

To: New Jersey Law Revision Commission
From: Nicole Grasso
Re: Seat Belt Usage (N.J.S. 39:3-76.2f) and Public Health and Safety
(N.J.S. 2C:40-18)
Date: July 6, 2015

MEMORANDUM

Staff seeks approval from the Commission to undertake a project addressing the issue of notice with regard to the interplay between N.J.S. 39:3-76.2f (“seat belt statute”) and N.J.S. 2C:40-18 (“public health and safety statute”) in response to the recent New Jersey Supreme Court decision in *State v. Lenihan*.¹ This issue was previously introduced to the Commission in a Memo drafted in June 2014 before the decision of the New Jersey Supreme Court in the case.²

Background

New Jersey requires each driver and front seat passenger along with all passengers between the ages of eight and eighteen to wear a seat belt in a vehicle.³ In addition, the driver of the vehicle “shall secure or cause to be secured in a properly adjusted and fastened safety seat belt system . . . any passenger who is at least eight years of age but less than eighteen years of age.”⁴ In November 2013, the New Jersey Supreme Court heard oral arguments regarding an issue of first impression concerning whether a violation of the seat belt statute could be a predicate offense to a conviction under New Jersey’s public health and safety statute.⁵ The public health and safety statute states that “[a] person is guilty of a crime of the second degree if the person knowingly violates a law intended to protect the public health and safety or knowingly fails to perform a duty imposed by a law intended to protect the public health and safety and recklessly causes death.”⁶

On August 10, 2007, eighteen year old defendant Kirby Lenihan was driving with her sixteen year old friend, K.G., in the passenger seat when defendant lost control of the vehicle and collided head on with a guardrail.⁷ Police found evidence of “huffing” at the time of the accident and neither defendant nor K.G. was wearing a seat belt.⁸ Both were transported to the hospital and K.G. sustained serious injuries.⁹ The following morning, K.G. died as a result of her

¹ *State v. Lenihan*, 219 N.J. 251 (2014).

² Chelsea Purdue, “*Failure to Wear a Seatbelt and Public Health and Safety (N.J.S.A. 2C:40:18)*” (June 12, 2014).

³ N.J.S.A. 39:3-76.2f(a).

⁴ N.J.S.A. 39:3-76.2f(b).

⁵ *State v. Lenihan*, 427 N.J. Super. 499, 49 A.3d 415 (N.J. Super. App. Div. 2012); Transcript of Oral Argument, *State v. Lenihan*, 2013 WL 6817492 (No. A-45-12).

⁶ N.J.S.A. 2C:40-18(a).

⁷ *Lenihan*, 219 N.J. at 256.

⁸ *Id.*

⁹ *Id.*

injuries.¹⁰ A grand jury found defendant guilty of N.J.S. 2C:40-18(a) as a violation of the public health and safety law because neither passengers were wearing seat belts.¹¹ This count was amended to a charge of a third degree crime as a result of plea negotiations.¹² The Appellate Division held that the seat belt statute falls directly into the public health and safety statute and is a law “intended to protect the public health and safety” as stated in N.J.S. 2C:40-18.¹³ The Appellate Division also held the language of N.J.S. 2C:40-18 is not unconstitutionally vague.¹⁴

On appeal to the New Jersey Supreme Court, defendant argued that her violation of the seat belt statute could not serve as a predicate offense to the public health and safety statute because someone who violates the seat belt statute does not threaten “the public health and safety,” only the health and safety of the discrete individual who is injured.¹⁵ Defendant contended that she was not on notice that such a “minor violation” would result in the prosecution of a third degree crime based on her passenger sustaining injuries.¹⁶ Defendant also argued that the public health and safety statute is unconstitutionally vague and added that the statute should be narrowly interpreted to reflect its limited history applying primarily to violations of fire and building codes affecting the community at large.¹⁷ The New Jersey Supreme Court was not persuaded by these arguments, and affirmed the Appellate Division’s decision.¹⁸

Issue Presented

It appears, based on an initial review of the legislative history and statutory interpretation that N.J.S. 39:3-76.2f and N.J.S. 2C:40-18 are reconcilable. In an attempt to reduce deaths and injuries resulting from traffic accidents, Congress passed the National Traffic and Motor Vehicle Safety Act of 1966.¹⁹ This led to the issuance of Federal Motor Vehicle Safety Standard No. 208 which required automobile manufacturers to install a lap belt for each occupant and shoulder harness for front seat occupants for the purpose of protecting the safety of occupants.²⁰ In 1988, the New Jersey Supreme Court found that “the issue [regarding seat belts and automotive safety] . . . undoubtedly concerns a matter of great public interest,” and that seat belts “may be the most significant source of automobile crash protection for occupants.”²¹ Presently, pursuant to 49 U.S.C.A. § 30127(d), Congress finds that it is in the public interest for the United States

¹⁰ *Id.* at 257.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 258

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *See id.*

¹⁸ *See id.* at 268.

¹⁹ *See Lenihan*, 427 N.J. Super. at 507.

²⁰ *Id.*

²¹ *See Lenihan*, 219 N.J. at 261 citing *Waterson v. General Motors Corp.*, 111 N.J. 238, 251, 270.

Government and each State to adopt and enforce mandatory seat belt regulations. In 1984, New Jersey was the second state to pass a law making the use of seat belts mandatory.²² The expressed intent of the Legislature was to reduce fatalities and serious injuries for all motor vehicle operators and passengers.²³ Every state, except New Hampshire, has enacted a seat belt law to protect public health and safety.²⁴

Although it has been determined by the New Jersey Supreme Court that a violation of the seat belt statute falls squarely within the public health and safety statute, there is nothing in the seat belt statute that prompts individuals to realize they can be prosecuted for a second, third, or fourth degree crime. In fact, when an individual reads the entire seat belt statute, the penalty provision found in that statute is a twenty dollar fine.²⁵ Many individuals, particularly those who focusing on Title 39, may not even know that the public health and safety statute exists because it has never been the main subject of litigation until the *Lenihan* decisions.²⁶ This may confuse defendants who believe the result of their inaction or failure to assume a duty to their passenger(s) will be a fine and not a substantially greater criminal charge.

It is important to add for further review defendant's second argument that the public health and safety statute is unconstitutionally vague, specifically the phrase "a law intended to protect the public health and safety."²⁷ Both the Appellate and the Supreme Court agreed that the Legislature intended the public health and safety statute to have a broad interpretation based on the plain and ordinary meaning.²⁸ The Appellate Division specifically noted that if the legislature intended the statute to be applied to only a community at large and not discrete individuals, as the defendant contended, it would have done so.²⁹

Conclusion

Staff seeks authorization from the Commission to undertake a project addressing the issue of notice with regard to the interplay between N.J.S. 39:3-76.2f ("seat belt statute") and N.J.S. 2C:40-18 ("public health and safety statute"). This goal of the project would be to afford defendants notice that they can be prosecuted for a crime rather than simply charged a modest fine for a violation of the seat belt statute.

²² *Lenihan*, 427 N.J. Super. at 508.

²³ *Id.*

²⁴ *Id.*

²⁵ N.J.S.A. 39:3-76.2j.

²⁶ *Lenihan*, 427 N.J. Super. at 421.

²⁷ *Lenihan*, 219 N.J. at 258.

²⁸ See *Lenihan*, 219 N.J. at 268; *Lenihan*, 427 N.J. Super. at 514-15.

²⁹ *Lenihan*, 427 N.J. Super at 514.