



NEW JERSEY LAW REVISION COMMISSION

Final Report Regarding the Approach of Pedestrians and the Use of the Term “Personal Conveyance” and “Pedestrian” in N.J.S. 39:4-92.4

October 20, 2022

The work of the New Jersey Law Revision Commission is only a recommendation until enacted.

Please consult the New Jersey statutes in order to determine the law of the State.

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Project Summary

In August of 2021, Governor Phil Murphy signed into law a bill¹ to protect pedestrians and “vulnerable road users” from the possibility of being injured by motor vehicles.² Pursuant to the new law, N.J.S. 39:4-92.4, when the operator of a motor vehicle approaches a “pedestrian, bicycle, low-speed electric bicycle, low-speed electric scooter, or any other lawful personal conveyance” they are required to do so with “due caution.”³

The statute defines the terms bicycle, low-speed electric bicycle, low-speed electric scooter, and pedestrian⁴ The term “lawful personal conveyance,” however, is not defined in N.J.S. 39:4-92.4 or anywhere else in the New Jersey statutes.⁵ Without clarification, the term “lawful conveyance” is subject to multiple interpretations.

The Commission has been asked to consider what constitutes a “lawful personal conveyance.”⁶ After a nationwide examination of this subject, the Commission recommends the modification of N.J.S. 39:4-92.4 to provide a definition for the term “personal conveyance.” The presence of such a definition is intended to educate the operators of vehicles about their responsibilities when approaching vulnerable road users, and to provide those responsible for enforcing the statute with guidance to uniformly enforce the law.⁷

Statute Considered

N.J.S. 39:4-92.4, entitled “Approach of pedestrians and bicycles by motor vehicle; definitions requirements penalties,” states in relevant part that:

* * *

b. The operator of a motor vehicle approaching a pedestrian, bicycle, low-speed electric bicycle, low-speed electric scooter, or **any other lawful personal conveyance** located or operating in an area designated for pedestrians or those conveyances, as appropriate, on the roadways of this State shall approach with due

¹ N.J.S. 39:4-92.4. A.B. 5656, 219th Leg., Second Ann. Sess. (N.J. 2021) (L. 2021, c.194, § 1, eff. Mar. 01, 2022).

² Larry Higgs, *Drivers Must now Move Over when Passing People Walking and on Bikes*, NJ.com (Aug. 07, 2021), <https://www.nj.com/news/2021/08/drivers-must-now-move-over-when-passing-people-walking-and-on-bikes.html?outputType=amp>.

³ N.J. STAT. ANN. § 39:4-92.4b.(1) – (3) (West 2021). In exercising “due caution” the operator of a motor vehicle may (1) make a lane change into a lane not adjacent to the pedestrian or personal conveyance; (2) if a lane change is not possible, they may allow a minimum of four feet between the car and the person being passed; or (3) they shall slow to twenty-five miles per hour and prepare to stop.

⁴ N.J. STAT. ANN. § 39:4-92.4a. (West 2021).

⁵ *Id.*

⁶ The absence of a statutory definition for “lawful personal conveyance” was brought to Staff’s attention via an e-mail from William Yarzab, St. Smart NJ Coordinator, North Jersey Transp. Planning Auth., to Samuel M. Silver, Dep. Dir., N.J. Law Rev. Comm’n (Oct. 06, 2021, 3:51 PM EST) (on file with the NJLRC). Before retiring in Feb. of 2013, William Yarzab served as a Lieutenant in the Randolph Police Dept. where he was the Division Commander for the Administrative Division.

⁷ *See infra* Appendix.

caution and shall, absent any other direction by a law enforcement officer, proceed as follows:

(1) when possible under existing safety and traffic conditions, make a lane change into a lane not adjacent to the pedestrian or **personal conveyance**;

(2) if a lane change cannot be made pursuant to paragraph (1) of this subsection, leave a reasonable and safe distance of not less than four feet while approaching the pedestrian or **personal conveyance** and maintain a distance of at least four feet until the motor vehicle has safely passed the **conveyance**; or

(3) if it is not possible, prohibited by law, or unsafe to make a lane change pursuant to paragraph (1) of this subsection or to leave a reasonable and safe distance of not less than four feet pursuant to paragraph (2) of this subsection, the motor vehicle operator shall reduce the speed of the motor vehicle to 25 miles per hour or a lower posted speed and be prepared to stop; the operator may pass the pedestrian or **personal conveyance** only if, considering the size and speed of the motor vehicle, traffic conditions, weather, visibility, and the surface and width of the roadway, passing does not endanger the safety of a pedestrian, operator of the **personal conveyance**, or any other person on the roadway.⁸

* * * *

Background

In just over a decade, cities nationwide have experienced a proliferation of micromobility transportation technology.⁹ The Federal Highway Administration (FHWA) defines micromobility as: “[a]ny, small, low-speed, human or electric-powered transportation device, including bicycles, scooters, electric-assist bicycles... electric scooters... and other small lightweight, wheeled conveyances.”¹⁰ The Federal Highway Administration has categorized micromobility users as “vulnerable road users,” akin to pedestrians, because these modes of transportation lack the protection of an enclosed vehicle.¹¹

During 2020 and 2021, there was an increase in road use in New Jersey by people “walking, bicycling, and using scooters.”¹² This was accompanied by a 9% increase in the pedestrian fatality

⁸ N.J.S. 39:4-92.4 (emphasis added).

⁹ *Micromobility, Emergence of New Transp. Modes*, *1 (U.S. Dept. of Transp., Wash. D.C.) available at https://rosap.ntl.bts.gov/view/dot/54137/dot_54137_DS1.pdf?#:~:text=FHWA%20defines%20micromobility%20as%3A,small%2C%20lightweight%2C%20wheeled%20conveyances (last visited Dec. 07, 2021).

¹⁰ *Id.*

¹¹ *Id.* at *2.

¹² Larry Higgs, *Law Requires Cars to Move Over to Pass Cyclists, Pedestrians headed to Gov’s Desk*, NJ.Com (Aug. 07, 2021), <https://www.nj.com/news/2021/06/law-requiring-cars-to-move-over-to-pass-cyclists-pedestrians-headed-to-govs-desk.html>; Larry Higgs, *New Driving Law Quietly Debuts Tuesday. Here are the New Passing Rules for N.J. Drivers*, NJ.Com (Mar. 01, 2022), <https://www.nj.com/news/2022/03/a-new-driving-law-quietly-debuts-tuesday-here-are-the-new-passing-rules.html>.

rate.¹³ People of color, the elderly, and people who did not have cars accounted for 34% of those deaths.¹⁴ In 2020, New Jersey had the eighth highest number of pedestrian deaths in the United States.¹⁵

To protect vulnerable road users, the majority of states have enacted “safe passing” laws.¹⁶ When New Jersey’s Governor signed N.J.S. 39:4-92.4, New Jersey joined forty-two other states and the District of Columbia in requiring the operator of a motor vehicle to leave either a minimum distance or a “safe distance” when passing a bicyclist.¹⁷

A number of states, including New Jersey, use “safe passing” statutes to protect not just bicyclists, but other vulnerable roadway users as well.¹⁸ These statutes create a legal framework

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ NCSL, *Safely Passing Bicyclists Chart*, (Sept. 10, 2021) <https://www.ncsl.org/research/transportation/safely-passing-bicyclists.aspx>.

¹⁷ ALA. CODE § 32-5A-82 (West 2022); ARIZ. REV. STAT. ANN. § 28-735 (West 2022); ARK. CODE ANN. § 27-51-311 (West 2022); CAL. VEH. CODE § 21760 (West 2022); COLO. REV. STAT. ANN. § 42-4-1002 (West 2022); CONN. GEN. STAT. ANN. § 14-232 (West 2022); DEL. CODE ANN. TIT. 21, § 4116 (West 2022); D.C. MUN. REGS. TIT. 18, § 2202 (West 2022); FLA. STAT. § 316.083 (West 2022); GA. CODE ANN. § 40-6-56 (West 2022); HAW. REV. STAT. ANN. § 291C-43 (West 2022); 625 ILL. COMP. STAT. ANN. 5/11-703 (West 2022); KAN. STAT. ANN. § 8-1516 (West 2022); KY. REV. STAT. ANN. § 189.340 (West 2022); LA. STAT. ANN. § 32:76.1 (West 2022); ME. REV. STAT. TIT. 29-A, § 2070 (West 2022); MD. CODE ANN., TRANSP. § 21-1209 (West 2022); MICH. COMP. LAWS ANN. § 257.636 (West 2022); MINN. STAT. ANN. § 169.18 (West 2022); MISS. CODE ANN. § 63-3-1309 (West 2022); NEB. REV. STAT. ANN. § 60-6,133 (West 2022); NEV. REV. STAT. ANN. § 484B.270 (West 2022); N.H. REV. STAT. ANN. § 265:143-A (West 2022); **N.J. STAT. ANN. § 39:4-92.4b (West 2022)**; N.D. CENT. CODE ANN. § 39-10-11.1 (West 2022); OHIO REV. CODE ANN. § 4511.27 (West 2022); OKLA. STAT. ANN. TIT. 47, § 11-1208 (West 2022); 75 PA. STAT. AND CONS. STAT. ANN. § 3303 (Purdon’s 2022); S.D. CODIFIED LAWS § 32-26-26.1 (West 2022); TENN. CODE ANN. § 55-8-175 (West 2022); UTAH CODE ANN. § 41-6A-706.5 (West 2022); VA. CODE ANN. § 46.2-839 (West 2022); VA. CODE ANN. § 46.2-905 (West 2022); WASH. REV. CODE ANN. § 46.61.110 (West 2022); W. VA. CODE ANN. § 17C-7-3 (West 2022); WYO. STAT. ANN. § 31-5-203 (West 2022) (**requiring a motorist to leave at least three, or more, feet when passing a bicyclist**). *Compare* MASS. GEN. LAWS ANN. CH. 89, § 2 (West 2022); MO. ANN. STAT. § 300.411 (West 2022); MONT. CODE ANN. § 61-8-320 (West 2022); N.Y. VEH. & TRAF. LAW § 1122-A (McKinney 2022); OR. REV. STAT. ANN. § 811.065 (West 2022); 31 R.I. GEN. LAWS ANN. § 31-15-18 (West 2022); S.C. CODE ANN. § 56-5-3435 (West 2022); VT. STAT. ANN. TIT. 23, § 1033 (West 2022) (**requiring motorists to pass at a “safe distance”**).

¹⁸ CONN. GEN. STAT. ANN. § 14-232 (West 2022) (including electric foot scooters, garbage compactors, tank vehicles, United States postal vehicles, express delivery carriers, and agricultural tractors); FLA. STAT. § 316.083 (West 2022) (including non-motorized vehicles); 625 ILL. COMP. STAT. ANN. 5/11-703 (West 2022) (including pedestrians, persons riding animals and animal-drawn vehicles); KY. REV. STAT. ANN. § 189.340 (West 2022) (including electric low speed scooters); ME. REV. STAT. TIT. 29-A, § 2070 (West 2022) (including roller skis); MD. CODE ANN., TRANSP. § 21-1209 (West 2022) (including motor scooters and electronic personal assist mobility devices - EPAMDs); MINN. STAT. ANN. § 169.18 (West 2022) (including pedestrians); NEB. REV. STAT. ANN. § 60-6,133 (West 2022) (including EPAMDs); NEV. REV. STAT. ANN. § 484B.270 (West 2022) (including electric scooters and pedestrians); **N.J. STAT. ANN. § 39:4-92.4b (West 2022)** (including electric scooters, pedestrians and personal conveyances); UTAH CODE ANN. § 41-6a-706.5 (West 2022) (defining “vulnerable user of a highway” as those operating motor scooters, skateboards, roller skates, in-line skates, motor drive-cycles, manual wheelchairs, golfcarts, mopeds, agricultural tractors, pedestrians, persons riding animals, EPAMDs); VA. CODE ANN. § 46.2-839 (West 2022) (including motorized skateboards, mopeds, persons riding animals, animal drawn vehicles; EPAMDs); VT. STAT. ANN. TIT. 23, § 1033 (West 2022) (defining vulnerable user a pedestrian; an operator of highway building, repair, or maintenance equipment or of agricultural equipment; a person operating a wheelchair or other personal mobility device, whether motorized or not; a person operating a bicycle or other nonmotorized means of transportation (such as roller skates, rollerblades, or roller skis); a person operating a motor-assisted bicycle or an electric bicycle; or a person riding,

to protect vulnerable users of the roadways, create a “less arbitrary standard,” and raise awareness of the importance of safe road practices.¹⁹ In addition to specified modes of transportation, N.J.S. 39:4-92.4 offers protection to individuals operating a “lawful personal conveyance.” Concern about the absence of a definition of “lawful personal conveyance” was brought to the attention of the Commission by a member of the public.²⁰

Analysis

The newly-enacted safe passing statute, N.J.S. 39:4-92.4, is similar to the New Jersey statute that requires the operator of a motor vehicle to use “due caution” when approaching a stationary, authorized emergency vehicle.²¹ Pursuant to N.J.S. 39:4-92.4, the operator of a motor vehicle is required to take certain actions when they encounter a pedestrian, or three other specified and statutorily defined road users – bicycles, low-speed electric bicycles, and low-speed electric scooters.²² The statute requires the operator of a motor vehicle to take the same actions when they encounter an individual operating “any other lawful personal conveyance.”²³

• *Undefined Term*

An examination of the New Jersey statutes and the New Jersey Administrative Code confirmed that the term “personal conveyance” is not defined in either, although the term appears six times in three New Jersey statutes and twice in the New Jersey Administrative Code.²⁴ A search of the term in Title 23 of the Code of Federal Regulations also did not yield a definition.²⁵

In New Jersey’s Motor Vehicle statutes, the term “personal conveyance” is used in the definition of “recreation vehicle” as “a self-propelled or towed vehicle equipped to serve as temporary living quarters for recreational, camping or travel purposes and used solely as a family or personal conveyance.”²⁶

driving, or herding an animal); WASH. REV. CODE ANN. § 46.61.110 (West 2022) (defining a vulnerable user to include pedestrians, motor scooters, motor driven cycles, mopeds, farm tractors; a person riding an animal, a motorized foot scooter, EPAMDs, a motorcycle).

¹⁹ See *supra* note 16.

²⁰ See Yarzab *supra* note 6.

²¹ N.J. STAT. ANN. § 39:4-92.2 (West 2022), commonly referred to as the “move over law.” Larry Higgs, *Drivers Must Now Move Over When Passing People Walking and on Bikes*, NJ.Com (Aug. 05, 2021), <https://www.nj.com/news/2021/08/drivers-must-now-move-over-when-passing-people-walking-and-on-bikes.html>.

²² N.J. STAT. ANN. § 39:4-92.4b.(1) – (3) (West 2022).

²³ *Id.*

²⁴ N.J. STAT. ANN. § 39:1-1 (West 2021); N.J. STAT. ANN. § 39:3-10.11 (West 2022); N.J. STAT. ANN. § 39:4-92.4b.(1) – (3) (West 2021); N.J. ADMIN. CODE § 13:21-23.1 (West 2022), and N.J. ADMIN. CODE § 19:9-1.1 (West 2022).

²⁵ See 23 C.F.R. § 490.205 (2021), entitled “Definitions,” (noting that number of non-motorized fatalities means the total number of fatalities involving pedestrian, bicyclist, other cyclist, and person on personal conveyance).

²⁶ N.J. STAT. ANN. § 39:1-1 (West 2022); N.J. STAT. ANN. § 39:3-10.11 (West 2022). The definition of “recreation vehicle” is identical in each statute and in the administrative code.

• *Fifty State Survey and Federal Guidance – Personal Conveyance*

An examination of the transportation statutes from across the country, and the District of Columbia, confirmed that only one other state – Kansas – uses the term *personal conveyance* when referring to a method of transportation.²⁷ In Kansas, the head of a state agency is prohibited from reimbursing a state employee for “any loss sustained to a state employee’s *personal conveyance*, or any related expense, when the conveyance was used on official state business.”²⁸ Like the New Jersey statutes, the Kansas statutes do not provide a definition for this term.²⁹

The term “personal conveyance” has been defined by the United States Department of Transportation. The Federal Motor Carrier Safety Administration defines a personal conveyance as “the movement of a commercial motor vehicle (CMV) for personal use while off-duty.”³⁰ In this context, the term indicates the capacity – professional or personal – in which an individual is operating a motor vehicle.

• *Fifty State Survey – Safe Passing Statutes*

The Commission also undertook an examination of each state’s safe passing statutes. Every state with safe passing statutes provides protection for bicyclists.³¹ Fourteen states provide protection to road users other than bicyclists.³² Of the fourteen, no two states set forth an identical list of protected roadway users.³³ Three states, Utah,³⁴ Vermont,³⁵ and Washington,³⁶ use the term “vulnerable users” to refer to persons traveling on roadways using an enumerated method of transportation. The Utah statute sets forth comprehensive protection for vulnerable road users, is accessible, and reflects contemporary drafting standards.

At the February 17, 2022, Commission meeting, the Commission discussed the further clarification of the proposed modifications to the statutory definitions set forth in the Appendix to

²⁷ KAN. STAT. ANN. § 46-922(f). (West 2022).

²⁸ *Id.*

²⁹ *Id.*

³⁰ The Federal Motor Carrier Safety Administration is the lead federal government agency responsible for regulating and providing safety oversight of commercial motor vehicles. U.S. DEPT. OF TRANSP., FEDERAL MOTOR CARRIER SAFETY ADMIN., “Who We Are,” <https://www.fmcsa.dot.gov/mission/who> (last visited Dec. 08, 2021).

³¹ *See supra* note 17.

³² *See supra* note 18.

³³ *Id.*

³⁴ UTAH CODE ANN. § 41-6a-706.5 (West 2022) (defining “vulnerable user of a highway” as those operating motor scooters, skateboards, roller skates, in-line skates, motor drive-cycles, manual wheelchairs, golfcarts, mopeds, agricultural tractors, pedestrians, persons riding animals, EPAMDs).

³⁵ VT. STAT. ANN. TIT. 23, § 1033 (West 2022) (defining vulnerable user a pedestrian; an operator of highway building, repair, or maintenance equipment or of agricultural equipment; a person operating a wheelchair or other personal mobility device, whether motorized or not; a person operating a bicycle or other nonmotorized means of transportation (such as roller skates, rollerblades, or roller skis); a person operating a motor-assisted bicycle or an electric bicycle; or a person riding, driving, or herding an animal).

³⁶ WASH. REV. CODE ANN. § 46.61.110 (West 2022) (defining a vulnerable user to include pedestrians, motor scooters, motor driven cycles, mopeds, farm tractors; a person riding an animal, a motorized foot scooter, EPAMDs, a motorcycle).

the Draft Tentative Report.³⁷ The Commission suggested that the definitions should be modified “to encompass the categories that the current modifications articulate individually.”³⁸ The Commission opined that “the goal of the statute is to protect people who do not have the protection of a motor vehicle while on the roadway.”³⁹ Such a definition section, they continued, “may result in a more concise statute that addresses categories of protected individuals that may, as yet, be unanticipated.”⁴⁰

• *Fifty State Survey - Pedestrian*

Throughout the country, the term pedestrian identifies individuals who are afoot, using a wheelchair, using certain personal conveyances, or are not occupying a motor vehicle. At the request of the Commission, Staff undertook an examination of how the term pedestrian is used in each of the fifty states, and the District of Columbia.⁴¹

The definition of the pedestrian set forth in the New Jersey statutes is virtually identical to the definition of the term in sixteen other states - “a person afoot.”⁴² Twenty states, and the District of Columbia, have expanded the definition of pedestrian from “persons afoot” to include persons who use a wheelchair, or similar device to assist with ambulation.⁴³ In addition to “persons afoot,” five states include various means of conveyances in their definition of the term pedestrian.⁴⁴

³⁷ N.J. Law Revision Comm’n, DRAFT TENTATIVE REPORT REGARDING THE USE OF THE TERM ‘PERSONAL CONVEYANCE’ IN N.J.S. 39:4-92.4 at *7-*10 (Feb. 07, 2022).

³⁸ N.J. LAW REVISION COMM’N, ‘Definition of Personal Conveyance,’ *Minutes of NJLRC Meeting 17 Feb. 2022*, at *4, Newark, New Jersey, [hereinafter Feb. 17, 2022, Minutes], www.njlrc.org (last visited Aug. 15, 2022).

³⁹ *Id.*

⁴⁰ *Id.* See proposed modification *infra* Appendix.

⁴¹ *Id.*

⁴² N.J. STAT. ANN. § 39:1-1 (West 2022) (defining “pedestrian” as a person afoot). See also ALA. CODE § 32-1-1.1 (West 2022) (defining pedestrian as “any individual afoot”); ARK. CODE ANN. § 27-49-114 (West 2022) (defining “pedestrian” as a person afoot); FLA. STAT. ANN. § 316.003 (West 2022) (defining “pedestrian” as any person afoot); GA. CODE ANN. § 40-6-96 (West 2022) (defining “pedestrian” as any person afoot including individuals who are standing, walking, jogging, running or otherwise on foot); 135 IND. ADMIN. CODE 2-1-1 (28) (West 2022) (defining “pedestrian” as any natural person afoot); IOWA CODE ANN. § 321.1 (West 2022) (defining “pedestrian” as any person afoot); MD. CODE ANN., TRANSP. § 11-145 (West 2022) (defining “pedestrian” as an individual afoot); NEB. REV. STAT. ANN. § 60-647 (West 2022) (defining “pedestrian” as any person afoot); N.M. STAT. ANN. § 66-1-4.14 (West 2022) (defining “pedestrian” as any natural person on foot); OKLA. STAT. ANN. TIT. 47, § 1-143 (West 2022) (defining “pedestrian” as any person afoot); 31 R.I. GEN. LAWS ANN. § 31-1-17(f) (West 2022) (defining “pedestrian” as any person afoot); S.C. CODE ANN. § 56-5-390 (West 2022) (defining “pedestrian” as any person afoot); TEX. TRANSP. CODE ANN. § 541.001 (West 2022) (defining “pedestrian” as a person on foot); WYO. STAT. ANN. § 31-5-102(a) (West 2022) (defining “pedestrian” as any person afoot).

⁴³ ARIZ. REV. STAT. ANN. § 28-101 (West 2022); CAL. VEH. CODE § 467 (West 2022); Colo. Rev. Stat. Ann. § 42-1-102 (68) (West 2022); D.C. Code Ann. § 50-110.01 (West 2022); Haw. Rev. Stat. Ann. § 291C-1 (West 2022); IDAHO CODE ANN. § 49-117 (5) (West 2022); KAN. STAT. ANN. § 8-1446 (West 2022); KY. REV. STAT. ANN. § 189.010 (8) (West 2022); La. Stat. Ann. § 32:1 (59) (West 2022); Me. Rev. Stat. tit. 29-A, § 101 (53) (West 2022); MICH. COMP. LAWS ANN. § 257.39, Sec. 39 (West 2022); MINN. STAT. ANN. § 169.011, Subd. 53 (West 2022); MISS. CODE ANN. § 63-3-121(d) (West 2022); NEV. REV. STAT. ANN. § 484A.165 (West 2022); N.Y. VEH. & TRAF. LAW § 130 (McKinney 2022); OR. REV. STAT. ANN. § 801.385 (West 2022); TENN. CODE ANN. § 55-8-101 (50) (West 2022); UTAH CODE ANN. § 41-6a-102 (West 2022); VT. STAT. ANN. TIT. 23, § 4 (67) (West 2022); W. VA. CODE ANN. § 17C-1-30 (West 2022); WIS. STAT. ANN. § 340.01 (43) (West 2022).

⁴⁴ ALASKA ADMIN. CODE TIT. 13, § 40.010 (a) (West 2022) (including the skis and snowshoes in the definition of pedestrian); 625 ILL. COMP. STAT. ANN. 5/1-158: § 1-158 (West 2022) (including in-line speed skates in the definition

Currently, three states use a definition of pedestrian that includes persons who do not occupy a vehicle and who may be using a personal conveyance drawn or driven by muscular power.⁴⁵ Finally, the statutes in Delaware, Montana, New Hampshire, and North Carolina do not define the term pedestrian.

A nationwide examination the term pedestrian indicates that New Jersey’s definition of the term, as set forth in N.J.S. 39:4-92.4, provides broad protection to individuals who are on foot and who are permitted by law to be upon New Jersey’s roadways. The breadth of New Jersey’s current statutory language encompasses the persons set forth in N.J.S 39:4-92.2, commonly referred to as the “move over law,” without having to individually enumerate each protected person. In addition, this language also provides protection to persons employed by, or who contract with, public utility companies in this state and property maintenance workers and any other individual who may be on the roadway for either work or recreation.

• *Personal Conveyance and the NJTR-1*

The New Jersey NJTR-1 Crash Report Manual⁴⁶ is used by law enforcement officers to assist them in memorializing a crash.⁴⁷ In January of 2022, the NJTR-1 was updated to include, and define, the term “personal conveyance.”⁴⁸ The definition of personal conveyance, as set forth in the NJTR-1, includes low-speed electric scooters, low-speed electronic bicycles, motorized scooters, motorized wheelchairs, and electric personal assistive mobility devices (hoverboards). Rather than create, or import, a new term – such as “vulnerable road user” – the Commission recommends that the term personal conveyance be defined in a manner that is consistent with the definition of the term found in the NJTR-1.

The absence of a statutory definition of “personal conveyance” in New Jersey leaves open the possibility that the term will be subject to competing interpretations for purposes of determining what constitutes a violation of the statute. The Commission therefore recommends modifying N.J.S. 29:4-92.4 to include a definition of personal conveyance to protect people who do not have the protection of a motor vehicle while on a roadway.

of pedestrian); 720 MASS. CODE REGS. 9.01 (West 2022) (including conveyances moved by human power in the definition of pedestrian); OHIO REV. CODE ANN. § 4511.01 (X) (West 2022) (including individuals a personal delivery device in the definition of pedestrian); WASH. REV. CODE ANN. § 46.04.400 (West 2022) (including wheelchairs or a means of conveyance propelled by human power other than a bicycle in the definition of pedestrian).

⁴⁵ CONN. GEN. STAT. ANN. § 38a-363 (West 2022) (defining “pedestrian” as any person not occupying a vehicle of any type other than a vehicle designed to be drawn or driven by muscular power); N.D. CENT. CODE ANN. § 26.1-41-01 (West) (defining “pedestrian” as any individual not occupying any vehicle designed to be driven or drawn by power other than muscular power and as a person afoot in N.D. Cent. Code Ann. § 39-01-01 (West 2022)); UTAH CODE ANN. § 31A-22-301 (West 2022) (defining “pedestrian” as any natural person not occupying a motor vehicle).

⁴⁶ NEW JERSEY NJTR-1 CRASH REPORT MANUAL (2d ed. Rev. Jan. 01, 2022). The NJTR-1 was created by professionals including those from the N.J. Div. of Highway Traffic Safety; MBO Engineering; NJDOT, Bureau of Transp. Data & Support; N.J. Motor Vehicle Comm’n; N.J. State Police; STRCC – Equity Reconstruction; N.J. Div. of Highway Traffic Safety; N.J. Office of Info. Tech.; N.J. Traffic Officers Ass’n; N.J. Tpk. Auth.; Rutgers Univ., NJLTAP Police Training; and the Essex Cnty. Sheriff’s Off.

⁴⁷ *Id.* at 8.

⁴⁸ *Id.* at 2, 75, 131.

- *Shoulder*

At the September 15, 2022, meeting of the Commission, a member of the public requested that the statutory language be expanded to include the protection of pedestrians, cyclists, and individuals operating person conveyances on the shoulder of a New Jersey roadway.⁴⁹ Based upon this request, Staff was asked to examine the propriety of adding the term “shoulder” to the proposed modifications set forth in subsection b. of N.J.S. 39:4-92.4.⁵⁰

The New Jersey Motor Vehicle Code provides a narrow definition of the term “roadway.” The term roadway is defined as “that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder....”⁵¹ “Shoulder” is defined as the “portion of the highway, exclusive of and bordering the roadway, designed for emergency use but not ordinarily used for vehicular travel.”⁵²

Persons who travel on roadways as a pedestrian, a bicyclist, or the operator of a personal conveyance, expose themselves to dangers that are not faced by the operators of motor vehicles.⁵³ When a person engages in one of these modes of travel, it is possible that a natural hazard - such as a tree branch, gravel, or pothole - might destabilize them. By contrast, it is unlikely that a person operating a motor vehicle will be endangered by such hazards.⁵⁴ Out of concern for their own safety, a pedestrian, a cyclist, or the operator of a personal conveyance may elect to utilize the shoulder of a roadway during the course of their travels.⁵⁵

In *Polzo v. County of Essex*, the New Jersey Supreme Court considered “whether a county could be held liable for the fatal accident that occurred when a person lost control of her bicycle while riding across a... depression on the shoulder of a county roadway.”⁵⁶ In New Jersey, a cyclist is “vested with all the rights and duties applicable to the driver of a vehicle under Title 39, chapter

⁴⁹ N.J. LAW REVISION COMM’N, ‘Definition of Personal Conveyance,’ *Minutes of NJLRC meeting 15 Sept. 2022*, at 2, Newark, New Jersey [hereinafter Sept. 15, 2022 Minutes]. See also e-mail from Jim Hunt, NJ Bike/Walk Coalition to Samuel M. Silver, Dep. Dir., N.J. Law Rev. Comm’n (Sept. 15, 2022, 2:48 PM EST) (recommending the inclusion of the word “shoulders” to subsection b. and clarification that the statute protects the person operating a bicycle or personal conveyance as appropriate) (on file with the NJLRC).

⁵⁰ Sept. 15, 2022 Minutes at *2. See Hunt *supra* n. 49.

⁵¹ N.J. STAT. ANN. § 39:1-1 (West 2022). Compare, *id.* (defining highway as “the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.”).

⁵² N.J. STAT. ANN. § 39:1-1 (West 2022) (defining shoulder as “that portion of the highway, exclusive of and bordering the roadway, designed for emergency use but not ordinarily used for vehicular travel.”). See also NEW JERSEY NJTR-1 CRASH REPORT MANUAL at 129 (defining “shoulder” using the same language as that found in N.J.S. 39:1-1). See ASS’N OF TRANSP. SAFETY INFO. PRO. * 15 (8th ed. Dec. 18, 2017) (defining shoulder as “that part of a trafficway contiguous with the roadway for emergency use, for accommodation of stopped road vehicles and for lateral support of the roadway structure.”).

⁵³ *Polzo v. Cnty. of Essex*, 209 N.J. 51, 71 (2012).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 55.

four of... the Motor Vehicle Code.”⁵⁷ Those who operate a bicycle on a roadway are required to “ride as near to the right side of the roadway as practicable....”⁵⁸ The Court also stated that, “a bicycle rider is directed to ride on the furthest right hand side of the roadway, not the roadway’s shoulder” which the Motor Vehicle Code does not designate as a bicycle lane.⁵⁹ In affirming summary judgment in favor of the defendant, the Court opined that “[b]icyclists do not have special privileges on a roadway’s shoulder.”⁶⁰

The New Jersey Legislature has enacted a Motor Vehicle Code that vests bicyclists, roller skaters, and skateboarders with all of the same rights and duties applicable to the operators of motor vehicles.⁶¹ To include a reference to the shoulder in subsection b. of N.J.S. 39:4-92.4 would endow the enumerated groups with “special privileges” to utilize the roadway’s shoulder in a manner that does not appear to be consistent with either the intent of the Legislature or the decision of the *Polzo* Court.

For the foregoing reasons, Staff does not recommend the inclusion of the term “shoulder” in N.J.S. 39:4-92.4.

Outreach

In connection with this project, the Commission sought comments from knowledgeable individuals and organizations including: New Jersey Division of Highway Traffic Safety; Statewide Traffic Records Coordinating Committee; New Jersey Department of Transportation, Bureau of Transportation Data and Support; New Jersey Motor Vehicle Commission; New Jersey Motor Vehicle Commission - CDL Coordinator; MBO Engineering; New Jersey State Police, Safe Corridor Unit; New Jersey Police Traffic Officers Association; Rutgers University, NJLTAP Police Training; Governor’s Highway Traffic Safety Policy Advisory Council (HTSPAC); New Jersey Bike/Walk Coalition; The League of American Bicyclists; North Jersey Transportation Authority – Street Smart NJ Pedestrian Safety Program; the Administrative Office of the Court; Association of Criminal Defense Attorneys; New Jersey State Bar Association – Criminal Law Section; New Jersey State Bar Association – Municipal Practice Section; New Jersey State Municipal Prosecutor’s Association; New Jersey Legal Services; New Jersey State Association of Chiefs of Police; Office of the Public Defender; and a number of private practitioners.

⁵⁷ N.J. STAT. ANN. § 39:4-14.1 (West 2022). *See also* N.J. STAT. ANN. § 39:4-10.10 (providing that “Every person operating any roller skates or skateboard upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by chapter four of Title 39 of the Revised Statutes....”).

⁵⁸ N.J. STAT. ANN. § 39:4-14.2 (West 2022).

⁵⁹ *Id.* *See* N.J. STAT. ANN. 39:1-1 (West 2002) (defining shoulder as that portion of the highway, exclusive of and bordering the roadway, designed for emergency use but not ordinarily to be used for vehicular travel.”).

⁶⁰ *Polzo*, 209 N.J. at 71 *citing Hochberger v. G.R. Wood, Inc.*, 124 N.J.L. 518, 520 (E. & A. 1940) (“The shoulder is not designed nor constructed for general traffic uses but is rather for emergency uses such as parking of vehicles disabled or otherwise.”); *Sharp v. Cresson*, 63 N.J. Super. 215, 221 (App. Div. 1960) (“It is clear that the Legislature did not intend that the shoulder of a road be used for ordinary travel.”).

⁶¹ *See supra* note 57 and accompanying text.

- *Opposition*

The Commission received opposition to its proposed modifications from a private practitioner.⁶² Counsel stated that “the statute covers all of the concerns to which N.J.S. 39:4-92.4 addresses itself.”⁶³ Counsel further opined that motorists familiar with the requirements of the law “will switch lanes without making the necessary observations to first determine that they can accomplish the lane switch safety [sic]” and will cause accidents.⁶⁴ The commentator opposed the Commission’s modifications and called for the repeal of N.J.S. 39:4-92.4 in its entirety.⁶⁵

- *Suggestions / Guidance*

A private practitioner provided an alternative definition of the term personal conveyance.⁶⁶ Counsel suggested that the term personal conveyances be amended to “a vehicle not required to have motor vehicle insurance weighing less than [‘]x[‘]...”⁶⁷

The New Jersey Division of Highway Traffic Safety (NJDHTS) suggested that the National Highway Traffic Safety Administration may offer additional source of guidance to understand the term personal conveyances in the context of motor vehicles crashes.⁶⁸ According to the NJDHTS, the National Highway Transportation Safety Authority (NHTSA) offers guidance “on personal conveyances in the Model Minimum for Uniform Crash Criteria Data (MMUCC).”⁶⁹ The MMUCC is commonly referred to by the NJDHTS to “define the fields and attributes used in the New Jersey’s [police accident reports and the] NJTR-1....”⁷⁰ The NJDHTS notes that “[t]he MMUCC calls for the State’s police accident report to use personal conveyance as a description of an *Other Pedestrian* attribute in the *Person Type* field.”⁷¹ The NJDHTS conveyed that the MMUCC defines personal conveyance as “a device, other than a transport device,⁷² used by a pedestrian for personal mobility assistance or recreation. These devices can be motorized or human powered, but not propelled by pedaling.”⁷³

⁶² E-mail from Allan Marain, Esq., to Samuel M. Silver, Dep. Dir., N.J. Law Rev. Comm’n (June 23, 2022, 2:12 PM EST) (on file with the NJLRC).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ E-mail from Kenneth Vercammen, Esq. to Samuel M. Silver, Dep. Dir., N.J. Law Rev. Comm’n (Jul. 03, 2022, 8:45 AM EST) (on file with the NJLRC).

⁶⁷ *Id.*

⁶⁸ E-mail from Joseph Weiss, Transp. Safety Analyst, NJ Div. of Highway Traffic Safety, to Samuel M. Silver, Dep. Dir., N.J. Law Rev. Comm’n (June 23, 2022, 1:15 PM EST) (on file with the NJLRC).

⁶⁹ *Id.* NAT’L HIGHWAY TRAFFIC SAFETY ADMIN., MMUCC GUIDELINE - MODEL MINIMUM FOR UNIFORM CRASH CRITERIA DATA, FIFTH EDITION (2017). The MMUCC guideline identifies a minimum set of motor vehicle crash data elements that allow States to best facilitate future analysis.

⁷⁰ Weiss, *supra* note 55.

⁷¹ *Id.* MMUCC at 60-61.

⁷² The term “transport device” is not defined in the MMUCC.

⁷³ *Id.* MMUCC at 166. *But see* discussion *infra* Support - Policy Director of League of American Bicyclists.

• *Support*

The Policy Director of the League of American Bicyclists thanked the Commission for providing him with a copy of the Tentative Report and expressed his appreciation for the level of detail in the Report.⁷⁴ He stated that “[t]here’s a somewhat visceral reaction to seeing “bicycle”... grouped with “personal conveyances” and noted that “a lot of states will be having this type of discussion in the near future....”⁷⁵ He opined that “[g]rouping bicycles with personal conveyances is in line with how we’ve discussed vulnerable road user definitions for several years, so grouping it there makes sense....”⁷⁶

The Unit Head for the Safe Corridor Unit of the New Jersey State Police expressed his support for the Commission’s proposed modifications to N.J.S. 39:4-92-4.⁷⁷ He advised the Commission, “I have read the proposed changes for 39:4-92.4.... I agree with all the changes and have no further comments or suggested changes. Thank you for the opportunity to work with you on this....”⁷⁸

Pending Bills

Shortly before the Commission concluded its work in this area, S.B. 3008 was introduced in the New Jersey Legislature and referred to the Senate Transportation Committee. The synopsis of this bill provides that it “[r]evises requirements for motor vehicle operators overtaking pedestrians, bicyclists, and scooter riders in certain circumstances.”

Conclusion

The Commission recommends modifying the language of N.J.S. 39:4-92.4 to clarify the definition of the term “pedestrian” and to define the term “personal conveyance” to eliminate any potential ambiguity resulting from the lack of a definition. The proposed modifications are intended to support the Legislature’s goals of protecting the vulnerable users of New Jersey’s roadways.

⁷⁴ E-mail from Ken McLeod, Policy Director, The League of American Bicyclists to Samuel M. Silver, Dep. Dir., N.J. Law Rev. Comm’n (June 14, 2022, 11:26 AM EST) (on file with the NJLRC).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ E-mail from Sergeant First Class David Guinan #6266, New Jersey State Police, Unit Head, Safe Corridor Unit, to Samuel M. Silver, Dep. Dir., N.J. Law Rev. Comm’n (July 18, 2022, 11:36 AM EST) (on file with the NJLRC).

⁷⁸ *Id.*

Appendix

The proposed modifications to the existing New Jersey statutes to incorporate the provisions of the Act are shown with underlining (for the addition of text), ~~striketrough~~ (for the removal of text) and *italics* or a combination of the three⁷⁹ as follows:

N.J.S. 39:4-92.4. Approach *and overtaking* of pedestrians, ~~and bicycles~~ *and persons using personal conveyances* by motor vehicle; definitions; requirements; penalties

a. As used in this section:

(1) *“Bicycle” shall have the same meaning as set forth in R.S.39:4-14.5.*

~~“Low speed electric bicycle” shall have the same meaning as set forth in R.S.39:1-1.~~

~~“Low speed electric scooter” shall have the same meaning as set forth in R.S.39:1-1.~~

~~(1)~~ (2) *“Pedestrian” shall include, but not be limited to, a pedestrian as defined in R.S.39:1-1,⁸⁰ a person in a wheelchair or motorized wheelchair as defined in R.S.39:1-1, a person employed by or who contracts with any public utility company in this State, a property maintenance worker, or any other person who is permitted by law to be upon the roadway and outside a motor vehicle for work or recreation.⁸¹*

~~(2)~~ (3) *“Personal conveyance”⁸² shall include:*

~~(A) a bicycle as defined in N.J.S. 39:4-14.5;⁸³~~

⁷⁹ The language set forth in italics has been added since the release of the Commission’s Revised Tentative Report. See Revised Tentative Report from Samuel M. Silver, Dep. Dir., Regarding the Use of the term “Personal Conveyance” in N.J.S. 39:4-92.4 (June 16, 2022) (on file with the Commission). See also N.J. LAW REVISION COMM’N, ‘Definition of Personal Conveyance,’ *Minutes of NJLRC meeting 15 Sept. 2022*, at *1-2, Newark, New Jersey. See also e-mail from Jim Hunt, NJ Bike/Walk Coalition to Samuel M. Silver, Dep. Dir., N.J. Law Rev. Comm’n (Sept. 15, 2022, 2:48 PM EST) (recommending the inclusion of the word “shoulders” to subsection b. and clarification that the statute protects the person operating a bicycle or personal conveyance as appropriate) (on file with the NJLRC).

⁸⁰ N.J. STAT. ANN. § 39:1-1 (West 2022) (defining “pedestrian” as a person afoot). See discussion *supra* notes 42-45.

⁸¹ The language is intended to be broad enough to protect persons who are standing, walking, jogging, running or otherwise on foot on a roadway. The breadth of this language includes the persons set forth in N.J. STAT. ANN. § 39:4-92.2 (West 2022), commonly referred to as the “move over law,” without having to enumerate each one individually. In addition, this language is intended to provide protection to persons employed by, or who contract with, public utility companies in this state and property maintenance workers as originally set forth in N.J. STAT. ANN. § 39:4-92.4 (West 2022); See Feb. 17, 2022 Minutes, at *2-5.

⁸² NEW JERSEY NJTR-1 CRASH REPORT MANUAL at 75, 131 (2d ed. Rev. Jan. 01, 2022) (defining personal conveyance as low-speed electric scooters, low-speed electric bicycles, motorized scooters, motorized wheelchairs, and electric personal assistive mobility devices (hoverboards)). Each of these personal conveyances have been set forth in the proposed statute.

⁸³ N.J. STAT. ANN. § 39:4-14.5 (West 2022) (defining bicycle as any two-wheeled vehicle having a rear drive wheel which is solely human-powered and having a seat height of 25 inches or greater when the seat is in the lowest adjustable position).

~~(B)~~ (A) a low-speed electric bicycle as defined in N.J.S. 39:1-1;⁸⁴

~~(C)~~ (B) a low-speed electric scooter as defined in N.J.S. 39:1-1;⁸⁵

~~(D)~~ (C) a manual wheelchair;⁸⁶

~~(E)~~ (D) a motorized wheelchair as defined in N.J.S. 39:1-1,⁸⁷ or similar mobility assisting devices used by persons with physical disabilities, or by persons whose ambulatory mobility has been impaired by age or illness;⁸⁸

~~(F)~~ (E) an electric personal assistive mobility device as defined in N.J.S. 39:4-14.10;⁸⁹

~~(G)~~ (F) a motorized scooter as defined in N.J.S. 39:1-1;⁹⁰

~~(H)~~ (G) a skateboard as described in N.J.S. 39:4-10.5;⁹¹

⁸⁴ N.J. STAT. ANN. § 39:1-1 (West 2022) (defining “low-speed electric bicycle” as a two or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts, that meets the requirements of one of the following classifications: “class 1 low-speed electric bicycle” which means a low-speed electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 20 miles per hour; or “class 2 low-speed electric bicycle” which means a low-speed electric bicycle equipped with a motor that may be used exclusively to propel the bicycle, and that is not capable of providing assistance when the bicycle reaches the speed of 20 miles per hour).

⁸⁵ N.J. STAT. ANN. § 39:1-1 (West 2022) (defining “Low-speed electric scooter” as a scooter with a floorboard that can be stood upon by the operator, with handlebars, and an electric motor that is capable of propelling the device with or without human propulsion at a maximum speed of less than 19 miles per hour).

⁸⁶ The term “wheelchair” is not defined in the New Jersey Motor Vehicle statutes.

⁸⁷ N.J. STAT. ANN. § 39:1-1 (West 2022) (defining “motorized wheelchair” as any motor-driven wheelchair utilized to increase the independent mobility, in the activities of daily living, of an individual who has limited or no ambulation abilities and includes mobility scooters manufactured specifically for such purposes and designed primarily for indoor use).

⁸⁸ This language is derived from the list of conveyances excluded from the definition of motorized scooter N.J. STAT. ANN. § 39:1-1.

⁸⁹ N.J. STAT. ANN. § 39:4-14.10 (West 2022) (defining “electric personal assistive mobility device” as a self-balancing non-tandem two wheeled device designed to transport one person which uses an electric propulsion system with average power of 750 watts (one horsepower), whose maximum speed on a paved level surface, when powered solely by such a propulsion system while operated by a person weighing 170 pounds is less than 20 miles per hour. The device shall not be considered a motorized wheelchair, motorized bicycle, motorcycle, motorized scooter, motorized skateboard, vehicle, or motor vehicle).

⁹⁰ N.J. STAT. ANN. § 39:1-1 (West 2022) (defining “motorized scooter” means a miniature motor vehicle and includes pocket bikes, super pocket bikes, scooters, mini-scooters, sport scooters, mini choppers, mini motorcycles, motorized skateboards, and other vehicles with motors not manufactured in compliance with Federal Motor Vehicle Safety Standards and which have no permanent Federal Safety Certification stickers affixed to the vehicle by the original manufacturer. This term does not include electric personal assistive mobility devices, motorized bicycles, low speed vehicles, low-speed electric bicycles, or low-speed electric scooters; or motorized wheelchairs, mobility scooters or similar mobility assisting devices used by persons with physical disabilities, or persons whose ambulatory mobility has been impaired by age or illness).

⁹¹ N.J. STAT. ANN. § 39:4-10.5 (West 2022) (the term skateboard is not defined in the New Jersey statutes. It is referenced in subsections b. and c. of this statute).

~~(H)~~ (H) a motorized skateboard as defined N.J.S. 39:1-1;⁹²

~~(I)~~ (I) roller skates as defined in N.J.S. 39:4-10.5; and⁹³

~~(K)~~ (J) any other device used by a person for transportation.⁹⁴

b. The operator of a motor vehicle shall:

~~(1)~~ (1) approaching a pedestrian, a person operating a bicycle ~~low-speed electric bicycle, low-speed electric scooter, or any other lawful personal conveyance~~ located or operating in an area designated for pedestrians, bicycles, or ~~those personal conveyances~~, as ~~appropriate~~, on the roadways⁹⁵ of this State ~~shall approach~~ with due caution; and, ~~shall~~,

(2) absent any other direction by a law enforcement officer, proceed as follows:

~~(1)~~ (A) when possible under existing safety and traffic conditions, make a lane change into a lane not adjacent to the pedestrian, or a person operating a bicycle or personal conveyance;

~~(2)~~ (B) if a lane change cannot be made pursuant to paragraph ~~(1)~~ (A) of this subsection, leave a reasonable and safe distance of not less than four feet while approaching the pedestrian, or a person operating a bicycle or personal conveyance and maintain a distance of at least four feet until the motor vehicle has safely passed the pedestrian, or person operating the bicycle or personal conveyance; or

~~(3)~~ (C) if it is not possible, prohibited by law, or is unsafe to make a lane change pursuant to paragraph ~~(1)~~ (A) of this subsection or to leave a reasonable and safe distance of not less than four feet pursuant to paragraph ~~(2)~~ (B) of this subsection, the motor vehicle operator shall reduce the speed of the motor vehicle to 25 miles per hour or a lower posted speed and be prepared to stop; the operator may pass the pedestrian, or person operating a bicycle or personal conveyance only if, considering the size and speed of the motor vehicle, traffic conditions, weather, visibility, and the surface and width of the roadway, passing does not endanger the safety of a pedestrian, operator of the bicycle or personal conveyance, or any other person on the roadway.

⁹² N.J. STAT. ANN. § 39:1-1 (West 2022) (defining “motorized skateboard” as a skateboard that is propelled otherwise than by muscular power).

⁹³ N.J. STAT. ANN. § 39:4-10.5 (West 2022) (defining “roller skates” as a pair of devices worn on the feet with a set of wheels attached, regardless of the number or placement of those wheels, and used to glide or propel the user over the ground).

⁹⁴ N.J. LAW REVISION COMM’N, ‘Definition of Personal Conveyance,’ *Minutes of NJLRC meeting 16 June 2022*, at *6, Newark, New Jersey, [hereinafter June 16, 2022, Minutes], www.njlrc.org (last visited Aug. 15, 2022).

⁹⁵ See N.J. STAT. ANN. § 39:1-1 (West 2022) (defining roadway as “that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term “roadway” as used herein shall refer to any such roadway separately, but not to all such roadways, collectively.”). See also, *id.* (defining highway as “the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.”).

c. A person who commits a violation of the provisions of this section which results in bodily injury as defined in N.J.S.2C:11-1 shall be fined \$500 and assessed two motor vehicle penalty points; if no bodily injury results, the violator shall be fined \$100 and shall not be assessed any penalty points.

d. Nothing in this section shall be construed to preclude or limit a prosecution or conviction for a violation of any offense defined by the laws of this State or for any violation of Title 39 of the Revised Statutes.

Credits: L.2021, c. 194, § 1, eff. March 1, 2022.

Comments

• *Subsection a.*

The proposed modifications eliminate the definitions of “low speed electric bicycle,” and “low speed electric scooter” from this subsection. These terms have been incorporated into the proposed definition of the term “personal conveyance,” which is set forth in subsection a.(2)(A)-(C).

• *Subsection a.(1) - Bicycle*

The Commission Staff was contacted by a commenter from the law enforcement community regarding the classification of bicycles as personal conveyances.⁹⁶ The commenter stated that for reporting purposes the NHTSA and the NJTR-1 do not include bicycles as personal conveyances. The restoration of this term, as a stand-alone term, would eliminate future reporting confusion and is consistent with the current practice of the New Jersey law enforcement community. The proposed restoration is also consistent with the comment received from the Policy Director of the League of American Bicyclists.⁹⁷

At the suggestion of the commenter, and with the authorization of the Commission,⁹⁸ the term bicycle has been restored to its original place in subsection a. Consistent with prior drafts, this term has been given a numerical designation for ease of accessibility and readability.

• *Subsection a.(2) - Pedestrian*

The current definition of pedestrian includes four groups of people. In addition to persons afoot, the present statutory definition of the term includes persons in wheelchairs; persons who are employed by a public utility company; property maintenance workers; and any other persons who are permitted to be on the roadway for work or recreation. The proposed modification eliminates, as surplusage, the specific references to the four enumerated groups because the language “any other person who is upon the roadway and outside a motor vehicle for work or recreation” appears to provide sufficient protection to all pedestrians who are on the roadway.⁹⁹

⁹⁶ Telephone call between Samuel M. Silver, Dep. Director, New Jersey Law Revision Comm’n and Sergeant First Class David Guinan #6266, New Jersey State Police, Unit Head, Safe Corridor Unit (Sept. 13, 2022).

⁹⁷ See discussion *supra* “Outreach Section – Support” p. 12. See also McLeod *supra* note 74. And see subsection a.(3) – personal conveyances *infra* for NJTR-1 definition of personal conveyance.

⁹⁸ See Sept. 15, 2022, Minutes at *2.

⁹⁹ An examination of subsections a. and b of N.J.S. 39:4-92.2 confirmed that the operator of a motor vehicle who approaches an enumerated vehicle must exercise due caution. The statute does not specifically provide for the protection of the operator or passengers once they exit the vehicle and move about on to the roadway. A plain reading of the current language of N.J.S. 39:4-92.4 confirms the protection of these individuals.

The proposed modification of this section includes the removal of the phrase “permitted by law” to provide protection to all persons who are upon the roadway.¹⁰⁰

• *Subsection a.(3) - Personal Conveyances*

The New Jersey State Police utilize the New Jersey NJTR-1 Crash Report Manual to assist Troopers in memorializing a crash.¹⁰¹ In 2022, the NJTR-1 was updated to include, and define, the term “personal conveyance.”¹⁰² **The NJTR-1 definition of personal conveyance includes: low-speed electric scooters; low-speed electronic bicycles; motorized scooters; motorized wheelchairs; and electric personal assistive mobility devices (hoverboards).**¹⁰³

Each of the conveyances that are set forth in the NJTR-1 definition of the term have been incorporated into the proposed definition of the term “personal conveyance.” Additionally, the proposed definition includes *four* additional means of conveyance – manual wheelchairs, skateboards, motorized skateboards¹⁰⁴, and roller skates – to provide protection to vulnerable road users who are operating conveyances, other than motor vehicles, that are recognized in the New Jersey statutes.

As noted in the comments regarding bicycles, subsection a.(1) *supra*, the term bicycle is not contained in the NJTR-1 definition of personal conveyance. Consistent with the NJTR-1’s treatment of personal conveyances, the term bicycle has been removed from the proposed statutory definition of personal conveyance.

The proposed language in subsection a.(2)(A)-(J) sets forth a list of mobility devices. The term “includes” has been used to signal that the list of conveyances is not exhaustive and may be expanded to accommodate future technological advancements.

• *Subsections a.(2)(A) – Low-Speed Electric Bicycle*

The term low speed electric bicycle, originally set forth in subsection a., has been moved to subsection a.(3)(A) to provide the broadest possible protection for vulnerable road users.

The NJTR-1 incorporates the term low-speed electric bicycle into its definition of “personal conveyance.”¹⁰⁵ To remain consistent with the practice that has already been undertaken by New Jersey’s law enforcement community, it is recommended that this term be incorporated into the proposed definition of “personal conveyance” as set forth in subsection a.(3)(A).

• *Subsection a.(3)(B) – Low-Speed Electric Scooter*

The term low-speed electric scooter has been incorporated into the definition of “personal conveyance” in the NJTR-1.¹⁰⁶ To remain consistent with the practice that has already been undertaken by New Jersey’s law enforcement community, it is recommended that this term be incorporated into the proposed definition of “personal conveyance” as set forth in subsection a.(3)(B).

¹⁰⁰ June 16, 2022, Minutes at *7, Newark, New Jersey, available at www.njlr.org (last visited Aug. 15, 2022).

¹⁰¹ NEW JERSEY NJTR-1 CRASH REPORT MANUAL at 8 (2d ed. Rev. Jan. 01, 2022)

¹⁰² *Id.* at 2, 75, 131.

¹⁰³ Emphasis added solely to make this definition easily identifiable for readers.

¹⁰⁴ The term motorized skateboard is defined twice in N.J.S. 39:4-1. The term has been incorporated into the definition of motorized scooter. *See* definition of motorized scooter *supra* note 58. The term is also defined independently in the same definition section. *See* definition of motorized scooter *supra* note 60.

¹⁰⁵ *Id.* at 75, 131.

¹⁰⁶ *Id.*

- *Subsection a.(3)(C)-(D) – Manual Wheelchair and Motorized Wheelchair*

“Wheelchair” is not defined in the New Jersey statutes. Consistent with the intent of the Legislature to protect “vulnerable users of a roadway,” the existing language pertaining to persons using wheelchairs has been moved to subsections a.(3)(C) and (D) to protect persons with physical disabilities or impaired ambulatory mobility who travel on New Jersey roadways using either manual or motorized wheelchairs.

“Motorized wheelchair” has been classified as a personal conveyance in the NJTR-1 and the proposed modification is consistent with such a categorization.

- *Subsections a.(3)(E)-(I) – Electric Personal Assistive Mobility Device, Skateboard, Motorized Skateboards, and Roller Skates*

The NJTR-1 has incorporated the terms “electric personal assist mobility device”, and “motorized scooter” into its definition of the term personal conveyance.¹⁰⁷ Consistent with this definition, it is recommended that these terms be incorporated into the proposed definition of “personal conveyance” as set forth in subsection a.(3)(E)-(I) to protect vulnerable roadway users whose modes of transportation are referenced elsewhere in the New Jersey Motor Vehicle statutes.

To achieve the broadest possible coverage for vulnerable road users, skateboards, motorized skateboards, and roller skates have been included in the proposed definition of personal conveyance.

- *Subsections a.(3)(J) – Future Personal Conveyances*

Given the pace at which advances are being made in the area of personal conveyances, it is impossible for the proposed statutory language to capture and catalogue every technological development. The proposed language in subsection a.(3)(J) is intended to capture any other devices used by a person for personal transportation. Consistent with the Legislature’s intent, the proposed statutory language is broad enough to provide the broadest possible protection to vulnerable road users

- *Subsection b.(1)*

Since the definition of the term “personal conveyance”¹⁰⁸ is intended to be comprehensive, the terms low-speed electric bicycle, low-speed electric scooter appear to be surplusage and are therefore recommended for removal from subsection b.(1).

Staff does not recommend that a reference to the “shoulder” of the roadway be added to this section. The New Jersey Legislature has enacted a Motor Vehicle Code that vests bicyclists, roller skaters and skateboarders with all of the same rights as all the rights and duties applicable to the operators of motor vehicles.¹⁰⁹ To include a reference to the shoulder in subsection b. of N.J.S. 39:4-92.4 would endow the enumerated groups with “special privileges” to utilize the roadway’s shoulder in a manner that is inconsistent with both the intent of the Legislature to hold each road user to the same standard and *Polzo* Court’s determination that cyclists – and by extension other road users – are not granted special privileges while utilizing the shoulder of a New Jersey roadway.¹¹⁰

This section also contains a proposed modification that includes the addition of the phrase “person operating” before the term bicycle, and applies to the term personal conveyance, to emphasize that the statute is intended to protect the person and not the means of conveyance.

¹⁰⁷ *Id.*

¹⁰⁸ *See supra* comments regarding the definition of the term “personal conveyance.”

¹⁰⁹ *See supra* notes 57, 61 and accompanying text.

¹¹⁰ *See* discussion of “shoulder” *supra* pp. 9-10.

For ease of reference and access, this subsection has been renumbered or re-lettered, as appropriate.

- *Subsection b.(2)*

Consistent with the direction of the Commission and to be consistent with the modifications made *supra*, the term bicycle has been added to the following subsections: b.(2)(A), (B), (C).

This section also contains a proposed modification that includes the addition of the phrase “person operating” before the term bicycle, and applies to the term personal conveyance, to emphasize that the statute is intended to protect the person and not the means of conveyance.

For ease of reference and access, this subsection has been renumbered or re-lettered, as appropriate.

- *Subsections c. and d.*

No modifications have been proposed to either subsection c. or d.

For Reference

N.J.S. 39:4-92.2. Duties of motor vehicle operator when approaching certain stationary vehicles displaying flashing, blinking or alternating lights; penalties

a. The operator of a motor vehicle approaching a stationary authorized emergency vehicle as defined in R.S.39:1-1 that is displaying a flashing, blinking, or alternating red or blue light, or any configuration of lights containing one of these colors, shall approach the authorized emergency vehicle with due caution and shall, absent any other direction by a law enforcement officer, proceed as follows:

(1) Make a lane change into a lane not adjacent to the authorized emergency vehicle if possible in the existing safety and traffic conditions; or

(2) If a lane change pursuant to paragraph (1) of subsection a. of this section would be impossible, prohibited by law or unsafe, reduce the speed of the motor vehicle to a reasonable and proper speed for the existing road and traffic conditions, which speed shall be less than the posted speed limit, and be prepared to stop.

b. The operator of a motor vehicle approaching a stationary tow truck as defined in section 1 of P.L.1999, c. 396 (C.39:3-84.6) that is displaying a flashing amber light, a stationary highway maintenance or emergency service vehicle that is operated by the State, an authority, or a county or municipality and displaying flashing yellow, amber, or red lights, or a stationary sanitation vehicle displaying a flashing amber warning light pursuant to section 1 of P.L.2011, c. 3 (C.39:3-54.27) shall approach the vehicle with due caution and shall, absent any other direction by a law enforcement officer, proceed as follows:

(1) Make a lane change into a lane not adjacent to the tow truck, highway maintenance or emergency service vehicle, or sanitation vehicle if possible in the existing safety and traffic conditions; or

(2) If a lane change under paragraph (1) of subsection b. of this section would be impossible, prohibited by law or unsafe, reduce the speed of the motor vehicle to a reasonable and proper speed for the existing road and traffic conditions, which speed shall be less than the posted speed limit, and be prepared to stop.

c. A person who violates this section shall be fined not less than \$100 and not more than \$500. In addition to the fine imposed pursuant to this subsection, a person convicted of three or more offenses under this section that occur within a 12-month period shall be assessed two motor vehicle penalty points pursuant to section 1 of P.L.1982, c. 43 (C.39:5-30.5).

A motor vehicle operator shall not be assessed motor vehicle penalty points unless the stationary vehicle is displaying flashing, blinking, or alternating lights in accordance with this section at the time of the third or subsequent violation.

Credits: L.2009, c. 5, § 1, eff. Jan. 27, 2009. Amended by L.2017, c. 43, § 2, eff. May 1, 2017; L.2019, c. 370, § 1, eff. Sept. 1, 2020.