RUTGERS JOURNAL OF LAW & PUBLIC POLICY

VOLUME 17 FALL 2019 ISSUE 1

Editor-in-Chief
ABIGAIL COOK

Executive Editors
JOSEPH ISOLA
MAX LEWKOWSKI

Managing Submissions Editor
GUZEL SADYKOVA

Managing Business, Marketing & Senior Staff Editor
E. CLAIRE NEWSOME

Managing Articles Editors
NINA DEPALMA
VIVIAN ISABOKE

Managing Research Editor
TARA CARLIN

Managing Notes Editors
COURTNEY CROSBY
AMANDA PARKER

Managing Blog Editor
MICHAEL CAPISTRANO FOSTER

Managing Publications Editor
JOSEPH C. ANTONAKAKIS

Senior Staff Editors
GABRIEL BEDELL
RYAN C. DUFFY
CAITLIN FLYNN
LUKE GRABIAK
TAYLOR JOHNSTON
BENJAMIN KATZ
MEGAN MALLON
MARIE MICHEL
MARIA NIETO
MORGAN PYLE

Staff Editors
BUNYAD BHATTI
JOSEPH CARR
BRIDGET CASEY
JUAN PABLO CHAVEZ
LAUREN COYLE
KEVIN DECRISTOFER
NEIL DOOGAN
KYLIE FINLEY
BRIANNE FREDRICK
ERIC GARCIA
KRISTINE GARCIA
SAMANTHA GARRISON
KAITLIN HACKETT
JAEDON HUIE
MARYANNE KANNAMPHUZHA
ARYN KEYEL
THOMAS JAMES LIVECCHI
CODY MARKS
BRIAN MAURO
MICHAEL MCCUTCHEON
STEVEN PASSARELLA
CONNER PORTERFIELD
HARSHITA RATHORE
AMANDA ROM
MELISSA SARSTEN
YUSEF SHAFIQ
CHELSEA SORIANO
DAMAYE WILLIAMS

Faculty Advisors
PHILIP L. HARVEY
MARGO KAPLAN
SARAH E. RICKS

About the Rutgers Journal of Law & Public Policy

The *Rutgers Journal of Law and Public Policy* (ISSN 1934-3736) is published three times per year by students of the Rutgers School of Law – Camden, located at 217 North Fifth Street, Camden, NJ 08102. The views expressed in the *Rutgers Journal of Law & Public Policy* are those of the authors and not necessarily of the *Rutgers Journal of Law & Public Policy* or the Rutgers School of Law – Camden.

Form: Citations conform to *The Bluebook: A Uniform System of Citation* (20th ed. 2016). Please cite the *Rutgers Journal of Law & Public Policy* as 17 RUTGERS J.L. & PUB. POL'Y __ (2019).

Copyright: All articles copyright © 2019 by the *Rutgers Journal of Law & Public Policy*, except where otherwise expressly indicated. For all articles to which it holds copyright, the *Rutgers Journal of Law & Public Policy* permits copies to be made for classroom use, provided that (1) the author and the *Rutgers Journal of Law & Public Policy* are identified, (2) the proper notice of copyright is affixed to each copy, (3) each copy is distributed at or below cost, and (4) the *Rutgers Journal of Law & Public Policy* is notified of the use.

For reprint permission for purposes other than classroom use, please submit request as specified at http://www.rutgerspolicyjournal.org/.

Manuscripts: The *Rutgers Journal of Law & Public Policy* seeks to publish articles making original contributions in the field of public policy. The *Journal* accepts both articles and compelling essays for publication that are related to the expansive topic of public policy. Manuscripts must contain an abstract describing the article or essay which will be edited and used for publication on the website and in CD-ROM format. The *Journal* welcomes submissions from legal scholars, academics, policy makers, practitioners, lawyers, judges and social scientists.

Electronic submissions are encouraged. Submissions by email and attachment should be directed to submissions@rutgerspolicyjournal.org.

Paper or disk submissions should be directed to *Rutgers Journal of Law & Public Policy*, Rutgers University School of Law – Camden, 217 North Fifth Street, Camden, New Jersey 08102.

Subscriptions: Subscription requests should be mailed to *Rutgers Journal of Law & Public Policy*, Rutgers University School of Law – Camden, 217 North Fifth Street, Camden, New Jersey 08102, or emailed to info@rutgerspolicyjournal.org.

Internet Address: The *Rutgers Journal of Law & Public Policy* website is located at http://www.rutgerspolicyjournal.org.

OFFICERS OF THE UNIVERSITY

ROBERT L. BARCHI, B.Sc., M.S., M.D., Ph.D., *President of the University*
NANCY CANTOR, A.B., Ph.D., *Chancellor of Rutgers University—Newark and Distinguished Professor*
PHOEBE HADDON, B.A., J.D., LL.M., *Chancellor of Rutgers University Camden and Professor of Law*
MICHAEL A. PALIS, B.S., Ph.D., *Provost of Rutgers University—Camden and Professor*
JEROME WILLIAMS, B.A., M.S., Ph.D., *Provost of Rutgers University—Newark and Distinguished Professor*

LAW SCHOOL ADMINISTRATION

DAVID LOPEZ, B.A., J.D., *Co-Dean and Professor of Law*
KIMBERLY MUTCHERSON, B.A., J.D., *Co-Dean and Professor of Law*

RICK SWEDLOFF, B.A., J.D., *Vice Dean and Professor of Law*
REID K. WEISBORD, B.S., J.D., *Vice Dean and Professor of Law*

EMILY BRENNAN, B.A., M.L.A., *Director of Law School Communications & Marketing*
VICTORIA CHASE, B.A., J.D., *Director of Clinical Programs and Clinical Associate Professor*
JAYDEV CHOLERA, B.A., *Director of Finance and Administration*
RHASHEDA DOUGLAS, B.A., J.D., *Dean of Minority Student Program (MSP)*
JON C. DUBIN, A.B., J.D., *Associate Dean for Clinical Education and Professor of Law*
WEI FANG, B.S., M.L.I.S., M.S.C.S., *Assistant Dean for IT and Head of Digital Services*
SUSAN FEATHERS, B.A., M.A., J.D., *Assistant Dean for Public Interest and Pro Bono*
JILL FRIEDMAN, B.A., J.D., *Associate Dean of Pro Bono and Public Interest and Professor of Law*
LINDA GARBACCIO, B.S., *Assistant Dean for Academic Services*
JOHN P. JOERGENSEN, B.A., M.S., M.A.L.S., J.D., *Senior Associate Dean for Information Services*
JOHN C. LORE, III, B.A., J.D., *Director of Trial Advocacy and Clinical Professor of Law*
VALARIE MCDUFFIE, B.S., M.B.A., *Senior Associate Dean for Business Services and CFO*
PAM MERTSOCK-WOLFE, *Director of Pro Bono and Public Interest*
ELIZABETH MOORE, B.A., *Director of Communications*
SARAK K. REGINA, B.A., J.D., *Associate Dean for Student Affairs*
ED RENTEZELAS, B.A., J.D., *Assistant Dean of Academic Records*
STEPHANIE RICHMAN, B.A., M.A., J.D., *Assistant Dean for Career Development*
THOMAS RYAN, *Director of Information Technology*
ROBERT STEINBAUM, B.A., J.D., *Associate Dean for Advancement*
ROBIN L. TODD, B.A., *Assistant Dean for Development*
LOUIS THOMPSON, B.A., M.A., J.D., *Associate Dean of Students and Diversity Affairs*
REBEKAH VERONA, B.S., J.D., *Assistant Dean for Career Development*
CAROL WALLINGER, B.S., J.D., *Director of Lawyering Programs and Clinical Professor of Law*
ANITA WALTON, B.A., M.B.A., *Assistant Dean for Admissions*
YVETTE BRAVO-WEBER, B.S., M.Ed., J.D., *Assistant Dean for MSP and Externships*

PROFESSORS OF LAW EMERITI

FRANK ASKIN, B.A., J.D., *Distinguished Professor of Law, Robert E. Knowlton Scholar, and Director of the Constitutional Rights Clinic*
PAUL AXEL-LUTE, B.A., M.L.S., *Deputy Director of the Law Library Emeritus*
A HAYS BUTLER, B.A., J.D., M.S. (LIS), *Law Librarian Emeritus*
NORMAN L. CANTOR, A.B., J.D., *Professor of Law and Justice Nathan L. Jacobs Scholar Emeritus*
EDWARD E. CHASE, B.A., J.D., *Professor of Law Emeritus*
RUSSELL M. COOMBS, B.A., J.D., *Professor of Law Emeritus*
LUCY COX, B.A., M.S., Ph.D., M.L.S., *International and Foreign Law Librarian Emerita*
MARCIA CRNOEVICH,B.A., M.B.A., J.D., *Assistant Teaching Professor: Legal Analysis, Writing and Research*
ANNE V. DALESANDRO, A.B., M.L.S., J.D., *Law Library Director Emerita and Professor of Law Emerita*
JOHN H. DAVIES, B.S., LL.B., LL.M., *Professor of Law Emeritus*
JACK FEINSTEIN, B.A., J.D., *Clinical Professor of Law and Director of the Civil Justice Clinic*
GEORGE GINSBURGS, Bacchalauréat Serie Mathematiques, B.A., M.A., Ph.D., *Distinguished Professor of Law Emeritus*
N.E.H. HULL, B.A., Ph.D, J.D., *Distinguished Professor Emerita*
JONATHAN HYMAN, A.B., LL.B., *Professor of Law and Arthur C. Clapp Public Service Scholar Emeritus*
HOWARD LATIN, B.A., J.D., *Professor Emeritus*
ARNO LIIVAK, B.A., M.L.S., J.D., *Professor of Law Emeritus*
JONATHAN MALLAMUD, A.B., J.D., *Professor of Law Emeritus*
SAUL MENDLOVITZ, B.A., M.A., J.D. *Dag Hammarskjold Professor Emeritus*
CAROL ROEHRENBECK, B.A., M.L.S., J.D., *Professor of Law and Director of the Law Library Emerita*
PETER SIMMONS, A.B., LL.B., *University Professor and John M. Payne Scholar*
RICHARD G. SINGER, B.A., J.D., LL.M., J.S.D., *Distinguished Professor of Law Emeritus*
ALFRED SLOCUM, B.S., J.D., LL.M., *Professor of Law Emeritus*
E. HUNTER TAYLOR, B.A., LL.B., LL.M, *Professor of Law Emeritus*
PAUL L. TRACTENBERG, B.A., J.D. *Board of Governors Distinguished Service Professor and Professor of Law*
ROBERT M. WASHBURN, A.B., J.D., LL.M., *Professor of Law Emeritus*

FACULTY

AARON ARI AFILALO, A.B., J.D., LL.M., *Professor of Law*
CAMILLE SPINELLO ANDREWS, B.A., J.D., *Professor of Law*
CHARLES AUFFANT, B.A., J.D., *Clinical Professor of Law*
SAHAR AZIZ, B.SC., M.A., J.D., *Professor of Law*
CARLOS A. BALL, B.A., J.D., LL.M., *Distinguished Professor of Law*
ESTHER CANTY-BARNES, B.A., J.D., *Clinical Professor of Law*
BERNARD W. BELL, B.A., J.D., *Professor of Law*
VERA BERGELSON, J.D., Ph.D., *Professor of Law*
ALEXIS KARTERON, B.A., J.D., *Clinical Professor of Law*
JOHN R. KETTLE, III, B.A., J.D., *Clinical Professor of Law*
SUZANNE A. KIM, B.A., J.D., *Professor of Law*
DENNIS KIM-PRIETO, B.A., M.S.L.I.S., M.F.A., J.D., *Librarian*
EMILY KLINE, B.A., J.D., *Assistant Teaching Professor: Legal Analysis, Writing and Research*
DONALD KOROBKIN, B.A., A.M., J.D., *Professor of Law*
KATHRYN KOVACS, B.A., J.D., *Professor of Law*
REBECCA KUNKEL, B.A., J.D., M.L.I.S., *Librarian*
ARTHUR B. LABY, B.A., J.D., *Professor of Law*

AMY BITTERMAN, B.A., J.D., *Assistant Teaching Professor: Legal Analysis, Writing and Research*
CYNTHIA A. BLUM, B.A., J.D., *Professor of Law*
ELISE BODDIE, B.A., M.P.P., J.D., *Professor of Law*
LINDA S. BOSNIAK, B.A., J.D., M.A., *Distinguished Professor of Law*
MICHAEL T. CAHILL, B.A., M.P.P., J.D., *Professor of Law*
MICHAEL A. CARRIER, B.A., J.D., *Distinguished Professor of Law*
VICTORIA L. CHASE, B.A., J.D., *Associate Clinical Professor of Law*
RONALD K. CHEN, A.B., J.D., *Distinguished Professor of Law*
ROGER S. CLARK, B.A., LL.B., LL.M., J.S.D., LL.D., *Board of Governors Professor and Distinguished Professor of Law*
LAURA COHEN, B.A., J.D.,*Distinguished Clinical Professor of Law*
JEAN-MARC COICAUD, Doctorat D'Etat, Ph.D., *Professor of Law*
JORGE CONTESSE, LL.B., LL.M., *Assistant Professor of Law*
MARJORIE E. CRAWFORD, B.A., M.L.I.S., *Librarian*
MARCIA CRNOEVICH, B.A., M.B.A., J.D., *Assistant Teaching Professor: Legal Analysis, Writing and Research*
SARAH DADUSH, B.A., J.D., LL.M., *Associate Professor of Law*
PERRY DANE, B.A., J.D., *Professor of Law*
DONNA I. DENNIS, B.A., M.A., J.D., Ph.D., *Professor of Law*
STUART L. DEUTSCH, B.A., J.D., LL.M., *University Professor and Willard Heckel Scholar*
JON DUBIN, A.B., J.D., *Associate Dean for Clinical Education, Professor of Law, Public Service Scholar*
DOUGLAS S. EAKELEY, B.A., A.B. (Oxon.), M.A., J.D., *Alan V. Lowenstein Professor of Corporate and Business Law and Distinguished Professor of Professional Practice*
KATIE EYER, B.A., J.D., *Professor of Law*
WEI FANG, B.S., M.L.I.S., M.S.C.S. *Assistant Dean for IT and Head of Digital Services*

JOHN J. FARMER, JR., B.A., J.D., *University Professor*
JOOTAEK LEE, M.A., J.D., M.L.S., *Assistant Professor and Librarian*
JOHN LEUBSDORF, B.A., M.A., J.D., *Distinguished Professor of Law*
JI LI, B.S., M.A., M.S., J.D., Ph.D., *Professor of Law*
MICHAEL A. LIVINGSTON, A.B., J.D., *Professor of Law*
DAVID LOPEZ, B.A., J.D. *Co-Dean, Professor of Law, and Prof. Alfred Slocum Scholar*
JOHN C. LORE, III, B.A., J.D., *Clinical Professor of Law*
EARL M. MALTZ, B.A., J.D., *Distinguished Professor of Law*
RANDI MANDELBAUM, B.S., J.D., LL.M., *Distinguished Clinical Professor of Law*
HEATHER MITCHELL, B.A., M.A., M.L.I.S., *Head of Technical Services, Librarian*
KIMBERLY MUTCHERSON, B.A., J.D., *Co-Dean and Professor of Law*
ALISON NISSEN, B.A., J.D., *Clinical Associate Professor of Law*
DAVID L. NOLL, B.A., J.D., *Associate Professor of Law*
JOHN F. K. OBERDIEK, B.A., M.A., J.D., Ph.D., *Professor of Law*
CHRYSTIN ONDERSMA, B.A., J.D., *Professor of Law*
CRAIG N. OREN, A.B., J.D., *Professor of Law*
TRACI OVERTON, B.A., J.D., *Clinical Staff Attorney*
BRANDON PARADISE, B.A., J.D., *Professor of Law*
DENNIS M. PATTERSON, B.A., M.A., J.D., Ph.D., *Board of Governors Professor and Distinguished Professor of Law*
TWILA PERRY, B.A., M.S.W., J.D., *Professor of Law*
JAMES GRAY POPE, A.B., J.D., Ph.D., *Distinguished Professor of Law and Sidney Reitman Scholar*
LOUIS S. RAVESON, B.A., J.D., *Professor of Law*
HARRY M. RHEA, B.A., M.S., M.A., PH.D, *Associate Professor of Criminal Justice and Law*
SARAH E. RICKS, B.A., J.D., *Distinguished Clinical Professor of Law and Co-Director, Pro Bono Research Project*
RUTH ANNE ROBBINS, B.A., J.D., *Distinguished Clinical Professor of Law*
RAND E. ROSENBLATT, B.A., M.S., J.D., *Professor of Law*

JAY M. FEINMAN, B.A., J.D., *Distinguished Professor of Law*
JACK FEINSTEIN, B.A., J.D., *Clinical Professor of Law*
GARY L. FRANCIONE, B.A., M.A., J.D., *Board of Governors Professor and Distinguished Professor of Law*
DAVID M. FRANKFORD, B.A., J.D., *Professor of Law*
ANN E. FREEDMAN, B.A., J.D., *Associate Professor of Law*
SANDY FREUND, B.A., J.D., LL.M., *Clinical Professor of Law*
STEVEN F. FRIEDELL, B.A., J.D., *Professor of Law*
MATTEO GATTI, J.D., LL.M., S.J.D., *Associate Professor of Law*
RACHEL GODSIL, B.A., J.D., *Professor of Law*,
STEVE C. GOLD, A.B., J.D., *Professor of Law*
SALLY F. GOLDFARB, B.A., J.D., *Professor of Law*
CARLOS GONZÁLEZ, B.A., M.A., J.D., *Professor of Law*
ELLEN P. GOODMAN, A.B., J.D., *Professor of Law*
JOANNE GOTTESMAN, B.A., J.D., *Clinical Professor of Law*
BARBARA GOTTHELF, B.A., J.D., *Professor of Professional Practice of Law*
STUART P. GREEN, B.A., J.D., *Distinguished Professor of Law*
ANJUM GUPTA, B.A., J.D., *Professor of Law*
YULIYA GUSEVA, LL.B., M.A., S.J.D., LL.M., *Associate Professor of Law*
ADIL A. HAQUE, A.B., J.D., *Professor of Law*
PHILLIP L. HARVEY, B.A., J.D., Ph.D., *Professor of Law*
STACY HAWKINS, B.A., J.D., *Professor of Law*
NORRINDA HAYAT, B.A., J.D., *Associate Clinical Professor of Law and Director of the Civil Justice Clinic*
TAJA-NIA Y. HENDERSON, A.B., M.A., J.D., Ph.D., *Professor of Law*
CHRISTINA S. HO, A.B., M.P.P., J.D., *Professor of Law*
BARBARA HOFFMAN, A.B., J.D., *Assistant Teaching Professor: Legal Analysis, Writing and Research*
ROBERT HOLMES, B.A., J.D., *Clinical Professor of Law*
ALAN S. HYDE, A.B., J.D., *Distinguished Professor of Law*
ANDREW J. ROTHMAN, B.A., M.F.A., J.D., *Associate Professor of Practice*
JACOB HALE RUSSELL, B.A., M.A., J.D., *Assistant Professor of Law*
PATRICK J. RYAN, B.A., M.A., J.D., LL.M., J.S.D., *Associate Professor of Law*
SABRINA SAFRIN, B.A., J.D., *Professor of Law*
ADAM SCALES, B.A., J.D., *Professor of Law*
MEREDITH L. SCHALICK, B.A., M.S., J.D., *Clinical Professor of Law*
DIANA SCLAR, B.A., J.D., *Professor of Law*
FADI SHAHEEN, LL.B., LL.M., S.J.D., *Associate Professor of Law*
CHARLOTTE SCHNEIDER, B.B.A., M.B.A., J.D., M.L.I.S., *Librarian*
PHYLLIS SCHULTZE, B.A., M.L.S., *Librarian*
SANDRA SIMKINS, B.A., J.D., *Distinguished Clinical Professor of Law*
AMY SOLED, B.A., J.D., *Assistant Teaching Professor: Legal Analysis, Writing and Research*
RAYMAN SOLOMON, B.A., M.A., J.D., Ph.D., *University Professor of Law and Dean Emeritus*
ALLAN R. STEIN, B.A., J.D., *Professor of Law*
BETH STEPHENS, B.A., J.D., *Distinguished Professor of Law*
RICK SWEDLOFF, B.A., J.D., *Vice Dean and Professor of Law*
NANCY TALLEY, B.A., J.D., M.S. (LIS), *Librarian*
GEORGE C. THOMAS III, B.S., M.F.A., J.D., LL.M., S.J.D., *Board of Governors Professor and Distinguished Professor of Law*
DAVID DANTE TROUTT, A.B., J.D., *Professor of Law*
GENEVIEVE TUNG, B.A., J.D., M.S., *Librarian*
JENNIFER ROSEN VALVERDE, B.A., M.S.W., J.D., *Clinical Professor of Law*
PENNY VENETIS, B.A., M.A., J.D., *Clinical Professor of Law*
ROSE CUISON VILLAZOR, B.A. J.D., LL.M, *Professor of Law and Chancellor's Social Justice Scholar*
ALEC WALEN, B.A., J.D., Ph.D., *Professor of Law*
CAROL WALLINGER, B.S., J.D., *Clinical Professor of Law*
MARK S. WEINER, A.B., J.D., Ph.D., *Professor of Law*
REID K. WEISBORD, B.S., J.D.,

RICHARD HYLAND, A.B., M.F.A., J.D., D.E.A.,
Distinguished Professor of Law
PAM JENOFF, B.A., M.A., J.D.,
Clinical Professor of Law
JOHN JOERGENSEN, B.A., M.S., M.A.L.S., J.D.,
Senior Associate Dean for Information Services, Director of the Law Library
MARGO KAPLAN, B.S., M.P.A., J.D.,
Professor of Law
Vice Dean and Professor of Law
ROBERT F. WILLIAMS, B.A., J.D., LL.M.,
Distinguished Professor of Law
CAROLINE YOUNG, B.A., M.S.L.I.S., J.D.,
Associate Director of the Law Library
JINGWEI ZHANG, LL.B, LL.M., L*ibrarian*
ADNAN ZULFIQAR, B.A., M.A., M.L.S., J.D.,
Assistant Professor of Law

RUTGERS
JOURNAL OF LAW & PUBLIC POLICY

VOLUME 17 FALL 2019 ISSUE 1

Current Issues in Public Policy

© 2019 by Rutgers University School of Law – Camden
ISSN 1934-3736

REVAMPING THE MEGAN'S LAW REGISTRANT RISK ASSESSMENT SCALE: RANKING REGISTRANTS FAIRLY AND ACCURATELY WHILE EFFECTIVELY PROTECTING THE COMMUNITY

Joseph C. Antonakakis*

* J.D. Candidate, May 2020, Rutgers Law School, Camden, New Jersey. Many thanks to my brother, Rafael Antonakakis, for his unconditional support, and my grandfather, Reverend Father Joseph Antonakakis, for his inspiration and spiritual guidance. Thank you also to the Staff Editors and Officers of the Journal of Law and Public Policy, especially Abigail Cook, Max Lewkowski and Joseph Isola, for working hard to make this a polished publication.

I. Introduction

Pursuant to most state registration statutes, sex offenders convicted of certain sex offenses must register with authorities and are oftentimes subject to strict community notification depending on the facts of the offender's offense.[1]

A uniform tool was created to ensure the fair and accurate ranking of sex offender community notification requirements. The Registrant Risk Assessment Scale ("RRAS") is predominantly used by courts and prosecutors as a uniform scale to ensure the fair and accurate ranking of sex offenders.[2] The RRAS was drafted by a team of prosecutors, psychological experts, and legal scholars, who had experience working in with Megan's law and with individuals who had committed sex offenses.[3]

However, the RRAS and sex offender registration procedures as a whole have recently come under fire as being too stringent. Psychological experts cite new studies on sex offender recidivism, which allegedly affect the practical and monetary efficacy of Megan's Law statutes.[4]

This paper proceeds in four parts: Part I begins with an introduction to Megan's Law generally and the history of the creation of the RRAS. To understand the future of the RRAS, it is imperative to have

---

[1] N.J. STAT. ANN. § 2C:7-2 (2017).

[2] ATTORNEY GENERAL GUIDELINES FOR LAW ENFORCEMENT FOR THE IMPLEMENTATION OF SEX OFFENDER REGISTRATION AND COMMUNITY NOTIFICATION LAWS, Ex. E at 1, Registrant Risk Assessment Scale Manual, (February 2007) [hereinafter AG GUIDELINES].

[3] *Id*.

[4] KRISTEN ZGOBA, ET AL., MEGAN'S LAW: ASSESSING THE PRACTICAL AND MONETARY EFFICACY 1 (2008) [hereinafter Megan's Law Report].

a general understanding of its past and its drafting. Part I concludes by discussing New Jersey's sex offender statute to provide a general landscape of how things stand in New Jersey in 2019.[5]

Part II delves more deeply into the RRAS, providing an overview of its format, its thirteen ranking criteria and how offenders are ranked in practice. Part II continues with case law from New Jersey that has shaped the RRAS over the past 23 years. Additionally, Part II contains various arguments made by opponents of current Megan's Law community notification requirements and Megan's Law as a whole.

Part III provides recommendations to the potential drafters of some future version of the RRAS. These recommendations are intended as guideposts for creating a fairer tool for more accurately ranking offenders.

Part IV concludes by providing a brief overview of arguments from both sides as well as a review of the recommendations made and how they affect the RRAS.

History

Prior to 1996, statutes requiring sex offender registration were virtually nonexistent. In 1994, seven-year-old New Jersey resident Megan Kanka was raped and murdered by her neighbor.[6] Kanka's parents pursued justice for their daughter by contacting their representatives and pushing for reform regarding sex offender registration.[7] With uncharacteristic speed, the New Jersey Assembly enacted Megan's Law in

---

[5] § 2C:7-2.

[6] Kimberly J. McLarin, *Trenton Races To Pass Bills On Sex Abuse*, N.Y. TIMES, Aug. 30, 1994, at B1.

[7] *Id*. at B2.

honor of Megan Kanka.[8] Following the passing of Megan's Law, similar sex offender registration legislature was passed including the Sex Offender Registration and Notification Act ("SORNA").[9] One main rationale behind Megan's Law is the belief that a community which is informed of the presence of sex offenders nearby allows them to take necessary measures to protect themselves against those potentially dangerous.[10] After Megan's Law passed, the Registrant Risk Assessment Scale was implemented to assess an offender's risk of reoffending.[11]

New Jersey's Sex Offender Registration Statute – An Introduction to Megan's Law

In New Jersey, the statute which governs registration of sex offenders is New Jersey Statutes Annotated 2C:7-2.[12] The statute states in pertinent part that a person who has been convicted of a sex offense shall register according to the provisions of the statute.[13] An offender

---

[8] *Id*.

[9] U.S. DEP'T OF JUSTICE, SEX OFFENDER REGISTRATION AND NOTIFICATION ACT (SORNA), (Mar. 6, 2018), https://www.justice.gov/criminal-ceos/sex-offender-registration-and-notification-act-sorna.

[10] SEX OFFENDER REGISTRATION AND NOTIFICATION: RESEARCH FINDS LIMITED EFFECTS IN NEW JERSEY, National Institute of Justice (Jan. 21, 2009), https://www.nij.gov/topics/corrections/community/sex-offenders/pages/about-megans-law.aspx.

[11] AG GUIDELINES, *supra* note 2.

[12] N.J. STAT. ANN. § 2C:7-2 (2017).

[13] § 2C:7-2(A)(1).

who fails to register as required by the statute may be found guilty of a third-degree crime.[14]

Some opponents of Megan's Law registration requirements have argued that certain Megan's Law requirements contradict ex post facto laws in the United States Constitution. *State v. Hunt* ruled on whether the amendment to 2C:7-2, which upgraded the failure to register as a convicted sex offender to a third-degree crime, violated the prohibition against ex post facto laws when applied to a sex offender convicted prior to the amendment's passing.[15] A statute is an ex post facto law if it:

> "(1) punish[es] as a crime an act previously committed, which was innocent when done; (2) make[s] more burdensome the punishment for a crime, after its commission; or (3) deprives a defendant of any defense available according to the law at the time when the crime was committed."[16]

In order to prevail on an ex post facto challenge, the defendant must prove that the new law retroactively applies to conduct completed prior to the enactment of the statute.[17] Because the offender's failure to register occurred after the amendment was passed, the court held that the offender failed to prove that the amendment retroactively applied to conduct completed before the enactment of the statute.[18] Further, the

---

[14] § 2C:7-2(A)(3).

[15] State v. Hunt, No. A-3136-12T3, 2014 WL 2718737, at *2 (N.J. Super. Ct. App. Div. June 17, 2014).

[16] State v. Muhammad, 145 N.J. 23, 57 (1996).

[17] *Hunt*, 2014 WL 2718737 at *2.

[18] *Id*. at *3.

court held that the amendment to 2C:7-2 did not violate the prohibition against ex post facto laws.[19]

In *State in Interest of C.K.*, the court struck down the Megan's Law requirement for categorical lifetime registration and notification requirements for juvenile offenders.[20] The court held that the State Constitution's substantive due process guarantee was violated by the language in 2C-7-2(g) and that imposing a lifetime bar on juveniles adjudicated delinquent of certain sex offenses from seeking relief from registration and community notification requirements applicable to sex offenders violated the offender's substantive due process rights.[21] Further, the court determined that the continued constraints on the lives and liberty of individuals long after they had become adults took on a punitive aspect that could not be justified.[22]

II. The Registrant Risk Assessment Scale

The Registrant Risk Assessment Scale is an instrument used by courts in New Jersey to rank the severity of a sex offender's crime and assess the offender's risk of reoffending.[23] Different RRAS scores require different scopes of notification.[24] The RRAS was constructed in 1996 by a team of expert legal scholars, psychologists, and researchers.[25] While the RRAS has been used by courts for over 20 years,

---

[19] *Id*.

[20] State *ex rel* C.K., 233 N.J. 44, 74 (2018).

[21] *Id*. at 73.

[22] *Id*. at 75-76.

[23] *See* AG GUIDELINES, *supra* note 2.

[24] *See id*.

[25] *Id*. at 2.

certain changes should be implemented in light of new scientific discoveries.

To ensure consistent ranking across similar sex offenses, the scale uses thirteen criteria to determine the scope of a registrant's notification.[26] Each criterion corresponds with a score: either low (Tier I), medium (Tier II) or high (Tier III).[27] There are four categories of factors: (A) Seriousness of Offense, (B) Offense History, (C) Characteristics of Offender and (D) Community Support.[28] Under the Seriousness of Offense category, the criteria used are (1) Degree of Force, (2) Degree of Contact and (3) Age of Victim.[29] Under the Offense History category, the criteria used are (4) Victim Selection, (5) Number of Victims, (6) Duration of Offensive behavior, (7) Length of Time Since Last Offense and (8) History of Anti-Social Acts.[30] Under the Characteristics of Offender category, the criteria used are (9) Response to Treatment and (10) Substance Abuse History.[31] Under the Community Support category, the criteria used are (11) Therapeutic Support, (12) Residential Support and (13) Employment and Educational History.[32] An offender's final Tier is determined by adding the final scores given to

---

[26] *Id*.

[27] AG GUIDELINES, *supra* note 2.

[28] *Id*. at 3.

[29] *Id*. at 2.

[30] *Id*. at 5.

[31] *Id*. at 7.

[32] *See id*. at 7-8.

each criterion.[33] A score of 0-36 corresponds to a Tier I classification, 37-73 to a Tier II classification, and 74-111 to a Tier III classification.[34]

Different scores require different scopes of notification; the higher the score, the broader the scope of notification.[35] Offenders who represent the lowest risk are placed in Tier I and are only required to notify law enforcement officials and the victims after release.[36] Tier II classification represents moderate risk of re-offense and are subject to higher notification requirements including the notification of organizations, educational institutions, day care centers and summer camps.[37] Tier III offenders are predicted to present the greatest risk to reoffend and are subject to the broadest community notification requirements.[38]

In *Doe v. Poritz*, the New Jersey Supreme Court determined that the liberty interests implicated by Megan's Law were significant.[39] The court in *Poritz* stated that a privacy interest is implicated when the government compiles private information about a convicted sex offender.[40] Due to the significant liberty and privacy interests at stake, the Court concluded that the judiciary had a special responsibility to ensure adequate protection to individuals subject to Megan's Law requirements.[41]

---

[33] AG GUIDELINES, *supra* note 2, Ex. E at 7-8.

[34] *Id*. at 4.

[35] *Id*. at 1.

[36] *Id*.

[37] *Id*.

[38] *Id*.

[39] Doe v. Poritz, 142 N.J. 1, 29 (1995).

[40] *Id*. at 86.

[41] *Id*. at 98.

Thus, the court in *Poritz* defined the judiciary's role as overseeing the classification and notification of those registrants considered moderate- or high-risk who raised objections about their classifications.[42]

One of the first New Jersey Supreme Court cases to rule on Megan's Law and the effects of the RRAS on offenders was *In re Registrant G.B.*[43] The court in *G.B.* stated that it is important for prosecutors and courts to balance a registrant's right to privacy against the community's interest in safety and notification.[44]

Opposition to Community Notification Requirements

Individuals in the psychiatric community have conducted recidivism studies on sex offenders since the drafting of the RRAS in 1996.[45] For example, one research article states:

> A few studies have also surveyed sex offenders to determine the impact that community notification laws have had upon them. Tewksbury (2005) found that social stigmatization, loss of relationships, employment and housing, and both verbal and physical assaults were experienced by a significant minority of registered sex offenders (see also Tewksbury & Lees, 2006). Zevitz and Farkas (2000) also found that a majority of sex offenders reported negative consequences, such as exclusion from residences, threats and harassment, emotional harm to their family members, social exclusion by neighbors, and loss of employment. Furthermore, according to many tier three offenders interviewed, these laws would not

[42] *Id*. at 29-30.

[43] *See generally In re* Registrant G.B., 147 N.J. 62 (1996).

[44] *Id*. at 78-79.

[45] Megan's Law Report, *supra* note 4, at 5-6.

> deter them from committing future sex offenses (Zevitz and Farkas, 2000). In fact, Presser and Gunnison (1999) suggest that notification laws may be counterproductive in that public scrutiny causes additional stress to offenders who are transitioning back into the community. The fear of exposure may cause offenders to avoid treatment, and in the case of pedophiles, may encourage offenders to seek out children as a result of adult isolation. If these assumptions are true, the risk of recidivism may be increased (Presser & Gunnison, 1999), or at least such factors would work against any protective measures taken, thus lessening or eliminating any positive effect of the law.[46]

However, as the author of the above-quoted paper states, the vast majority of research conducted on Megan's Law registrants fails to address a critical question: whether community notification and registration obligations under Megan's Law reduce the rates of sex offense, whether primary or recidivist offenses, in the communities in which the registration obligations are applied.[47] In fact, only one study was conducted in the state of Washington comparing sexual recidivism rates between two groups of sexual offenders.[48] The study compared sexual recidivism rates between two groups of sex offenders: one group released three years prior to the implementation of community notification laws in Washington, and one group released three years after the implementation.[49] The study revealed that after 54 months, there was no statistically significant difference in the arrest rate for sex offenders

---

[46] *See id*.

[47] *Id*. at 6.

[48] *Id*.

[49] *Id*.

between the two groups.[50] Another study revealed that offenders subject to Megan's Law community notification obligations were arrested for new crimes more quickly than were offenders not subject to the same community notification requirements.[51]

Revamping the RRAS

The RRAS is often deemed the end-all-be-all as a tool used to rank offenders. Many in this school cite *In re C.A*., where the court held that the RRAS is presumptively accurate, is owed deference, and that an offender's score should not be altered without a factual basis to do so.[52] However, the RRAS can be seen as an outdated tool, which requires updating to catch up with modern sex offenses and new research on offender recidivism.

In *In re N.B.*, the court ruled that, because the offender committed a sole sex offense within the scope of the household/incest exception of 2C:7-13, the offender's registration was exempt from public access.[53] The exception exempts from public access the registration record of an individual convicted of a sole sex offense that is committed under circumstances in which the offender was related to the victim by blood.[54]

Caselaw on Registration Requirements

In *State v. Halloran*, the court held that the offender's failure to register a secondary residence was not a de minimis infraction entitling the offender to dismissal of the indictment charging him with failure to

---

[50] *See id*.

[51] Megan's Law Report, *supra* note 4, at 7.

[52] *In re* Registrant, C.A., 146 N.J. 71, 108-09 (1996).

[53] *In re* N.B., 222 N.J. 87, 99 (2015)

[54] *Id*. at 89.

register.[55] The court held that sex offenders subject to Megan's Law registration requirements who reside in multiple locations are required to register each address where they reside.[56] The court in *State v. J.C.C.-H* affirmed sentences against an offender for failing to re-register as a sex offender and failing to verify his address annually.[57] In *L.A. v. Hoffman*, the court held that the alleged possible injury to convicted sex offenders from being required to register on Internet registry was significantly greater than possible harm to the state from failing to require a sex offender who should have been required to register on the Internet.[58] Further, the court held that sex offenders required to register on the Internet registry were faced with an immediate and significant deprivation of liberty and faced a stigma that put their livelihood, domestic tranquility, and personal relationships in grave jeopardy.[59]

In *In re D.F.S.*, the court held that, in determining whether a convicted sex offender's qualifying sexual misconduct was found to be characterized by a pattern of repetitive, compulsive behavior, focus was placed on whether the offender's conduct was repetitive at the time when the sex offense was committed, not on conduct at the time of the Megan's Law hearing.[60]

In *A.C. v. State*, the offender argued that the State exceeded their statutory authority by requiring registrants to provide information not

---

[55] State v. Halloran, 446 N.J. Super. 381, 390 (N.J. Super. Law Div. 2014).

[56] *Id*. at 397.

[57] State v. J.C.C.-H, No. A-4942-12T2, 2015 WL 2458183, at *1 (N.J. Super. Ct. App. Div. May 29, 2015).

[58] L.A. v. Hoffman, 144 F. Supp. 3d 649, 671 (D.N.J. 2014).

[59] *Id*. at 671.

[60] *In re* D.F.S., 446 N.J. Super. 203, 207 (N.J. Super. Ct. App. Div. July 1, 2016).

authorized by the Attorney General when verifying their addresses.[61] The court affirmed the lower court's summary judgment on the matter, finding that the offender's arguments were without merit.[62]

In *State v. DeBiasse*, the offender was charged with fourth-degree failure to register as required by 2C:7-2, and argued that his non-compliance was inconsequential because he was wearing a GPS leg-bracelet during the relevant time period.[63] The court rejected the offender's argument, concluding that the offender's failure to register is the type of conduct the statute was designed to address.[64]

In *State v. Daniels*, the defendant argued that a disparity existed between the kidnapping offense referred to in 2C:7-2(b)(1) and (b)(2).[65] The court rejected the argument, stating that if the legislature had the intent to limit the scope of subsection (b)(2) in the way in which the defendant argues, it could have expressly stated that intention.[66]

In *State v. Gutierrez*, the court, rejecting defendant's arguments, affirmed the convictions that defendant was subject to community

---

[61] A.C. v. State, No. A-3797-14T3, 2016 WL 7010531, at *1 (N.J. Super. Ct. App. Div. Dec. 1, 2016).

[62] *Id*.

[63] State v. DeBiasse, No. A-2781-14T2, 2017 WL 727231, at *1 (N.J. Super. Ct. App. Div. Feb. 24, 2017).

[64] *Id*.

[65] State v. Daniels, No. A-5451-12T1, 2014 WL 6886133, at *1 (N.J. Super. Ct. App. Div. Dec. 9, 2014).

[66] *See id*. at *2.

notification under 2C:7–2 and to community supervision for life under 2C:43-6.4.[67]

In *New Jersey Div. of Child Protection and Permanency v. K.N.S.*, the court addressed whether a defendant's youth and motivation to correct her mistakes could be considered when determining if a defendant falls under 2C:7-2(f).[68] The court, taking into account these factors, held that the consequences of 2C:7-2, including the implications upon future careers or reputations, were harsh and unjust punishment for the particular defendant in the case.[69]

The court in *State v. Bolvito* held that the Legislature, in passing N.J.S.A. 2C:14-10, intended that penalties shall mandatorily be imposed on any defendant convicted of one or more of the sexual offenses listed in N.J.S.A. 2C:7-2.[70]

Community Supervision for Life and Parole Supervision for Life

N.J.S.A 2C:43-6.4 is the statute that identifies the crimes that result in the special sentence of parole supervision for life.[71] N.J.S.A. 2C:43-6.4(d) states, in pertinent part, that a person who violates a condition of a special sentence of community supervision for life ("CSL") or parole supervision for life ("PSL") without good cause is guilty of a crime of the third degree and shall be sentenced to a term of imprisonment, unless the court is clearly convinced that the interests of justice

---

[67] State v. Gutierrez, No. A-4609-11T3, 2014 WL 563820, at *2 (N.J. Super. Ct. App. Div. Feb. 14, 2014).

[68] New Jersey Div. of Child Protection and Permanency v. K.N.S., 441 N.J. Super. 392, 402 (N.J. Super. Ct. App. Div. 2015).

[69] *Id*.

[70] State v. Bolvito, 217 N.J. 221, 230 (2014).

[71] N.J. STAT. ANN. § 2C:43-6.4 (2017).

outweigh the need to deter this conduct and the interest of public safety that a sentence to imprisonment would be a manifest injustice.[72]

A 2014 amendment to the statute upgraded a violation of a condition of CSL to a third-degree crime and added convictions for a violation of CSL to the list of predicate crimes that mandate the imposition of PSL.[73]

In *State v. Perez*, the court determined that application of the amended version of 2C:43-6.4, which rendered those who violated CSL ineligible for parole, violated the offender's right of protection against ex post facto laws.[74] The amended version of the statute, enacted prior to the offender's violation of CSL, replaced references to CSL with PSL so as to preclude parole for those serving either special sentence.[75] Further, the court ruled that CSL and PSL are distinct special post-sentence supervisory schemes for certain sex offenders.[76]

In *State v. F.W.*, the court ruled that, because PSL imposes greater punishment on an offender than CSL does, an offender sentenced to CSL cannot later be subjected to the harsher special sentencing provisions of the PSL statute.[77] The court noted that when the offender was convicted, a CSL violation was a fourth-degree crime.[78] However, in 2014, the Legislature amended 2C:43-6.4(d) to provide that a CSL

---

[72] § 2C:43-6.4(d).

[73] § 2C:43-6.4.

[74] State v. Perez, 220 N.J. 423, 442 (2015).

[75] *Id*. at 437.

[76] *See id*. at 427-28.

[77] State v. F.W., 443 N.J. Super. 476, 483-84 (N.J. Super. Ct. App. Div. 2016).

[78] *Id*. at 482.

violation is punishable as a third-degree crime.[79] The court affirmed the offender's conviction for violating the terms of his CSL.[80] Citing *Perez*, the offender argued that he was only eligible to be convicted of the fourth-degree version of 2C:43-6.4(d) and should not have had his CSL converted to PSL.[81] The court agreed and, applying those cases, reversed the conviction of third-degree version of 2C:43-6.4(d) and conversion of CSL to PSL.[82]

In *State v. Harrison*, the court reversed the judgment of conviction for an offender's third-degree conviction of violation of CSL and implementation of PSL under 2C:43-6.4(d).[83] The State argued that because the offender was indicted and convicted of engaging in new criminal conduct after the effective date of the 2014 amendment to 2C:43-6.4, the amendment does not apply retroactively and, therefore, does not violate the constitutional bar on ex post facto laws.[84] The court rejected the State's argument and determined that the amendment upgraded a violation of a condition of CSL to a third-degree crime and mandated imposition of a special sentence of PSL, violating the constitutional prohibition against ex post facto laws.[85]

---

[79] N.J. STAT. ANN. § 2C:43-6.4(d).

[80] *F.W.*, 443 N.J. Super. at 482.

[81] *Id*. at 483.

[82] *Id*.

[83] State v. Harrison, No. A-1021-15T2, 2017 WL 1089572, at *1 (N.J. Super. Ct. App. Div. Mar. 23, 2017).

[84] *Id*. at *2.

[85] *Id*.

The Supreme Court of New Jersey in *State v. Hester* (2018),[86] reapplying the *Perez* standard, affirmed the decision of the New Jersey Superior Court in *State v. Hester* (2017) which stated that the 2014 amendment to 2C:43-6.4, which materially altered offenders' prior sentences and increased penalties for violation of the conditions of CSL sentences, violated state and federal ex post facto clauses.[87] The State argued that the 2014 amendment is a recidivist statute which enhances the punishment for subsequent offenses and therefore is not an ex post facto law.[88] The court rejected this argument, stating that the amendment operates differently than recidivist statutes that have withstood challenge under federal and state ex post facto clauses.[89] The court held that the amendment materially altered offenders' prior sentences to their disadvantage – increasing to a third-degree crime a violation of the terms of their supervised release and converting their CSL to PSL, thus empowering the Parole Board to return the offender to prison for a violation, such as failing to report a change of address.[90] The court further ruled that the amendment effected a change which offends the principles of the federal and state ex post facto clauses.[91]

In *State v. Reeth*, the court affirmed the lower court's conclusion that the offender violated a condition of his special sentence by failing to complete mental health counseling deemed reasonably necessary by his parole officer and required as a condition of community supervision

---

[86] State v. Hester, 233 N.J. 381, 384 (2018).

[87] State v. Hester, 449 N.J. Super. 314, 321 (N.J. Super. Ct. App. Div. 2017).

[88] *Id*.

[89] *See id*.

[90] *Id*.

[91] *Id*.

for life.[92] Further, in *J.B. v. N.J. St. Parole Bd.*, the court determined that an offender's failure to submit to a polygraph, absent good cause, may be prosecuted as a third-degree crime.[93]

In *Drift v. N.J. St. Parole Bd.*, the court determined that the Legislature intended to vest in the Parole Board the authority of determining if and the consequences of violating the conditions of PSL, subject to the applicable statutes and regulations.[94] The court further held that it was appropriate for the Board to determine whether the offender violated a condition of PSL and the appropriate disposition.[95]

Alternatives to the RRAS

There are a number of alternatives to using the RRAS for certain types of offenders. Currently, offenders under the age of 18, also known as juvenile offenders, are assessed using the Juvenile Risk Assessment Scale ("JRAS").[96]

Like the RRAS, the JRAS has several categories of factors which are used to assess a juvenile sex offender's risk of reoffending and community notification requirements.[97] The JRAS uses fourteen

---

[92] State v. Reeth, No. A-5990-10T3, 2014 WL 1613652, at *1 (N.J. Super. Ct. App. Div. Apr. 23, 2014).

[93] J.B. v. N.J. St. Parole Bd., 444 N.J. Super. 476, 491 (N.J. Super. Ct. App. Div. 2016).

[94] Drift v. N.J. St. Parole Bd., No. A-4503-14T3, 2017 WL 1788667, at *6 (N.J. Super. Ct. App. Div. May 5, 2017).

[95] *Id*.

[96] JUVENILE RISK ASSESSMENT SCALE (JRAS), 1 available at https://www.state.nj.us/lps/dcj/megan/jras-manual-scale-606.pdf [hereinafter JRAS].

[97] *Id*. at 2-8.

factors, compared to the thirteen used in the RRAS.[98] The three categories are (1) Sex Offense History, (2) Antisocial Behavior, and (3) Environment Characteristics.[99] The factors considered under Sex Offense History are degree of force, degree of contact, age of victim if there is a 4 year age difference or more, victim selection, number of offenses/victims, duration of offensive behavior, length of time since last offense, and victim gender.[100] Factors considered under Antisocial Behavior are history of anti-social acts and substance abuse.[101] Finally, the factors considered under Environment Characteristics are response to sex offender treatment, sex offender specific therapy, residential support, and educational stability.[102] On the JRAS, a score of 0 to 9 equates to a Low Risk classification, 10 to 19 equates to a Moderate Risk classification, and 20 to 28 equates to a High Risk classification.[103]

Arguments exist to use a different scale for offenders who have downloaded child pornography. For child pornography offenders, a diagnostic tool called the Child Pornography Offender Risk Tool ("CPORT") was constructed to determine the risk of re-offense for offenders who are convicted of child pornography offenses.[104] The

---

[98] *Id*. at 9.

[99] *Id*. at 1-2.

[100] *Id*. at 2-5.

[101] *Id*. at 5-6.

[102] JRAS, *supra* note 96 at 6-8.

[103] *Id*. at 9.

[104] ANGELA W. EKE, ET. AL., VALIDATION STUDY OF THE CHILD PORNOGRAPHY OFFENDER RISK TOOL (CPORT) 456 (2018) [hereinafter CPORT Study].

CPORT is different from the RRAS in a number of ways uses different criteria to assess an offender's risk of re-offense.[105]

The validation sample of one study attempting to validate the CPORT used a number of frequencies for the CPORT factors. The frequencies for the seven CPORT items for the validation sample were (1) age at the time of the index investigation, 35 years or younger; (2) any prior criminal history; (3) any failure on conditional release; (4) any contact sexual offending; (5) indication (admission or diagnosis) of sexual interest in children; (6) more boy than girl content in child pornography; and (7) more boy than girl content in other child-related materials (e.g., images of nude or partially clothed children).[106]

The CPORT has undergone extensive research by its drafters including a validation study to test whether the tool is accurate. The validation study used by the drafters of the CPORT contained a small sample.[107] The purpose of the present study was to validate the predictive accuracy of the CPORT in an independent, but geographically similar sample of men convicted of child pornography offenses.[108] "The initial sample consisted of 86 child pornography cases provided by a large provincial police service" in Canada.[109]

Because of the small sample, the drafters of the CPORT and the individuals who conducted the validation study do not recommend using the CPORT in practice.[110] Additionally, the CPORT was drafted in

---

[105] *Id*. at 457.

[106] *See id*. at 461.

[107] *Id*. at 471.

[108] CPORT Study, *supra* note 104, at 458.

[109] *Id*. at 459.

[110] *Id*. at 472.

Canada where child pornography laws differ from those in the United States.[111] Because the laws are different, the CPORT has only been validated, if you can call it that on offenders which have committed different offenses than registrants in the U.S.:

> Limitations of the CPORT: "The validation sample was small, resulting in low statistical power. This was particularly evident when assessing individual CPORT items. Consequently, we focused primarily on comparisons of effect size magnitude, as opposed to statistical significance.
>
> As we noted earlier, unlike the development sample, none of the current sample had prior child pornography charges; this is, in part, because an individual with a prior child pornography offense investigated by the same police service would have been in the original development sample. We did not select cases with no prior child pornography offenses, as individuals could have had prior offenses from another jurisdiction, but none did in this study. In addition, although we grouped individuals based on prior and current offending, some individuals in the CP/NC group will have had an undetected (or later detected) contact sexual offense.
>
> The current sample was also based on the same geographic area, assessed adult males convicted of child pornography offenses, and, as in the development sample, focused on police investigation files. The CPORT has yet to be validated in other jurisdictions, using clinically obtained assessment data, among non-convicted offenders (e.g., those charged with a child pornography offense and awaiting trial), or

[111] *Id.*

> among juvenile or female offenders. With additional research, CPORT may change with regard to how it is used.[112]

The main criticism of studies conducted on the validity of the CPORT is that the validation studies are small and that, because it was drafted in Canada, the CPORT is not accurately validated on offenders in the United States:

> The CPORT was developed to predict persistence in offending among those detected for child pornography offenses. It has some overlap with other risk tools, which is not surprising given what is known about the dimensions underlying risk to reoffend in general (e.g., criminal history is a reliable risk factor in sexual and non-sexual offenders, adults and juveniles, men and women). Thus, CPORT and Static- 99R have some similar items (e.g., relevance of criminal history, sexual interests, offending involving male children) and both are static in nature.
>
> Unlike the CPORT, the Static-99R cannot be used with child pornography offenders who have not committed contact or noncontact sexual offenses involving a direct victim. It is also less clear how well the Static-99R would apply for individuals with current child pornography offenses and historical contact offenses committed many years ago. The CPORT and Static-99R also predict different outcomes, with the CPORT predicting any sexual recidivism (contact, CP, other noncontact) and child pornography recidivism specifically. As well, the corresponding percentile ranks would differ because the two measures use different reference groups. Whereas dual offenders would be in the higher range on the

[112] *See id*. at 471-72.

CPORT (they receive an extra point for the contact sexual offense), they might be similar to or lower than typical Static-99R samples. Unlike other measures, the CPORT captures items relating to the characteristics of child pornography and other child-related content.

Some offenders identified as having no prior reported contact sexual offenses will self-report committing such offenses against children (e.g., estimates of approximately half, see Bourke et al., 2014; Seto et al., 2011). In our samples, some offenders were charged with previously undetected (historical) contact sexual offenses against children. Of interest will be methods or tools that help identify those most likely to have previously unidentified, undetected contact sexual offense(s). This is important for victim identification as well as to potentially assist our understanding of future risk of offending. Researchers in the United Kingdom developed the KIRAT (Long, Alison, Tejeiro, Hendricks, & Giles, 2016) to assist police in prioritizing suspects involved with indecent images of children by identifying those who were more likely to have already committed a contact sexual offense. This is not the same task as identifying those who are at higher risk of recidivism, that is, offending in the future.

Also of interest is the trajectory of offending. For example, in some of our current cases, the child pornography charge came after the contact offending, and these offenses appeared to be truly separate, rather than a delayed child pornography charge in investigations for contact sexual offending. As well, when we examine recidivism, some individuals known only for their child pornography offending go on to commit a contact sexual offense against a child. A concern for many is whether accessing child exploitation material is a "gateway" for future contact sexual offending—and, more specifically,

> for whom it might be a gateway offense. It would helpful to study the timing of offenses in a cohort of individuals charged or convicted of child pornography. Such research has been conducted in other areas of offending, with a focus on the relevance for risk assessment (e.g., intimate partner violence; Hilton & Eke, 2016).[113]

There are a number of reasons to use a single uniform scale to rank offenders. Ranking offenders consistently is important to prevent injustice. Using the RRAS for all offenders allows consistency across the vast breadth of sex offenses. Additionally, the RRAS has been used for over two decades and has set a precedent for being presumptively accurate, according to *In re C.A.*[114]

Deregistration

An offender's obligations under Megan's Law are not permanent and may be terminated if certain circumstances are met. N.J.S.A. 2C:7-2(f) provides that a person required to register under the act may make application to the Superior Court of the State to terminate the registration obligation upon proof that the person has: (1) not committed an offense within 15 years following conviction or release from a correctional facility for any term or imprisonment imposed, whichever is later, (2) is not likely to pose a threat to the safety of others, and (3) demonstrates that he is not precluded by subsection 2C:7-2(g).[115]

In *In re A.D.*, the offender argued that the New Jersey Supreme Court interpreted the word "offense" as used in 2C:7-2(f) as "sex

---

[113] CPORT Study, *supra* note 104, at 461.

[114] *In re* Registrant C.A., 146 N.J. at 79.

[115] N.J. STAT. ANN. §2C:7-2(f) (2017).

offense."[116] The court rejected this argument, citing the definition of "offense" in N.J.S.A. 2C:1-14(k) as "a crime, a disorderly persons offense[,] or a petty disorderly persons offense unless a particular subsection in this code is intended to apply to less than all three."[117] The court held that, because the Legislature has defined the term and stated that its meaning applies throughout the code, unless a different meaning is plainly required, the term "offense" in 2C:7-2(f) means a crime, disorderly persons offense, or petty disorderly persons offense and not the unstated limited meaning, "sex offense."[118]

In *In re J.S.*, the defendant argued that the word "conviction" in 2C:7-2(f) was distinguishable from the term "judgment of conviction" in determining when the 15-year termination period for Megan's Law and CSL registration requirements commences.[119] The court, noting that the Legislature did not deliberately omit the "judgment of" language from the statute as the defendant argued, held that the registration requirement commences upon imposition of those requirements, not before the imposition of those requirements.[120]

In *State in Interest of D.M.*, the court held that, because the defendant was over the age of fourteen when the incident occurred, he

---

[116] *In re* A.D., 441 N.J. Super. 403, 415 (N.J. Super. Ct. App. Div. 2015).

[117] *Id*. at 416.

[118] *See id*. at 417.

[119] *In re* J.S., 444 N.J. Super. 303, 309 (N.J. Super. Ct. App. Div. 2016).

[120] *Id*. at 313.

must report for at least fifteen years pursuant to 2C:7-2(f).[121] The court cited decisions *J.G.* (2001)[122] and *J.P.F.* (2004)[123] in its decision.

N.J.S.A. 2C:7-2(g) states, in pertinent part, that any person convicted of more than one sex offense, adjudicated delinquent, acquitted not guilty by reason of insanity of certain offenses, or convicted of aggravated sexual assault is subject to Megan's Law registration for life, without possibility of termination.[124]

The court in *State v. Crumrine* denied a defendant's request to end his Megan's Law registration obligations under 2C:7-2(f).[125] The defendant in *Crumrine* committed more than one sex offense. Citing 2C:7-2(g), the court held that, because the defendant pled to more than one sex offense, he was ineligible to take advantage of the 2C:7-2(f)

---

[121] State *ex. rel.* D.M., 451 N.J. Super. 415, 428 (N.J. Super. Ct. App. Div. 2017).

[122] *See generally In re* Registrant J.G., 169 N.J. 304, 337-40 (2001) (holding that in the case of a ten-year-old adjudicated delinquent for aggravated sexual assault of his eight-year-old cousin, Megan's Law applies until age eighteen if the juvenile offender is under the age of fourteen and is determined by clear and convincing evidence to be unlikely to pose a threat to the safety of others in the community).

[123] *See generally* State *ex rel.* J.P.F., 368 N.J. Super. 24, 40-41 (N.J. Super. Ct. App. Div. 2004) (declining to extend the holding in *J.G.* regarding termination of Megan's Law requirements to a seventeen-year-old juvenile offender adjudicated delinquent for fourth-degree criminal sexual contact of another seventeen-year-old, as juvenile was over fourteen years of age).

[124] N.J. STAT. ANN. § 2C:7-2(g) (2017).

[125] State v. Crumrine, No. A-4337-15T3, 2017 WL 6275707, at *2 (N.J. Super. Ct. Law Div. Dec. 11, 2017).

language allowing a person to request termination of his or her Megan's Law obligations.[126]

In *In re J.M.*, the court addressed the issue as to whether a convicted sex offender, who is subject to a lifetime bar to termination of Megan's Law registration may nevertheless be eligible for termination from the requirements of CSL and PSL.[127] The registrant, convicted of aggravated sexual assault, challenged the retroactive application of lifetime registration under Megan's Law for offenses committed prior to the enactment of the law.[128] The court rejected the registrant's challenge, stating that the lifetime sex offender registration requirement of Megan's Law did not constitute punishment, but rather was a proper exercise of public protection.[129] Therefore, retroactive application of the requirement to offenses that occurred prior to the Law's enactment did not violate the ex post facto clause of the federal constitution.[130] The court went on to state that N.J.S.A. 2C:7-2(g), enacted after the completion of registrant's custodial sentence, removed any expectation or possibility that the offender could be terminated from the registration requirements.[131]

Similarly, in *In re Registrant J.K.*, the defendant argued that the retroactive application of 2C:7-2(g), which was added after he was placed on Megan's Law, violated the Ex Post Facto clause of the federal

---

[126] *Id*.

[127] *In re* J.M., 440 N.J. Super. 107, 113 (N.J. Super. Ct. Law Div. 2014).

[128] *Id*. at 109.

[129] *Id*.

[130] *Id*. at 112.

[131] *Id*.

and state constitutions.[132] The Ex Post Facto clause prohibits any statute from making punishment of a crime more burdensome by punishing an act previously committed, which was innocent when done.[133] The court was not persuaded by the defendant's argument and held that the registration requirements of Megan's Law are not penal since the legislative intent was not punishment but a proper exercise of protection for the public.[134]

Judicial Decisions Adjusting the RRAS

The RRAS has been judicially adjusted on several occasions. New Jersey courts have held that certain factors of the RRAS can be adjusted to be accurate and fair. This shows that the RRAS has been slightly modified in the past and may be modified again in the future.

The court in *In the Matter of Registrant N.F.* ruled on a number of RRAS factors.[135] According to *N.F.*, when calculating a registrant's score on the RRAS, the State is free to rely on hearsay statements to support its assertions and does not need to base its calculations surrounding the underlying offense solely on the facts of conviction.[136] In *N.F.*, the court stated that the trial court had correctly determined, by clear and convincing evidence, that the offender committed acts sufficient to rank him as a Tier II offender pursuant to the RRAS.[137] The

---

[132] *In re* Registrant J.K., No. A-1910-14T1, 2016 WL 6134925, at *1 (N.J. Super. Ct. App. Div. Oct. 21, 2016).

[133] *See id*. at *3.

[134] *Id*. at *6.

[135] *In re* Registrant N.F., No. A-1387-16T1, 2018 WL 2924332, at *8 (N.J. Super. Ct. App. Div. June 11, 2018).

[136] *Id*. at *14.

[137] *Id*. at *22-23.

court affirmed the offender's designation as a Tier II sex offender and affirmed that the offender was subject to Tier II community notification and inclusion on the Internet Registry.[138]

The offender in *N.F.* argued that factors one through five of the RRAS should not be scored for child pornography offenders.[139] N.F.'s score for factor two (degree of contact) was based on the finding that he committed an act of sexual penetration upon the female victim, who was about ten years old.[140] "Factor three (age of the victim) was based in part on the age of the victim, who was under thirteen years of age, and the many other victims who appear in the child pornography videos."[141] "The scores on factors four (victim selection) and five (number of offenses/victims) also were based on the victims depicted in the numerous child pornography videos found in N.F.'s house."[142] The court was not convinced that it was inappropriate for the trial court to consider his possession and distribution of child pornography for purposes of scoring factors three, four, and five.[143] The court found, in scoring factors three, four, and five of the RRAS, it was appropriate for the court to consider the many victims depicted in the child pornography videos the offender possessed.[144] However, under *In re P.B.*, mere possession of child pornography is not sufficient to constitute penetration under factor two[145]

---

[138] *See id.*

[139] *Id*. at *18.

[140] *Id*.

[141] *In re* N.F., 2018 WL 2924332, at *18.

[142] *Id*.

[143] *Id*.

[144] *Id*. at *19.

[145] *In re* P.B., 427 N.J. Super. 176, 182 (N.J. Super. Ct. App. Div. 2012).

An offender may only be scored Moderate or High Risk for factors 1-4 if the registrant is a participant or producer of the child pornography.[146]

The offender in *N.F.* argued that the trial court erred in determining a High Risk score for Factor 2.[147] In this case, the trial judge found that "the State had proven by clear and convincing evidence that N.F. had committed an act of sexual penetration upon the female minor, J.B."[148] The judge found that J.B.'s statements on this issue were "completely credible" and, for this reason, N.F. received a score of fifteen (high risk) on factor two of the RRAS.[149]

In *In re V.L.*, the court ruled that Factor 7, the "length of time since last offense" criterion for classifying a sex offender under the Registrant Risk Assessment Scale meant length of time since last sex offense.[150]

In *In re A.D.*, the court determined that, when determining an offender's score under Factor 8, the RRAS takes into consideration antisocial acts other than sexual offenses.[151] In determining an offender's underlying history of antisocial behavior, the court in *In re Civil Commitment of A.B.* agreed with the State's psychiatrist that the offender's failure to register and notify pursuant to 2C:7-2 was indicative of the offender's underlying antisocial personality disorder.[152]

---

[146] *Id*.

[147] *In re* N.F.,2018 WL 2924332, at *14.

[148] *Id*. at *15.

[149] *Id*.

[150] *In re* V.L., 441 N.J. Super. 425, 426 (N.J. Super. Ct. App. Div. 2015).

[151] *In re* A.D., 441 N.J. Super. 403, 420 (2017).

[152] *In re* Civil Commitment of A.B., No. A-4488-10T2, 2014 WL 6490452, at *4 (N.J. Super. Ct. App. Div. Nov. 21, 2014).

As is evident from the abundance of past case law, adjusting the RRAS to clarify criteria and update for modern research is not a novel concept. Adjusting the RRAS to reflect modern research furthers the goal of protecting the community and accurately assessing an offender's risk.

III. Recommendations

Where some may resist change, others push for an overhaul. However, it may be possible to combine these two approaches. As of the time of this writing, the RRAS is over two decades old and does not reflect advancements in technological and scientific research that have occurred since its original drafting.

One solution may come in the form of a compromise. It would be prudent to update the RRAS to reflect the advancements of statistical and psychiatric science. After 23 years of existence, enough research exists on the accuracy of the RRAS and the effects slight tweaks could have on different factors. Updating the weight of certain factors to accurately reflect the rate of recidivism could drastically affect an offender's score and community notification requirements.

Adding negative weight factors could also accurately adjust an offender's RRAS score. For example, offenders who have completed sex offender specific therapy are at a significantly lower risk of reoffending than are offenders who have not undergone similar therapy.[153] Currently, an offender who has completed such a therapeutic regime would receive a score of 0 under Factor 11 for Therapeutic Support. A score of zero neither helps nor hurts an offender. However, perhaps an offender should gain credits – in the form of a decreased score – for undergoing such therapy. One way to update the RRAS for Therapeutic Support would be to provide negative points for offenders

[153] Megan's Law Report, *supra* note 4, at 5-7.

who have undergone sex offender specific therapy. Oftentimes, an offender's RRAS score, tier classification, and notification requirements can change dramatically with a change of just a few points. Granting just a three-point credit to an offender for completing therapy could further the goal of ensuring a just result for the offender while accurately imparting to police and the community an offender's risk of re-offense.

Perhaps a score credit may be extended to all Low Risk criteria. Rather than a score of zero, prosecuting authorities can decrease an offender's RRAS score by one or two points for staying offense-free for a long period of time (Factor 7), lacking prior anti-social criminal behavior (Factor 8), completing drug and alcohol therapy (Factor 10), successfully completing sex offender therapy (Factors 9 and 11), living in a supportive environment (Factor 12), and maintaining gainful employment (Factor 13). A mere one-point credit in each of these factors could lead to a drastic change in an offender's RRAS score and tier classification.

IV. Conclusion

In its current state, the RRAS is a static document. Though the content, risk factors, and scores of the RRAS has remained largely unchanged over the past 23 years, a growing call exists to revamp the RRAS to reflect research that has occurred since the document's drafting. One side argues that the RRAS is incomplete in the sense that it does not accurately reflect an offender's dangerousness and should be adjusted to include child pornography offenses, juveniles and offenders who have committed other non-contact offenses. Another side argues that the RRAS is incomplete in the sense that it does not accurately reflect nearly two-dozen years of psychiatric and forensic research on sex offenders' risk of reoffending. Since the RRAS was drafted, courts and the New Jersey Attorney General have interpreted each factor in various

ways, showing that the RRAS and the descriptions of its factors require further careful clarification and adjustment.

A number of proposed solutions exist. Revamp the RRAS to accurately reflect the recidivism rates of child pornography offenders. Adjust the weight of various scores for various factors to account for recent research on how the factor affects the registrant's risk of re-offense. Provide point credits to a registrant's score for staying offense-free, completing drug and alcohol therapy, successfully completing sex offender specific therapy, living in a supportive setting, and maintaining gainful employment. As the RRAS currently stands, the latter solution only provides an offender with a score of zero. Adjusting the risk assessment scores to take away points from an offender's score could likely lead to a fairer and more accurate score for a registrant and may more accurately ensure the safety of the community.

Rather than remaining a static document, the RRAS should be a living document, capable of being amended by individuals who are knowledgeable on offender risk, including prosecutors, scientists, and psychiatric experts. Someday soon perhaps a new Registrant Risk Assessment Scale will be drafted to reflect the research conducted since the original was drafted, ensuring accurate tiering and community notification for offenders, and fulfilling the intended purpose of protecting communities.