

# Court Outlines When Sex Offenders May Attempt To Terminate Their Registration Requirements Under Megan's Law And Community Supervision For Life (CSL)

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January 22, 2019 | by Brian Kenney

On December 7, 2018, the Appellate Division decided In the Matter of Registrant H.D., (App. Div. 2018) Docket Nos. A5321-16T1 and A5322-16T1, a decision approved for publication. This matter involved two appeals from sex offender registrants under Megan's Law. In 1994 and 1998, respectively, the petitioners were sentenced to community supervision for life under the Violent Predator Incapacitation Act, enacted as part of Megan's Law, and were also required to register as sex offenders as required by N.J.S.A. 2C:43-6.4(a). J.M. and H.D., the petitioners, were also registered as sex offenders pursuant to N.J.S.A. 2C:7-2(a) and (c).

In 2001, J.M. was convicted of disorderly persons computer-related theft. That same year, H.D. was convicted of fourth-degree failure to register as a sex offender. Both petitioners remained offense-free since those 2001 convictions.

Pursuant to N.J.S.A. 2C:7-2(f) any registrant may apply "to the Superior Court ... to terminate the [registration] obligation upon proof that the person has not committed an offense within [fifteen] years following conviction or release from a correctional facility for any term of imprisonment imposed, whichever is later, and is not likely to pose a threat to the safety of others." (Emphasis added).

To terminate CSL under 2C:43-6.4(c), the statute mandates that:

[A] judge may grant a petition for release from a special sentence of [community] supervision for life only upon proof by clear and convincing evidence that the person has not committed a crime for [fifteen] years since the last conviction or release from incarceration, whichever is later, and that the person is not likely to pose a threat to the safety of others of released from [community] supervision.

The petitioners moved to remove their registration requirements under Megan's Law and CSL and the trial court ruled that both petitioners were ineligible to terminate their registration requirements because they had failed to remain offense-free in the 15 years following their convictions giving rise to their registration requirements. However, the trial court terminated H.D.'s CSL, holding that the 15-year period is measured from the date of last offense rather than from the date of the underlying conviction under Megan's Law.

On appeal, petitioners argued they were entitled to terminate their registration requirements because they had remained offense-free for 15 years following their last convictions, contending that the "conviction" for the 15-year clock referred to the last conviction rather than the underlying conviction under Megan's Law. The State contended the opposite.

The court conducted an in-depth analysis of questions of statutory interpretations. The court cited prior precedent, stating, "The overriding goal of all statutory interpretation 'is to determine as best we can the intent of the Legislature, and to give effect to that intent.'" State v. S.B., 230 N.J. 62, 67 (2017). The court also commented that if the language itself does not lead to a single, clear meaning, courts can look to "extrinsic evidence, including legislative history, for guidance." State v. O'Driscoll, 215 N.J. 461, 474 (2013).

The court pointed to subsection (f) of N.J.S.A. 2C:7-2 and how same permits relief from registration obligations if "the person has not committed an offense within [fifteen] years following conviction or release from a correctional facility for any term of imprisonment imposed, whichever is later, and is not likely to pose a threat to the safety of others." (Emphasis added). The court stated the emphasized portion was ambiguous, not as to when the fifteen-year-offense free clock starts, "but rather, more accurately, whether the clock may ever reset."

The court ruled that the provision only required a registrant to remain offense-free for 15 years from the last conviction, not the underlying conviction under Megan's Law, because the remedial purposes of Megan's Law would not be served by requiring registrants to continue their obligations after demonstrating they could lead law-abiding lives. Specifically, the court disagreed with the State's argument that Megan's Law remedial purpose prohibits subsection (f) relief for anyone who commits an offense, however minor, within the first fifteen years following conviction or release for the

underlying sex offense. The court held that the Legislature “never intended to forever bar relief from Megan’s Law registration requirements to every person who commits an offense, however minor, within the first fifteen years following conviction of a sex offense or release from custody after that conviction.” The court also noted that the legislature would not intend different timeframes for release from registration and from CSL. While reversing and remanding the matters to the Law Division, the court requested that it consider whether H.D. and J.M. have remained offense free since their 2001 convictions and are “not likely to pose a threat to the safety of others” pursuant to N.J.S.A. 2C:7-2(f).