

MINUTES OF COMMISSION MEETING
April 20, 2006

Present at the New Jersey Law Revision Commission meeting held at 153 Halsey Street, 7th Floor, Newark, New Jersey, were Commissioners Albert Burstein, Vito Gagliardi, Jr., Sylvia Pressler and Andrew Bunn. Grace Bertone of McElroy, Deutsch & Mulvaney attended on behalf of Commissioner Rayman Solomon and Professor William Garland attended on behalf of Commissioner Patrick Hobbs.

Minutes

The Minutes of the March 16, 2006, meeting were accepted as submitted.

Report of Nominating Committee

Commissioner Bertone presented the Nominating Committee's report, explaining that outgoing Chairman Burstein no longer wished to serve as the Chair of the Commission. Commissioner Bertone said that the Committee had nominated Commissioner Gagliardi to be Chairman. The Commission elected Commissioner Gagliardi Chairman. Chairman Gagliardi said that he was flattered by the nomination, and said that it was impossible to fill the shoes of outgoing Chairman Burstein. Chairman Gagliardi was very pleased that Chairman Burstein, with his invaluable participation and insights into the legislative process, had agreed to continue serving on the Commission.

Poor Law

Chairman Gagliardi said that the term "needy persons" is too quaint and should be changed. Commissioner Pressler said that she did not like the use of the term "welfare", suggesting instead the use of the term "public assistance". She also suggested that the terms "eligible person" and "eligible family" be defined, then used throughout the revised text instead of "needy".

John Cannel explained that the current statute consists of two programs, a general assistance program, which provides assistance to anyone who needs it, and the TANF program (which was the old Aid to Families with Dependent Children) which provides assistance to families with children.

Chairman Gagliardi observed that the Commission has generally steered away from revising relatively recent law and asked if Staff had any contact with Trenton which suggested that modification to the relatively recent changes to this area of the law would not be a problem. Mr. Cannel replied that Staff's contacts with Trenton have revealed that many of the people responsible for dealing with this area of the law were unfamiliar with current controlling statutory language, as they primarily work from the language contained in the regulations. He also noted that Staff did not make substantive changes in any recent statutes.

Commissioner Pressler indicated that she did not think the draft was sufficiently clear on the distinctions between municipal and county obligations. Mr. Cannel said that the language needed to be clarified, but that as complicated and rough as the draft is, it is considerably better than the original statute.

Commissioner Pressler asked if it would be better to structure the piece as two chapters: one pertaining to general assistance, and one pertaining to TANF. Mr. Cannel responded that it might be appropriate to have three chapters, one for administrative provisions, one for general assistance and one for TANF. He also pointed out that the language of the draft does not define Department or Commissioner. He explained that in the original statute some references to the Commissioner are to the Commissioner of Human Services, and some are to the Commissioner of Labor. Unfortunately, the original statute is not clear. Commissioner Pressler agreed that neither the language of the statute nor the language of the regulations is clear.

Professor Garland suggested that the piece begin with those sections applicable to both general assistance and TANF, then deal with general provisions and administration, then general assistance, then TANF.

Mr. Cannel said that general definitions will be placed in a shared section, and words applicable to only one chapter or section will be defined in that chapter or section. Unlike the current statute, the draft should not include substantive material in the definitions section as it is easy to overlook or misinterpret it when placed there.

Chairman Gagliardi asked if any Commissioners had a specific section or concept that they wished to discuss. As none did, he said that the Commission would hold a more detailed discussion after the next revision.

Mr. Cannel explained that Staff had discussed the project with some representatives of legal services people and some county welfare administrative staff.

Commissioner Pressler said that any draft would have to deal with Fair Hearing requirements (pertaining to notice and a hearing, etc.); although they are not currently included in the statute, they are fundamental to the process.

Professor Garland asked how efficient it was to have a system that is administered at both the county and the municipal levels. Mr. Cannel explained that the majority of municipalities have turned over the administration of the applicable programs to the counties, but that there were exceptions in the cases of large municipalities like Newark and Jersey City.

Commissioner Pressler asked if there was a way to find out how many municipalities have not retained control over these programs, and Mr. Cannel advised that Judy Ungar has this information and will provide it to the Commission at the next meeting. Commissioner Pressler suggested that the statute should provide that

municipalities that turned over control of the programs to the county should not be able to take control back from the county.

Title 39

The Commission began its review by looking at a chart listing penalty provisions from Volume I and portions of Volume II of Title 39.

The Commission considered penalty provisions in which there appeared to be a significant disparity between the fine imposed and the jail time provided for, provisions in which a very low fine (below \$50) is called for, and provisions in which a fine of more than \$1,000 is called for. The Commission also considered the statutory sections in which imprisonment was called for only in the event that there was a failure to pay a fine, sections in which imprisonment was called for in cases of “administrative” offenses, and sections in which no upper limit was set on the fine that may be imposed.

Sections in the penalty provisions exist in which clarification of terminology would be helpful. The statute contains references to suspension, revocation and forfeiture of a driver’s license or registration. These should be modified to make it clear whether there is any substantive difference in impact among the three. The terminology regarding driving is inconsistent, with references to both a “right to operate” a vehicle and the “driving privilege”.

The section pertaining to driving while intoxicated is very long, as it is in the original statute. Staff will review this section to see if there is a logical manner in which to divide the information. In that same section, despite several provisions pertaining to the forfeiture of the privilege of driving in New Jersey, there is only a single reference to discretionary reinstatement of a driver’s license. It may be appropriate to include the discretionary language elsewhere in the section, or to remove it from the only subsection which contains it. Staff will determine whether a list of approved drug or alcohol inpatient rehabilitation programs currently exists.

Ms. Tharney explained that while a number of sections of the current statute have been consolidated, further consolidation may be appropriate; Staff will review the piece again to make that determination.

The Commission requested that Staff make the following changes to the current Volume II penalty provisions draft: (1) remove language calling for imprisonment in cases of non-serious or administrative offenses; (2) attempt to categorize the fines in groups so that when there is a change to a type of fine, it retains some proportionality in regard to other offenses of a similar type or degree; (3) include an upper limit on all fines; (4) modify the lowest of the fines to a lower threshold of \$50 if appropriate; (5) eliminate language calling for imprisonment for failure to pay a fine; (6) obtain information on motor vehicle penalty points and create a chart of those; and (7) add additional penalty provisions contained in Volume II.

Miscellaneous

The next meeting of the Commission is scheduled for May 18, 2006.