

To: New Jersey Law Revision Commission
From: Whitney G. Schlimbach, Counsel
Re: Interpretation of the Household/Incest Exception to Inclusion in Sex Offender Central Registry in N.J.S. 2C:7-13d.(2)
Date: July 11, 2022

Project Summary¹

In New Jersey, the registration records of individuals convicted of a qualifying sex offense are made available to the public through an internet registry, pursuant to N.J.S. 2C:7-13.² If the “sole sex offense” that triggered the registration and notification requirements satisfies one of three exceptions in N.J.S. 2C:7-13d., an individual’s registration record “shall not be made available to the public on the Internet registry.”³

A “sole sex offense” is defined in N.J.S. 2C:7-13d., as “a single conviction . . . for a sex offense which involved no more than one victim, no more than one occurrence or, in the case of an offense which meets the criteria of [the household/incest exception], members of no more than a single household.”⁴ The “household/incest” exception applies to offenders related by at least third-degree blood or affinity to the victim.⁵

In *In re N.B.*, the New Jersey Supreme Court considered whether a defendant who pled guilty to one count of sexual contact with his minor half-sister, but admitted during his plea hearing to “several acts of sexual contact” with her, was eligible for the household/incest exception.⁶ Although the definition of “sole sex offense” was added to N.J.S. 2C:7-13 in 2004 to address divergent interpretations of the term,⁷ the *N.B.* Court clarified whether the requirement that a “sole sex offense . . . involved no more than one victim, no more than one occurrence” applies to an offense qualifying under the “household/incest” exception.⁸

Based on the decision to “separately address[] the household/incest exception in the final clause of N.J.S. 2C:7-13(d),” the *N.B.* Court found the Legislature “intended [the household/incest

¹ This Memorandum focuses on the court’s interpretation of N.J.S. 2C:7-13d. as discussed in *In re N.B.*, 222 N.J. 87 (2015). This issue was brought to Staff’s attention after a review of *State v. H.C.*, 2021 WL 1713300 (N.J. Super. Ct. App. Div. Apr. 30, 2021), which relied on the reasoning and holding of *In re N.B.* to determine whether a similarly situated defendant qualified under the household/incest exception in subsection (d)(2) of N.J.S. 2C:7-13. See discussion *infra* at pp. 4-5.

² N.J. STAT. ANN. § 2C:7-13 (West 2022).

³ N.J. STAT. ANN. § 2C:7-13d.

⁴ N.J. STAT. ANN. § 2C:7-13d.

⁵ N.J. STAT. ANN. § 2C:7-13d.(2) (including those who were “a resource family parent, a guardian, or stood in loco parentis within the household. . .”).

⁶ *In re N.B.*, 222 N.J. at 90.

⁷ Sponsors’ Statement to S.B. 1208, 211th Leg., 2004 Sess. (N.J. 2004) (“In rulings concerning these exceptions, courts have varied on the meaning of the ‘sole sex offense’ requirement. For example, some courts have construed this term to apply to offenses which involved only a single incident or occurrence, or no more than one victim. Other courts have construed the term more broadly, considering the term to contemplate the character, rather than the number of offenses committed by a defendant . . .”).

⁸ *In re N.B.*, 222 N.J. at 90 (“Constru[ing] the statutory definition of “sole sex offense”] in a manner that gives meaning to all of the words chosen by the Legislature, that provision indicates that N.J.S.A. 2C:7-13(d)(2) applies to the conviction here.”).

exception] to be less restrictive than the other two exceptions.”⁹ The Court “conclude[d] that the Legislature intended the household/incest exception to apply to a registrant [like the defendant] whose single conviction . . . involves more than one instance of sexual contact with a single victim who is within his or her household.”¹⁰

Relevant Statute

N.J.S. 2C:7-13 provides in relevant part:

* * *

- d. The individual registration record of an offender whose risk of re-offense has been determined to be moderate and for whom the court has ordered notification in accordance with paragraph (2) of subsection c. of section 3 of P.L.1994, c.128 (C.2C:7-8) shall not be made available to the public on the Internet registry if the sole sex offense committed by the offender which renders him subject to the requirements of P.L.1994, c.133 (C.2C:7-1 et seq.) is one of the following:
- (1) An adjudication of delinquency for any sex offense as defined in subsection b. of section 2 of P.L.1994, c.133 (C.2C:7-2);
 - (2) A conviction or acquittal by reason of insanity for a violation of N.J.S.2C:14-2 or N.J.S.2C:14-3 under circumstances in which the offender was related to the victim by blood or affinity to the third degree or was a resource family parent, a guardian, or stood in loco parentis within the household; or
 - (3) A conviction or acquittal by reason of insanity for a violation of N.J.S.2C:14-2 or N.J.S.2C:14-3 in any case in which the victim assented to the commission of the offense but by reason of age was not capable of giving lawful consent.

For purposes of this subsection, "sole sex offense" means a single conviction, adjudication of guilty or acquittal by reason of insanity, as the case may be, for a sex offense which involved no more than one victim, no more than one occurrence or, in the case of an offense which meets the criteria of paragraph (2) of this subsection, members of no more than a single household.¹¹

Background

In *N.B.*, the New Jersey Supreme Court addressed whether the defendant in *N.B.*, who was convicted of one count of sexual contact with a minor and admitted during his plea hearing to multiple instances of sexual contact with the victim, was eligible for the household/incest

⁹ *Id.* at 100.

¹⁰ *Id.* at 102.

¹¹ N.J. STAT. ANN. § 2C:7-13 (emphasis added).

exception in N.J.S. 2C:7-13d.(2).¹² Following allegations that he sexually assaulted his minor half-sister while they lived in the same household, the nineteen-year-old defendant was indicted on one count of first-degree aggravated sexual assault, two counts of second-degree sexual assault and one count of third-degree endangering a child.¹³

Pursuant to a plea agreement “dispos[ing] of all charges in the indictment, as well as any potential charges” arising from the defendant’s sexual abuse of his half-sister before he turned eighteen, the defendant pled guilty to one count of second-degree sexual assault.¹⁴ At the plea hearing, the trial court was “advised . . . that N.B. was not contesting the allegations concerning incidents that occurred when he was a juvenile,” and the defendant “admitted on the record that he had sexual contact with the victim on certain dates . . . when [the defendant] was a juvenile.”¹⁵

Following his conviction and sentencing, the defendant was designated a Tier 2 offender, “presenting a moderate risk of re-offense.”¹⁶ The trial court accepted the State’s argument that the defendant’s admission “to multiple offenses over several years” disqualified the defendant from the household/incest exception.¹⁷

The Appellate Division affirmed the trial court’s interpretation of the statutory language, concluding that “N.B.’s multiple offenses against a single victim at different points in time precluded the application of the household/incest exception.”¹⁸ The defendant appealed, and the Supreme Court granted certification.¹⁹

Analysis

- *In re N.B.*

To determine the applicability of the household/incest exception to the defendant in *N.B.*, the Supreme Court analyzed the statutory definition of “sole sex offense.”²⁰ The Court found that “the language of the original version of [N.J.S. 2C:7-13d.] is subject to conflicting interpretations,” but that the “2004 amendment defining sole sex offense . . . provides more compelling evidence of the Legislature’s intent.”²¹

The Court explained that the second clause of the 2004 amendment “distinguishes between the exceptions prescribed by N.J.S.A. 2C:7-13(d)(1) and (d)(3), and the household/incest exception.”²² The second clause in the definition of “sole sex offense . . . excludes an offender who otherwise meets the requirements of [the exceptions in (d)(1) and (d)(3)] if his or her offense

¹² *In re N.B.*, 222 N.J. at 91.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* (“N.B. did not admit to any offense involving a victim other than his half-sister.”).

¹⁶ *Id.* at 92.

¹⁷ *Id.*

¹⁸ *Id.* at 93.

¹⁹ *Id.*

²⁰ *Id.* at 97.

²¹ *Id.* at 99.

²² *Id.*

involves more than one victim or more than one occurrence.”²³ The Court continued that “[b]y contrast, an offender in the household/incest category . . . may qualify for the exception in a broader category of cases: those which involve no more than one victim, no more than one occurrence *or* . . . members of no more than a single household.”²⁴

Concluding that “[t]he statutory text suggests that [the household/incest exception] is intended to be less restrictive than the two other exceptions prescribed by N.J.S.A. 2C:7-13d.,” the *N.B.* Court rejected the interpretation that “none of the statute’s three exceptions are available to an offender whose offenses involved more than one victim and one occurrence.”²⁵ To do otherwise “would contravene the canon of statutory construction that directs courts to interpret laws so as to give meaning to all of the Legislature’s statutory text.”²⁶

Applying this reasoning to the facts in *N.B.*, the Supreme Court held that “the Legislature intended the household/incest exception to apply to a registrant [like *N.B.*] whose single conviction otherwise meets the requirements of [that section] and involves more than one instance of sexual contact with a single victim who is within his . . . household.”²⁷

- *State v. H.C.*

Six years after the decision in *N.B.*, the Appellate Division addressed the applicability of the household/incest exception in *State v. H.C.*²⁸ In *H.C.*, the defendant pled guilty to one count of fourth-degree criminal sexual contact.²⁹ The charges against the defendant stemmed from a police report by his 24-year-old niece that he had sexually abused her when she was between six and twelve years old.³⁰ During the investigation, the defendant and his niece “discussed their sexual activities as well as defendant’s sexual conduct with [her] brother . . . and . . . sister” in a recorded telephone call.³¹ The defendant and his nieces and nephew did not live in the same household at the time.³²

The trial court found that the “alleged sexual abuse of [the defendant’s other niece and nephew] serves as a basis for more than a ‘sole sex offense’ under N.J.S.A. 2C:7-13 to disqualify him from the household/incest exception.”³³ The Appellate Division disagreed with the trial

²³ *Id.* at 100.

²⁴ *Id.*

²⁵ *N.B.*, 222 N.J. at 100 - 01.

²⁶ 222 N.J. at 101 (“[i]f, as the State contends, the Legislature intended that none of the three exceptions set forth in N.J.S.A. 2C:7-13(d) are available to a registrant whose sex offense involves more than one victim or more than one occurrence, then it would have left out several of the words that appear in the statute”).

²⁷ *Id.* at 102. The *N.B.* court explicitly declined to “address whether an offender with a single conviction premised upon multiple admitted acts upon multiple victims, all within the household” would be eligible for the household/incest exception in N.J.S. 2C:7-13d.(2)). *Id.* at 102, n.7.

²⁸ 2021 WL 1713300 (N.J. Super. Ct. App. Div. Apr. 30, 2021).

²⁹ *Id.* at *1.

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at *1.

³³ *Id.* at *3.

court's basis for declining to apply the household/incest exception, finding instead that because the defendant "was not convicted of those offenses . . . he only had a sole sex offense."³⁴

The Appellate Division relied on the Supreme Court's interpretation of N.J.S. 2C:7-13d.(2) in *In Re N.B.*, drawing a parallel between the two fact patterns.³⁵ The *H.C.* court described the statutory analysis in *N.B.* as addressing an ambiguity arising from the lack of either "an 'and' or an 'or' between 'no more than one victim' and 'no more than one occurrence'" in the statutory definition of "sole sex offense."³⁶ Citing the holding in *N.B.*, the *H.C.* court held the household/incest exception inapplicable because the "defendant was not a member of the household of the victim."³⁷

Despite the clarification of N.J.S. 2C:7-13d. by the *N.B.* Court, the meaning of "sole sex offense" in the context of the household/incest exception still may not be sufficiently clear to prevent litigation regarding the scope of the exception.

Pending Bills

There are two bills currently pending which address N.J.S. 2C:7-13, but neither of them addresses the definition of "sole sex offense." One bill proposes conforming the New Jersey sex offender registration system with the federal Sex Offender Registration and Notification Act (SORNA) and has been introduced in each legislative session since 2010-2011.³⁸ The other proposes requiring publication of additional identifying information of eligible sex offenders.³⁹

Conclusion

Staff requests authorization to conduct further research and outreach to determine whether N.J.S. 2C:7-13d. would benefit from a modification clarifying the application of the requirement that a sole sex offense involves "no more than one victim, no more than one occurrence" to the household/incest exception, which has been interpreted as "less restrictive than the other two exceptions" by the New Jersey Supreme Court in *In re N.B.*⁴⁰

³⁴ *Id.* at *3 (citing *Hayes v. Delamotte*, 231 N.J. 373, 387 (2018) (applying the "well-settled [principle] that appeals are taken from orders and . . . not . . . opinions," and that orders may be affirmed for reasons different from those set forth by the trial court)).

³⁵ *Id.* ("Like the registrant in *N.B.*, defendant pled guilty to one count of a sexual offense but admitted to multiple acts.").

³⁶ *Id.* at *2.

³⁷ *Id.* at *3.

³⁸ A.B. 2496, 220th Leg., 2022 Sess. (N.J. 2022) (identical to S.B. 1844); A.B. 3252, 219th Leg., 2020 Sess. (N.J. 2020) (identical to S.B. 2111); A.B. 3852, 218th Leg., 2018 Sess. (identical to S.B. 1174); S.B. 1716, 217th Leg., 2016 Sess. (N.J. 2016); S.B. 1702, 216th Leg., 2014 Sess. (N.J. 2014) (identical to A.B. 3832); A.B. 764, 215th Leg., 2012 Sess. (N.J. 2012) (identical to S.B. 850 and A.B. 2952); A.B. 4225, 214th Leg., 2011 Sess. (N.J. 2011) (identical to S.B. 2993).

³⁹ A.B. 3456, 220th Leg., 2022 Sess. (N.J. 2022).

⁴⁰ *In re N.B.*, 222 N.J. at 100.