



State of New Jersey

**N J L R C**

**New Jersey Law Revision Commission**

**ANNUAL REPORT**

**1999**

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**TABLE OF CONTENTS**

**I. MEMBERS AND STAFF**..... 5

**II. HISTORY AND PURPOSE**..... 6

**III. FINAL REPORTS**

    A. Public Transportation..... 7

    B. Oaths and Affidavits ..... 8

    C. Uniform Child Custody Jurisdiction and Enforcement Act..... 8

    D. Juries..... 9

    E. Environmental Protection – Natural and Historic Resources..... 10

    F. Fair Resolution of Proprietary Title Claims Act ..... 10

    G. Probate Code..... 10

    H. Uniform Commercial Code – Article 9 ..... 11

    I. Uniform Anatomical Gift Act ..... 12

**IV. TENTATIVE REPORTS**

    A. Fair Resolution of Proprietary Title Claims Act..... 13

    B. Probate Code Revisions..... 13

    C. Uniform Anatomical Gift Act..... 13

    D. Uniform Commercial Code – Article 9..... 13

    E. Rehabilitative Sentencing of Drug Offenders..... 13

**V. WORKS IN PROGRESS**

A. Environmental Protection..... 14

B. Common Interest Ownership Act..... 15

C. Legalized Games of Chance..... 15

D. Property Law ..... 15

E. Disability Terms..... 15

F. Code of Criminal Procedure ..... 15

G. Statute of Limitations..... 15

H. Uniform Computer Information Transaction Act..... 16

I. Property Tax ..... 16

## APPENDIX

### VI. FINAL REPORTS PUBLISHED IN 1999

Public Transportation.....	<b>Appendix A</b>
Oaths and Affidavits.....	<b>Appendix B</b>
Uniform Child Custody Jurisdiction and Enforcement Act.....	<b>Appendix C</b>
Juries.....	<b>Appendix D</b>
Environmental Protection – Natural and Historic Resources .....	<b>Appendix E</b>
Fair Resolution of Proprietary Title Claims Act.....	<b>Appendix F</b>
Probate Code Revisions .....	<b>Appendix G</b>
Uniform Commercial Code – Article 9.....	<b>Appendix H</b>
Uniform Anatomical Gift Act.....	<b>Appendix I</b>

### VII. TENTATIVE REPORTS PUBLISHED IN 1999

Fair Resolution of Proprietary Title Claims Act.....	<b>Appendix J</b>
Probate Code Revisions .....	<b>Appendix K</b>
Uniform Anatomical Gift Act.....	<b>Appendix L</b>
Uniform Commercial Code – Article 9.....	<b>Appendix M</b>
Rehabilitative Sentencing of Drug Offenders .....	<b>Appendix N</b>

## **I. MEMBERS AND STAFF OF THE COMMISSION IN 1999**

The members of the Commission are:

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

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

**Peter Buchsbaum**, Attorney-at-Law

**Vito A. Gagliardi, Jr.**, Attorney-at-Law

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

**Eric Neisser**, Acting Dean, Rutgers Law School - Newark, Ex officio, January 1, 1999 to August 30, 1999

**Stuart Deutsch**, Dean, Rutgers Law School - Newark, Ex officio, September 1 to December 31, 1999

Represented by **Robert Carter**, Professor of Law

**Ronald J. Riccio**, Dean, Seton Hall Law School, Ex officio, January 1, 1999 to August 31, 1999

**Patrick Hobbs**, Dean, Seton Hall Law School, Ex officio, September 1, 1999 to December 31, 1999

Represented by **William Garland**, Professor of Law

**David C. Russo**, Chairman, Assembly Judiciary Committee, Ex officio

**Rayman Solomon**, Dean, Rutgers Law School - Camden, Ex officio,

Represented by **Grace Bertone**, Attorney-at-Law

The staff of the Commission is:

John M. Cannel, Executive Director

Maureen E. Garde, Counsel

John J. A. Burke, Associate Counsel

Judith Ungar, Associate Counsel

Leland J. White, Associate Counsel

## II. HISTORY AND PURPOSE OF THE COMMISSION

In 1985, the Legislature enacted a statute creating the Law Revision Commission.<sup>1</sup> The Commission conducts a continuous review of New Jersey's statutes to identify subjects that require statutory revision. This review corrects conflicting, obsolete or redundant statutes, and identifies area of law requiring comprehensive revision. The Commission also considers recommendations from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, and other learned bodies and public officers. The Commission's objective is to simplify, clarify and modernize New Jersey statutes.

The Commission opened its office in 1987. Since then, it has filed 42 reports with the Legislature of which 18 have been enacted into law. Many recommendations are now pending before the Legislature. The Commission's work has been the subject of comment in law journals and has been used by law revision commissions in other states. In revising a law, the Commission extensively examines local law and practices and consults the law of other jurisdictions, experts in the area and proposals of learned bodies.

The meetings of the Commission are open to the public. The Commission actively solicits public comment on its Tentative Reports, which are widely distributed to interested persons and groups. In 1996, the Commission established its website where its reports are published on the Internet.<sup>2</sup> The publications of the Commission's reports on the Internet make its work more accessible to the public.

New Jersey has a tradition of law revision. The first Law Revision Commission was established in 1925. It produced the Revised Statutes of 1937. The Legislature intended the work of revision and codification to continue after

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<sup>1</sup> 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.

<sup>2</sup> See [www.lawrev.state.nj.us](http://www.lawrev.state.nj.us); see also [www.lex2k.org](http://www.lex2k.org), an affiliated website

enactment of the Revised Statutes. As a result, the Law Revision Commission continued in operation. After 1939, its functions passed to a number of successor agencies, most recently the Legislative Counsel.<sup>3</sup> In 1985, the Legislature transferred the functions of statutory revision and codification to the New Jersey Law Revision Commission.<sup>4</sup>

### **III. FINAL REPORTS**

In 1999, the New Jersey Law Revision Commission published nine final reports. A final report contains the decision of the Commission on a particular legal subject. The report contains an analysis of the subject, a proposed statute and appropriate commentary. It is published after the public has had an opportunity to comment on tentative drafts of the report. The final report is filed with the Legislature. After filing, the Commission and its staff work with the Legislature to draft the report in bill form and to facilitate its enactment.

#### **A. Public Transportation**

In 1999, the Commission completed its Final Report and Recommendations Relating to Public Transportation (see Appendix A). The Report was undertaken as part of the project to revise the laws relating to transportation. It includes all subject matter on public transportation now found in Title 48 - Public Utilities. The proposed statutes on public transportation are new. The current statutes on public transportation in Title 48 - Public Utilities are intermixed with statutes on kinds of public utility unrelated to transportation, and contain detailed provisions on subjects that are no longer important.

When the statutes in this area were enacted, public transportation companies were powerful economic forces. The situation has changed; there is now little to regulate. Governmental entities or interstate operations acting by federal authority provide most rail and bus service. There are some bus companies and a few rail companies subject to state regulation. These chapters provide authority for the Department of Transportation to require licenses for those public transportation operations and to regulate those companies as to safety, service and rates. However, the proposed statutes do not require the Department to regulate public transportation in ways that no longer serve any public purpose.

#### **B. Oaths and Affidavits**

In 1999, the Commission completed its Final Report and Recommendations Relating to Oaths and Affidavits (see Appendix B), which updates the statutory law. Title 41, the current law on oaths and affidavits, is a collection of provisions concerned with official oaths taken by public officers and with so-called "ordinary"

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<sup>3</sup> N.J.S.A. 52:11-61

<sup>4</sup> L.1985, c.498.

oaths and affidavits used for various purposes. The Commission Report is a revision of the entire Title. It eliminates provisions that are unnecessary, including provisions concerning the Western Board of Proprietors, and provisions criminalizing perjury and false swearing superseded by Title 2C, and recommended for repeal in other projects completed by the Law Revision Commission. Those provisions deemed to have continuing validity have been reorganized and regularized. A new provision permitting a certification in lieu of oath has been added.

The revised provisions have been divided into two chapters, "Official oaths" and "Oaths and affidavits." The first chapter deals with the official oaths of office taken by elected and appointed officials at the commencement of their service. The taking of such oaths by certain State officers and the substance of the oaths is mandated by the New Jersey Constitution. The proposed second chapter deals with so-called ordinary oaths, that is, a swearing or affirmation to tell the truth. The source provisions regarding these two distinct types of oaths were somewhat intertwined, and every effort has been made to distinguish between them in the separate chapters.

### C. Uniform Child Custody Jurisdiction and Enforcement Act

In 1999, the Commission completed its Final Report and Recommendations Relating to the Uniform Child Custody Jurisdiction and Enforcement Act (see Appendix C), which recommends the adoption of the 1997 Uniform Child Custody Jurisdiction and Enforcement Act with minor non-uniform amendments.

In 1968, the Uniform Child Custody Jurisdiction Act (UCCJA) was approved by the National Conference of Commissioners on Uniform State Laws, and the American Bar Association. The Act aimed to diminish the problems which thousands of children endured annually as they were shifted from state to state and from family to family while their parents or other persons battled over their custody. New Jersey adopted the Act in 1979, with only a few minor variations in wording. N.J.S. 2A:34-28 through 2A:34-52. In 1990, the Legislature added two new sections: providing for protective custody of a child to prevent flight or concealment, and requiring that court orders include a notice, in English and Spanish, advising as to penalties for violation.

In 1997, the National Conference of Commissioners on Uniform State Laws, completed the Uniform Child Custody Jurisdiction and Enforcement Act (1997) (UCCJEA) which was intended to replace the Uniform Child Custody Jurisdiction Act (UCCJA). The Uniform Child Custody Jurisdiction and Enforcement Act revises child custody law in the context of federal statutes and almost three decades of inconsistent case law, and it provides a remedial process to enforce custody and visitation determinations.

The Commission recommended adoption of the 1997 Act. Along with the main text of the act, the Commission also accepted optional provisions on application of the act to Indian Tribes and on non-disclosure of identifying information that might jeopardize a party or a child in a custody proceeding. The



Commission decided to supplement the Uniform law with two sections that were added to the UCCJA by the Legislature after its enactment in 1979.

The Commission approved two differences from the uniform text of UCCJEA. It reworded Section 105, International Application of Act, subsections (a) and (c), giving New Jersey courts greater authority to exercise discretion regarding custody judgments made in foreign countries. It also made a small change in wording of subsection 209(a) to make it clear that certain residence data need not be disclosed if the court finds that the data must be protected in the interest of personal safety.

#### D. Juries

In 1999, the Commission completed its Final Report and Recommendations Relating to Juries (see Appendix D), which continues the Commission's examination of jury law. The current jury statutes were enacted in 1995 in response to a report filed by the Law Revision Commission in 1992. While this enactment represented a comprehensive revision of the law regarding juries, no enactment can be the last word on a subject. Issues always arise that require reexamination of statutes, even those recently revised.

Most important, after the enactment of the jury statute, the Constitution was amended to provide for State funding of the judicial system. As a result of that change, some jury-related functions were transferred from county officers to state judicial employees. The statutes enacted in 1995, like their predecessors, assume that most jury management is done by the sheriffs' offices. The statutes must now be corrected to reflect current practice.

In addition, current statutes limit jury service to a single session of court. As a result, jury panels must change on the dates that begin a new term, even if the date is in the middle of a week. While this requirement can be inconvenient for petit juries, the effects on grand juries are more important. Every grand jury, whenever its term begins, must end its term by the end of a session. While no one has suggested that a grand jury be scheduled to sit for more than four months, flexibility in scheduling when grand jury terms start and end would be convenient to courts and prosecution and would simplify compliance with the statutory requirement that there be at least one grand jury sitting in each county at all times. As a result, the Commission recommended deletion of the references to terms of court and substitution of provisions limiting the length of jury service and making exceptions to the limitations.

The Commission also recommended the enactment of new provisions specifying that a person who is summoned for jury service and not chosen for a jury within two days be released as having completed jury service. That provision represents the practice in a majority of counties, but there are a few counties where prospective jurors are held for a full week. The statutory requirement implements the expectation that jury reform adopted three years ago would allow the implementation of a two day or one trial rule throughout the state.

#### E. Environmental Protection – Natural and Historic Resources

In 1999, the Commission completed its Final Report and Recommendations Relating to Environmental Protection – Natural and Historic Resources (see Appendix E), which recompiles and rationalizes the law governing state parks and forests, state monuments and historic sites and the preservation of open spaces.

#### F. Fair Resolution of Proprietary Title Claims Act

In 1999, the Commission completed its Final Report and Recommendations Relating to the Fair Resolution of Proprietary Title Claims Act (see Appendix F), which resolves ownership issues implicating the State's residual rights in property formerly owned by the Eastern Board of Proprietors. In July 1998, the Department of Environmental Protection acquired the remaining property interests of the Eastern Board of Proprietors, a corporate entity which first acquired property in the seventeenth century from the grantees of the English King Charles II. In addition to two identified parcels of land adjacent to State parks, the State acquired the residual land ownership rights to a large part of the State's geographical area. As a result, title questions which formerly could be resolved expeditiously and at low cost with the Proprietors may now become time-consuming and expensive to resolve with the State. Current governmental mechanisms are designed to regulate conveyances of the State's land interests, rather than to facilitate the resolution of questions about the land title of private parties. The Commission Report and Recommendations provides a relatively simple and expeditious mechanism for resolving certain ownership issues which implicate the State's newly-acquired residual rights in the property of the former Eastern Board of Proprietors.

#### G. Probate Code Revisions

In 1999, the Commission completed its Final Report and Recommendations Relating to Probate Code Revisions (see Appendix G), which addresses problems associated with missing heirs. The Commission began this project in response to a problem regarding the Probate Code: the statutes do not provide clearly for what should be done if it is not known whether heirs of a particular class exist or who should inherit if particular persons cannot be found. A number of statutes bear on the subject, but they conflict.

The issue was raised in Matter of Estate of Peterson, 316 N.J. Super. 549 (Ch.Div. 1998), which concerns an intestate estate that was to be divided among 31 heirs. One heir, a first cousin, could not be located. There was no proof that the cousin was still alive, or that he had issue. The court examined the statutes on the subject and found that they conflict, but found 3B:23-21 controlling and ordered a missing heir's share paid to the Unclaimed Property Administrator. While the result in the Peterson case may be correct as a matter of law, it is not good policy. In most cases involving an heir who is missing or unknown, forwarding property to the Unclaimed Property Administrator is not the first step in getting the property to the rightful heir; it is a final disposition of the property to the State. Payment to the Unclaimed Property Administrator for the unknown father of an illegitimate child

just takes money from the child's mother and gives it to the State. That result should be avoided.

As a result, the Commission recommended amendments to the Probate Code assuring that reasonable efforts be used to look for an heir and that the missing heir's share be held for two years to give him a chance to be found or come forward. After that process, it can be assumed that the missing heir will probably not be found and his share is to be divided among heirs who can be found.

#### H. Uniform Commercial Code – Article 9

In 1999, the Commission completed its Final Report and Recommendations Relating to the Uniform Commercial Code – Article 9 (see Appendix H), which recommends enactment of Revised Article 9 with non-uniform amendment to establish central filing of financing statements. In July 1998, the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Law Institute (ALI) approved a Revised Article 9 - Secured Transactions for the Uniform Commercial Code (UCC). The Commission reviewed Revised Article 9 and recommends it as appropriate for enactment in New Jersey.

Revised Article 9 covers collateral not previously considered Article 9 assets. For example, debtors may create Article 9 security interests in health care receivables and deposit accounts. The revision also fine-tunes the perfection and priority rules for various kinds of Article 9 property. For example, a creditor's security interest in payment intangibles is automatically perfected upon sale, and security interests in bank deposit accounts and investment property are perfected by control generally by tripartite agreement.

The Article also improves, but does not resolve, the myriad problems arising from the necessity to determine which jurisdiction's law governs any particular legal issue. For example, the revision clarifies that the debtor's jurisdiction is the place to file a financing statement. The revision modifies the filing rules by moving toward a central filing system. Finally, the Article expands rights of consumers particularly in the case of default. However, while Revised Article 9 improves the law of secured transactions by repairing technical problems that have arisen under existing law, its approach to filing financing statements is not sufficiently innovative and leaves issues that require independent reconsideration at the state level. The revision presents New Jersey with the opportunity to establish a central filing system for UCC financing statements.

The Commission therefore recommends that the Legislature adopt Revised Article 9 (with its conforming amendments). The Commission also recommends that the Legislature adopt non-uniform amendments to (1) establish a central filing system and (2) provide a Part 6 default rule for consumer transactions, and enact conforming amendments to statutes referencing the former Article 9.

## I. Uniform Anatomical Gift Act

In 1999, the Commission completed its Final Report and Recommendations Relating to the Uniform Anatomical Gift Act (see Appendix I), which rejects adoption of the uniform law and recommends amendment of existing New Jersey law.

Ten years ago the New Jersey Law Revision Commission referred its Report and Recommendations on the Uniform Anatomical Gift Act (1987) to the Legislature. The Commission recommended adoption of the 1987 UAGA but took no position on sections of the Uniform Act which differed from two then-recent New Jersey legislative policy enactments: the routine inquiry law; and the required request law. Since that time, the Legislature has further amended its version of the original 1968 UAGA. Additional state and federal regulations have nullified and superseded several provisions of the Act. However, the most essential provisions of New Jersey state law and federal law are consonant, due to recent amendments to both. Adoption of any provisions of the 1987 UAGA would risk placing state and federal laws in conflict and in some cases moving backwards from positive change.

The Commission no longer recommends the enactment of the Uniform Anatomical Gift Act. The New Jersey statutes include several provisions which are not in the Uniform Act and which should be retained. Examples include N.J.S. 26:6-59 which adds college programs for mortuary science students to list of eligible donees of bodies or body parts; and N.J.S. 26:6-60 which adds eye bank technicians and medical students to list of persons allowed to remove eyes.

However, some revision is necessary to bring New Jersey into full conformity with federal regulations and modern practice. The Commission recommends amendments to these provisions of the New Jersey Anatomical Gift Act.

## **IV. TENTATIVE REPORTS**

In 1999, the Commission published seven Tentative Reports. A tentative report represents the first settled attempt of the Commission to revise an area of law. It is the product of lengthy deliberations, but it is not final. A tentative report is distributed to the general public for comment. The Commission considers these comments and amends its report.

### **A. Fair Resolution of Proprietary Title Claims Act**

In 1999, the Commission published its Tentative Report on the Fair Resolution of Proprietary Title Claims Act (see Appendix J). Later that year, the Commission submitted its Final Report and Recommendations on the Fair Resolution of Proprietary Title Claims Act (see Appendix F).

### **B. Probate Code Revisions**

In 1999, the Commission published its Tentative Report on Probate Code Revisions (see Appendix K). Later that year, the Commission submitted its Final Report and Recommendations on Probate Code Revisions (see Appendix G).

### **C. Uniform Anatomical Gift Act**

In 1999, the Commission published its Tentative Report on the Uniform Anatomical Gift Act (see Appendix L). Later that year, the Commission submitted its Final Report and Recommendations on the Uniform Anatomical Gift Act (see Appendix I).

### **D. Uniform Commercial Code – Article 9**

In 1999, the Commission published its Tentative Report relating to the Uniform Commercial Code – Article 9 (see Appendix M). Later that year, the Commission submitted its final Report and Recommendations on the Uniform Commercial Code – Article 9 (see Appendix H).

### **E. Rehabilitative Sentencing of Drug Offenders**

In 1999, the Commission published its Tentative Report relating to the Rehabilitative Sentencing of Drug Offenders (see Appendix N).

New Jersey's controlled dangerous substance law, chapter 35 of the Criminal Code, enacted as the Comprehensive Drug Reform Act of 1986. 2C:35-1. That law provides:

It is the intention of the Legislature to provide for the strict punishment, deterrence and incapacitation of the most culpable and dangerous offenders, and to facilitate where feasible the rehabilitation of drug dependent persons so as ultimately to reduce the demand for

illegal controlled dangerous substances and the incidence of drug-related crime.

2C:35-1.1

To implement this policy, the Legislature enacted 2C:35-14 which allows a judge to set aside the usual presumption of imprisonment and sentence an offender to a drug treatment program rather than to prison when certain conditions are met. These conditions include findings that placing the offender in a drug treatment program does not endanger the community and the placement will serve to end the offender's dependency on drugs.

However, the words of the statute create another restriction on the use of drug treatment, one that does not appear to have been intended by the Legislature. The statute has been held not to recognize treatment that took place before the date of sentence and to require that a person who, as the result of that treatment is no longer drug dependent at the time of sentence, must go to prison. *State v. Soricelli*, 156 N.J. 525 (1999). The Court noted that the result did not advance the legislative policy, but found that it was required by the words of the statute. The Supreme Court went on to refer the matter to the Legislature for correction.

The Tentative Report found that this statute is in need of correction. The Commission proposed an amendment to allow non-custodial sentencing for the responsible offender who deals with his own drug problem immediately and does not wait for the sentencing court to force him to do it.

## **V. WORK IN PROGRESS**

### **A. Environmental Protection Projects**

In 1993, the Commission entered into a working agreement with the Department of Environmental Protection to revise the state's extensive environmental statutes. The project was suggested by Senator Robert E. Littell. The first stage of the project involved identifying the numerous statutes to be included in the project, which are currently scattered through 13 existing titles of the New Jersey Statutes. The second phase involved reorganizing these statutes into eight new subtitles, to be organized under the new title "Environment."

In 1999, the Commission issued a final report on the proposed subtitle "Natural and Historic Resources" (see Final Reports above). Final reports on two other subtitles were released earlier. Work continues on the subtitle "Pollution Prevention, Control and Remediation."

### **B. Common Interest Ownership Act**

In 1997, the Commission began a project to draft a single comprehensive law for regulation of condominiums, planned communities and cooperatives. New Jersey has a number of existing statutes that regulate or impact some or all of these

common interest ownership communities. The Commission studied the Uniform Common Interest Ownership Act, but decided that it would be preferable to write a simpler and clearer statute based both on the Uniform Law and on existing New Jersey provisions. A report should be filed on this subject early in 2000.

#### C. Legalized Games of Chance

In 1999, the Commission directed the staff to investigate revision of Chapter 8, Legalized Games of Chance, of Title 5 of the New Jersey Revised Statutes. The Chapter establishes the Legalized Games of Chance Control Commission and regulates bingo, raffles and amusement games.

Staff members met with members of the staff of the Legalized Games of Chance Control Commission and the Division of Consumer Affairs, to learn how the current statutes operate and which areas need revision.

#### D. Property Law

In 1999, the Commission began a project to revise the portions of Title 46 that concern general real property law. This project would replace those fragmentary provisions with a code of property law along the lines of the Restatement.

#### E. Disability Terms

In 1999, the Commission began a project to identify the statutes that use inappropriate words to refer to disabled persons and to replace them with contemporary terminology in the field.

#### F. Code of Criminal Procedure

In 1999, the Commission began a project to recompile the parts of Title 2A that deal with criminal procedure. This project would continue the reorganization of Title 2A and would compile all law on criminal procedure with the criminal law in Title 2C

#### G. Statute of Limitations

Some years ago, the Commission began a project to revise the law on the statutes of limitations. The project was abandoned when the Commission was unable to reach a consensus on the approach to be taken. In 1999, the Commission decided to re-examine the subject and to resume work on the project.

#### H. Uniform Computer Information Transaction Act

In 1999, in response to a request from the National Conference of Commissioners on Uniform State Laws, the Commission began a review of the Uniform Computer Information Transaction Act (UCITA). UCITA has engendered both strong support and opposition in the business and academic communities.

The Commission has begun an in-depth examination of the substantive effects of UCITA, its differences from existing law, and its relationship to the recommendations of the Commission's 1998 Report on Standard Form Contracts.

### I. Property Tax

In 1997, the Commission approved a project, at the request of former Chief Judge of the Tax Court, Lawrence Lasser, to revise the laws related to property tax.

The current laws are antiquated, redundant and badly organized. To assist in the project, the Commission assembled a panel of experts. The project has been delayed by the tragic death of Judge Lasser. However, work on the project should begin again during 2000.