



NEW JERSEY LAW REVISION COMMISSION

Revised Tentative Report Regarding the Use of the Term “Personal Conveyance” in N.J.S. 39:4-92.4

June 16, 2022

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” N.J.S. 1:12A-8.

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **August 15, 2022**.

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report, or direct any related inquiries, to:

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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 will educate the operators of vehicles about their responsibilities when approaching vulnerable road users. A definition of this term will also 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 increase was accompanied by a 9% pedestrian fatality rate.¹³

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.nhtl.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>.

¹³ *Id.*

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

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) (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, driving, or herding an animal); WASH. REV. CODE ANN. § 46.61.110 (West 2022) (defining a vulnerable user to

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 revealed 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

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

An examination of the transportation statutes from across the country, and the District of Columbia, confirms that only one other state – Kansas – uses the term *personal conveyance* when

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.

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*

Staff 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 the Draft Tentative Report.³⁷ The Commission suggested that the definitions should be modified

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).

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).

“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 definition of 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

³⁸ N.J. LAW REVISION COMM’N, ‘Definition of Personal Conveyance,’ *Minutes of NJLRC meeting 17 Feb. 2022*, at *4, Newark, New Jersey.

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 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

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 State Police utilize the New Jersey NJTR-1 Crash Report Manual to assist State Troopers in memorializing a crash.⁴⁶ In January of 2022, the NJTR-1 was updated to include, and define, the term “personal conveyance.”⁴⁷ 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. Staff 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.

Pending Bills

No pending bills in New Jersey concern the issue raised in this Report.

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 at 8 (2d ed. Rev. Jan. 01, 2022)

⁴⁷ *Id.* at 2, 75, 131.

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.

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) and ~~striketrough~~ (for the removal of text) as follows:

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

a. As used in this section:

~~“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) ~~“Pedestrian” shall include, but not be limited to, a pedestrian as defined in R.S.39:1-1,⁴⁸ 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.⁴⁹

(2) “Personal conveyance”⁵⁰ shall include:

(A) a bicycle as defined in N.J.S. 39:4-14.5;⁵¹

(B) a **low-speed electric bicycle** as defined in N.J.S. 39:1-1.⁵²

⁴⁸ N.J. STAT. ANN. § 39:1-1 (West 2022) (defining “pedestrian” as a person afoot). *See* discussion *supra* notes 42-45.

⁴⁹ 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* N.J. LAW REVISION COMM’N, ‘Definition of Personal Conveyance’, *Minutes of NJLRC meeting 17 Feb. 2022*, at *2-*5, Newark, N.J.

⁵⁰ 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)).

⁵¹ 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).

⁵² 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).

(C) a low-speed electric scooter as defined in N.J.S. 39:1-1;⁵³

(D) a manual wheelchair;⁵⁴

(E) a motorized wheelchair as defined in N.J.S. 39:1-1,⁵⁵ or similar mobility assisting devices used by persons with physical disabilities, or by persons whose ambulatory mobility has been impaired by age or illness;⁵⁶

(F) an electric personal assistive mobility device as defined in N.J.S. 39:4-14.10;⁵⁷

(G) a motorized scooter as defined in N.J.S. 39:1-1;⁵⁸

(H) a skateboard as described in N.J.S. 39:4-10.5;⁵⁹

(I) a motorized skateboard as defined N.J.S. 39:1-1;⁶⁰

(J) roller skates as defined in N.J.S. 39:4-10.5; and⁶¹

⁵³ 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).

⁵⁴ The term “wheelchair” is not defined in the New Jersey Motor Vehicle statutes.

⁵⁵ 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).

⁵⁶ This language is derived from the list of conveyances excluded from the definition of motorized scooter N.J. STAT. ANN. § 39:1-1.

⁵⁷ 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).

⁵⁸ 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).

⁵⁹ 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).

⁶⁰ N.J. STAT. ANN. § 39:1-1 (West 2022) (defining “motorized skateboard” as a skateboard that is propelled otherwise than by muscular power).

⁶¹ 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).

(K) any other device used by a person for transportation.⁶²

b. The operator of a motor vehicle shall:

~~(1) 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 a person using a personal conveyances, as appropriate, on the roadways 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 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 personal conveyance and maintain a distance of at least four feet until the motor vehicle has safely passed the pedestrian 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 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.~~

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.

⁶² N.J. LAW REVISION COMM'N, 'Definition of Personal Conveyance,' *Minutes of NJLRC meeting 16 June 2022*, at --, Newark, New Jersey.

Comments

- *Subsection a.*

The proposed modifications eliminate the definitions of “bicycle”, “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) - 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 lawfully on the roadway.⁶³

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.⁶⁴

- *Subsection a.(2) -- Personal Conveyances*

The New Jersey State Police utilize the New Jersey NJTR-1 Crash Report Manual to assist Troopers in memorializing a crash.⁶⁵ In 2022, the NJTR-1 was updated to include, and define, the term “personal conveyance.”⁶⁶ 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).

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 five additional means of conveyance – bicycles, manual wheelchairs, skateboards, motorized skateboards⁶⁷, 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.

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)-(B) – Bicycle and Low-Speed Electric Bicycle*

The term bicycle, originally set forth in subsection a., has been moved to subsection a.(2)(A) to provide the broadest possible protection for vulnerable road users.

⁶³ 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.

⁶⁴ N.J. LAW REVISION COMM’N, ‘Definition of Personal Conveyance,’ *Minutes of NJLRC meeting 16 June 2022*, at --, Newark, New Jersey.

⁶⁵ NEW JERSEY NJTR-1 CRASH REPORT MANUAL at 8 (2d ed. Rev. Jan. 01, 2022)

⁶⁶ *Id.* at 2, 75, 131.

⁶⁷ 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.

The NJTR-1 incorporates the term low-speed electric bicycle into its definition of “personal conveyance.”⁶⁸ To remain consistent with the practice that has already been undertaken by the New Jersey State Police, it is recommended that this term be incorporated into the proposed definition of “personal conveyance” as set forth in subsection a.(2)(B).

- *Subsection a.(2)(C) – Low-Speed Electric Scooter*

The term low-speed electric scooter has been incorporated into the definition of “personal conveyance” in the NJTR-1.⁶⁹ To remain consistent with the practice that has already been undertaken by the New Jersey State Police, it is recommended that this term be incorporated into the proposed definition of “personal conveyance” as set forth in subsection a.(2)(C).

- *Subsection a.(2)(D)-(E) – 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.(2)(D) and (E) 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.(2)(F)-(J) – 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.⁷⁰ 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.(2)(F)-(J) 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.

- *Subsection b.*

Since the definition of the term “personal conveyance”⁷¹ is intended to be comprehensive, the terms bicycle, low-speed electric bicycle, low-speed electric scooter appear to be surplusage and are therefore recommended for removal.

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

- *Subsections c. and d.*

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

⁶⁸ *Id.* at 75, 131.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *See supra* comments regarding the definition of the term “personal conveyance.”

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.