

**To: New Jersey Law Revision Commission**  
**From: Samuel M. Silver**  
**Re.: Use of Magistrate in the New Jersey Statutes**  
**Date: January 13, 2020**

## MEMORANDUM

### Executive Summary

Staff was previously asked to review the usage of the term “misdemeanor” in the New Jersey Statutes.<sup>1</sup> During the course of that project, Staff noted that a non-Code statute requires a police officer to bring an individual who has been arrested before a “municipal magistrate.”<sup>2</sup>

A cursory examination of the New Jersey Statutes confirmed the current use of the term “magistrate.” The presence of this anachronistic term in the New Jersey’s statutes may obfuscate the law contained in the statutory provisions in which it appears.

### Historical Background

In New Jersey, the formation of judicial tribunals pre-dates the appointment of the royal governor in 1703.<sup>3</sup> Under the “Proprietors,” the colonists had formed courts to adjudicate legal disputes which served as the basis for the “Ordinance of Lord Cornbury.”<sup>4</sup>

The “Ordinance of Lord Cornbury” officially created the first courts of New Jersey.<sup>5</sup> As early as 1667, court cases were heard in Monmouth County.<sup>6</sup> One year later, in 1668, courts were convened in both Bergen and Woodbridge.<sup>7</sup> By 1669, Newark began to hold its own “town courts” on an annual basis.<sup>8</sup> By November of 1675, the assembly in East Jersey created several courts that would be held on a monthly basis in each county.<sup>9</sup>

In 1682, East Jersey was transferred to the twenty-four proprietors.<sup>10</sup> The assembly subsequently divided the province into four counties and reorganized the courts for “the better governing and settling courts in the same....”<sup>11</sup> This year also marked the creation of a court of

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<sup>1</sup> N.J. Law Rev. Comm’n, Final Report Addressing the Use of the Term “Misdemeanor” in the New Jersey Statutes (March 21, 2019), available at <https://www.njlrc.org/projects/2019/5/30/wills-w5zeb?rq=misdemeanor>

<sup>2</sup> See N.J.S. 27:19-36.3 (relating to the arrest of individuals on any bridge owned by or under the control of a county bridge commission).

<sup>3</sup> Edward Q. Keasby, *The Courts of New Jersey and Some Account of Their Origin and Jurisdiction*, N.J. Law Journal, Vol. XVII, No. 5, 131, 132 (May 1894).

<sup>4</sup> *Id.* at 132-133.

<sup>5</sup> *Id.* at 133.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

Common Right.<sup>12</sup> An appeal was given from the court of Common Right to the King, provided that the party could pay the costs of suit, the judgment entered against him, security to prosecute his suit within eighteen months, or pay costs “if cast in the appeal.”<sup>13</sup> The Courts of East New Jersey, did not resemble those of West New Jersey in either name or structure.<sup>14</sup>

The western courts differed from their eastern counterpart and more closely resembled the courts established in the united colony.<sup>15</sup> By 1681, three justices, or commissioners, sat in every court accompanied by “twelve men of the neighborhood.”<sup>16</sup> Together they would, “hear all causes, and assist the twelve men with the law, and pronounced the judgment of the twelve men in whom the judgment resides.”<sup>17</sup> In 1682, a total of four session courts with unlimited jurisdiction were to be held yearly in Burlington and Salem.<sup>18</sup> From 1685 through 1699, West Jersey established the following: courts small causes; a county court; a Court of Appeals; a Court of Oyer and Terminer; a Supreme Court of Appeals; and, the Provincial Court, or the Court of Appeals.<sup>19</sup>

To a large extent, these courts formed the basis of the judicial system organized by the royal governors after the Proprietors surrendered the government to the Crown.<sup>20</sup> Although the new courts were modeled closely to the English courts, they managed to retain some of the “peculiar” features of these predecessor courts.<sup>21</sup> Notably, “[t]he magistrate [was] made the judge of the first civil court set up in the new country, and some of the rules of our present practice can be found in the earliest statutes regulating this court.”<sup>22</sup>

By 1776, “[t]he courts referred to in the first constitution had already been created by ordinance or by statute.”<sup>23</sup> At the time, the nature and jurisdiction of these judicial bodies was well understood.<sup>24</sup> The drafters, therefore, saw no need to do more than refer to them by name.<sup>25</sup> In each town, elected justices of the peace presided over legal matters without a jury.<sup>26</sup> These judicial officials were “[a]t times elected solely for political party control, often resulting in

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<sup>12</sup> *Id.* at 134.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 135.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* These session courts did not have jurisdiction over capital cases. It should be noted that no provision was made for these types of matters.

<sup>19</sup> *Id.* at 135-136.

<sup>20</sup> *Id.* at 136.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> John Morelli, *Rising from the Chaos: A history of the Municipal Courts*, 197 N.J. Law. 8 (1997).

officials who were illiterate, partial or courting popularity.”<sup>27</sup> The adoption of the 1844 Constitution did little to alter New Jersey’s system of jurisprudence.<sup>28</sup>

By the early 20<sup>th</sup> century, New Jersey municipalities had established a number of independent local courts.<sup>29</sup> In what has been described as “a confusing jumble of courts” the police courts, records courts, magistrates courts and family court exercised ambiguous and overlapping jurisdiction.<sup>30</sup> Chapter 264, of the Laws of 1954, was designed to replace the “... haphazard set of local courts with a more effective system as part of a statewide judiciary, in implementation of the Constitution of 1947.”<sup>31</sup> In addition, the judicial article of the 1947 Constitution replaced the multiplicity of courts with a simplified court structure that included “such inferior courts as established by the legislature.”<sup>32</sup> The Legislature would eventually abolish the police, magistrate and recorder courts and authorize the establishment of municipal courts.<sup>33</sup> Magistrates would ultimately become known as a judges of the municipal court.<sup>34</sup>

### Definition

The word “magistrate” now seems to be nothing more than a vestige of a bygone era. Nevertheless, it is still be found in the New Jersey statutes. In Title 1 of the New Jersey Statutes, the term magistrate is defined to include, “...any judge, municipal magistrate or officer or other person having the powers of a committing magistrate.”<sup>35</sup>

The term “magistrate” is defined in a total of six statutes, spanning four titles.<sup>36</sup> The New Jersey statutes do not, however, contain a uniform definition for this term.<sup>37</sup> The “Definitions and General Rules of Construction” define magistrate as any judge, municipal magistrate or officer or other person having the powers of a committing magistrate.<sup>38</sup> In the context of Alcohol Beverage Law, a magistrate is defined simply as the Superior or Municipal Court.<sup>39</sup> New Jersey’s Motor Vehicle and Traffic Laws define a magistrate as any Court and the Superior Court, and any officer having the powers of a committing magistrate and the chief administrator.<sup>40</sup> In that same Title, the Director of the Motor Vehicle Commission is vested with

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> John Morelli, *Rising from the Chaos: A history of the Municipal Courts*, 197 N.J. Law. at 8.

<sup>30</sup> *Id.*

<sup>31</sup> *Krieger v. Jersey City*, 27 N.J. 535, 539 (1958).

<sup>32</sup> John Morelli, *Rising from the Chaos: A history of the Municipal Courts*, 197 N.J. Law. at 9 *citing* N.J. Const. (1947), Art. VI §1.

<sup>33</sup> *Id.* See N.J.S. 2A:8-2. See N.J.S. 2B:12-1.

<sup>34</sup> N.J.S. 2B:12-4.

<sup>35</sup> N.J.S. 1:1-2.

<sup>36</sup> See N.J.S. 1:1-2; N.J.S. 33:1-1; N.J.S. 39:1-1; N.J.S. 39:5-2; N.J.S. 48:4-35; and, N.J.S. 48:4-46.

<sup>37</sup> *Id.*

<sup>38</sup> N.J.S. 1:1-2.

<sup>39</sup> N.J.S. 33:1-1.

<sup>40</sup> N.J.S. 39:1-1.

the same powers as a magistrate.<sup>41</sup> In New Jersey’s Public Utilities statutes, judges and officers having the powers of the committing magistrate are defined as magistrates<sup>42</sup>; and, are equated with all judges of county and criminal courts, and other officers having powers of the committing magistrate.<sup>43</sup>

The multiple definitions of the term magistrate serve as one source of statutory confusion regarding this word, the statutory references to various types of magistrates serve as another.

### **Magistrate**

Within the 88 statutes that use the word “magistrate” there are several statutes that reference six distinct types of magistrates.<sup>44</sup> These statutes include references to: the committing magistrate<sup>45</sup>; the issuing magistrate<sup>46</sup>; the police magistrate<sup>47</sup>; the municipal magistrate<sup>48</sup>; the chief magistrate<sup>49</sup>; and, the neighboring magistrate.<sup>50</sup> None of these terms is defined.

### **Conclusion**

Staff seeks authorization to conduct additional research and outreach regarding the use of the term “magistrate” to determine whether it would be of assistance to update the statutes and, if appropriate, recommend removal of the term.

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<sup>41</sup> N.J.S. 39:5-2.

<sup>42</sup> N.J.S. 48:4-35.

<sup>43</sup> N.J.S. 48:4-46(f).

<sup>44</sup> N.J.S. 1:1-2; N.J.S. 2A:14-19; N.J.S. 2A:14-29; N.J.S. 2A:33-5; N.J.S. 2A:33-22; N.J.S. 2A:67-4; N.J.S. 2A:152-13; N.J.S. 2A:155-5; N.J.S. 2A:160-11; N.J.S. 2A:160-21; N.J.S. 2A:160-22; N.J.S. 2A:160-23; N.J.S. 2A:160-24; N.J.S. 2A:160-26; N.J.S. 2A:160-32; N.J.S. 2A:162-5; N.J.S. 2A:166-17; N.J.S. 2A:166-18; N.J.S. 2A:169-3; N.J.S. 2C:52-10; N.J.S. 21. 4:15-5; N.J.S. 4:15-9; N.J.S. 6:5-8; N.J.S. 19:32-23; N.J.S. 19:32-24; N.J.S. 19:32-46; N.J.S. 19:32-47; N.J.S. 23:3-15; N.J.S. 23:3-20; N.J.S. 23:5-30; N.J.S. 23:13-1; N.J.S. 24:1-2; N.J.S. 27:19-36.3; N.J.S. 30:8-22; N.J.S. 30:8-33; N.J.S. 30:9-12.17; N.J.S. 30:9-12.21; N.J.S. 32:2-25; N.J.S. 32:4-6; N.J.S. 32:10-2; N.J.S. 32:26-13; N.J.S. 33:1-1; N.J.S. 33:1-56; N.J.S. 33:1-57; N.J.S. 33:1-59; N.J.S. 33:1-60; N.J.S. 33:1-61; N.J.S. 33:1-62; N.J.S. 33:1-71; N.J.S. 37:1-13; N.J.S. 37:1-13.1; N.J.S. 39:1-1; N.J.S. 39:3-79.2; N.J.S. 39:4-14.3; N.J.S. 39:4-56.2; N.J.S. 39:4-201; N.J.S. 39:4-210; N.J.S. 39:5-2; N.J.S. 39:5-6; N.J.S. 39:5-7; N.J.S. 39:5-9; N.J.S. 39:5-27; N.J.S. 39:5-28; N.J.S. 39:5-31; N.J.S. 39:7-7; N.J.S. 39:12-12; N.J.S.40:24-9; N.J.S. 40:37-203; N.J.S. 40:61-22.13; N.J.S. 40:61-22.28; N.J.S. 40:61-26; N.J.S. 40:69A-207; N.J.S. 40A:5-41; N.J.S. 41:2-5; N.J.S. 41:2-6; N.J.S. 48:4-35; N.J.S. 48:4-43; N.J.S. 48:4-46; N.J.S. 48:4-54; N.J.S. 48:12-166; N.J.S. 51:8-19; N.J.S. 51:9-11; N.J.S. 56:3-21; N.J.S. 58:5A-4; N.J.S. 27:17-1(25); N.J.S. 27:17-1(35) N.J.S. 40:43-65(7); and, Val.:4-7.3.

<sup>45</sup> N.J.S. 1:1-2; N.J.S. 30:8-22; N.J.S. 39:1-1; N.J.S. 39:7-7; N.J.S. 40:24-9; N.J.S.48:4-35; N.J.S. 48:4-46.

<sup>46</sup> N.J.S. 33:1-56; N.J.S. 33:1-57; N.J.S. 33:1-59; N.J.S. 33:1-60; N.J.S. 33:1-61; N.J.S. 33:1-62.

<sup>47</sup> N.J.S. 27:17-1(25); N.J.S. 40-37-203.

<sup>48</sup> N.J.S. 1:1-2; N.J.S. 2A:14-19; N.J.S. 27:19-36.3; N.J.S. 37:1-13.1; N.J.S. 40:69A-207; N.J.S. 40A:5-41.

<sup>49</sup> Val. 4-7.3.

<sup>50</sup> N.J.S. 2A:155-5.