



## NEW JERSEY LAW REVISION COMMISSION

### Revised Draft Tentative Report Relating to the Issue of “Residence” for Sex Offender Registration

**May 14, 2018**

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” *N.J.S. 1:12A-8*.

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **July 13, 2018**.

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report or direct any related inquiries, to:

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## Executive Summary

In the case of *State v. Halloran*, the Superior Court of New Jersey considered whether, under Megan's Law, a convicted sex offender is required to register more than one residence, including any secondary residence the offender inhabits for a period of time.<sup>1</sup> The Court concluded that the address of a secondary residence must be registered, and that a failure to do so is not a *de minimis* violation.<sup>2</sup> The Commission authorized Staff to conduct further research and outreach in order to determine whether it would be appropriate to clarify what appears to be an ambiguity in N.J.S. 2C:7-2.

In this Revised Draft Tentative Report, a new change has been added to address the recent New Jersey Supreme Court decision impacting a portion of N.J.S. 2C:7-2 dealing with the constitutionality of lifetime registration requirements for persons adjudicated delinquent for sexual offenses as juveniles.

## Background

### I. Current New Jersey Statutory Provisions

N.J.S. 2C:7-1 to -11, referred to as “Megan's Law”, contains registration and community notification requirements enacted for the purpose of protecting the community from the dangers of recidivism by sexual offenders.<sup>3</sup> In enacting Megan's Law, the Legislature found and declared that:

- a. The danger of recidivism posed by sex offenders and offenders who commit other predatory acts against children, and the dangers posed by persons who prey on others as a result of mental illness, require a system of registration that will permit law enforcement officials to identify and alert the public when necessary for the public safety.
- b. A system of registration of sex offenders and offenders who commit other predatory acts against children will provide law enforcement with additional information critical to preventing and promptly resolving incidents involving sexual abuse and missing persons.<sup>4</sup>

N.J.S. 2C:7-2 provides that a person who has been convicted, adjudicated delinquent, or found not guilty by reason of insanity of the commission of a sex offense must register with the appropriate agency.<sup>5</sup> When a person required to register under N.J.S. 2C:7-2 changes his or her

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<sup>1</sup> *State v. Halloran*, 446 N.J. Super. 381 (L. Div. 2014).

<sup>2</sup> *Id.* at 397.

<sup>3</sup> See *Halloran*, 446 N.J. Super. at 391.

<sup>4</sup> N.J.S. 2C:7-1.

<sup>5</sup> N.J.S. 2C:7-2(a)(1).

address, that person must notify the appropriate law enforcement agency of the intent to move, and must re-register with the appropriate law enforcement agency no less than 10 days before he or she intends to first reside at the new address.<sup>6</sup> If the individual returns to New Jersey from out-of-state, they are required to register within 10 days of their return.

The statute currently reads, in pertinent part, as follows:

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...

(2) A person confined in a correctional or juvenile facility or involuntarily committed who is required to register shall register prior to release...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 ...10 days of first **residing** in or returning to a municipality in this State...

(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...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;

...

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

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<sup>6</sup> N.J.S. 2C:7-2(d)(1).

enforcement agency no less than 10 days before he intends to first reside at his **new address**. ... 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....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. ...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. ... 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]<sup>7</sup>

The Legislature placed great importance on law enforcement’s ability to know the location of a convicted sex offenders in order to “[prevent] and promptly [resolve] incidents involving sexual abuse and missing persons.”<sup>8</sup>

## ***II. The Federal Sex Offender Registration and Notification Act***

The Federal Sex Offender Registration and Notification Act (“SORNA”) provides federal registration requirements for sex offenders and imposes certain responsibilities on the states regarding implementation.<sup>9</sup> SORNA requires offenders to register, and keep their registration current, in each jurisdiction where the offender resides, is an employee, and is a student.<sup>10</sup> SORNA also provides that, in order to keep the registration current, an offender must appear in person to notify appropriate law enforcement of each change of name, residence, employment, or student status, within three (3) business days of the occurrence of such change. Failure of a jurisdiction to comply with the provisions of SORNA will result in a decrease in federal funding.<sup>11</sup> The relevant statutory provisions read as follows:

### **(a) In general**

A sex offender shall register, and keep the registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student. For initial registration purposes only, a sex offender shall also

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<sup>7</sup> N.J.S. 2C:7-2.

<sup>8</sup> N.J.S. 2C:7-1.

<sup>9</sup> 34 U.S.C. § 20911 - 20932.

<sup>10</sup> 34 U.S.C. § 20913.

<sup>11</sup> 34 U.S.C. § 20927.

register in the jurisdiction in which convicted if such jurisdiction is different from the jurisdiction of residence.

...

**(c) Keeping the registration current**

A sex offender shall, not later than 3 business days after each change of name, residence, employment, or student status, appear in person in at least 1 jurisdiction involved pursuant to subsection (a) and inform that jurisdiction of all changes in the information required for that offender in the sex offender registry. That jurisdiction shall immediately provide that information to all other jurisdictions in which the offender is required to register.<sup>12</sup>

...

**(13) Resides**

The term “resides” means, with respect to an individual, the location of the individual's home or other place where the individual habitually lives.<sup>13</sup>

There is no explicit mention in the federal statute that an individual is required to register a secondary address, however, the phrase, “...register, and keep the registration current, in each jurisdiction where the offender resides...,” in U.S.C. § 20913(a) would seem to encompass secondary residences that comport with the definition of “resides” as provided in U.S.C. § 20911.

Senate Bill 1174, introduced for the 2018-2019 Legislative Session, aims to revise New Jersey’s Megan’s Law in response to the requirements of SORNA.<sup>14</sup> SORNA created federal standards for state sex offender registration and community notification which classify a registrant based on the type of offense committed, rather than the current case-by-case tier-based risk assessment currently conducted in New Jersey. In response to SORNA, the bill revises the scope, manner, and format of the disclosure to the general public of information pertaining to the identity, specific and general whereabouts, physical characteristics, and criminal history of persons found to have committed a sex offense. If enacted, S1174 would not alter N.J.S. 2C:7-2 to clarify that an offender required to register in New Jersey must register secondary addresses. It would require an offender to notify law enforcement at both their previous and subsequent, or secondary, address within three (3) business days that they are residing at that address.

S1174 also amends N.J.S. 2C:7-4, which concerns the registration forms required to be provided to offenders at the time of sentencing pursuant to N.J.S. 2C:7-3. The current version of N.J.S. 2C:7-4 requires registrants to list “any current temporary residence” they may have at the time of registration.<sup>15</sup> N.J.S. 2C:7-4 does not specifically require registration of a secondary address that a registrant may have for an extended period of time or may acquire in the future. S1174 would modify the language of N.J.S. 2C:7-4 from simply requiring an individual to register “any current temporary residence” they have at the time of registration to the language that follows:

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<sup>12</sup> 34 U.S.C. § 20913.

<sup>13</sup> 34 U.S.C. § 20911.

<sup>14</sup> S1174, 218th Leg., Reg. Sess. (NJ. 2018).

<sup>15</sup> N.J.S. 2C:7-4b(1).

Section 4 of P.L.1994, c.133 (C.2C:7-4) is amended to read as follows:

...

(4) A statement in writing signed by the person required to register acknowledging that the person has been advised of the duty to register and reregister imposed by this act and soliciting the following information from the person required to register:

...

(c) the address of any and all residences where the person resides or will reside, including any current temporary residence or, if the person has no permanent residence, any location where the person habitually lives;<sup>16</sup>

A version of the bill presently introduced as S1174 was first introduced in 2011 and has been introduced in each subsequent Legislative session since that time without Legislative action on the measure. As of May 7, 2018, a companion bill has been introduced in the Assembly as A3852 and has been referred to the Assembly Law and Public Safety Committee.<sup>17</sup>

### ***III. Sex Offender Registration Laws in Other States Requiring Registration of a Sex Offender's Secondary Address***

Several states have specific language addressing the issue of registration and notification of a sex offender's temporary or secondary residence. These jurisdictions address the issue in different ways. In some instances, they attempt to clarify the definition of secondary residence through descriptive terminology, in other instances, a bright-line period of days is indicated within which an offender must register the secondary address or be in violation of the statute.

#### ***A. Descriptive Terminology Approach – No Bright-line***

California is one state where descriptive language is used to provide guidance as to the meaning of a secondary residence as follows:

If the person who is registering has more than one residence address at which he or she regularly resides, he or she shall register in accordance with the Act in each of the jurisdictions in which he or she regularly resides, regardless of the number of days or nights spent there. If all of the addresses are within the same jurisdiction, the person shall provide the registering authority with all of the addresses where he or she regularly resides.<sup>18</sup>

Residence is not defined in this section, however, in the section addressing registration requirements for transients, residence is defined as follows:

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<sup>16</sup> S1174, 218th Leg., Reg. Sess. (NJ. 2018).

<sup>17</sup> A3852, 218th Leg., Reg. Sess. (NJ. 2018).

<sup>18</sup> Cal. Penal Code § 290.011.

“Residence” means one or more addresses at which a person regularly resides, regardless of the number of days or nights spent there, such as a shelter or structure that can be located by a street address, including, but not limited to, houses, apartment buildings, motels, hotels, homeless shelters, and recreational and other vehicles.

It appears that California’s solution to the timing issue regarding a secondary residence is to require registration of a secondary residence “regardless of the number of days or nights spent” at that secondary location. However, it also appears that a person must first be considered to be “regularly residing” at the secondary address.

Minnesota also contains descriptive language, rather than a bright-line number of days, to address registration of secondary residences for sex offenders. The relevant statutory provisions are as follows:

(a) A person required to register under this section shall provide to the corrections agent or law enforcement authority the following information:

(1) the person's primary address;

(2) all of the person's secondary addresses in Minnesota, including all addresses used for residential or recreational purposes;<sup>19</sup>

...

(i) “Secondary address” means the mailing address of any place where the person regularly or occasionally stays overnight when not staying at the person's primary address. If the mailing address is different from the actual location of the place, secondary address also includes the physical location of the place described with as much specificity as possible. However, the location of a supervised publicly or privately operated shelter or facility designated to provide temporary living accommodations for homeless individuals as defined in section 116L.361, subdivision 5, does not constitute a secondary address.<sup>20</sup>

#### **B. *Bright-line Approach – Specific Number of Days***

In Utah, a specific number of days is used as a bright-line time period, beyond which, if an offender has not registered, he or she would be considered to be in violation of the statute. The relevant language is as follows:

...[A]n offender shall... register... within three business days of every change of the offender's primary residence, any secondary residences, place of employment, vehicle information, or educational information required to be submitted...<sup>21</sup>

...

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<sup>19</sup> Minn. Stat. § 243.166.

<sup>20</sup> Minn. Stat. § 243.166.

<sup>21</sup> Utah Code § 77-43-105.

(15) “Secondary residence” means any real property that the offender owns or has a financial interest in, or any location where, in any 12-month period, the offender stays overnight a total of 10 or more nights when not staying at the offender's primary residence.<sup>22</sup>

Massachusetts also sets out a specific number of days beyond which an offender who has not registered their secondary address would be in violation of the statute. The relevant provisions are as follows:

...The file on each sex offender required to register...shall include the following information, hereinafter referred to as registration data:

(a) the sex offender's name, aliases used, date and place of birth, sex, race, height, weight, eye and hair color, social security number, home address, any secondary addresses and work address and, if the sex offender works at or attends an institution of higher learning, the name and address of the institution...<sup>23</sup>

...

“Secondary addresses”, the addresses of all places where a sex offender lives, abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year and which is not a sex offender's primary address; or a place where a sex offender routinely lives, abides, lodges, or resides for a period of 4 or more consecutive or nonconsecutive days in any month and which is not a sex offender's permanent address, including any out-of-state address.<sup>24</sup>

The descriptive terminology approach as well as the bright-line approach both provide improved guidance regarding the requirement to register a secondary address, although it may be impossible to devise a statutory framework that covers all scenarios involving a person's residence.

### ***C. Proposed Modifications to Sex Offender Registration Statutes in Other States***

Some states have introduced proposed legislation which would modify the text of their sex offender registration statutes to add additional offenses to the list of enumerated crimes which require registration or to make technical modifications with no impact on the registration of secondary addresses. Utah, the state whose statutory language upon which the proposed language appearing in the Appendix is based, currently has no proposed legislation which would amend the Utah statute relating to registration of the addresses of sex offenders.

## ***IV. State v. Halloran and the Cases Cited Therein***

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<sup>22</sup> Utah Code § 77-43-102.

<sup>23</sup> Mass. Gen. Laws ch. 6, § 178D.

<sup>24</sup> Mass. Gen. Laws ch. 6, § 178C.

In *State v. Halloran*, the Court addressed whether, under Megan's Law, a sex offender is obligated to register more than one residence.<sup>25</sup> Prior to *Halloran*, no New Jersey case law had addressed the issue of multiple residences in the context of sex offender registration and notification statutes.

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.<sup>26</sup> Having originally registered an address in Hamburg as his residence, Halloran then registered his residence as the Roxbury Motel on February 2, 2011.<sup>27</sup>

Halloran moved out of the Roxbury Motel on February 7<sup>th</sup>, without leaving a forwarding address or registering his new residence. He moved back into the Roxbury Motel on March 16<sup>th</sup>.<sup>28</sup> On that same date, Halloran was arrested and charged with Failing to Notify Law Enforcement of a Change of Residence.<sup>29</sup> Halloran accepted a plea bargain, was sentenced to 30 days in the Morris County Correctional Facility and one year of probation, and was released from jail on September 28<sup>th</sup>.<sup>30</sup>

Following his release, Halloran was found to be residing at his girlfriend's home.<sup>31</sup> He admitted on October 3<sup>rd</sup> that he had been residing at his girlfriend's home since August 22<sup>nd</sup>.<sup>32</sup> Halloran had not registered this residence with the local police department.<sup>33</sup> He was indicted on October 20<sup>th</sup> for Failure to Register within the statutorily required period of time and Failure to Advise of Use of Internet.<sup>34</sup>

On Halloran's motion to dismiss prosecution as a *de minimis* infraction, the Court held that his failure to register a secondary residence was not a *de minimis* infraction.<sup>35</sup> Additionally, 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.<sup>36</sup>

The timeline during which the defendant in *Halloran* resided at the secondary address in Mount Olive, at which he neglected to register, is as follows: Defendant took up residence at his secondary address on August 22<sup>nd</sup>.<sup>37</sup> Eighteen days later, he was imprisoned in the Morris County

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<sup>25</sup> *State v. Halloran*, 446 N.J. Super. 381 (L. Div. 2014).

<sup>26</sup> *Id.* at 383.

<sup>27</sup> *Id.* at 384.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 385.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 398.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 385.

Correctional Facility until September 28<sup>th</sup>.<sup>38</sup> While imprisoned, he registered as required, but provided his address in Roxbury, not the address where he had been living since August 22<sup>nd</sup>.<sup>39</sup> On October 3<sup>rd</sup>, defendant informed local law enforcement in Mount Olive that he had been staying there “on-and-off for some time,” ultimately admitting that he had been living there since August 22<sup>nd</sup>.<sup>40</sup> Defendant spent a total of 23 days at the Mount Olive residence without notifying Roxbury or Mount Olive law enforcement of his move.

In holding that the defendant in *Halloran* was required to register his secondary residence, the Court paid specific attention to the “well-recognized distinction between ‘residence’ and ‘domicile.’”<sup>41</sup> Since this was a matter of first impression in New Jersey, the Court in *Halloran* conducted an in-depth analysis of cases resulting from similar laws in other states, which addressed the distinction between residence and domicile, noting that “[i]t is axiomatic that a person may have more than one residence.”<sup>42</sup> The Court concluded that an offender must register a secondary residence.<sup>43</sup>

In the California case of *People v. Horn* the defendant was convicted of failing to register as a sex offender and testified at trial that he resided with his grandmother, where he kept his personal property and received his mail. He admitted that he also resided with a woman and her two children at a different address “from time to time,” but that he considered his grandmother’s home “to be his residence.” On appeal, the defendant objected to a jury instruction which stated that, “[d]epending upon the circumstances, one may have a single place of residence or more than one place of residence,” because the statute “did not require registration of a ‘second place of residence.’” The Court concluded that the objective of the statute, namely, “to assure that persons convicted of the crimes enumerated therein shall be readily available for police surveillance at all times because the Legislature deemed them likely to commit similar offenses in the future,” would be, “defeated entirely were an offender allowed to remain at one or more undisclosed locations on a regular basis, even if the locations were not the offender’s exclusive abode. An offender would hardly be subject to ‘surveillance at all times’ if he or she were not required to register addresses at which the offender spent more than a brief, passing amount of time.”<sup>44</sup>

In *North Carolina v. Abshire*, the defendant was staying at her father’s house, “‘off and on over about a three week period’ ... [and] that ‘almost, everyday’ she still visited [the registered address] to care for her pets, wash clothes, or ‘hang out’” and considered her residence to be the address which she returned to regularly, kept pets, received mail, and kept all of her belongings. The Court noted that the term “address” was included in the North Carolina sex offender

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<sup>38</sup> *Id.* at 386, 397.

<sup>39</sup> *Id.* at 386.

<sup>40</sup> *Id.* at 385.

<sup>41</sup> *Halloran*, 446 N.J. Super. at 392.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* discussing *People v. Horn*, 68 Cal.App.4th 408, 80 Cal.Rptr.2d 310 (Cal. Ct. App. 1998); *North Carolina v. Abshire*, 363 N.C. 322, 677 S.E.2d 444 (2009); *Ohio v. Sommerfield*, 2006–Ohio–1420, 2006 WL 758747 (Ohio Ct. App. 2006).

<sup>44</sup> *People v. Horn*, 68 Cal.App.4th 408, 80 Cal.Rptr.2d 310 (Cal. Ct. App. 1998).

registration statute, and concluded that, to the extent the meaning of “address” is unclear, the Court must look to the ‘spirit of the act and what the act seeks to accomplish,’ which in this case was “to assist law enforcement agencies and the public in knowing the whereabouts of sex offenders and in locating them when necessary.” The Court found that failing to require an offender to register a secondary residence, “would thwart the intent of the legislature if a sex offender were allowed to actually live at a location other than where he or she was registered and not be required to notify the sheriff of that new address as long as he or she continued to receive United States Postal Service mail at the registered address. Such a result would enable sex offenders to elude accountability from law enforcement and would expose the public to an unacceptable level of risk.”<sup>45</sup>

In *Ohio v. Sommerfield*, the defendant owned a home which was his registered address but began residing with his girlfriend in a neighboring county, “twenty-four hours a day, seven days a week during June 2004 and at various times in the months thereafter.” The defendant’s girlfriend and her daughter testified that his visits were intermittent, he had no key to the residence and kept no clothes or personal articles there. After the jury was unable to reach a unanimous verdict, the trial court dismissed the indictment for failure to register the secondary address upon a finding of unconstitutional vagueness. On the state’s appeal and in response to the defendant’s contention that the statute was impermissibly vague because the terms “residence” and “temporary domicile” were undefined, the Court of Appeals held that,

Since the legislature chose not to provide a specific definition of the term in R.C. 2950.04, the term is construed with its ordinary meaning. As noted in Black’s definition of “residence,” the general distinction between “residence” and “domicile” is that “domicile” incorporates an intention to return; while someone can have more than one residence an individual can only have one domicile. Black’s defines “domicile” as a “a person’s true, fixed, [principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere.” These are the commonly accepted definitions of the two terms.

In addition to their commonly accepted meanings, we can ascertain the meaning of these terms from the context of the statute. While both “residence” and “temporary domicile” may have unique and technical definitions in various other contexts, it is clear that, as used in R.C. 2950.04, the legislature intended the terms to have their commonly accepted legal meanings. The legislature clearly announced its purpose in enacting Chapter 2950 in R.C. 2950.02(B): “it is the general assembly’s intent to protect the safety and general welfare of the people of this state” by requiring registration for sex offenders “who will live in or near a particular neighborhood.” Thus, the clear intent of the registration requirement is to discern where sex offenders are currently residing so as to inform the general public. In this context, the clear intent of the statute is to have sex offenders register in a county in which they are living or maintain a permanent dwelling. [citations omitted]<sup>46</sup>

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<sup>45</sup> *North Carolina v. Abshire*, 363 N.C. 322, 677 S.E.2d 444 (2009).

<sup>46</sup> *Ohio v. Sommerfield*, 2006 WL 758747 (Ohio Ct. App. 2006).

The *Halloran* Court pointed to these cases as reinforcing, “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.”<sup>47 48</sup>

## V. *Domicile vs. Residence in Other Contexts in New Jersey Law*

There are other areas of the law depends on determining, or distinguishing between, a person's residence and domicile. The word "resident" has varied meanings dependent on the context in which it occurs and the result designed to be accomplished by its use, and those factors also determine whether it should be given a broad or a restricted construction.<sup>49</sup> Among the factors which are chiefly important in determining the domicile of a person who has more than one residence are the physical characteristics of each, the time spent and the things done in each place, the other persons found there, the person's mental attitude toward each place, and whether there is or is not an intention, when absent, to return.<sup>50</sup>

The distinction between domicile and residence is said to be straight-forward: “Domicile” is the place where a person has their true, fixed, permanent home, and principal establishment, and to which, whenever they are absent, they have the intention of returning.<sup>51</sup> “Residence” is different in that the elements of permanency, continuity, and connection with the physical, cultural, social, and political attributes are missing.<sup>52</sup> An adequately manifested intention is the determining factor which changes a residence from just a place where a person lives, to a domicile.<sup>53</sup> Where a person lives in two homes and divides his or her time between them, it is still the person’s intention which

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<sup>47</sup> *Halloran* at 397.

<sup>48</sup> One recent case of note, *State In the Interest of C.K.*, 2018 WL 1915104 (2018), deals tangentially with the section currently under review by the Commission as a result of the decision in *Halloran*. In *C.K.*, the New Jersey Supreme Court examined the constitutionality of N.J.S. 2C:7-2(g) as it pertains to adjudications of delinquency for sexual offenses. N.J.S. 2C:7-2(f) provides that a registrant may apply to terminate the registration obligation upon proof that the person has not committed an offense within 15 years following conviction or release from a correctional facility.<sup>48</sup> The Court held that N.J.S. 2C:7-2(g) is unconstitutional as applied to juveniles adjudicated delinquent as sex offenders. N.J.S. 2C:7-2(g) provides as follows:

g. A person required to register under this section who has been convicted of, adjudicated delinquent, or acquitted by reason of insanity for more than one sex offense as defined in subsection b. of this section or who has been convicted of, adjudicated delinquent, or acquitted by reason of insanity for aggravated sexual assault pursuant to subsection a. of N.J.S.2C:14-2 or sexual assault pursuant to paragraph (1) of subsection c. of N.J.S.2C:14-2 is not eligible under subsection f. of this section to make application to the Superior Court of this State to terminate the registration obligation.

<sup>49</sup> *Continos v. Parsekian*, 68 N.J. Super. 54, at 58–59 (App. Div. 1961).

<sup>50</sup> *Mercadante v. City of Paterson*, 111 N.J. Super. 35, 39–40 (Ch. Div. 1970), *aff'd*, 58 N.J. 112, 275 A.2d 440 (1971) citing the Restatement, Conflict of Laws, s 9e.

<sup>51</sup> *Santeez v. State Farm Ins. Co.* 338 N.J. Super. 166 at 173-174 (2000).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

establishes one or the other as their domicile.<sup>54</sup> A person may have only one true domicile, however, a person may have more than one residence.<sup>55</sup>

### A. *Voting*

In practice, the distinction between residence and domicile, at times, requires a deeper understanding of the definition of those terms within the context of the statute in question. In certain statutes the term “residence” refers to “domicile” and is interpreted as such by the Courts. For example, the statute setting the residence requirement for voting provides that:

...every person possessing the qualifications required by Article II, paragraph 3, of the Constitution of the State of New Jersey and having none of the disqualifications hereinafter stated and being duly registered...shall have the right of suffrage and shall be entitled to vote in the polling place assigned to the election district in which he **actually resides**, and not elsewhere. [emphasis added]<sup>56</sup>

N.J.S. 19:31-5, the statute which outlines persons entitled to register to vote provides:

Each person, who is at least 17 years of age at the time he or she applies for registration, who **resides** in the district in which he or she expects to vote, who will be of the age of 18 years or more on or before the first election in which he or she expects to vote, who is a citizen of the United States, and who, if he or she continues to **reside** in the district until that election, will at the time have fulfilled all the requirements as to length of **residence** to qualify him or her as a legal voter, shall, unless otherwise disqualified, be entitled to be registered in such district... [emphasis added]<sup>57</sup>

“Residence,” to entitle a person to vote means fixed domicile or permanent home.<sup>58</sup> A person may have multiple residences, but only one “domicile” for purposes of voting.<sup>59</sup> Factors contributing to a determination of domicile include a person’s billing address, residence from which tax returns are filed, mailing address, membership in local clubs, driver's license, place where a person spends the greatest amount of time, newspaper subscriptions, and similar considerations.<sup>60</sup> In the case of college students, all bona fide resident students are entitled to vote in their college or university communities, and, in seeking to register, such students may not be subjected as a class to questioning beyond that to which other applicants are subjected.<sup>61</sup> This

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<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> N.J.S. 19:4-1.

<sup>57</sup> N.J.S. 19:31-5.

<sup>58</sup> *State v. Benny*, 20 N.J. 238, 252–54, 119 A.2d 155 (1955); *Petition of Kriso*, 276 N.J.Super. 337, 341, 647 A.2d 1373 (App.Div.1994); *Brueckmann v. Frignoca*, 9 N.J. Misc. 128, 152 A. 780 (1930).

<sup>59</sup> *State v. Atti*, 127 N.J.L. 39, 41, 21 A.2d 603 (Sup.Ct.1941), *aff'd*, 128 N.J.L. 318, 25 A.2d 634 (E. & A.1942).

<sup>60</sup> *See, Benny, supra*, 20 N.J. at 240–49, 119 A.2d 155.

<sup>61</sup> *Worden v. Mercer Cty. Bd. of Elections*, 61 N.J. 325 at 346-347, 348 (1972).

includes “(1) those who plan to return to their previous residences, as well as (2) those who plan to remain permanently in their college communities, (3) those who plan to obtain employment away from their previous residences, and (4) those who are uncertain as to their future plans.”<sup>62</sup>

### **B. Public Education**

In the context of “residence” for public education purposes, the focus is actually on domicile. N.J.S. 18A:1-1 provides that “[r]esidence” means domicile, unless a temporary residence is indicated.” N.J.S. 18A:38-1 states in relevant part “[p]ublic schools shall be free to the following persons over five and under 20 years of age...[a]ny person who is domiciled within the school district”.

In determining the “residency” of a student for the purposes of determining which school district bears the financial responsibility of providing for the student’s education, the domicile of the student in question is the domicile of the student’s parent.<sup>63</sup> However, the Court has demonstrated “a flexible approach to domicile when a child does not live in a traditional, two-parent household,” in holding that both districts must share a child’s education costs where the parents of the child lived in different school districts, the child lived with each parent in alternate weeks under a joint custody arrangement, and the child required out-of-district special education.<sup>64</sup>

### **C. Taxation**

Statutes in the context of taxation also involve the distinction between residence and domicile. The Transfer Inheritance Tax Act, for example, repeatedly refers to “resident” or “residence” as the determining factor regarding whether a decedent’s estate is subject to a transfer inheritance tax.<sup>65</sup> Several portions of the statute reference “residence” or “resident,” however, a small portion of the statute included for the sake of simplicity and to serve as an example states “[w]here real or tangible personal property situated in this State or intangible personal property wherever situated is transferred by will or by the intestate laws of this State from a **resident** of this State dying seized or possessed thereof. [emphasis added]”<sup>66</sup>

The Court has repeatedly found that in the statutory context of the Transfer Inheritance Tax Act, “resident” means domiciliary, and “residence,” when spoken of for purposes of imposition of the Transfer Inheritance Tax, signifies “domicile.”<sup>67</sup> Similarly, for income tax purposes, the Courts

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<sup>62</sup> *Id.* at 348.

<sup>63</sup> *Yarborough v. Yarborough*, 290 U.S. 202, 211, 54 S.Ct. 181, 185, 78 L.Ed. 269 (1933).; *P.B.K. v. Bd. of Educ. of The Borough of Tenafly*, 343 N.J. Super. 419, (App. Div. 2001)(citing *Bd. of Educ. of Summit v. Millburn Twp. Bd. of Educ.*, 95 N.J. Admin.2d (EDU) 506 (1994); *Clifton Bd. of Educ. v. Sauro*, 96 N.J. Admin.2d (EDU) 497, 500 (1996)).

<sup>64</sup> *Bd. of Educ. of Summit v. Millburn Twp. Bd. of Educ.*, 95 N.J. Admin.2d (EDU) 506 (1994).

<sup>65</sup> See N.J.S. 54:34—1 *et seq.*

<sup>66</sup> N.J.S. 54:34—1a.

<sup>67</sup> *Lyon v. Glaser*, 60 N.J. 259 (1972) (citing *In re Estate of Gillmore*, 101 N.J.Super. 77, 85-87, 243 A.2d 263 (App.Div.), *certif. den.* 52 N.J. 175, 244 A.2d 304 (1968); *In re Fisher*, 13 N.J.Super. 48, 55, 80 A.2d 227

look to domicile as the determining factor in whether an individual is liable for income tax in New Jersey.<sup>68</sup>

#### ***D. Other Contexts in Which Residence is Addressed***

In the instance of a request for a change of venue, plaintiff's residence will be presumed to be where he alleges it to be, unless indications to the contrary appear.<sup>69</sup> The criteria for determining residence for change of venue requests are the same as that used to determine domicile for purposes of voting.<sup>70</sup>

Similarly, determination of residence in cases involving transportation, namely car accidents, the Unsatisfied Claim & Judgment Fund, and similar matters, rely upon an individual's intent supported by the surrounding circumstances.<sup>71</sup> With regard to driving privileges in New Jersey, Title 39 does not appear to specifically define the term "residence," however, based on the contextual use of the word, residence refers to "residence" in the legal sense, and not domicile. For example, N.J.S. 39:3-17.1 requires someone moving to New Jersey to obtain a New Jersey driver's license within 60 days of becoming a "resident" in the state.<sup>72</sup> The 60 day requirement attaches immediately when an individual takes up "residency" or becomes a "resident," rather than the moment someone establishes their domicile in New Jersey.<sup>73</sup>

#### ***VI. Residence and Domicile in the Context of N.J.S. 2C:7-2***

The concept that an individual may have more than one "residence" but only one "domicile" remains relatively consistent in the analysis of residence across various other areas of the law, despite the term "residence" for the purposes of voting law, education law, and tax law referring to a person's domicile.

In the case of N.J.S. 2C:7-2 as interpreted in *Halloran*, "residence" refers to residence in the traditional sense, rather than domicile, but unlike other areas of law, "residence" also even perhaps refers to an address where a sex offender is staying for a period of time not defined in statute. N.J.S. 2C:7-2 does not refer solely to domicile.<sup>74</sup>

The Court in *Halloran* concluded that the 23 days the defendant stayed at the Mount Olive address constituted a sufficient period of time to render the defendant in violation of the N.J.S.

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(App.Div.1951); *In re Rueff's Estate*, 157 Misc. 680, 284 N.Y.S. 426 (Sur.Ct.1935), *aff'd mem.* 249 App.Div. 617, 292 N.Y.S. 183 (1926), *app. dis.* 273 N.Y. 530, 7 N.E.2d 677 (1937)).

<sup>68</sup> See *Wolff v. Baldwin*, 9 N.J. Tax 11 (1986); *Goffredo v. Dir., Div. of Taxation*, 9 N.J. Tax 135 (1987).

<sup>69</sup> *Dabaghian v. Kaffafian*, 71 N.J. 115 (Sup. Ct. 1904).

<sup>70</sup> *Id.* at 116.

<sup>71</sup> See *Caballero v. Martinez*, 186 N.J. 548 (2006); *Smith v. Starkey Farms*, 149 A. 759 (N.J. Sup. Ct. 1930).

<sup>72</sup> See N.J.S. 39:3-17.1 Continuation of nonresident driving rights after becoming resident; vehicle registration after certain date; criminal penalties; repeat offenses.

<sup>73</sup> See *Id.*

<sup>74</sup> See *State v. Halloran*, 446 N.J. Super. 381 (Law Div. 2014).

2C:7-2 registration requirements. The Court indicated that this was because the purpose of the statute- to fairly apprise law enforcement and residents of the places where a sex offender resides - would be thwarted by allowing a sex offender to reside at an unregistered address.

### ***VII. 10 Day Notice Provision in N.J.S. 2C:7-2d(1) – Will It Impact Proposed Changes to the Law?***

If an individual required to register returns to New Jersey from out-of-state, they are required to register within 10 days of their return. N.J.S. 2C:7-2d(1), however, provides that “[u]pon 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**. [emphasis added]”<sup>75</sup>

At what point under the law is an offender deemed to have changed their residence, or acquired a secondary residence, thus requiring notification 10 days in advance to appropriate law enforcement?

Senate Bill 1174, discussed above, would address in some measure the issue of the “10 days prior” notification by instead requiring offenders to register within three business days *after* changing their address. The relevant provision reads as follows, bracketed language would be removed, underlined language would be added:

d. (1) Upon a change of address, a person shall notify the law enforcement agency with which the person is registered and shall appear in person to re-register with the appropriate law enforcement agency [no less than 10 days before he intends to first reside] within three business days of first residing at his new address.<sup>76</sup>

### ***VIII. Results of Outreach***

Staff conducted outreach to representatives of law enforcement across New Jersey. Outreach efforts remain ongoing. Currently, offenders register with local law enforcement according to the tier at which they are assessed after a Registrant Risk Assessment and are not monitored on a daily basis. They check in with their probation and/or parole officers on the dates specified and are given a date by which they must re-register as per the terms of their tier designation. Offenders have only one registered address at a time and are required to provide adequate verification of residence at the stated address.

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<sup>75</sup> N.J.S. 2C:7-2d(1).

<sup>76</sup> S1174, 218th Leg., Reg. Sess. (NJ. 2018).

Most individuals who are convicted of the most serious crimes of a sexual nature are subject to lifetime community supervision or lifetime parole supervision.<sup>77</sup> These offenders are supervised by the New Jersey Parole Board. The offenders are subject to office reporting, home visits, and additional conditions of supervision. Offenders are presented with certificates which outline all of the conditions to which they are subject. There are, however some individuals required to register under N.J.S. 2C:7-2 who are not subject to lifetime monitoring as discussed in Section X. below.

Additionally, Staff received comment from a member of the public suggesting that the Commission use the opportunity presented by this project to broadly amend the statutory provisions pertaining to sex offenders. The commenter mentioned that current sex offenders are already under a great deal of supervision from the New Jersey State Parole Board and that subjecting them to further requirements would be burdensome and unnecessary given modern techniques employed by the Parole Board to track and monitor registrants. The commenter also suggested that the proposed language may be too vague and too easy to circumvent.

### ***IX. Registrants Impacted by Proposed Statutory Modifications***

In response to concerns from the Commissioners that the proposed statutory modifications would impact individuals who committed less-severe crimes more than those who committed more-severe crimes, Staff conducted an analysis of the enumerated offenses requiring either Community Supervision for Life (CSL) or Parole Supervision for Life (PSL) as compared with offenses which require registration under N.J.S. 2C:7-2, but which do not require CSL or PSL. A brief overview of the tier-classification system is also provided.

Individuals who have committed the following offenses are, depending on the date of the offense, subject to either CSL or PSL:<sup>78</sup>

Aggravated sexual assault; sexual assault; aggravated criminal sexual contact; kidnapping pursuant to paragraph (2) of subsection c. of N.J.S. 2C:13-1; or an attempt to commit any of these crimes if the court found that the offender's conduct was characterized by a pattern of repetitive, compulsive behavior; endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child pursuant to subsection a. of N.J.S. 2C:24-4; endangering the welfare of a child pursuant to paragraph (3) or (4) subparagraph (a) of paragraph (5) of subsection b. of N.J.S. 2C:24-4; luring or enticing pursuant to section 1 of P.L.1993, c. 291 (C.2C:13-6); leader of a child pornography network pursuant to section 8 of P.L.2017, c. 141 (C.2C:24-4.1).<sup>79</sup>

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<sup>77</sup> N.J.S. 2C:43-6.4. The defendant in *Halloran* was convicted of five counts of Aggravated Sexual Assault and five counts of Endangering the Welfare of a Child, both of which are offenses which would require lifetime supervision under N.J.S. 2C:43-6.4.

<sup>78</sup> Community Supervision for Life is required for enumerated offenses occurring between October 31, 1994 and January 14, 2004, when the statute was amended to refer to Parole Supervision for Life.

<sup>79</sup> N.J.S. 2C:7-2b.

Based on the guidelines for CSL and PSL, it does not appear that the following offenses require CSL or PSL, yet are subject to registration under N.J.S. 2C:7-2:

Criminal sexual contact pursuant to N.J.S. 2C:14-3b. if the victim is a minor; criminal restraint pursuant to N.J.S. 2C:13-2, or false imprisonment pursuant to N.J.S. 2C:13-3 if the victim is a minor and the offender is not the parent of the victim; knowingly promoting prostitution of a child pursuant to paragraph (3) or paragraph (4) of subsection b. of N.J.S. 2C:34-1.<sup>80</sup>

Regarding the 3-Tier classification system, individuals are classified from Tier 1 to Tier 3 based on their assessed level of risk of re-offense, with 3 being the highest level of risk and 1 being the lowest.<sup>81</sup> The tier system is used to determine the amount of community notification required by the registrant.<sup>82</sup> It is not based solely on the specific crime of which the individual is convicted.<sup>83</sup> An individual is assigned a tier using the Registrant Risk Assessment Scale (RRAS) or the Juvenile Risk Assessment Scale (JRAS), if the registrant is 18 or under when classified.<sup>84</sup>

The Risk Assessment Scales were developed by the Division of Criminal Justice after consultation with county prosecutors, members of the Department of Corrections, staff from the Adult Diagnostic and Treatment Center and psychologists.<sup>85</sup>

The RRAS consists of four categories: the seriousness of the registrant's offense, the registrant's offense history, characteristics of the registrant, and community support available to the registrant.<sup>86</sup> These four categories provide for a total of thirteen separate criteria on: (1) Degree of Force; (2) Degree of Contact; (3) Age of the Victim; (4) Victim Selection; (5) Number of Offenses/Victims; (6) Duration of Offensive Behavior; (7) Length of Time Since Last Offense; (8) History of Antisocial Acts; (9) Response to Treatment; (10) Substance Abuse; (11) Therapeutic Support; (12) Residential Support; and (13) Employment/ Educational Stability.<sup>87</sup> These criteria are evaluated and assigned a point score to determine the total final score for purposes of tier assignment.<sup>88</sup>

The JRAS is identical to the RRAS with the exception that the JRAS also considers the gender of the victim.<sup>89</sup>

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<sup>80</sup> *Id.*

<sup>81</sup> Administrative Office of the Courts, Criminal Practice Division, Report on Implementation of Megan's Law (November 2017) at 11-12.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

As of November 2017, there were 5,083 Tier 1 registrants, or 40% of all registrants in New Jersey, 7,027 Tier 2 registrants, or 56% of all registrants in New Jersey, and 478 Tier 3 registrants, or 4% of all registrants in New Jersey.<sup>90</sup>

All individuals convicted of the offenses in N.J.S. 2C:7-2 are required to register, regardless of whether they committed an offense which includes a sentence of CSL or PSL.<sup>91</sup> Additionally, it appears that, depending on the results of the Risk Assessment, an individual required to register under N.J.S. 2C:7-2 who *is* sentenced to CSL or PSL, is not automatically classified as Tier 3.<sup>92</sup> A person could commit a crime resulting in CSL or PSL, but be classified as Tier 2 or Tier 1, depending on the assessed risk of re-offense of that individual. Conversely, it looks as if an individual convicted of an offense which would not subject that person to CSL or PSL could be classified at a Tier 3 risk level based on the results of the assessment.

Based on Staff consideration of the above, it appears that requiring all individuals who register under N.J.S. 2C:7-2 to register secondary addresses would not have the effect of singling out those individuals at a lower-tier risk designation or those individuals whose crimes did not require a sentence of CSL or PSL.

## Conclusion

The Court in *Halloran* held that an offender required to register under N.J.S. 2C:7-2 must register a secondary residence in order to remain compliant with the statute.<sup>93</sup> Since the requirement to register a secondary address is not explicitly contained in the statute, clarification of the statutory language may be of use to those who seek guidance.

The draft language contained in the Appendix suggests a number of days, either consecutively or in the aggregate over a calendar year, during which an offender could reside at a secondary residence before he or she would be required to register that address. The draft language also defines the term “secondary address” as used in N.J.S. 2C:7-2(a).<sup>94</sup>

Additionally, draft language appears in the Appendix that would remove language referring to adjudication of delinquency from N.J.S. 2C:7-2(g) in response to the New Jersey Supreme Court’s holding in *State In the interest of C.K.*, 2018 WL 1915104 (2018).

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<sup>90</sup> *Id.* at 12-13.

<sup>91</sup> N.J.S. 2C:7-2.

<sup>92</sup> See Administrative Office of the Courts, Criminal Practice Division, Report on Implementation of Megan's Law (November 2017) at 11-13.

<sup>93</sup> *Halloran* at 397.

<sup>94</sup> While S1174, if enacted, would address the issue of the 10 day notice provision, and would require the form given to an offender at the time of sentencing to include a provision notifying them that they are required to register every address at which they reside, S1174 does not modify N.J.S. 2C:7-2 to provide guidance regarding the duration of time an individual may spend at a particular residence before it constitutes a violation of N.J.S. 2C:7-2, or clarify that the offender must register any secondary address they have.

## Appendix

It is proposed that N.J.S. 2C:7-2(a) be amended to read as follows:

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.

(2) A person required to register under this section shall register within three business days of every change of the person's primary residence, any secondary residences, place of employment, vehicle information, or educational information.

(3)“Secondary residence” means any real property that the registrant owns or has a financial interest in, or any location where, in any 12-month period, the registrant stays a total of five consecutive or ten or more days in the aggregate.

[(2)] (4) A person who in another jurisdiction is required to register as a sex offender and (a) is enrolled on a full-time or part-time basis in any public or private educational institution in this State, including any secondary school, trade or professional institution, institution of higher education or other post-secondary school, or (b) is employed or carries on a vocation in this State, on either a full-time or a part-time basis, with or without compensation, for more than 14 consecutive days or for an aggregate period exceeding 30 days [in a calendar year] in any 12-month period,<sup>95</sup> shall register in this State as provided in subsections c. and d. of this section.

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

**In addition to the provisions which were originally the subject of this project, since the Commission is working on N.J.S. 2C:7-2, it is further proposed that N.J.S. 2C:7-2(g) be amended as a result of the recent decision of the New Jersey Supreme Court in *State In the interest of C.K.*, 2018 WL 1915104 (2018).**

In *C.K.*, the New Jersey Supreme Court examined the constitutionality of N.J.S. 2C:7-2(g) as it pertains to adjudications of delinquency for sexual offenses. N.J.S. 2C:7-2(f) provides that a registrant may apply to terminate the registration obligation upon proof that the person has not committed an offense within 15 years following conviction or release from a correctional facility. The Court held that N.J.S. 2C:7-2(g) is unconstitutional as applied to juveniles adjudicated delinquent as sex offenders.

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<sup>95</sup> This modification is recommended to maintain consistency with the language in the proposed new section (3).

In response to the Court's determination in that case, Staff proposes an amendment to N.J.S. 2C:7-2(g) to read as follows:

g. A person required to register under this section who has been convicted of, ~~adjudicated delinquent~~, or acquitted by reason of insanity for more than one sex offense as defined in subsection b. of this section or who has been convicted of, ~~adjudicated delinquent~~, or acquitted by reason of insanity for aggravated sexual assault pursuant to subsection a. of N.J.S.2C:14-2 or sexual assault pursuant to paragraph (1) of subsection c. of N.J.S.2C:14-2 is not eligible under subsection f. of this section to make application to the Superior Court of this State to terminate the registration obligation.