

MINUTES OF COMMISSION MEETING

April 16, 2020

Present at the New Jersey Law Revision Commission meeting, held via video conference, were: Chairman Vito A. Gagliardi, Jr.; Commissioner Andrew O. Bunn; Commissioner Virginia Long; Commissioner Louis N. Rainone; Professor Bernard W. Bell, of Rutgers Law School, attending on behalf of Commissioner David Lopez; and Grace Bertone, of Bertone Piccini, LLP, attending on behalf of Commissioner Kimberly Mutcherson.

Minutes

On the motion of Commissioner Bunn, which was seconded by Commissioner Long, the Minutes from the March 19, 2020 meeting were unanimously approved by the Commission.

Interpretive Statement

Mark Ygarza discussed with the Commission a Revised Draft Tentative Report proposing a project to clarify N.J.S. 19:3-6 and explain which municipal actor has the authority to draft and submit an interpretive statement with a referendum ballot, as addressed by the Appellate Division in *Desanctis v. Borough of Belmar*, 455 N.J. Super. 316 (App. Div. 2018).

In *Desanctis*, the Mayor and Council adopted an ordinance appropriating funds for the construction of a pavilion and authorizing the issuance of bonds and notes to finance part of the construction. Voters filed a protest petition to require a referendum on the ordinance. Subsequently, the Borough Administrator drafted an interpretive statement for the proposed ordinance to be voted on during the referendum. The Plaintiff filed suit to invalidate the interpretive statement because it was not voted on by the Mayor and Council, which deprived Plaintiff and the public an opportunity to comment on and object to its content. The Plaintiff alleged that the statement contained ‘inaccurate, misleading and extraneous information,’ presenting another ground for invalidation.

The Appellate Division considered whether the trial court correctly held that an interpretive statement submitted by the Borough Administrator, without a resolution by the Mayor and Council, is invalid. The Court examined N.J.S. 19:3-6 and concluded that an interpretive statement must be passed by a resolution or ordinance voted upon by the governing body of the municipality. The Appellate Division held that the statutory scheme weighs against allowing a mayor and council to “outsource” an interpretive statement. Pursuant to the Home Rule Act, a clerk is required to submit a petition, once it is found sufficient, “to the governing body of the municipality without delay so that they may approve it through a vote.” The language of the statement should be given to the governing body, subject to “the requirement that it fairly interpret the public question and set forth its true purpose of the ordinance.”

In response to direction provided to Staff at the March 19, 2020 meeting, Mr. Ygarza revised sections a., b., and c., to reflect the statutory intent and the decision of the Court in *Desanctis*.

Staff also engaged in research to ascertain whether there are any statutes that conflict with N.J.S. 19:3-6. Mr. Ygarza reported that 32 statutes mention public question voting. These statutes, however, do not involve anything regarding the interpretive statement. Of the 32, there are four statutes that reference balloting procedures. The voting procedure for the dissolution of the public library, N.J.S. 40:54-7.1, specifically references N.J.S. 19:3-6 and adds that the statement must be informative, fair and balanced.

In an attempt to ascertain whether any rules, regulations or statutes may conflict with the language proposed, Staff sent an email to the Divisions of Elections. As of the date of the meeting, Staff had not received a response. Mr. Ygarza briefly examined the local ballot statutes in other states and learned that Arkansas has an election committee that allow for the drafting and the approval of interpretive statements.

Commissioner Bell considered the question of how an individual might place a question on the ballot. Commissioner Rainone said that in municipalities incorporated under the *Faulkner Act*, individuals are permitted to place information on a ballot by petition. He questioned who would handle the drafting and approval of such a ballot question. Laura Tharney asked whether the drafting of a ballot question under such circumstances should be contained in a separate section of the statute. Commissioner Rainone suggested that Staff examine the *Faulkner Act*, to see whether the Act covers such a circumstance, and Commissioner Bunn concurred.

Chairman Gagliardi asked the Commission to consider whether the statute, as drafted, is sufficient to address the issues raised in *Desanctis* and by Commissioner Bell. The Chairman noted an interpretive statement may be challenged in court if a party believes that it is arbitrary, capricious and unreasonable. The Court may, under the circumstances described by Commissioners Bell and Rainone, issue injunctive relief to the aggrieved party.

Commissioner Long observed that *Desanctis* did not turn on how well the interpretive statement was drafted. In that case, the wrong party approved the statement and that error formed the basis of the litigation. She therefore suggested that Staff re-examine this issue. Chairman Gagliardi observed that the statute should require a statement that fairly and accurately describes the impact of the interpretive statement. Commissioner Bell also suggested that an examination of the statutory language that other states have utilized to address this issue would be beneficial to the Commission's consideration of this issue.

Staff was directed to engage in additional research to address the issues raised, and to review and revise the language contained in the Appendix as appropriate.

Aggravated Assault

John Cannel discussed with the Commission a Draft Tentative Report and a Memorandum proposing modification regarding the intent necessary for an individual to be convicted of the

aggravated assault of an officer in cases involving the throwing of bodily fluids, in violation of N.J.S. 2C:12-13. Mr. Cannel examined the statute against the backdrop of the Appellate Division's decision in *State v. Majewski*, 450 N.J. Super. 353 (App. Div. 2018), and in light of recent events involving the novel Coronavirus – COVID-19.

Mr. Cannel briefly explained that in *State v. Majewski*, the Appellate Division considered whether N.J.S. 2C:12-13, which prohibits the throwing of bodily fluids at law enforcement officers, required the State to prove that the defendant intended to hit the officer with bodily fluid, or if intent was irrelevant under the doctrine of “transferred intent.”

The Court decided that both aspects of the statute, throwing bodily fluids at law enforcement and causing (in some other way) contact of bodily fluid with an officer, called for purposeful conduct in order for a defendant to be guilty of aggravated assault. For this reason, the Court reversed the decision of the trial court, vacated the defendant's conviction, and dismissed the indictment without prejudice.

Mr. Cannel suggested that recent news reports involving the arrest of individuals coughing and sneezing upon law enforcement officers while claiming to have the Coronavirus may warrant broadening the project. In March 2020, several individuals were arrested after intentionally coughing on law enforcement officers and thereafter claiming that they had the COVID-19 infection and could transmit it. These individuals were charged with, among other things, “terroristic threats” in violation of N.J.S. 2C:12-3. According to Mr. Cannel the terroristic threats statute is not the best statute with which to charge an individual who engaged in this type of behavior. Furthermore, it is not clear that any existing statute would make the act criminal.

In its current form, N.J.S. 2C:12-13 does not clearly set forth that purposeful conduct is required for a defendant to be found guilty of aggravated assault when throwing bodily fluid at certain enumerated law enforcement employees. Recent circumstances led Staff to consider the modification of the aggravated assault statute. Staff proposed amendatory language for both N.J.S. 2C:12-13 and N.J.S. 2C:12-1 to address these circumstances.

Commissioner Bunn supported the expansion of this project to include the circumstances described by Mr. Cannel in the most recent news reports. He added that this is a current issue that was worthy of further exploration. Chairman Gagliardi agreed with Commissioner Bunn's assessment of the proposed expansion of this project. The Chairman questioned whether the word “infection” was either too broad or too narrow. Mr. Cannel answered that he was unable to come up with language to determine the specific types of infections that should be set forth in the statute. He added that it would be difficult to do, and Staff would conduct additional research on the subject.

Mr. Cannel advised the Commission that in the draft, this type of assault has been categorized as a disorderly persons offense. He questioned whether this offense should be a crime of the fourth degree when the victim is a law enforcement officer. Commissioner Bunn inquired whether it is currently a crime of the fourth degree to assault a police officer. Mr. Cannel answered that assaulting an officer with bodily fluids is a fourth-degree crime, and that if section (b)14 was

also made a fourth-degree offense it would be consistent with the penalty set forth in the statute for attacking a police officer with bodily fluids.

Commissioner Bell questioned whether assault with a bodily fluid is specific to individuals who work in correctional institutions, or if there are cases where people have thrown bodily fluids at law enforcement officers outside of a correctional setting. He noted that a correctional institution is a very different environment than the general public, because in this type of setting there is a greater danger involved in general disorder. Mr. Cannel replied that the current law is broader than just a correctional setting, and it also applies to officers on the street.

Laura Tharney asked if the Commission would want the statute to include bodily fluids generally. Commissioner Long inquired whether the statute should include spitting. Commissioner Bunn added that perhaps the statute should include acts that place the victim in “mortal fear.” Mr. Cannel indicated that he understood the necessity of narrowing the nature of the fear set forth in the statute.

After a brief discussion Commission requested that Staff conduct additional research and drafting for Commission review at an upcoming meeting.

Towing Act

Mark Ygarza presented a Draft Tentative Report that discussed modification of the Towing Act to clarify whether administrative remedies must be exhausted before a complaint may be filed in Court against a towing company pursuant to N.J.S. 56:13-21, and as discussed in *Pisack v. B & C Towing, Inc.*, 455 N.J. Super. 225 (App. Div. 2018).

Mr. Ygarza briefly discussed the facts of the case in *Pisack*, in which three plaintiffs, two of whom were pro se, were charged for the nonconsensual towing of their vehicles by privately-owned towing companies. In all three cases, the plaintiffs’ cars were towed from public roads at the direction of the police and none of the plaintiffs consented to the towing of their vehicles. Each plaintiff was billed for the towing and each plaintiff paid all of the charges to have their vehicles released from storage yards.

The Appellate Division examined N.J.S. 56:13-21 and focused on the language that provides that a “director may order a towing company that has billed a person...an amount determined by the director to be unreasonable to reimburse the person.... ” The Court observed that when a statutory provision contains the words ‘may’ and ‘shall’ it is presumed that the statute intended to distinguish between them, so that ‘shall’ is construed as mandatory and ‘may’ as permissive. The Court concluded that the Legislature contemplated that vehicle owners could file their Consumer Fraud Act claims because nothing in the Towing Act requires a plaintiff to exhaust every administrative remedy before filing a lawsuit in Superior Court.

On the motion of Commissioner Bunn, which was seconded by Commissioner Bell, the Commission unanimously voted to release this Report as a Tentative Report.

Endangering the Welfare of a Child

Samuel Silver discussed a Memorandum proposing a project to modify the phrase “impairing or debauching the morals of a child” in New Jersey’s child endangerment statute and as discussed in *State v. Johnson*, 460 N.J. Super. 481 (Law Div. 2019).

In *State v. Johnson*, a high school senior received a message via social media from the defendant, a middle school guidance counselor at the same school. In the message, the defendant requested a partially nude photograph of the victim. Upon receiving it, the victim blocked him on Instagram. In addition, she notified her guidance counselor that she received a message from a male staff member via social media and that it made her feel uncomfortable.

The Court noted that a “child” is an individual under the age of 18. The term “sexual conduct” is not defined in the New Jersey Code of Criminal Justice. The Court confirmed that there is no requirement that the defendant have physical contact with the victim. In New Jersey, an individual can be convicted of child endangerment for showing nude photographs to minors. In addition, sexual conversations have also been deemed a sufficient basis for a jury finding of “sexual conduct” within the meaning of N.J.S. 2C:24-4(a)(1). There is nothing in the child endangerment statute that requires that the sexual conduct occur in the physical presence of the victim. Thus, the defendant’s sexual conduct can be communicated via telephone.

The *Johnson* Court examined two different standards that have been applied in endangerment cases involving sexual conduct. The first standard examined the specific language of the statute and the effect of the conduct in question on the victim. The second standard, announced by the New Jersey Supreme Court in *State v. Hackett*, 166 N.J. 66, 80 (2001), examined the impact of the defendant’s conduct on the “average child in the community.” Mr. Silver noted that the endangering statute does not define the term “impairing” either. It is not clear which standard should be used in these types of cases. There are seven pieces of Legislation pending in the current session regarding N.J.S. 2C:24-4, none of which addresses the issues in *State v. Johnson*.

John Cannel advised the Commission that the “average child” is a “reasonable person standard.” In *Johnson* the victim’s morals were beyond reproach. Based on the reaction of the victim it would be difficult for the State to prove that her morals were impaired or debauched.

Commissioner Bell inquired whether the Code of Criminal Justice covers “offensiveness” in a statute that covers debauching the morals of a child. Mr. Cannel responded that there are other statutes like sexual assault and flashing that are separate from debauching the morals of a child but not one that covers “offensive” behavior like that in *Johnson*.

Staff was given authorization to proceed with additional research and outreach.

Posse Comitatus

Samuel Silver presented a Memorandum proposing a project to consider the removal of the word “posse” from N.J.S. 53:2-1. Pursuant to the statute, members of the State Police shall be

subject to the call of the Governor as peace officers of the State; furnish adequate police protection to inhabitants of rural section of the State; provide first aid to the injured; assist the helpless in times of need; and, at the request of a municipality, the Governor may use the State Police as a posse.

In ninth century England, Alfred the Great permitted Sheriffs and other officials to summon a posse. These individuals possessed the ability to summon armed citizens to assist in keeping the peace. The active participation of these individuals was seen as a necessary element to keeping “the King’s peace.” The legal power vested in these governmental actors, in this capacity, was referred to as *posse comitatus*.

In New Jersey, the use of the term *posse comitatus* dates to 1795 when the Supreme Court of Judicature heard the matter of *Patten v. Halsted*. The term was used in the context of a civil action to return a party to the jurisdiction of the court. Before 1850, posse comitatus thrived as a well-developed and popular institution for local law enforcement. These early posses were thought to have two benefits: the ties of property and family, and love of country and liberty, made posse members effective instruments for the suppression of disorder; and, these characteristics made them unfit to promote any scheme of usurpation.

A twentieth century case in New Jersey examined the doctrine of *posse comitatus*. In *Tull v. State*, 125 N.J. Super.272 (App. Div. 1973), Harold Tull was shot by an unidentified member of the New Jersey State Police, who had been summoned to Asbury Park to assist the city in maintaining order during a civil disturbance. As a result of the injuries that he sustained, Mr. Tull sued the State of New Jersey. The Appellate Division was asked to consider whether the State was liable for the Plaintiff’s injuries under the doctrine of *respondeat superior*. In the context of this case, the Court noted that the Legislature has granted the New Jersey State Police the authority to co-operate with any other State Department or any local authority in detecting crime, apprehending criminals, and preserving law and order.

Mr. Silver summarized that in New Jersey, the authority to summon a posse is mentioned only once in the statute and is vested with the chief executive. It is not defined in the New Jersey statutes, and the role and authority of a posse are not established in either statutes or case law. There is no indication of the Governor’s role regarding a posse, and the statute is also silent regarding the length of time that the State Police may be impressed into such service.

Chairman Gagliardi stated his support for the project. Given the current state of emergency, the Chairman suggested that Staff wait a few months before moving forward with this project. Commissioner Bunn agreed and added that the Staff should reach out the League of Municipalities in addition to the New Jersey State Police.

Staff was authorized by the Commission to engage in additional research and outreach to determine whether it would be appropriate to modify N.J.S. 53:2-1 to remove the term “posse.”

Kidnapping

Samuel Silver began by thanking Marissa Soistman, a New Jersey Institute of Technology Legislative Intern, for her work on this project. He then discussed a Memorandum proposing a project to clarify the “unharmful release” provision of New Jersey’s kidnapping statute and as discussed in *State v. Nunez-Mosquea*, 2017 WL 3623378 (App. Div. 2017).

New Jersey’s Code of Criminal Justice does not set forth the type of harm necessary to convict a defendant of first-degree kidnapping. In *State v. Nunez-Mosquea*, a woman was kidnapped at gunpoint and forced into the defendant’s van. The defendant drove the victim to his home, sexually assaulted her, and eventually released her. From the defendant’s apartment and van, the police recovered the victim’s clothing, college identification, phone, and phone case. The defendant was arrested and charged with first degree kidnapping, convicted, and ultimately sentenced to twenty-five years in prison.

The Appellate Division distinguished *Nunez-Mosquea* from *State v. Sherman*. In *Sherman*, the defendant abducted a child and held her at his mother’s home for approximately 24 hours. During that time, he built her a “fort” from couch cushions and fed her snacks, before deciding he wanted to return her to her parents without receiving a ransom. The defendant dropped her at a shopping mall and instructed her “to run to the first adults she saw and tell them the police were looking for her.” Although she appeared to be “good condition, with no signs of physical injury or emotional distress” and that “the man that took her treated her nicely” she was subsequently diagnosed with post-traumatic stress disorder.

The Court determined that “unharmful release” according to this provision does include emotional or psychological harm. Mr. Silver noted that the Model Jury Charge for kidnapping has twice been amended since the *Sherman* decision. In 2007, the Model Jury Charge for Kidnapping was amended in response to *State v. Sherman* to provide that the State must prove the defendant “knowingly harmed” or “knowingly did not release” the victim in a safe place prior to his apprehension.

In 2014, the model jury charge for kidnapping was revised once again. The model jury charge now provides that: “[i]f the State is contending that the victim suffered emotional or psychological harm, it must prove that the victim suffered emotional or psychological harm beyond that inherent in a kidnapping. That is, the State must prove that the victim suffered substantial or enduring emotional or psychological harm.”

Mr. Silver asked the Commission for authorization to conduct additional research and outreach to determine whether it would be useful to clarify the definition of “unharmful” in New Jersey’s kidnapping statute, to address the fact that physical and psychological harm suffered by the victim should be sufficient to convict a defendant of first degree kidnapping and mirror the language contained in the Model Jury Charge.

Commissioner Bunn commented that the focus of the “safe return” exception in the statute should be maintained and remain unaffected by any proposed changes. Commissioner Bell

inquired how a defendant is supposed to know whether “post-traumatic stress disorder” has affected the victim and whether that is any different from the typical kidnapping. If the kidnapper is not informed of this, the statute would have no effect on the kidnapper’s actions, which is the purpose of the current statute.

Staff was authorized to conduct additional research to determine whether it would be useful to clarify the definition of “unharmful” in N.J.S. 2C:13-1(c) to address emotional or psychological harm suffered by a victim.

Federal Preemption

Arshiya Fyazi presented an update Memorandum on the repeal of the preempted language contained in N.J.S. 54:10A-5(a).

Ms. Fyazi briefly discussed that in October 2019, the Commission authorized Staff to engage in additional research and outreach based upon the holding in *Stanislaus Food Prod. Co. v. Director, Div. of Taxation*. In *Stanislaus*, the Court considered whether the Alternative Minimum Assessment (“AMA”) was an obstacle to the accomplishment and execution of the purposes and objectives of the Interstate Income Act of 1959 (“IIA”). The Court held that the AMA expressly conflicted with the IIA because it specifically targeted IIA entities. The Court further determined that it constituted conflict preemption because it stands as an obstacle to Congress exempting those same entities from net income taxation. As a result, the Court concluded that based on the Preemption Doctrine, the IIA preempts the AMA. Ultimately, the Court determined that the AMA is preempted by IIA pursuant to the Commerce Clause and Supremacy Clause of the United States Constitution.

Ms. Fyazi explained that Staff confirmed that the Legislature repealed the problematic provision of the statute, effective July 31, 2019. As the Legislature has already addressed the constitutional defect in the statute by way of repeal, Staff recommended the conclusion of work in this area.

The Commission unanimously agreed to conclude work in this area.

Bias Intimidation

Samuel Silver and Veronica Fernandes presented an updated memo regarding bills proposing removal of language from N.J.S. 2C:16-1(a)(3).

Several years ago, Staff sought authorization from the Commission to work on a project concerning subsection a.(3) of New Jersey’s Bias Intimidation statute. Staff sought to remove the language that permitted the victims’ perception of the alleged offense to serve as the basis for a conviction. This issue was brought to New Jersey Law Revision Commission’s attention after review of *State v. Pomianek*, 429 N.J. Super. 339 (App. Div. 2013).

The defendant in *State v. Pominanek* was convicted of harassment by communication, harassment by alarming conduct, bias intimidation, and official misconduct. The Appellate

Division affirmed part of the defendant's conviction, reversed the bias-harassment conviction, and remanded the matter to the trial court.

At the March 21, 2013 meeting, the Commission declined to take further action pending review by the Supreme Court. The State's petition for certification was granted and on March 17, 2015, the New Jersey Supreme Court issued an opinion regarding the constitutionality of the bias-crime statute. The Court held that subsection (a)(3) of N.J.S. 2C:16-1, as written, violated the Due Process Clause of the 14th Amendment because it focused on the victim's perception and not the defendant's intent. Further, the statute does not give a defendant sufficient guidance or notice regarding how to conform to the law.

Ms. Fernandes informed the Commission that legislative work in this area began shortly after the Supreme Court's decision. During the 2020-2021 session, seven bills have been introduced in the Legislature regarding the Bias Intimidation Statute, five in the Assembly and two in the Senate.

Three of the five bills introduced in the Assembly address the unconstitutionality of subsection a.(3). Two bills seek to eliminate the entire unconstitutional provision. A2745 seeks to eliminate the provision in the statute concerning the victim's perception of the defendant's purpose and proposes it to be replaced with language concerning a "reasonable" victim.

Mr. Silver noted that given the number of bills pending in the New Jersey Legislature, it is apparent that the Legislature is aware and working on this issue. He asked the Commission's authorization to conclude work in this area since the Legislature is aware of the problem posed by the statutory language and is actively working to address this issue.

The Commission unanimously agreed that no further action shall be taken by the Commission in this area of law.

Inheritance from a Deceased Child

Laura Tharney presented an update Memorandum, prepared by Jennifer Weitz, regarding the status of a project regarding the circumstances under which a biological parent may be precluded from inheriting the estate of a child. The project is based on the Appellate Division decision in *In re Estate of Fisher*, 443 N.J. Super. 180 (App. Div. 2015).

Ms. Tharney discussed *In re Estate of Fisher*, in which the biological father was accused by the biological mother of abandoning their son, which would have prevented the father from inheriting any part of the son's estate. The Appellate Division noted that the father was indeed absent for large parts of his son's life, but never manifested an intent to abandon, as evidenced by the father's attempts to continue communications with his son and his refusal to accept the mother's offer to relinquish child support payments in return for the father's voluntary termination of parental rights.

Ms. Tharney then briefly explained the facts of *In re Acerra*, in which the decedent Luis Acerra never married and had no children or siblings. He was predeceased by his mother, who

died in 2009, and both maternal grandparents. His biological father was never known. Richard Litwin was in a relationship with Acerra's mother at the time of Acerra's birth. Litwin lived with Acerra's mother until her death, and with Acerra for his entire life. Litwin treated Acerra as his own son, providing him with food and shelter, and assisting with his college tuition. Acerra's mother had legal custody of him until a 1995 order awarded Litwin custody, when Acerra was fourteen. Since Litwin never married Acerra's mother, he was not a stepfather, and he never legally adopted Acerra. Further, a 1990 genetic paternity test proved that Litwin was not Acerra's biological father. Louis Acerra died intestate in January 2012 at the age of thirty.

In May 2015, Litwin filed suit to be declared Acerra's legal father under the New Jersey Parentage Act, N.J.S. 9:17-38 to -58, in order to inherit from Acerra's estate. Acerra's uncle and aunt opposed Litwin's motion. They sought to inherit the entirety of Acerra's estate, to the exclusion of Acerra's many "half-blood" aunts, uncles, and other relatives, who themselves had filed suit to inherit.

In September 2015, the trial court dismissed Litwin's complaint with prejudice, finding that he was not Acerra's father and was ineligible to inherit from his estate. The Appellate Court upheld the trial court's ruling, noting that based on the results from the paternity test, "any presumption of paternity was incontrovertibly rebutted." It also rejected Litwin's contention of psychological parentage, finding that its application to intestate succession was inconsistent with the purpose of the Parentage Act.

Ms. Tharney noted that the concept of psychological parentage has been applied only in matters concerning custody, visitation, and child support. In addition, there is no authority allowing a psychological parent to be considered a parent for purposes of intestacy. In the absence of any enforceable agreement to adopt the decedent, or any steps taken to initiate an adoption proceeding, the *Fisher* Court held the trial court was correct in concluding an equitable adoption did not exist, and therefore the father figure could not inherit.

Ms. Tharney explained that Staff examined the manner in which other states treat parental abandonment in the context of inheritance from a child and found that state approaches to a parent's fitness to inherit from a child vary. Some states do not focus on disqualifying behavior *per se*, but instead have requirements for a parent to inherit, generally that the parent openly held out the child as his or her own, and did not withhold support. The majority of states recognize abandonment as a specific category that precludes inheritance from a child. These states follow one of three approaches for determining abandonment: inclusion of a statutory definition, reference to another statutory standard, or case law interpretation.

According to Ms. Tharney, *Acerra* appears to be the only New Jersey case to consider psychological parentage in the context of inheritance.

The New Jersey Legislature considered the inheritance rights of non-biological relatives in May 2018; the bills did not move out of committee in either house. However, in 2019 the Legislature recognized non-biological parents in amendments to the New Jersey Parentage Act.

The Act was amended to extend parental rights to individuals and couples who have become parents by way of assisted reproduction procedures.

The Uniform Law Commission also recognized de facto parents in the Uniform Probate Act of 2019. Noting that amendments to the Probate Code were necessary after release of the Uniform Parentage Act in 2017, the 2019 Amendments to the Uniform Probate Act aim “to provide greater consistency in determining intestate shares within blended families, remove outdated terminology, and incorporate the concept of de facto parentage.”

Commissioner Bunn asked if the Commission did anything with respect to the Uniform Probate Act. Ms. Tharney advised him that Staff had begun considering that project some time ago, but that it was not one of the projects that Staff was actively working on at this time. She said that if the Commission would like, Staff could combine this project with the Probate Code update project. Commissioner Bell noted that part of the Commission’s responsibility is to comment on the work of the Uniform Law Commission. He added that since the Legislature is working in this area it might be helpful to bring to their attention the work from the ULC that might be germane to the issue and provide the Commission’s view on it. Chairman Gagliardi agreed.

John Cannel noted that there is a second Uniform Law that was released about a year ago, the Non-Parent Custody and Visitation Act, that is a related issue; he suggested that it could be rolled into this project as well. Commissioner Bunn stated that Staff should take a look and then recommend whether these two projects should be combined.

Commission advised Staff to continue with research and outreach in this area, including to determine if the projects should be combined.

Juvenile Detention

Arshiya Fyazi presented an update on bills related to the incarceration of juvenile offenders. The constitutional issue related to the detention of developmentally disabled juveniles was brought to the Commission’s attention after Staff reviewed the Appellate Division decision in *State in Interest of T.C.*, 454 N.J. Super. 189 (App. Div. 2018). The statute at issue is N.J.S. 2A:4A-43(c).

Ms. Fyazi briefly discussed the facts in *T.C.* As a child, T.C. was classified as disabled and on the autism spectrum. At the age of 17, T.C. pled guilty to a crime and the Court imposed a two-year probationary term with 30 days at the Ocean County Juvenile Detention Center and 30 days of electronic monitoring. T.C. appealed his sentence and argued that the law did not allow for developmentally disabled juveniles to be incarcerated in a state or county facilities.

The State maintained that N.J.S. 2A:4A-43(c) allows a juvenile to be detained in a county in which there is a facility that meets the requirements of the Juvenile Justice Commission. At the time of the appeal, nine counties lacked access to an approved juvenile detention facility. The Appellate Division considered the constitutionality of subjecting some developmentally disabled juveniles to short term post-adjudication incarceration while others, based solely on their geography, would be released from custody. The Court found that a plain reading of the Juvenile

Justice Code violated New Jersey's constitutional guarantee of equal protection. The Court in *T.C.* held that juveniles with developmental disabilities may not be held in county detention facilities if there was no certified, short-term incarceration program in every county.

In July 2018, the Commission authorized review of pending legislation and requested that Staff provide the Commission with an analysis of this legislation in a future Memorandum. In this new legislative session, Staff found two bills that seek to amend N.J.S. 2A:4A-43.

Assembly Bill 1414 is identical to Senate Bill 2249. Both propose to establish a Juvenile Offender Community Conservation and Improvement Services program and a 90-day nonresidential program that would offer courts an alternate sentencing option for non-violent juvenile offenders. The bills do not address the constitution defect discussed by the Court in *State in Interest of T.C.*

Assembly Bill 1915 focuses on juvenile incarceration and parole. his bill imposes restrictions on the incarceration of juveniles; eliminates fines; and proposes to establish a program to collect, record and analyze data regarding juveniles who were incarcerated. Although the newly enacted statute addresses the incarceration of juvenile offenders, it does not address the constitutional deficiency discussed by the court in *In the Interest of T.C.*

Commissioner Bunn asked whether it would be possible to remedy the Equal Protection violation that occurs in these situations without recommending a program for incarceration of juveniles in counties without that facility. Any such recommendation would presumably necessitate an allocation of funds which is not the usual course that the Commission would take. Chairman Gagliardi suggested that identification of the issue and bringing it to the attention of the Legislature appears to be within the scope of the Commission's work.

The Commission authorized Staff to continue with research and outreach, including the examination the potential solutions to the issues mentioned.

Miscellaneous

Given the impact of COVID-19, Chairman Gagliardi noted that there is a likelihood that the next meeting of the Commission would be held by way of a video conference.

To provide stakeholders with the opportunity to appear before the Commission, the Revised Draft Final Report regarding Standard Form Contracts will tentatively be placed on the June 2020 Agenda.

Laura Tharney advised the Commission that the article drafted by the NJLRC will be published in an upcoming edition of the Seton Hall Legislative Law Journal.

On April 22, 2020, Laura Tharney will be representing the Commission in a New Jersey State Bar Association Continuing Legal Education Program. The real estate conference will be held via webcast and will feature presentations by other participants known to the Commission, including Alexander Fineberg, David Ewan, and Lawrence Fineberg. Ms. Tharney added that the

Commission has worked, over the years, on more than 20 projects that address various areas of real estate law.

Adjournment

The meeting was adjourned on the motion of Commissioner Bunn, which was seconded by Commissioner Bertone.

The next Commission meeting is scheduled to be held on May 21, 2020, at 4:30 p.m.