

Residency Requirements For First Responders

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Introduction

Disaster planning raises many issues. One of the most important is that of evacuation planning. The response to Hurricane Katrina allowed us to see what happens when plans are not viable or not executed as expected. As a part of evacuation planning, the issue of residency requirements for first responders has come to the forefront of emergency response debates.

In 2005, Pennsylvania Senators Orie, Scarnati, Wozniak, and several others introduced Senate Bill 438 which stated, “No municipality may require its law enforcement officers to be residents of the municipality in order to serve in the capacity of law enforcement officer.”¹ This particular bill only dealt with police officers and was not prompted by emergency response concerns. The bill was tabled, never becoming a law.

Residency requirements are “rules or regulations promulgated by city council ordinance, charter provision, or administrative rule that state that local public employees must live within the boundaries of a municipality.”² In recent months, administrators and policymakers have been questioning such requirements for several reasons:

- The perception that such requirements narrow the applicant pool to a point that there is increasing incompetence in the ranks;
- Quality-of-life issues such as schools, crime, and affordable housing.
- They inhibit an employee’s opportunities to be promoted; and
- Recent disasters have reinforced the image that there is danger to first-responders and their families that may preclude first responders from helping others.^{3,4}

In addition to questioning the wisdom of residency requirements, others are asking questions about federalism – are residency requirements local, state or federal issues? Holistic disaster planning requires us to look at many issues and perhaps determine that residency should be addressed in evacuation plans.⁵

Disaster Planning

The National Response Plan (2004) specifically addressed the issue of worker safety for emergency responders.⁶ At the time of publication, the nation was still recovering from heavy losses suffered on September 11, 2001, by the New York Fire Department, New York Police Department, and New York Transit Authority. Subsequent guidance issued by the Federal Emergency Management Agency (FEMA) and Pennsylvania Emergency Management Agency (PEMA) encourage municipalities to “pre-plan to the greatest extent possible” for first-responder safety.⁷ Similarly, literature published in academic and practitioner journals have supported pre-planning and minimizing risks to first-responders.⁸

It was not until after Hurricane Katrina that the interplay of “worker safety” and “residency requirements” was noted; however, the large geographical area involved in the disaster seems to demonstrate that even those living outside New Orleans were vulnerable. It does not seem that an emergency responder living in the suburbs of New Orleans fared much better than one in the city.

The Bipartisan Senate Report observed that there was no planned evacuation for “essential personnel and non-essential personnel” and that “many first-responders used their own initiative and left to take care of their families.”⁹ As police officers were required to live in New Orleans, many of them lost their homes, equipment, and uniforms in the flooding; thus, those that did arrive for duty often were without ballistic vests, gloves, and waterproof clothing suitable for wading through contaminated waters. The Senate Report noted that because of the residency requirements for police officers, they were personally affected by the hurricane. The White House Report stated that over 70% of New Orleans officers were victims.¹⁰ A later debate on the Department of Homeland Security’s “Lessons Learned” website addressed the issue of residency requirements for New Orleans and concluded that we need to

“re-look at residency requirements.”¹¹ This website is available to all local, state, and federal employees and is a clearinghouse to share ideas in the homeland security arena.

Another area of disaster planning that has been discussed is the possibility of emergency responders following the example of the armed forces and creating “family care plans.” These plans provide information such as where the family goes if the military member is sent away or the member’s duty assignment becomes uninhabitable (such as in sensitive overseas assignments). A similar concept might be developed for first responders. The process of creating such plans forces the employee and family to consider their options.

Further, agencies often require first-responders to have a packed emergency bag that may include three days of food (often military-style rations), water, and toiletries. Police officers in particular observe that their “toolkit” has grown exponentially from the days of a pair of handcuffs and a revolver – perhaps it may be time to assume that every first-responder has a “grab and go kit” that allows him to be self-sufficient for 48-72 hours.

Background

It is helpful to know something about the history of residency requirements to better understand the arguments for and against them. As with many other remaining vestiges of bygone days, there is a reason why many cities created them and in some cases still have residency ordinances. There is no clearly defined beginning of residency requirements.^{12, 13} The most commonly accepted origin of residency requirements in the United States seems to be that they derived from the spoils system prevalent in large American cities during the mid-1800s. In cities such as Chicago and Boston, the local ward bosses hired public employees, particularly police officers and firefighters. This practice ensured the ward bosses’ continued reelection by employees whose jobs were directly tied to the ward bosses. But it also provided a service to assist the ward bosses in collecting bribes and protection money.

By the twentieth century, reformers had identified machine politics and residency requirements as being primary causes of corruption and they issued a call for hiring the “best qualified men regardless of where they lived.”¹⁴ Some municipalities did heed the call (at least partially)

and required employees to live within a certain distance from the jurisdiction. After World War II, most large cities saw much of their populations move to the suburbs. As a result, many municipalities began to require their employees to live within the jurisdictional boundaries of their municipality. This was intended to keep employees' expenditures of their personal incomes within the municipality as well as ensuring that emergency personnel were available in a timely manner.¹⁵

By the late 1960s, a few large cities still had residency requirements but most others did not. This was made possible through improved transportation and the growth of suburbs. This trend reversed when cities reinstated residency requirements to halt "middle-class flight" to the suburbs.¹⁶ Proponents of residency requirements highlight such success in "protecting the public coffer and providing more employment to city residents."¹⁷ With the advent of community policing, a model of policing that encourages police officers to know their communities, proponents have noted that residents have a greater interest in quality of life issues and that officers living in communities help to suppress crime.¹⁸ Others have observed that residency requirements provide a more equitable balance of race and ethnicity within a community. Finally, some research has proposed that officers with longer commutes to work experience more stress and such commutes have negative impacts on the environment and infrastructure.

Oponents to residency requirements are equally convinced that their worth is questionable. An analysis of the Miami-Dade Police Department concluded that residency requirements (often invoked to increase the number of minority employees) so narrowed the applicant pool that they were a factor in increasing the incompetence of the force.¹⁹ An examination of consent decrees that impose race-conscious hiring found that such practices encourage lowering qualifying standards to permit hiring of recruits with less education and more criminal and financial problems.²⁰

Employees often oppose such requirements for quality-of-life reasons. In recent years, more have been vocal in their need to place families in safe, affordable neighborhoods that can accommodate disabled family members. Unions often oppose residency requirements because they inhibit an employee's ability to be promoted. Police and fire departments are normally hierarchical organizations with relatively little opportunity for advancement unless an officer or firefighter is

willing to move to another department or agency. They may not be free to do so if residency is required.²¹ Police unions have noted that their officers are at risk “simply because they are police officers - harassed, their children ridiculed and intimidated, along with their cars and homes being vandalized.”²² Police officers are sometimes victimized by virtue of their position; however, it is unclear if a residency requirement makes a difference – criminals are mobile and can travel outside a political jurisdiction. The “pros” and “cons” of residency are summarized in the following table:

Table 1: Residency Requirements

Pro	Con
<ul style="list-style-type: none"> • Halts “middle-class” flight • Protects public coffers • Provides employment for residents • Creates equitable balance of race/ethnicity in public jobs • Longer commute times have negative consequences on employee and infrastructure 	<ul style="list-style-type: none"> • Narrows applicant pool • Lowers qualification standards • Quality of life issues (housing, crime, schools) • Inhibits promotions • Employees and their families in harms way if disaster strikes • Police cite safety issue of living among those they arrest

Today

A recent U.S. Department of Justice survey found that the “number of police agencies that require residency has significantly decreased.”²³ Some, such as those in Ohio and Rhode Island, have had little choice as the states have stepped in and passed legislation prohibiting residency requirements. Further, cities such as Austin, Texas, that have considered residency requirements discovered they are prohibited.²⁴ Even when residency requirements are prohibited because of state or municipal codes, some cities have attempted to get around it by giving promotion to officers who reside in the jurisdiction.

New Orleans had been discussing residency requirements before Hurricane Katrina devastated the city. In 2005, many black business, civil rights, and religious leaders formed a coalition to oppose suspending residency requirements for the police department. They observed that doing so “will increase the number of white officers and lead to racial problems.”²⁵ Mayor Nagin countered that “more than 70% of the city’s residents support lifting them to give the police chief what he needs.”²⁶ In December 2005, the New Orleans City Council suspended the residency requirements to help officers who needed to find a place to live and were not going to be successful in finding it in New Orleans because of Hurricane Katrina damage.²⁷

Lastly, many police agencies are experiencing a personnel crisis as they struggle to find replacements for many police officers that are members of the National Guard or Reserves and have been called up for extended military service. Some agencies have relaxed hiring standards in areas such as criminal history, physical fitness, and college degrees. This concerns criminal justice educators who fear that the move toward professionalizing public safety is regressing.

The types of residency are generally broken down into three categories and are summarized in the following table.

Table 2: Types of Residency

None	Response Residency	Physical Residency
No restrictions – employee lives where he or she chooses	Employee must live within a certain commuting time or distance from jurisdiction – may be distance from employee’s home to jurisdictional border, work location, or center of municipality	Employees must live within jurisdictional area

Pennsylvania

Pennsylvania has more local governments than any state except Illinois.²⁸ With over 2,600 municipalities, there are 1,114 police departments, 2,062 fire departments, and almost 90,000 emergency medical services practitioners (emergency medical technicians and

paramedics assigned within 16 regions). All Pennsylvania cities, boroughs, and townships outside of rural areas provide police services and fire services. Though cities most commonly have paid firefighters, many boroughs have a mixture of paid and volunteer. Thirty percent of rural municipalities provide police services (their own, contracted, or regional).²⁹ Those that do not provide police services rely on the Pennsylvania State Police for coverage. All municipalities have at least one fire company and associated EMT response unit responsible for its citizens though it is increasingly becoming difficult to staff volunteer fire departments.³⁰

Residency is a local issue in Pennsylvania and is often decided through collective bargaining. It is most common in policing – less common in fire services because of their dependence on volunteers and almost non-existent in EMS. It is more common in larger municipalities such as Philadelphia where a residency requirement exists for all city employees.

Physical residency, in which an employee must live within their jurisdiction, is not a common practice in most areas except for agency leaders (Chief of Police, Fire Chief) and only for paid positions. It is more common to find response residency in which municipalities require officers to respond within a certain time frame or live within a certain distance from the jurisdiction. State and local fire officials were unaware of any such requirements except for the largest cities because of the severe volunteer shortage.³¹

Legal Issues

Residency rules have been the subject of considerable litigation. Nationwide, there have been many challenges to residency requirements for all public employees (including school teachers) but overwhelmingly the courts have reiterated that these are collective bargaining or local government issues short of any state legislation stating otherwise.^{32, 33} The two most frequent areas of constitutional litigation have been in the areas of right to travel and right to equal protection under the law. The right to travel issue was pretty much settled in the 1970s when the U.S. Supreme Court upheld the City of Philadelphia's residency requirement for firefighters. In *McCarthy v Philadelphia Civil Service Commission*, 424 U.S. 645 (1976), the court ruled that the firefighter did not have a

“constitutional right to be employed by the City of Philadelphia while he is living elsewhere.”³⁴

Likewise, when considering the right to equal protection under the law claim, the state courts addressed the issue in the 1970s. A recent series of cases in the 1990s brought it to the attention of the federal courts. Generally, the courts have upheld reasonable residency ordinances for police officers and firefighters because it is rational to have a policy that allows such employees to respond more quickly to emergency calls. What is still in dispute is whether or not disabled employees can be forced to live within a jurisdiction if they need services located outside the city.³⁵ The only connection to emergency responders may be for those who have disabled family members.

In Pennsylvania, the only lawsuit addressing residency requirements is the case of three former Scranton police officers who were fired after challenging the city’s residency requirement in 1997. The 3rd U.S. Circuit Court of Appeals ruled that there was sufficient evidence of retaliation for the officers to pursue their legal claim.³⁶ In this case, the real issue is not residency but retaliation. Pittsburgh is the only city in Pennsylvania in which a state law was passed years ago prohibiting the police union from even bringing up the residency rule when it negotiates a new contract for city officers. Officers in other towns are allowed to discuss eliminating the requirement.³⁷

Union challenges to residency within the bargaining process are murkier. Arbitrators have issued varied rulings depending on the facts of each case. Legislation that has been enacted by states to eliminate residency for police or firefighters has thus far generally been upheld.³⁸ Ohio and Rhode Island have passed such legislation forbidding local residency requirements. Opponents to residency requirements often tout that such requirements force the hiring of less-qualified applicants (particularly those with criminal records). Several cities are under U.S. Department of Justice consent decrees because officers were hired with expedited and cursory background checks.³⁹

These types of issues raise the real possibility of “negligent hiring” of police officers and other first-responders. First-responders have a great deal of autonomy and are working in rapidly-evolving, tense situations – without much, if any, direct supervision.

Federalism

The framers of the U.S. Constitution created jurisdictional arrangements as a way to prevent the tyranny of a strong, central government. Police powers were given to the state so that “states have the power to regulate health, safety, welfare, and morals of its citizens.”⁴⁰ Local governments have no status in the U.S. Constitution – they are creations and conveniences of the states. Traditionally they have adapted state laws to local conditions, taken care of public works, licensed public accommodations, and provided basic public services. Issues such as residency requirements traditionally have rested with local authorities and this is the status-quo. Allowing local governments to make such decisions brings the decision-making closer to the affected residents and it allows for collective bargaining. Nevertheless, it makes it difficult to create disaster plans because of the inconsistencies throughout the state. Many opponents of residency couch it in constitutional terms and constitutional issues may be better addressed by the state.

Conversely, the state can “legislate” the issue of residency by requiring or prohibiting it. Similarly, it can recommend a course of action and tie it to funding or provide education and information to local governments. A consistent state policy helps in creating disaster plans. Nevertheless, local governments generally dislike the state moving into areas they feel are local issues and it may be difficult to account for very real local differences. Furthermore, the state might change a policy that works.

The federal government can also “legislate” residency in a couple of ways. They might tie disaster preparedness funds or homeland security funds to a particular residency policy. Or they can provide education and information to state and local governments. Of course this ensures consistent disaster planning, but the states will see federal action as federal encroachment into a state issue. Lastly, this too may have unintended consequences by changing policies that work.

Conclusion

Police residency in Pennsylvania is a local issue and thus inconsistent throughout the Commonwealth. Senate Bill 438 introduced in 2005 was tabled. Residency mostly affects police officers and some

paid firefighters. It has vociferous opponents and proponents. It does not seem that it is an “all or nothing” proposition. Disaster planners look at issues that may impact community readiness. Hurricane Katrina was an exceptional event. It may not be necessary to change current policies because of Hurricane Katrina; however, it should be noted that Pennsylvania is one of the most flood-prone states in the United States and has had its own share of disasters. Pennsylvania also has more commercial truck traffic (much of it carrying hazardous materials) than any state in the eastern United States. It also has a large amount of rail traffic that is equally vulnerable to disasters. It is not inconceivable that Pennsylvania can have a disaster (man-made or natural) in which residency of first responders might be relevant.

One of the most important considerations of disaster planning is the ability of first responders to adequately respond. Policymakers desiring to have rational, well-thought out disaster plans need to look at the issues surrounding such response. First-responder residency clearly fits into this area. One of the lessons noted after Hurricane Katrina dealt with the failure of policymakers and emergency management practitioners to inculcate the recommendations made after training exercises and previous disasters. They failed to make important decisions necessary to safeguard the residents of New Orleans and surrounding communities. Pennsylvania should not make the same mistake. To quote former British Prime Minister John Major, “The politician who never made a mistake, never made a decision.”⁴¹ Conversely, failing to make a decision may clearly turn out to be a larger mistake.

Policymakers can create policy to promote residency or forbid it. This may be done at all levels of government. But there may be unintended consequences to any decision. One can only make a decision based upon the known advantages and disadvantages. These are summarized in Table 3, on the following page.

Hurricane Katrina taught us that we suffer predictable consequences when we fail to use existing information and be decisive in creating and executing our emergency plans. It is prudent for us to use the lessons learned to make decisions in creating our current emergency response policies.

Table 3: Levels of Government: Disadvantages and Advantages of Deciding the Issue at Each Level

<p><i>Local Issue</i></p> <p><i>Advantages:</i></p> <ul style="list-style-type: none"> • Status Quo • Decision-making closer to residents • Collective-bargaining possible 	<p><i>Disadvantages:</i></p> <ul style="list-style-type: none"> • Inconsistent throughout state which makes it difficult to create disaster plans • Constitutional issues may be better addressed by the State
<p><i>State Issue</i></p> <p><i>Advantages:</i></p> <ul style="list-style-type: none"> • Can legislate the issue state-wide • Can recommend a course of action and tie it to funding • Can provide education and information to local governments • A consistent state policy helps in creating disaster plans 	<p><i>Disadvantages:</i></p> <ul style="list-style-type: none"> • Locals usually dislike the state moving in to areas they feel are local issues • Difficult to account for very real local differences • May be changing a policy that works
<p><i>Federal Issue</i></p> <p><i>Advantages:</i></p> <ul style="list-style-type: none"> • Ensures consistent disaster planning • Can tie to disaster preparedness and/or homeland security funding • Can provide education and information to state and local governments 	<p><i>Disadvantages:</i></p> <ul style="list-style-type: none"> • States will see as federal encroachment into a state issue • May have unintended consequences by changing policies that work

Notes

¹An Act providing for law enforcement residency requirements, 2005, Pennsylvania Senate Bill 438 P.N. 461, <http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm>

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²²Lutz, Michael (2007) President’s Message: The Issue of Residency for Police Officers” published in FOP letter – accessed on 1/18/2007.

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