

To: New Jersey Law Revision Commission
From: Vito J. Petitti
Re: Skate Park Act
Date: February 10, 2014

MEMORANDUM

This Memorandum springs from discussion at the December 2012 Commission meeting as to whether there is a New Jersey skate park statute and, if not, whether the Commission should take up the project.

Title 5, Amusements, Public Exhibitions and Meetings, of the New Jersey Statutes addresses a variety of athletic and recreational activities, such as boxing, wrestling, breeding and racing of horses, motor vehicle racing, sports wagering, skiing, and roller skating – but not skateboarding.

Skateboarding is, however, addressed in Title 39, Motor Vehicles and Traffic Regulation, which applies the same rights and duties of motor vehicle drivers to skaters and skateboarders; establishes rules for the operation of skates and skateboards on public roadways; and requires skateboarders, skaters, and bicyclists age 17 and under to wear helmets. Title 39 also requires the sellers of skates and skateboards to post helmet warning notices.

But the New Jersey statutes are silent as to duties and obligations of skate park participants, i.e., facilities not considered roller skate rinks under Title 5's New Jersey Roller Skating Rink Safety and Fair Liability Act.¹ While there does not yet appear to be a legal definition of "skate park" in New Jersey law, according to Merriam-Webster, a skate park is a place with special structures and surfaces on which people can roller-skate or skateboard. The State of Nevada has a skateboard park statute² which defines "skateboard park" as "a park or part of a park with paths, slopes, structures, jumps and other areas open to the public that are designated for use with a skateboard, roller skates, a bicycle or a scooter."

Preliminary research indicates there are at least 58 operational skate parks in New Jersey, the majority of which appear to be publicly operated. At least some indoor facilities remain in use year-round. The rules for participation at both public and private skate parks vary widely. The Freehold skate park, for instance, requires only a helmet while the City of Bayonne lists 18 rules and points of etiquette, including the requirement for helmets, elbow pads, knee pads, and wrist guards; a prohibition against foul language; and a warning that use of the skate park is at one's own risk.

Privately owned skate parks tend to operate for a fee and require participants or their parents to sign a release of liability (as do at least some public skate parks). As discussed during the December 2013 Commission meeting, parties seeking to enforce a release from liability

¹ *N.J.S.* 5:14-1 et seq. Under *N.J.S.* 5:14-3, "Roller skating rink" means a building, facility or premises which provides an area specifically designed to be used by the public for recreational or competitive roller skating.

² *NV ST* 455B.200 et seq.

against a New Jersey recreational activity operator achieve varying results, depending on such factors as whether the agreement is against public policy, specificity of the agreement's terms, and upon the degree and kind of negligence on the part of defendant. For instance, in *Hojnowski v. Vans Skate Park*,³ a release signed by a parent on behalf of a child injured in a skate park could operate to force the matter to be arbitrated, but could not waive the minor's right to sue in tort.

At least nine other states have enacted legislation encouraging and regulating skateboarding activities. Public policy in these states favors governmental immunity over liability, while liability appears to be a substantial deterrent to the operation of private skate parks.

Staff seeks Commission authorization to conduct additional research to determine whether it would be appropriate for the Commission to suggest new legislation related to the operation of skate parks in New Jersey.

³ *Hojnowski v. Vans Skate Park*, 375 N.J.Super.568 (2005)