

ANNUAL REPORT - 2023

New Jersey Law Revision Commission



THIRTY-SEVENTH ANNUAL REPORT

2023





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

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The New Jersey Law Revision Commission

Vision:

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

Mission:

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



Clarify



Simplify



Remedy

Statement of the Chairman

As the Chairman of the New Jersey Law Revision Commission, I am pleased to present the 2023 Annual Report of the Commission for the Legislature's consideration, marking the conclusion of the 37th year of the Commission's work.

The Commission completed work on 20 recommendations to the Legislature during the 2022-2023 legislative session in a variety of subject-matter areas, and work is ongoing on more than 50 other projects that address a wide range of statutes. Thirteen bills based on the work of the Commission were introduced in the Legislature during the session, and the bills amending the statutes to close the statutory gap between New Jersey divorce/dissolution laws and probate laws passed both houses of the Legislature and were enacted as P.L.2023, c.238. We were pleased to see that nearly half of the members of the Legislature either sponsored or assisted with the progress of bills based on the work of the Commission during this legislative session.

To increase awareness of the Commission's work, Commission staff members communicated with legislators and attended legislative committee hearings in support of the Commission's work. Staff members also offered two Continuing Legal Education presentations in association with the Office of Legislative Services in 2023, and they participated in a panel discussion sponsored by the Insurance Council of New Jersey. In addition, the Commission concluded work on an international institutional collaboration with the preparation of a paper by Deputy Director Samuel M. Silver that examined and summarized the historical development of the intoxication defense and the relevant law in New Jersey, and a presentation by Mr. Silver based on his research at an international conference held in September 2023 at the Birmingham Law School, University of Birmingham, UK.

An adjustment to the Commission's annual appropriation in 2023 enabled the Commission to reinstate its Legislative Fellowship program, a one-year full-time staff position for a recent law school graduate that is modeled on judicial clerkships, and the Commission's work is already benefiting from the participation of an additional staff member. We also continue 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's focus continues to be the maintenance of a high standard of legal research and analysis, while increasing its engagement with members of the public. 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. References to the Commission's work in the popular press in 2023, including the New Jersey Monitor, NJ 101.5, the Asbury Park Press, and in the trade-focused publication Window Film Magazine, increase 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 help 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 always, to my fellow Commissioners for the volume of material that they review each month, and the thoughtful and detailed recommendations that they provide 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 continually seeking opportunities to improve our work, and to increase its accessibility and efficiency.

Finally, 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 2023. It remains our hope that the quality of the Commission's work reflects the breadth and the caliber of these contributions.

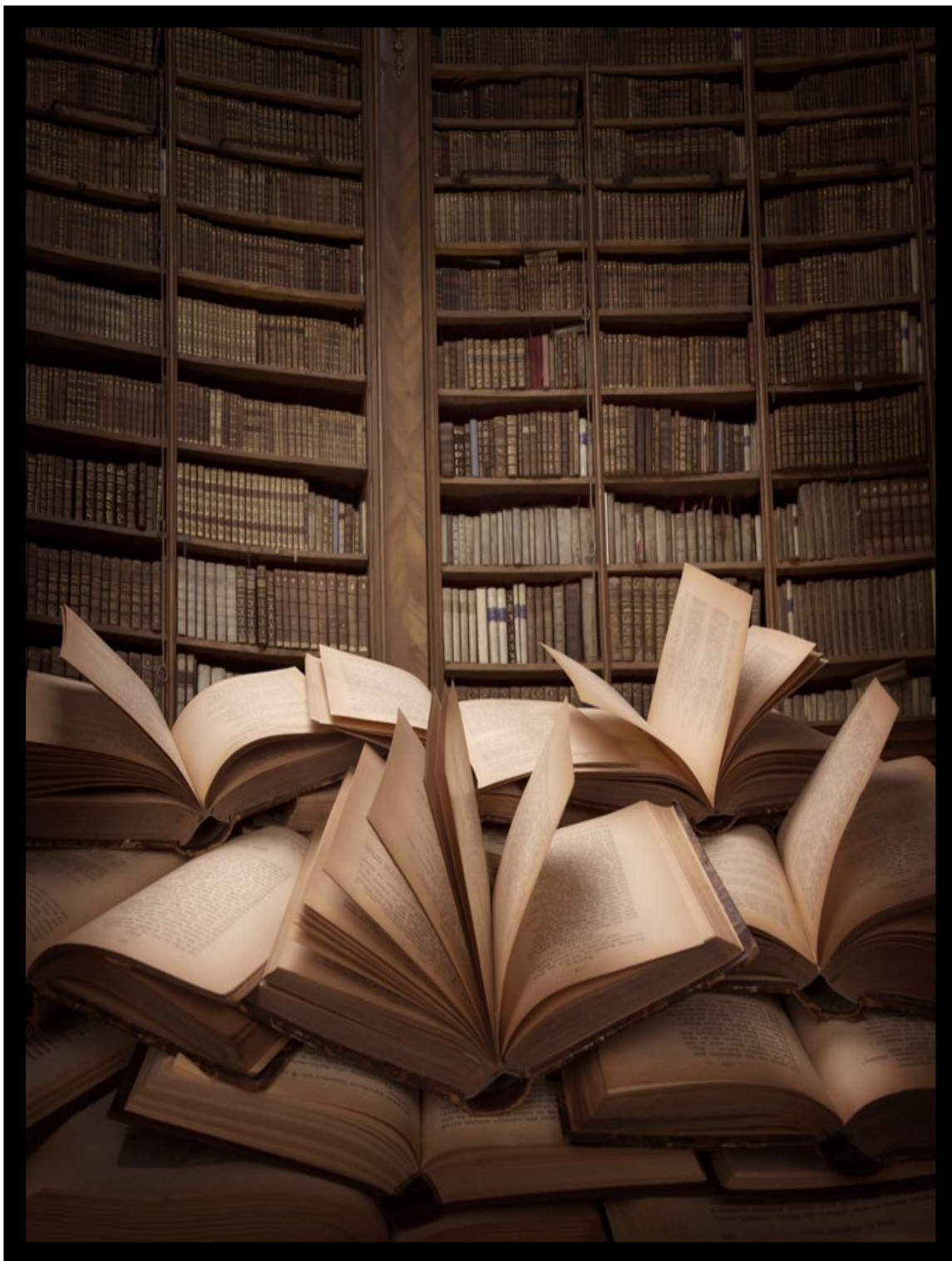
We look forward, in 2024, to continuing our work in several significant areas of the law and to the opportunity to engage with individuals throughout the State who share our goal of improving the laws that govern all of us.

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

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1. – Overview of the Work of the NJLRC in 2023



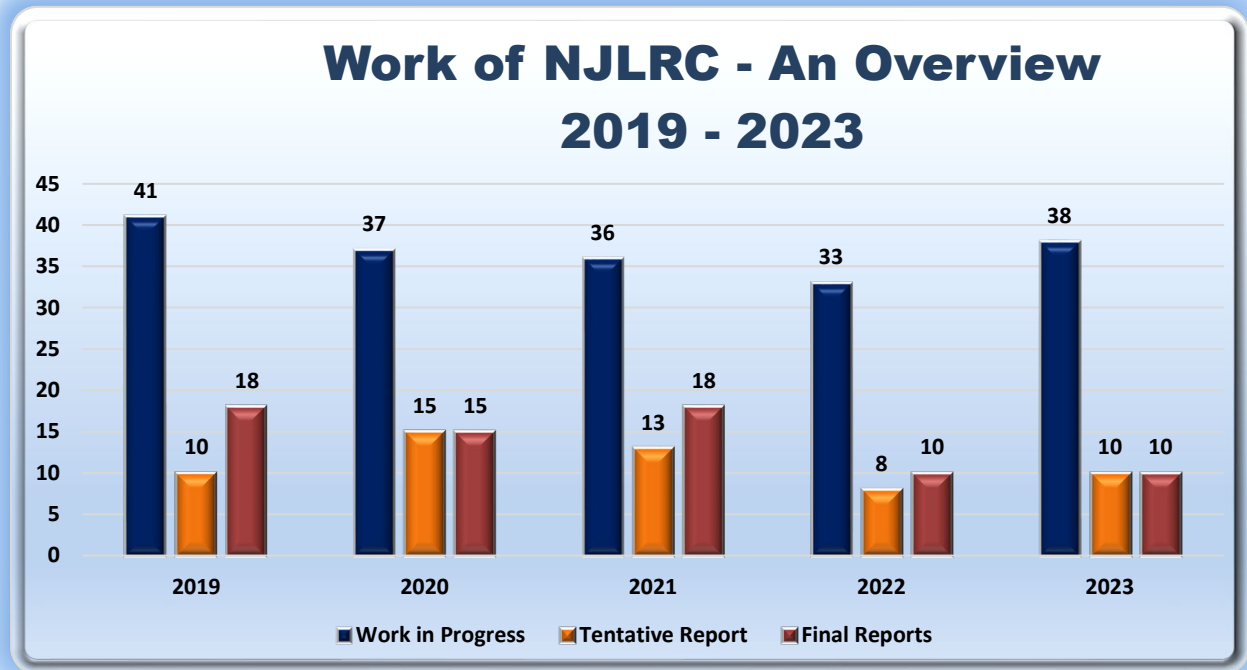
1. – Overview of the Work of the NJLRC in 2023

General Overview:

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

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

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



Bills Introduced Based on NJLRC Work

The following bills introduced this legislative session were based in whole or in part on the work of the NJLRC, or pertain to subject areas in which the NJLRC provided information and support to the Legislature:

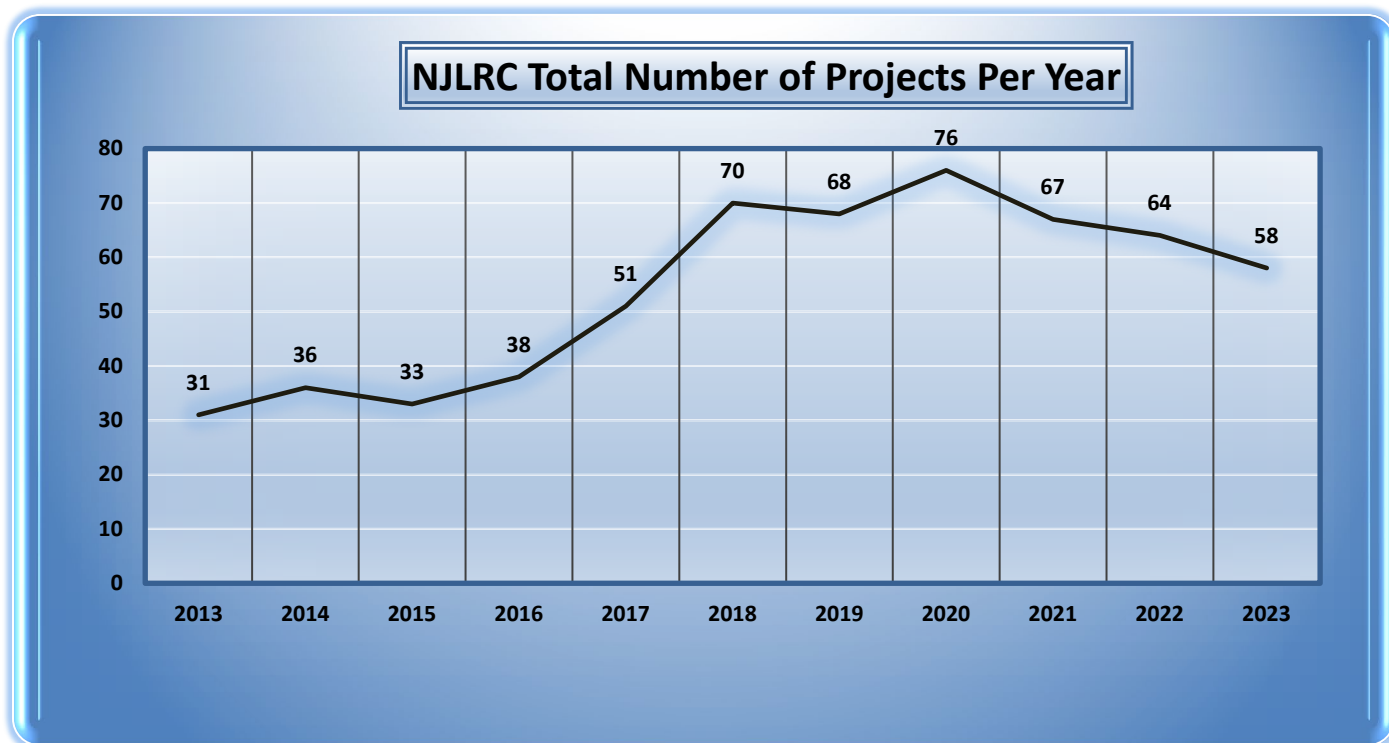
- S1195 – (Sen Vitale) Revises the statutes concerning oaths and affidavits
- S1225 – (Sen Greenstein, Sen Diegnan) Requires municipality to return to taxpayer property taxes paid in error due to assessor’s or owner’s mistake
- S1548 – (Sen Greenstein) Provides certain workers with maximum workers’ compensation benefits regardless of outside employment
- S1606 – (Sen Greenstein) Concerns eligibility for unemployment benefits when offer of employment rescinded
- S2991 – (Sen Singleton, Sen Stack) Permits court to effectuate equitable distribution when complaint for divorce or dissolution of civil union has been filed and either party has died prior to final judgment
- S3544 – (Sen Diegnan, Sen Oroho) Concerns motor vehicles overtaking certain pedestrians and persons operating bicycles and personal conveyances
- A623 – (Asm S Kean) Establishes time periods for adverse possession of certain property
- A1314 – (Asm Greenwald, Asw McKnight, Asw Park) Requires municipality to return to taxpayer property taxes paid in error due to assessor’s or owner’s mistake
- A1315 – (Asm Greenwald) Provides certain workers with maximum workers’ compensation benefits regardless of outside employment
- A1316 – (Asm Greenwald, Asm Mukherji, Asw Murphy, Asm Atkins, Asw Quijano, Asw Lopez, Asw McKnight, Asm Sampson) Concerns eligibility for unemployment benefits when offer of employment rescinded
- A2351 – (Asm Mukherji, Asw Flynn, Asw, Murphy, Asw McKnight) Permits court to effectuate equitable distribution when complaint for divorce or dissolution of civil union has been filed and either party has died prior to final judgment
- A5367 – (Asm Karabinchak, Asm Stanley, Asw Swain) Concerns motor vehicles overtaking certain pedestrians and persons operating bicycles and personal conveyances

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

Assemblyman Reginald W. Atkins
 Assemblyman Robert Auth
 Assemblywoman Linda S. Carter
 Assemblyman John Catalano
 Assemblyman Joseph V. Egan
 Assemblywoman Victoria A. Flynn
 Assemblyman Louis D. Greenwald
 Assemblywoman Sadaf F. Jaffer
 Assemblyman Robert J. Karabinchak
 Assemblyman Sean T. Kean
 Assemblywoman Yvonne Lopez

Assemblyman John F. McKeon
Assemblywoman Angela V. McKnight
Assemblyman Raj Mukherji
Assemblywoman Carol A. Murphy
Assemblywoman Ellen J. Park
Assemblywoman Annette Quijano
Assemblyman William B. Sampson
Assemblyman Parker Space
Assemblyman Sterley S. Stanley
Assemblywoman Shavonda E. Sumpter
Assemblywoman Lisa Swain
Assemblywoman Claire S. Swift
Assemblyman Edward H. Thomson
Assemblyman Anthony S. Verrelli
Senator James Beach
Senator Jon M. Bramnick
Senator Anthony M. Bucco
Senator Renee C. Burgess
Senator Christopher J. Connors
Senator Kristin Corrado
Senator Nilsa I. Cruz-Perez
Senator Joseph P. Cryan
Senator Patrick J. Diegnan, Jr.
Senator Edward Durr
Senator Nia H. Gill
Senator Vin Gopal
Senator Linda R. Greenstein
Senator Gordon M. Johnson
Senator Joseph A. Lagana
Senator Fred H. Madden
Senator Declan J. O'Scanlon
Senator Steven V. Oroho
Senator Joseph Pennacchio
Senator Vincent J. Polistina
Senator Nellie Pou
Senator Teresa M. Ruiz
Senator Paul A. Sarlo
Senator Holly T. Schepisi
Senator Nicholas P. Scutari
Senator Robert W. Singer
Senator Troy Singleton
Senator Bob Smith
Senator Brian P. Stack
Senator Douglas J. Steinhardt
Senator Michael L. Testa

Senator Shirley K. Turner
 Senator Joseph F. Vitale
 Senator Andrew Zwicker



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 2023.

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

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

Administrative Office of the Courts, New Jersey

Kelsey Allen, Law Librarian, New Jersey State Library

Lynne E. Allsop, Deputy Clerk, Tax Court Management Office

Mona Alpert

American Bar Association

The American Law Institute

David B. Amerikaner, Special Counsel, Duane Morris, LLP

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

Joseph Andresini, Judge, New Jersey Tax Court

Peter Andreyev, New Jersey State Patrolmen's Benevolent Association

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

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

Niki Athanasopoulos, Esq., First Deputy County Counsel, Office of the County Counsel

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

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

Lindsay Beaver, Legislative Counsel, Uniform Law Commission

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Andrew Bileci, Administrative Lieutenant, Morris County Sheriff's Department

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

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Matthew Clark, County Tax Administrator – ORM Director, Monmouth County Board of Taxation

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Amanda Dalton Clark, Assistant Prosecutor, Monmouth County Prosecutor's Office

Jenny-Brooke Condon, Professor, Seton Hall University School of Law

Jackie Conover

Amy Conrad, Government Affairs Manager, New Jersey State Bar Association

Constitutional Officers Association of New Jersey

County Prosecutor's Association of New Jersey

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

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Kathleen Cullen, New Jersey Department of Corrections

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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

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

David Dileo, New Jersey State Parole Board

Division of Commercial Recording, New Jersey

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

Jim Dolan, New Jersey State Police

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Monica Do Outeiro, Assistant Prosecutor, Dir. Appellate Section

Fletcher C. Duddy, Deputy Public Defender, Special Litigation Unit, New Jersey Office of the Public Defender

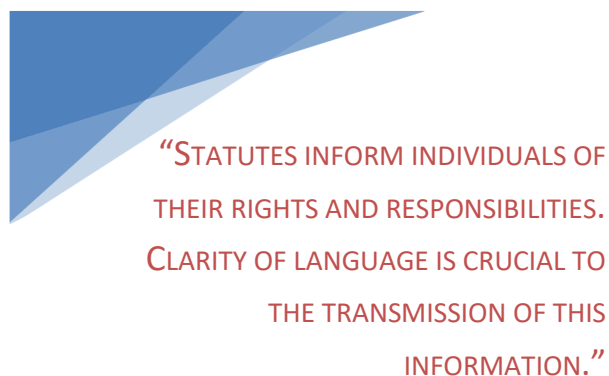
Mark H. Duffy, Executive Director, Assembly Republican Office

Michael J. Dufty, Counsel to the Director, New Jersey Division of Taxation

Christopher Duryee, Tax Administrator, Union County Board of Taxation

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

Katie Eyer, Professor, Rutgers Law School



Laura C. Tharney, Samuel M. Silver, Arshiya M. Fyazi, Jennifer D Weitz, Christopher Mrakovic, and Rachael M. Segal, *On the Path Toward Precision: Responding to the Need for Clear*

Todd Feldman, Editorial Coordinator, The American Law Institute

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James Ferguson, New Jersey Motor Vehicle Commission

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Jim Hunt, New Jersey Bike/Walk Coalition

Heather Husted, Electronic Resources Librarian, New Jersey State Library

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Cynthia Lambert, New Jersey State Library

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Alison L. Lefkovitz, Assistant Professor and Director of Law, Technology and Culture Program, New Jersey Institute of Technology

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Eugene Lepore, New Jersey Senate Majority Office

Penney Lewis, Commissioner for Criminal Law, Law Commission of England & Wales

Eugene G. Liss, Esq., General Counsel to the Newark Teachers Union Local 481

Jennifer Lochel, Section Chief, Department of Children and Families-Central, Office of the Attorney General

Jeanne LoCicero, Legal Director, American Civil Liberties Union

David J. Lorette, First Assistant Legislative Counsel, Office of Legislative Services

Timothy P. Lydon, Executive Director, Senate Majority Office

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Briana L. McKenna, Center for Social Justice

JJ Mckenna

Maureen McMahon, Executive Director, Office of Legislative Services

Mary M. McManus-Smith, Esq., Chief Counsel for Family Law and Director of Litigation, Legal Services of New Jersey

David McMillin, Esq., Legal Services of New Jersey



“...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*

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New Jersey Department of Corrections

New Jersey Department of Transportation

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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Evelyn Padin, United States District Judge (during her time as the President of the New Jersey State Bar Association)

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Christine Shipley, Executive Director, Senate Republican Office



“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 Pistritto, and Rachael M. Segal, Legislative

Mitchell Sklar, Executive Director, New Jersey State Association of Chiefs of Police

Daniel J. Sperrazza, Executive Director, External Affairs, New Jersey Department of Corrections

Gary R. La Spisa, II, Vice President, Insurance Council of New Jersey

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Christine Stearns, Chief Government Relations Officer, New Jersey Hospital Association

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

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Teri Taylor, Reference Services, New Jersey State Library

Gwen Tolbert, Manager of Recruitment, Center for Career Development, Rutgers Law School

Paul Tractenberg, Professor Emeritus, Rutgers Law School

Stephen E. Trimboli, Esq.

Gregory Tufaro, Chief of Staff, Senator Patrick J. Diegnan, Jr.

Uniform Law Commission

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Kenneth Vercammen, Kenneth Vercammen & Associates

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

Peter A. Vignuolo, Esq., Clarkin & Vignuolo, P.C.

Valerie Villanueva, Legal Secretary, Office of Legislative Services

Frank Viscomi, Esq., Civil Trial Bar Section, New Jersey State Bar Association

Robert Vivian, Legislative Liaison, Department of Agriculture

Rachel Wainer Apter, Justice, New Jersey Supreme Court (during her time as the Executive Director of the Division of Civil Rights)

Keith Waldman, Esq., Chair, New Jersey State Bar Association's Labor and Employment Law Section

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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 59 bills based upon 78 of the 237 Final Reports and Recommendations released by the Commission. The Commission's work also resulted in a change to the Court Rules in 2014. The projects that have been enacted (or otherwise implemented) to this time are:

2023

- *Equitable Distribution After Death of Party to Action* (P.L.2023, c.238) – The Report of the Commission recommended changes to the equitable distribution statute (N.J.S. 2A:34-23), the elective spousal share statute (N.J.S. 3B:8-1), and the statute pertaining to intestacy (N.J.S. 3B:5-3), to close the statutory gap between New Jersey divorce/dissolution laws and probate laws. Without a change in the law, a surviving spouse/partner could be left without a remedy if one party to a divorce or dissolution proceeding died prior to the entry of a final judgment in the action.

2021

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

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

2019

- *Sexual Assault* (L.2019, c.474) – The Report of the Commission recommended changes to the statute concerning sexual assault to better reflect the modern reality of New Jersey's sexual offense prosecutions by

making the statutory text consistent with the decisions of New Jersey’s courts, and with the instructions delivered to jurors during criminal proceedings. The Report proposed the removal of the outdated “physical force” requirement, incorporated the current standards regarding the capability of understanding and exercising the right to refuse, and other changes to reflect decisions of the New Jersey Supreme Court.

Enactment Reflecting Work of the Commission:

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

2017

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

- *Uniform Foreign Country Money-Judgment Recognition Act* (L.2017, c.365) – This, too, was an area of the law on which the Commission did not issue a Final Report but engaged in work and provided support for the bills underlying the Act.

2016

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

2015

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

2014

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

2013

- *Pejorative Terms (L.2013, c.103)* – The Report proposed elimination of demeaning, disrespectful, and archaic terminology used in the New Jersey statutes when referring to persons with developmental, cognitive, or psychiatric disabilities.
- *Uniform Commercial Code – Article 1 – General Provisions (L.2013, c.65)* – The Report proposed updates to Article 1 of the Uniform Commercial Code that contains definitions and general provisions which, in the absence of conflicting provisions, apply as default rules covering transactions and matters otherwise covered under a different article of the UCC.
- *Uniform Commercial Code – Article 4A – Funds Transfers (L.2013, c.65)* – The Report proposed updating Article 4A of the Uniform Commercial Code to address what would otherwise have been a gap in the law since 4A does not cover a fund transfer governed by federal Electronic Funds Transfer Act (EFTA). Among the changes brought about by the Dodd-Frank Act, the Wall Street Reform and Consumer Protection Act, is an amendment to the EFTA so that the law will govern “remittance transfers” (the electronic transfer of funds to a person located in a foreign country requested by a consumer and initiated by a person or financial institution that provides remittance transfers for consumers in the normal course of its business), whether or not those remittance transfers are also “electronic fund transfers” as defined in EFTA. When the federal law changed in February 2013, without the modification to Article 4A, a fund transfer initiated by a remittance transfer would have been entirely outside the coverage of Article 4A, even if the remittance transfer is not an electronic fund transfer and would not have been covered by either law.
- *Uniform Commercial Code – Article 7 – Documents of Title (L.2013, c.65)* – The Report proposed modifications to Article 7 of the Uniform Commercial Code to accomplish two primary objectives: (1) allowance of electronic documents of title, and (2) introduction of provisions to reflect trends at the state, federal, and international levels.
- *Uniform Commercial Code – Article 9 – Secured Transactions (L.2013, c.65)* – The Report proposed changes to Article 9 of the Uniform Commercial Code, which governs security agreements when the property is not real estate. These arrangements are the basis of an important part of commercial finance, and many involve interstate transactions, so it is important that the state laws governing them are as nearly uniform as possible. The most significant change proposed concerns specification of the name of debtors who are natural persons.

2012

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

2011

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

Historical Enactments:

The remaining projects enacted since the Commission began work are:

- Anatomical Gift Act (L.2001, c.87)
- Cemeteries (L.2003, c.261)
- (Uniform) Child Custody Jurisdiction and Enforcement Act (L.2004, c.147)
- Civil Penalty Enforcement Act (L.1999, c.274)
- Construction Lien Law (L.2010, c.119)
- Court Names (L.1991, c.119)
- Court Organization (L.1991, c.119)
- Criminal Law, Titles 2A and 24 (L.1999, c.90)
- (Uniform) Electronic Transactions Act (L.2001, c.116)
- Evidence (L.1999, c.319)
- (Uniform) Foreign-Money Claims Act (L.1993, c.317)
- Intestate Succession (L.2001, c.109)
- Juries (L.1995, c.44)
- Lost or Abandoned Property (L.1999, c.331)
- Material Witness (L.1994, c.126)
- (Uniform) Mediation Act (L.2004, c.157)
- Municipal Courts (L.1993, c.293)
- Parentage Act (L.1991, c.22)
- Probate Code (L.2001, c.109)
- (Uniform) Prudent Management of Institutional Funds Act (L.2009, c.64)
- Recordation of Title Documents (L.1991, c.308)
- Repealers (L.1991, c.59, 93, 121, 148)
- Replevin (L.1995, c.263)
- School Background Checks (L.2007, c.82)
- Service of Process (L.1999, c.319)

- Statute of Frauds (L.1995, c.36)
- Surrogates (L.1999, c.70)
- Tax Court (L.1993, c.403)
- Title 45 – Professions (L.1999, c.403)
- Uniform Commercial Code Article 2A – Leases (L.1994, c.114)
- Uniform Commercial Code Article 3 – Negotiable Instruments (L.1995, c.28)
- Uniform Commercial Code Article 4 – Bank Deposits (L.1995, c.28)
- Uniform Commercial Code Article 4A – Funds Transfers (L.1994, c.114)
- Uniform Commercial Code Article 5 – Letters of Credit (L.1997, c.114)
- Uniform Commercial Code Article 8 – Investment Securities (L.1997, c.252)
- Uniform Commercial Code Article 9 – Secured Transactions (L.2001, c.117)

New Jersey Cases that Mention the NJLRC:

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- *Smith v. Vieceli*, 2021 WL 866998 (App. Div. 2021)
- *Catalina Marketing Corp. v. Hudyman*, 459 N.J. Super. 613 (App. Div. 2019)
- *SDK Troy Towers, LLC v. Troy Towers, Inc.*, 2019 WL 612670 (App. Div. 2019)
- *Residential Mortgage Loan Trust 2013-TT2 by U.S. Bank National Association v. Morgan Stanley Mortgage Capital, Inc.*, 457 N.J. Super. 237 (App. Div. 2018)
- *Diamond Beach, LLC v. March Associates, Inc.*, 2018 WL 6729724 (App. Div. 2018)
- *NRG REMA LLC v. Creative Envtl. Sols. Corp.*, 454 N.J. Super. 578, 583 (App. Div. 2018)
- *Gately v. Hamilton Memorial Home, Inc.*, 442 N.J. Super. 542 (App. Div. 2015)
- *State v. Tate*, 220 N.J. 393 (2015)
- *Booker v. Rice*, 431 N.J. Super. 548 (App. Div. 2013)
- *In re T.J.S.*, 419 N.J. Super. 46 (App. Div. 2011)
- *Pear Street, LLC*, 2011 WL 9102 (App. Div. 2011)
- *Haven Savings Bank v. Zanolini*, 416 N.J. Super. 151 (App. Div. 2010)
- *Marino v. Marino*, 200 N.J. 315 (2009)
- *Tashjian v. Trapini*, 2009 WL 2176723 (App. Div. 2009)
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- *Loder v. Neppel*, 2007 WL 4118319 (App. Div. 2007)
- *Semencz v. Borough of Hasbrouck Heights*, 2006 WL 2819813 (Law Div. 2006)
- *Warren County Bar Ass'n v. Board of Chosen Freeholders of County of Warren*, 386 N.J. Super. 194 (App. Div. 2006)
- *Gebroer-Hammer Associates, Inc. v. Sebbag*, 385 N.J. Super. 291 (App. Div. 2006)

- *L'Esperance v. Devaney*, 2005 WL 3092849 (App. Div. 2005)
- *Morton v. 4 Orchard Land Trust*, 180 N.J. 118 (2004)
- *Morton v. 4 Orchard Land Trust*, 362 N.J. Super. 190 (App. Div. 2003)
- *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:

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- Matthew Digan, *Lessons from UCAPA: Why Recent Domestic-Focused Anti-Abduction Legislation Has Largely Remained Unsuccessful*, 100 TEX. L. REV. ONLINE 104 (2022)
- Laura C. Tharney, Samuel M. Silver, Whitney G. Schlimbach, and Karyn L. White, *Tenure, Unemployment, and Workers' Compensation: Illuminating Rights and Responsibilities in New Jersey's Employment Law*, 45 SETON HALL LEGIS. J. 2 (2022);
- Robert Ramsey, 40 NEW JERSEY PRACTICE SERIES, *Jurisdiction of Municipal Court* §§24.1 (2022)
- Laura C. Tharney, Samuel M. Silver, Arshiya M. Fyazi, Jennifer D. Weitz, Christopher Mrakovcic & Rachel M. Segal, *On the Path Toward Precision: Responding to the Need for Clear Statutes in the Criminal Law*, 45 SETON HALL LEGIS. J. 2 (2021)
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- Edward M. Callahan, Jr., 1 FIFTY ST. CONSTR. LIEN & BOND L., *New Jersey Construction Lien Law* § 31.02 (2016; 2019)
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- Larry T. Garvin, *The Changed (and Changing?) Uniform Commercial Code*, 26 FLA. ST. U. L. REV. 285 (1999)
- Richard F. Dole, Jr., *The Essence of a Letter of Credit Under Revised U.C.C. Article 5: Permissible and Impermissible Nondocumentary Conditions Affecting Honor*, 35 HOUS. L. REV. 1079 (1998)
- Fred H. Miller, *Realism Not Idealism in Uniform Laws—Observations from the Revision of the UCC*, 39 S. TEX. L. REV. 707 (1998)
- Margaret L. Moses, *The Uniform Commercial Code Meets the Seventh Amendment: The Demise of Jury Trials under Article 5?*, 72 IND. L. J. 681 (1997)
- Albert J. Rosenthal, *Uniform State Laws: A Discussion Focused on Revision of the Uniform Commercial Code Moderator*, 22 OKLA. CITY U. L. REV. 257 (1997)
- Nancy S. Marder, *Deliberations and Disclosures: A Study of Post-Verdict Interviews of Jurors*, 82 IOWA L. REV. 465 (1997)
- Symposium, *Uniform State Laws: A Discussion Focused on Revision of the Uniform Commercial Code Moderator*, 22 OKLA. CITY U. L. REV. 257 (1997).
- John J.A. Burke, *New Jersey's New Material Witness Statute: Balancing the Rights of Prosecutors, Defendants, and Material Witnesses in Criminal Cases*, 19 SETON HALL LEGIS. J. 475 (1995)
- Fred H. Miller & Robert T. Luttrell, *Local Comments to Uniform Laws: A Winning Combination*, 48 CONSUMER FIN. L.Q. REP. 60 (1994)
- Shirley S. Abrahamson & Robert L. Hughes, *Shall We Dance? Steps for Legislators and Judges in Statutory Interpretation*, 75 MINN. L. REV. 1045 (1991)
- John J.A. Burke & John M. Cannel, *Leases of Personal Property: A Project for Consumer Protection*, 28 HARV. J. ON LEGIS. 115 (1991)
- Lawrence F. Flick, II, *Leases of Personal Property*, 45 BUS. LAW. 2331 (1990)

In addition to the items referenced above, the Commission was pleased to be mentioned in articles by: Charles Toutant in the New Jersey Law Journal entitled *Commission Calls for Indemnification of County Employees Who Help State Fight Crime* (December 17, 2021); Charles Toutant in the New Jersey Law Journal entitled *Panel Upholds Threat of Imprisonment for Debtors' Discovery Violations* (October 9, 2019); and Adam J. Sklar and Gary M. Albrecht, in the New Jersey Lawyer, *Construction Liens Arising From Tenant Work - Commercial Landlord Concerns and Strategies*, vol. 319 at p. 58 (2019).

The work of the Commission was also mentioned nationally, in an article concerning unusual divorce laws in effect in various states by Daniel Thomas Mollenkamp, "Most Surprising Divorce Laws by State" on

Investopedia (September 22, 2021) as well as an article concerning archaic laws by Michael Waters “*Hundreds of wacky, obsolete laws still exist. Why don’t more states remove them?*” in The Highlight, by Vox (November 18, 2019).

There were additional mentions of the work of the Commission in the popular press in 2023, including New Jersey Monitor, NJ 101.5, the Asbury Park Press, and in the trade-focused publication Window Film Magazine. These mentions of the work of the Commission followed those that appeared in the popular press in 2022, which included Business Insider, New Jersey Monitor, NJ.com, Patch.com, and in an article and a television clip featured on NBC Universal Media, LLC’s News 4 New York.

Institutional Collaborations:

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

The Commission was contacted in 2018 because of its work in the area of criminal law, and offered the opportunity to work as a Collaborating Organization with individuals affiliated with the Birmingham Law School, University of Birmingham, UK.

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

The Commission’s collaborative work in this area culminated in 2023 with the preparation of a paper by Samuel M. Silver, Deputy Director, that examined and summarized the historical development of the intoxication defense and the relevant law in New Jersey, and a presentation that Mr. Silver made based on his research at an international conference held in September 2023 at the Birmingham Law School, University of Birmingham, UK.

3. – History and Purpose of the Commission



3. – *History and Purpose of the Commission*

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

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

The Commission began work in 1987. Its statutory mandate is to “promote and encourage the clarification and simplification of the law of New Jersey and its better adaptation to social needs, secure the better administration of justice and carry on scholarly legal research and work.” N.J.S. 1:12A-8.

It is the duty of the Commission to conduct a continuous review of the general and permanent statutes of the state, and the judicial decisions construing those statutes, to discover defects and anachronisms. *Id.* The Commission is also called upon to prepare and submit to the Legislature bills designed to remedy the defects, reconcile the conflicting provisions found in the law, clarify confusing provisions, and excise redundancies. *Id.* In addition, the Commission is directed to maintain the statutes in a revised, consolidated, and simplified form. *Id.*

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

The Commission consists of nine Commissioners including the Chair of the Senate Judiciary Committee, the Chair of the Assembly Judiciary Committee, designees of the Deans of New Jersey’s three law school campuses, and four attorneys admitted to practice in New Jersey (two appointed by the President of the Senate – no more than one of whom shall be of the same political party, and two appointed by the Speaker of the General Assembly – no more than one of whom shall be of the same political party). N.J.S. 1:12A-2. The members of the Commission serve without compensation and have declined to be reimbursed for the expenses that they incur in the performance of their duties, although the statute permits such reimbursement. N.J.S. 1:12A-5.

The Staff of the Commission is a mix of full-time and part-time employees including a full-time Executive Director, a full-time Deputy Director, one full-time Counsel, a temporary full-time Legislative Fellow (a one-year position modeled on a judicial clerkship), and a full-time Executive Assistant. Law students assist the Commission as part-time paid Legislative Law Clerks, for-credit externs, and pro bono volunteers. Undergraduate students and recent law school graduates also provide research and drafting assistance.

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.

Once a project begins, the Commission examines New Jersey law and practice and, when appropriate, the law of other jurisdictions. Throughout the course of its work, the Commission seeks input from individuals and organizations familiar with the practical operation of the law and the existing statutes. When the preliminary

research and drafting is finished, the Commission issues a Tentative Report that it makes available to the public for formal comments. The Commission reviews all comments received and incorporates them into its work as appropriate.

When a revision is completed, a Final Report and Recommendation is prepared. That document contains an explanation of the issue, the research done, the comments received, and the reasons for the Commission's recommendation. Generally, a Final Report will also contain an Appendix that includes proposed draft statutory language. Final Reports are submitted to the New Jersey Legislature for consideration and the potential introduction of a bill based on the Commission's work.

4. – Final Reports and Recommendations



4. – Final Reports and Recommendations

Applicability of Driving While Intoxicated Statute to Bicycles

A person who “operates a motor vehicle while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit producing drugs,” or operates a motor vehicle with a blood alcohol concentration over an enumerated limit, may be found guilty of driving while intoxicated. A conviction for driving while intoxicated carries with it: a fine; a period of detainment; the possibility of imprisonment; and the requirement of an ignition interlock device. As a result of cases decided in the 1980s, there exists a conflict in the common law concerning the applicability of N.J.S. 39:4-50 to those who operate bicycles while intoxicated.

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

In December of 2023, the Commission issued a Final Report that brought to the attention of the Legislature the conflict in the common law regarding the applicability of New Jersey’s DWI statute to bicyclists for such action as the Legislature may deem appropriate.

Comprehensive Drug Reform Act – Joint Motions to Vacate Parole Ineligibility

The New Jersey Comprehensive Drug Reform Act of 1987 contains several statutes that require a sentencing court to impose a minimum term during which a convicted defendant is to be ineligible for parole. If, a defendant’s negotiated plea provides for a lesser sentence, or if the State and a defendant enter into a post-conviction agreement after a trial that calls for a lesser sentence or period of parole ineligibility, a court may honor such agreements.

In *State v. Arroyo-Nunez*, 470 N.J. Super. 351 (App. Div. 2022), the Appellate Division considered whether N.J.S. 2C:35-12 permits a trial court to vacate the mandatory period of parole ineligibility of a defendant sentenced to state prison pursuant to a guilty plea to a CDRA offense. The Court also considered whether a Directive issued by the New Jersey Attorney General, and a New Jersey Court Rule that permits joint motions to vacate a mandatory period of parole ineligibility for non-violent drug offenses, invalidated the statute and violated the Separation of Powers doctrine. The *Arroyo-Nunez* Court noted that Section 12, in its current form, could be read to preclude post-conviction agreements for defendants who elect to plead guilty rather than proceed to trial. The Court concluded that motions filed pursuant to the Directive and under the aegis of Rule 3:21-10(b)(3) were permissible. In addition, the Court stated that judges would, moving forward, be required to make individualized determinations of whether good cause exists for the requested relief.

In September of 2023, the Commission issued a Revised Final Report in which it recommended the modification of N.J.S. 2C:35-12 to clarify that a defendant may enter into a post-conviction agreement with the State to vacate a mandatory period of parole ineligibility for a non-violent drug offense even if the defendant’s original conviction was the result of a guilty plea.

Interest Rates in Eminent Domain Actions

The Eminent Domain Act of 1971 (Act) was enacted to establish uniformity in condemnation actions and

contains a “general repealer” applicable to agencies and organizations able to exercise the power of eminent domain. A statute in the Act, N.J.S. 20:3-32, sets forth the procedure for calculating interest on just compensation awards, but an older statute, N.J.S. 27:7-22, provides that a six percent interest rate is applicable to all just compensation awards.

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

In June of 2023, the Commission released a Final Report that recommended elimination of the reference to a fixed interest rate provision from N.J.S. 27:7-22 and eight additional statutes conferring the power of eminent domain to various agencies and organizations. The Final Report also recommended modifications to N.J.S. 20:3-32, adding language to clarify the procedure for determining the interest rate on a just compensation award.

Megan’s Law and the Definition of Minor

To protect children from the dangers posed by persons who commit sexual offenses, the New Jersey Legislature enacted a registration system for individuals classified as sex offenders that is designed to provide law enforcement officials with the information necessary to prevent, or resolve, sexual abuse cases. An individual who is convicted of a sex offense against a minor must register with the designated registering agency. The term “minor,” however, is not defined by the relevant Act.

In *State v. Farkas*, 2022 WL 803466 (App. Div. Mar. 17, 2022), the Appellate Division considered whether the seventeen-year-old victim of criminal sexual contact was a minor; thus requiring the defendant to comply with the requirements of Megan’s Law. To determine the meaning of the term “minor,” the Court examined: the definition of the term found in secondary sources; the definition of “adult” in Title 9; and the definitions of “emancipated” and “unemancipated minor.” The Court determined that in New Jersey, a minor is a person under the age of eighteen. In its decision, the Court did not address the two inconsistent definitions of “minor” found in the New Jersey Code of Criminal Justice.

“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 2023, the Commission released a Final Report that recommended modification of N.J.S. 2C:7-2, in a manner consistent with the Appellate Division decision in *Farkas*, to clarify that the term “minor” as used in the Act refers to persons under eighteen years of age.

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

The New Jersey Gross Income Tax Act (Act) requires the Division of Taxation (Division) to assess any tax

within three years after a taxpayer has filed a tax return unless the taxpayer has filed a false or fraudulent return. The Division is also authorized to issue an assessment for a deficiency arising out of an erroneous refund within three years from the issuance of such a refund. This statute of limitations is extended to five years where “it appears that any part of the refund was induced by fraud or misrepresentation of a material fact.”

In *Malhotra v. Director, Division of Taxation*, 32 N.J. Tax 443 (Tax 2021), the Tax Court considered the meaning of the term “misrepresentation” as used in N.J.S. 54A:9-4(c)(4). In the absence of a statutory definition and the lack of legislative history regarding the level of intent, the Court determined that misrepresentation must include some level of intent that is above a mistake. Pursuant to N.J.S. 54A:9-4(c)(1)(B), the Division is authorized to issue a deficiency assessment at any time if a taxpayer files a false or fraudulent return with the intent to evade tax. If a fraudulent return yields a refund to the taxpayer, however, the Division is required to make its deficiency assessment within five years from the issuance of that refund. Neither a plain reading of the statute nor the *Malhotra* Court’s decision provides an explanation for what appears to be a disparity in treatment.

In March of 2023, the Commission released a Final Report that recommended the removal of the five-year statute of limitations on assessments for erroneous refunds induced by fraud to eliminate the apparent conflict between the two fraud exceptions contained in this statutory section. The Commission also recommended eliminating the phrase “misrepresentation of a material fact” from subsection (c)(4) to remove the ambiguity created by this undefined term.

New Jersey Statute of Frauds – Mandatory Attorney Review Provisions

In New Jersey, an action for palimony requires a promise by one party to a non-marital personal relationship to provide support or other consideration to the other during the relationship or after its termination. In 2010, the Legislature amended the Statute of Frauds to require that such arrangements be reduced to writing and signed by the promisor. The statute further provides that the arrangement is not binding upon the parties “unless it was made with the independent advice of counsel for both parties.”

In *Moynihan v. Lynch*, 250 N.J. 60 (2022), the New Jersey Supreme Court was asked to determine the validity of the mandatory attorney-review requirement for palimony agreements. The Court examined whether the requirement obligates parties entering into a palimony agreement to seek legal representation, and whether mandating counsel for unwilling parties is constitutionally permissible. The Court also considered whether the attorney-review requirement served a significant and legitimate public purpose related to appropriate governmental objectives. After the Court examined the legislative history of the palimony statute it concluded that the attorney-review requirement was an arbitrary government restriction that contravenes the Plaintiff’s substantive due process rights.

In July of 2023, the Commission issued a Final Report that recommended modification of N.J.S. 25:1-5 to clarify that written support agreements between non-marital parties do not require both parties to obtain the independent advice of counsel before entering to such an agreement.

Unemployment Compensation for the Wrongfully Incarcerated

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

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

In June of 2023, the Commission released a Final Report that recommended modification of N.J.S. 43:21-5 to clarify that separation from employment as a result of wrongful incarceration is reviewed as if the employee left work voluntarily. The Commission also recommended the inclusion of a statutory presumption that a dismissal of the individual's charges, a grand jury's decision not to indict, or a finding of not guilty after a trial, shall be presumptive evidence that the individual did not voluntarily leave work. This presumption may be rebutted through an examination of the totality of the circumstances surrounding the individual's separation from employment.

Uniform Commercial Code – 2022 Amendments

Significant updates to the Uniform Commercial Code (UCC) were released by the Uniform Law Commission (ULC) in 2022 to address “emerged and emerging technologies.” They are intended to “bring the UCC into the digital age by providing commercial law rules for a new category of transactions: the transfer and leveraging of virtual currencies and certain other digital assets.”

The 2022 Amendments support commercial activity involving “controllable electronic records” (CERs), which are defined to include “virtual currencies, nonfungible tokens, and electronic promises to pay.” The ULC

“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)

explained that the Amendments: “will reduce transaction costs and the cost of credit,” are “narrowly focused to avoid stifling innovation,” “preserve uniformity of state law,” “clarify rules for money in electronic form,” “update UCC terminology for the digital age,” are drafted using technology-neutral language to “apply to future technologies,” and protect the expectations of the parties to transactions that predate the effective date of the amendments, including a “grace period to preserve pre-established priorities.”

Consistent with Commission practice regarding UCC amendments, the Commission prepared a Final Report that summarized the proposed changes and the reasons for the changes. The Commission's Final Report that recommended enactment of the 2022 UCC

Amendments was released in March of 2023. It indicated which statutory sections in New Jersey are impacted by the Amendments (and whether the Amendments impact the substance of the statutory language or simply change the explanatory material that appears in the comments to the UCC). The Commission's Report also identified provisions in the current New Jersey statutes that deviate in some way from the ULC's text so that particular attention can be paid in those areas when layering the Amendments into the existing law.

Workers Compensation - “Recreational or Social Activities”

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

In May of 2023, the Commission released a Final Report that recommended the addition of language to N.J.S. 34:15-8 that clarified the definition of the phrase “recreational or social activities,” consistent with the New Jersey Supreme Court decisions.

5. – Tentative Reports



5. – Tentative Reports

Accidental Disability Retirement Benefits – Traumatic Event

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

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

In September 2020, the Commission released a Tentative Report and sought comment from stakeholders. Update Memoranda incorporating commenter feedback were presented to the Commission in March and July of 2021. Research and outreach are ongoing, and a Revised Tentative Report is expected in early 2024.

Community Supervision for Life / Parole Supervision for Life

Sexual offenders in New Jersey may be sentenced to parole supervision for life (PSL) pursuant to N.J.S. 2C:43-6.4. A violation of the conditions of PSL is a third-degree crime. Before a 2003 amendment to the statute, offenders were sentenced to community supervision for life (CSL) and, prior to 2014, a violation of the conditions of PSL or CSL was only a fourth-degree crime.

The New Jersey Supreme Court held, in *State v. Hester*, 233 N.J. 381 (2018), that the 2014 amendment of N.J.S. 2C:43-6.4 violated the Ex Post Facto Clause of the New Jersey and Federal Constitutions as applied to individuals sentenced to CSL prior to the amendment. The Commission authorized research and outreach to determine whether the statute would benefit from a modification in response to the Supreme Court’s holding regarding the Ex Post Facto impact of the 2014 amendment.

A Tentative Report was released in December of 2023 proposing modifications to N.J.S. 2C:43-6.4 to clarify that, for those individuals sentenced to CSL prior to 2014, a violation of the conditions of CSL is a fourth-degree offense.

Endangering the Welfare of a Child – Morals

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

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

Since the Commission’s release of its Tentative Report on this subject, Staff has been working with commenters to determine whether it is appropriate to remove references to the anachronistic and undefined terms and replace them with language that clearly sets forth the prohibited conduct. A Final Report is anticipated in the Spring of 2024.

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 2024.

Impact of Mail-In Ballots

The Commission authorized a project to consider the impact of N.J.S. 19:63-26, which prohibits invalidation of an election on the basis of defective mail-in ballots, on an election contest claim pursuant to N.J.S. 19:29-1, as addressed by *In the Matter of the Election for Atl. Cnty. Freeholder Dist. 3 2020 Gen. Election*, 468 N.J. Super. 341 (App. Div. 2021). The Appellate Division determined, based on the canons of statutory interpretation and the intent of the Legislature, that N.J.S. 19:29-1 is applicable to elections conducted by mail-in ballot. The Court further held that N.J.S. 19:63-26 operates as a “rebuttable presumption” when one of the grounds for contesting an election in N.J.S. 19:29-1 is asserted.

Following the release of a Tentative Report in October 2022, the Commission authorized additional research and outreach with respect to issues raised by a commenter regarding the scope of the Election Law Enforcement Commission’s jurisdiction in the context of an election contest claim pursuant to N.J.S. 19:29-1.

In December of 2023, the Commission released a Revised Tentative Report that proposes modifications to clarify the impact of N.J.S. 19:63-26 on election contest claims brought pursuant to N.J.S. 19:29-1, as well as modifications to N.J.S. 19:29-1 and the Campaign Contributions and Expenditures Reporting Act clarifying the scope of the ELEC’s jurisdiction over Reporting Act violations. A Final Report is anticipated in 2024.

Juvenile Justice - State Home for Boys and Girls

The Juvenile Justice Commission (JJC) was created to provide centralized authority for planning, policy development and service provision in the juvenile justice system. Among the JJC’s many responsibilities are the custody and care of juveniles committed to and otherwise placed under its jurisdiction.

New Jersey's State Home for Boys, opened on June 28, 1867, was established as a home for troubled youth. The State Home for Boys is now known as the "New Jersey Training School," or colloquially as "Jamesburg," and is JJC's largest facility.

There are several statutes outside of Title 52 that contain references to the State Home for Boys and the State Home for Girls. Neither of these designations is utilized by the JJC, nor are they referenced or defined in any other statute. Such statutory references appear to be outdated.

In December of 2023, the Commission released a Tentative Report that recommends the removal of these anachronistic references from the general and permanent statutory law. A Final Report is anticipated in the Spring of 2024.

Local Land and Building Law – Bidding

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

In July of 2020, the Commission authorized Staff to conduct 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 Final Report is anticipated in 2024.

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

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

Prisons and Youth Correctional Facilities – Farms, Camps, and Quarries

Since 1918, the statutory definition of "State Prison" has included the existing prison in Trenton. The definition of youth correctional institutions includes the existing Youth Reception and Correctional Center, Yardville, and the Youth Correctional Institutions at Bordentown and Annandale. These statutes, defining places of incarceration, also include references to farms, camps, quarries or grounds where individuals sentenced to incarceration may from time to time be kept, housed, or employed.

While the New Jersey Department of Corrections (DOC) and the Juvenile Justice Commission (JJC) maintain correctional farms and camps, neither entity operates a prison quarry. The statutory references to quarries appear to be outdated.

In September of 2023, the Commission released a Tentative Report that recommends the elimination of the anachronistic statutory references to quarries and the clarification of the language regarding where persons convicted of criminal offenses or found to be delinquent may be confined by the DOC and the JJC. A Final Report is expected in the Spring of 2024.

Transfer of Jurisdiction in Tax Assessment Challenges

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 of Taxation by opposing parties. 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.

Staff provided an Update Memorandum to the Commission in March of 2022 after preliminary outreach to the Administrative Office of the Courts. A Tentative Report was released in January of 2023. Following the outreach period, a Draft Final Report was presented to the Commission in May of 2023. The Commission requested that Staff conduct additional outreach to obtain feedback regarding an alternative modification to the statute. Staff continues to conduct outreach on this narrow issue, and a Final Report is anticipated in early 2024.

Wrongful or Mistaken Imprisonment and NERA

In New Jersey, the term of parole supervision for persons who were convicted of certain violent crimes begins upon the completion of the sentence of incarceration imposed by the Court. At the time that the statute was enacted, it did not contemplate that a defendant could be wrongfully or mistakenly compelled to remain in prison beyond the prescribed sentence, and then mandated to serve the entire period of parole supervision.

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

The Commission released a Tentative Report in July of 2022, recommending statutory modifications to address the constitutional infirmity discussed by the Court in *State v. Njango*, and to make the statute more accessible. A Final Report is anticipated in early 2024.

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 on the maximum allowable monthly rent set by federal, State, and local authorities.

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

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 responsive information in 2024.

Affidavit of Merit Statute – Application to Respondeat Superior Claims

New Jersey’s Affidavit of Merit (AOM) statute requires a plaintiff who brings a “malpractice or negligence claim against a ‘licensed person’ to submit an AOM by an appropriately licensed person” pursuant to N.J.S. 2A:53A-27.3. The AOM must state that there is a “reasonable probability” that the plaintiff’s claim is “meritorious.” N.J.S. 2A:53A-26 defines “licensed persons” to include qualifying health care facilities, so plaintiffs must provide AOMs when making a claim that the licensed facility itself acted negligently. The statutory language does not address whether an AOM is required in the context of a vicarious liability claim against a licensed facility arising out of the conduct of its unlicensed employee.

In *Haviland v. Lourdes Medical Center of Burlington County., Inc.*, the New Jersey Supreme Court addressed “whether an AOM is required to maintain a negligence claim premised solely on a theory of respondeat superior for the alleged conduct of” an unlicensed employee, and determined that, in those circumstances, “a plaintiff has no such obligation.”

In July 2023, the Commission authorized a project to consider whether N.J.S. 17:32-20 should be modified to clarify whether an AOM is required in the context of respondeat superior claims. Work in this area is ongoing.

Anachronistic Statutes

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

which no longer exist, or they deal with problems deemed important at one time, but which have ceased to be relevant.

The Commission’s most recent work on anachronistic statutes 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 any of the statutes under consideration were in current use.

Review is ongoing and the issuance of a Final Report is anticipated in 2024.

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 that had been adopted in Alaska, Ohio, Arkansas and North Dakota.

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

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

In contrast to New Jersey, those 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 HALL LEG. J. 332 (2015), 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 late 2024.

Audit Adjustments Involving Returns from Closed Years

A deficiency assessment for corporate business taxes is governed by the State Tax Uniform Procedure Law (Act) provided for in the Taxpayer’s Bill of Rights. The Director of the Division of Taxation has broad

discretion to adjust and redetermine the tax returns to make a fair and reasonable determination of the amount of tax payable under the Act. The Director is not permitted to assess additional tax after the expiration of more than four years from the date of filing of a return.

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

In June of 2022, the Commission authorized Staff to conduct a nationwide examination of this issue. Work is ongoing and expected to continue in 2024.

Biometric Data

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

In *McDonald v. Symphony Bronzeville Park, LLC*, No. 126511 slip op. at 2 (Ill. Feb. 3, 2022), the Illinois Supreme Court considered the language of the State’s Compensation Act and its Privacy Act to determine whether the Compensation Act’s exclusivity provisions bar an employee claim filed in circuit court for statutory damages under the Privacy Act. To this time, New Jersey has no comprehensive data privacy laws. Although an “Invasion of Privacy” statute may be found in the New Jersey Criminal Code, this statute does not address data privacy. The statutes that mandate the reporting of data breaches and the security of social security numbers do not address the collection of personal identifiers.

In October of 2022, the Commission authorized Staff to examine the work of the Uniform Law Commission in this area. Work is ongoing in this area and is expected to continue in 2024.

Books and Records of Account

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

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

The Court determined that “books and records of account” does not encompass all records, books, and documents of a corporation,” but it also noted that the phrase is not defined within the statute. An Update Memorandum detailing several possible avenues of modification was presented to the Commission in January 2023. Outreach to interested stakeholders is ongoing, and a Revised Tentative Report is anticipated in early 2024.

Citizen’s Arrest

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

During the past century, organized police forces have become the norm and the need 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 an individual, the amount of force that may be used to effectuate such an arrest, the length of detention that is legally permitted, and the breadth of the immunity granted to those who act pursuant to these statutes.

The Commission, in November of 2020, directed Staff to conduct research to determine how best to modify the shoplifting statute to address present social concerns. A Tentative Report is expected in the Spring of 2024.

Compassionate Release

New Jersey’s Compassionate Release Act (Act), N.J.S. 30:4-123.51c, eliminated the Parole Board’s authority to grant “medical parole” and transferred that power to the judiciary. In *State v. F.E.D.*, 251 N.J. 505 (2022), the New Jersey Supreme Court considered, in a case of first impression, several aspects of the Act that it considered ambiguous. The Court examined whether a trial court was required to accept the eligibility determination of the Department of Corrections without scrutiny. The Court also focused on the meaning of the undefined phrase “activities of basic living” and considered the quantum of those activities that a petitioner must be *unable to perform* to be considered permanently physically incapacitated and eligible for compassionate release. Finally, the Court considered the Act’s requirement that the petitioner be “permanently physically incapable of committing a crime if released” and “would not pose a threat to public safety.”

Once a determination is made that a defendant is eligible for compassionate release, the statute does not state whether it “requires a judges to grant compassionate release, or leaves them discretion to deny relief, when a defendant has satisfied the Act’s medical and public safety conditions.” The New Jersey Supreme Court considered this question in the consolidated appeals of *State v. A.M.*, and *State v. Oliver*, 252 N.J. 432 (2023), along with the question of how such discretion should be exercised in the absence of an explicit statutory provision.

A court’s decision to grant or deny a petition for compassionate release is predicated on its evaluation of the opinions of licensed physicians and other medical information. The Act requires that the contents of the petition, and any responding comments, shall be confidential. The statute does not, however, provide guidance regarding the disclosure of the identity of a litigant seeking the relief.

The absence of a statutory standard of review for eligibility determinations led the *F.E.D.* Court to affirm

the Appellate Division’s standard of review for the Department of Corrections eligibility decisions. The Court also affirmed the Appellate Division’s definition of the phrase “activities of basic living” which is not readily apparent from a plain reading of the statute.

The *A.M.* Court concluded that judges have the discretion to deny the compassionate release of persons who are incarcerated if they find that one or more “extraordinary aggravating factors” exists. The statute neither enumerates “extraordinary aggravating factors” nor provides the standard for evaluating them.

In both *F.E.D.* and *A.M.*, the Court “respectfully urge[d] the Legislature to provide guidance with respect to whether it envisions that our courts will depart from our general practice of disclosing to the public the identity of a litigant seeking relief in the setting of... future compassionate relief proceeding[s].” In January of 2023, the Commission authorized work in this area. A Tentative Report is expected in 2024.

“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*

Consumer Fraud Act – Learned Professionals Exception

In *Atlantic Ambulance Corporation v. Cullum*, 451 N.J. Super. 247 (App. Div. 2017), the Appellate Division considered a denial of class certification for alleged violations of the Consumer Fraud Act (CFA). The defendants refused to pay Atlantic Ambulance for services because they believed their bills were “unconscionably high.” They brought a claim under the CFA and sought class certification. The Appellate Division held that denial of class certification was proper not because Defendants failed to meet the requirements for a class, but because the underlying consumer fraud claim was inapplicable to ambulance service providers since they fall within the “learned professional” exception to the CFA.

In 2019, the Commission approved a project to consider whether the CFA should be modified to clarify the scope of the learned professional exemption. Work in this area is ongoing.

Development and Installation of Electric Vehicle Supply Equipment or Make Ready Parking Spaces

Under the “Act concerning electric vehicle supply equipment and Make-Ready parking spaces” applications for the installation of electric “vehicle supply equipment” and/or “Make-Ready” parking spaces may occur in one of three contexts. An application may be made for the installation of electric vehicle supply equipment or Make-Ready parking spaces at existing gasoline service stations, existing retail establishments, or any other existing building. As a condition of preliminary site plan approval, the Act requires the installation of electronic vehicle supply equipment and/or Make-Ready parking spaces for multiple dwelling projects held under certain types of ownership. Finally, a parking lot or garage not covered by a multiple dwelling application is required to install a specific number of Make-Ready parking spaces contingent upon the amount of off-street parking spaces provided by the project.

The Act raises questions that are unanswered by the current statutory scheme. The Act does not specify: what happens when the requirements of the Act are not met; whether the construction official is a part of the review process prior to the issuance of a zoning permit; what happens when the requirements for the issuance of a zoning permit are not satisfied; and whether a municipality may require an applicant to install a specific type of electric vehicle supply equipment.

In May of 2023, the Commission authorized Staff to conduct additional research and outreach on this subject. Work in this area will continue in 2024.

Exception to Publication in Central Sex Offender Registry

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

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

Staff continues to conduct research and outreach to determine whether and how N.J.S. 2C:7-13 can be clarified to reflect the Supreme Court’s holding and a Tentative Report is anticipated in 2024.

Expungement – Clean Slate

An expungement is the extraction, sealing, impounding, or isolation of all records on file within any court, detention or correctional facility, law enforcement or criminal justice agency concerning a person's detection, apprehension, arrest, detention, trial, or disposition of an offense within the criminal justice system.” In New Jersey a petitioner may seek an expungement for a range of offenses and records retained by the State.

The general purpose of New Jersey’s expungement statute is to eliminate the collateral consequences imposed upon otherwise law-abiding citizens who had a brush with the criminal justice system. Since 1979, the Legislature has maintained that the primary objective of the expungement provisions is providing relief to the one-time offender who has led a life of rectitude and disassociated himself with unlawful activity. In *State v. R.O.-S.*, 474 N.J. Super. 87 (Law. Div. 2021), two petitioners, each of whom had multiple convictions including violations of local ordinances, sought expungements under the State’s newly enacted “clean slate” statute. The court considered, as a matter of first impression whether the recently enacted statute, N.J.S.A. 2C:52-5.3, includes violations of local ordinances.

A Draft Tentative Report recommending the modification of N.J.S. 2C:52-5.3 to include a reference to municipal ordinance violations was listed for Commission consideration in December of 2023. The Commission refrained from consideration of the Report in deference to legislative action in this area near the end of the session. The Commission will revisit its work in early 2024.

Expungement – Meaning of Closely Related Circumstances

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

In *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 during a three-month period were sufficiently related to grant his petition for an expungement.

The Commission authorized a project 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 2024.

Household Member - Definition of in Prevention of Domestic Violence Act

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

In November of 2020, the Commission directed Staff to engage in outreach to various stakeholders to determine whether the PDVA, specifically N.J.S. 2C:25-19(b), would benefit from the addition of the term “household member.” A Tentative Report on this subject is anticipated in 2024.

Law Against Discrimination - Definition of “Legal Representative”

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

In *Tompkins v. Thomson*, 2017 WL 2730256 (App. Div. June 26, 2017), the Appellate Division was confronted with a “Supersession Order” issued by the Attorney General to the Camden County Prosecutor’s Office to take control of the Camden City Police Department. This order was coupled with the County Freeholder’s execution of a consulting agreement with a third-party contractor. The Court ultimately decided that an employment relationship did not exist between the plaintiff, a city police officer, and the defendant, the Camden County Prosecutor. Under the existing law, it is unclear whether third parties should be considered “legal representatives” subject to liability under the LAD. The term “legal representative” is not defined in the LAD.

The Commission authorized Staff to engage in outreach to various stakeholders to determine whether including a definition for the term “legal representative” would be of assistance in furthering the purpose of the LAD in instance such as those in *Tomkins v. Thomson*. Work is ongoing.

Merger of Criminal Convictions for Leaving-the-Scene and Endangering an Injured Victim

In New Jersey, criminal convictions are merged in certain circumstances identified in N.J.S. 2C:1-8. In *State v. Herrera*, 469 N.J. Super. 599 (App. Div. 2022), the Appellate Division addressed whether the offenses of leaving the scene of a motor vehicle accident, N.J.S. 2C:11-5.1, and endangering an injured victim, N.J.S. 2C:12-1.2, should be merged. After conducting a “flexible multi-factor” approach approved by the New Jersey Supreme Court, the *Herrera* Court determined that merger of the two convictions was appropriate.

The Commission authorized further research and outreach to criminal law practitioners to determine whether the statute would benefit from modification reflecting the *Herrera* analysis. Outreach in this area is ongoing, and Staff anticipates providing the Commission with the results of its preliminary research in 2024.

Municipal Vacancies

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

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

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

New Jersey First Act – Residency Requirement

The New Jersey First Act (NJFA) establishes a state residency requirement for every person holding an office, employment, or position within state or local government. The NJFA also authorizes New Jersey citizens to seek the ouster of individuals covered by the residency requirement who fail to reside in New Jersey after a 365-day grace period.

In *Kratovil v. Angelson*, the Superior Court considered the question of whether unpaid volunteers — in this case, members of the Rutgers University Board of Governors — are subject to the residency requirement of the NJFA. After noting ambiguity in the statute and evaluating the relevant statutory provisions and their history, the Court concluded that the NJFA residency requirement should not apply to unpaid volunteers such as the Rutgers Board of Governors. *Kratovil* also addressed a second ambiguity in NJFA. Specifically, whether the NJFA allows a complaint to seek ouster within one year of any 365-day period in which an individual fails to meet the residency requirement, or whether ouster can only be sought within one year of a single 365-day period.

Ultimately, the Court found that the legislative use of the word “any” means that ouster can be sought for any 365-day period, even if that leaves certain individuals vulnerable to residency challenges for many years.

In November 2023, the Commission authorized a project on this matter to determine whether the language of the statute would benefit from clarification in light of issues highlighted by the Court in *Kratovil v. Angelson*. Work is ongoing.

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.

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

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

The Legislature enacted Title 15A in 1983 on the recommendation of the Nonprofit Law Revision Commission. In a statement accompanying the enactment, the Nonprofit Law Revision Commission expressed an intention for the Nonprofit Act to closely track the Business Act for the benefit of both the nonprofit and business communities, and practitioners within the legal community. While the Business Act has been amended numerous times over the years, the

Legislature has not similarly modified the Nonprofit Act.

Staff is continuing to review the Nonprofit Act and compare it to the Business Act, with a goal of identifying Business Act modifications that would be similarly useful in the Nonprofit Act and proposing the appropriate revisions. This project has received the support of New Jersey’s Center for Non-Profits, and Staff anticipates working closely with this organization in the preparation of a Tentative Report to be released in 2024.

Open Public Records Act

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

- Catalyst Theory

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

- Meaning of Name and Identity

The OPRA exception for records of an ongoing investigation was considered by the New Jersey Supreme Court in *North Jersey Media Group, Inc. v. Township of Lyndhurst*, 229 N.J. 541 (2017). In that case, the Court 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

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

Work on these issues is expected to continue in 2024.

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

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

Parental Rights

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

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

In July of 2022, the Commission authorized Staff to conduct additional research and outreach on this subject. A Tentative Report is expected in early 2024.

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 engage in additional outreach to the Legislature in the new legislative session to correct the language.

Public Hearing on Tenure Charges

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

In December 2021, the Commission authorized 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.

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 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 statute 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 will assess whether this issue should remain a stand-alone project or be combined with the Commission’s previous work in the Landlord-Tenant area.

Retroactive Modification of Child Support

Pursuant to N.J.S. 2A:17-56.23a, child support obligations cannot be retroactively modified by the court prior to the date that an application for modification was filed. The statute has consistently been read, with very limited exceptions, to prohibit retroactive reductions in child support obligations for the period predating the application for reduction.

In *K.A. v. F.A.*, the Superior Court of New Jersey considered, as a matter of first impression, the issue of whether a child support obligation may be retroactively modified prior to the date of filing where the change in circumstances was an adult adoption. Finding that the circumstance of adult adoption is similar to the already established exception of emancipation, the *K.A.* Court held that the statute does not bar modification of child support retroactive to the date of an adult adoption.

The Commission authorized research and outreach to determine whether the statute would benefit from a modification articulating the judicial exceptions to the prohibition on retroactive modification in N.S.J. 2A:17-56.23a. Work in this area is ongoing.

Title 39: Windshield Statute (N.J.S. 39:3-74) - Window Tint Traffic Stops/Citations

In November 2023, the Commission authorized a project to consider whether N.J.S. 39:3-74, the “Windshield Statute,” would benefit from clarification, particularly with regard to its applicability to traffic stops involving tinted windows, as discussed in *State v. Smith*, 251 N.J. 244 (2022).

The Commission directed Staff to conduct additional research focusing on the statutes of other states in this area, and Staff anticipates reporting back to the Commission with the results of its survey of the law in early 2024.

Tort Claims Act - Applicability of Notice Provision to Contribution and Indemnification Claims

In New Jersey, in order to bring a tort claim against a public entity, notice of the claim must be made within ninety days of the accrual of the cause of action pursuant to N.J.S. 59:8-8. The statute does not, however, indicate whether claims for contribution and indemnification against a public entity are also subject to the ninety-day deadline. The New Jersey Supreme Court addressed a divergence in the lower courts on this issue in *Jones v. Morey’s Pier, Inc.*, 230 N.J. 142 (2017).

The Commission authorized a project to determine whether N.J.S. 59:8-8 would benefit from a modification to clarify that defendants seeking contribution or indemnification from a public entity must provide notice of that claim within the ninety-day deadline in the statute. Following an Update Memorandum in June

2023, a Draft Tentative Report was presented to the Commission in July 2023, proposing modifications to N.J.S. 59:8-8 that incorporate the requirement that parties provide notice of contribution and indemnification claims against public entities within ninety days of the accrual of the cause of action.

Staff conducted additional research regarding the distribution of risk aspect of the *Jones* holding, and a Revised Draft Tentative Report was presented to the Commission in September 2023. The RDTR proposed modifications to N.J.S. 59:8-8 that reflected the *Jones* Court’s articulation of tortfeasor liability in a situation where a defendant has failed to provide notice of a contribution claim within the ninety-day deadline in the statute.

The Commission requested additional research and outreach regarding whether to modify either the Comparative Negligence Act or the Joint Tortfeasors Contribution Law to reflect the distribution of risk aspect of the *Jones* holding. A Tentative Report is anticipated in early 2024.

Tort Claims Act - Bystander Liability Claims

In New Jersey, to bring a tort claim against a public entity, a plaintiff must file a notice of the claim within ninety days of the accrual of the cause of action pursuant to N.J.S. 59:8-8. The statute does not specify what kinds of claims are subject to the ninety-day notice provision.

In *Alberts v. Gaeckler*, 446 N.J. Super. 551 (Law Div. 2014), the Court held that a plaintiff asserting bystander liability claims against the state “must comply with the notice requirements of the [Tort Claims Act]” and the filing of an amended complaint alleging bystander liability damages may not relate back to the date of the filing of the original complaint.

The Commission authorized research and outreach on this issue to determine whether N.J.S. 59:8-8 would benefit from a modification to clarify the types of tort claims that are subject to the ninety-day notice provision in the TCA. Staff is assessing whether the Commission should await additional judicial clarification in this area and, if not, the release of a Tentative Report is anticipated in 2024.

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

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

Tort Claims Act - Immunity for Sexual Misconduct Claims

The New Jersey Tort Claims Act (TCA) provides public entities with immunity from civil liability except in certain circumstances, including when a claim is based on sexual misconduct “caused by a willful, wanton or grossly negligent act,” as set forth in N.J.S. 59:2-1.3. The TCA also provides that public entities are not liable for the acts or omissions of an employee that constitute a crime in N.J.S. 59:2-10, and that no damages shall be awarded against a public entity or employee for pain and suffering except in the limited circumstances set forth in N.J.S. 59:9-2.

In *EC by DC v. Inglima-Donaldson*, 470 N.J. Super. 41 (App. Div. 2021), the Appellate Division addressed whether a public entity loses its TCA immunity when a public employee commits a sexual assault, and how that loss of immunity affects the applicability of N.J.S. 59:2-10 and N.J.S. 59:9-2. The *EC by DC* Court held that an intentional sexual assault by a public employee eliminated the public entity’s immunity pursuant to N.J.S. 59:2-1.3. Regarding the applicability of N.J.S. 59:2-10 and N.J.S. 59:9-2, the Court distinguished between an “immunity” in N.J.S. 59:2-10, which is not available to a public entity subject to the loss of immunity in N.J.S. 59:2-1.3, and a “limitation on liability” in N.J.S. 59:9-2, which remains applicable.

The Commission authorized research and outreach to determine whether modifying any of the statutes to reflect the Court’s holding in *E.C. by D.C.* would be beneficial. Outreach to interested and knowledgeable individuals and organizations is ongoing, and Staff anticipates providing the Commission with the results of its research in 2024.

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*, 241 N.J. 567 (2020), the New Jersey Supreme Court considered whether legal malpractice claims are exempt from the TCA and whether the plaintiff’s “loss of liberty” damages claim is subject to the verbal threshold of the TCA. The Court considered whether N.J.S. 59:9-2(d) is clear regarding whether loss of liberty damages are a subset of pain and suffering damages.

The Commission authorized a project in this area to determine whether it would be appropriate to modify N.J.S. 59:9-2 in response to the issues raised by *Nieves*.

Uniform Powers of Appointment Act

Powers of Appointment allow “the owner of property to name a third party and give that person the power to direct the distribution of that property among some class of permissible beneficiaries.” This is a long-standing method of estate planning that allows an individual to pass the authority to distribute property without entirely ceding control over it, but it is generally governed by common law.

The Uniform Powers of Appointment Act (UPAA) was released in 2013 by the Uniform Law Commission to establish a national standard of statutes regarding powers of appointment. New Jersey has a patchwork of statutes and common law governing powers of appointment, with most of the case law dating from the early to mid-1900s, and it appears as though the existing body of law could benefit from a codification of the law regarding powers of appointment in line with the UPAA to bring the existing standards into a modern and accessible form.

Staff is preparing recommendations regarding this area of the law.

Uniform Power of Attorney Act

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

Staff is preparing recommendations regarding this area of the law.

Uniform Probate Code

The Commission began work on a project to consider the possible enactment of the Uniform Probate Code (UPC) in New Jersey. New Jersey's probate law, Title 3B, is modeled on the 1969 version of the UPC and it was revised in 1990 to reflect subsequent amendments. Since then, the UPC has been modified a number of times, most recently in 2019. The promulgation of the Uniform Parentage Act of 2017 necessitated amendments to the UPC's intestacy and class-gift provisions.

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

*John M. Cannel, Retired
(2015)*

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 will continue on this large and important project.

Uniform Residential Landlord and Tenant Act, Article 11

The Commission previously completed a substantial project concerning New Jersey's Landlord and Tenant law and released a Final Report in 2012. Although introduced in bill form in a prior session of the Legislature, that Commission project has not yet been enacted.

The Commission's 2012 Report incorporated the New Jersey Safe Housing Act (SHA) but, in 2021, Staff reviewed the 2015 Revised Uniform Residential Landlord and Tenant Act, with a focus on Article 11 of that Act, to determine whether New Jersey is employing the “best practices” in this area of law. New Jersey's SHA only recognizes the potential for physical harm. The plain language of the Prevention of Domestic Violence Act, however, recognizes harassment, stalking, and cyber-harassment as within its definition of domestic violence. New Jersey courts have also recognized psychological harm as grounds for a restraining order, noting that acts of harassment, even absent physical abuse, “can cause great emotional harm and psychological trauma.”

Staff review of this area continues, and further Commission consideration is expected in 2024.

Use of Civilian Monitors in Wiretap Investigations

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

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

The Court determined that because the civilian contractors had been deputized and sworn in as “special county investigators,” they were “investigative or law enforcement officers.” As a result, the Court declined to review whether the Act permits non-deputized civilian personnel to monitor intercepted communication. Instead, the Court said that the Legislative and Executive branches of government would be better suited to address whether N.J.S. 2A:156A-12 includes non-deputized civilians. Work will continue in this area in 2024.

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

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

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

The “medical and hospital service” provision set forth in N.J.S. 34:15-15 does not set forth a time within which an employer must furnish the medical treatment called for in that section. The Commission authorized Staff to conduct the research and outreach necessary to determine whether work in this area would be useful. Additional work is expected in 2024.

7. – Concluded or No Action Recommended



7. – *Concluded or No Action Recommended*

Notice by Publication

The Commission authorized a project in 2019 to conduct research and outreach regarding statutes governing notice by publication for municipalities. Notice by publication statutes mandate that a newspaper in which a notice may appear must be published and circulated either within the municipality, or in the county in which the municipality is located. The statutes' intent is to notify the largest number of people regarding municipal action. Historically, publication meant the actual location where the newspaper was printed and circulated to the public. Developments in the publishing industry, however, changed the manner in which newspapers are published, distributed, and read. This raises the issue of how municipalities may comply with the statutory requirements.

In deference to ongoing legislative activity, Staff refrained from actively working in this area after the project was authorized. The policy issues recognized by the Commission during its initial consideration of the project added an additional layer of complexity to any possible work in this area. Finally, although this project focused on an important issue, it did not appear that the Commission would have the resources to devote to a project of this scope in the near future. As a result, in September of 2023, work in this area was concluded.

Workers Compensation - “Intentional Wrong” Exception

In 2021, the Commission authorized a project addressing the scope of the “intentional wrong” exception to workers' compensation coverage in N.J.S. 34:15-8, in light of the Appellate Division decision in *Bove v. AkPharma Inc.*, 460 N.J. Super. 123 (App. Div. 2019), *cert. denied*, 240 N.J. 7 (2019), and *cert. denied*, 240 N.J. 2 (2019).

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

Strong opposition was received from commenters regarding the modifications proposed in an October 2022 Tentative Report, and with respect to revised modifications in a September 2023 Draft Final Report.

In October 2023, the Commission released a Final Report that did not recommend modifying N.J.S. 34:15-7.

8. – Current and Historic Commissioners and the Staff of the NJLRC



8. – Current and Historic Commissioners and the Staff of the NJLRC

The current members of the Commission are:

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



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

Andrew O. Bunn, Vice-Chairman, Attorney-at-Law



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

Editor of the Rutgers Law Review.

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

New Jersey Supreme Court Justice Virginia Long joined the firm after 15 years on the Appellate Division and 12 years on the Supreme Court. Justice Long devotes her efforts to assisting clients with ethics and appellate matters, corporate governance, and governmental integrity investigations and to serving as a mediator and arbitrator providing dispute resolution alternatives. She also spearheads the firm's pro bono efforts in New Jersey. Justice Long began her career as a Deputy Attorney General and later served as Director of the New Jersey Division of Consumer Affairs and as Commissioner of the former New Jersey Department of Banking. She also practiced law at the firm of Pitney, Hardin and Kipp. In 1978, she was appointed to the New Jersey Superior Court, where she presided over civil, criminal and family law cases in Union County. From 1983 to 1984, she was the General Equity judge for Mercer, Somerset, and Hunterdon counties. In 1984, Justice Long was elevated to the Appellate Division, where she became a presiding judge in 1995. She was

appointed to the New Jersey Supreme Court in 1999 and was confirmed by the Senate for a second term and granted tenure in 2006, retiring in 2012 when she reached the mandatory retirement age. Justice Long received her undergraduate degree from Dunbarton College of Holy Cross in 1963 and graduated from the Rutgers School of Law – Newark in 1966.

Louis N. Rainone, Attorney-at-Law

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

aide to State Senator Richard Van Wagner, and on the staff of Assembly Speaker Alan J. Karcher.

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

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

Raj Mukherji, Chair, Assembly Judiciary Committee, Ex officio

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

Johanna Bond, Dean, Rutgers University School of Law, Ex officio

Dean Bond graduated from Colorado College and the University of Minnesota, where she earned a J.D. and a master's degree in public policy. She also holds an LL.M. from Georgetown University Law Center. Dean Bond served as a law clerk for United States District Judge Ann D. Montgomery in Minnesota. She comes from the faculty of Washington and Lee University School of Law where she served as the Associate Dean for Academic Affairs. Dean Bond was also an Associate Professor of Law at the University of Wyoming and a Visiting Associate Professor of Law at Georgetown University Law Center. She served as the Executive Director of the Women's Law and Public Policy Fellowship Program. Dean Bond began leading Rutgers Law School in July 2023. She is an expert in international human rights law and gender and the law. Her scholarship has appeared in numerous journals. In 2001 and 2015 she was selected as a Fulbright Scholar. Dean Bond has traveled extensively and collaborated with non-governmental organizations and human rights lawyers around the world. Her 2001 Fulbright award enabled her to travel to Uganda and Tanzania for research that resulted in her edited book, *Voices of African Women: Women's Rights in Ghana, Uganda, and Tanzania* (Carolina Academic Press, 2005).

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



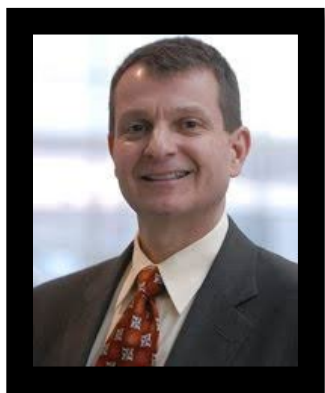
The managing partner of Bertone Piccini, Grace Bertone is a graduate of Fairleigh Dickinson University, summa cum laude, and Rutgers University School of Law, Camden, where she served as Editor-in-Chief of the Rutgers Law Journal. She was admitted to the bars of New Jersey and Pennsylvania and related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

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. Kears 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.

John Kip Cornwell, Interim Dean, Seton Hall University School of Law, Ex Officio



Dean 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.

Represented by **Professor Edward Harnett**



Professor Harnett received his A.B., magna cum laude, from Harvard and his J.D. from New York University, where he was elected to the Order of the Coif and received the highest award given to J.D. candidates. He clerked for Judge Frederick B. Lacey and Judge Robert E. Cowen of the United States District Court for the District of New Jersey, and for Chief Judge John J. Gibbons of the United States Court of Appeals for the Third Circuit. After his clerkships, he practiced with the Federal Public Defender and the law firm of Robinson, St. John & Wayne. He has published articles in the areas of civil procedure, federal jurisdiction, and constitutional law, and is a co-author of the leading text on practice before the Supreme Court of the United States. He is the Richard J. Hughes Chair for Constitutional and Public Law and Service at Seton Hall University School of Law, teaching courses including Civil Procedure, Constitutional Law, and Federal Courts. Professor Harnett was appointed by John Roberts, Chief Justice of the United States, to serve as the Reporter for the Advisory Committee on the Federal Rules of Appellate Procedure and by Chief Justice Rabner to serve on the New Jersey Civil Practice Committee.

Former Commissioners:

Daniel F. Becht, Esq.

Peter A. Buchsbaum, Esq.

Albert Burstein, Esq.

Bernard Chazen, Esq.

John J. Degnan, Esq.

Edward J. Kologi, Esq.

Thomas N. Lyons, Esq.

Hugo M. Pfaltz, Jr., Esq.

Hon. Sylvia Pressler, P.J.A.D. (Retired)

Howard T. Rosen, Esq.

Anthony R. Suarez, Esq.

Former Ex officio Commissioners:

Roger I. Abrams, Dean, Rutgers School of Law – Newark

Senator John Adler

Assemblyman Peter J. Barnes, III

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

Represented by Professor John Kip Cornwell

Michael T. Cahill, Co-Dean, Rutgers School of Law – Camden

Represented by Grace C. Bertone, Esq.

Ronald K. Chen, Co-Dean, Rutgers School of Law – Newark

Represented by Professor Bernard Bell

Rose Cuison-Villazor, Interim Co-Dean, Rutgers School of Law – Newark

Represented by Professor Bernard Bell

Elizabeth F. Defeis, Dean, Seton Hall University School of Law

Represented by Professor Robert A. Diab

Roger Dennis, Dean, Rutgers School of Law – Camden

Represented by Hope Cone

Stuart Deutsch, Dean, Rutgers School of Law – Newark

John J. Farmer, Jr., Dean, Rutgers School of Law – Newark

Represented by Professor Bernard Bell

Senator William L. Gormley

Assemblywoman Linda R. Greenstein

Assemblyman Walter M.D. Kern

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

Represented by Professor Bernard Bell

Assemblywoman Marlene Lynch Ford

Kimberly Mutcherson, Dean, Rutgers School of Law - Camden

Represented by Grace Bertone

Eric Neisser, Acting Dean, Rutgers School of Law – Newark

Represented by Professor Robert Carter

Senator Edward T. O'Connor

Assemblywoman Annette Quijano

Ronald J. Riccio, Dean, Seton Hall University School of Law

Represented by Professor William Garland

Paul T. Robinson, Dean, Rutgers School of Law – Camden

Assemblyman David C. Russo

Senator Paul A. Sarlo

Assemblyman Thomas J. Schusted

Senator Nicholas P. Scutari

Peter Simmons, Dean, Rutgers School of Law – Newark

Richard G. Singer, Dean, Rutgers School of Law – Camden

Rayman Solomon, Dean, Rutgers School of Law – Camden

Represented by Grace C. Bertone, Esq.

Assemblyman Gary W. Stuhltrager

The staff of the Commission includes:

Laura C. Tharney, Executive Director

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

Samuel M. Silver, Deputy Director

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

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

Whitney G. Schlimbach, Counsel

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

Veronica V. Fernandes, Executive Assistant

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

Carol Disla-Roa, Legislative Fellow

Carol Disla-Roa joined the Commission as a Legislative Fellow in October of 2023. She became a licensed attorney in 2023 and has been admitted to practice in New Jersey. Carol earned her B.A. in Public and Nonprofit Administration from Rutgers University – Newark, School of Public Affairs and Administration in 2020 and graduated from Seton Hall University, School of Law in 2023.

John M. Cannel, Retired (*until March 2023*)

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

Student Legislative Law Clerks and Externs:

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

The Commission was fortunate to have the assistance this year, as in past years, of bright, motivated, and dedicated students with excellent research and writing skills whose efforts have increased the Commission’s

ability to work in numerous different areas of the law. The students who worked with the Commission in 2023 are:

Sameer T. Ahmad (Seton Hall University School of Law) – Legislative Law Clerk – Summer 2023

Kyle M. Ryan (Seton Hall University School of Law) – Legislative Law Clerk – Summer 2023

Other Assistance by Students and Recent Graduates:

During the Fall semester of 2023, research and drafting assistance was provided to the NJLRC by student intern **Meyarah Jabarin** through a cooperative relationship with the New Jersey Institute of Technology and Alison Lefkowitz, 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 from both the Camden and Newark campuses of Rutgers University Law School: **Joseph Baldofsky, Alyssa Le, Zahirah Sabir, Daniel Salerno,** and **Nicole Sodano**, in cooperation with Jill Friedman, Associate Dean, Pro Bono & Public Interest, and Sarah E. Ricks, Distinguished Clinical Professor of Law, at Rutgers Law School – Camden. Pro bono legal research and drafting were also provided by law students and recent graduates **Christopher Camaj, Esq., Daniel Gogerty,** and **Shelby E. Ward, Esq.,** 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 2024



9. – Looking Ahead to the Work of the NJLRC in 2024

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.

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. Efforts to enhance outreach, transparency, and the use of electronic media and communications are ongoing.

A 2019 website upgrade made additional information available online. Significant upgrades to the Commission's website were also made in 2023 to increase the accessibility of the Commission's work so that members of the public have access to, and can benefit from, the work of the Commission at all stages of its projects.

Throughout 2023, Staff also worked to increase and improve the effectiveness of the Commission's outreach and increase public participation in the work of the Commission. Part of this effort involves the use of video communication tools to enable remote public participation in Commission meetings.

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

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