



ALBANY LAW SCHOOL

GOVERNMENT LAW CENTER

EXPLAINER

The New York Law Revision Commission: Past and Present

By Erika Bentley, Albany Law School Class of 2022

What is the New York Law Revision Commission?

The New York Law Revision Commission was created by statute as a permanent commission dedicated exclusively to systematic law reform.

The Commission is part of New York's rich legal history and is the longest continuously operating commission of its kind in the United States,¹ setting an example that was later followed by other states and other countries.²

Establishment and Purpose of the New York Law Revision Commission

The Commission was first proposed by Judge Benjamin N. Cardozo over 100 years ago as a "Ministry of Justice" for New York. Judge Cardozo envisioned a permanent commission dedicated to review and revision of New York's laws through legislation.³ At the time, the body of common law and the statutes were insufficient to address the evolving needs of the state and its citizens.

According to Judge Cardozo, the defects and anachronisms in the then-existing substantive and procedural laws created a lack of consistency between those laws and the requirements of modern society, which interfered with the ability of the courts to address the needs of the people, and resulted in prolonged delays and unjust outcomes. Dissatisfaction and concerns with the existing body of law and its application were echoed by many of Judge Cardozo's contemporary judges, attorneys, government officials, and members of the public.⁴

¹ John W. MacDonald, *Legal Research Translated into Legislative Action*, 48 Cornell L. Rev. 401 (1963); see e.g., Laura C. Tharney & Samuel M. Silver, *Legislation and Law Revision Commissions: One Option for the Management and Maintenance of Ever-Increasing Bodies of Statutory Law*, 41 Seton Hall Legis. J. 329, 338 (2017).

² Other jurisdictions that adopted a law revision commission after New York include California, Connecticut, Louisiana, Michigan, New Jersey, Oregon, Australia, Canada, New Zealand, and South Africa. See Tharney & Silver, *supra* note 1, at 342 (collecting state and international law revision entities).

³ Benjamin H. Cardozo, *A Ministry of Justice*, 35 HARV. L. REV. 113 (1921).

⁴ See e.g., John Godfrey Saxe, *A Ministry of Justice or Law Revision Commission*, 3 N.Y. L. Rev. 98 (1925); John L. Buckley, *N.Y. Maintains Its Lead in Law Improvement*, 6 N.Y. ST. B.A. BULL. 325 (1934); see generally John W. MacDonald, *Legal Research Translated into Legislative Action*, 48 Cornell L. Rev. 401 (1963).

The New York Law Revision Commission was established in 1934⁵ and was designed to function as a permanent “channel between the Legislature and the courts, and the Legislature and the people.”⁶ The Commission is comprised of five members appointed by the Governor, including two practicing attorneys and two members of law school faculties within the state, and four *ex officio* members of the Legislature.⁷

This structure was intended to utilize the knowledge and experience of legal scholars and practicing attorneys to address areas of uncertainty or complexity in the law through careful study, with the Commission’s conclusions to be communicated to the Legislature in annual reports.

Operation and Procedure

The Commission’s work is non-partisan. Its recommendations have historically been based on data, careful research and, where possible, the consensus of interested parties.

The Commission’s studies have been prompted in a variety of ways. Over the years, studies undertaken by the Commission have been specifically authorized by the Legislature, commenced in response to requests by the Governor and other executive branch officers, and in response to problems identified by bar associations, judges, lawyers, and members of the general public. In other instances, the Commission has ascertained the need for new legislation or amendments to existing laws through its own examination of New York statutes and case law, the laws of other states, and legal literature.

The Law Revision Commission first extensively studies selected issues through research, meetings with affected individuals and organizations, and consultation with expert members of the practicing bar and law school faculty. Once that groundwork is laid, the Commission issues preliminary findings for public input and may conduct public hearings on particularly difficult issues. Final recommendations are presented to the Legislature in a detailed report. At times, the Commission also has drafted proposed bills for appropriate action by the Legislature.

⁵ N.Y. Session Law (1934), c. 597. The statute tasked the Commission with:

- Examining the State’s common law and statutes for the purposes of discovering defects and anachronisms in the law and recommending needed reforms.
- Receiving and considering proposed changes in the law recommended by groups and individuals such as the American Law Institute, bar associations, judges, public officials, lawyers and the public.
- Recommending such changes to the state’s civil and criminal laws as it deems necessary to harmonize them with current conditions.
- Reporting its proceedings annually to the Legislature and, if it deems advisable, submitting proposed bills to effectuate its recommendations.

N.Y. Legis. Law § 72(1) (McKinney 2022).

⁶ *Report of the Commission to Investigate Defects in the Law and Its Administration*, 1924 Leg. Doc. No. 70 at p. 7.

⁷ N.Y. Legis. Law § 70.

Contributions to New York Law

In its 88 years of existence, the Commission has undertaken numerous studies, developed recommendations for change, and proposed legislation on a wide variety of subjects. Reforms initiated by the Commission have been particularly significant in areas such as negligence and personal injury, contracts, real property, commercial law, and family and matrimonial law. The Commission has also done extensive work in other areas of New York law, including the Insurance Law, the State Administrative Procedure Act, the Uniform Commercial Code, the Alcohol Beverage Control Law, the Not-for-Profit Corporation Law, and single statutes such as those governing inheritance rights of adopted children, spendthrift trusts, joint bank accounts for convenience, privacy provisions for HIV research, and guardianship of incapacitated individuals.

Current Status

The Law Revision Commission has remained authorized by statute since its inception in 1934, but has faced periodic challenges with maintaining its funding. There have been several attempts over the past 30 years (some successful) by various Governors to defund the Commission. Most recently, the Commission's work has been significantly hindered by the lack of any funding since 2016, as a result of a discontinuance of its inclusion in the state budget.⁸ Nevertheless, the careful work, dedication, and specialized knowledge contributed by the Commission has continued, with a much-reduced scope, through the voluntary work of former staff and several Commission members.⁹

Conclusion

The Law Revision Commission was designed to utilize the knowledge and experience of legal scholars and practicing attorneys to address complex and/or unclear areas of law through careful study, for which it is uniquely positioned. The Commission serves a critical function in the ongoing improvement of New York's laws, endeavoring to ensure that the State's laws remain consistent, fair, responsive to emerging societal needs and reflective of the forward-thinking nature of its citizens. Unfortunately, the Commission's work has been impeded for the past several years due to a lack of funding. It is hoped that this will be rectified in the near future.

⁸ Current commissioners have effectively continued since their appointments, over a decade ago, due to the lack of appointment of replacements after their terms expired. N.Y. Pub. Off. Law § 5 (McKinney 2022).

⁹ For example, in January 2021, the Commission submitted a proposed bill and memo recommending an update to Article 17A of the Surrogate's Court Procedure Act (SCPA Art. 17A) to address certain constitutional shortcomings and the incongruence between outdated provisions of SCPA Art. 17A and New York's current policy toward treatment of individuals with developmental disabilities.