

**To: New Jersey Law Revision Commission**  
**From: Samuel M. Silver**  
**Re.: Misdemeanors and High Misdemeanors**  
**Date: October 10, 2017**

## MEMORANDUM

### Executive Summary

Staff had been asked to review the Model Entity Transaction Act<sup>1</sup> (META) to determine whether modifications to New Jersey's law to incorporate provisions of the Act would be of use. In connection with research on this subject, Staff noted that it is presently a "misdemeanor" for a partnership to conduct or transact business in New Jersey if they have not filed the appropriate paperwork with the County Clerk's Office.<sup>2</sup> A cursory examination of the New Jersey Statutes confirms the prevalence of both the term "misdemeanor" and "high misdemeanor."

### Misdemeanor and High Misdemeanor

In New Jersey "crimes" are set forth in Title 2C. In its current incarnation, crimes are classified, for the purpose of sentence, into four degrees.<sup>3</sup> The statute, N.J.S. 2C:43-1(a) refers to crimes of the first degree, second degree, third degree, and fourth degree.<sup>4</sup> The New Jersey Criminal Code does, however, recognize that other statutes may define criminal activity and that the designation of these crimes may not follow the schema set forth in N.J.S. 2C:43-1(a).<sup>5</sup>

Misdemeanors are addressed in the criminal code in Subtitle 3, Chapter 43, Section 1, subsection b. Regarding misdemeanors, subsection b. provides:

... notwithstanding any other provision of law, a crime defined by any statute of this State other than this code and designated as a misdemeanor shall constitute for purpose of sentence, a crime of the fourth degree.

There are presently 271 references to the term "misdemeanor" in the New Jersey Statutes. These references span 41 titles and 1 appendix. An individual alleged to have violated one of these statutory sections could be charged with a crime of the fourth degree<sup>6</sup>, subject to eighteen months incarceration<sup>7</sup> and up to a \$10,000.00<sup>8</sup> fine if no alternate punishment is specified in the individual statute.<sup>9</sup>

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<sup>1</sup> Model Entity Transactions Act (META) Summary, Uniform Law.

<sup>2</sup> See N.J.S. 56-1-1 and N.J.S. 56:1-2.

<sup>3</sup> N.J.S. 2C:43-1(a).

<sup>4</sup> Id.

<sup>5</sup> N.J.S. 2C:43-1(b).

<sup>6</sup> Id.

<sup>7</sup> N.J.S. 2C:43-6(4).

<sup>8</sup> N.J.S. 2C:43-3(b)(2).

<sup>9</sup> See CANNEL, CRIMINAL CODE ANNOTATED, *Comment N.J.S. 2C:43-1(b)*, (Gann 2017).

The New Jersey Statutes also contain references to “high misdemeanors.” This classification of crimes is also addressed in the criminal code in Subtitle 3, Chapter 43, Section 1, subsection b. This subsection provides:

...a crime defined by any statute of this State other than this code and designated as a high misdemeanor shall constitute for the purpose of sentence a crime of the third degree.

The statutes of New Jersey contain 36 references to “high misdemeanors” across 18 titles. A person convicted of a high misdemeanor could be charged with a crime of the third degree<sup>10</sup>, subject to between three to five years incarceration<sup>11</sup> and up to a \$10,000.00<sup>12</sup> fine if no alternate punishment is specified in the individual statute.<sup>13</sup>

The classification of an offense, for sentencing purposes, as a misdemeanor or a high misdemeanor is anachronistic. These monikers represent designations from a time prior to the present codification of the New Jersey Criminal Code.

### **Conclusion**

Staff seeks authorization to conduct additional research and outreach regarding the use of the terms “misdemeanor” and “high misdemeanor” to determine whether it would be of assistance to update the statutes to reflect the currently accepted terminology.

Should such further research and outreach be approved by the Commission, Staff will contact the appropriate stakeholders to advise them of the Commission’s consideration of this issue, and offer any documents produced by the Commission.

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<sup>10</sup> *N.J.S. 2C:43-1(b)*.

<sup>11</sup> *N.J.S. 2C:43-6(3)*.

<sup>12</sup> *N.J.S. 2C:43-3(b)(1)*.

<sup>13</sup> *See CANNEL, CRIMINAL CODE ANNOTATED, Comment N.J.S. 2C:43-1(b), (Gann 2017)*.