



NEW JERSEY LAW REVISION COMMISSION

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

March 05, 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 **May 15, 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:

Timothy J. Prol, Counsel
New Jersey Law Revision Commission
153 Halsey Street, 7th Fl., Box 47016
Newark, New Jersey 07102
973-648-4575
(Fax) 973-648-3123
Email: tjp@njlrc.org
Web site: <http://www.njlrc.org>

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.¹ 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.² 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 response to feedback from the Commission, Staff has expanded the section of this Report discussing the Federal Sex Offender Registration and Notification Act (SORNA), has added a discussion of sex offender registration law in several other states, and has engaged in outreach to a number of law enforcement agencies throughout New Jersey. Additionally, the Appendix has been updated in response to guidance provided by the Commission to include an option combining descriptive language regarding the definition of a secondary or temporary address with a bright-line number of days beyond which an offender who stays at an address or location would be in violation of N.J.S. 2C:7-2.

This Report is being released to elicit comments regarding the issue of whether modification of N.J.S. 2C:7-2 as a result of the decision in *Halloran* is appropriate in order to clarify that individuals required to register under N.J.S. 2C:7-2 must register “secondary” addresses as well as their primary domicile or residence. Additionally welcome are comments and feedback regarding the proposed statutory modifications which would clarify N.J.S. 2C:7-2 according to the result in *Halloran*. Draft statutory language included for the purposes of comment is contained in the Appendix which follows this Report.

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 Laws which were enacted for the purpose of protecting the community from the dangers of recidivism by sexual offenders.³ 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.

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

² *Id.* at 397.

³ *See Halloran*, 446 N.J. Super. at 391.

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.⁴

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.⁵ When a person required to register under N.J.S. 2C:7-2 changes their address, they must notify the law enforcement agency with which they register of their intent to move, and they must re-register with the appropriate law enforcement agency no less than 10 days before they intend to first reside at the new address.⁶ 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 N.J.S. 2C:7-1.

⁵ N.J.S. 2C:7-2(a)(1).

⁶ N.J.S. 2C:7-2(d)(1).

(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 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]⁷

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.”⁸

II. The Federal Sex Offender Registration and Notification Act

The Federal Sex Offender Registration and Notification Act, or SORNA, provides federal registration requirements for sex offenders and imposes certain responsibilities on the states regarding implementation.⁹ SORNA requires offenders to register, and keep their registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student.¹⁰ 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.¹¹ The relevant statutory provisions read as follows:

⁷ N.J.S. 2C:7-2.

⁸ N.J.S. 2C:7-1.

⁹ 34 U.S.C. § 20911 - 20932.

¹⁰ 34 U.S.C. § 20913.

¹¹ 34 U.S.C. § 20927.

(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 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.¹²

...

(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.¹³

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, which has been introduced for the 2018-2019 Legislative Session, aims to revise New Jersey’s Megan’s Law statute in response to the requirements of SORNA.¹⁴ 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. While 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. The issue of an offender spending a certain amount of time at a location other than his or her primary address, beyond which an offender could be considered to be in violation of N.J.S. 2C:7-2, is not addressed by S1174.

S1174 also amends N.J.S. 2C:7-4, which addresses requirements for registration forms, which, under N.J.S. 2C:7-3, are required to be provided to offenders at the time they are sentenced. S1174 would require the form an offender receives at the time of sentencing to contain a

¹² 34 U.S.C. § 20913.

¹³ 34 U.S.C. § 20911.

¹⁴ S1174, 218th Leg., Reg. Sess. (NJ. 2018).

notification that they must register any address, including temporary residences. The provision in the bill provides in pertinent part:

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;¹⁵

A version of the bill presently introduced as S1174 was first introduced in 2011. While a version of the current bill has been introduced in each subsequent Legislative session since 2011, to date, there has been no Legislative action on the measure. The bill does not directly amend the residence and address registration requirements in N.J.S. 2C:7-2, nor does it provide guidance regarding the duration of time beyond which an offender required to register under the act must register their secondary address.

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

Several states have explicit considerations in their criminal codes which address 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.¹⁶

¹⁵ S1174, 218th Leg., Reg. Sess. (NJ. 2018).

¹⁶ Cal. Penal Code § 290.011.

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

“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. In some sense, the clause “regularly resides” appears to potentially be in conflict with the clause “regardless of the number of days or nights spent there” because, how could someone be considered to be “regularly residing” at a location after only one night? Yet, one night spent at a location could seem to be interpreted to require registration under the “regardless of the number of days or nights spent there” clause of the section.

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;¹⁷

...

(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.¹⁸

The Minnesota statute provides some guidance regarding the type of conduct which would be considered a violation of the statute but does not provide a specific bright-line timeframe which would constitute a violation of the statute.

¹⁷ Minn. Stat. § 243.166.

¹⁸ Minn. Stat. § 243.166.

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...¹⁹

...

(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.²⁰

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...²¹

...

“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.²²

The descriptive terminology approach as well as the bright-line approach both provide improved guidance regarding the requirement to register a secondary address. While it may be impossible to devise a statutory framework that covers all scenarios involving a person's residence, the combination of descriptive language and bright-line guidance could encompass a reasonably broad cross-section of activity.

¹⁹ Utah Code § 77-43-105.

²⁰ Utah Code § 77-43-102.

²¹ Mass. Gen. Laws ch. 6, § 178D.

²² Mass. Gen. Laws ch. 6, § 178C.

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

In the case of *State v. Halloran*, which resulted in the Commission's consideration of this issue, the Court addressed whether, under Megan's Law, a sex offender is obligated to register more than one residence.²³ 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 2011.²⁴ Having originally registered an address in Hamburg as his residence, Halloran then registered his residence as the Roxbury Motel on February 2, 2011.²⁵ Halloran moved out of the Roxbury Motel on February 7, 2011 without leaving a forwarding address or registering his new residence. He moved back into the Roxbury Motel on March 16, 2011.²⁶

On March 16, 2011, Halloran was arrested and charged with Failing to Notify Law Enforcement of a Change of Residence.²⁷ 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, 2011.²⁸

Following Halloran's release from jail, he was found to be residing at his girlfriend's home.²⁹ Halloran admitted on October 3, 2011 that he had been residing at his girlfriend's home since August 22, 2011.³⁰ Halloran had not registered this residence with the local police department.³¹ He was indicted on October 20, 2011 for Failure to Register within the statutorily required period of time and Failure to Advice of Use of Internet.³²

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.³³ 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.³⁴

For the sake of focusing the analysis, the timeline during which the defendant in *Halloran* resided at the secondary address in Mount Olive, at which he neglected to register, is recapped as

²³ *State v. Halloran*, 446 N.J. Super. 381 (Law Div. 2014).

²⁴ *Id.* at 383.

²⁵ *Id.* at 384.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 385.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.* at 398.

³⁴ *Id.*

follows: Defendant took up residence at his secondary address on August 22, 2011.³⁵ On September 9, 2011, eighteen (18) days later, defendant was imprisoned in the Morris County Correctional Facility until September 28, 2011.³⁶ While imprisoned, he registered as required under the provisions of N.J.S. 2C:7-2, but provided his primary address in Roxbury, not his secondary address where he had been living since August 22, 2011.³⁷ On October 3, 2011, 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, 2011.³⁸ Defendant spent a total of twenty-three (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.’”³⁹ 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.”⁴⁰ The Court concluded that an offender must register a secondary residence.⁴¹

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.”⁴²

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

³⁵ *Id.* at 385.

³⁶ *Id.* at 386, 397.

³⁷ *Id.* at 386.

³⁸ *Id.* at 385.

³⁹ *Halloran*, 446 N.J. Super. at 392.

⁴⁰ *Id.*

⁴¹ *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).

⁴² *People v. Horn*, 68 Cal.App.4th 408, 80 Cal.Rptr.2d 310 (Cal. Ct. App. 1998).

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 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.”⁴³

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,

⁴³ *North Carolina v. Abshire*, 363 N.C. 322, 677 S.E.2d 444 (2009).

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]⁴⁴

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.”⁴⁵

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

There are other areas of the law wherein the result 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.⁴⁶ 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.⁴⁷

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.⁴⁸ “Residence” is different in that the elements of permanency, continuity, and connection with the physical, cultural, social, and political attributes are missing.⁴⁹

An adequately manifested intention is the determining factor which changes a residence from just a place where a person lives, to a domicile.⁵⁰ Where a person lives in two homes and divides his or her time between them, it is still the person’s intention which establishes one or the other as their domicile.⁵¹ A person may have only one true domicile, however, a person may have more than one residence.⁵²

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

⁴⁴ *Ohio v. Sommerfeld*, 2006–Ohio–1420, 2006 WL 758747 (Ohio Ct. App. 2006).

⁴⁵ *Halloran* at 397.

⁴⁶ *Continos v. Parsekian*, 68 N.J. Super. 54, at 58–59 (App. Div. 1961).

⁴⁷ *Mercadante v. City of Paterson*, 111 N.J. Super. 35, 39–40, 266 A.2d 611, 613 (Ch. Div. 1970), *aff'd*, 58 N.J. 112, 275 A.2d 440 (1971) citing the Restatement, Conflict of Laws, s 9e.

⁴⁸ *Santeez v. State Farm Ins. Co.* 338 N.J. Super. 166 at 173-174 (2000).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

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:

Except as provided in R.S.19:4-2 and R.S.19:4-3, 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 as required by Title 19, 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]⁵³

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. Each 17-year-old registrant shall be designated in the Statewide voter registration system as temporarily ineligible to vote until the registrant's 18th birthday. [emphasis added]⁵⁴

“Residence,” to entitle a person to vote means fixed domicile or permanent home.⁵⁵ A person may have multiple residences, but only one “domicile” for purposes of voting.⁵⁶ 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.⁵⁷

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.⁵⁸ This 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.”⁵⁹

B. Public Education

⁵³ N.J.S. 19:4-1.

⁵⁴ N.J.S. 19:31-5.

⁵⁵ *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).

⁵⁶ *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).

⁵⁷ *See, Benny, supra*, 20 N.J. at 240–49, 119 A.2d 155.

⁵⁸ *Worden v. Mercer Cty. Bd. of Elections*, 61 N.J. 325 at 346-347, 348 (1972).

⁵⁹ *Id.* at 348.

In the context of “residence” for public education purposes, the focus is actually on domicile. N.J.S. 18A:1-1, in relevant part, provides that “[r]esidence’ means domicile, unless a temporary residence is indicated.”

N.J.S. 18A:38-1, which provides for attendance at school free of charge, 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.⁶⁰ 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.⁶¹

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.⁶² 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]”⁶³

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.”⁶⁴ Similarly, for income tax purposes, the Courts look to domicile as the determining factor in whether an individual is liable for income tax in New Jersey.⁶⁵

D. Other Matters in Which Residence is Addressed

⁶⁰ *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)).

⁶¹ *Bd. of Educ. of Summit v. Millburn Twp. Bd. of Educ.*, 95 N.J. Admin.2d (EDU) 506 (1994).

⁶² See N.J.S.A. 54:34—1 *et seq.*

⁶³ N.J.S.A. 54:34—1a.

⁶⁴ *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 (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)).

⁶⁵ See *Wolff v. Baldwin*, 9 N.J. Tax 11 (1986); *Goffredo v. Dir., Div. of Taxation*, 9 N.J. Tax 135 (1987).

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.⁶⁶ The criteria for determining residence for change of venue requests are the same as that used to determine domicile for purposes of voting.⁶⁷

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.⁶⁸ 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.⁶⁹ 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.⁷⁰

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.⁷¹

The Court in *Halloran* reviewed the timeline of the defendant's stay at the Mount Olive address, and concluded that the twenty-three (23) days he stayed there, eighteen (18) consecutive days and five (5) additional consecutive days following his release from the Morris County Correctional Facility, constituted sufficient time spent at the Mount Olive address that defendant was in violation of the N.J.S. 2C:7-2 registration requirements. As indicated by the Court, this was because the purpose of the statute, namely, that law enforcement and residents of the local area must be apprised of the places where sex offenders reside in order to protect the public at large, would be thwarted by allowing a sex offender to reside for a period of time 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?*

⁶⁶ *Dabaghian v. Kaffafian*, 71 N.J. 115 (Sup. Ct. 1904).

⁶⁷ *Id.* at 116.

⁶⁸ See *Caballero v. Martinez*, 186 N.J. 548 (2006); *Smith v. Starkey Farms*, 149 A. 759 (N.J. Sup. Ct. 1930).

⁶⁹ 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.

⁷⁰ See *Id.*

⁷¹ See *State v. Halloran*, 446 N.J. Super. 381 (Law Div. 2014).

It is of note that N.J.S. 2C:7-2d(1) requires an offender to provide 10 days' notice to appropriate law enforcement agencies of their planned move to a new address. As noted above, however, if the individual 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) 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]”⁷²

The decision in *Halloran* raises the question: At what point does an address where an offender spends an extended amount of overnight time become a residence for registration purposes? Stated another way, 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.⁷³

While this provision addresses the timing issue of when an individual is required to register, it does not address the issue of the duration of time an offender is legally be permitted to stay for a period of time beyond which they must register as provided by N.J.S. 2C:7-4.

VIII. Results of Outreach in This Area

Staff conducted preliminary 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. Offenders are required to provide adequate verification of residence at the stated address.

⁷² N.J.S. 2C:7-2d(1).

⁷³ 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.⁷⁴ 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. Some individuals, however, are subject to registration under N.J.S. 2C:7-2 who are not subject to lifetime monitoring.

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.⁷⁵ Since the terminology regarding the registration of a secondary address for the purposes of compliance with N.J.S. 2C:7-2 is not explicitly defined in the statute, it appears appropriate to clarify the language in the statute for those who would seek reliable guidance within the statute in order to comply therewith.

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 includes a second option which does not set a specific number of days beyond which an offender would be required to register, but does clarify that an offender required to register under N.J.S. 2C:7-2 must register any secondary address where they reside. Additionally, a third option is included combining descriptive language providing guidance regarding the definition of a secondary or temporary address with a bright-line number of days beyond which an offender who stays at an address or location will be in violation of N.J.S. 2C:7-2.⁷⁶

⁷⁴ 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.

⁷⁵ *Halloran* at 397.

⁷⁶ 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 overnights at a particular residence before it constitutes a violation of N.J.S. 2C:7-2 or to clarify that the offender must register any secondary address they have.

Appendix

Three options are proposed to amend N.J.S. 2C:7-2a to read as follows:

Option 1:

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. A person required to register pursuant to this section shall register each address at which that person spends more than 14 days, consecutively or in the aggregate, in a calendar year.

Option 2:

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. A person required to register pursuant to this section shall register each address at which that person resides in a calendar year, regardless of the number of days or nights spent there. A person may reside in more than one location for purposes of registration. For purposes of this section, a person is deemed to reside at any permanent or temporary residence and at any location where the person habitually lives.

Option 3:

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. Within three (3) business days of establishing or changing a primary or secondary residence, or establishing a physical presence at a particular location, the offender shall register or report in person, as required by this section. A person required to register pursuant to this section shall register each address at which that person resides, including the addresses or locations 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 12-month period in addition to 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 thirty-day period in addition to a sex offender's primary address.