, and archaic terminology used in the New Jersey statutes when referring to persons with developmental, cognitive, or psychiatric disabilities.
- *Uniform Commercial Code – Article 1 – General Provisions (L.2013, c.65)* – The Report proposed updates to Article 1 of the Uniform Commercial Code that contains definitions and general provisions which, in the absence of conflicting provisions, apply as default rules covering transactions and matters otherwise covered under a different article of the UCC.

- *Uniform Commercial Code – Article 4A – Funds Transfers* (L.2013, c.65) – The Report proposed updating Article 4A of the Uniform Commercial Code to address what would otherwise have been a gap in the law since 4A does not cover a fund transfer governed by federal Electronic Funds Transfer Act (EFTA). Among the changes brought about by the Dodd-Frank Act, the Wall Street Reform and Consumer Protection Act, is an amendment to the EFTA so that the law will govern “remittance transfers” (the electronic transfer of funds to a person located in a foreign country requested by a consumer and initiated by a person or financial institution that provides remittance transfers for consumers in the normal course of its business), whether or not those remittance transfers are also “electronic fund transfers” as defined in EFTA. When the federal law changed in February 2013, without the modification to Article 4A, a fund transfer initiated by a remittance transfer would have been entirely outside the coverage of Article 4A, even if the remittance transfer is not an electronic fund transfer, and would not have been covered by either law.
- *Uniform Commercial Code – Article 7 – Documents of Title* (L.2013, c.65) – The Report proposed modifications to Article 7 of the Uniform Commercial Code to accomplish two primary objectives: (1) allowance of electronic documents of title, and (2) introduction of provisions to reflect trends at the state, federal, and international levels.
- *Uniform Commercial Code – Article 9 – Secured Transactions* (L.2013, c.65) – The Report proposed changes to Article 9 of the Uniform Commercial Code, which governs security agreements 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)
- Repealers (L.1991, c.59, 93, 121, 148)
- Replevin (L.1995, c.263)
- School Background Checks (L.2007, c.82)
- Service of Process (L.1999, c.319)
- Statute of Frauds (L.1995, c.36)
- Surrogates (L.1999, c.70)
- Tax Court (L.1993, c.403)
- Title 45 – Professions (L.1999, c.403)
- Uniform Commercial Code Article 2A – Leases (L.1994, c.114)
- Uniform Commercial Code Article 3 – Negotiable Instruments (L.1995, c.28)
- Uniform Commercial Code Article 4 – Bank Deposits (L.1995, c.28)
- Uniform Commercial Code Article 4A – Funds Transfers (L.1994, c.114)
- Uniform Commercial Code Article 5 – Letters of Credit (L.1997, c.114)
- Uniform Commercial Code Article 8 – Investment Securities (L.1997, c.252)
- Uniform Commercial Code Article 9 – Secured Transactions (L.2001, c.117)

New Jersey Cases that Mention the NJLRC:

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- *Catalina Marketing Corp. v. Hudyman*, 459 N.J. Super. 613 (App. Div. 2019)
- *SDK Troy Towers, LLC v. Troy Towers, Inc.*, 2019 WL 612670 (App. Div. 2019)
- *Residential Mortgage Loan Trust 2013-TT2 by U.S. Bank National Association v. Morgan Stanley Mortgage Capital, Inc.*, 457 N.J. Super. 237 (App. Div. 2018)
- *Diamond Beach, LLC v. March Associates, Inc.*, 2018 WL 6729724 (App. Div. 2018)
- *NRG REMA LLC v. Creative Env'tl. Sols. Corp.*, 454 N.J. Super. 578, 583 (App. Div. 2018)
- *Gately v. Hamilton Memorial Home, Inc.*, 442 N.J. Super. 542 (App. Div. 2015)
- *State v. Tate*, 220 N.J. 393 (2015)
- *Booker v. Rice*, 431 N.J. Super. 548 (App. Div. 2013)
- *In re T.J.S.*, 419 N.J. Super. 46 (App. Div. 2011)
- *Pear Street, LLC*, 2011 WL 9102 (App. Div. 2011)
- *Haven Savings Bank v. Zanolini*, 416 N.J. Super. 151 (App. Div. 2010)
- *Marino v. Marino*, 200 N.J. 315 (2009)
- *Tashjian v. Trapini*, 2009 WL 2176723 (App. Div. 2009)
- *New Jersey Div. of Youth and Family Services v. A.P.*, 408 N.J. Super. 252 (App. Div. 2009)
- *State v. Broom-Smith*, 406 N.J. Super. 228 (App. Div. 2009)
- *Seaboard Towers Development Co., LLC v. AC Holding Corp., II*, 2008 WL 2340016 (App. Div. 2008)
- *Patel v. 323 Cent. Ave. Corp.*, 2008 WL 724052 (App. Div. 2008)
- *Alampi v. Pegasus Group, L.L.C.*, 2008 WL 140952 (App. Div. 2008)
- *Michael J. Wright Const. Co., Inc. v. Kara Homes, Inc.*, 396 B.R. 131 (D.N.J. 2008)
- *Loder v. Neppel*, 2007 WL 4118319 (App. Div. 2007)
- *Semenecz v. Borough of Hasbrouck Heights*, 2006 WL 2819813 (Law Div. 2006)
- *Warren County Bar Ass'n v. Board of Chosen Freeholders of County of Warren*, 386 N.J. Super. 194 (App. Div. 2006)
- *Gebroee-Hammer Associates, Inc. v. Sebbag*, 385 N.J. Super. 291 (App. Div. 2006)
- *L'Esperance v. Devaney*, 2005 WL 3092849 (App. Div. 2005)
- *Morton v. 4 Orchard Land Trust*, 180 N.J. 118 (2004)
- *Morton v. 4 Orchard Land Trust*, 362 N.J. Super. 190 (App. Div. 2003)
- *Board of Chosen Freeholders of County of Morris v. State*, 159 N.J. 565 (1999)
- *James Const. Co., Inc. v. Director, Div. of Taxation*, 18 N.J. Tax 224 (1999)
- *Prant v. Sterling*, 332 N.J. Super. 369 (Ch. Div. 1999)
- *Wingate v. Estate of Ryan*, 149 N.J. 227 (1997)
- *State v. Storm*, 141 N.J. 245 (1995)

Journal Articles and Scholarly Reference Materials that Mention the NJLRC:

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

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- Charles F. Kenny, Esq., and Scott G. Kearns, Esq., FIFTY STATE CONSTRUCTION LIEN AND BOND LAW § 31.02 *New Jersey Construction Lien Law*, 1 JW-CLBL § 31.02 (2020; 2021)
- Laura C. Tharney, Samuel M. Silver, Arshiya M. Fyazi, Jennifer D. Weitz, and Mark D. Ygarza, *Canons or Coin Tosses: Time-Tested Methods of Interpreting Statutory Language*, 44 SETON HALL LEGIS. J. 285 (2020)
- Peter J. Mazzei, Laura C. Tharney, Samuel M. Silver, Jennifer D. Weitz, Joseph A. Pistritto & Rachael M. Segal, *Legislative Archeology: “It’s Not What You Find, It’s What You Find Out”*, 43 SETON HALL LEGIS. J. 2 (2019)
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- CCH Incorporated, LAW OF ELECTRONIC COMMERCE, *Non-uniform State Law Approaches* §5.07 (2019; 2020; 2021)
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- Michael D. Sirota, Michael S. Meisel & Warren A. Usatine, 44 NEW JERSEY PRACTICE SERIES, *Debtor-Creditor Law and Practice – Asset Sales by Distressed Companies* §6.2 (2019; 2020; 2021)
- James H. Walzer, James W. Kerwin, 16A NEW JERSEY PRACTICE SERIES, *Legal Forms* § 56.14 (2019; 2020; 2021)
- Myron C. Weinstein, 29 NEW JERSEY PRACTICE SERIES, *Law of Mortgages* §§ 7.2, 7.3, 7.5, 9.2, 9.3, 9.4, 10.0.30, 10.3, 10.5, 10.6, 10.11, 10.15, 10.20 (2019; 2020; 2021)
- Myron C. Weinstein, 30 New Jersey Practice Series, *Law of Mortgages* §§ 28.1A, 28.9A (2019; 2021)
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- Joseph A. Romano, *No “Dead Giveaways”: Finding a Viable Model of Ante-Mortem Probate for New Jersey*, 48 Seton Hall L. Rev. 1683 (2018)
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- Laura C. Tharney & Samuel M. Silver, *Legislation and Law Revision Commissions: One Option for the Management and Maintenance of Ever-Increasing Bodies of Statutory Law*, 41 SETON HALL LEGIS. J. 329 (2017)
- Ben Nipper, *Legislating Death: A Review and Proposed Refinement of the Uniform Determination of Death Act*, 17 Houston J. Health L. & Pol’y 429 (2017)

- Jacob Arthur Bradley, *Antemortem Probate is a Bad Idea: Why Antemortem Probate Will Not Work and Should Not Work*, 85 Miss. L. J. 1431 (2017)
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- Susan Reach Winters & Thomas D. Baldwin, 10 NEW JERSEY PRACTICE SERIES, *Family Law and Practice – Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) §22:31* (2016; 2019; 2020; 2021)
- Bea Kandell & Christopher McGann, *How Deep is the Black Hole, and How Do We Dig Our Clients Out?*, NEW JERSEY FAMILY LAWYER, Vol. 36, No. 5 – April 2016
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- Laura C. Tharney & Jayne J. Johnson, *All Hands on Deck: New Jersey Law Revision Commission Recommends Modified Uniform Laws to Safeguard the Public and Address Disasters and Their Aftermath*, 38 SETON HALL LEGIS. J. 339 (2014)
- Sharon Rivenson Mark & Mary Wanderpolo, 45 NEW JERSEY PRACTICE SERIES, *Elder Law—Guardianships and Conservatorships §§22:28, 32:1* (2014)
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- Blake Sherer, *The Maturation of International Child Abduction Law: From the Hague Convention to the Uniform Child Abduction Prevention Act*, 26 J. AM. ACAD. MATRIMONIAL LAW 137 (2013)
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In addition to the items referenced above, the Commission was pleased to be mentioned in articles by: Charles Toutant in the New Jersey Law Journal entitled *Commission Calls for Indemnification of County Employees Who Help State Fight Crime* (December 17, 2021); Charles Toutant in the New Jersey Law Journal entitled *Panel Upholds Threat of Imprisonment for Debtors' Discovery Violations* (October 9, 2019); and Adam J. Sklar and Gary M. Albrecht, in the New Jersey Lawyer, *Construction Liens Arising From Tenant Work - Commercial Landlord Concerns and Strategies*, vol. 319 at p. 58 (2019).

The work of the Commission was also mentioned nationally, in an article concerning unusual divorce laws in effect in various states by Daniel Thomas Mollenkamp, "*Most Surprising Divorce Laws by State*" on Investopedia (September 22, 2021) as well as an article concerning archaic laws by Michael Waters "*Hundreds of wacky, obsolete laws still exist. Why don't more states remove them?*" in The Highlight, by Vox (November 18, 2019).

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 was the first such commission in the nation. It was established in 1925 and produced the Revised Statutes of 1937. Since the Legislature intended that the work of revision and codification continue after the enactment of the Revised Statutes, the Law Revision Commission continued in operation until 1939. After that, the functions of the 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. Its statutory mandate is to “promote and encourage the clarification and simplification of the law of New Jersey and its better adaptation to social needs, secure the better administration of justice and carry on scholarly legal research and work.” N.J.S. 1:12A-8. It is the duty of the Commission to conduct a continuous review of the general and permanent statutes of the state, and the judicial decisions construing those statutes, to discover defects and anachronisms. *Id.* The 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.*

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, 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

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 February of 2021, the Commission released a Final Report that recommends modification of the New Jersey’s Child Endangerment statute to clarify that the “harm” to which it refers includes the exposure of a child to imminent danger and a substantial risk of harm.

Confinement

In *State v. Clarity*, 454 N.J. Super. 603 (App. Div. 2018), the Appellate Division considered the ambiguity created by the lack of a definition for the term “confinement” as used in N.J.S. 2C:44-3(a) in the context of whether an individual could be deemed a persistent offender for purposes of sentencing.

The defendant in *Clarity* committed a criminal act in Florida, entered a guilty plea, and was sentenced to probation. Later, while in New Jersey, Clarity was arrested for child endangerment and pled guilty. He 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. 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.”

In February of 2021, the Commission released a Final Report recommending changes to clarify the meaning of “confinement” in New Jersey’s persistent offender statute, N.J.S. 2C:44-3(a), as discussed in *State v. Clarity*.

County Commissioner

Amid a statewide, and national, move to reexamine statutory terms rooted in systemic racism, the Commission undertook an examination of the use of the term “workhouse” in New Jersey’s statutes. The term “Freeholder” appears in many of the same statutes as the term “workhouse.”

In August of 2020, Governor Phil Murphy signed into law bills eliminating the titles “Freeholder” and “chosen freeholder” from County government. This replaced the terms “Freeholder” and “chosen freeholder” with the term “County Commissioner”, required the counties to update materials to reflect the title change, and created a definition of “Freeholder” and “chosen freeholder” to clarify that any statutory reference to either means a “county commissioner.”

In December of 2021 the Commission released a Final Report that recommends the removal of the anachronistic terms from more than 1,000 New Jersey statutes.

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 these individuals are required to perform does not arise from, nor is it incidental to, the performance of their duties as county employees. Instead, their services are provided for the sole benefit of, and at the exclusive direction of, the State. The statutes do not address a situation in which 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 December of 2021 the Commission released a Final Report that recommends statutory modifications to clarify that the Attorney General must defend current or former “non-State” personnel who are called upon to participate in a State criminal prosecution and are subsequently sued in a civil action by the criminal defendant.

Inhabitant - Definition of

To protect the “inhabitants” of the State from discrimination, the Legislature enacted the “Law Against Discrimination.” “Inhabitants,” as used in the preamble of the New Jersey Law Against Discrimination (NJLAD), is not defined in the Act. Moreover, the use of the term is inconsistent with the language used in other provisions of the statute, namely N.J.S. 10:5-5(a), which defines the term “person,” and does not limit the definition to New Jersey residents or employees.

The breadth of protection provided by the NJLAD was the subject of *Calabotta v. Phibro Animal Health Corp.*, 460 N.J. Super. 38 (App. Div. 2019). The *Calabotta* Court noted that the restrictive language used in the

preamble created “a potential interpretive ambiguity about the statute’s coverage.” The Appellate Division found that the Legislature did not intend for the NJLAD to apply solely to the inhabitants of New Jersey, and extended protection to an Illinois resident who worked for a New Jersey-based company.

The Commission released a Final Report in October of 2021, recommending the modification of the NJLAD to clarify that individuals who reside outside of New Jersey and work, or conduct business within, the State are protected by the Act.

Jessica Lunsford Act in the New Jersey Sexual Assault Statute

An offender convicted of an aggravated sexual assault involving a victim less than thirteen years old will be sentenced to life imprisonment and must serve a minimum of twenty-five years of this sentence. A prosecutor “in consideration of the interests of the victim” may, however, offer the defendant a negotiated plea agreement of fifteen years, during which the defendant would not be eligible for parole.

The Jessica Lunsford Act (JLA) does not require the State to present a statement of reasons explaining the departure from the twenty-five-year mandatory minimum sentence. The JLA also does not provide a sentencing court with the opportunity to review the prosecutor’s exercise of discretion to “protect against arbitrary and capricious prosecutorial decisions.” The absence of these safeguards served as the basis of the constitutional challenge considered by the New Jersey Supreme Court in *State v. A.T.C.*, 239 N.J. 450 (2019).

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

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

In September of 2021, the Commission released a Final Report that recommends the modification of the Jessica Lunsford Act to address the issues identified by the New Jersey Supreme Court in *State v. A.T.C.* The proposed modification requires a prosecutor to provide the sentencing court with a statement explaining why a defendant was offered a plea bargain that would result in a term of incarceration, or period of parole ineligibility, less than that prescribed by the statute.

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 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 May of 2021, released a Final Report to clarify that a governmental actor will only violate the LGEL if they intentionally use or attempt to use their official position improperly.

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.

During the course of the Commission work in this area, additional issues were identified that were not decided by the Court in *Kamienski*.

In November of 2021, the Commission released a Final Report recommending changes to the Act to clarify awards of attorney fees under the Act, and to clarify the application of the Act in cases involving an individual serving concurrent or consecutive sentences.

Organization of County Committees

New Jersey's election statute contains requirements that the election of county committee members, and the selection of the committee chair and vice-chair, be based on gender. These requirements were added to the statute to "equalize opportunity between the genders in the political forum and to encourage women's involvement in politics." In recent years, however, these provisions have been called into question by those seeking political office.

In *Central Jersey Progressive Democrats v. Flynn*, MER L 000732, slip op. (Law Div. Sep. 02, 202), the Plaintiffs sought to compel the Middlesex County Clerk to prepare primary ballots that called for the election of two "committeepersons," rather than distinguishing candidates based upon their gender. The Court found that the statute violates the freedom of association and impermissibly discriminates on the basis of gender, and determined that, in Middlesex County, all future ballots are to be prepared without regard to gender.

Since any modification of the law in this area requires policy determinations best suited to the Legislature, the Final Report released by the Commission in April of 2021, does not make a recommendation about whether or how N.J.S. 19:5-3 should be changed. Instead, it urges the Legislature to consider this issue and take action as it deems appropriate.

Posse, Use of the Word

In New Jersey, the State Police may be used as a "posse." The governing body of a municipality may ask the Governor to authorize the use of the State police within its borders.

An examination of New Jersey's statutes confirmed that the term "posse" is used only once in the body of statutory law. The presence of this term complicates the statute in which it appears and removing it would eliminate that issue without compromising the remaining language of that statute.

A Final Report was released by the Commission in March of 2021 recommending the elimination of the term posse from N.J.S. 53:2-1.

Post-adjudication Incarceration of Juveniles

In *State in the Interest of T.C.*, 454 N.J. Super 189 (App. Div. 2018), the Appellate Division considered the constitutionality of subjecting some developmentally disabled juveniles to short term, post adjudication, incarceration, while releasing others from custody based solely on geography. The Court in *T.C.* explained that to preserve the constitutionality of the Juvenile Justice Code, juveniles with developmental disabilities may not be held in county detention facilities as long as there is not a certified, short-term incarceration program in every county.

Requiring all counties to obtain access to approved short-term detention programs is one way to address the constitutional issue raised by the Court. The determination about whether to impose such a requirement is properly left to the Legislature. The Final Report released by the Commission in May of 2021 does not contain a recommendation for addressing the constitutional issue, but brings it to the attention of the Legislature for consideration as appropriate.

Reasonable Cause in the Context of a Domestic Violence Search Warrant

The Commission began work on a project in July of 2020 relating to the statutorily prescribed standard that a court must consider when ordering the search and seizure of weapons pursuant to a temporary restraining order.

The New Jersey Supreme Court, in *State v. Hemenway*, 239 N.J. 111 (2019), determined that using the statutory standard of reasonable cause to issue a domestic violence warrant to 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. Applying a “reasonable cause” standard in such circumstances violates the requirement that, in the absence of exigent circumstances, all warrants must be based on probable cause.

In October of 2021, the Commission released a Final Report in which it recommends statutory modifications to adapt New Jersey’s search and seizure statutes to reflect the probable cause standard found in both the State and Federal Constitutions.

School District of Residence

In New Jersey, the Commissioner of Education approves charter schools under the Charter School Program Act (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 considered in *Bd. of Educ. of Twp. of Piscataway v. New Jersey Dept. of Educ.*, 2019 WL 2402545 (App. Div. Jun. 07, 2019).

In that case, the Appellate Division considered the responsibility for paying for students to attend charter schools in districts other than those in which they live. The Court determined that the Department of Education properly implemented the statutory funding provisions by requiring Piscataway to provide funding for students enrolled in charter schools located outside of its school district.

In May of 2021, the Commission released a Final Report recommending modification of N.J.S. 18A:36A-12 to clarify that “school district of residence” refers to the school district in which a student is domiciled.

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

The Division of Workers’ Compensation has been vested, since 2012, with 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 based on contracts, however, have traditionally been subject to a six-year statute of limitations.

The legislative history regarding the 2012 amendment to the Workers’ Compensation statutes vesting the Division with jurisdiction over disputed claims is silent regarding the statute of limitations that applies in these

“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)*

actions. The absence of clear direction was considered by the Appellate Division in *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).

In July of 2021, the Commission issued a Final Report recommending the modification of the Workers’ Compensation statutes to clearly identify the statute of limitations that applies to disputed medical provider claims. Choosing the length of the statute of limitations, however, involves policy determinations best suited to the Legislature.

Temporary Disability Benefits to Certain Volunteers

The efforts and risks borne by volunteer firefighters have been recognized by protections and exemptions afforded them in New Jersey’s employment law. The Workers’ Compensation Act delineates workers’ compensation benefits for these 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 considered to be unclear.

Although there is a history of legislative expansion of these protections, N.J.S. 34:15-75 does not reflect the intent of the Legislature.

In January of 2021, the Commission issued a Final Report that recommends modifications to the current worker’s compensation statute, N.J.S. 34:15-75, to clarify that regardless of their outside employment at the time of the injury, certain volunteer employees and other workers are eligible to collect benefits for injury or death that occurs during the course of performing their duties.

Unemployment Benefits when an Offer of Employment 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 *McClain v. Bd. of Review, Dep't of Labor*, 237 N.J. 445 (2019), the New Jersey Supreme Court determined 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.”

The Commission released a Final Report in June of 2021 recommending that N.J.S. 43:21-5(a) be clarified to exempt from disqualification employees who leave their current jobs upon receipt of an offer of employment with a new employer, scheduled to begin within seven days, if that offer is subsequently rescinded by the new employer through no fault of the employee.

Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act

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 “assure the victims of domestic violence the maximum protection from abuse the law can provide.”

Consistent with the Commission’s mandate to consider the work of the Uniform Law Commission, Staff reviewed the Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act of 2015 (the “Act” or “RECDVPOA”), which proposes recognition of domestic-violence protection orders across international jurisdictions. To determine whether any, or all, portions of the Act would be appropriate for enactment in New Jersey, Staff examined the New Jersey statutes that encompass this area of law.

In December 2021, to update the statutory language of New Jersey’s Prevention of Domestic Violence Act and support the legislative intent underlying it, the Commission released a Final Report that incorporates the protections contained in the RECDVPOA and those recommended by experts in this field into N.J.S. 2C:25-17 et seq., N.J.S. 2C:29-9, 37-7 and 58-3, as appropriate.

Workhouse, Use of the Word

The Commission’s work in the area of “confinement” of a criminal defendant revealed the continued use of the term “workhouse” in New Jersey’s statutes.

Amid a statewide, and national, move to reexamine statutory language rooted in systemic racism, the continued presence of 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.

A Final Report was released by the Commission in April of 2021 recommending the elimination of the term “workhouse” from the statutes in which it appears.

5. – Tentative Reports



5. – Tentative Reports

Accidental Disability Retirement Benefits – Traumatic Event

The New Jersey courts are called upon with some frequency to consider accidental disability retirement benefits. The Commission began work on a project regarding the “traumatic event” standard in the accidental disability pension statute, N.J.S. 43:16A-7, in response to 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.” The decisions of the Appellate Division and the New Jersey Supreme Court, reveal the challenges posed by applying the existing statute to a variety of factual situations in a consistent manner. Questions remain about whether the statutory reference to 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 accidental disability retirement benefits.

In September 2020 the Commission released a Tentative Report and sought comment from stakeholders. Update Memoranda incorporating commenter feedback were presented to the Commission in March 2021 and July 2021. Work continues in this area and a Final Report is expected in 2022.

Anachronistic Statutes

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

The Commission’s 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.

Proposing the elimination of some of those statutes was complicated by the fact that they were referred to by other statutes. Commission Staff engaged in additional research and outreach to assess the impact and confirm whether or not any of the statutes under consideration were in current use. A Final Report is anticipated in early 2022.

Collateral Consequences of Criminal Conviction

The Commission previously authorized a thorough review of New Jersey’s statutes and the 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), in which the Court considered the interplay between the statute regarding the effect of an order of expungement, N.J.S. 2C:52-27, and 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 Commission began work on a project that consisted 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.

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. This 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 in this area. In 2022, the Commission anticipates reviewing the impact of recent legislative activity and renewing its work in this area as appropriate.

Disability Benefits After Leaving Public Employment

The Commission authorized a project to conduct further research into whether Public Employees’ Retirement System (PERS) members applying for ordinary disability benefits pursuant to N.J.S. 43:15A-42, must be working in public service in order to be eligible for the benefits.

The Appellate Division addressed this issue in *Murphy v. Bd. of Tr., Pub. Emp.’s Ret. Sys.*, 2019 WL 1646371 (App. Div. 2019). In *Murphy*, a PERS member who became disabled after leaving public sector employment sought ordinary disability pursuant to N.J.S. 43:15A-42. After reviewing the statute’s legislative history, the Court concluded that the Legislature intended to limit eligibility for ordinary disability benefits to those PERS members working in the public sector.

In March 2021, the Commission released a Tentative Report recommending that the statute be modified to reflect the Appellate Division holding in *Murphy*. A Final Report is anticipated in early 2022.

“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)*

Endangering the Welfare of a Child – Morals

Forty-two years after N.J.S. 2C:24-4 was enacted, the New Jersey Superior Court, Law Division considered, in *State v. Johnson*, 460 N.J. Super. 481 (Law Div. 2019), whether sexually suggestive messages sent to a minor by way of social media constituted they type of sexual conduct that would impair or debauch the morals of a child. “Sexual conduct” is not defined in New Jersey’s child endangerment statute.

In September of 2021 the Commission released a Tentative Report on this subject proposing modifications to the statute to clarify the law in this area. Staff anticipates working with stakeholders to determine whether it is appropriate to remove references to anachronistic and undefined terms and to replace them with language that clearly sets forth the prohibited conduct. A Final Report is anticipated in early 2022.

Expungement

The Commission began work on a project in 2015 pertaining to the expungement of juvenile adjudications, codified at N.J.S. 2C:52-4.1 after the New Jersey Supreme Court’s decision, *In re D.J.B.*, 216 N.J. 433 (2014), which clarified the manner in which an individual’s juvenile dispositions relate to the expungement of adult convictions.

In the case that gave rise to the Commission’s work in this area, the New Jersey Supreme Court analyzed the legislative intent and the history of New Jersey’s expungement law, and 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 drafted proposed revisions to clarify N.J.S. 2C:52-4.1 and simplify the statutory language to assist individuals filing pro se expungement provisions. A Tentative Report incorporated these revisions and proposed the elimination of subsections of N.J.S. 52-4.1 that do not accurately reflect New Jersey’s current expungement process in which individuals petition for the expungement of both juvenile adjudications and adult convictions contemporaneously.

During the course of this project, there was considerable legislative activity in the area of expungements, some of which was signed into law. The Commission is reviewing this area of the law to determine whether additional modifications might be appropriate and anticipates a Final Report in 2022.

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. 2013). 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.

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 to the issues involving the gross sales threshold. Staff anticipates presenting a Final Report to the Commission in the Spring of 2022.

Guardianship

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

The Commission compared sections of the UGCOPAA, Title 3B and Title 30 of the New Jersey statutes to assess substantive differences and identify provisions that could benefit from revision or adoption. The Commission found numerous areas meriting further research, such as person-centered planning to incorporate an individual’s preferences and values into a guardianship order, and requiring courts to order the least-restrictive means necessary for protection of persons unable to care for themselves. A Final Report is expected in 2022.

Interpretation of the Receivership Act

The Commission authorized a project to conduct research regarding the court’s discretion to appoint a receiver, or not, pursuant to N.J.S. 2A:42-117 of the Multifamily Housing Preservation and Receivership Act, based on the Appellate Division’s holding in *Mfrs. and Traders Tr. Co. v. Marina Bay Towers Urban Renewal II, LP*, No. A-5879-17T2, 2019 WL 5395937 (App. Div. 2019).

“The 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*

In *Manufacturers*, the Court considered whether a court may deny the appointment of a receiver if one or both of the statutory conditions are met, as a result of ambiguous language in N.J.S. 2A:42-117. The Court considered the legislative history of the statute and the Multifamily Housing Preservation and Receivership Act as a whole, and concluded that a court does have discretion to appoint or deny the appointment of a receiver.

In October 2021, the Commission released a Tentative Report recommending modifications to N.J.S. 2A:42-117 to clarify the scope of the court’s discretion to appoint a receiver. The Commission anticipates the release of a Final Report in Spring of 2022.

Local Land and Building Law – Bidding

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

The Commission engaged in research and outreach to ascertain whether the LPCL bidding process applies to government contracts with private persons that require the construction or repair of capital improvements as a condition of acquisition, pursuant to N.J.S. 40A:12-5(a)(3) and, if so, whether some modification to the statute might be appropriate. A Tentative Report was released in February of 2020 and a Revised Tentative Report was released in July of 2020.

Staff anticipates the completion of a Final Report in 2022.

Parentage

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

The work of the Commission in this area is intended to deal more comprehensively with the rights and obligations between parents and children and to address 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.

Staff is working closely with knowledgeable commenters to update the drafting in this area.

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 26:1A1, 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 in January 2019. Upon this review, over 100 duplicate definitions were identified and catalogued.

The Commission released a Tentative Report proposing the consolidation of the various definition sections and elimination of repetitively defined terms in December 2021. A Final Report is anticipated in 2022.

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 revealed that New Jersey deviates from the UPOAA in several ways and has fully adopted only a few UPOAA provisions while partially adopting others.

Staff has analyzed the provisions of the Uniform Act that have not yet been adopted in New Jersey, and is preparing recommendations regarding this area of the law.

6. – Work in Progress



6. – Work in Progress

Additional Rent

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

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

In March of 2021, the Commission directed Staff to engage in outreach to various stakeholders to ascertain whether the issue is prevalent throughout the state. Staff anticipates providing the Commission with the results of the preliminary research in the Spring of 2022.

Ante-mortem Probate

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

In contrast to New Jersey, these states permit a testator to preemptively validate a will during his or her lifetime by petitioning the court for ante-mortem probate. Although the process and effect vary by jurisdiction, the existence of an ante-mortem probate option offers testators in those jurisdictions an opportunity to prevent a will contest after their death. This obviates the evidentiary problem inherent in traditional post-mortem probate, and permits the realization of the testator’s intent. Detractors, however, warn that raising probate matters during the testator’s lifetime could lead to family disturbances and potentially waste judicial resources.

The Seton Hall Legislative Law Journal published the article, “Ante-Mortem Probate in New Jersey – An Idea Resurrected?”, 39 SETON H. LEG. J. 332 (2015), written by Susan Thatch, a member of the Commission staff at the time. This article reviewed the historical and statutory background of ante-mortem probate legislation and evaluated the potential of this type of legislation in New Jersey. Additional work in this area is anticipated in 2022.

Books of Records and 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 clarifying 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 a dozen 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. The Working Group rejected all of the plaintiff’s demands. The plaintiff then 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 also noted that the phrase is not defined in the statute. Additional work is anticipated on this project in 2022 to assess whether revisions to the statute would be of use.

Citizen’s Arrest

New Jersey has long recognized the doctrine of “citizen’s arrest.” This doctrine authorizes a private person to detain another without a warrant or process, and bring them before a statutorily designated member of the judiciary under specified circumstances.

During the past century, however, 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 someone, the amount of force that may be used to effectuate 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.

In November of 2020, the Commission 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 2022.

Closely Related Circumstances – Meaning in New Jersey Expungement Statute

Subject to certain enumerated exceptions, New Jersey’s expungement statute allows a person to present an expungement application to the Superior Court for more than one indictable offense. Crimes, or a combination of crimes and offenses, that were interdependent or closely related in circumstances and committed as part of a sequence of events within a comparatively short period of time, colloquially referred to as a “crime spree”, may be eligible for expungement under certain circumstances.

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

Staff was authorized to examine this subject matter to assess whether it would be useful to clarify “interdependent,” “closely related in circumstances,” and “comparatively short period of time” in N.J.S. 2C:52-2 and a Tentative Report is anticipated in 2022.

Communications Data Warrants and Electronic Communications

In *In the Matter of the Application of the State of New Jersey for Communications Data Warrants to Obtain the Contents of Stored Communications from Twitter, Inc.* 448 N.J. Super. 471 (App. Div. 2017), the

Appellate Division was asked to consider whether the audio portions of a video camera, or video tape, fall within the “Wiretapping and Electronic Surveillance Control Act.”

Under the existing law, it is unclear whether communications sent via social media are to be considered communications for purposes of the Wiretapping and Electronic Surveillance Control Act. The Commission authorized Staff to engage in outreach to various stakeholders and to determine the resources that would be necessary to complete the Commission’s analysis of this area. Work is anticipated in 2022 to determine whether a Tentative Report would be appropriate.

Consumer Fraud Act

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

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

“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)*

Work on this project is ongoing as Staff reaches out to interested parties and considers whether revising and restructuring the CFA could improve 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. 2017), the Appellate Division was confronted with a “Supersession Order” issued by the Attorney General to the Camden County Prosecutor’s Office to take control of the Camden City Police Department. 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 there was no employment relationship between the plaintiff, a city police officer, and the defendant, the Camden County Prosecutor.

Under the existing law, it is not clear whether and when third parties should be considered “legal representatives” subject to liability under the LAD, which does not define that term. 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 instances such as 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 (App. Div. 2018). The issues before the court were: (1) whether the Defendant’s motion to vacate his previous guilty pleas for driving under the influence and refusal to submit to a Breathalyzer test were time barred, and (2) whether there were adequate factual bases for these convictions.

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

Frivolous Litigation

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

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

There is presently no statute in New Jersey that addresses frivolous litigation in appellate matters. Work on this project is expected to continue in 2022 to determine whether the inclusion of statutory language concerning appellate matters would be of assistance.

Household Member, Definition of

The New Jersey Legislature considers domestic violence a serious crime against society, and it enacted the Prevention of Domestic Violence Act (PDVA) to assure victims of domestic violence the maximum protection from abuse 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 the term “household member.” A Tentative Report on this subject is anticipated in the Spring of 2022.

Landlord/Tenant

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

Based on Staff’s comparison of the Uniform Act with the SHA, it appears that modifying the SHA to recognize psychological harm would align it with both the Uniform Act and the Prevention of Domestic Violence Act. A Tentative Report is anticipated in Spring of 2022.

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. META permits: the conversion of one kind of business organization to another; the merger of two or more business organizations into one organization; an interest exchange between two entities so that one of them is controlled by the other without actually merging the two entities; and the domestication of an entity originally organized in another state.

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

So far, eight states have enacted META. Staff is in the process of reviewing the New Jersey statutes governing corporations to identify any 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. Work is anticipated in this area in 2022.

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.

“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)*

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 in the legal community. While the Business Act has been amended numerous times over the years, the Legislature has not similarly modified the Nonprofit Act.

Work is ongoing to review the Nonprofit Act and compare it to the Business Act, to identify 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 that organization in the preparation of a Tentative Report.

Notice by Publication

The Commission authorized a project regarding the 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. Developments in the publishing industry, however, have changed the manner in which newspapers are published, distributed, and read. This raises questions about how municipalities may comply with the statutory requirements.

Work in this area is expected to continue in 2022.

Open Public Records Act

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

- *Catalyst Theory (2021)*

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.

- *Meaning of Name and Identity (2021)*

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

- *Redaction (2021)*

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 was whether the County violated OPRA by denying the requestor access to redacted information.

Work on these issues is expected to continue in 2022.

PERS Re-Enrollment as a Critical Need Employee

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

Work on this project is ongoing as Staff reaches out to interested parties to determine whether modifying the language in N.J.S. 43:15A-57.2 would be of assistance in addressing the category of individuals eligible for an exception to re-enrollment in the PERS.

Prerequisites for Recording

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

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

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.

“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)*

Public Health and Safety – Seatbelt Usage

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

In *Lenihan*, the eighteen-year-old defendant was driving with her sixteen-year-old friend in the passenger seat and lost control of the vehicle, hitting a guardrail. Neither the defendant nor her passenger was wearing a seat belt as required by N.J.S. 39:3-76.2f. The passenger died as a result of the injuries she sustained, and defendant was charged and found guilty of a third-degree crime pursuant to N.J.S. 2C:40-18.

Defendant appealed and argued that: (1) her violation of the seat belt statute could not serve as a predicate offense for conviction pursuant to N.J.S. 2C:40-18 because violations of the seat belt statute do not threaten “the public health and safety”; (2) she lacked notice that such a “minor violation” would result in third degree criminal charges; and (3) N.J.S. 2C:40-18 is unconstitutionally vague and should be narrowly interpreted. The New Jersey Supreme Court affirmed the defendant’s conviction.

A preliminary examination of the legislative history and contemporaneous news articles indicated that the intent of N.J.S. 2C:40-18 was likely to focus on violations of New Jersey building codes by night clubs and similar establishments. Expansion of the scope of N.J.S. 2C:40-18 to include statutes such as N.J.S. 39:3-76.2f as predicate offenses may exceed the expectations of the Legislature. Work is expected to conclude in 2022.

Public Hearing on Tenure Charges

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

In December 2021, the Commission authorized Staff to conduct further research regarding the Tenured Employee Hearing Law and to contact interested parties to determine if clarification was necessary. Work is ongoing and Draft Tentative Report is anticipated in early 2022.

Rent Security Deposit Act

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

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

Roll-back Taxes in the Farmland Preservation Act

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

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

Staff has been authorized to examine this subject matter and a Tentative Report is anticipated in 2022.

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. The Commission authorized Staff to work in this area, and a Tentative Report is expected in 2022.

Tax Assessment Jurisdiction

The Commission authorized a project to conduct research and outreach regarding modifications to N.J.S. 54:3-21, which contains the jurisdictional and procedural requirements for appealing a property assessment. In *30 Journal Square Partners, LLC v. City of Jersey City*, 32 N.J. Tax 91, 96 (N.J. Tax 2020), the Tax Court discussed the lack of a statutory mechanism for transferring jurisdiction to the Tax Court when there are dual filings in the Tax Court and the County Board by opposing parties.

Staff continues to conduct research and outreach to determine whether and how to incorporate such a procedural mechanism in the statute. A Tentative Report is anticipated in 2022.

Theft of Immovable Property

In *State v. Kosch*, 444 N.J. Super. 368 (App. Div. 2016), the Appellate Division considered the definition of the word “transfer” in N.J.S. 2C: 20-3(b) and determined that the term, and the legislative intent regarding its meaning, are unclear. N.J.S. 2C:20-3(b) reads as follows: “A person is guilty of theft if he unlawfully transfers any interest in immovable property of another with purpose to benefit himself or another not entitled thereto.” The *Kosch* Court explained that “there is no question these three properties were owned by others and, although, as the ostensible contract purchaser, defendant may have possessed a partial interest... he never lawfully acquired the interest he was charged with taking. We, thus, turn to whether a ‘transfer’ occurred within the meaning of N.J.S.A. 2C:20-3(b).”

New Jersey’s Criminal Code does not define the term “transfer” and the court looked to a variety of sources to find an appropriate definition. 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 2022 as appropriate.

Tort Claims Act Notifications

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

The Court determined that a plaintiff asserting bystander liability claims against a public entity 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 whether it is appropriate to await additional judicial clarification before recommending changes to the statute.

Tort Claims and Wrongful Imprisonment Claims

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

In *Nieves v. Office of the Public Defender*, the New Jersey Supreme Court considered whether legal malpractice claims are exempt from the TCA and whether the plaintiff’s ‘loss of liberty’ damages claim is subject to the verbal threshold of the TCA. The Court considered whether N.J.S. 59:9-2(d) is clear regarding whether loss of liberty damages are a subset of pain and suffering damages. Staff was authorized to engage in additional research and outreach to determine whether it would be appropriate to modify N.J.S. 59:9-2 in response to the issues raised by *Nieves*.

Unemployment 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 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 regarding powers of appointment. New Jersey has a patchwork of statutes and common law governing powers of appointment, with most of the case law dating from the early to mid-1900s. It appears that the existing body of law could benefit from codification in line with the UPAA to bring the existing standards into a modern and accessible form.

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 considered an Update Memorandum summarizing recent legislative activity in this area and noting sustained legislative activity over several sessions. Staff was directed to contact the Human Trafficking Commission to see if additional efforts by the Commission could be of use in this area.

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 Uniform Parentage Act of 2017 necessitated amendments to the UPC’s intestacy and class-gift provisions. The 2019 amendments provide a more consistent formula for determining

intestate shares within blended families, remove outdated terminology, and incorporate the concept of de facto parentage. The intestacy formula also accounts for the possibility that a child may have more than two parents, and therefore more than two sets of grandparents.

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

Use of Civilian Monitors in Wiretap Investigations

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

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

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

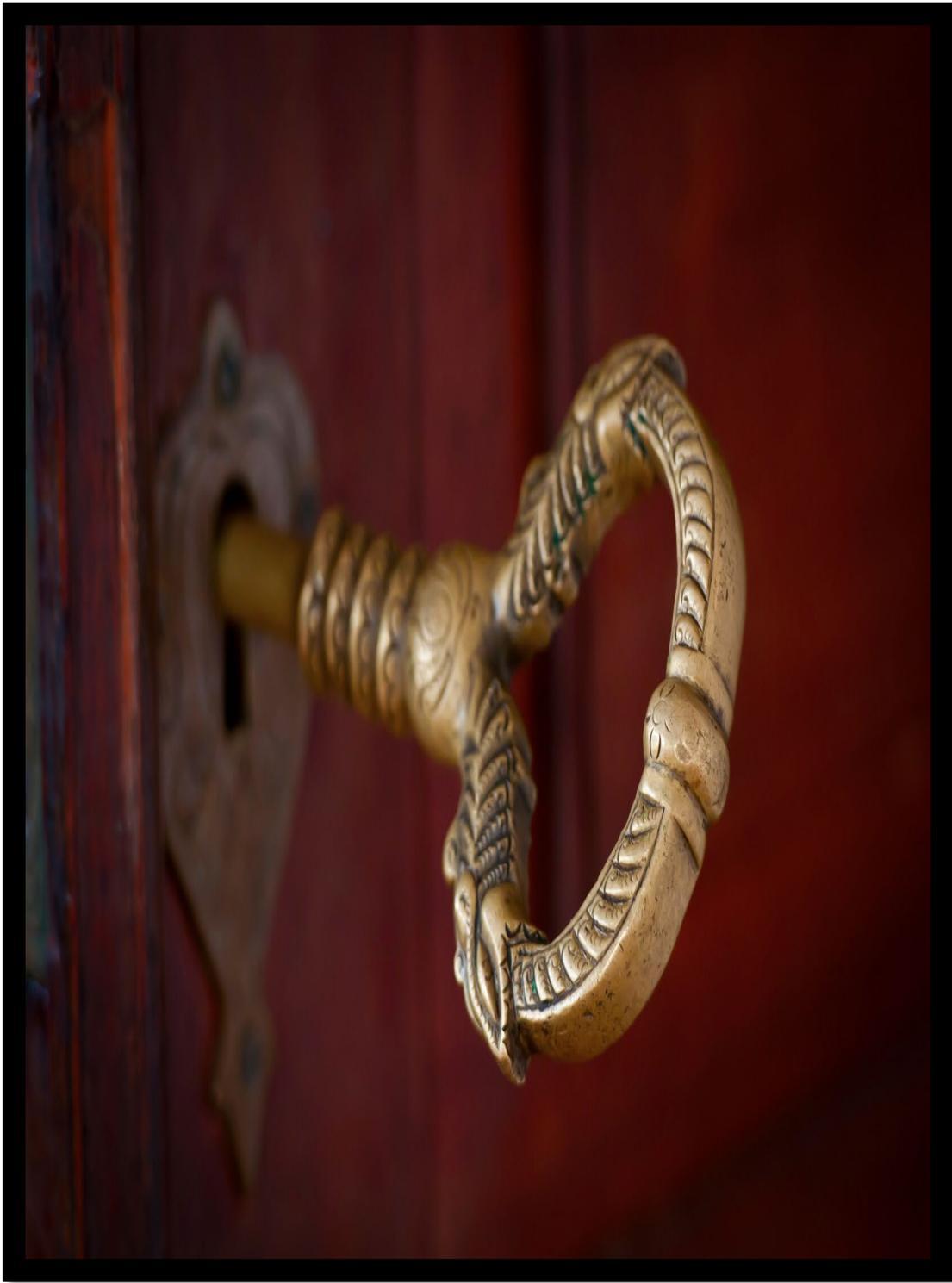
In April of 2021, the Commission authorized Staff to work in this area.

Vehicular Homicide Sentencing

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

Work on this project is ongoing as Staff reaches out to interested parties to determine whether modifying the statutory language would be of assistance in clarifying the scope of the two statutes.

7. – No Action Recommended



7. – No Action Recommended

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.

Staff reached out to interested parties to determine whether and how any proposed modification to the statute should be approached. Based on the additional research and outreach, the Commission concluded its work in this area without issuing a Report.

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. 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. Staff was authorized by the Commission to engage in additional research and, based on that research, the Commission concluded its work in this area without issuing a Report.

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, indicating that it was susceptible to more than one interpretation.

Staff released a Tentative Report in July 2020 and contacted various stakeholders for their input. Due to the highly specialized nature of this area of law, the Commission sought information to determine whether modification of PLIGAA was necessary to clarify the statute. In light of the input received, the Commission concluded its work in this area without issuing a Report.

Standard Form Contracts

The Commission published a Report on Standard Form Contracts in 1998. That Report recognized that the 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 update it.

The Commission engaged in significant work on the Report in 2020. It considered extensive comments and made substantial changes to its drafts in response to those comments. Nevertheless, in October 2021, the Commission voted not to release a Final Report on this project, and to conclude its work in this area.

8. – Commissioners and Staff of the NJLRC 2021



8. – Commissioners and Staff of the NJLRC in 2021**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.



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.



Raj Mukherji, Chair, Assembly Judiciary Committee, Ex officio

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

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

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

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



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

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

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

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

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



Represented by **Professor Bernard Bell**

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

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

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

Represented by **Professor John Kip Cornwell**

Professor Cornwell received his A.B., with honors, from Harvard University, his M.Phil. in International Relations from Cambridge University, and his J.D. from Yale Law School where he was an Editor of the Yale Law Journal. He clerked for the Honorable Mariana R. Pfaelzer of the United States District Court for the Central District of California and the Honorable Dorothy W. Nelson of the United States Court of Appeals for the Ninth Circuit. After his clerkships, he served as a senior trial attorney for the Civil Rights Division of the U.S. Department of Justice, and as an adjunct professor at the National Law Center of George Washington University. He has written in the areas of criminal law and procedure, mental health law and federal civil rights law, including writings concerning laws pertaining to sexual predators,

exploring the constitutional limits on states' authority to confine this population for purposes of public safety and psychiatric rehabilitation.

The staff of the Commission includes:**Laura C. Tharney**, Executive Director

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

Samuel M. Silver, Deputy Director

Samuel Silver joined the Commission as a staff attorney in March of 2017 and was named Deputy Director in March 2019. He has been a licensed attorney since 1994 and is admitted to practice in New Jersey. As a solo practitioner, Sam engaged in civil and criminal litigation as well as appellate practice. He litigated matters before the Superior Court, Law Division, and municipal courts throughout New Jersey. Sam argued appellate matters before the Appellate Division and the Supreme Court of New Jersey, and practiced before the United States District Court. He received a B.A. from the University of Wisconsin's Madison Campus, and graduated from the Washington College

of Law – American University in 1994. In 2016, he earned a master’s degree in trial advocacy from Stetson University College of Law.

Whitney G. Schlimbach, Counsel (*beginning September 2021*)

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

Karyn L. White, Counsel (*beginning September 2021*)

Karyn White joined the Commission as a staff attorney in September of 2021. She has been a licensed attorney since 1996, initially practicing law in Pennsylvania and becoming licensed in New Jersey in 2019. Before joining the Commission, Karyn worked as in-house counsel for a local school district. Her prior experience was as a criminal prosecutor, working as an assistant district attorney and as a deputy attorney general in Pennsylvania. She was also a law clerk for the Supreme Court of Pennsylvania. Karyn received a B.A., cum laude, from the University of Scranton, and graduated from the University of Pittsburgh School of Law in 1995.

Arshiya M. Fyazi, Counsel (*through August 2021*)

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 (*through June 2021*)

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.

Christopher J. Mrakovcic, Legislative Law Clerk (*through May 2021*)

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

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

Student Legislative Law Clerks and Externs:

In addition to the full- and part-time Commission Staff members, law students from New Jersey's three law schools play a significant role in the work of the Commission. With the supervision and assistance of the 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 2021 are:

Angela C. Febres, Seton Hall University School of Law – Legislative Law Clerk – Summer and Fall 2021

Lauren P. Haberstroh, Seton Hall University School of Law – Legislative Law Clerk – Summer and Fall 2021

Jasmin Rodriguez, Seton Hall University School of Law – Legislative Extern – Summer 2021

Other Assistance by Students:

During the Spring semester of 2021, research and drafting assistance was provided to the NJLRC by student interns **Ayiah-bideha Al-qanawi** and **Samantha Schultz**, and in the Fall semester of 2021 by NJIT student interns **Andreea Chirica** and **Volney Steffire** through a cooperative relationship with the New Jersey Institute of Technology and Alison Lefkovitz, Assistant Professor and Director of NJIT's Law, Technology & Culture program.

In addition, pro bono legal research and drafting assistance was provided to the NJLRC by law students: **Guvenc Acarkan** (graduate), **Chaim Lapp**, and **Daniel Tomascik** 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 **Gaozhen Hang** and **Ryan Schimmel** 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 2022



9. – Looking Ahead to the Work of the NJLRC in 2022

The Commission's underlying mission, and the nature of its work, do not change from year to year, or from one legislative session to the next. Each year, however, the Commissioners and Staff endeavor to improve the Commission's process, product, and communications, and are always receptive to suggestions from interested parties regarding how to do so.

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

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

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 within the legislative process, and the NJLRC works collaboratively with the Office of Legislative Services to support the Legislature by bringing issues to the attention of Legislators that might not otherwise receive consideration. Commission Staff always appreciate the opportunity to cooperate with Staff members from the Office of Legislative Services, who have deep experience and expertise in various subject-matter areas, and with the Staff members in the Legislative Partisan and District Offices.

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