



**ANNUAL REPORT OF THE  
NEW JERSEY LAW REVISION COMMISSION  
1994**

Report to the Legislature of the State of New  
Jersey as provided by C. 1:12A-9.

February 1, 1995



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## I. COMPOSITION OF THE COMMISSION

The composition of the Commission in 1994 was:

**Albert Burstein**, Chairman, Attorney-at-Law

**Roger I. Abrams**, Dean, Rutgers Law School - Newark, Ex officio,  
Represented by **Robert Carter**, Professor of Law

**Peter Buchsbaum**, Attorney-at-Law (appointed 7/94)

**Bernard Chazen**, Attorney-at-Law

**Roger Dennis**, Dean, Rutgers Law School - Camden, Ex officio,  
Represented by **Grace Bertone**, Attorney-at-Law

**William L. Gormley**, Chairman, Senate Judiciary Committee, Ex officio

**Thomas N. Lyons**, Attorney-at-Law (resigned 6/94)

**Hugo M. Pfaltz, Jr.**, Attorney-at-Law

**Ronald J. Riccio**, Dean, Seton Hall Law School, Ex officio,  
Represented by **Ahmed Bulbulia**, Professor of Law

**Gary W. Stuhltrager**, Chairman, Assembly Judiciary, Law and Public Safety  
Committee, Ex officio

John M. Cannel, Executive Director  
Maureen E. Garde, Counsel  
John J. Burke, Staff Attorney  
Judith Ungar, Staff Attorney

## II. HISTORY AND WORK OF THE COMMISSION

The Law Revision Commission was created by L.1985, c.498, and charged with the duty to:

- a. Conduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it for the purpose of discovering defects and anachronisms therein, and to prepare and submit to the Legislature, from time to time, legislative bills designed to
  - (1) Remedy the defects, (2) Reconcile conflicting provisions found in the law, and (3) Clarify confusing and excise redundant provisions found in the law;
- b. Carry on a continuous revision of the general and permanent statute law of the State, in a manner so as to maintain the general and permanent statute law in revised, consolidated and simplified form under the general plan and classification of the Revised Statutes and the New Jersey Statutes;
- c. Receive and consider suggestions and recommendations from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, and other learned bodies and from judges, public officials, bar associations, members of the bar and from the public generally, for the improvement and modification of the general and permanent statutory law of the State, and to bring the law of this State, civil and criminal, and the administration thereof, into harmony with modern conceptions and conditions; and
- d. Act in cooperation with the Legislative Counsel in the Office of Legislative Services, to effect improvements and modifications in the general and permanent statutory law pursuant to its duties set forth in this section, and submit to the Legislative Counsel and the Division for their examination such drafts of legislative bills as the commission shall deem necessary to effectuate the purposes of this section.

The Commission began operation in 1986; however, the concept of permanent, institutionalized statutory revision and codification is not new in New Jersey. The first Law Revision Commission was established in 1925. That commission produced the Revised Statutes of 1937. The intent of the Legislature was that the work of revision and codification continue after the Revised Statutes, so the Law Revision Commission continued in operation. After 1939, its functions passed to a number of successor agencies. Most recently, statutory revision and codification were among the duties of Legislative Counsel (N.J.S. 52:11-61). By L.1985, c.498, the Legislature transferred

the functions of statutory revision and codification to the New Jersey Law Revision Commission.

### **III. PROJECTS AND RECOMMENDATIONS**

In 1994, the New Jersey Law Revision Commission filed three final reports on the subjects of the revision of the laws relating to Lost Property, the revision of the laws relating to Voting Offenses, and the revision of the laws relating to Distraint/Artisans' Liens.

#### A. Compilation of Voting Offenses into the Criminal Law

In 1994, the Commission filed a Final Report and Recommendations Relating to the Compilation of Voting Offenses into the Criminal Law (see Appendix A).

This report is a continuation of the effort begun by the Commission's Report on Compilation of the Criminal Law. This report examines statutes defining offenses concerning elections and voting.

In 1978, the Code of Criminal Justice was enacted as Title 2C of the New Jersey Statutes. Its purpose "was to create a consistent comprehensive system of criminal law." State v. Crawley, 90 N.J. 241, 250 (1982). The Code was intended by its drafters, the Criminal Law Revision Commission, to replace all of the substantive criminal law in Title 2A. New Jersey Penal Code, Vol. I, p.213. The attempt to create a single comprehensive codification of all criminal laws and a single uniform consistent system of sentencing was continued when the Comprehensive Drug Reform Act compiled drug offenses into the Criminal Code.

While most of the criminal law is compiled in Title 2C, the Code of Criminal Justice, statutes defining various offenses remain scattered throughout other titles. In many cases, statutes defining criminal offenses are properly compiled outside the Criminal Code. Offenses applicable only to persons engaged in a particular activity or profession are appropriately compiled with other law on the activity or profession.

Offenses closely related to regulatory systems may be appropriately placed with other statutes on the same subject. However, crimes that may be applicable to the public generally should be placed in the Criminal Code. That compilation enhances accessibility and fosters the consistent application of general principles of criminal law and sentencing. Applying this standard, one group of offenses -- offenses concerning elections and voting -- should be recompiled into the Criminal Code. Those offenses are now scattered throughout Titles 18A, 19, and 40 of the statutes.

This report recommends the replacement of most of the current voting offenses with a new chapter of the Criminal Code. The chapter is designed to be a clear, coherent statement of the voting offenses that are applicable to the general public. The offenses are stated in general terms so that they reach any kind of conduct that involves the evil sought to be prevented. The Commission has also identified certain offenses related to voting that are unnecessary in that they cover activities already made criminal by other, more general criminal statutes. The proposed chapter does not replace all of the offenses relating to elections. There are a few sections that should remain with election law. These sections forbid certain activities by election officials. This report recommends that such sections be amended only as is necessary to make them consonant with current criminal law.

## B. Distraint/Artisans' Liens

In 1994, the Commission filed a Final Report and Recommendations Relating to the Distraint/Artisans' Liens (see Appendix B).

### I. Distress

Distress, the act of distraining (seizing) a tenant's goods to satisfy an arrears of rent, is a common law right of the landlord exercised in a nonjudicial proceeding. New Jersey statutes have regulated distraint since 1795. The current statutes, N.J.S. 2A:33-1



to -23, derive from the 1877 compilation with one exception: 2A:33-1 was amended in 1971 to prohibit distraints for money owed on residential property.

New Jersey distress statutes have been found to violate federal constitutional standards protecting ownership of property because the statute lacked a requirement of notice and hearing before distraint. Callen v. Sherman's, Inc., 92 N.J. 114 (1983). Although the Court stated that reading the statute in conjunction with R. 4:52-1(a) governing an order to show cause would satisfy due process requirements, the distress statutes have never been amended to cure their constitutional defects. It is inappropriate to rely on court rules to make the statutes constitutional as applied. The proposed provisions provide constitutionally required pre-judgment notice and hearing and a procedure for self-help in extraordinary circumstances. R. 4:52-1 through -6, which govern injunctions, can then serve their appropriate function of providing detailed procedural guidance.

The proposed revisions encompass two additional statutes regarding hotels and lofts which, like the distress statutes, allow landlords to distraint and sell property of lessees who owe rent without judicial hearing. From a policy standpoint, it is appropriate that all distraint be governed by a single set of rules. However, the scope of the proposed provisions does not extend to premises used solely as a residence, nor to goods in leased spaces which are covered by other statutes.

## II. Artisans' Liens

Six New Jersey statutes establish liens for storage of, or work done on, goods which one person (owner) entrusts to another (lienor) who performs the service: N.J.S. 2A:44-19.1 through -19.9, Dry Cleaning, Laundering and Tailoring Businesses; N.J.S. 2A: 44-20 through -31. Garage Keepers and Automobile Repairmen; N.J.S. 2A:44-51 through -52, Livery Stables, and Boarding and Exchange Stable Keepers; N.J.S. 2A:44-157 through -164, Processors of Goods; N.J.S. 2A:44-169 through -173, Processors of

Motion Picture Films; N.J.S. 2A:44-174 through -177, Watch and Jewelry Repairmen. These statutes vary as to the circumstance of allowing action by an artisan, the procedure surrounding a sale and distribution of proceeds.

The nature of the sale provisions of two statutes has caused them to be held unconstitutional. The Garage Keepers Lien Act was held unconstitutional in Whitmore v. N.J. Div. of Motor Vehicles, 137 N.J. Super. 492, 500 (Ch. Div. 1975). The Stableman's Lien Act was held unconstitutional in White Birch Farms v. Garritano, 233 N.J. Super. 553, 557-558 (Law Div. 1987).

The proposed statute replaces all but one of the current artisan lien statutes except the one dealing with garage keepers and automobile repairmen. It provides a uniform method for dealing with all similar situations which may arise in the future. The proposed statute avoids constitutional questions by permitting either party in the dispute to bring an action before divestment and sale. The Commission recommends repeal of the one statute not replaced by this proposal, the one dealing with garage keepers and automobile repairmen and its replacement with an amendment of the abandoned motor vehicles laws, N.J.S. 39:10A-8 through 39:10A-20. That statute follows the general lines of the Commission proposal but allows for the fact that change in ownership of motor vehicles and boats requires adherence to certificate of title requirements

### C. Lost or Abandoned Property

The Commission filed a Final Report and Recommendations Relating to the revision of the Lost or Abandoned Property Act (see Appendix C).

As part of its project to revise all of Title 2A of the New Jersey Statutes, the Commission drafted a proposed statute dealing with Distress (the right to hold a tenant's goods to satisfy a claim for rent) and Artisans' Liens (the right of a person who works on goods of another to a lien on those goods for the work performed). During the

drafting process questions arose about abandoned property. Research revealed that there was no statute and little case law establishing rights and obligations in regard to lost or abandoned property. As a result, the Commission decided to draft a new statute on the subject.

The primary purpose of this new statute is to establish procedures for dealing with lost or abandoned property which promote return of lost property to the owner and which protect the expectations of the finder. The statute defines lost property and abandoned property, and provides procedures and remedies which prescribe the powers and duties of finders and owners of the property, and of relevant government employees. It provides for the disposition of lost property that remains unclaimed by the owner and by the finder. The statute exempts from its application limited types of property.

## **IV. PROJECTS AWAITING FINAL RECOMMENDATION**

### A. Environmental Protection Projects

In 1994, the Commission completed a Tentative Report and Recommendations on the first major portion of the environmental statutes project. A 150-page draft of the revised statutes relating to natural and historic resources has been made available to the public for comment. (See Appendix D).

The Tentative Report is part of a project which was begun in 1993, when the Commission entered into a working agreement with the Department of Environmental Protection and Energy to revise the state's extensive environmental statutes. The project was suggested by Senator Robert E. Littell. Thus far, Commission staff has identified the numerous statutes which will be included in the project, which are currently scattered throughout 13 existing titles of the New Jersey Statutes. These statutes have been reorganized into a proposed new title to be called "Environmental Protection and Energy."

The Commission's working plan involves reorganizing the environmental statutes into eight new subtitles. Research and drafting work is in progress on the remaining subtitles in the project.

### B. Misdemeanors

In 1994, the Commission completed a Second Tentative Report and Recommendations Relating to Misdemeanors and distributed it for public comment (see Appendix E).

While most of the criminal law is compiled in Title 2C, the Code of Criminal Justice, statutes defining various offenses remain scattered throughout other titles. In the majority of cases, these statutes are properly compiled. Offenses closely related to regulatory systems may be appropriately placed with other statutes on the same subject.

However, the majority of these statutes were enacted before the Criminal Code. As a result, some have become unnecessary because of the more general provisions of the Code. In addition, many are phrased in pre-Code language and define "misdemeanors" rather than crimes graded by degree.

This project examines the penal provisions that are outside Titles 2A, 2C and 24 to determine whether they should be repealed as superseded by the Criminal Code, should be incorporated into the Criminal Code, or should be amended to be made consistent with the Criminal Code.

### C. Uniform Commercial Code Revised Article 5

The Commission completed a Tentative Report Relating to Uniform Commercial Code Revised Article 5 - Letters of Credit and distributed it for public comment (see Appendix F).

The National Conference of Commissioners on Uniform State Laws approved Uniform Commercial Code Revised Article 5 -- Letter of Credit (With Conforming and Miscellaneous Amendments to Article 9) at its 1994 Annual Meeting. A letter of credit is an engagement by an issuer, usually a bank, to honor a demand for payment by the beneficiary on the presentation of documents identified in the letter of credit. The letter of credit facilitates the sale of goods between distant merchants by assuring the seller of payment. Existing Article 5, enacted forty years ago, was revised to accommodate contemporary developments and practices regarding letters of credit, and to conform to international letter of credit standards. The likely effect of the adoption of Revised Article 5 is to make payment of letters of credit more certain and to allow parties freedom of contract to modify letter of credit arrangements to meet commercial needs.

#### D. Uniform Commercial Code Revised Article 8

The Commission completed a Tentative Report Relating to Uniform Commercial Code Revised Article 8 -- Investment Securities, and distributed it for public comment (see Appendix G).

The National Conference of Commissioners on Uniform State Laws approved Uniform Commercial Code Revised Article 8 -- Investment Securities at its 1994 Annual Meeting. Revised Article 8 covers issues related to the settlement of securities trades for securities held directly by legal owners and for securities held indirectly by securities professionals on behalf of beneficial owners. Most publicly traded equity securities in the United States are held indirectly by members of the Depository Trust Company. Existing Article 8 is predicated on the assumption that securities are held directly in the name of legal owners, and therefore does not reflect the way most securities are actually held. Revised Article 8 cures this problem by providing rules for the indirect holding system. Rules for the direct holding system are retained, since the revision assumes that Article 8 should not seek to influence the development of the securities holding system.

#### E. Judgments

The Commission completed a Tentative Report Relating to Judgments and distributed it for public comment (see Appendix H).

The Commission's review of statutes concerning judgments continues the effort begun in 1989 to revise Title 2A provisions concerning the courts and the administration of civil justice. The current 32 sections include many which are outdated, unclear and superseded in practice by newer, more detailed rules. Moreover, even taken together the statutes and rules do not reflect the totality of current practice.

The Commission proposal states the processes by which a judgment or order is recorded and the process by which information concerning subsequent events that affect

the judgment are added to the record. The Commission has largely completed a project to revise the statutes on lis pendens and has begun a project to revise the statutes relating to the execution of judgments. The recommendations of those related projects will complement the proposed revised statutes on judgments.

#### F. Judgment Execution Sales

The Commission completed a Tentative Report Relating to Judgment Execution Sales of Real Property and distributed it for public comment (see Appendix I). The public comment period ends on January 30, 1995 and the Commission expects to release a final report shortly thereafter.

In 1991 the New Jersey Supreme Court held in New Brunswick Savings Bank v. Markouski, 123 N.J. 402, that judgment creditors and other holders of an interest in a debtor's real property have a right to be notified of the pending sale of the property to satisfy another judgment creditor's lien.

Prior to the decision in Markouski, neither New Jersey statutes nor the court rules required that notice of an execution sale of real property be given except by posting on the property and publication in the newspaper. No statute or rule was forthcoming immediately to implement the notice requirement imposed in Markouski until July 1994, when the Supreme Court announced a new rule to be effective September 1, 1994.

The new rule, actually an amendment to R. 4:65-2, provides that a notice of sale shall be posted, advertised and sent by mail to certain parties, and in addition, be filed with the county recording officer pursuant to the Notice of Settlement Act "and such filing shall have the effect of the notice of settlement as therein provided."

Questions were immediately raised as to the effect of the new rule, the validity of its incorporation of the Notice of Settlement Act, and the relationship between the new rule and the lis pendens statute, the notice provisions of which are typically utilized

in mortgage foreclosure cases. The Supreme Court immediately stayed the implementation of the rule in foreclosure sales at the request of the Bar Association, but it currently remains effective as to judgment execution sales. See *In the Matter of the Amendments to Rule 4:65-2*, 137 N.J.L.J. (September 5, 1994).

In its December 1994 Tentative Report, the Commission recommends a legislative solution to the problem raised in the Markouski case as to judgment execution sales. Under the proposed provisions, a judgment creditor who obtains a writ of execution or other order directing the sale of real property is required to file a notice of the issuance of the writ or other order in the land records. The judgment creditor is then required to send a copy of the notice to all interest holders of record as of the date of the filing of the notice, as well as to other interest holders not of record but of whom the judgment creditor has actual knowledge. Subsequent interest holders would be deemed to have notice of the pendency of the sale of the property through the filing of the notice. Under this proposed statutory scheme, as a practical matter a judgment creditor need only do one record search prior to the execution sale in order to determine the parties to whom notice of the pendency of the sale must be sent. Any subsequent interest or lienholders would be deemed to have notice of the pendency of the sale by virtue of the filing of the notice in the land records.

With respect to actual notice of the date, time and place of a sale, these provisions stipulate that only those interest holders who request notice are required to receive it. It should be noted that any interest holder may request notice of the sale, regardless of when the interest was acquired, provided that the request for notice is received at least 10 days prior to the scheduled sale. While some interest holders may wish to receive notice of the sale, there are many circumstances under which an interest holder might choose not to receive notice. It is the view of the Commission that requiring that only one notice be given to interest holders of record, unless they request subsequent notices of the actual sale, coupled with the constructive notice provided by



the filing in the land records, strikes a proper balance among the interests of the respective parties.

#### G. Possession and Sale of Stolen Property

In 1994, the Commission completed a Second Tentative Report and Recommendations Relating to Possession and Sale of Stolen Property and distributed it for public comment (see Appendix J).

The current statute on this subject, N.J.S. 2C:20-7.1, was added to the Criminal Code as part of L.1981, c.167. Unfortunately, the current statute is poorly drafted and not in harmony with other theft crimes. Most important, the current statute does not contain a penalty for its violation and thus is not enforceable. The error appears to have resulted from indecision as to how the statute should relate to other theft offenses. In the Criminal Code, theft is a single offense, graded according to the value of the property stolen. Provisions that establish the penalty for theft are in 2C:20-2 with other provisions applicable to all forms of theft. The fencing statute duplicated some of these general provisions in subsections (c) and (d) but it did not duplicate the penalty provision. As a result, the intent of the drafters on penalty is unclear.

The revision proposed by this report cures the problems of the fencing statute by combining the fencing statute with the other theft offenses. That involves identifying the provisions of the fencing statute that do not duplicate provisions of the theft statutes and adding them to the appropriate theft provisions. This approach provides a penalty for fencing by treating it as a theft and grading it according to the value of the value of the property involved. N.J.S. 2C:20-2(b).

### **V. PROJECTS UNDER CONSIDERATION**

#### Foreclosure

In connection with its effort to revise all of Title 2A -- Administration of Civil Justice, the Commission began a project this year to revise the law on foreclosure.

Current statutory law on that subject is incomplete and archaic. Many of the substantive legal principles are found not in the statutes but in court rules or cases. In addition, there have been allegations that the foreclosure process involves inappropriate delay, and that delay tends to discourage investment in New Jersey. The Commission is examining the current practice and proposals for reform in an effort to codify the law of foreclosure and produce an efficient, expeditious and fair process.

#### Enforcement of Judgments

The project on enforcement of judgments is also a continuation of the effort to revise the statutes in Title 2A concerning the administration of civil justice. Much of the law on the enforcement of judgments is archaic. Much of the practice is not reflected in the statutes. It is the purpose of the project to simplify the law and bring it into conformity with current practice.

## **VI. COMMISSION RECOMMENDATIONS ENACTED INTO LAW**

Four specific reports of the Law Revision Commission were enacted as two laws in 1994: L.1994, c.114 enacted Commission recommendations regarding the Uniform Commercial Code by adding Article 2A - Leases and Article 4A - Wire Transfers, and by repealing Article 6 - Bulk Transfers; L.1994, c.126 added a new chapter to the Criminal Code to deal with the subject matter of material witnesses.

## VII. APPENDICES

- A. Final Report and Recommendations Relating to the Compilation of Voting Offenses into the Criminal Law (c:\rpts\voting.doc)
- B. Final Report and Recommendations Relating to Distraint/Artisans' Liens (c:\rpts\D&Alien.doc)
- C. Final Report and Recommendations Relating to the Lost or Abandoned Property Act (c:\rpts\trptl.doc)
- D. Tentative Report and Recommendations Relating to the Environmental Protection (c:\environ\2parks\draft6.doc)
- E. Second Tentative Report and Recommendations Relating to Compilation of Criminal Law into the Criminal Code, Correction of Statutes Defining Misdemeanors (c:\crim\trptm1.doc)
- F. Tentative Report and Recommendations Relating to Uniform Commercial Code Revised Article 5 - Letters of Credit (c:\ucc\trpt5.doc)
- G. Tentative Report and Recommendations Relating to Uniform Commercial Code Revised Article 8 - Investment Securities c:\ucc\trpt8.doc)
- H. Tentative Report and Recommendations relating to Judgments (c:\judgmt\trpt.doc)
- I. Tentative Report and Recommendations Relating to Judgment Execution Sales of Real Property (c:\exec\trpts.doc)
- J. Tentative Report and Recommendations Relating to Possession and Sale of Stolen Property (c:\crim\trptf2.doc)