# WILENTZ
## —ATTORNEYS AT LAW—

# Understanding Megan's Law Tier Level Designations, the Registrant Risk Assessment Scale Guidelines, and an Approach for Challenging a Tier Level Risk Designation

05/19/21

The statutory system of registration and notification under Megan's Law in New Jersey is intended to determine the danger of recidivism by an individual who has been convicted of a crime that falls within the parameters of Megan's Law. With public safety as the goal in the Tiering designation system, it purports to objectively determine a sex offender's degree of risk of re-offense. The scoring itself is a subjective process and is only as accurate as the information that it is based upon.

## Megan's Law: What is the Registrant Risk Assessment Scale?

The Registrant Risk Assessment Scale (RRAS) is a scoring instrument that purportedly considers a Registrant's offense history, personal characteristics, community support, and the seriousness of the offense. These attributes are scored through a review by the County Prosecutor's Office where the Registrant resides. The County Prosecutor's Office performs an assessment of the Registrant's personal circumstances, criminal history, and information available as to the underlying charges. The RRAS instrument generates an overall score and determines a Registrant's re-offense risk as Tier 1 low, Tier 2 moderate, or Tier 3 high risk level for re-offense.

## What are Tier Designations and Why are They Important?

The designation Tier imposed has substantial implications for a Registrant. The Tier levels are designated as: Tier 1 (low risk – notification to law enforcement), Tier 2 (moderate risk – notification to law enforcement, certain community organizations, agencies and groups likely to encounter the Registrant), or Tier 3 (high risk - notification to law enforcement, certain community organizations, agencies, groups, and member of the public likely to encounter the Registrant). The scope, means, and requirements for registration and notification are set forth in the New Jersey Attorney General Guidelines for Law Enforcement for the Implementation of Sex Offender Registration and Community Notification Laws Manual.

## How is Risk of Re-Offense Determined?

EXHIBIT F

**REGISTRANT RISK ASSESSMENT SCALE**

| Criteria | Low Risk | 0 | Moderate Risk | 1 | High Risk | 3 | Comments | Total |
|---|---|---|---|---|---|---|---|---|
| **Seriousness of Offense x5** | | | | | | | | |
| 1. Degree of Force | no physical force; no threats | | threats; minor physical force | | violent; use of weapon; significant victim harm | | | |
| 2. Degree of Contact | no contact; fondling over clothing | | fondling under clothing | | penetration | | | |
| 3. Age of Victim | 18 or over | | 13 - 17 | | under 13 | | | |
| | | | | | | | Subtotal: | |
| **Offense History x3** | | | | | | | | |
| 4. Victim Selection | household/family member | | acquaintance | | stranger | | | |
| 5. Number of Offenses/ Victims | first known offense/victim | | two known offenses/victims | | three or more offenses/victims | | | |
| 6. Duration of Offensive Behavior | less than 1 year | | 1 to 2 years | | over 2 years | | | |
| 7. Length of Time Since Last Offense | 5 or more years | | more than 1 but less than 5 years | | 1 year or less | | | |
| 8. History of Anti-Social Acts | no history | | limited history | | extensive history | | | |
| | | | | | | | Subtotal: | |
| **Characteristics of Offender x2** | | | | | | | | |
| 9. Response to Treatment | good progress | | limited progress | | prior unsuccessful treatment or no progress in current treatment | | | |
| 10. Substance Abuse | no history of abuse | | in remission | | not in remission | | | |
| | | | | | | | Subtotal: | |
| **Community Support x1** | | | | | | | | |
| 11. Therapeutic Support | current/ continued involvement in therapy | | intermittent | | no involvement | | | |
| 12. Residential Support | supportive/ supervised setting; appropriate location | | stable and appropriate location but no external support system | | problematic location and/or unstable; isolated | | | |
| 13. Employment/ Educational Stability | stable and appropriate | | intermittent but appropriate | | inappropriate or none | | | |
| | | | | | | | Subtotal: | |
| | | | | | | | Total: | |

Scoring: Highest possible total score = 111
Low Range: 0 - 36     Moderate Range: 37 - 73     High Range: 74 - 111

Registrant Risk Assessment Scale Scoring Form

The New Jersey Attorney General's Office has established a detailed manual that sets forth a number of factors to be assessed in determining a Registrant's risk of re-offense under the RRAS. The "Attorney General Guidelines for Law Enforcement for the Implementation of Sex Offender Registration and Community Notification Laws" is 84 pages in length and provides detailed guidance for both County Prosecutors and for defense attorneys as to how sex offender registration and community notification are to be implemented.

Our courts have also identified the factors to be considered in registration and community notification to include:

> (1) Conditions of release that minimize the risk of re-offense, including but not limited to whether the offender is under supervision of probation or parole; receiving counseling, therapy or treatment; or residing in a home situation that provides guidance and supervision;

> (2) Physical conditions that minimize the risk of re-offense, including but not limited to advanced age or debilitating illness;

> (3) Criminal history factors indicative of high risk of re-offense, including:

>> (a) Whether the offender's conduct was found to be characterized by repetitive and compulsive behavior;

>> (b) Whether the offender served the maximum term;

>> (c) Whether the offender committed the sex offense against a child;

> (4) Other criminal history factors to be considered in determining risk, including:

>> (a) The relationship between the offender and the victim;

>> (b) Whether the offense involved the use of a weapon, violence, or infliction of serious bodily injury;

>> (c) The number, date and nature of prior offenses;

> (5) Whether psychological or psychiatric profiles indicate a risk of recidivism;

> (6) The offender's response to treatment;

> (7) Recent behavior, including behavior, while confined or while under supervision in the community as well as behavior in the community following service of the sentence; and

> (8) Recent threats against persons or expressions of intent to commit additional crimes.

In re V.L., 441 N.J. Super. 425, 428–432 (App. Div. 2015); N.J.S.A. 2C:7–8b.

Any challenge to a proposed Tier level requires a careful analysis of the underlying information used to score the instrument and a careful assessment of the basis of the State's scoring of the RRAS. It is possible that the State scored the RRAS with outdated, incomplete, or inaccurate information. The scoring of the form is a subjective process, is only as good as the information relied upon, and a qualified psychologist should be provided with and review the entire record and perform an independent scoring of the RRAS.

**Challenging a Tier Level Designation**

To successfully challenge a Tier level determination, the following information should be obtained, reviewed, and considered:

(1) A review of the underlying conviction, including the charges, pre-sentence report, judgment of conviction, the Adult Diagnostic Center's evaluation, and other documents in the record of the criminal prosecution;

(2) Whether the Registrant has a stable residence;

(3) The Registrant's history of steady and appropriate employment;

(4) The Registrant's history of stable social and family relationships;

(5) The Registrant's participation in and compliance with any mental health counseling;

(6) The completion of a recent evaluation by a qualified mental health professional who can perform a professional psychosexual evaluation and risk assessment;

(7) The Registrant's history of incarceration and/or supervision on probation and/or parole;

(8) Whether the Registrant was determined to be or not be a repetitive compulsive Offender at the time of sentence;

(9) If there was a determination of repetitive and compulsive behavior by the Adult Diagnostic Treatment Center it's determination may be overcome through proof that the Registrant's entire life, subsequent to the conviction, demonstrates that the Registrant does not present a risk to the safety of any member of society;

(10) Whether the Registrant presents any general medical issues that may support that the Registrant is no longer or is a lesser risk for re-offense;

(11) A consideration of the Registrant's age at the time of the offense;

(12) A consideration of the Registrant's age at the time of the application;

(13) Whether the underlying conviction involved a weapons offense and/or violence;

(14) The number of times and circumstances of any sex offense(s);

(15) The Registrant's prior criminal history and any subsequent involvement with law enforcement;

(16) The Registrant's recent behavior demonstrating good adjustment, compliance with counseling, and that supervision in the community has been a success;

(17) Confirmation that there have been no threats or any indicia of risk for committing any further offense.

While it is the State's burden, by clear and convincing evidence, that the proposed Tier classification is correct, the score generated by the RRAS is only as good and valid as the information available to the person scoring the instrument.  It is critical that a complete, accurate, and thorough record be compiled and provided to a qualified psychologist to perform an up-to-date Tiering analysis under the Attorney General Guidelines.  If there is to be a challenge to a Tiering determination there must be a compelling and accurate record created to reassess and challenge a Tiering determination that has been made by the State.

If an application by motion is made for a Tier level reduction the underlying support for the application should be accurate and compelling.  If you would like to speak with Eric Marcy, Esq., as to your options in applying for a tier reduction you may contact Mr. Marcy by phone at 732-855-6004 or by email at emarcy@wilentz.com.

**References:**

N.J.S.A. 2C:7–8

State v. C.W. , 449 N.J.Super. 231, 260 (App. Div. 2017)

In re Registrant V.L., 441 N.J.Super. 425-426, 428-32 (App. Div. 2015)

In re Registrant M.F., 169 N.J. 45, 54 (2001).

E.B. v. Verniero, 119 F.3d 1077 (3d Cir.1997), cert. denied, 522 U.S. 1110, 118 S.Ct. 1039, 140 L.Ed.2d 105 (1998).

In re Registrant C.A., 146 N.J. 71, 82 (1996).

Doe v. Poritz, 142 N.J. 1, 109 (1995)

New Jersey Attorney General Guidelines for Law Enforcement for the Implementation of Sex Offender Registration and Community Notification Laws (Revised February 2007)

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