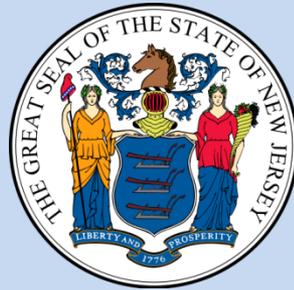


# *New Jersey Law Revision Commission*

## ***Proposed Revision of Title 2C of New Jersey's Code of Criminal Justice – Sexual Offenses***



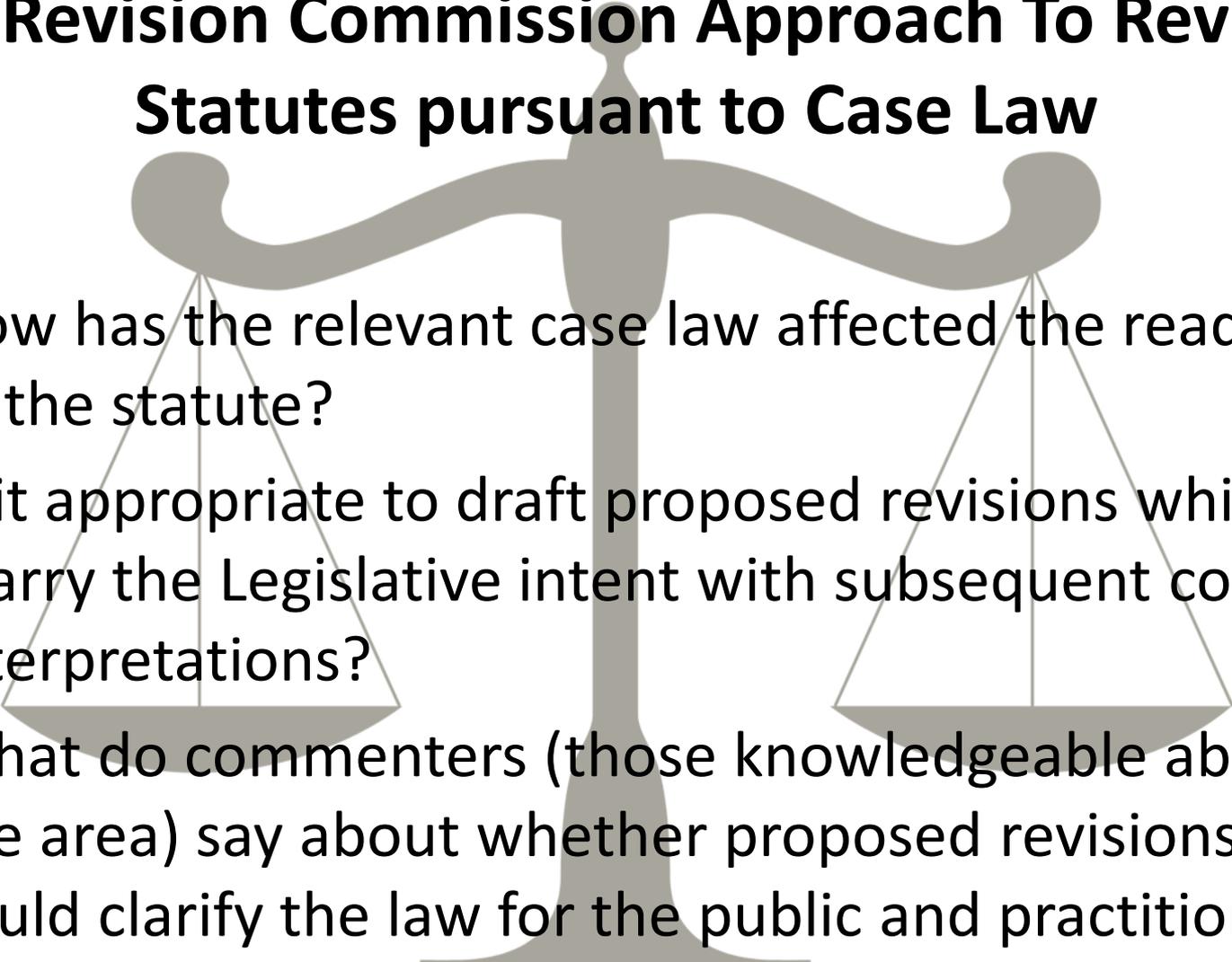
*Presented by:*

Susan G. Thatch, Esq., Counsel

[sgt@njlrc.org](mailto:sgt@njlrc.org)

**June 6, 2014**

# Law Revision Commission Approach To Revising Statutes pursuant to Case Law



- How has the relevant case law affected the reading of the statute?
- Is it appropriate to draft proposed revisions which marry the Legislative intent with subsequent courts' interpretations?
- What do commenters (those knowledgeable about the area) say about whether proposed revisions could clarify the law for the public and practitioners?
- Would proposed revisions simplify the application of the statutory scheme?

## Sexual Assault Historical Background

Historically, courts in many jurisdictions have expected women to resist to the fullest extent of her abilities.

Insistence on evidence of resistance minimized the importance of the forcible and assaultive aspect of the defendant's conduct.

In 1978, NJ Legislature passed reform legislation to address “a widely-sensed evil and to effectuate an important public policy.”

Reformed sexual assault law places primary emphasis on the assaultive nature of the crime rather than on the victim's behavior.

# New Jersey Statutory Overview

- Promulgated in 1978, N.J.S. §§ 2C:14-1 to-11 addresses Sexual Offenses including Sexual Assault, Sexual Contact and Lewdness.
- N.J.S § 2C:14-2 defines Sexual Assault as an “act of sexual penetration with another person” involving the use of “physical force or coercion.”
- N.J.S § 2C:14-2 (a) outlines various “enhancement” factors that elevate a charge of Sexual Assault to Aggravated Sexual Assault.
- “Physical Force” is undefined by the statute.

# “Physical Force or Coercion” – Interpretive Case Law

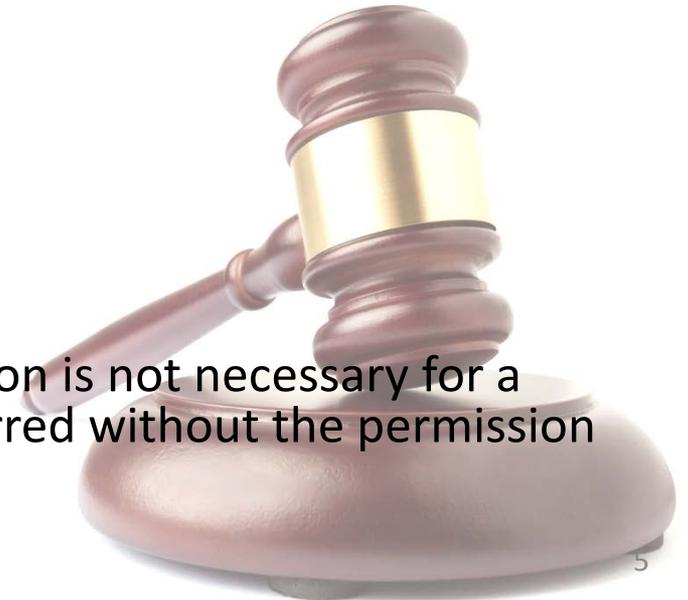
## *State in Interest of M.T.S.*

### Issue:

Whether within N.J.S. 2C:14-(a)(6) the Legislature had intended to require that force “in addition to that entailed in an act of involuntary or unwanted sexual penetration” be proven in order to convict a defendant for the crime of sexual assault.

### Holding:

Physical Force in addition to the act of penetration is not necessary for a sexual assault conviction if penetration occurred without the permission of the victim.



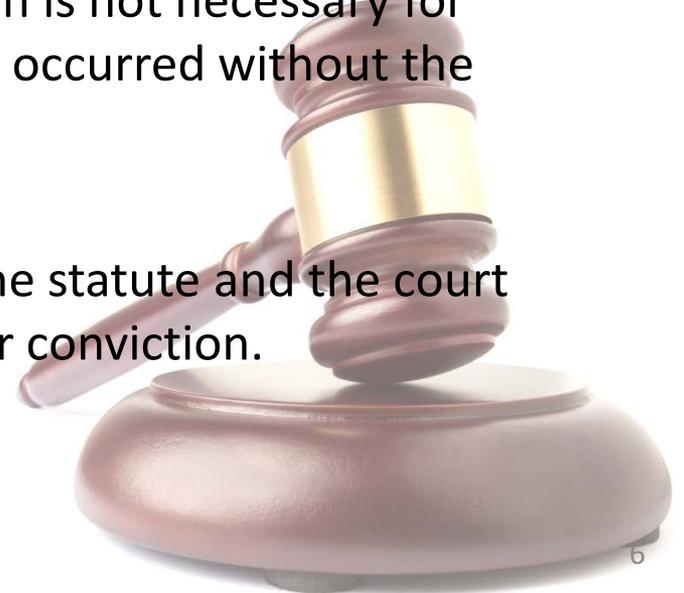
# “Physical Force or Coercion” – Interpretive Case Law

*State in Interest of M.T.S.*

Result:

While “physical force or coercion” requirement remains in the statute, physical force **in addition** to act of penetration is not necessary for conviction under § 2C:14-2 if the penetration occurred without the victim’s permission.

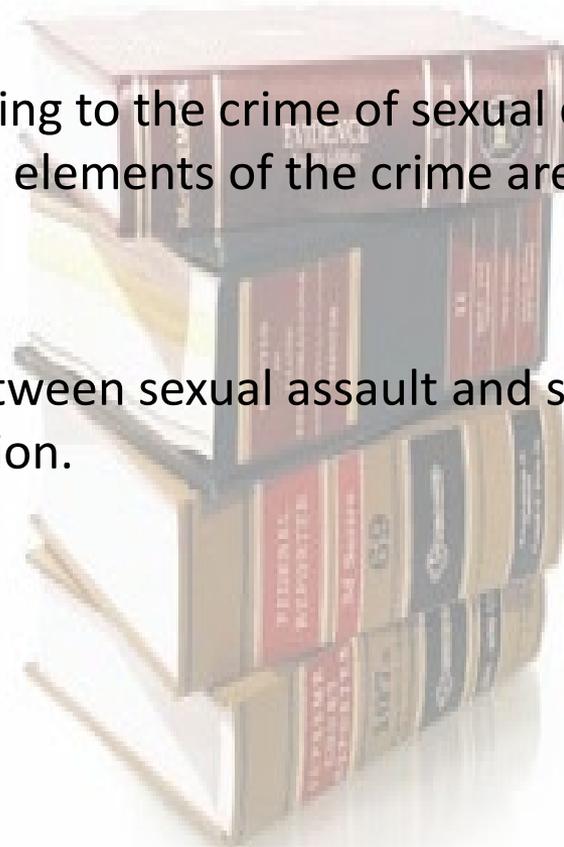
Post- M.T.S., prosecutors have had to use both the statute and the court decision to determine necessary elements for conviction.



# “Physical Force or Coercion” – Interpretive Case Law

## *State v. Triestman*

- Extended the M.T.S. ruling to the crime of sexual contact under N.J.S. 2C:14-3(b) because the elements of the crime are statutorily linked to those of sexual assault.
- Only differentiation between sexual assault and sexual contact is presence or absence of penetration.



# “Aggravated Assault on Another” – Interpretive Case Law

## *State v. Rangel*

- N.J.S. § 2C:14-2 (a)(2) provides that if the sexual act is “committed during the commission, or attempted commission...of robbery, kidnapping, homicide, aggravated assault on another, burglary, arson or criminal escape” it shall be considered aggravated sexual assault, a crime of the first degree.
- Court evaluated whether “aggravated assault on another” enhancement in N.J.S. § 2C:14-2(a)(3) was intended to include the aggravated assault of the victim or of a third-party.
- Court determined that the “severe personal injury” provision of the statute addressed the sexual assault victim while the “aggravated assault on another” was intended to punish violence against a third party.

# Ability to Consent: Incapacity & Sexual Assault

- Courts have expressed concern about preconceived judgments toward individuals with an intellectual or developmental disability and have stressed the importance of according such individuals their fundamental rights.
- At the same time, it has been determined that those with intellectual or developmental disabilities are vulnerable and require the special protection of our laws.

# Incapacity – NJ Statutory Background

- Historically, New Jersey statutes have specifically addressed sexual assaults against persons with intellectual or developmental disabilities.
- Original 1978 statute made it a second degree offense to “commit act of sexual penetration” if the victim “is one whom the actor knew or should have known was physically helpless, mentally defective or mentally incapacitated.”
- Term “mentally defective” was amended by Legislature to one who “had a mental disease or defect” in 2011.
- Amendment was not intended to change the legal meaning of the statute or overrule any judicial interpretations.



# Incapacity – Interpretive Case Law

## *State v. Olivio*

### Issue:

When shall an individual be deemed “mentally defective” for purposes of N.J.S. 2C:14-2 (c)(2)?

### Holding:

Person considered mentally defective “if, at the time of the sexual activity, he or she is unable to comprehend the distinctly sexual nature of the conduct or is incapable of understanding or exercising the right to refuse to engage in such conduct with another.”

### Result:

Case remains guiding interpretation for sexual assault cases involving individuals with intellectual and/or developmental disabilities.

# ***New Jersey Law Revision Commission Proposed Modifications***

- Revisions to N.J.S. 2C:14-2 removing “physical force or coercion” element with added language consistent with *M.T.S.* and focusing on affirmative consent.
- Pursuant to *Rangel*, revision to N.J.S. 2C:14-2(a)(3) to clarify that aggravated assault on or of a person other than the sexual assault victim is the enhancement factor turning the sexual assault into a crime of the first degree.
- Revisions to N.J.S. 2C:14-2 clarifying when an individual may have an inability to consent due to physical or mental incapacitation reflecting the standard set forth in *Olivio*.

# Input sought for Title 2C report

- Staff outreach:
  - New Jersey Coalition Against Sexual Assault
  - New Jersey Bar Association
  - Women’s Bar Association
  - County Bar Associations
  - Office of the Public Defender
  - NJ Municipal Prosecutors Association
  - Organizations that represent disabled persons such as Disability Rights, ARC of New Jersey, Disability Rights NJ and the Mental Health Association of NJ
  - Administrative Office of the Courts

# From Commission Project to Enactment in New Jersey



- Commission released Revised Tentative Report in October 2013.
- Positive feedback has been received from both disability rights groups and the Office of the Public Defender.
- Staff plans to present Final Report to the Commission in the upcoming months.



# References

- State in Interest of M.T.S., 129 N.J. 422 (1992).
- State v. Triestman, 416 N.J. Super. 195 (2010).
- State v. Rangel, 213 N.J. 500 (2013).
- State v. Olivio, 123 N.J. 550 (1991).

# References

## Photo Credit

- Slide 2 - <http://www.thestrengthsfoundation.org/3-tips-for-behaving-ethically-at-your-tylenol-moments/scales-of-justice-2>
- Slide 3 - <http://www.openculture.com/2014/04/what-books-should-every-intelligent-person-read.html>
- Slides 5 & 6 - <http://consumerrecoverynetwork.com/reducing-debt-buyer-collection-lawsuits-default-judgments/>
- Slide 7 - <http://blogs.law.harvard.edu/plap/2011/10/21/harvard-law-school-book-drive-to-benefit-the-prison-book-program/>
- Slide 8 - <http://blogs.villagevoice.com/runninscared/arrests/>
- Slide 9 - <http://www.primetimebailbonds.com/fullerton-court-house-locations-phone-numbers/>
- Slide 10 - <http://www.mentalhealthy.co.uk/news/1656-support-mental-health-awareness-wear-the-ribbon.html>
- Slide 11 - [http://www.cleveland.com/countyincrisis/index.ssf/2012/03/jimmy\\_dimora\\_federal\\_racketeer\\_211.html](http://www.cleveland.com/countyincrisis/index.ssf/2012/03/jimmy_dimora_federal_racketeer_211.html)
- Slide 12 - <http://www.clker.com/clipart-faded-draft-stamp.html>
- Slide 13 - <http://talentformula.ca/development/feedback/attachment/feedback-2>
- Slide 14 - <http://myemail.constantcontact.com/NJFOP-announces-its-endorsements-.html?soid=1111108629950&aid=0Bwl1ImCwkU>

# Speaker Bio

Susan Thatch recently joined the New Jersey Law Revision Commission as a staff attorney. She was admitted to practice in 1997 and is licensed in New York and New Jersey.

Prior to joining the Commission, Ms. Thatch was in private practice at the Newark office of McCarter & English, and subsequently, at the New York office of Milbank, Tweed, Hadley & McCloy specializing in real estate and other commercial transactions. She is a graduate of Rutgers College, B.A., English and Political Science and attended Rutgers School of Law – Newark, where she served as an Editor of the Law Review.

# ***Contact Information***

Susan G. Thatch, Esq., Counsel  
New Jersey Law Revision Commission

Web site [www.njlrc.org](http://www.njlrc.org)

Email [sgt@njlrc.org](mailto:sgt@njlrc.org)

Phone 973-648-4575

