



NEW JERSEY LAW REVISION COMMISSION

Draft Final Report Addressing the Use of the Term Magistrate in the New Jersey Statutes

July 20, 2020

The work of the New Jersey Law Revision Commission is only a recommendation until enacted.

Please consult the New Jersey statutes in order to determine the law of the State.

Please send comments concerning this Report or direct any related inquiries, to:

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Executive Summary

The Commission previously undertook an examination of the use of the term “misdemeanor” in the New Jersey Statutes.¹ During the course of that project, the Commission noted that a non-Code statute required a police officer to bring an individual who has been arrested before a “municipal magistrate.”²

An examination of the New Jersey statutes confirmed the current use of the anachronistic term “magistrate.” The Commission recommends the removal of this term where doing so is appropriate and the revision of statutes that employ the term to reflect the judicial officer responsible for carrying out the duties designated therein.

Historical Background

In New Jersey, the formation of judicial tribunals pre-dates the appointment of the royal governor in 1703.³ Under the “Proprietors,” the colonists formed courts to adjudicate legal disputes which served as the basis for the “Ordinance of Lord Cornbury.”⁴

The “Ordinance of Lord Cornbury” officially created the first courts of New Jersey.⁵ As early as 1667, court cases were heard in Monmouth County.⁶ One year later, in 1668, courts were convened in both Bergen and Woodbridge.⁷ By 1669, Newark began to hold its own “town courts” on an annual basis.⁸ By November of 1675, the assembly in East Jersey created several courts that would be held on a monthly basis in each county.⁹

In 1682, East Jersey was transferred to the twenty-four proprietors.¹⁰ The assembly subsequently divided the province into four counties and reorganized the courts for “the better governing and settling courts in the same...”¹¹ This year also marked the creation of a court of Common Right.¹² An appeal was given from the court of Common Right to the King, provided that the party could pay the costs of suit, the judgment entered against him, security to prosecute

¹ N.J. Law Rev. Comm’n, Final Report Addressing the Use of the Term “Misdemeanor” in the New Jersey Statutes (March 21, 2019), available at <https://www.njlrc.org/projects/2019/5/30/wills-w5zeb?rq=misdemeanor>

² See N.J.S. 27:19-36.3 (relating to the arrest of individuals on any bridge owned by or under the control of a county bridge commission).

³ Edward Q. Keasby, *The Courts of New Jersey and Same Account of Their Origin and Jurisdiction*, N.J. Law Journal, Vol. XVII, No. 5, 131, 132 (May 1894).

⁴ *Id.* at 132-133.

⁵ *Id.* at 133.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 134.

his suit within eighteen months, or pay costs “if cast in the appeal.”¹³ The Courts of East New Jersey, did not resemble those of West New Jersey in either name or structure.¹⁴

The western courts more closely resembled the courts established in the united colony.¹⁵ By 1681, three justices, or commissioners, sat in every court accompanied by “twelve men of the neighborhood.”¹⁶ Together they would, “hear all causes, and assist the twelve men with the law, and pronounced the judgment of the twelve men in whom the judgment resides.”¹⁷ In 1682, a total of four session courts with unlimited jurisdiction were to be held yearly in Burlington and Salem.¹⁸ From 1685 through 1699, West Jersey established the following: courts small causes; a county court; a Court of Appeals; a Court of Oyer and Terminer; a Supreme Court of Appeals; and, the Provincial Court, or the Court of Appeals.¹⁹

To a large extent, these courts formed the basis of the judicial system organized by the royal governors after the Proprietors surrendered the government to the Crown.²⁰ Although the new courts were modeled closely to the English courts, they managed to retain some of the “peculiar” features of these predecessor courts.²¹ Notably, “[t]he magistrate [was] made the judge of the first civil court set up in the new country, and some of the rules of our present practice can be found in the earliest statutes regulating this court.”²²

By 1776, “[t]he courts referred to in the first constitution had already been created by ordinance or by statute.”²³ At the time, the nature and jurisdiction of these judicial bodies was well understood.²⁴ The drafters, therefore, saw no need to do more than refer to them by name.²⁵ In each town, elected justices of the peace presided over legal matters without a jury.²⁶ These judicial officials were “[a]t times elected solely for political party control, often resulting in officials who were illiterate, partial or courting popularity.”²⁷ The adoption of the 1844 Constitution did little to alter New Jersey’s system of jurisprudence.²⁸

By the early 20th century, New Jersey municipalities had established a number of

¹³ *Id.*

¹⁴ *Id.* at 135.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* These session courts did not have jurisdiction over capital cases. It should be noted that no provision was made for these types of matters.

¹⁹ *Id.* at 135-136.

²⁰ *Id.* at 136.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ John Morelli, *Rising from the Chaos: A history of the Municipal Courts*, 197 N.J. Law. 8 (1997).

²⁷ *Id.*

²⁸ *Id.*

independent local courts.²⁹ In what has been described as “a confusing jumble of courts” the police courts, records courts, magistrates courts and family court exercised ambiguous and overlapping jurisdiction.³⁰ Chapter 264, of the Laws of 1954, was designed to replace the “... haphazard set of local courts with a more effective system as part of a statewide judiciary, in implementation of the Constitution of 1947.”³¹ In addition, the judicial article of the 1947 Constitution replaced the multiplicity of courts with a simplified court structure that included “such inferior courts as established by the legislature.”³² The Legislature eventually abolished the police, magistrate and recorder courts and authorize the establishment of municipal courts.³³ Magistrates would ultimately become known as a judges of the municipal court.³⁴

Definition

The word “magistrate” now seems to be nothing more than a vestige of a bygone era. Nevertheless, it is still found in the New Jersey statutes. In Title 1 of the New Jersey Statutes, the term magistrate is defined to include, “...any judge, municipal magistrate or officer or other person having the powers of a committing magistrate.”³⁵

The term “magistrate” is defined in a total of six statutes, in four titles, but those definitions are not uniform.³⁶ The “Definitions and General Rules of Construction” define magistrate as any judge, municipal magistrate or officer or other person having the powers of a committing magistrate.³⁷ In the context of Alcohol Beverage Law, a magistrate is defined simply as the Superior or Municipal Court.³⁸ New Jersey’s Motor Vehicle and Traffic Laws define a magistrate as any Court and the Superior Court, and any officer having the powers of a committing magistrate and the chief administrator.³⁹ In that same Title, the Director of the Motor Vehicle Commission is vested with the same powers as a magistrate.⁴⁰ In New Jersey’s Public Utilities statutes, judges and officers having the powers of the committing magistrate are defined as magistrates⁴¹; and, are equated with all judges of county and criminal courts, and other officers having powers of the committing magistrate.⁴²

²⁹ John Morelli, *Rising from the Chaos: A history of the Municipal Courts*, 197 N.J. Law. at 8.

³⁰ *Id.*

³¹ *Krieger v. Jersey City*, 27 N.J. 535, 539 (1958).

³² John Morelli, *Rising from the Chaos: A history of the Municipal Courts*, 197 N.J. Law. at 9 *citing* N.J. Const. (1947), Art. VI §1.

³³ *Id.* See N.J.S. 2A:8-2. See N.J.S. 2B:12-1.

³⁴ N.J.S. 2B:12-4.

³⁵ N.J.S. 1:1-2.

³⁶ See N.J.S. 1:1-2; N.J.S. 33:1-1; N.J.S. 39:1-1; N.J.S. 39:5-2; N.J.S. 48:4-35; and, N.J.S. 48:4-46.

³⁷ N.J.S. 1:1-2.

³⁸ N.J.S. 33:1-1.

³⁹ N.J.S. 39:1-1.

⁴⁰ N.J.S. 39:5-2.

⁴¹ N.J.S. 48:4-35.

⁴² N.J.S. 48:4-46(f).

The multiple definitions of the term magistrate serve as one source of statutory confusion regarding this word, the statutory references to various types of magistrates serve as another.

Magistrate

Within the 88 statutes that use the word “magistrate” there are references to six distinct types of magistrates.⁴³ These include: the committing magistrate⁴⁴; the issuing magistrate⁴⁵; the police magistrate⁴⁶; the municipal magistrate⁴⁷; the chief magistrate⁴⁸; and, the neighboring magistrate.⁴⁹ None of these terms is defined.

Outreach

In connection with this Report, the Commission sought comments from several knowledgeable individuals and organizations, including: the Attorney General of New Jersey; the New Jersey Administrative Office of the Courts; the New Jersey Municipal Prosecutor’s Association; Association of Criminal Defense Lawyers; the Criminal Law Section of the New Jersey State Bar Association; the New Jersey County Prosecutor’s Association and each of the County Prosecutors; private criminal defense attorneys; the New Jersey State League of Municipalities; the New Jersey Association of Counties; New Jersey State Association of Chiefs of Police; New Jersey Police Traffic Officers Association; the Municipal Court Administrators Association of New Jersey; the Department of Agriculture; the Election Law Enforcement Commission; the Community Affairs and Elections Section; the New Jersey Election Commission; the Division of Fish and Wildlife; the Department of Health; the Division of Alcoholic Beverage Control; the Office of Weights and Measures; the New Jersey Motor Vehicle Commission; the Department of Transportation; the Port Authority Commission; and, the Public Utilities Section of the Division of Law.

⁴³ N.J.S. 1:1-2; N.J.S. 2A:14-19; N.J.S. 2A:14-29; N.J.S. 2A:33-5; N.J.S. 2A:33-22; N.J.S. 2A:67-4; N.J.S. 2A:152-13; N.J.S. 2A:155-5; N.J.S. 2A:160-11; N.J.S. 2A:160-21; N.J.S. 2A:160-22; N.J.S. 2A:160-23; N.J.S. 2A:160-24; N.J.S. 2A:160-26; N.J.S. 2A:160-32; N.J.S. 2A:162-5; N.J.S. 2A:166-17; N.J.S. 2A:166-18; N.J.S. 2A:169-3; N.J.S. 2C:52-10; N.J.S. 21. 4:15-5; N.J.S. 4:15-9; N.J.S. 6:5-8; N.J.S. 19:32-23; N.J.S. 19:32-24; N.J.S. 19:32-46; N.J.S. 19:32-47; N.J.S. 23:3-15; N.J.S. 23:3-20; N.J.S. 23:5-30; N.J.S. 23:13-1; N.J.S. 24:1-2; N.J.S. 27:19-36.3; N.J.S. 30:8-22; N.J.S. 30:8-33; N.J.S. 30:9-12.17; N.J.S. 30:9-12.21; N.J.S. 32:2-25; N.J.S. 32:4-6; N.J.S. 32:10-2; N.J.S. 32:26-13; N.J.S. 33:1-1; N.J.S. 33:1-56; N.J.S. 33:1-57; N.J.S. 33:1-59; N.J.S. 33:1-60; N.J.S. 33:1-61; N.J.S. 33:1-62; N.J.S. 33:1-71; N.J.S. 37:1-13; N.J.S. 37:1-13.1; N.J.S. 39:1-1; N.J.S. 39:3-79.2; N.J.S. 39:4-14.3; N.J.S. 39:4-56.2; N.J.S. 39:4-201; N.J.S. 39:4-210; N.J.S. 39:5-2; N.J.S. 39:5-6; N.J.S. 39:5-7; N.J.S. 39:5-9; N.J.S. 39:5-27; N.J.S. 39:5-28; N.J.S. 39:5-31; N.J.S. 39:7-7; N.J.S. 39:12-12; N.J.S.40:24-9; N.J.S. 40:37-203; N.J.S. 40:61-22.13; N.J.S. 40:61-22.28; N.J.S. 40:61-26; N.J.S. 40:69A-207; N.J.S. 40A:5-41; N.J.S. 41:2-5; N.J.S. 41:2-6; N.J.S. 48:4-35; N.J.S. 48:4-43; N.J.S. 48:4-46; N.J.S. 48:4-54; N.J.S. 48:12-166; N.J.S. 51:8-19; N.J.S. 51:9-11; N.J.S. 56:3-21; N.J.S. 58:5A-4; N.J.S. 27:17-1(25); N.J.S. 27:17-1(35) N.J.S. 40:43-65(7); and, Val.:4-7.3.

⁴⁴ N.J.S. 1:1-2; N.J.S. 30:8-22; N.J.S. 39:1-1; N.J.S. 39:7-7; N.J.S. 40:24-9; N.J.S.48:4-35; N.J.S. 48:4-46.

⁴⁵ N.J.S. 33:1-56; N.J.S. 33:1-57; N.J.S. 33:1-59; N.J.S. 33:1-60; N.J.S. 33:1-61; N.J.S. 33:1-62.

⁴⁶ N.J.S. 27:17-1(25); N.J.S. 40-37-203.

⁴⁷ N.J.S. 1:1-2; N.J.S. 2A:14-19; N.J.S. 27:19-36.3; N.J.S. 37:1-13.1; N.J.S. 40:69A-207; N.J.S. 40A:5-41.

⁴⁸ Val. 4-7.3.

⁴⁹ N.J.S. 2A:155-5.

The Commission did not receive any opposition to the statutory modifications set forth in the Appendix.

The Monmouth County Prosecutor expressed no objection to “eliminating the term ‘magistrate’ and replacing it with the word ‘judge’....”⁵⁰ Private counsel suggested that, “[i]n Title 39, magistrate should be changed to Municipal Court Judge.”⁵¹ The Department of Environmental Protection, Division of Fish and Wildlife, advised the Commission that they “...agree with the changes the NJ Law Revision Commission is proposing....”⁵² The Cape May County Prosecutor’s office advised the Commission that they “...strongly support the NJLRC’s recommendation that the Legislature update the statutes by replacing the word magistrate with judge.”⁵³ Further, they informed the Commission that their “...office strongly supports the Commission’s finding that the term is a vestige of a bygone era.”⁵⁴

- *Statutory Titles*

In addition to the other comments received, Staff received a recommendation that the word “magistrate” be removed from the statutory titles in which it appears.⁵⁵ Although the ability to alter the title of a statute is outside the Commission’s control, this recommendation is included in this Report for the sake of completeness and so that those who can influence such things are aware of this stakeholder’s recommendation.

Conclusion

The Appendix on the following pages proposes modifications to the New Jersey statutes that utilize the term magistrate. The proposed modifications are derived from the language and context of references contained in similar statutes and the New Jersey Rules of Court.

⁵⁰ See E-mail from Christopher Gramiccioni, Prosecutor, Monmouth County, to Samuel M. Silver, Deputy Director, New Jersey Law Revision Commission (June 03, 2020, 12:18 PM EST) (providing no objection to “eliminating the term ‘magistrate’ and replacing it with the word ‘judge....’” (On file with the NJLRC).

⁵¹ See e-mail from Kenneth Vercammen, Kenneth Vercammen & Associates, P.C., to Samuel M. Silver, Deputy Director, New Jersey Law Revision Commission (July 05, 2020, 8:30 AM EST) (on file with the NJLRC).

⁵² See letter from David M. Golden, Director, Dep’t. of Env’tl. Prot., Div. of Fish & Wildlife, to Samuel M. Silver, Deputy Director, New Jersey Law Revision Commission (July 08, 2020) (on file with the NJLRC).

⁵³ See letter from Ed Shim, Senior Assistant Prosecutor, Cape May County, to Samuel M. Silver, Deputy Director, New Jersey Law Revision Commission (July 06, 2020) (on file with the NJLRC).

⁵⁴ *Id.* at *2.

⁵⁵ *Id.* at *2-3.