

To: New Jersey Law Revision Commission
From: Christian Weisenbacher
Date: July 10, 2017
Re: Defining “Residence” for Sex Offender Registration—*State v. Halloran*

MEMORANDUM

Executive Summary

In the case of *State v. Halloran*, the Superior Court of New Jersey considered whether a convicted sex offender must register each of his residences.¹ The Court determined that a convicted sex offender must indeed register each secondary residence in addition to his primary residence or domicile.²

Background

In 1992, Robert Halloran was convicted of five counts of Aggravated Sexual Assault and five counts of Endangering the Welfare of a Child and was sentenced to twenty years in prison. Halloran was released in 2011.³ Having originally registered an address in Hamburg as his residence, Halloran then registered his residence as the Roxbury Motel on February 2, 2011.⁴ Halloran moved out of the Roxbury Motel on February 7, 2011 without leaving a forwarding address or registering his new residence. He then moved back in to the Roxbury Motel on March 16, 2011.⁵

On March 16, 2011, Halloran was arrested and charged with Failing to Notify Law Enforcement of a Change of Residence.⁶ Halloran accepted a plea bargain, was sentenced to thirty days in the Morris County Correctional Facility and one year of probation, and was released from jail on September 28, 2011.⁷

Following Halloran’s release from jail, he was found to be residing at his girlfriend’s home.⁸ Halloran admitted on October 3, 2011 that he had been residing at his girlfriend’s home since August 22, 2011.⁹ Halloran had not registered this residence with the local police department.¹⁰ He was indicted on October 20, 2011 for Failure to Register within the statutorily required period of time and Failure to Advise of Use of Internet.¹¹

¹ *State v. Halloran*, 446 N.J. Super. 381 (Law Div. 2014).

² *Id.* at 397.

³ *Id.* at 383.

⁴ *Id.* at 384.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 385.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

On Halloran’s motion to dismiss prosecution as a *de minimis* infraction, the Superior Court held that his failure to register a secondary residence was not a *de minimis* infraction.¹² The Court noted that

[w]hen registering and reregistering his residence, defendant acknowledged and signed his *N.J.S.A. 2C:7–1* registration form, which reads in pertinent part:

In accordance with the provisions of *N.J.S.A. 2C:7–1*, you are required to re-register with the local police department in the town in which you reside and the town in which you will be moving to *every* time you relocate to an address that is different from the one listed on your previous registration. This must be done 10 days *before* you re-locate. You must also re-register with your local police department either every 90 days or annually, as provided by law. If you are employed at a school, attend a school, or carry on a vocation, you must register with law enforcement agency with jurisdiction over that community. Failure to comply with these requirements will subject you to penalties as set forth in the statute...

Each time defendant registered an address, he also initialed paragraph 3 of the “Registration/Re–Registration/Address Verification Form,” which says:

I understand that if I *move*, I must notify the local police department where I am registered, and the police department where I intend to live, at least 10 days before I move. I must then re-register in my new town. Verification of that address is due the year after the re- registration date. I understand that if I move out of New Jersey and then move back to New Jersey, I must re-register within 10 days of returning to this State with the local law enforcement agency in the town where I live. I understand that if I move to another State, I will be subject to any and all laws governing sex offender registration procedures in that State.¹³

The Court said that to “accept defendant’s interpretation of *N.J.S.A. 2C:7–2*—that there exists no requirement to register more than one residence—would eviscerate the statute and undermine the legislative intent to protect the public.”¹⁴

The Court also said that its “finding is further premised on the well-recognized distinction between ‘residence’ and ‘domicile.’ It is axiomatic that a person may have more than one residence. *See McQueen v. Brown*, 342 *N.J. Super.* 120, 132...(App. Div. 2001) (“[R]esidence” has been defined as ‘[t]he act or fact of living in a given place for some time.’ *Black’s Law Dictionary* 1310 (6th ed.1990). Here, the Legislature chose the term ‘residence,’ not ‘domicile’ ”)...”¹⁵

¹² *Id.* at 398.

¹³ *Id.* at 384–85.

¹⁴ *Id.* at 392.

¹⁵ *Id.* at 392.

As a result, even though it appears that neither “reside”, nor “residence” is defined in the statutes pertaining to sex offender registration, the Court held that the plain language of the statute clearly articulates that a sex offender or other person required to register must do so for each of his or her residences, not just the most current residence or his or her domicile.¹⁶ N.J.S. 2C:7-2 provides, in pertinent part, that:

a. (1) A person who has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sex offense as defined in subsection b. of this section shall register as provided in subsections c. and d. of this section.

...

(3) A person who fails to register as required under this act shall be guilty of a crime of the third degree.

...

c. A person required to register under the provisions of this act shall do so on forms to be provided by the designated registering agency as follows:

(1) A person who is required to register and who is under supervision in the community on probation, parole, furlough, work release, or a similar program, shall register at the time the person is placed under supervision...in accordance with procedures established by the Department of Corrections, the Department of Human Services, the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c. 284 (C.52:17B-170) or the Administrative Office of the Courts, whichever is responsible for supervision;

(2) A person confined in a correctional or juvenile facility or involuntarily committed who is required to register shall register prior to release in accordance with procedures established by the Department of Corrections, the Department of Human Services or the Juvenile Justice Commission and, within 48 hours of release, shall also register with the chief law enforcement officer of the municipality in which the person **resides** or, if the municipality does not have a local police force, the Superintendent of State Police;

(3) A person moving to or returning to this State from another jurisdiction shall register with the chief law enforcement officer of the municipality in which the person will **reside** or, if the municipality does not have a local police force, the Superintendent of State Police within 120 days of the effective date of this act or 10 days of first **residing** in or returning to a municipality in this State, whichever is later;

(4) A person required to register on the basis of a conviction prior to the effective date who is not confined or under supervision on the effective date of this act shall register within 120 days of the effective date of this act with the chief law enforcement officer

¹⁶ *Id.* at 385.

of the municipality in which the person will **reside** or, if the municipality does not have a local police force, the Superintendent of State Police;

...

d. (1) Upon a change of address, a person shall notify the law enforcement agency with which the person is registered and shall re-register with the appropriate law enforcement agency no less than 10 days before he intends to first **reside** at his new address. Upon a change of employment or school enrollment status, a person shall notify the appropriate law enforcement agency no later than five days after any such change. A person who fails to notify the appropriate law enforcement agency of a change of address or status in accordance with this subsection is guilty of a crime of the third degree.

...

e. A person required to register under paragraph (1) of subsection b. of this section or under paragraph (3) of subsection b. due to a sentence imposed on the basis of criteria similar to the criteria set forth in paragraph (1) of subsection b. shall verify his address with the appropriate law enforcement agency every 90 days in a manner prescribed by the Attorney General. A person required to register under paragraph (2) of subsection b. of this section or under paragraph (3) of subsection b. on the basis of a conviction for an offense similar to an offense enumerated in paragraph (2) of subsection b. shall verify his address annually in a manner prescribed by the Attorney General. In addition to address information, the person shall provide as part of the verification process any additional information the Attorney General may require. One year after the effective date of this act, the Attorney General shall review, evaluate and, if warranted, modify pursuant to the “Administrative Procedure Act,” P.L.1968, c. 410 (C. 52:14B-1 et seq.) the verification requirement. Any person who knowingly provides false information concerning his place of **residence** or who fails to verify his address with the appropriate law enforcement agency or other entity, as prescribed by the Attorney General in accordance with this subsection, is guilty of a crime of the third degree. [Emphasis added]

The Court, in reaching its conclusion, looked to case law from other states and found that it served “to reinforce the conclusion that sex offenders subject to Megan's Law registration requirements who reside in multiple locations are required by statute to register each address where they reside. Consequently, defendant was on notice that his failure to register his Mount Olive residence was unlawful. (*Zarrilli* factors (a) and (b)).”¹⁷

Conclusion

Staff seeks authorization to engage in further research and outreach in order to determine if it would be appropriate to clarify what appears to be an ambiguity in N.J.S. 2C:7-2. While the New Jersey Superior Court here determined there to be no such ambiguity in the statute, it is possible that sex offenders and others required to register, the people who most need to have a proper understanding of the law and are indeed directly affected by any personal misinterpretations of that law, may be *pro se* and therefore would benefit from greater clarity in the statute. The statute might benefit from the addition of language to define “residence” or

¹⁷ *Id.* at 397.

“reside” in order to clarify that a person may have several “residences” and that the person must register the address of each of those “residences.”

The statute, as currently drafted, may result in those who are required to register to fail to do so not out of malice but as a result of a misinterpretation of the law, thereby putting the public at risk and creating issues of fairness for those who may fail to follow the law despite a good faith effort to do so.