

**REPORT ON  
IMPLEMENTATION  
OF  
MEGAN'S LAW**

Administrative Office of the Courts  
Criminal Practice Division  
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## **I. INTRODUCTION**

On October 31, 1994, the New Jersey Legislature enacted the Registration and Community Notification Laws (RCNL), N.J.S.A. 2C:7-1 to -11, also known as Megan's Law. Megan's Law requires certain convicted sex offenders to register with law enforcement authorities, and provides for varying levels of community notification based upon the degree of risk posed to the offender's community.

On July 25, 1995, the New Jersey Supreme Court rendered its decision in Doe v. Poritz, 142 N.J. 1 (1995), upholding the constitutional validity of the statutory scheme but mandating judicial review of prosecutorial decisions relating to notification. In Doe, the Supreme Court held that the State had the burden of going forward, that burden being satisfied by evidence that prima facie justified the proposed level and manner of notification. Upon the prosecutor furnishing such proof, the registrant then bore the burden of persuading the court by a preponderance of the evidence that the proposed notification did not conform to the law and guidelines. Id. at 32.

The Third Circuit Court of Appeals sustained the constitutionality of the statutory scheme in E.B. v. Verniero, 119 F.3d 1077 (3d Cir. 1997) against challenges that the notification requirements of Megan's Law constituted punishment in violation of the United States Constitution. However, the Third Circuit held that as a matter of procedural due process, the burden of persuasion had to be borne by the State, not the defendant. The court also concluded that the State must prove its case by "clear and convincing evidence." Id. at 1111. That higher burden of persuasion required that all cases where the prosecutor had assigned a tier and a proposed scope of notification, and which a judge had reviewed, be re-

opened and re-determined.

A subsequent constitutional challenge, brought by the Office of the Public Defender on behalf of Tier 2 and Tier 3 registrants whose offenses were committed after the enactment of Megan's Law, involving the registrant's right to privacy, was addressed by the District Court for the District of New Jersey. The District Court found that the distribution of Tier 2 and Tier 3 notices under the Attorney General Guidelines unreasonably infringed upon plaintiff-registrant's privacy rights and ordered that the Guidelines be redrafted to reasonably limit disclosure to those entitled to receive it. Paul P. v. John J. Farmer, Jr., Attorney General, et al. 80 F. Supp. 2d 320, 325 (D.N.J. 2000). Pursuant to the District Court's instructions, the Attorney General revised the *Attorney General Guidelines for Law Enforcement for the Implementation of Sex Offender Registration and Community Notification Laws (Guidelines)*, effective March 23, 2000.

The *Guidelines* have four types of Rules of Conduct that are tailored for school personnel, community organization officials, community members and businesses. The main purpose of the Rules of Conduct is to ensure that the information about the registrant is not shared with anyone who is not authorized to receive it.

The Office of the Public Defender challenged the revised *Guidelines*, arguing that they were deficient because they did not require issuance of a court order that would subject the recipient of sex offender information to contempt of court sanctions for unauthorized disclosures. The Public Defender also argued that a person's block of residence was constitutionally protected information that, under the revised Guidelines, would be disseminated without any safeguards against its improper use. The District Court rejected

those arguments in Paul P. v. John J. Farmer, Jr., Attorney General, et al., 92 F. Supp. 2d 410 (D.N.J. 2000). The Public Defender then filed an appeal to the Third Circuit Court of Appeals, which upheld the constitutionality of Megan's Law, and concluded that the revised *Guidelines* adequately safeguard a registrant's privacy interests in ensuring that information is disclosed only to those individuals who have a particular need for the information. Paul P. v. John J. Farmer, Jr., Attorney General, et al., 227 F. 3d 98 (3d Cir. 2000).

The Internet Registry Act, P.L. 2001, c. 167 was enacted on July 23, 2001. The law, codified at N.J.S.A. 2C:7-12 to -19, provides for the establishment of a Sex Offender Internet Registry. The Sex Offender Internet Registry is included on the State Police website at www.njsp.org.

Three months after the law was enacted, the Office of the Public Defender and the American Civil Liberties Union filed a complaint in District Court on behalf of sex offenders who are subject to Megan's Law. The complaint challenged the constitutionality of the Sex Offender Internet Registry. On December 6, 2001, the District Court ordered that information identifying the home or apartment number, street, zip code, and municipality where the registrant resides should not be included on the Sex Offender Internet Registry. A.A., et al. v. State of New Jersey, et al., 176 F.Supp.2d 274 (D.N.J. 2001).

The Plaintiffs filed an appeal of the District Court's decision of their preliminary injunction with the U.S. Court of Appeals for the Third Circuit. The Third Circuit ordered the District Court to dissolve the preliminary injunction preventing the listing of registrants' home addresses on the Sex Offender Internet Registry. A.A., et al. v. State of New Jersey, et al., 341 F.3d 206 (3d Cir. 2003). Since September 26, 2003, the home addresses of

registrants have been included on the Sex Offender Internet Registry.

In January 2004, the Plaintiffs filed a class action lawsuit, A.A., et al. v. State of New Jersey, in Superior Court challenging the internet registry. The Plaintiffs complaint was dismissed on December 20, 2004. Plaintiffs filed an appeal of this decision. In A.A. v. State, 384 N.J. Super. 481 (App. Div.), certif. denied, 188 N.J. 346 (2006), the court affirmed the Law Division decision holding that the State has a rational and legitimate basis for allowing citizens to be aware of and to protect their children from sex offenders, and the amendment to the State Constitution authorizing the posting of information about sex offenders on the Internet does not violate the Equal Protection Clause.

In June 2006, the Attorney General's Office developed a Juvenile Risk Assessment Scale (JRAS) and accompanying Manual, to address the Supreme Court's concerns that "the Attorney General's Guidelines and the Registrant Risk Assessment Scale (RRAS), in their present form, do not adequately distinguish adult and juvenile offenders and specifically do not take into account the issues unique to juveniles below age fourteen." See In the Matter of Registrant J.G., 169 N.J. 304, 333 (2001).

The JRAS is for juvenile offenders who are 18 years old or under at the time of the tiering process. All other offenders will be tiered using the RRAS. The *Guidelines*, RRAS, JRAS, and Risk Assessment Manuals can be accessed on the Division of Criminal Justice's website at [www.njdcj.org](http://www.njdcj.org).

The Division of Child Protection and Permanency, formerly known as the Division of Youth and Family Services, in the Department of Children and Families was granted access to Megan's Law records for use in carrying out its responsibilities, effective July 1, 2006. See

N.J.S.A. 2C:7-5a(1). The Department of Human Services and county and municipal welfare agencies were granted similar access, effective April 1, 2014, for exclusive use in placing homeless families and persons in emergency shelters, which include but are not limited to, hotels and motels. See N.J.S.A. 2C:7-5a(2).

Municipal ordinances prohibiting convicted sex offenders from living within specified distances of schools and other designated facilities have been found to be preempted by Megan's Law and therefore, invalid. See G.H. v. Township of Galloway, 401 N.J. Super. 392 (App. Div. 2008), aff'd, 199 N.J. 135 (2009).

## **II. MEGAN’S LAW - OVERVIEW**

<b>REGISTRATION</b> 	<p>Offenders convicted of certain sex offense(s) are required to register with law enforcement authorities.</p>
<b>RISK OF RE-OFFENSE DETERMINED AND TIER ASSIGNED</b> 	<p>Prosecutor determines risk of re-offense based on the Risk Assessment Scale and assigns registrant to a “tier.”</p>
<b>REGISTRANT NOTIFIED</b> 	<p>Registrant given notice of prosecutor’s tier assignment, proposed groups and individuals, if any, to be notified and inclusion on the Sex Offender Internet Registry.</p> <p>Registrant required to object to tier assignment, scope of notification and inclusion on the Sex Offender Internet Registry within 14 days.</p>
<b>HEARING HELD</b> 	<p>Judge reviews prosecutor’s tier assignment, proposed scope of notification, and inclusion on the Sex Offender Internet Registry, and hears arguments from the prosecutor, registrant or the registrant’s attorney.</p> <p>Judge determines final tier assignment, scope of notification, and inclusion on the Sex Offender Internet Registry and enters appropriate order.</p>
<b>COMMUNITY NOTIFICATION</b> 	<p>Groups or persons are notified by law enforcement authorities.</p>
<b>SEX OFFENDER INTERNET REGISTRY</b>	<p>If ordered by the Judge, the Registrant will be included on the Sex Offender Internet Registry.</p>

### **III. MEGAN'S LAW - PROCESS**

#### **A. Registration**

Megan's Law requires registration by sex offenders with local law enforcement authorities or the New Jersey State Police. The registrant must provide his or her name, social security number, age, race, sex, date of birth, height, weight, hair and eye color, address of legal residence, address of current temporary residence, and date and place of employment. Information must also be provided by the registrant as to the crime or crimes that required registration. In addition, the registrant must provide information as to whether he/she has routine access to or use of a computer or any other device with Internet capability. Failure to notify law enforcement of such information or of a change in the person's access to or use of a computer or other device with Internet capability or to provide false information is a third degree crime. N.J.S.A. 2C:7-2d(2). The law also provides that it is a third degree crime if the appropriate law enforcement agency is not notified of a change of address, employment or school enrollment status. N.J.S.A. 2C:7-2d(1).

It is a third degree crime for an individual to fail to register as required under the law. See N.J.S.A. 2C:7-2a(3). It is also a third degree crime for any person to knowingly provide false information concerning his or her place of residence or who fails to verify his address with the appropriate law enforcement agency or other entity. See N.J.S.A. 2C:7-2e. As of July 1, 2017, 7,753 individuals had been indicted for failure to register and 5,549 persons had been convicted of that crime.<sup>1</sup>

Fifteen years after conviction, or release from a correctional facility, whichever is

later, a registrant may make application to the Superior Court to terminate the obligation to register. The registrant must provide proof that no offense has been committed within those 15 years, and that he or she is not likely to pose a threat to the safety of others. However, a registered sex offender who has been convicted of, adjudicated delinquent, or acquitted by reason of insanity for more than one sex offense as defined in N.J.S.A. 2C:7-2b, or who has been convicted of, adjudicated delinquent, or acquitted by reason of insanity for aggravated sexual assault pursuant to N.J.S.A. 2C:14-2a or sexual assault pursuant to N.J.S.A. 2C:14-2c(1), can not petition the Superior Court to terminate the registration obligation. See N.J.S.A. 2C:7-2g.

The Supreme Court in In the Matter of Registrant J.G., 169 N.J. 304 (2001), held that the registration requirement of a juvenile who committed a sexual offense when under the age of fourteen will terminate at age eighteen if, after a hearing held on motion of the juvenile, the court determines by clear and convincing evidence that the delinquent is not likely to pose a threat to the safety of others.

As of July 1, 2017, the New Jersey State Police<sup>2</sup> report that 16,242 persons have registered. The data show that, in the last two years, approximately 30 registrants are entered into the State Police registry each month.

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<sup>1</sup> This data was extracted from a report produced from the Administrative Office of the Courts Megan's Law case tracking system using the program developed by the Department of Law and Public Safety, Division of Criminal Justice.

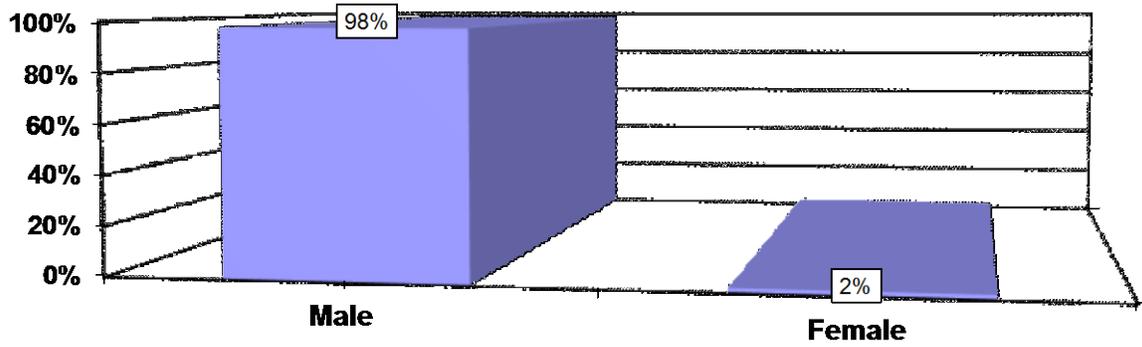
<sup>2</sup> Pursuant to N.J.S.A. 2C:7-4d, the State Police maintain the official central registry of persons required to register pursuant to Megan's Law. The State Police registry includes all registrants living in the state including those that are incarcerated, whereas the report produced from the Megan's Law case tracking system does not include registrants that are incarcerated.

## **B. Demographic Data**

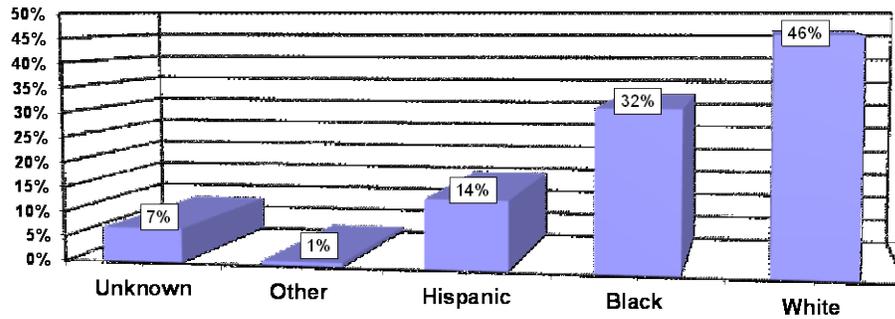
Demographic data was compiled using the Administrative Office of the Courts (AOC) Megan's Law case tracking system, rather than from the State Police central registry, because the AOC information is more readily retrievable grouped by gender, race and age. The State Police are required to maintain the central registry of registrations. See N.J.S.A. 2C:7-4d. The AOC system is designed to track the movement of Megan's Law cases in the judicial process.

Of the 15,726 registrants in the Megan's Law case tracking system, as of July 1, 2017, 15,407 (98 percent) are male and 7,293 registrants (46 percent) are white. The distribution by age shows that 60 percent of registrants are between 22 and 50 years old, with the highest grouping (22 percent) between 31 and 40 years old.

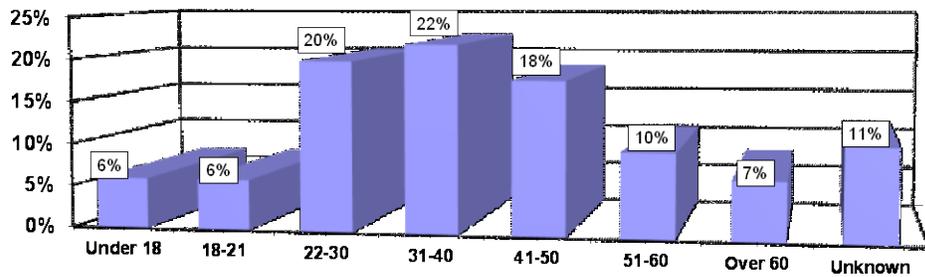
## Gender of Registrant



## Race of Registrant



## Age of Registrant



### **C. Assignment of Tier<sup>3</sup>**

Each registrant is assigned a tier that determines which groups or individuals in the community will receive notification. The prosecutor in the county in which the registrant resides assigns the registrant a tier using the Registrant Risk Assessment Scale (RRAS) or the Juvenile Risk Assessment Scale (JRAS), which is used for registrants who are 18 or under when tiered.

The RRAS was developed by the Division of Criminal Justice after consultation with county prosecutors, members of the Department of Corrections, staff from the Adult Diagnostic and Treatment Center and psychologists. The RRAS is designed to provide a method of determining what risk of re-offense a registrant poses to the community: high, moderate, or low. The RRAS and accompanying manual describing its use was first issued by the Attorney General in 1995, and subsequently revised in June 1998.

The RRAS consists of four categories: the seriousness of the registrant's offense, the registrant's offense history, characteristics of the registrant, and community support available to the registrant. These four categories provide for a total of thirteen separate criteria on: (1) Degree of Force; (2) Degree of Contact; (3) Age of the Victim; (4) Victim Selection; (5) Number of Offenses/Victims; (6) Duration of Offensive Behavior; (7) Length of Time Since Last Offense; (8) History of Antisocial Acts; (9) Response to Treatment; (10) Substance Abuse; (11) Therapeutic Support; (12) Residential Support; and (13) Employment/Educational Stability. These criteria are evaluated and assigned a point score. The combined

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<sup>3</sup> The data on the assignment of tiers was extracted from a report produced by the Administrative Office of the Courts Megan's Law case tracking system dated July 1, 2017. The AOC has produced the data by slightly modifying the program developed by the Department of Law and Public Safety for their Megan's Law Statistics Report, which they distributed until May 2005. The program excludes the same cases as those that were excluded by the Department of Law and Public Safety which are as follows: cases where the the registrant is deceased, registered in custody, transferred to another county, registered out of state, non-registered offender or non-registered out of state. The program also excludes cases where the registrant's obligation to register has been terminated pursuant

points from all criteria determine the final score for tiering purposes. The tier assignment determines which groups or individuals in the community receive notice. Tier 1 is below 37 points, and is designated “low risk.” Law enforcement will be notified of the registrant’s presence in the community and provided with certain identifying information about the registrant. Tier 2 is 37-73 points, and is designated “moderate risk.” A Tier 2 classification generally requires notification to law enforcement, schools and community organizations. Tier 3 is 74-111 points, and is designated “high risk.” A tier 3 classification generally requires notification to law enforcement, schools, community organizations, and members of the public likely to encounter the registrant.

The JRAS scale consists of three categories: the registrant’s sex offense history; antisocial behavior and environment characteristics. These three categories provide for a total of fourteen separate criteria on (1) Degree of Force; (2) Degree of Contact; (3) Age of Victim; (4) Victim Selection; (5) Number of Offenses/Victims; (6) Duration of Offensive Behavior; (7) Length of Time Since Last Offense; (8) Victim Gender; (9) History of Anti-Social Acts; (10) Substance Abuse; (11) Response to Sex Offender Treatment; (12) Sex Offender Specific Therapy; (13) Residential Support; and (14) Employment/Educational Stability. These criteria are evaluated and assigned a point score. The combined points from all criteria determine the final score for tiering purposes: Tier 1 (low risk) is below 10 points; Tier 2 (moderate risk) is 10-19 points; and Tier 3 (high risk) is 20-28 points. The scope of notification for each tier level under the JRAS is the same as the RRAS.

The following data provide the number of registrants, by county, who have been assigned tiers by county prosecutors. The data show that as of July 1, 2017, 12,588 persons,

or 80% of registrants, have been assigned tiers.<sup>4</sup>

Of the 12,588 persons who have been assigned tiers, 5,083, ( or 40%), were tier 1, 7,027, (or 56%), were tier 2 and 478, (or 4%), were tier 3. The following chart represents the data by county.

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<sup>4</sup> The data in some counties shows that there have been more cases notified and/or disposed than assigned tiers 2 or 3. This can occur when the case is administratively closed as a Tier 1 by the prosecutor after the notice has been sent to the registrant. Administratively Closed Tier 1 cases are not included in the notified/disposed data. An Administratively Closed Tier 1 determination occurs when a prosecutor has used the Scale and determined that the registrant is a low risk to re-offend. In those cases, the police are notified of the registrant's presence in the community and the case is closed. These cases never appear before a judge.

## REGISTRANTS

<u>County</u>	<u>Tier 1</u>	<u>Tier 2</u>	<u>Tier 3</u>
Atlantic	195	497	42
Bergen	242	573	32
Burlington	143	188	11
Camden	352	769	74
Cape May	114	98	9
Cumberland	444	398	15
Essex	518	859	150
Gloucester	185	183	9
Hudson	385	756	30
Hunterdon	45	39	2
Mercer	174	388	10
Middlesex	500	359	12
Monmouth	314	376	10
Morris	139	38	5
Ocean	195	385	20
Passaic	527	503	21
Salem	102	86	2
Somerset	127	107	2
Sussex	59	82	3
Union	256	285	17
Warren	67	58	2
<b>STATEWIDE</b>	<b>5,083</b>	<b>7,027</b>	<b>478</b>

<u>Tier</u>	<u># of Registrants</u>	<u>% of Total</u>
<b>Tier 1</b>	5,083	40%
<b>Tier 2</b>	7,027	56%
<b>Tier 3</b>	478	4%

## **D. Notification to Registrant<sup>5</sup>**

After the prosecutor assigns a registrant to a tier, the registrant is notified by the prosecutor's office of his or her tier classification and the proposed scope of community notification. The registrant has 14 days from the date of the notice to object to the prosecutor's decision as to tier assignment or suggested scope of community notification.<sup>6</sup>

As of July 1, 2017, of the 12,588 registrants assigned tiers, 7,505 registrants (60%) have been tiered 2 or 3. Of the registrants tiered as 2 or 3, 8,227 registrants (100%) have been notified of their tier assignment and opportunity for judicial review.<sup>7</sup>

The following chart shows the county breakdown of tier 2 and tier 3 registrants notified of their tier assignment:

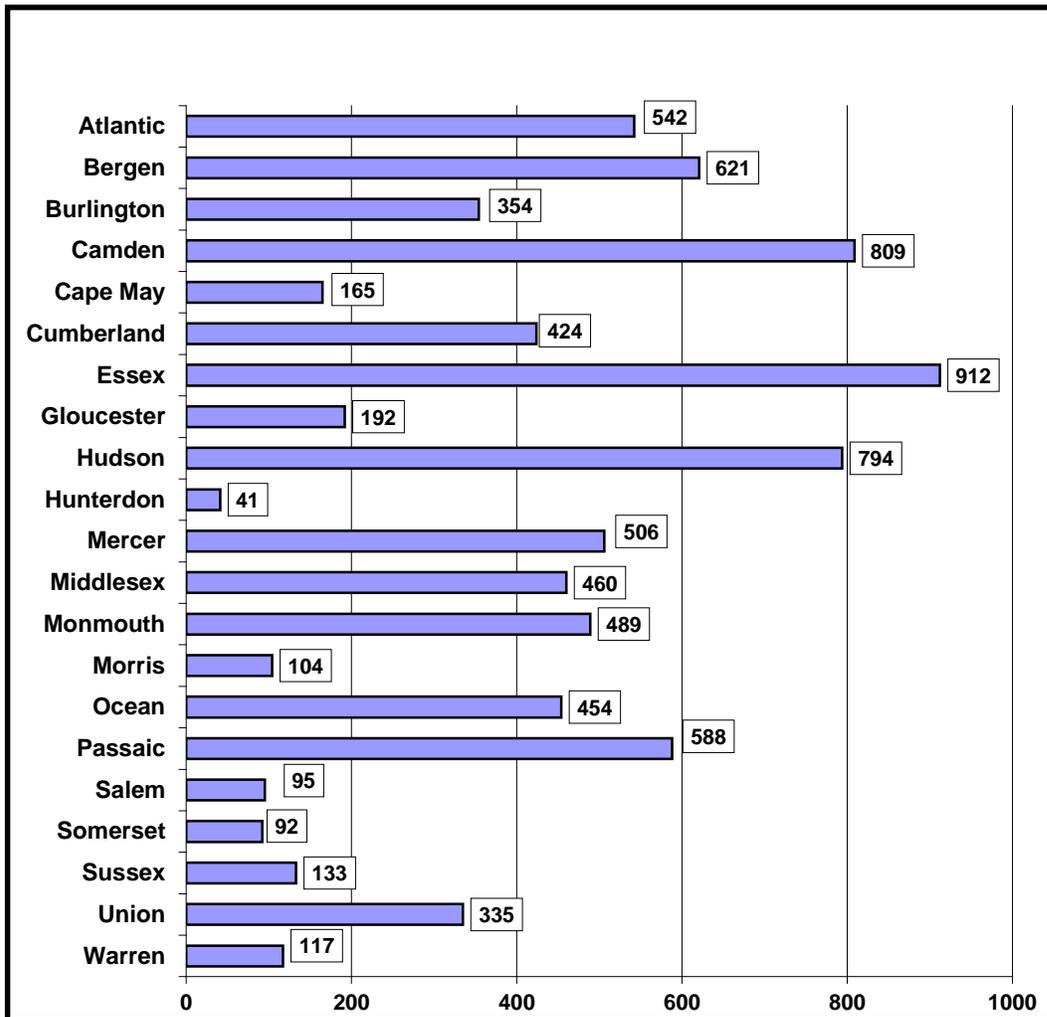
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<sup>5</sup> The data on the number of registrants notified was obtained from the Megan's Law case tracking system. This data does not include cases where the registrant is deceased, registered in custody, transferred to another county, registered out of state, non-registered offender, non-registered out of state or registrant's whose obligation to register has been terminated pursuant to N.J.S.A. 2C:7-2f. See footnote 3.

<sup>6</sup> The procedures for providing notice to the registrant of tier 2 or tier 3 classification, for hearing objections to tier 2 or tier 3 classification, scope of notification, inclusion on the Sex Offender Internet Registry, and Megan's Law motions are set forth in an order of the New Jersey Supreme Court dated March 31, 2009.

<sup>7</sup> See footnote 4.

## County Breakdown of Tier 2 and Tier 3 Registrants Notified of Tier Assignment



### E. Case Disposition Hearings Generally<sup>8</sup>

After the prosecutor and registrant have presented their evidence, a court determines the final tier, scope of notification and/or inclusion on the Sex Offender Internet Registry. The Court makes this determination after reviewing the papers filed, and if the registrant requests a hearing, listening to evidence during a conference or hearing. The judge makes his findings based on the clear and convincing standard. See E.B. v. Verniero, supra, 119

<sup>8</sup> This information was obtained from the Megan's Law case tracking system. See footnote 3.

E.3d at 1111.<sup>9</sup> A judicial order is required before notification can proceed. See Doe v. Poritz, supra, 142 N.J. at 31. As of July 1, 2017, there were 8,219 registrants whose cases have proceeded to disposition either by default, i.e., the registrant does not request a hearing, conference or hearing. Ninety-nine percent of all offenders who have been notified of their tier assignment have had their cases disposed.<sup>10</sup>

Every time a registrant moves within a county or between counties or changes employment, the prosecutor's office must make an application to the court to amend the scope of notification and the court must again make a determination regarding community notification.<sup>11</sup> See In the Matter of Registrant H.M., 343 N.J. Super. 219 (App. Div 2001). However, some of the criteria that contributes to the score, such as those relating to the offense, are static, and would not be re-evaluated unless there was a clear factual error. See In the Matter of R.A., 395 N.J. Super. 565 (App. Div. 2007).

Therefore, it is likely that one registrant can have multiple dispositions over time, depending on the number of times he or she moves. The tier will not change unless there has been a change in circumstances. However, the scope of notification may vary if the registrant moves to a geographically different community.

There were 5,234 tier 2 and tier 3 cases (64% of cases disposed) that were resolved after a conference or hearing. In 4,118 cases (79%), the initial tier 2 or 3 designation was affirmed by the court. In 1,116 cases (21%), the initial tier designation was amended by the court. Of the 4,118 cases in which the initial tier designation was affirmed, 3,901 cases were

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<sup>9</sup> Subsequent to the decision in E.B., the Attorney General petitioned the New Jersey Supreme Court to adopt the burden of persuasion set forth by the Third Circuit in E.B. In an Order dated September 10, 1997, the Court did so. The Order also required a redetermination of cases previously decided under the burden of persuasion formerly required by Doe v. Poritz, supra.

<sup>10</sup> The chart on page 19 reflects the cases that have been disposed. This chart does not reflect those cases that were disposed by the prosecutor under an Administratively Closed Tier 1 determination. See footnote 4.

<sup>11</sup> The procedures for motions are included in the order of the New Jersey Supreme Court dated March 31, 2009.

tier 2 and 217 were tier 3. The 1,116 cases in which the initial tier 2 or tier 3 designation was amended are as follows:

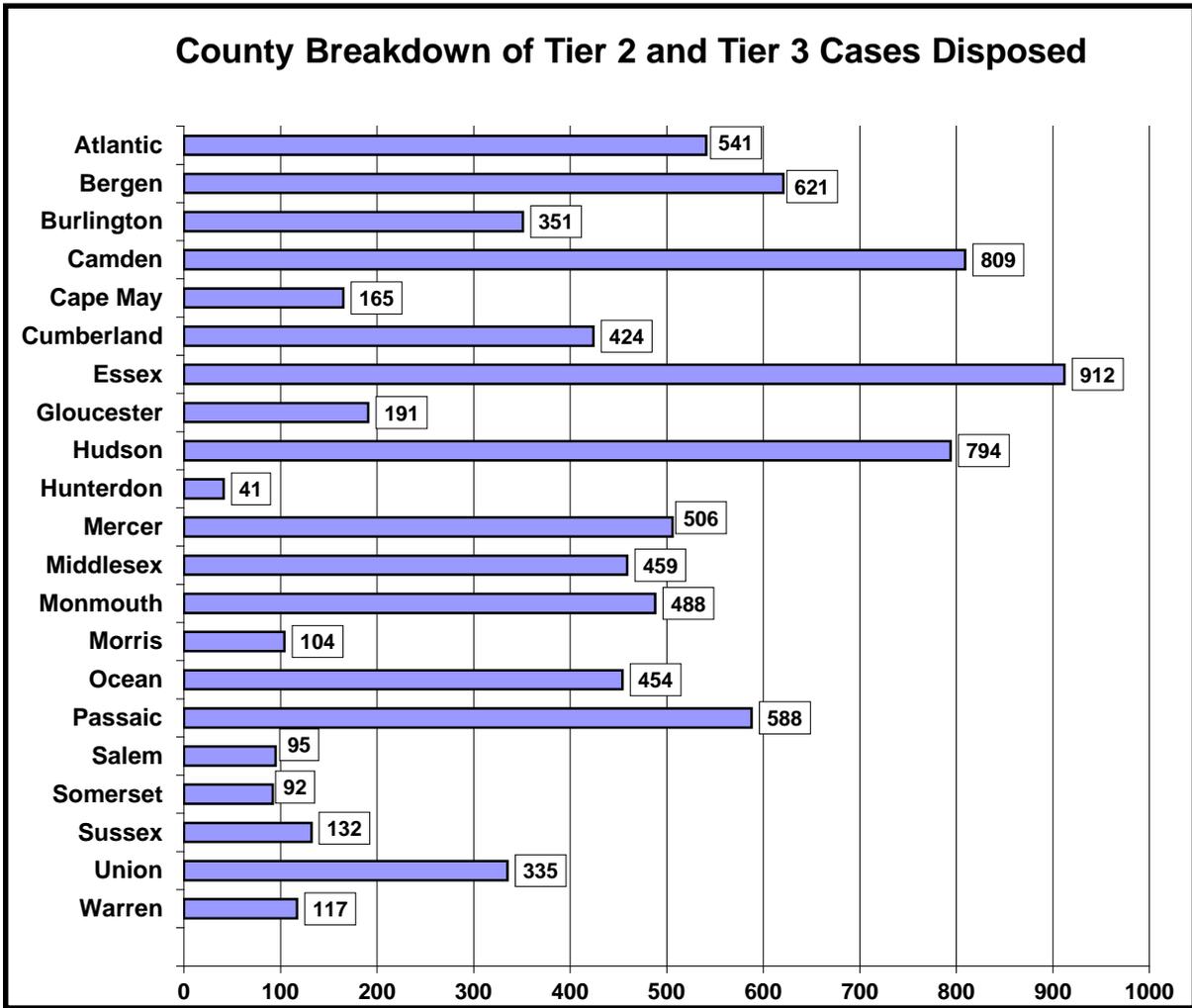
Amended Tier 2 to tier 3	28
Amended Tier 2 to tier 1	924
Amended Tier 3 to tier 2	163
Amended Tier 3 to tier 1	1

There were 2,985 tier 2 or tier 3 cases (36% of cases disposed) that were resolved by default, i.e., where the registrant did not appear at the scheduled hearing to object or oppose the tier classification or scope of community notification. Of the 2,985 tier 2 and tier 3 cases resolved by default, 2,874, or 96%, were tier 2 cases, and 111, or 4%, were tier 3 cases.

The following chart presents data on the total number of statewide dispositions by county.<sup>12</sup>

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<sup>12</sup> This chart does not include cases where the registrant is deceased, registered in custody, transferred to another county, registered out of state, non-registered offender, non-registered out of state, or registrants whose obligation to register has been terminated pursuant to N.J.S.A. 2C:7-2f. See footnote 3.



As of July 1, 2017, there were approximately 8 cases (1% of cases notified) scheduled to be heard statewide.<sup>13</sup> The breakdown of open cases by county is as follows:

<sup>13</sup> This information was taken from a report generated on cases contained in the Megan’s Law case tracking system.

<b>County Breakdown of Open Cases</b>		
<b><u>County</u></b>	<b><u>Tier 2</u></b>	<b><u>Tier 3</u></b>
<b>Atlantic</b>	1	0
<b>Bergen</b>	0	0
<b>Burlington</b>	3	0
<b>Camden</b>	0	0
<b>Cape May</b>	0	0
<b>Cumberland</b>	0	0
<b>Essex</b>	0	0
<b>Gloucester</b>	1	0
<b>Hudson</b>	0	0
<b>Hunterdon</b>	0	0
<b>Mercer</b>	0	0
<b>Middlesex</b>	1	0
<b>Monmouth</b>	0	0
<b>Morris</b>	0	0
<b>Ocean</b>	1	0
<b>Passaic</b>	0	0
<b>Salem</b>	0	0
<b>Somerset</b>	0	0
<b>Sussex</b>	1	0
<b>Union</b>	0	0
<b>Warren</b>	0	0
<b>STATEWIDE</b>	<b>8</b>	<b>0</b>

**F. Sex Offender Internet Registry**

On July 23, 2001, L. 2001, c. 167, which provides for the establishment of the Sex Offender Internet Registry was enacted. The law is codified at N.J.S.A. 2C:7-12 to -19.

While the State Police are required to develop and maintain the Internet Registry, the law also requires the Attorney General to “strive to ensure the information contained in the Internet registry is accurate, and that the data therein is revised and updated as appropriate in a timely and efficient manner.” N.J.S.A. 2C:7-14. Tier 1 registrants, or

Tier 2 registrants whose scope of notification have been determined to be low risk, will not be included on the Internet Registry. However, N.J.S.A. 2C:7-13b(2), effective July 1, 2014, requires low and moderate risk registrants whose conduct was characterized by a pattern of repetitive, compulsive behavior pursuant to N.J.S.A. 2C:47-3 to be included on the Internet Registry.<sup>14</sup>

Tier 2 registrants whose scope of notification has been determined to be moderate are generally included on the Internet Registry, except if the offense that makes the person subject to Megan's Law falls within one of three exceptions, the offender will not be included on the Internet Registry. See N.J.S.A. 2C:7-13d. The exceptions are that the sole sex offense was (1) committed while the offender was a juvenile, (2) an incest offense or (3) an offense where the victim consented to the offense but was underage. A "sole sex offense" is defined as a single conviction, adjudication of guilty or acquittal by reason of insanity, as the case may be, for a sex offense which involved no more than one victim, no more than one occurrence or, in the case of an incest offense, members of no more than a single household. N.J.S.A. 2C:7-13d. However, pursuant to N.J.S.A. 2C:7-13e, if the prosecutor establishes by clear and convincing evidence that, given the particular facts and circumstances of the offense and the characteristics and propensities of the offender, the risk to the general public posed by the offender is substantially similar to that posed by other moderate risk offenders who do not fall under the exceptions, a registrant may still be included on the Internet Registry despite falling within one of the exceptions. These exceptions from inclusion on the Internet Registry are not applicable to registrants whose

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<sup>14</sup> Pursuant to the U.S. District Court Order entered in L.A. and Z.R. v. John J. Hoffman, Acting Attorney General of New Jersey on March 16, 2017, certain low or moderate risk sex offenders cannot be included on the Internet Registry unless the State can establish by clear and convincing evidence that the offender's conduct was characterized by a pattern of repetitive and compulsive behavior.

conduct was characterized by a pattern of repetitive, compulsive behavior. N.J.S.A. 2C:7-13e

N.J.S.A. 2C:7-13b provides that all offenders whose risk of re-offense is high or for whom the court has ordered notification in accordance with N.J.S.A. 2C:7-8c(3), will be listed on the Internet Registry.

Inclusion on the Sex Offender Internet Registry will not proceed until the registrant has been given notice by the prosecutor's office that he or she can object to the prosecutor's determination and request a hearing. At the hearing, the judge hears arguments from the prosecutor, registrant, or counsel. The judge then determines whether or not the registrant will be included on the Sex Offender Internet Registry.

As of July 1, 2017, there were 4,379 registrants included on the Sex Offender Internet Registry.<sup>15</sup> Pursuant to N.J.S.A. 2C:7-4d, the State Police maintain the official central registry of persons required to register pursuant to Megan's Law.

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The Order is retroactive to July 1, 2014, which is the effective date of the statutory changes.

<sup>15</sup> The State Police website includes the Sex Offender Internet Registry at [www.njsp.org](http://www.njsp.org).

## G. Descriptive Data

The Supreme Court has mandated that the AOC prepare and submit an annual *Report on the Implementation of Megan's Law*. See Doe v. Poritz, supra, 142 N.J. at 39. To fulfill this requirement, data from case dispositions are coded and entered into a database. Although 8,219 tier two and tier three cases have been disposed, there were 11,675 case entries contained in the Megan's Law Adult Disposition Database as of July 1, 2017.<sup>16</sup>

There are an additional 211 cases, wherein the JRAS was used, in the Megan's Law Juvenile Disposition Database as of July 1, 2017.<sup>17</sup> Of these 211 cases, 209 are tier two cases and 2 are tier three case. There are 88 (42%) cases that were resolved by default and 123 (58%) cases that were resolved after a conference or hearing. In the 211 cases where notification was requested by the prosecutor, schools, children's organizations, and day care centers were the most requested. Due to the limited number of cases, this Report does not further distinguish this data.

Of the 11,675 cases contained in the Megan's Law Adult Disposition Database, 48% were resolved by default<sup>18</sup> and 52% were resolved after a conference or hearing.<sup>19</sup> Of the 5,650 default cases, 95% were initially classified by prosecutors as Tier Two and 5% were classified as Tier Three.

The 11,675 Registrant Risk Assessment Scale scores assigned by prosecutors are as follows:

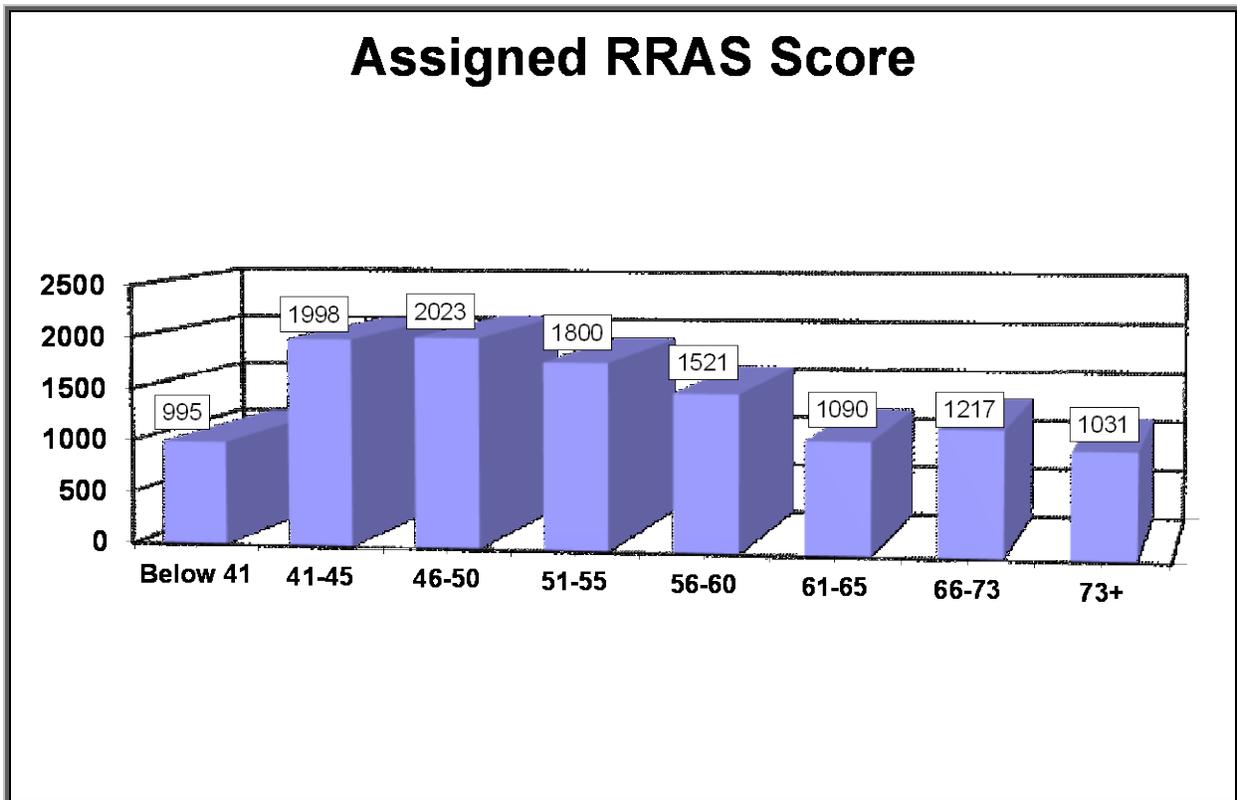
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<sup>16</sup> The reason for the difference is that the report produced from the Megan's Law case tracking system does not include registrants who are deceased or incarcerated. In addition, the Megan's Law case tracking system report does not include all the dispositions for a registrant who relocates to another county. The Megan's Law case tracking system report only includes data for the disposition where the registrant is currently located. The data from the old county is superseded by the data for the new county in the Megan's Law case tracking system report.

<sup>17</sup> See description of JRAS on page 12.

<sup>18</sup> The registrant did not appear at the hearing to object to the tier classification or scope of community notification.

<sup>19</sup> Note that the data contained in the Megan's Law case tracking system on all cases disposed show that 36% were resolved after



## 1. Cases Where Registrant Defaulted

### a. Tiering and Scoring

There were 5,650 cases in the Megan’s Law Adult Disposition Database where the registrant defaulted, *i.e.*, did not request a hearing on the prosecutor’s risk assessment or community notification decision. Of those cases, 5,394 (or 95%) were tier 2, and 256 (or 5%), were tier 3.

### b. Prosecutors’ Notification Decision

The following data depicts the types of notification recommended by prosecutors

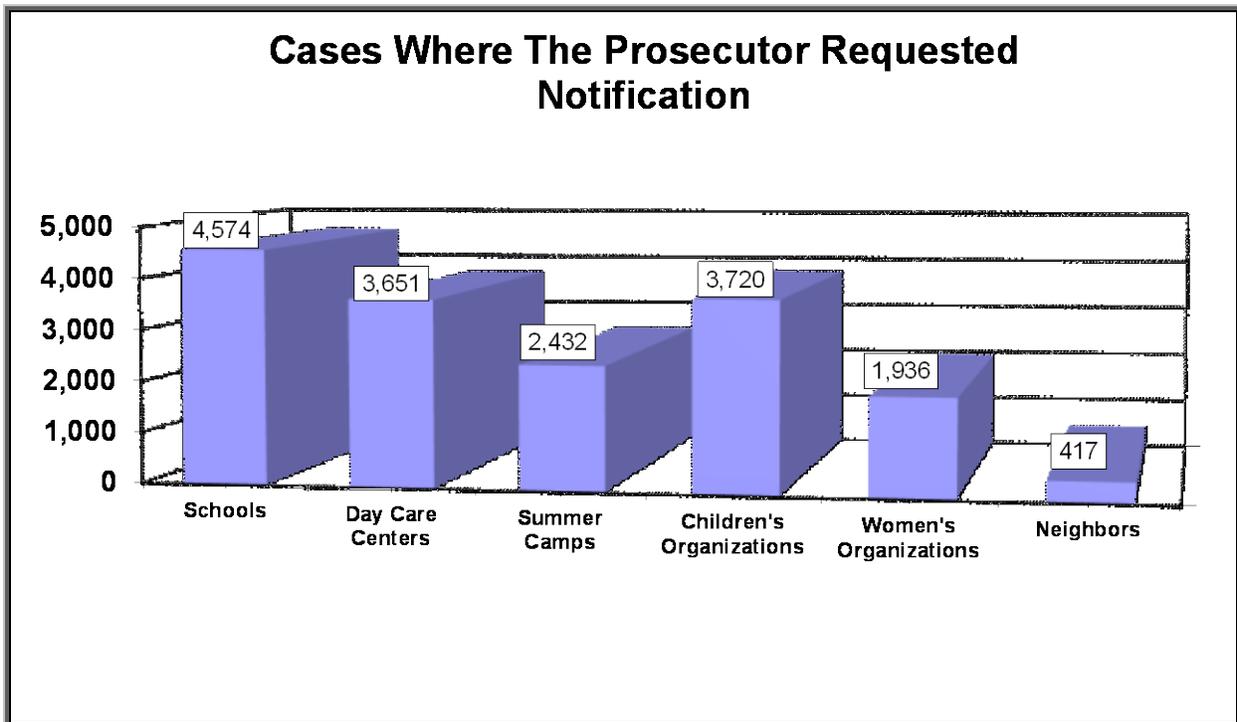
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default and 64% disposed after a conference or hearing. See Footnote 16.

in cases where the registrant defaulted. Prosecutors requested notification<sup>20</sup> to schools in 4,574 cases. Notification to day care centers (3,651) and children's organizations (3,720) were also frequently requested. Notification to summer camps, women's organizations and neighbors were less frequently requested. The *Guidelines* state that if the offender's past victims are all adult women, and there is no documentation in the file that the offender has offended against young children, then elementary schools or organizations that supervise young children may be excluded from the organizations and schools to be notified, because they are not likely to encounter the offender. The critical factor to be considered in determining scope of notification, according to the *Guidelines*, is the geographical proximity of schools, institutions or organizations to the offender's residence, employment and/or schooling, or, if appropriate, places regularly frequented by the offender.

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<sup>20</sup> In many cases, the prosecutor requested notification of multiple groups. There were also 955 default cases where the prosecutor did not request notification of schools, day care centers, summer camps, community organizations, neighbors or other individuals. Although data on the relationship of the victim is not present generally in cases where there is no notification requested by the prosecutor, the scoring of the Registrant Risk Assessment Scale "Victim Selection Factor" (Factor 4) would seem to indicate that in the majority of these cases the victim was a member of the immediate family or a household member. The *Guidelines* permit "no notification" where the offender's past victims are all members of the immediate family or the same household. It may then be determined by the prosecutor that the offender is not a risk to community organizations or schools, which would otherwise receive notification. Members of the immediate family include, for purposes of this determination, the offender's children, adopted, step and foster children, nieces, nephews, brothers and sisters, to whom the offender has regular access. Members of the same household include the children of any person living in the household in which the offender lives or where the offender has either full or part-time care or legal responsibilities, and may include multi-unit housing and families living in adjacent or adjoining housing. Members of the same household does not require a family relationship.



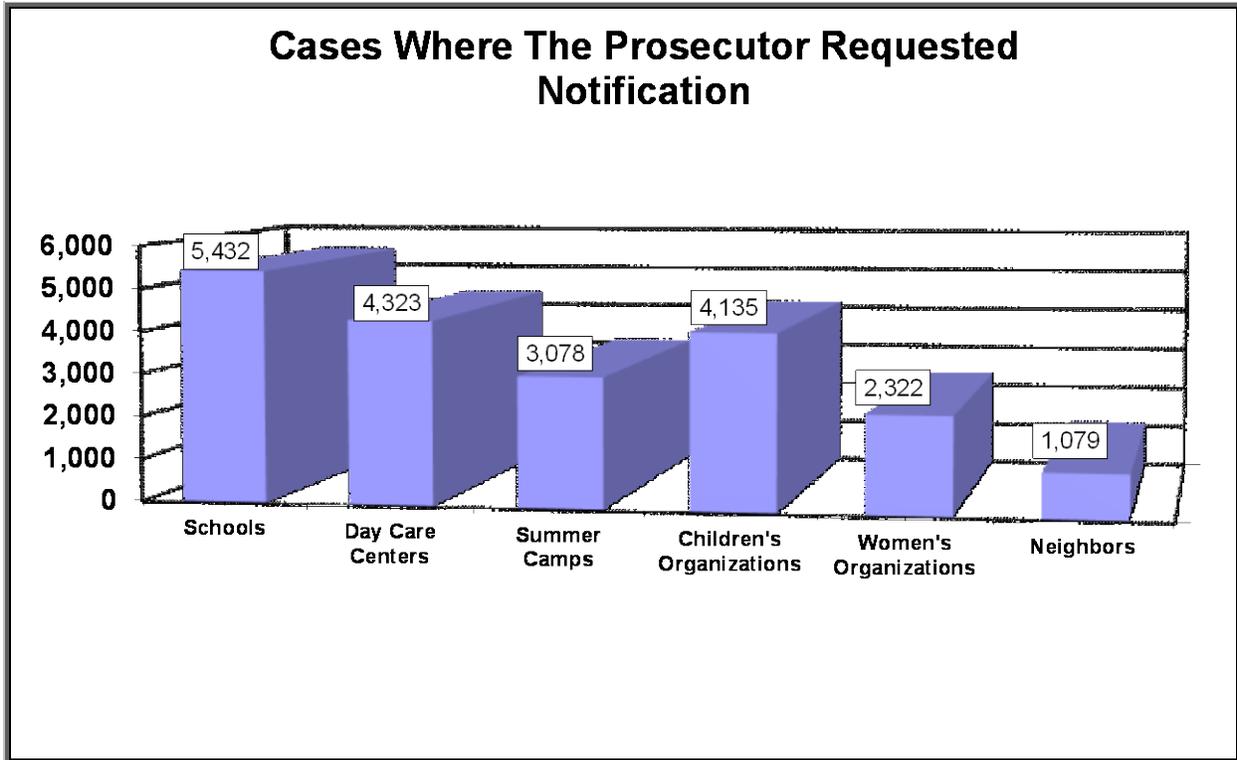
## 2. Cases Proceeding to a Conference or Hearing

### a. Tiering and Scoring

There were 6,025 cases in the database where the registrant requested judicial review of the prosecutor's tiering or community notification decision. Of those cases, 5,196 (86%) were tier 2 and 829 (14%) were tier 3.

### b. Prosecutors' Notification Decision

The data below depict the types of notification recommended by prosecutors in cases where the registrant requested a hearing. As can be seen from the data, prosecutors requested notification to schools in the majority of cases (5,432 cases) where notification was requested.<sup>21</sup> Notification to day care centers (4,323) and children's organizations (4,135) were also frequently requested. Notification to summer camps, women's organizations, and neighbors were less frequently requested.



**c. Objections**

**i. Scoring of Factors Contained in the Registrant Risk Assessment Scale**

Of the 6,025 cases where there was a conference or hearing,<sup>22</sup> 4,320 (72%) involved registrants who objected to the scoring of one or more of the factors contained in the RRAS. For the most part, registrants objected to only one or two factors. Overall, there were 12,791 objections based upon specific factors.

<sup>21</sup> There were 487 cases where the prosecutor did not request any type of notification to schools, day care centers, summer camps, community organizations, neighbors or other individuals. See footnote 20.

<sup>22</sup> In a number of cases due to certain issues being raised, the initial conference became a hearing or the judge set a date for a hearing.

The breakdown of objections is as follows:

	<b># Cases--This Factor <u>Objected To</u></b>	<b># Cases--This Factor <u>Changed</u></b>
<b>FACTOR 1</b> (Degree of Force)	706	364 (52%)
<b>FACTOR 2</b> (Degree of Contact)	477	198 (42%)
<b>FACTOR 3</b> (Age of Victim)	278	160 (58%)
<b>FACTOR 4</b> (Victim Selection)	485	277 (57%)
<b>FACTOR 5</b> (Number of Offenses\Victims)	580	369 (64%)
<b>FACTOR 6</b> (Duration of Offensive Behavior)	462	308 (67%)
<b>FACTOR 7</b> (Length of Time Since Last Offense)	1183	1575 <sup>23</sup>
<b>FACTOR 8</b> (History of Anti- Social Acts)	730	499 (68%)
<b>FACTOR 9</b> (Response to Treatment)	1353	1234 (91%)
<b>FACTOR 10</b> (Substance Abuse)	926	868 (94%)
<b>FACTOR 11</b> (Therapeutic Support)	1926	1926 (100%)
<b>FACTOR 12</b> (Residential Support)	1579	1684 <sup>24</sup>
<b>FACTOR 13</b> (Employment\Educational Stability)	2106	2293 <sup>25</sup>

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<sup>23</sup> This factor is often changed on motion by the prosecutor before the registrant objects because updated information on the registrant becomes available. This change is more frequent in re-determinations because of the passage of time.

<sup>24</sup> See footnote 23.

Of the 6,025 cases, there were 1,842 (31%) tier changes.<sup>26</sup> The tier changes are reflected below:

Amended Tier 2 to Tier 1	1,307
Amended Tier 3 to Tier 2	500
Amended Tier 3 to Tier 1	8
Amended Tier 2 to Tier 3	27

## **ii. Scope of Notification**

In the 6,025 cases where there was a conference or hearing, there were 2,631 (44%) cases where the registrants objected to the scope of notification. The judges altered the scope of notification in 3,191 (53%) cases. The most common change was to the group/individuals to be notified and the scope of notification.<sup>27</sup>

## **d. Expert Testimony**

The data indicates that expert testimony was presented to the court in 1,489 (25%) of the 6,025 cases where there was a conference or hearing. Expert opinion is often submitted to the court in the form of an expert's psychological report as opposed to live testimony. The judge can then use the report to determine the risk the registrant poses to the community.

## **3. Cases Including the Sex Offender Internet Registry**

Of the 11,675 cases contained in the database as of July 1, 2017, there were 9,839 (84%) cases that included data on the Sex Offender Internet Registry.<sup>28</sup> Of those 9,839 cases, the prosecutor wanted to include the registrant on the Sex Offender Internet Registry in 7,578 (77%) cases. In those 7,578 cases, there were 1,491 (20%) objections to being included on the Sex Offender Internet Registry. Of those 1,491 objections, there were 576 (39%)

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<sup>25</sup> See footnote 23.

<sup>26</sup> Note that the data contained in the Megan's Law case tracking system on all cases disposed shows tier changes in a total of 1,116 cases out of 5,234 registrants whose case has been disposed after a conference or hearing. See footnote 16.

<sup>27</sup> There were a number of cases where the judge agreed to tier 1 notification despite the registrant being classified as tier 2. This most often occurred where the victim was a member of the registrant's household.

<sup>28</sup> The prosecutor makes the initial determination whether to include the registrant on the Sex Offender Internet Registry. If the

objections based upon the three exceptions enumerated in N.J.S.A. 2C:7-13d. The incest exception was the most frequently raised objection.

The prosecutor's determination to include the registrant on the Sex Offender Internet Registry was upheld in 6,147 (81%) cases. The most common reasons for changing the prosecutor's request to include the registrant on the Sex Offender Internet Registry were because the tier or the scope of notification were reduced to a Tier 1. These changes can occur based upon a change in circumstances or expert opinion as to the risk the registrant poses in the community.

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prosecutor decides, after reviewing a case that has already had a tier determination hearing, that the registrant should not be included on the Sex Offender Internet Registry, the case would not appear before the court again unless there was a change in circumstances.