

*Attorney General Guidelines
for Law Enforcement
for the Implementation of
Sex Offender Registration
and Community Notification Laws*

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REGISTRANT
RISK ASSESSMENT SCALE
MANUAL

This manual is to assist in the implementation of the Registrant Risk Assessment Scale (RRAS). The purpose of the scale and this accompanying manual is to provide Prosecutors with an objective standard on which to base the community notification decision mandated by statute and to insure that the notification law is applied in a uniform manner throughout the State. The Risk Assessment Scale was rationally derived by a panel of mental health and legal experts by the following process: 1) the selection of risk assessment criteria that have empirical support; 2) the weighting of these pertinent risk assessment criteria and 3) the use of sample cases to assist in the setting of numerical cut-off points for low, moderate and high risk scores.

The purpose of this assessment is to provide a method of notification to the public so as to address the concerns of the community regarding the location of convicted sex offenders who may be a risk of committing further offenses. The assessment process required by the statute is not intended to determine the actual probability of any one registrant reoffending. Rather, as the Court's opinion in Doe v. Poritz makes clear, the Legislature has already concluded that the nature of the offense, *i.e.*, a sex offense, warrants notification at some level. "Therefore the probability of reoffense on the part of moderate- or high-risk offenders is not the issue before the court, but rather the relatively greater risk of reoffense compared either to the low-risk offender class or the moderate-risk offender class." Doe v. Poritz, 142 N.J. 1, 34 (1995). Instead, using well recognized criteria, the panel has formulated a method of objectively placing registrants in tiers designed to provide the public with notice of the whereabouts of convicted sex offenders, such that the community will be better informed and prepared.

The procedure set forth here will result in a numerical value, based upon the application of the chart to the available, relevant information. That numerical value will translate into a risk assessment which correlates to a tier. Prosecutors do not have the discretion to modify a tier determination derived from this procedure except in two instances: 1) If an offender has indicated that he will reoffend if released into the community and the available record reveals credible evidence to support this finding, then the offender will be deemed to be a high risk of reoffense regardless of the outcome of the weighting procedure; and 2) if the offender demonstrates a physical condition that minimizes the risk of reoffense, including but not limited to advanced age or debilitating illness, then the offender will be deemed to be a low risk of reoffense regardless of the outcome of the weighting procedure.

In In the Matter of Registrant G.B., 147 N.J. 62 (1996), the Supreme Court of New Jersey considered the use of expert testimony in relation to a registrant's Scale score. Generally, a court will accord a binding effect to the tier determination resulting from a registrant's Scale score, unless the registrant presents subjective criteria that would support a departure from reliance on that classification. In G.B., the Court held that, in addition to allowing evidence disputing the factual accuracy of the information used to calculate the registrant's Scale score, a court may consider expert testimony concerning the registrant's psychological state in assessing the accuracy of a registrant's tier classification. The trial court has the ultimate authority to determine the admissibility, form and weight of such expert testimony. A registrant may use such evidence to argue that the Scale calculations do not properly reflect the registrant's relative risk of reoffense and, in a case which falls outside the "heartland" of cases, the court may consider such testimony to override the Scale score. It should be noted that, in such cases, the court may use such psychological evidence to justify a departure from the Scale score to order either a higher or lower tier designation.

1. Selection of Risk Assessment Criteria

In selecting the criteria to be incorporated into the scale, the statutory requirements set forth in N.J.S.A. 2C:7-6 have been subsumed in the criteria. For example, Criteria 1 - 7 will capture repetitive and compulsive offenders, as well as those who have been released following service of an entire sentence of incarceration. Also, for example, the factor of "recent threats against persons or expressions of intent to commit additional crimes" is captured by the inclusion of the override criteria set forth above.

Assessing the potential risk of reoffense of a sex offender has two components:

1.1. The seriousness of the offense should the offender recidivate

If, for example, one is dealing with a compulsive exhibitionist, although there may be a high likelihood of recidivism, the offense itself is considered a nuisance offense. Hence, the offender's risk to the community would be judged low, consistent with the low legal penalties associated with such offenses. Conversely, with a violent offender who has a history of substantial victim harm, even a relatively low likelihood of recidivism may result in a moderate or high potential risk to the community given the seriousness of a reoffense. This is consistent with the caution exercised by the State Parole Board in releasing such violent offenders or in the similar caution exercised in releasing Not Guilty by Reason of Insanity defendants who have committed violent offenses.

Some risk assessment criteria were specifically selected to reflect the seriousness of the offense. These criteria include degree of force, degree of victim contact, and age of victim. All of these criteria are reflected in the increase by degree of statutory severity based on the presence of each of the criteria.

1.2. The likelihood that the offender will recidivate

The expert panel reviewed existing risk assessment scales commonly used with sex offenders.² In addition, the panel reviewed considerable research regarding predicting sex offender recidivism. These reviews of existing instruments and empirical literature led the panel to select risk assessment criteria that have demonstrated empirical support and

²e.g., Steen & Monnette, *Adolescent Sex Offenders in the Community* (1989) and Wenet, *Workshop at Massachusetts Criminal Justice Training Council* (1981).

common usage by sex offender experts.³ Other criteria which lacked such well-recognized empirical support were not included. These criteria can be divided into a few broad areas:

1.2.1. Intensity, duration, and frequency of illegal sexual behavior: Victim selection, number of offenses/victims, duration of offensive behavior, and length of time since last offense fall into this category.

1.2.2. Antisocial lifestyle: History of antisocial acts (other than sex offenses), substance abuse, and employment/educational stability fall into this category.

1.2.3. Involvement in treatment: Response to treatment and therapeutic support fall into this category.

1.2.4. Social support: Residential support falls into this category.

For ease of use, on the scale itself, these criteria were grouped as follows:

1. Seriousness of Offense
2. Offense History
3. Characteristics of Offender
4. Community Support

The latter three groups of criteria relate to the likelihood that the offender will recidivate. The first group are criteria that relate to the consequences to the community should the offender recidivate.

2. Weighting of the risk assessment criteria

The criteria listed in the "seriousness of offense" category have been given the most weight, to be multiplied by five. The panel's reasoning is twofold. First, it is intended that the violent, predatory offender be rated higher than those who have not committed such offenses. Giving the highest weighting score to the "seriousness of offense" characteristics accomplishes this goal. Second, the panel wishes to have those with lower level offenses, in particular, lewdness crimes, such as exhibitionism, rated as lower risk even though the registrant might be quite compulsive, so as to reflect the lower risk of harm to the community. This goal, too, is accomplished by the heavy weighting of these criteria. These goals mirror both the relative severity of statutory penalties as well as the intent of the notification statute itself.

³e.g., Maletsky, Factors Associated with Success and Failure in the Behavioral and Cognitive Treatment of Sexual Offenders, 6 Annals of Sex Research 241 (1993); Furr, Prediction of Sexual or Violent Recidivism Among Sexual Offenders; A Comparison of Prediction Scales, 6 Annals of Sex Research 271 (1993); McGrath, Sex Offender Risk Assessment and Disposition Planning: A Review of Empirical and Clinical Findings, 35 Journal of Offender Therapy and Comparative Criminology 328 (1991); Tracy, Morgenbesser & McDonald, Program Evaluation--Recidivism Research Involving Sex Offenders in Greer and Stuart, The Sexual Aggressor (1983); Serin, Malcolm, Khanna & Barbaree, Psychopathy and Deviant Sexual Arousal in Incarcerated Sexual Offenders, 9 Journal of Interpersonal Violence 3 (1994); Marshall, Jones, Ward, Johnston & Barbaree, Treatment Outcome with Sex Offenders, 11 Clinical Psychology Review 465 (1991); Quinsey, Lalumiere, Rice & Harris, Predicting Sexual Offenses in Campbell, Assessing Dangerousness (1995); Harris, Rice & Cormier, Psychopathy and Violent Recidivism, 15 Law and Human Behavior 625 (1991); Serin, Psychopathy and Violence in Criminals, 6 Journal of Interpersonal Violence 423 (1991); Prentky, Knight & Lee, Development and Validation of a Risk Assessment Scale for Extrafamilial Child Molesters, unpublished manuscript, (1995).

The literature on risk assessment indicates that most predictions of future offenses fail due to not taking into account the base rate of occurrence of offenses within the given population. This failing can be remedied by anchoring the risk assessment in the historical factors that define the risk of the population as a whole, and then using current, dynamic factors to modify the assessed risk.⁴ Moreover, the historical factors--particularly those related to extensiveness of prior sexual offending and extensiveness of antisocial behavior--tend to be the most powerful predictors of future offenses.⁵ Consequently, the expert panel has weighted the scores of the three likelihood criteria groups to account for their strength of prediction. Offense history items are multiplied by three, characteristics of the offender items are multiplied by two, and community support items are multiplied by one. If any factor is not supported by the available information, then n/a should be placed in the Comment Section.

Additionally, the expert panel weighted the low, moderate, and high risk components of each item as 0, 1, and 3 respectively. The panel concluded that a score of high risk on any given item should be given prominence in the final calculation of risk. Consequently, the panel gave high risk scores on an item a score of three, as opposed to a score of two, which would be expected if equal increments were used. However, once the total risk score for the scale is calculated, overall risk levels--that is, low, moderate, and high--are of equal weight.

**The ranges are: low risk--0 to 36;
 moderate risk--37 to 73;
 high risk--74 or higher.**

3. Use of Sample Cases

Once the above scoring mechanisms were agreed upon, the panel used sample cases of agreed upon risk to insure that risk assessments using the scale conformed to panel judgments.

4. Utilizing the Criteria

In utilizing the following criteria, the assessing individual should look to the most serious instance of each as it appears on the record. For example, where the record reveals that a registrant has committed a sex offense against a 13-year old but no weapon or other violence was used, but a different sex offense was also committed against a 20-year old using a weapon or violence, then Criterion 1 should reflect the use of violence and Criterion 3 should reflect that a crime was committed against a 13-year old.

This weighting process may take into account any information available and encompasses all credible evidence. Thus, a determination of the number of victims or offenses may be based upon documentation other than a criminal conviction. Such documentation may include, but is not limited to, criminal complaints not the subject of a conviction but which are supported by credible evidence, victim statements, admissions by the registrant, police reports, medical, psychological or psychiatric reports, pre-sentencing reports, and Department of Corrections discharge summaries.

The following is a list of the criteria in the Registrant Risk Assessment Scale, along with an explanation of how each is used. "Low risk", "moderate risk" and "high risk"

⁴Quinsey, Lalumiere, Rice & Harris, supra.

⁵Quinsey, Rice & Harris, supra; Quinsey, Lalumiere, Rice & Harris, supra; Romero & Williams, Recidivism among Convicted Sex Offenders, 49 Federal Probation 58 (1985); Prentky, et al., supra.

examples are also provided by way of illustration. These examples are in no way intended to be exclusive.

1. **Degree of force** is related to the seriousness of the potential harm to the community if reoffense occurs.

Low risk example: intra- or extra-familial child sexual abuse in which the offender obtains or attempts to obtain sexual gratification through use of candy, pets or other nonviolent methods; offender exposes self to child; offender fondles adult victim without use of force.

Moderate risk example: offender threatens physical harm or offender applies physical force that coerces but does no physical harm, for example, by holding the victim down; the offender uses verbal coercion against a child victim, for example, by telling a child victim that he will get "in trouble" or "won't be loved" if he tells anyone of the abuse.

High risk example: offender causes lasting or substantial physical damage to victim, or offender uses or is armed with a weapon.

2. **Degree of contact** is related to the seriousness of the potential harm to the community if reoffense occurs.

Low risk example: fondles child victim over clothes; approaches adult victim on street and presses body against buttocks over clothing; exhibitionism or showing pornography to a child.

Moderate risk example: fondles under clothing.

High risk example: penetrates orifice with object, tongue, finger, or penis.

3. **Age of victim** is related to seriousness of the potential offense. This criterion mirrors statutory age levels. The youngest victim for any offense known is scored. Offense need not have led to conviction if credible evidence exists in the records. For juveniles, a four year age difference between the offender and the victim is needed to score this criterion.

4. **Victim selection** is related to likelihood of reoffense (with intrafamilial offenders having the lowest baserate of reoffense) as well as risk to the community at large.

Low risk example: sexually abuses younger sibling, household member, biological child, stepchild, or common law spouse's child; offender sexually abuses family member who does not live in the household.

Moderate risk example: "acquaintance" implies a degree of social/business interaction beyond that of a single contact and includes an offender who sexually abuses a neighbor's child, a child for whom he or she is babysitting, or a child for whom he or she is coach or teacher; offender performs coercive sexual acts with date ("date rape").

High risk example: sexually abuses child or adult stranger accosted on street, in park, or in schoolyard; offender lures stranger (either adult or child) into coercive sexual activity; offender meets victim in bar and later assaults. Use of the word "stranger" does not automatically preclude fact situations in which the victim knows the identity of the offender, for example, the offender and victim may have had an exchange of words in a bar or other social setting.

5. **Number of offenses/victims** is related to the likelihood of reoffense. A conviction

is not necessary if the rater finds credible evidence of multiple sexual offenses/victims. Multiple incidents with a given victim are addressed in criterion six, rather than in this criterion.

Low risk example: intrafamilial sexual abuse of one child (even if multiple incidents with the one child); sexual assault of one adult stranger

Moderate risk example: two separate victims (even if only one incident with each victim or one incident involving both victims)

High risk example: three separate victims

6. **Duration of offensive behavior** is related to both the likelihood of reoffense as well as the seriousness of the behavior itself. A conviction is not necessary if the rater finds credible evidence to support a specific duration of offensive behavior.

7. **Length of time since last offense (while at risk)** is related to likelihood of reoffense. The time counted in this criterion is only time at risk--that is, when the offender is in a situation in which he or she has ready, unsupervised access to potential victims. Time incarcerated or civilly committed does not count, given that most offenders do not commit offenses under those circumstances. If, however, evidence exists (such as documented institutional disciplinary charge) that the offender did commit a sexual offense while incarcerated, then this offense should be included in the time calculation. For juveniles, time spent in residential placement without furloughs should be treated similarly to incarceration for adults.

Low risk example: five or more years at risk since last offense

Moderate risk example: between one and five years at risk since last offense

High risk example: one year or less at risk since last offense

8. **History of antisocial acts** is a good predictor of future antisocial acts, sexual and otherwise. The more extensive the antisocial history, the worse the prognosis for the offender. Antisocial acts include crimes against persons, crimes against property, and status offenses (for juveniles). Acts which are not the subject of criminal charges but that are credibly represented in the available records may be counted. For example, sexual deviancy not the subject of criminal prosecution may be counted in this category as long as it has not already been included in Factor 5 above. In this way, any "double-counting" will be avoided. Available documentation which can be considered may include evidence of truancy, behavioral problems in school or in a work situation, school suspensions, work suspensions, prior diagnoses of conduct disorder or oppositional defiant disorder. Acts perpetrated while incarcerated or committed may be included.

Low risk example: no history of antisocial acts other than the charged sex offense

Moderate risk example: three or fewer documented occurrences of prior antisocial behavior, which may be demonstrated by consequences such as prior arrests, loss of job, or school suspensions, or other disciplinary actions.

High risk example: more than three documented occurrences of prior antisocial behavior; history of antisocial behavior that led to more than three prior arrests, school suspensions, job losses; prior diagnosis of oppositional defiant disorder or conduct disorder may qualify an offender automatically for high risk.

9. **Response to treatment** is related to likelihood of reoffense. All else equal, a good response to treatment indicates less risk of reoffense. A therapist's report is necessary to rate this criterion.

Low risk example: therapist indicates good progress in sex offender specific treatment; no offenses during treatment

Moderate risk example: therapist indicates some progress but significant treatment difficulties; no offenses during treatment

High risk example: therapist indicates no current progress; one or more offenses committed while in treatment

10. **Substance abuse** can act as a disinhibitor of impulses, causing an offender to act on urges he or she might otherwise be able to control. Additionally, substance abuse can be an indicator of either a broader antisocial lifestyle or a low level of social competence. Finally, substance abuse can act as a disorganizing factor in an otherwise socially competent individual. This category should be treated separately from "History of Anti-Social Acts." If substance abuse, or the lack of such a problem, is weighted here, it should not also be included as an "Anti-Social Act" for purpose of category #8. In this way, any "double-counting" will be avoided.

Low risk example: no history of substance use that impaired social or occupational functioning. Historical occasional use that did not impair functioning acceptable.

Moderate risk example: historical substance abuse, but presently in remission; present functioning not impaired; current episodic use.

High risk example: current substance dependence; present functioning impaired.

11. **Therapeutic support** provides both a means of monitoring and treating the offender, both of which reduce the likelihood of offenses. The extreme categories of "current/continued involvement" and "no involvement" are self-evident. Intermittent can be scored if the individual is currently in treatment but has had a gap between prior and current treatment or attends treatment inconsistently. The offender should be scored as low risk if there is documented, bona fide effort to obtain treatment, for example, being on a waiting list.

12. **Residential support** is a measure of social stability and competence, both of which reduce the likelihood of relapse. The elements in rating this criterion are the appropriateness of the residence (does not place offender in situation similar to that in which prior offense occurred, such as unsupervised contact with children or ready access to potential victims) and level of support and supervision (such as family or friends). The rater can also consider supervision provided by probation or parole.

Low risk example: living with family or non-deviant friends in location that does not provide ready access to victims; living in half-way house; for juveniles, living in foster home with skilled foster parents and no access to potential victims; reports regularly to parole or probation officer.

Moderate risk example: living in setting with no access to potential victims, but little or no social support, such as living by self in apartment complex or rooming house, or living with family or friends who provide no support or may enable deviant behavior. Reports only intermittently to parole or probation officer.

High risk example: living alone across the street from a school; homeless; frequent relocation as part of transient lifestyle; fails to report on regular basis to parole or probation officer.

13. **Employment/educational stability** is a measure of both social competence and social (particularly economic) support. For juveniles, educational stability is scored based on lack of academic or school-related discipline problems. For adults, the analogous measure is length of time employed at current job, lack of period of unemployment, or job changes but with rising compensation or improving work conditions. Additionally, the form of employment should not involve ready, unsupervised access to potential victims, such as employment as a school bus driver.

Low risk example: employed steadily in job that does not present access to victims; attends school regularly without disciplinary problems. May be disabled physically or developmentally and therefore not employed or in school.

Moderate risk example: employed in job that does not present access to victims, but period(s) of unemployment or numerous job changes; inconsistent school attendance (truancy, suspensions, etc.).

High risk example: currently unemployed or employed in setting that allows ready access to potential victims; school drop-out.

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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