Sex Crime in America: Examining the Emergence and Effectiveness of Sex Offender Laws

Christina Mancini
FLORIDA STATE UNIVERSITY
COLLEGE OF CRIMINOLOGY AND CRIMINAL JUSTICE

SEX CRIME IN AMERICA: EXAMINING THE EMERGENCE AND EFFECTIVENESS OF SEX OFFENDER LAWS

By
CHRISTINA MANCINI

A Dissertation submitted to the College of Criminology and Criminal Justice in partial fulfillment of the requirements for the degree of Doctor of Philosophy

Degree Awarded: Summer Semester, 2009
The members of the committee approve the dissertation of Christina Mancini, defended on June 5, 2009.

________________________________________
Daniel P. Mears  
Professor Directing Dissertation

________________________________________
Melissa Radey  
Outside Committee Member

________________________________________
Kevin Beaver  
Committee Member

Approved:

________________________________________
Thomas G. Blomberg  
Dean, College of Criminology and Criminal Justice

The Graduate School has verified and approved the above mentioned committee members.
I dedicate this dissertation to my maternal grandmother, Louise Stupnizky (affectionately known as “Nanny”), for encouraging me to pursue my dreams, no matter the cost.
ACKNOWLEDGEMENTS

There are several individuals that have contributed greatly to the quality of this manuscript. First and foremost, I thank the Chair of the dissertation, Dr. Daniel P. Mears for his extraordinary patience, expertise, professionalism, and most importantly, his superb mentoring over the last four years. Dr. Mears has dedicated countless hours of his time to assist with developing the content of the dissertation, framing of analyses, scoping of implications, and also with editing and formatting. He is truly a remarkable scholar and outstanding mentor and I greatly admire his work, methodological rigor and analytic skills, and ingenuity. I am eternally grateful and incredibly fortunate that he agreed to chair this research endeavor.

Committee members Dr. Kevin Beaver and Dr. Melissa Radey also devoted much of their time to assist with dissertation analyses, writing, and implications. Dr. Beaver presented many thoughtful suggestions concerning research methods and analyses that contributed significantly to the quality of the dissertation. Dr. Radey was instrumental in helping frame several research questions and analyses, and lent her expertise in a number of places throughout the dissertation. I thank both members for their continued advisement and guidance.

Several other College faculty members also supported my professional development and scholarship over the years. Dean Thomas Blomberg, Dr. Eric Stewart, Dr. William Bales, Dr. Marc Gertz, Dr. Gary Kleck, Dr. Carter Hay, Dr. William Doerner, and Dr. Bruce Bullington exposed me to a range of research methodologies during my tenure in the College that shaped much of the dissertation. I thank them all for their pedagogy.

College staff members also greatly assisted me with preparation of the dissertation and related administrative tasks. True to spirit, Margarita Frankeberger went above and beyond the call of duty by providing me with timely information about dissertation deadlines and formatting, and by answering my never-ending questions, all with a smile on her face. Leslee Boldman and the Dean’s Office staff helped tremendously with several logistical issues related to the dissertation defense and did so happily.

My colleagues were critical to the completion of this project not only for their professional opinions, but also for their constant encouragement during the challenging parts of the dissertation. I thank Julia DiPonio, Katie Taylor, Xia Wang, Ryan Meldrum, Ryan Shields,
Dan Ragan, Marie Ratchford, J. C. Barnes, Justin Pickett, Will Hauser, Kevin Wang, and Kristin Lavin.

A number of experts gladly provided me with clarification about technical and literature issues. Special thanks go to Dr. Michelle Meloy, Dr. Jill Levenson, and Tracy Velázquez. I would also like to thank Dr. Emily Leventhal for providing helpful information about specific state statutes and for her kind words of advice throughout the dissertation process.

Finally, I thank my family for their support throughout my life. I thank my fiancé Jesse Seiden for his many endearing qualities and his unconditional love; my mother and father in-law, Betty and Paul Seiden for their love and support and for their helpful suggestions on an earlier draft of the manuscript; my mother, Christine Mancini for putting up with me during those awkward teenage years; my sister, Danielle Guess for reminding me not to take myself too seriously; my grandmother, Louise Stupnizky for instilling in me a “Depression-era mentality” and a love of reading; my aunt and uncle, Carol and Richard Wallin for the compassion and kindness they showed me during tough times of my life; and not least, my dogs, June and Lola for providing much-needed comedic relief during the writing process.
# TABLE OF CONTENTS

LIST OF TABLES ................................................................................................................................. viii  
LIST OF FIGURES ............................................................................................................................... ix  
ABSTRACT .................................................................................................................................................. x  

1. INTRODUCTION .................................................................................................................................. 1  
   Research Goal, Questions, and Strategies ...................................................................................... 4  
   Structure of Dissertation ............................................................................................................... 6  

2. BACKGROUND ...................................................................................................................................... 7  
   Early Colonial Days: Unspeakable Crimes .................................................................................. 7  
   The Progressive Era: Moral Hygiene and Sex Offenders ............................................................ 8  
   The 1930s-1950s: The Medical Model and Sexual Psychopathy Laws ........................................ 9  
   The 1960s-1970s: Deinstitutionalization and “Nothing Works” ................................................ 10  
   The 1980s: “Get Tough” Justice and Sex Offender Policy .......................................................... 11  
   The 1990s: The Decade of the Sex Offender ............................................................................. 13  
   Sex Crime Laws Today: An Assortment of Policies .................................................................... 16  

3. DATA AND METHODS ..................................................................................................................... 18  
   Chapter 4 ......................................................................................................................................... 18  
   Chapter 5 ......................................................................................................................................... 19  
   Chapter 6 ......................................................................................................................................... 19  
   Chapter 7 ......................................................................................................................................... 19  
   Chapter 8 ......................................................................................................................................... 20  

4. “IT VARIES FROM STATE TO STATE”: THE TYPES OF SEX CRIME POLICIES NATIONALLY ................................................................................................................................. 21  
   Introduction ..................................................................................................................................... 21  
   Background ..................................................................................................................................... 22  
   The Present Study .......................................................................................................................... 26  
   Findings .......................................................................................................................................... 27  
   Summary and Implications ............................................................................................................. 32  

5. SEX OFFENDERS—AMERICA’S NEW WITCHES? A THEORETICAL ANALYSIS OF SEX CRIME LAWS .................................................................................................................... 46  
   Introduction ..................................................................................................................................... 46  
   Background: Sex Offenders—America’s New Witches? ............................................................... 48  
   Witch Hunt Theories ...................................................................................................................... 51  
   Analysis .......................................................................................................................................... 57  
   Discussion and Conclusion ............................................................................................................ 67  

LIST OF TABLES

Table 4.1. Sex Crime Laws, by State and Region, as of 2008.......................................................... 39
Table 4.2. Length of Registration for Sex Offenders, by State, as of 2008............................................. 40
Table 4.3. Group to which Community Notification Law Applies, as of 2008.............................. 43
Table 4.4. Residency Restrictions, by State, as of 2008................................................................. 44
Table 7.1. Descriptive Statistics............................................................................................................. 116
Table 7.2. Logistic Regression of Public Support for Capital Punishment on Social and
Demographic Variables: Convicted Murderers .......................................................... 117
Table 7.3. Logistic Regression of Public Support for Capital Punishment on Social and
Demographic Variables: Sex Offenders Convicted of Crimes against Adults........ 118
Table 7.4. Logistic Regression of Public Support for Capital Punishment on Social and
Demographic Variables: Sex Offenders Convicted of Crimes against Children.... 119
Table 8.1. The U.S. Supreme Court’s References to Social Science Research in Deciding Prominent Sex Offender Cases: Sex Crimes Involving Children...................... 143
Table 8.2. The U.S. Supreme Court’s References to Social Science Research in Deciding Prominent Sex Offender Cases: Sex Offender Recidivism and Reentry................. 145
Table 8.3. The U.S. Supreme Court’s References to Social Science Research in Deciding Prominent Sex Offender Cases: Sex Crime Prevalence .............................................. 146
Table 8.4. The U.S. Supreme Court’s References to Social Science Research in Deciding Prominent Sex Offender Cases: Sex Offenders and Treatment........................................ 147
Table 8.5. The U.S. Supreme Court’s References to Social Science Research in Deciding Prominent Sex Offender Cases: Effects of Sexual Victimization ........................................ 148
LIST OF FIGURES

Figure 4.1. Percentage of States with Multiple Sex Crime Laws, as of 2008 ........................................ 45
Figure 5.1. Timeline of Sex Offender Laws and Related Events, 1990-2000 ..................................... 74
Figure 6.1. Causal Pathway Model of Sex Offender Registration and Community Notification Laws: Capable Guardianship................................................................. 93
Figure 6.2. Causal Pathway Model of Sex Offender Registration and Community Notification Laws: Shaming/Retribution................................................................. 94
Figure 6.3. Causal Pathway Model of Sex Offender Residency Restriction Laws ......................... 95
Figure 6.4. Causal Pathway Model of Sex Offender Castration Laws ............................................. 96
ABSTRACT

In the past two decades, every state in America has enacted some type of sex crime law, including sex offender registration, community notification, residency restrictions, castration policies, mandatory prison sentences for possessing child pornography, and a host of other sanctions. Scholars have noted that sex crime legislation has been “hastily passed” (Fortney, Levenson, Brannon, and Baker, 2007:1) and that “decisions about what to do with sex offenders are often made without the benefit of theoretical insights” (Kruttschnitt, Uggen, and Shelton, 2000:66) and instead have been in reaction to “unusual and compelling cases” (La Fond, 2005:9).

Juxtaposed against these observations is the fact that today we know little about most sex crime policies. In particular, we know little about why they emerged and whether they are, or are likely to be, effective in reducing sexual offending and victimization. To this end, the goal of this dissertation is to contribute to scholarship on and debates about sex crime policies by examining five key questions.

First, what is the range of the types of sex crime laws nationally? Second, to what extent do Erikson’s (1966) and Jensen’s (2007) theories about witch hunts explain the emergence of sex crime laws in recent decades? Third, to what extent are sex crime laws based on theory and research? Fourth, is there variation in public views about sex crime laws, especially concerning use of the death penalty for sex offenders? Fifth, does the U.S. Supreme Court use criminological theory and research in reaching decisions about sex crime policy, and if so, does the Court’s assessment of theory and research accord with the actual state of the literature?

Data for this dissertation come from a variety of sources, including information about state laws from the National Conference of State Legislatures (NCSL), national public opinion data examining views about sex offenders from the Roper Center for Public Opinion Research, and a number of U.S. Supreme Court decisions. The dissertation is structured around five substantive chapters that address the five questions above. It concludes with a discussion of the study’s implications and future directions for theory, research, and policy.
On October 22, 1989, 11 year-old Jacob Wetterling was bicycling home from a store with his brother and a friend in St. Joseph, Minnesota. Out of nowhere, a masked gunman came out of a driveway and forced Jacob to come with him. Jacob’s whereabouts are still unknown to this day. Convinced that a sex offender kidnapped their son, Jerry and Patty Wetterling helped pen the Jacob Wetterling Crimes against Children and Sexually Violent Offender Registration Act in 1994. This law was one of the first legislative attempts to institute state sex offender registries in the nation (Lewis, 1996). Approximately five years later, seven year-old Megan Kanka was lured into her neighbor’s home, a convicted sex offender, with the promise of seeing his new puppy. Soon after, less than thirty yards from her doorstep, Megan was raped and murdered. Megan’s parents argued that had they known a sex offender was living next door, they would have never let Megan out of their sight. Like Jacob’s case, Megan’s abduction, sexual assault, and murder sparked national outrage. In 1996, Megan’s Law, was adopted in her memory. It requires states to notify residents when sex offenders move into their neighborhoods (Montana, 1995).

The Jacob Wetterling Act (1994) and Megan’s Law (1996) marked the beginning of an emergence of a broad range of expanded sex crime policies across the country. Indeed, in the last twenty years every state has implemented sex offender legislation. These laws hit on a number of dimensions and include sex offender registration, community notification, residency restrictions, civil commitment, castration laws, mandatory prison sentences for child pornography possession, and an array of other punishments. Scholars have suggested that these laws have been “hastily passed” (Fortney et al., 2007:1) and that “decisions about what to do with sex offenders are often made without the benefit of theoretical insights” (Kruttschnitt et al., 2000:66) and instead have been in reaction to “unusual and compelling cases” (La Fond, 2005:9).

Juxtaposed against these observations is the fact that today we know little about most sex crime policies. In particular, we know little about why they emerged and whether they are, or
are likely to be effective. Five specific research gaps which will be the focus of this dissertation stand out.

First, there is an absence of studies investigating the range of the types of sex crime laws nationally. Few studies have documented the types of sex crime policies nationally and variation across states and within the content of these laws. Variation across states and within a policy may result in differences in how the law is applied and who it affects. Such variation is important for several reasons. One is that precisely because there has been, or appears to have been, a dramatic growth in the number and type of sex offender laws, there is a risk that policymakers, researchers, and the public may fail to discern important nuances across states and within the laws. For example, many laws treat sex offenders as one large group even though research documents that sex offenders vary greatly, from those who commit acts of public indecency to those who sexually assault children (Hanson and Morton-Bourgon, 2005). Assessing the national use of these laws may assist with developing more accurate characterizations about sex offender laws in America.

Evidence of substantial variation may indicate that substantially different theoretical or causal logics underlie these laws. In turn, such variability can lead to several implications. Policies with different theoretical logics may have different effects, which would mean that the results of an evaluation from one policy may not nonetheless match a similar policy. They may also lead to different conclusions about the likely effects of the policies; one may, for example, be based on well-established theory and another may not. Finally, different theoretical logics typically will require different approaches to identifying how a particular effect is achieved.

Not least, another benefit of examining variation in sex crime laws is that it highlights the potential need for caution about generalizing the effects of one policy to a variant of that policy. If, for instance, an evaluation shows that a 500 feet sex offender residency restriction reduces recidivism that does not necessarily mean that a 2,000 feet restriction would be equally effective.

Second, many voids exist in explaining the emergence of sex crime policies in the mid-1990s. Virtually no theoretical accounts exist that explain the rapid growth of sex crime laws in the mid-1990s. The proliferation is notable because the emergence and spread of such laws does not appear to reflect trends in sex crime rates. For example, Finkelhor and Jones (2004b:685) reported that from 1990 through 2004, substantiated cases of child sexual abuse in the U.S. declined by almost 50 percent. The country also witnessed decreases in reports of forcible rape
among individuals 12 and older. The nation’s forcible rape rate per 100,000 people in 1990 was 41.1, by 2004 that estimate dwindled to 32.4 (Federal Bureau of Investigation, 2007). Despite these national trends, sex offender laws have flourished (Palermo and Farkas, 2001).

The recent rise in these laws also bears attention because their emergence does not parallel the appearance of a general “get tough” sentencing movement in the 1980s and early 1990s. Given these observations, why have these laws emerged? One potentially fruitful line of inquiry is to view the emergence of sex crime laws as the modern-day equivalent of a witch hunt. Indeed, experts have likened today’s sex offenders to yesterday’s witches. To illustrate, Krueger (2007: M1) recently commented that “increasingly, legislation dealing with sex offenders is being passed that is punitive, untested, expensive and, in many cases, counterproductive—demonizing people who commit sexual offenses without offering any empirical information that the new laws will reduce sexually violent crime.” To the extent that these characterizations are apt, theories that have been used to explain witch hunts might reveal why sex offender laws have become prominent in the U.S.

Third, there are few theoretical or causal logic evaluations of these laws. Several scholars have suggested that sex offender laws typically are developed and implemented without theoretical guidance (Kruttschnitt et al., 2000; Levesque, 2005). To the extent that such assertions are true, it suggests that these policies are unlikely to be effective. As Rossi, Lipsey, and Freeman (2004) have emphasized, for a policy to achieve its goals and objectives, it typically must have a strong theoretical foundation. To date, there have been no systematic efforts to detail or describe the theoretical foundation (i.e., causal logic) of the most prominent sex crime policies that have emerged in recent decades across the U.S. A theory evaluation of such policies has several potential benefits. It can provide policymakers with a better understanding of the rationales underlying these policies (i.e., it can clarify the precise goals and outcomes of the policies). It can provide insight into whether these policies are likely to be effective. It also can provide guidance on ways to better or more appropriately assess the implementation and impacts of these policies. And, as Rossi et al. (2004) noted, it can provide guidance on ways in which to improve these policies.

Fourth, only a handful of public opinion studies have investigated views about these laws. As a number of scholars have observed (Brannon, Levenson, Fortney, and Baker, 2007; Brown, 1999; Fuselier et al., 2002; Sample and Bray, 2003), research examining public views
about sex crime policy is limited. Several studies have investigated public opinion among samples likely not representative to the greater U.S. population, have used only descriptive analyses, and typically have not examined social and demographic cleavages that explain how different members of the public view these laws. These oversights are potentially problematic because although public opinion does not necessarily drive public policy, a large body of evidence suggests that it can (Roberts and Stalans, 1997) and often does (Burstein, 2003). For this reason, understanding public views and what influences them is important.

Fifth, virtually no research has explored U.S. Supreme Court decisions and sex crime policies. Although U.S. Supreme Court decisions essentially constitute the “law of the land” and as such warrant attention as subjects of policy research, especially in an era in which there has been increasing calls for evidence-based policy (Lipsey, Petrie, Weisburd, and Gottfredson, 2006), no empirical studies have scrutinized the Court’s rulings about sex offender policies. In particular, studies have not examined whether the Court’s decisions involve reference to established criminological theory or research about sex offenders and sex crime. To wit, do U.S. Supreme Court decisions reflect an awareness of or an accurate analysis of criminological theory and research about sex offending? Should it be discovered that the Court’s decisions are inaccurate, this would suggest its rulings are flawed, from a research and theoretical standpoint, and thus may not reflect “evidence-based” policy.

Research Goal, Questions, and Strategies

The overarching goal of this dissertation is to contribute to scholarship on and debates about sex crime policies, and in particular, to examine why they emerged and their actual or likely effectiveness. To achieve this goal, the dissertation examines five related questions. These questions and the strategies used to address them are discussed below.

Chapter 4: First, what types of sex crime laws exist nationally and to what extent is there variation across states and within these types of laws? A cursory review of the literature suggests that sex crime laws may vary widely among states. This chapter systematically investigates the extent to which there is variation across states and within these types of laws. Information about these laws comes from several sources including a comprehensive national
report recently published by Velázquez (2008) and also several National Conference of State Legislatures (NCSL) reports.

Chapter 5: Second, why have sex crime laws emerged so rapidly in recent years? Critics have likened the unprecedented growth in sex crime laws to that of a legislative “witch hunt.” Yet, virtually no studies have investigated factors contributing to the rapid proliferation of these laws. This chapter draws on scholarly work and theoretical accounts, specifically those that have been used to explain the emergence of witch hunts (Erikson, 1966; Jensen, 2007), to examine whether these frameworks also explain the emergence of sex crime laws in the mid-1990s.

Chapter 6: Third, are these policies likely effective in reducing sexual victimization? Experts have questioned the effectiveness of sex crime policies in the U.S., but few studies have examined their actual or likely effectiveness. Causal logic evaluations are used by researchers to identify how policies may achieve their goals (Rossi et al., 2004). Using this approach, this chapter selects three of the most prominent sex offender laws—sex offender registries and community notification; residency restrictions; and castration—and then examines the extent to which they accord with prior theory, logic, and empirical research.

Chapter 7: Fourth, what are the public’s views about sex crime laws? Only a handful of empirical studies have tested hypotheses about public perceptions of these policies (Brown, 1999; Mears, Mancini, Gertz, and Bratton, 2008). This chapter examines the extent to which the public endorses capital punishment for sex offenders. To this end, it draws on nationally representative data and uses multivariate regression analyses to examine social and demographic divides in opinions about the death penalty.

Chapter 8: Fifth, do U.S. Supreme Court decisions reflect an awareness of or an accurate understanding of criminological theory and research about sex offenders and sex crime? The Court often shapes social policy by rendering opinions through its power of judicial review (Stolz, 2002). To date, there has been little empirical investigation as to whether the Court’s decisions about sex crime policy involve reference to established criminological theory or research, or the extent to which such theory and research are interpreted accurately. This chapter first assesses whether criminological theory and research (or assumptions about what is known and what is not known about sex crime and sex offenders) are brought to bear on Court decisions about sex offender policies, then discusses the Court’s understanding of relevant studies, and
finally, examines whether its understanding (as reflected in written decisions) accords with what has been established in the sex crime literature.

Structure of Dissertation

This dissertation is structured around nine chapters, five of which are devoted to answering the specific research questions above. Briefly, the chapters are organized as follows.

Chapter 1 describes the goals and objectives of the dissertation, the research questions the dissertation will address, the strategies that will be used to examine those questions, and the structure of the dissertation.

Chapter 2 provides a historical background of sex crime policies in America.

Chapter 3 briefly describes the data that are used in each chapter. More detailed information about the types of data, measures, and analyses used in the dissertation is provided in each substantive chapter (i.e., chapters 4, 5, 6, 7, and 8).

Chapter 4 explores the range of the types of sex crime laws in place across the nation and examines the variation across states and within the specific content of these laws.

Chapter 5 draws on theoretical accounts, specifically two that have been used in explaining prior outbreaks of witch hunts (Erikson, 1966; Jensen, 2007), to examine whether these frameworks also explain the emergence of sex crime laws in recent decades.

Chapter 6 reviews three prominent sex offender laws and examines the extent to which they accord with prior theory, logic, and empirical research.

Chapter 7 investigates the extent to which the public supports capital punishment for sex offenders and then explores social and demographic variation in such support.

Chapter 8 describes an array of diverse U.S. Supreme Court cases involving sex offender laws to examine whether these decisions reflect an awareness of and an accurate analysis of criminological theory and research about sex offenders and sex crime.

Chapter 9 summarizes findings of the dissertation and concludes with a discussion of the study’s implications for theory, research, and policy.
CHAPTER 2

BACKGROUND

Many experts have highlighted the sharp increase in the types of sex crime policies adopted nationally in recent decades (Sample and Bray, 2003; Zevitz, 2006). Indeed, Duwe and Donnay (2008:412) observed that in the last twenty years “lawmakers across the country have enacted a variety of policies designed to increase public safety by decreasing the incidence of sexual recidivism.” To put this change into historical perspective, this chapter discusses how sex crimes have been characterized and addressed in the past.

**Early Colonial Days: Unspeakable Crimes**

Historical accounts suggest that efforts to curtail sex offending began as early as the American colonial days. In the Massachusetts Bay Colony, acts such as homosexuality, bestiality, sodomy, adultery, statutory rape, and other “immoral offenses,” were, in some cases, considered capital crimes. In most instances of sex crime, banishment and physical punishments such as public flogging were typical sanctions (Godbeer, 1995). In a historical analysis of responses to sex crime over the years, Gavey (2005:17) concluded that although rape was a serious and “detestable” crime in early colonial days, there was a hesitancy to condemn men accused of sex crime, as there appeared to be “an overriding concern for the wrongs of falsely accusing a man of rape, over and above the wrongs of the rape itself.” Because sex offenses at this time were viewed as “un-Christian” or “unspeakable crimes,” it is difficult to assess the full range of policies used by early Americans, as historical records of these offenses are scarce (Godbeer, 1995). Thus, we are left with significant questions about sex offender policy at this time. Given this dearth of information, we turn now to exploring more modern reforms at the beginning of the 20th century.
The Progressive Era: Moral Hygiene and Sex Offenders

Influenced heavily by the Progressives at the turn of the 20th century and a larger “child-saving” movement, the nation began to experience greater scholarly interest in sex crime and its consequences on children and young adults. Notably, beginning in the late 1800s and early 1990s, there was a mass migration of rural and foreign people to the larger and more industrialized cities. For these new urbanities, finding legitimate work was not always feasible, and some, not yet in their teens, turned to prostitution to make a living (Sacco, 2002). Prominent scholarly accounts like W.L. Gibb’s “Indecent Assault of Children” (1894) revealed the extent of the sex crime problem, including accounts of child prostitution and inspired an outpouring of public concern about these conditions.

There was a larger medical concern that sex offending led to the spread of sexually transmitted diseases (STDs). Venereal disease and syphilis were two highly prevalent STDs that afflicted a substantial proportion of children. According to experts, the Progressives’ movement to reduce sex offending was sought not only to improve social conditions for children, but also to prevent the spread of illness (Sacco, 2002).

Positivism, with strong roots in the eugenics movement and social Darwinism, appeared to dictate approaches toward sex offenders throughout the Progressive era. Repeat or habitual sex offenders, deemed to be “incurable,” were sometimes institutionalized for life or executed (Jenkins, 1998:40). For less serious sex offenders, treatment included indeterminate sentences with required psychiatric counseling and in some instances, physical castration. Castration was viewed as a policy that served dual purposes. First, castration served to decrease sexual urges and fantasies, and second, it also sterilized the offender, so that his “condition” could not be passed to offspring (Scott and Holmberg, 2003:502).

At this time, popular stereotypes about sex offenders were endorsed by the public and the research community. Some of the beliefs were that sex offenders suffered from mental abnormalities (e.g., “feeble-mindedness”) and that certain ethnic and racial groups, and those living in poverty were more prone to commit sex crimes than Whites and the more affluent (Sacco, 2002).

The legal environment at this time was also shaped by positivistic thinking. In describing this impact, Jenkins (1998:43) noted, “these laws often mixed criminal and civil functions.
together in a confusing and perilous manner.” Regardless of the possible unintended effects of these hybrid policies, “sweeping new laws were implemented with minimal criticism” (Jenkins, 1998:43). Indeed, positivist reforms appeared to be embraced by many influential groups, including psychiatrists and women’s and child-saving organizations, which were actively involved in shaping sex crime policy efforts (Gibb, 1894). The focus on preventing sexual violence continued into later decades.

The 1930s-1950s: The Medical Model and Sexual Psychopathy Laws

A series of child sex murders in 1937 alerted the public and policymakers to the risk sex offenders posed to children and women (Cole, 2000; Freedman, 1987). Perhaps partially influenced by these media accounts and the prevailing view that science could “fix” criminal pathology, beginning in the 1930s and continuing well into the 1950s sexual psychopathy laws emerged in the U.S. These laws were designed to force sex offenders into medical treatment (Fitch, 1998; Shultz, 1965). Although few sex offenders were actually considered legally insane, psychiatrists often referred to sex offenders as “sexual psychopaths” and were instrumental in the passage of these laws (Cole, 2000; Freedman, 1987). States varied in their implementation of these laws, but the general criteria of the legislation required that either the offender committed more than one sex crime or that the offender suffered from mental abnormalities such as emotional instability or sexual impulsivity. Sexual psychopathy laws are one of the first documented civil commitment attempts of sex offenders in America (Freedman, 1987).

According to scholarly accounts, words such as “fiend,” “degenerate,” and “pervert” were used to describe sex offenders in the sex crime literature and popular media throughout this era. The prevailing view was that sex offenders were “neither sane nor insane,” but lacked the ability to control sexual impulses and were likely to recidivate, and therefore, should be segregated until “cured” (Lieb, Quinsey, and Berliner, 1998:56). In some instances, treatment for sex offenders included doses of testosterone-lowering hormones, given in the belief that these drugs could help control the sexual urges of repeat offenders (Scott and Holmberg, 2003:502).

Sutherland (1950:547) was one of the first scholars to critique sex offender legislation. Specifically, he claimed that sex offenders as a group had low rates of recidivism and that such
laws, “although dangerous in principle,” were rarely invoked, and thus, had little appreciable effect on subsequent sex offending. Many scholars blamed “mass hysteria” as a driving catalyst responsible for these laws, brought on, in part, because of grisly media coverage of atrocious, but rare, sex crimes, such as the case of Albert Fish. Fish, a self-proclaimed pedophile, had confessed to the murder, cannibalism, and sexual assault of numerous children. Fish’s crimes represented an extreme offender; however, many in favor of sexual psychopathy laws contended that if policymakers could identify such dangerous offenders and treat them before their crimes escalated numerous lives would be saved (La Fond, 1998).

Although such cases outraged the public, sexual psychopathy laws were not intended as punitive sanctions. The laws were created in an attempt to force offenders into treatment and to incapacitate them, as a popular misconception among policymakers and the public at the time was that sex offenders had high rates of recidivism compared to other offenders (Lieb et al., 1998). We turn now to exploring sex offender policies nationally in the 1960s and 1970s.

The 1960s-1970s: Deinstitutionalization and “Nothing Works”

In the 1960s and 1970s, the criminal justice system experienced a radical shift in sex crime legislation. In particular, the publication of the “nothing works” Martinson (1974) report appears to have had a profound impact on the criminal justice system’s response to sex offenses (Lucken and Latina, 2002:22). Although the public continued to express concern about such crime, much of extant research on sex crime was thought to be antiquated and based on misconceptions about crime and offenders (Petrunik, 2002). In reaction, research began to focus on debunking prevalent sex crime myths and pointing to unintended effects of sex crime policies, such as racial disparities in sentencing.

This change in empirical direction reflected a larger intellectual movement that was described by concepts such as “decriminalization” and “deinstitutionalization” (Lilly, Cullen, and Ball, 2007). Sex crimes were soon examined separately, and a distinction was made between “mere molestation” and serious sex offending. Scholars began to view molestation and certain types of pedophilia as less damaging to victims than previously assumed. For instance, a number of scholarly accounts such as Abrahamsen (1960) and Kempe and Kempe (1978) were
published at this time suggesting that child victims often suffered no serious damage as a result of molestation, and may, in fact, have enjoyed the victimization experience. Instead of focusing on the harmful consequences of sexual victimization, many scholars emphasized the racial disparities of sex crime policies, particularly in the South. In this region, lynching and executions of African American men accused of sexually assaulting White women continued until this practice was eventually outlawed by the Supreme Court in the 1960s (Petrunik, 2002).

In the legal arena, encompassing sex offender laws like civil commitment were routinely struck down. Throughout this era, the U.S. Supreme Court appeared to adopt a liberal orientation toward the legality of policies—one that emphasized offenders’ rights, as evidenced by a series of “offender friendly” cases like *Miranda v. Arizona* (1966). In *Specht v. Patterson* (1967), the U.S. Supreme Court ruled against a state sex offender statute that allowed for a man who originally faced a possible 10 year sentence for “indecent liberties” with a child to face an indeterminate penalty of possibly life in prison contingent on a psychological evaluation. The Court ruled that such legislation does not afford an offender basic due process rights, such as the right to counsel and to confront witnesses. In a similar case four years later, the Supreme Court in its ruling of *Lessard v. Schmidt* (1974) made it more difficult for states to civilly commit sex offenders that “posed no risk to society.” The Court ruled in *Lessard v. Schmidt* (1974) that states had to afford those in jeopardy of civil commitment due process rights such as the right to confront witnesses testifying against them, counsel, and the right to a jury trial.

Towards the end of the 1970s, the rehabilitative ideal, which previously shaped theory and empirical research and guided sex offender policies, appeared to wane. Jenkins (1998:113) put it a bit more forcefully when he concluded that “these attacks all but killed the rehabilitative ideal as a respectable component of American social policy.” We now move toward examining sex offender laws in the 1980s.

**The 1980s: “Get Tough” Justice and Sex Offender Policy**

Whereas previous decades stressed treatment and decriminalization, beginning in the 1980s, criminal justice policy was guided by the “just deserts” philosophy (Akers and Sellers, 2004; Lilly et al., 2007). Lucken and Latina (2002:23) noted of this time that “the Reagan/Bush
era provided a ripe environment for the return of criminology theories based on individual responsibility.” In the political atmosphere, sexual criminality was thought to be due to a lack of moral aptitude. Jenkins (1998:121) observed, “for moral traditionalists, a campaign against sex crime provided an effective weapon for combating what they saw as a slide toward decadence, which had been unchecked since about 1965 and which was symbolized by the tolerance of divorce, abortion, homosexuality, drugs, and sexual promiscuity.”

Throughout this decade, several get-tough initiatives aimed at incapacitating and punishing offenders emerged in the U.S. Sentencing guidelines and determinate sentences were key policies used in the criminal justice system, “with the intent of bringing certainty, fairness, and uniformity to sentencing and punishment” (Lucken and Latina, 2002:24). Most sexual psychopathy laws reminiscent of the 1930s and 1940s were repealed in the latter part of the 1980s, seen as discriminatory by liberals and too lenient by conservatives (Lieb et al., 1998). Perhaps fueled by celebrated cases described in the media, instead of focusing on the habitual “pervert” or sexual psychopath, policies began to target child pornographers and child sex abusers (Terry, 2005). Such laws imposed stricter penalties for child sexual abuse and the manufacture, sale, or possession of child pornography. For instance in describing child pornography laws at the time, as Jenkins (1998:150; see also Jenkins, 2001) explained, “a crime was committed by anyone who ‘knowingly receives or distributes’ or ‘knowingly possesses’ images, in addition to anyone who made or sold them.”

Constitutional challenges to these increasing child pornography laws were often unsuccessful. For example, in 1982 the U.S. Supreme Court heard a challenge of one of these laws. In New York v. Ferber (1982), the Court ruled that the First Amendment did not prohibit states from banning the sale of material depicting minors engaged in sexual activity. The decision was a landmark case that eroded earlier “constitutional assumptions”—such as the right to privacy in the home.

Throughout the 1980s, Americans began to recognize incest and “acquaintance rape” as widespread forms of sexual abuse. Popular talk-shows often featured sex crimes victims that recalled vivid accounts of child sex abuse during this era (Gavey, 2005; Terry, 2005). Another change occurred in the legal arena. Courtroom procedures were relaxed so that convictions were easier to obtain against offenders known to the victim. For example, several states suspended statutes of limitations for certain sex crimes, allowing victims of sex abuse several years to report
victimization (Terry, 2005). The acknowledgement that the bulk of sex crime was committed by perpetrators familiar to the victim was a radical departure from previous accounts that sex crime was overwhelmingly committed by strangers (Gavey, 2005).

More broadly, during this “get-tough” era, we start to see more of an emphasis on crime victims. Empirical work examined the long-term effects of sexual abuse including illnesses such as post-traumatic stress disorder (PTSD). The National Crime Victimization Survey (NCVS) which began in 1973, suggested that a substantial proportion of sex crimes go unreported to law enforcement (Rand and Catalano, 2006; Terry, 2005). Memory recall therapy, developed by psychiatrists at this time, was a way for alleged victims of sex abuse to recall their repressed victimization through psychiatric counseling. A number of alleged incidents of sexual abuse were recalled at this time period, suggesting an epidemic of sexual victimization among children. The validity of this method was questioned, and as Jenkins (1998:180) commented, “If a person was convicted of a crime on the basis of recollection, whether of an adult or a child, was this any more just or reliable than that of the spectral evidence used with deadly effect in seventeenth-century Salem?” Juxtaposed against such observations, we turn now to describing the unprecedented emergence of sex crime laws in the 1990s, an era depicted by experts as the “decade of the predatory sex offender” (Nash, 1999:45).

The 1990s: The Decade of the Sex Offender

Clearly, as several scholars have observed, the nation witnessed an unprecedented growth in sex crime laws throughout the mid-1990s. In questioning the emergence of these laws during this decade, experts have linked a series of highly publicized child abduction and murder cases to the proliferation of these laws later in the decade. In particular, scholars have identified three specific cases that appeared to act as catalysts for the emergence of subsequent sex crime legislation. We begin first with Jacob Wetterling’s abduction. In 1989, eleven year-old Jacob Wetterling was kidnapped at gunpoint while riding his bicycle in St. Joseph, Minnesota. The search for Jacob continued for several months and made national headlines. Less than four years after Jacob’s abduction, twelve year-old Polly Klass was kidnapped from her home in Petaluma, California and murdered by a violent offender with a long history of sexual offenses against
women. Her body was found weeks later in a deserted field. Less than a year later, in Hamilton Township, New Jersey, seven year-old Megan Kanka was lured into her neighbor’s home, a convicted sex offender, and sexually assaulted and murdered (Sample and Bray, 2006).

These widely publicized tragedies of child abduction, sexual assault, and murder sparked national outrage. In response to these cases, policymakers around the country began to enact stricter legislation aimed at tougher sentences for repeat sex offenders, identifying and monitoring sex offenders living in communities, and equipping communities with information about registered sex offenders living in nearby neighborhoods (Sample and Kadlec, 2008). For instance, after his daughter’s death, Marc Klass, was instrumental in working with California lawmakers to enact “three strikes and you’re out” sentencing policies designed to incarcerate violent offenders for long periods of time (Tier and Coy, 1997).

Jacob’s and Megan’s parents were also active in the development of legislation designed to increase penalties for sex offenders. Convinced that a sex offender abducted their son (although Jacob’s body was never recovered), Jacob’s parents, Jerry and Patty Wetterling helped pen the Jacob Wetterling Crimes against Children and Sexually Violent Offender Registration Act in 1994. This was one of the first legislative attempts to institute a state sex offender registry in the country (Sample and Bray, 2006).

In particular, Megan’s parents sought to increase community awareness about the prior histories of released sex offenders. Partially due to their efforts, Megan’s Law was adopted by the federal government in 1996. The law requires states to notify community members when sex offenders move into their neighborhoods. States must develop and implement sex offender registries or risk losing federal funding for other criminal justice programs (Center for Sex Offender Management, 1999). The Jacob Wetterling Act (1994) and Megan’s Law (1996) marked the beginning of an emergence of a broad range of expanded sex crime policies across the country. With the advent of the internet in the mid-to-late 1990s, states began to create sex offender registry websites with the intent of providing concerned citizens with information about released sex offenders (Sample and Bray, 2006).

Other prominent and controversial sex crime polices enacted at this time hit on a number of other dimensions. The laws included controversial practices such as castration of sex offenders, enactment of civil commitment statutes, and the implementation of sex offender residency restrictions.
One debated effort was the enactment of castration policies across the nation. As noted earlier, the U.S. practiced castration of offenders at the turn of the 20th century and during the sexual psychopathy decade (1930s to 1950s). However, the practice lost its appeal in later decades due to concerns about its legality and effectiveness (Scott and Holmberg, 2003; Spalding, 1998). In describing the castration policies of the mid-1990s, Meyer and Cole (1997:2) observed that the reemergence of such punishments was likely “in response to increased public awareness and outcry” about sexual offending. The authors further noted that “attention is being focused on castration because it is believed that decreasing testosterone will decrease sexual interest and activity and thus lead to a decrease in sexual offenses and violence” (p. 4).

With the development of reversible chemical castration treatments (such as Medroxyprogesterone acetate or MPA) in earlier decades, more states began to consider chemical castration as treatment for certain types of sex offenders (Spalding, 1998). In the late 1990s, California and Florida passed castration statutes for sex offenders. A handful of other states soon followed. By and large, federal courts have upheld the use of chemical castration as a constitutional practice, at this time, as it appears such sanctions are considered treatment rather than criminal punishments (Scott and Holmberg, 2003).

It was also during the mid-1990s that states considered enacting civil commitment statutes to indefinitely detain sex offenders at high-risk of reoffending. Recall that an earlier generation of civil commitment emerged in the early part of the 20th century, as part of the sexual psychopathy statutes. However, with its reemergence in the 1990s, the law was challenged in the federal courts. In 1997, the U.S. Supreme Court heard the case of Kansas v. Hendricks and ruled that civil commitment was not unconstitutional because its primary objective is to treat, not punish, the offender. In that decision, the Court concluded that states have the right to enact statutes that are designed to protect citizens from dangerous offenders (Wright, 2008).

Concerned that convicted sex offenders reoffend soon after release, during the latter part of the 1990s states began to implement residency restriction laws that prohibited sex offenders from living within a certain distance of places children congregate, such as schools, school bus stops, playgrounds, or daycare centers. Boundary restrictions ranged widely from state to state to a minimum of 500 feet to a maximum of over 2,000 feet. Premised on the belief that sex offenders prey on victims that live in close vicinity to them, the legislation soon spread as states
across the country began to enact such laws (Meloy, Miller, and Curtis, 2008). We move now toward discussing sex crime laws in the 2000s.

**Sex Crime Laws Today: An Assortment of Policies**

One of the more striking features about today’s policy landscape is the diversity of laws and initiatives that exist. These include: sex offender registration, community notification, residency restrictions, chemical castration, electronic monitoring, Halloween restrictions, policies requiring sex offenders to display a special permit on their licenses, and sex offender lifetime supervision (Wright, 2008). Similar to prior developments in the 1990s, the addition of these policies appears to be motivated, in part, by high profile child abduction and murder cases, like that of Jessica Lunsford.

Jessica Lunsford was kidnapped from her home in Homosassa, Florida in 2005. Her abductor, John Couey, a twice convicted sex offender, failed to register with law enforcement in his community. Couey kept Jessica alive for days and raped her repeatedly, before finally burying her alive in his backyard. The case brought national attention to the failure of states to effectively monitor sex offenders living in the community. Florida legislators, along with assistance from Jessica’s father, Mark Lunsford, developed and enacted the Jessica Lunsford Act in 2005 and since then, forty-two other states have considered adopting similar laws. The law requires thorough background checks of school employees that may come into contact with children (Couey was a mason at Jessica’s school), more stringent monitoring of sex offenders, increased penalties for sex offenders who fail to register in their state, and other requirements (Sample, 2006; Wright, 2008).

Other recent developments include the Adam Walsh Child Protection and Safety Act (2006), which was passed in memory of Adam Walsh, who was kidnapped from a Florida mall and murdered in 1981. This new piece of legislation expands the scope of crimes covered by state sex offender registries, makes failure to register with a state agency a federal crime, and includes provisions to create a national sex offender database by 2009 (Appelbaum, 2008).

Currently, across the nation several other types of sex crime policies have flourished. For example, states continue to enact and expand sex offender residency restrictions, practice civil
commitment and chemical castration for repeat sex offenders, and have recently developed gateway laws, or legislation aimed at identifying future sex offenders (i.e., offenders that have not yet committed sex offenses, but may be at increased risk of doing so; see, e.g., Sample and Bray, 2003). Critics of these laws charge that they are premised largely on misconceptions about the nature of sex crime and sex offenders. To take just one example, consider a rationale behind the nationally implemented sex offender registry and community notification laws. One assumption of these laws is that sex assaults are often perpetrated by strangers living in the community. However, the bulk of empirical research suggests that most sex crime victims (as high as 85 percent) are assaulted by familiar perpetrators (Terry, 2005). It is unclear if the many other sex crime policies that we have today rest on theoretical foundations or whether they too make assumptions about the nature of sex crime and offenders that do not appear to be supported by extant research. Against this historical backdrop, it is also unclear what explains the emergence of these laws and whether they are, or are likely to be effective, in reducing sexual offending and victimization.
CHAPTER 3

DATA AND METHODS

This dissertation seeks to contribute to scholarship on and debates about sex crime policies by examining their emergence and effectiveness, or likely effectiveness. To this end, I will explore several research questions using a variety of theoretical perspectives and a range of methodological approaches. For that reason, I use several different methodological approaches and sources of data. Here, I briefly summarize the data and analytic strategies. Each of the chapters provide more detailed information about the data and methods. Tables and figures from each analysis are located at the end of each substantive chapter.

Chapter 4

Clearly, every state across the nation has adopted some type of sex offender law. It is also the case that a diverse range of laws exist. In reviewing the literature, seven types of laws can be distinguished—sex offender registries, community notification, residency restrictions, civil commitment, lifetime supervision, sex offender driver license notation requirements, and castration laws. However, not every state has enacted each of these laws. In addition, the specific contours of the individual laws can vary considerably. The goal of this chapter is to explore variation across states, and also variation within specific types of laws. To undertake such an analysis, a recent listing of state sex offender laws is needed. One such source exists. Velázquez (2008) published a comprehensive report that details many of the types of sex offender laws enacted across the country, including an appendix that describes specific state statutes. However, her work did not include specific state information about chemical castration and driver’s license notation laws. To examine those laws, I use National Conference of State Legislatures (NCSL) reports and specific state statutes. The chapter will draw on these sources and describe the range of sex crime laws and the variation across states and within the content of these laws.
Chapter 5

This chapter draws on scholarly work and theoretical accounts, specifically those that have been used to explain the outbreak of witch hunts (Erikson, 1966; Jensen, 2007), to examine whether these frameworks also explain the proliferation of sex crime laws in the mid-1990s. First, it examines support for the assertion that sex offenders are among America’s “newest witches.” Second, it reviews two well-known and diverse theories about witch hunts. Third, the chapter applies these theories to known facts about sex offenders and sex offender laws. Next, it describes the influence of other social factors, such as the advent of the internet, in the emergence of sex crime laws in the last twenty years.

Chapter 6

This chapter examines three prominent sex crime policies—sex offender registration and community notification, residency restrictions, and castration of sex offenders and the extent to which they accord with theory, logic, and prior research. I focus on these policies because they are highly controversial, far-reaching, and are among the laws most widely implemented across the country. Analyses consist of developing various causal logic models and analyzing the causal pathways by which sex offender policies are supposed to achieve their stated goals.

Chapter 7

Here, I examine the extent to which the public supports executing specific types of violent offenders, with a focus on explaining public perceptions about sex crime and sex offenders. The data used in this study were collected by the Minneapolis Star Tribune in August of 1991 using telephone interviewing. They are housed in the Roper Center for Public Opinion Research data archives under the name, “The Minnesota Poll # 1991-AUGNAT: Crime and Sex Offenders.” The national survey sought to gauge public opinion about sex crime, sex offenders,
and sex crime policy. The data (n=1,101) are generally representative of the U.S. population in 1991 and have not been used in prior research.

Using this data, I examine three dependent variables: support for the death penalty of convicted murderers, sex offenders convicted of crimes against adults, and sex offenders convicted of crimes against children. Chapter 7 more fully describes the measures that will be used in this analysis, the justification for including them, hypotheses about their effects, and their coding. For several of the variables, I include expectations about whether there are specific instances where views may differ depending on the type of offender being considered for the death penalty.

Chapter 8

This chapter first assesses whether criminological theory and research (or assumptions about what is known and what is not known about sex crime and offenders) are cited in U.S. Supreme Court’s decisions about sex offender laws. It then discusses the Court’s understanding of criminological theory and research. Finally, it examines whether the Court’s assessments (as reflected in its majority decisions) accord with what has been established in the scholarly literature. The analyses focus on several Court decisions involving a diverse set of sex offender laws.
CHAPTER 4

“IT VARIES FROM STATE TO STATE”:
THE TYPES OF SEX CRIME POLICIES NATIONALLY

Introduction

In recent decades, every state has enacted some type of sex crime law. Many accounts depict the emergence of these laws as part of a greater “get tough” sentencing philosophy (La Fond, 2005; Winick, 1998). Yet, it may not be accurate to say all states have uniformly gotten tough on sex offenders. Put differently, state laws may vary considerably, both across the different types of laws, and also within types of policies. Few studies have examined such variation. Juxtaposed against this research gap, this study examines two questions. First, to what extent is there variability across types of sex crime laws? Second, to what extent is there variation within types of laws?

Several implications flow from exploring these questions. One implication involves being able to accurately characterize sex crime laws in America. The focus on these laws nationally requires understanding of the types of laws used in different states and the extent to which the content of these laws varies. At the same time, if we want to describe diverse sex crime laws at the state level, we need to examine individual state efforts. Moreover, preliminary investigations have found the content of these laws to differ substantially—suggesting important implications for assessing the punitiveness of these laws and their variants.

A second implication is that such studies may assist with assessing the theoretical foundation of these laws. If, for example, a state requires community notification of all sex offenders, regardless of recidivism risk, it precedes with a logic that differs substantially from the logic of a statute that requires the notification of only high-risk sex offenders. The former assumes that all sex offenders have an equal risk of recidivism, regardless of their prior offense history; the latter that only the highest-risk sex offenders constitute a threat to the public.

Finally, substantial variation across states and within the types of laws may have profound implications for efforts to evaluate the impacts of these laws and for determining the
generalizability of findings from other states. For example, studies examining the effect of a law in a particular state that has adopted multiple (say, five) sex offender laws would have to account for the effects of the four other laws. Doing so would entail a substantially different type of evaluation than one that examines the effect of any one law in a state that has only the one sex offender law. Separately, uncovering variability highlights the need for caution in generalizing the effects of one policy to a variant of that policy. Consider, for example, an evaluation that shows a residency restriction prohibiting offenders from living within 500 feet of a school reduces recidivism in one state. It does not necessarily follow that we would detect a similar impact in a different state that has a 2,000 feet residence restriction. Put differently, substantial variability in sex crime laws would underscore the need for the use of caution when generalizing the effects of particular studies.

Building off prior observations, the goal of this study is to describe variability across states and within specific types of policies. In particular, the chapter focuses on categories of seven laws—sex offender registries, community notification, residency restrictions, civil commitment, lifetime supervision, sex offender driver license notation requirements, and castration laws—that have consistently garnered attention from the scholarly community and have been adopted by at least some states. Drawing on state statutes from each of the 50 states, this chapter documents whether states have these laws and the extent to which there is variation within these types of laws. In particular, the chapter discusses the emergence of sex crime laws, describes the study, presents findings, and identifies several implications for theory, research, and policy.

**Background**

Sex crime invokes much fear among the populace and is a crime that has lasting effects on communities, victims, and offenders (Wright, 2008). In part to respond to public concern about sexual victimization, and perhaps more generally to appear tougher on crime, most states have adopted policies aimed primarily at increasing penalties for sex offenses. Many of these policies are relatively new and have been critiqued as being “hastily passed and not based on scientific evidence, but on emotional reactions to high profile, violent, disturbing cases” (Fortney
et al., 2007:1). Despite these scholarly criticisms, federal courts have affirmed many of these laws, allowing states wide latitude to develop and implement a plethora of sex crime policies (Scott and Gerbasi, 2003; Wright, 2003). Even so, there has been no systematic assessment of these laws.

A New Era of “Get Tough” Legislation?

Is it appropriate to say all states have gotten tough on sex offenders? Some scholars assume these types of laws are created equal. Levesque (2000:331) claimed that “much like other crimes, sex crimes against children have been part of efforts to impose mandatory sentences, determinate sentencing, and ‘truth in sentencing.’” Moreover, scholars have noted that nationally a number of laws have been enacted exclusively targeting sex offenders. To illustrate, Miethe, Olson, and Mitchell (2008:205, 224) recently commented that sex offenders are “a major focus of current crime-control policies . . . contemporary public policy involving sex offenders includes offender registries, community notification campaigns, civil commitment laws, chemical castration, and increased sentences for sexual offenses.”

Obscured by these depictions of sex crime laws in America, is the fact that there appears to be variation both across states and also within the laws themselves. Consider, for instance, the variation in the number of sex crime laws adopted by states. Accounts suggest some states have enacted a wide range of laws, whereas others have implemented only federally required laws (Velázquez, 2008). There is also considerable variation within types of laws. A cursory glance suggests there is a wide range of residency restrictions for sex offenders. In some states, sex offenders are prohibited from living within 500 feet of a school or school bus stop. In other states, sex offenders may not live within one mile of places children congregate (Levenson and D’Amora, 2007). These two examples bring us back to the two questions this study will examine. First, to what extent do states vary across the types of sex crime laws? Second, to what extent is there variation within the content of these laws?

In canvassing the literature, one can identify seven types of laws—sex offender registries, community notification, residency restrictions, civil commitment, lifetime supervision, sex offender driver license notation requirements, and castration laws. Not all exist in every state; some appear to be more prevalent than others (registries), some less (castration laws). Here, I describe these laws.
**Sex Offender Registries.** Two pieces of federal legislation are primarily responsible for the emergence of sex offender registries. The Jacob Wetterling Act (1994) and Megan’s Law (1996) require that states develop sex offender registries and notify the public about sex offenders living in the community or risk losing ten percent of their Byrne Formula funding for criminal justice programs (Center for Sex Offender Management, 1999). Although some accounts suggest that the registries vary from state to state, the process typically requires that offenders register with local agencies such as the state police, department of public safety, office of the attorney general, or the department of corrections. Depending on the specific state statute, offenders may be required to register for a period of ten years or less to life (Lees and Tewksbury, 2006).

**Community Notification.** Community notification laws are closely related to registries. Similar to registries, community notification laws appear to vary from state to state. Typically, the public is notified about sex offenders living in the community via a state website that lists sex offenders by name, posts their pictures, and in some cases, displays their addresses (Tewksbury, 2005). In a comprehensive study of sex offender laws in the U.S., Velázquez (2008) reported that community notification methods may also include press releases, flyers, phone calls, door-to-door contact, and neighborhood meetings coordinated by law enforcement. In some instances, registration is only required for high-risk sex offenders. Some states assign offenders to one of three risk levels and notify the public according to the recidivism risk of the offender. In contrast, other states rely on a more liberal community notification approach, publicizing the location of all sex offenders without regard to recidivism risk.

**Residency Restrictions.** Unlike sex offender registries and notification laws, states do not lose federal funding if they decline to enact residency restrictions. Based on the premise that sex offenders have high rates of recidivism and strike near places children congregate, these laws were enacted to prohibit sex offenders from residing in close proximity to schools, school bus stops, parks, daycare centers, and other locations children frequent (Mercado, Alvarez, and Levenson, 2008). Law enforcement and other state agencies (e.g., department of safety) are typically responsible for ensuring that certain offenders do not live within close vicinity of prohibited areas that are outlined in the law (Tewksbury and Levenson, 2007). States differ in the type of boundary restriction. Boundary restrictions can range from 500 feet to over 2,000 feet (Levenson and D’Amora, 2007).
Civil Commitment. Civil commitment is also a sanction that states have implemented in the past two decades to respond to concerns about sexual recidivism. Sex offender commitment is “generally a multistep process and is similar across states” (Levenson, 2004:639). The law requires first that certain high-risk offenders undergo psychiatric evaluation. If found to meet certain criteria, offenders are required to stand trial by a judge or jury. If the offender is committed, he or she is held in confinement until a clinician finds the offender is no longer a threat to the community.

Lifetime Supervision. Lifetime supervision is a fairly recent advancement in sex crime legislation. Developed primarily to address repeat offending, these laws require that correctional authorities monitor high-risk sex offenders for the duration of their lifetimes (Nieto, 2004; Petersilia, 2007). Colorado recently implemented the Lifetime Supervision Act. In a state report, the Colorado Department of Corrections (2002:21) concluded that “while the legislation acknowledges, and even emphasizes, that sex offenders cannot be ‘cured,’ it also recognizes that the criminal sexual behaviors of many offenders can be managed . . . comprehensive sex offender treatment and carefully structured and monitored behavioral supervision conditions can assist many sex offenders to develop internal controls for their behaviors.”

Driver’s License Notation. Several states have recently enacted laws that require sex offenders to display a special driver’s license notation stating their registration status (Chaffin, 2008). These laws were developed and implemented, in part, to address concerns that states failed to update their registry records once offenders moved to different jurisdictions (Hawkins, 2006). Driver’s license-related screening “could, in concept, help improve the level of compliance with state sex offender registration requirements as well as enhance monitoring” (Government Accountability Office, 2008:30). The report further noted that implementation of the law is key to its success. If designed properly, this practice could “prevent sex offenders in one state from evading detection simply by moving to another state” (p. 30).

Chemical Castration. In an attempt to reduce sexual violence, some states have experimented with policies designed to reduce biological urges to sexually offend. Typically, castration laws require certain types of male offenders (generally, sexual recidivists) to receive injections of synthetic hormones to reduce sexual arousal (Scott and Holmberg, 2003). Some states allow eligible offenders to choose chemical castration in lieu of other types of sanctions. A handful of states permit offenders to elect surgical castration as a permanent solution instead.
of the reversible chemical castration approach. Researchers generally agree that “castration treatment should always include a cognitive-based psychotherapy approach” (Meyer and Cole, 1997:8-9).

The Present Study

It clearly is the case that every state has passed some type of sex offender law. It is also the case that a range of laws exist. However, it remains unclear if the assessment that every state has uniformly enacted many laws is correct. Further significant questions exist about the variability within these types of laws. The goal of this study is to explore variation across types of widely implemented sex offender laws, and also variation within the content of these laws.

What is needed to undertake such a study is a comprehensive review of state statutes. Fortunately, Velázquez (2008) recently published a comprehensive report describing the types of sex offender laws enacted across the country; included in this publication was an extensive appendix listing detailed information about specific state laws. Missing in her report was information about chemical castration and driver’s license notations. For that information, other reports exist. Using this data and a variety of other resources, such as National Conference of State Legislatures (NCSL) publications about chemical castration and driver’s license notations, and specific state statutes, the chapter will investigate statutes from every state and describe the range of sex crime policies and examine whether variation exists across states and within these laws. By drawing on these sources, it is possible to identify whether each state has enacted these types of laws and the content of these laws. Below, we begin by first investigating whether each state has these laws and the types and the intensity of these laws. Then, we turn to variation within the content of these laws.
Variation across States

We begin first by examining these seven laws and the variation across states and then move to exploring the intensity of these laws. Exploring the variation across states can assist with efforts to accurately characterize sex crime policies nationally and for highlighting the level of experimentation among states in responding to sex crime. Several patterns emerge from table 4.1 (located at the end of the chapter). Indeed, it is evident that variation exists within states and that there is variability in the types of sex crime laws they have.

Second, we see that 100 percent of states (n=50) have enacted sex offender registries and community notification laws. What accounts for this pattern? There is actually a straightforward explanation. In the 1990s, the federal government enacted legislation requiring that states enact sex offender registries and community notification laws or risk losing federal funding for criminal justice programs (Welchans, 2005). This development is of interest for at least two reasons. In looking at sex offender registries and community notification we cannot view these laws as state endeavors. Perhaps of greater interest is exploring other types of laws not mandated by the federal government.

It is quite clear that several states have enacted more than the two federally required laws. The number of laws enacted by states range from a minimum of two laws to a maximum of six laws. Notably, no state has enacted all seven laws. However, some states have enacted close to that number. For example, Texas and Florida stand out as states that have enacted six different laws. When examining the types of laws states have enacted, inspection of table 4.1 shows that nearly two-thirds of states (n=33) have enacted sex offender residency restrictions. Those laws adopted less so include civil commitment provisions for sex offenders (38 percent, n=19), lifetime supervision laws (28 percent, n=14), driver’s license restrictions (22 percent, n=11) and chemical castration treatment (16 percent, n=8). A handful of states, such as Wyoming have only adopted the first two types of laws and no others.

Table 4.1 also presents the geographic regional information about states that have adopted sex crime laws. Based on the premise that significant variations in penal policy exist regionally (see Borg, 1997; Gottschalk, 2006), analyses explored whether the South, for instance,
adopted more laws than other regions, such as the Northeast. Inspection of table 4.1 shows that indeed, the South has the greatest number of sex crime laws (n=65), whereas the Northeast has the least number of laws (n=26). The Midwest and West regions are largely similar. Examination of table 4.1 reveals that each of these two regions has adopted forty-seven sex crime laws. Also striking in table 4.1 is that all states in the South have enacted residency restrictions, whereas no states in the Northeast region have these laws. Analyses presented in table 4.1 also sought to identify states with the greatest number of laws. Here, no clear theme emerges—the states with the greatest number of sex crime laws (at least five) are Arizona, California, Florida, Illinois, Louisiana, Oregon, Texas, West Virginia, and Wisconsin. Notably, these states can be found throughout the U.S., indicating no clear-cut regional culture of punitiveness. Besides the above patterns, inspection of the table shows that there is much variation within states even in the same geographical region.

Let us turn now to a focus on the intensity of these laws. It is clear that some states have been more active in adopting sex crime laws than others. Federal law requires that states implement sex offender registries and community notification policies or risk losing federal funding for criminal justice programs (Beck and Travis, 2005). Thus, at a minimum, all states have adopted at least two sex offender laws. However, as inspection of figure 4.1 (presented at the end of the chapter) suggests, several states have gone beyond this federal requirement. We see in the figure that most states (90 percent) have enacted more than two sex crime laws. Over half of states (56 percent) have enacted more than four sex crime laws. Notably, at least ten percent of states have only adopted the federally required sex crime laws.

**Variation within the Content of Sex Crime Laws**

We move next to investigating the extent to which there is variation within the content of these laws. Determining the extent of variability within specific types of laws has many implications. Such examination can assist with developing accurate characterizations about the state of sex offender laws in America, assessing the theoretical foundation of these policies, undertaking empirical evaluations of them, and not least, underscoring the need for caution when generalizing the effects of one law to a variant of that law.

Clearly, there is considerable variation within these laws. Inspection of table 4.2 shows that in all but one state (Colorado), the length of sex offender registration ranges from ten years
to life. Specifically, thirty-six states have a ten to fifteen year length requirement for a range of sex offenders. Eleven states mandate that certain sex offenders register for sixteen to twenty-five years. Forty-eight states require specific types of sex offenders (e.g., those that convicted of crimes against children) to register for life. Notably, eleven states, including Georgia, require all registered sex offenders to register for life (i.e., the state statutes make no clear distinction between offender types). Not shown in table 4.2 is that three states—Arizona, Kansas, and New Hampshire—have special juvenile exemptions in which youth sex offenders are required to register for significantly shorter durations (e.g., once they reach age 25) than adult sex offenders.

Federal law requires that states not only develop and implement sex offender registries, but that they also notify neighborhoods about sex offenders released into communities. As part of this study, analyses presented in table 4.3 examined how notification actually occurred. I found that notification laws vary in a) how they are carried out (internet registries, flyers, neighborhood meetings, e-mail, telephone calls) and who they serve (all members of the public, only those living in close vicinity to registered sex offenders), and also b) who they affect (all registered sex offenders, low-level offenders).

Notably, all states have developed internet registries that list the names and addresses of convicted sex offenders. Some states also disseminate information about offenders via flyers, community meetings, and e-mail. State sex offender registry websites are generally available to everyone. Some states, such as Kentucky, notify citizens via telephone about sex offenders living in close vicinity to their residences. Other states, such as Louisiana, use e-mail to notify citizens living in close proximity to convicted offenders.

A last observation—as inspection of table 4.3 shows—is that most states disseminate information about all types of registered sex offenders. Eighteen states (36 percent) only provide information to the public about high-risk offenders. For example, Vermont’s community notification law requires that information be released only about sex offenders convicted of aggravated sex crimes and sex crimes against children. One state (Idaho) publicizes identifying information only about all adult registered sex offenders. Overall, most states (64 percent, n=32) publicize personal information about all registered sex offenders. For example, North Carolina’s community notification statute requires public notification of virtually all sex offenders—those considered low, medium, and high-risk.
We now turn to the third sex crime policy examined, residency restrictions. Once again, variability emerges as a prominent theme. Table 4.4 describes the boundaries in feet of these restrictions. What is striking is that some states have twice the distance in length of residency restrictions. The interval cut-offs are used to highlight the variability in these laws. Further examination of the table shows that seventeen states have no such restrictions. Of the 33 states that do, eight states, such as Idaho, have enacted residency restrictions that range from 500 feet to 1,499 feet. Twelve other states, like Florida, prohibit sex offenders from living within 1,000 feet to 1,499 feet of specific locations (e.g., schools). There is only one state, Mississippi, that has enacted a 1,500 feet restriction. Many states have gone even beyond this range. Four states—Alabama, Arkansas, Iowa, and Oklahoma—have adopted 2,000 feet restrictions. California has the most restrictive law. In that state, sex offenders convicted of crimes against children are prohibited from living within one mile (5,280 feet) of an elementary school.

A smaller number of states have residency laws that do not fit easily in the above categories. For example, Minnesota and Oregon have general residency restrictions in which the exact boundary restriction is determined by local authorities (such as the county or city). In addition, three states have a residency restriction that can be described as other. These laws include restrictions that do not apply specifically to the public. For instance, Alabama and Utah statutes require that convicted sex offenders not live within 1,000 feet of their victims’ residences. South Carolina law requires that sex offenders not reside in campus student housing at a public institution of higher learning supported in whole or in part by the state.

Also examined in table 4.4 was whether residency restrictions specifically target sex offenders convicted of crimes against children. Close to 30 percent of states that have this policy apply the law exclusively to offenders convicted of crimes against children (see also, Meloy et al., 2008). By contrast, the other states make no distinction between offenders. This finding is striking because residency laws typically prohibit offenders from living near places children frequent (e.g., schools, playgrounds).

The fourth policy examined here, civil commitment, can be more easily generalized. As Levenson (2004:639) noted, the process is largely “similar among states.” With few exceptions, a judge or jury must find the offender “sexually violent” or “sexually dangerous” within the state’s definition of the term. Approximately 38 percent of these state statutes (n=14) describe the length of confinement for sex offenders as “indeterminate.” All statutes list eligible sex
offenders as needing to suffer from a “mental abnormality,” or “personality disorder,” and/or listed as “sexual predators” to be eligible for civil confinement. For instance, in Massachusetts, only sex offenders that “suffer from a mental abnormality or personality disorder that makes them more likely to engage in sex offenses” are eligible for civil commitment.

Turning now to the fifth law, sex offender lifetime supervision, here again this law can be easily summarized. By and large, states have similar lifetime supervision statutes. Almost all of these laws target repeat or high-risk sex offenders. Among the states that have this law in place, almost half require that sex offenders convicted of crimes against children receive lifetime supervision upon release. For example, Arizona law allows that in cases in which probation is an available sentence for certain felonies against children the probation term ordered may be up to and including life. Some of these statutes (n=4) contain specific language that permits offenders to petition the court for release of lifetime supervision after a set period of time. Wisconsin, for instance, “provides procedures for petition for termination of lifetime supervision” (National Conference of State Legislatures, 2003:2).

In recent years, there has been an emphasis on requiring sex offenders to obtain either special identification cards or to bear driver’s licenses with special annotations. Few states have these laws and among those that do, virtually all states require that sex offenders obtain a special identification card or receive specific notations on their driver’s license alerting officials to their registration status. In Florida, for example, registered sex offenders are required to have either the marking “943.0435, F.S.” (the specific state statute concerning registered sex offenders) or “775.21, F.S.” (the state statute describing Florida’s sexual predator law) imprinted on their driver’s license or identification cards. Similarly, in Delaware, the identification cards of offenders are stamped with a “y” detonating their registered sex offender status (National Conference of State Legislatures, 2008a).

Finally, but not least, castration laws are examined. Here, we see little variation within this type of law. Most of these laws require chemical castration as a provision of release from confinement and in most cases, chemical castration treatment via MPA is required for release. Virtually all of these statutes apply to repeat sex offenders. For instance, the National Conference of State Legislatures (2008b:1) reported that Florida law “makes chemical treatment mandatory for a second conviction of sexual battery.” California uses similar language in its castration statutes. About half of the states that use chemical castration (n=4) require that
offenders with child victims also undergo the sanction. Notably, at least two states (Texas and Louisiana) allow sex offenders to choose surgical castration in lieu of chemical castration. However, both statutes “prohibit a judge from requiring a defendant to undergo such a procedure as condition of community supervision” (National Conference of State Legislatures, 2008b:2).

**Summary and Implications**

**Summary**

Scholars have characterized the 1990s as the “decade of the predatory sex offender” (Nash, 1999:45). In this time frame, nearly every state enacted some type of sex crime law. Although national estimates of both forcible rape and child sexual abuse have largely remained stable or decreased over the last twenty years, sex crime laws have flourished during this same time period (Bureau of Justice Statistics, 2006; Finkelhor and Jones, 2004a). Today, it appears as if a wide range of these laws exist nationwide, and that states have “gotten tough” on sex offenders. The reason for this intense policy focus is not entirely clear. One explanation is that the emergence of these laws fits a general punitive movement toward offenders (La Fond, 2005). However, virtually no studies have examined whether all states have uniformly gotten tough on sex offenders. To address this research gap, this study sought to address two questions. First, to what extent is there variability across states? Second, to what extent is there variation within the content of these laws?

Starting first with exploring the variability across types of sex crime laws, we see some patterns. The first pattern is that variation exists across states. In examining the types of laws states have adopted, analyses found that at a minimum, states are required by the federal government to adopt two sex crime laws—sex offender registries and community notification laws. Given this requirement, and to better identify state-level efforts, the study also examined five other types of laws that states are not required to enact—residency restrictions, civil commitment, lifetime supervision, driver’s license restrictions, and castration laws. Some significant findings emerged. First, the number of laws enacted across states range from a minimum of two laws to a maximum of six laws. Second, no state has adopted all seven laws.
Most notably, the overwhelming majority of states (90 percent) have enacted more than the two federally required laws.

In examining variability across states, the study also explored regional adoption of sex crime laws. Mixed support exists for the assertion that some regions have “gotten tougher” on sex offenders than other regions. Let us begin first with observations that support this contention. Using as an indicator of punitiveness, the number of laws regions have adopted, analyses revealed that the South had the greatest number of sex offender laws, whereas the Northeast had the fewest number of laws. Another notable finding was that all states in the Southern region have residency restrictions in place, whereas no states in the Northeast region have enacted residency restriction laws. By contrast, states with the greatest number of sex offender laws can be found throughout the nation—suggesting no clear pattern of regional punitiveness.

The study also explored the intensity of sex offender laws. Most states have adopted a wide range of sex crime laws. Given that federal law mandates that states develop sex offender registries and community notification policies, at a minimum, all 50 states have adopted at least two sex offender laws. However, most states have gone well beyond federal requirements and have enacted additional laws. As evident from inspection of figure 4.1, only a small minority (ten percent) of states have enacted only the two federally required laws. The overwhelming majority (90 percent) has adopted more than these laws.

Turning now to our second focus—the extent to which variation exists within types of laws—it is clear that depending on the law, considerable variation exists within the content of these policies. Although all states are required to enact sex offender registries and community notification laws, variability exists within these statutes. In particular, states differ remarkably in the length of registration and also in how they carry out community notification. For instance, some states require lifetime registration, whereas others limit registration to ten years. Wide variation exists within community notification laws. Over one-third of states report information about only higher-risk offenders, such as offenders convicted of crimes against children. The remaining states provide the community with information about all types of offenders.

When focusing on residency laws, it is clear that wide variability surrounds this policy. Of the states that have this policy, boundary restrictions range widely from 500 feet to over 2,000 feet. There is variation, too, in the types of offenders affected by the residency law. Close to
half of all states in the U.S. have a residence restriction that applies to all offenders, regardless of whether the offense involved a child victim. By contrast, when exploring civil commitment, we see much less variability within this policy. With rare exception, the law targets high-risk and repeat offenders. The commitment process is generally similar as well and involves a psychological evaluation and legal proceedings. Lifetime supervision laws can also be summed up succinctly. Most states limit this sanction to offenders convicted of sex crimes against children and repeat offenders. Similarly, we see less variation when we examine recently enacted driver’s license notations which were enacted to better monitor the sex offender population. Only a small number of states have enacted these laws, and among those that have most require certain types of sex offenders to carry an identification card or bear a driver’s license with a special sex offender notation. Finally, castration laws were examined. Here, too, states have similar laws in place. Most states permit chemical castration for repeat offenders released from prison. Close to half of states reserve the sanction specifically for offenders convicted of crimes against children. In addition, some states have provisions that allow for offenders to choose surgical castration over chemical castration.

Implications

Several implications flow from study findings. First, not knowing enough about the variability in the range of sex crime laws nationally and variability within the content of these laws precludes an accurate characterization of sex crime policies nationally. At the same time, exploring these laws across the country emphasizes the level of experimentation among states in responding to sex crime. In addition, as the study found, the content of these laws vary substantially—suggesting in part important implications for assessing the severity of these laws and their variants. Moreover, findings presented here have implications for assessing the theoretical foundation of these laws. Finally, and perhaps, most salient, is that studies of this sort have the potential to inform research evaluations devoted to examining the impacts of these laws, and also highlight the need for caution in generalizing the effects of one policy to a variant of another policy.

Beginning first with implications for accurately characterizing these laws, consider several observations. There are a significant number of states (90 percent) that have enacted several sex offender laws. There are, too, a number of other states (10 percent) that have not
gone beyond the government mandate to develop registries and community notification laws.

Further exploring state and regional variation may provide more accurate depictions about sex crime laws in America. Clearly, although a substantial proportion of states have enacted laws in addition to the federally required laws, at least ten percent of states have not gone beyond the mandate. Future studies should pursue efforts to evaluate why these states have not adopted legislation beyond sex offender registries and community notification laws.

In addition, the study found some support for the hypothesis that laws vary among geographical region. The Southern region had the greatest number of sex crime laws. By contrast, compared to all other regions, the Northeastern region had the fewest number of sex offender laws. Another clear regional pattern emerged when examining residency restrictions. Here, findings show that all states in the South have enacted these laws, while no states in the Northeast had these laws in place. Also examined was whether there were any regional patterns among the most punitive states. No clear theme emerges—the states with the greatest number of sex crime laws are Arizona, California, Florida, Illinois, Louisiana, Oregon, Texas, West Virginia, and Wisconsin. Notably, these states are located throughout the country.

One limitation of this study was that it used only the number of sex crime laws in a given region as an indicator of punitiveness and it did not investigate other measures of “get tough” justice (e.g., the number of offenders imprisoned for sex crimes). This line of research may be especially fruitful to pursue as Greenberg and West (2001:637) argue that “regions outside the South have been catching up to the South in imprisonment.” Thus, future studies should build on study findings presented here and further explore regional variation in the emergence of sex offender reforms. Such efforts have the potential to assist with developing more accurate characterizations about sex offender laws in the U.S.

Second, studies of this sort may also assist in assessing the theoretical foundation of these laws. For instance, if a state requires community notification of all sex offenders, regardless of recidivism risk, this variant of the notification law assumes something much different than a statute that requires the notification of only high-risk sex offenders. Namely, the former assumes that all sex offenders have an equal risk of recidivism, regardless of their prior offenses.

Consider, too, the variability in residency restriction laws. A majority of states require that all types of sex offenders, even those that have not committed crimes against children, to abide by the residency law. What is odd is that these laws, with rare exception, prohibit offenders from
living near places children frequent, such as a school, school bus stop, playground, or park. The theoretical logic of this variant of the law assumes homogeneity among sex offenders. Yet, experts such as Edwards and Hensley (2001) have reported that offenders that prey on children have significantly different patterns of offending than offenders that prefer adult victims. Namely, the former practice such techniques as “grooming” child victims to gain their trust (p. 94). Thus, restricting the residences of these offenders may assist with efforts to prevent sexual victimization among children, but it is unclear whether the law will affect adult victimization.

What is also variable about this law is the distance of the boundary restriction. Nationally, restrictions range from 500 feet to over one mile. Notably, no empirical evidence exists to point to the ideal boundary restriction. A state study of registered sex offenders living in Colorado found that offenders were randomly located throughout the state “and were, in fact, not usually within 1,000 feet of a school or child care center” (Colorado Department of Public Safety, 2004:30). A study of Minnesota’s residency law reported similar findings (Minnesota Department of Corrections, 2003). Thus, we are left with little guidance for developing the most effective boundary restriction.

Furthermore, there is evidence these laws may do more harm than good. Emerging research suggests that highly restrictive residency laws “are believed to adversely affect many of the factors typically associated with the successful community reentry of offenders . . . these factors include stable housing, stable employment, strong informal social networks, and community reintegration” (Meloy et al., 2008:212-213). Under this logic, the more restrictive version of the law may actually increase rates of recidivism among affected offenders (Levenson and Cotter, 2005). Statutes that are more restrictive and prohibit offenders from living within one mile of places children congregate assume a different logic from the laws with shorter boundaries—essentially that sex offenders will commit crimes in even, relatively less immediate vicinity to places children frequent. Future studies investigating the effects of residency restrictions would have to take into the account the very different theoretical logics of each variant of the law.

Finally, and perhaps most importantly, finding significant variation across states and within the types of laws exist has significant implications for research evaluations and for determining the generalizability of findings from other states. Studies examining the effect of any one law in a particular state that has adopted several sex offender laws would have to
account for the effects of the other laws. This endeavor would entail a much different type of evaluation than one that examines the effect of any one law in a state that has only two sex offender laws. Separately, detecting such variability underscores the need for caution in generalizing the effects of one policy to a variant of that policy. For example, if an evaluation shows that requiring sex offenders to register for a period of ten years with state agencies significantly reduces sexual recidivism, it does not automatically follow that requiring offenders to register for the duration of their lifetimes would equally decrease levels of sex crime.

The implications presented above may also assist with policy development. Heeding recommendations from scholars, state legislatures might consider implementing a moratorium on certain sex crime laws until the various effects of the different policies have been identified. This is not a novel practice. Consider current debates about capital punishment. Lawmakers in Maryland and New Mexico are proposing a suspension of the death penalty citing little evidence of a deterrent effect and rising costs associated with the punishment (Urbina, 2009). Similar criticisms have been leveled against sex crime legislation.

In a recent review, Cohen and Jeglic (2007:380) argued that “many of the legal-based methods for dealing with sex offenders lack research on effectiveness or have produced less than promising results.” For example, a recent study exploring whether Megan’s Law had any affect on monthly rape rates in ten states found no consistent or significant effect of the law (Vásquez, Maddan, and Walker, 2008). Other scholars have characterized current sex crime laws as “knee-jerk” and “panic-driven” responses that are unlikely to substantially deter sex offenders (Meloy, Saleh, and Wolff, 2007:433).

Adding to concerns about these policies are their costs. A 2008 report estimated the cost of implementing Megan’s Law in New Jersey at around $555,000 in 1995. By 2007, the annual costs of maintaining the law totaled around $4 million. The authors concluded that “since sex crime rates have been down prior to Megan’s Law and pre and post samples do not indicate statistically lower rates of sexual offending, the high costs associated with Megan’s Law are called into question” (Zgoba, Witt, Dalessandro, and Veysey, 2008:37). Other scholars charge that due to the expense of these laws, the criminal justice system diverts a significant proportion of tax dollars away from fighting other types of crime (Janus, 2000). Given these criticisms, lawmakers might want to consider repealing some types of sex crime laws until their various impacts can be further examined.
Despite scholarly concerns about the efficacy and costs of these laws, in recent years “state legislatures spent an unprecedented amount of time and resources in addressing the behavior of sex offenders” (Sample and Bray, 2003:59). A recent study published by the federally funded Center for Sex Offender Management (CSOM, 2008:1) reported that when asked to list their top ten public policy concerns, state legislators rated “sex offenders and sexual predators” as “number 5.” Notably, concern about sex offenders ranked higher than such issues as “energy and environment” and “the minimum wage.” Notwithstanding the policy focus on sexual offending, “most of these laws, policies, and practices have been implemented without any form of analysis or evaluation of their intended outcome . . .” (Farkas and Stichman, 2002:279).

Many accounts depict the emergence of these laws as part of a greater “get tough” sentencing philosophy (La Fond, 2005). However, it may be misleading to characterize all states as having become uniformly punitive toward sex offenders. Using as a crude measurement, the sheer number of laws adopted, this study clearly found that some states have “gotten tough” on sex offenders. Notably, over half of states have enacted at least four sex offender laws. Ninety percent of states have adopted one additional law beyond the federally mandated sex offender registries and notification laws. Even so, at least ten percent of states have not enacted legislation beyond these federal requirements. When focusing on sex crimes, what this variation suggests is nuanced accounts of the new penology.
The table below shows the sex crime laws, by state and region, as of 2008.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Northeast</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>26</td>
</tr>
<tr>
<td>Connecticut</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Maine</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>New Jersey</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>New York</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Vermont</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>South</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>65</td>
</tr>
<tr>
<td>Alabama</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X X</td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>Arkansas</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Delaware</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>Florida</td>
<td>X</td>
<td>X</td>
<td>X X</td>
<td></td>
<td>X X</td>
<td></td>
<td></td>
<td>6</td>
</tr>
<tr>
<td>Georgia</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>Kentucky</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Louisiana</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>5</td>
</tr>
<tr>
<td>Maryland</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Mississippi</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>North Carolina</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>South Carolina</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>Tennessee</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>Texas</td>
<td>X</td>
<td>X</td>
<td>X X</td>
<td></td>
<td>X X</td>
<td></td>
<td></td>
<td>6</td>
</tr>
<tr>
<td>Virginia</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>West Virginia</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X X</td>
<td></td>
<td></td>
<td>5</td>
</tr>
<tr>
<td>Midwest</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>47</td>
</tr>
<tr>
<td>Illinois</td>
<td>X</td>
<td>X</td>
<td>X X</td>
<td></td>
<td>X X</td>
<td></td>
<td></td>
<td>5</td>
</tr>
<tr>
<td>Indiana</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>Iowa</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>Kansas</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>Michigan</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>Minnesota</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>Missouri</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>Nebraska</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>North Dakota</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Ohio</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>South Dakota</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td>5</td>
</tr>
<tr>
<td>West</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>47</td>
</tr>
<tr>
<td>Alaska</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>Arizona</td>
<td>X</td>
<td>X</td>
<td>X X</td>
<td>X</td>
<td>X X</td>
<td></td>
<td></td>
<td>6</td>
</tr>
<tr>
<td>California</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>5</td>
</tr>
<tr>
<td>Colorado</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Hawai’i</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>Idaho</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Montana</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>Nevada</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>New Mexico</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Oregon</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>5</td>
</tr>
<tr>
<td>Utah</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>Washington</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>Wyoming</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2</td>
</tr>
</tbody>
</table>

N (percent) 50 (100%) 50 (100%) 33 (66%) 19 (38%) 14 (28%) 11 (22%) 8 (16%)
### Table 4.2. Length of Registration for Sex Offenders, by State, as of 2008

<table>
<thead>
<tr>
<th>State</th>
<th>10 to 15 years</th>
<th>16 to 25 years</th>
<th>Life</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>Juveniles</td>
<td></td>
<td>Adults</td>
</tr>
<tr>
<td>Alaska</td>
<td>1st offense</td>
<td></td>
<td>2nd offense or aggravated sex offense</td>
</tr>
<tr>
<td>Arizona</td>
<td>1st offense</td>
<td></td>
<td>2nd offense</td>
</tr>
<tr>
<td>Arkansas</td>
<td>1st offense</td>
<td></td>
<td>2nd offense, sexually violent predators, those convicted of aggravated sex offense</td>
</tr>
<tr>
<td>California</td>
<td></td>
<td></td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Colorado</td>
<td>Class 1, 2, or 3 felony sex offense</td>
<td>Class 4, 5, or 6 felony sex offense</td>
<td>Felony sex assault involving children, sexual assault on a client by a psychotherapist, incest, or aggravated incest</td>
</tr>
<tr>
<td>Connecticut</td>
<td>All registered sex offenders</td>
<td></td>
<td>Those convicted of sexual assault of victim under age 13</td>
</tr>
<tr>
<td>Delaware</td>
<td>Tier 1 sex offenders</td>
<td>Tier 2 sex offenders</td>
<td>Tier 3 sex offenders</td>
</tr>
<tr>
<td>Florida</td>
<td></td>
<td></td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Georgia</td>
<td></td>
<td></td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Hawaii</td>
<td></td>
<td></td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Idaho</td>
<td>All registered sex offenders</td>
<td></td>
<td>Violent and repeat sex offenders</td>
</tr>
<tr>
<td>Illinois</td>
<td>All registered sex offenders</td>
<td></td>
<td>Sexually violent predators</td>
</tr>
<tr>
<td>Indiana</td>
<td>1st offense</td>
<td></td>
<td>2nd offense</td>
</tr>
<tr>
<td>Iowa</td>
<td>1st offense</td>
<td></td>
<td>2nd offense and sexually violent predators</td>
</tr>
<tr>
<td>Kansas</td>
<td>First offense</td>
<td></td>
<td>Second offense, sexually violent predators, and those convicted of sex crimes against children</td>
</tr>
<tr>
<td>Louisiana</td>
<td>All registered sex offenders</td>
<td></td>
<td>Second offense, sexually violent predator</td>
</tr>
<tr>
<td>Maine</td>
<td>Determined by court</td>
<td>Determined by court</td>
<td>Determined by court</td>
</tr>
<tr>
<td>Maryland</td>
<td>All registered sex offenders</td>
<td></td>
<td>Aggravated sex crimes, sex crimes against children under age 12, sexually violent offender</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>All registered sex offenders</td>
<td></td>
<td>Those convicted of two or more sex crimes or of a sexually violent crime</td>
</tr>
<tr>
<td>Michigan</td>
<td></td>
<td></td>
<td>Those convicted of two or</td>
</tr>
</tbody>
</table>

1 Colorado has a five year registration requirement for offenders convicted of misdemeanor sex crimes such as voyeurism.
<table>
<thead>
<tr>
<th>State</th>
<th>10 to 15 years</th>
<th>16 to 25 years</th>
<th>Life</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minnesota</td>
<td>All registered sex offenders</td>
<td>more crimes, sexually violent offense, sex crimes involving victim under age 13</td>
<td>Those convicted of two or more crimes, committed murder during a sex assault, sexually dangerous person</td>
</tr>
<tr>
<td>Mississippi</td>
<td>Misdemeanor sex offenses</td>
<td>Felony sex offenses</td>
<td>Those convicted of crimes against children under age 14, repeat sex offenses, and sexually violent offenses</td>
</tr>
<tr>
<td>Missouri</td>
<td>All registered sex offenders</td>
<td>All registered sex offenders</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Montana</td>
<td>All registered sex offenders</td>
<td>All registered sex offenders</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Nebraska</td>
<td>All registered sex offenses</td>
<td>Offenders who were convicted of an aggravated offense or have prior convictions for sex-related offenses</td>
<td>Offenders who were convicted of an aggravated offense or have prior convictions for sex-related offenses</td>
</tr>
<tr>
<td>Nevada</td>
<td>Tier 1 offenders</td>
<td>Tier 2 offenders</td>
<td>Tier 3 offenders</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>All registered sex offenders</td>
<td>Those convicted of aggravated felonious sexual assault, felonious sexual assault, habitual indecent exposure, offenses against children, and those with a second sex-related conviction</td>
<td>Those convicted of aggravated felonious sexual assault, felonious sexual assault, habitual indecent exposure, offenses against children, and those with a second sex-related conviction</td>
</tr>
<tr>
<td>New Jersey</td>
<td>All registered sex offenders</td>
<td>All registered sex offenders</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>New Mexico</td>
<td>1st sex offense</td>
<td>2nd sex offense</td>
<td>2nd sex offense</td>
</tr>
<tr>
<td>New York</td>
<td>Level 1 sex offenders</td>
<td>Level 1 sex offenders</td>
<td>Level 2 or 3 sex offenders, sexual predators, sexually violent offenders, those convicted of multiple sex crimes</td>
</tr>
<tr>
<td>North Carolina</td>
<td>All registered sex offenders</td>
<td>Sexually violent sex offenders, sex offenders that have committed multiple sex offenses, and those convicted of an aggravated sex offense</td>
<td>Sexually violent sex offenders, sex offenders that have committed multiple sex offenses, and those convicted of an aggravated sex offense</td>
</tr>
<tr>
<td>North Dakota</td>
<td>Low-risk sex offenders</td>
<td>Moderate-risk sex offenders</td>
<td>High-risk sex offenders</td>
</tr>
<tr>
<td>Ohio</td>
<td>Tier 1 sex offenders</td>
<td>Tier 2 sex offenders</td>
<td>Tier 3 sex offenders</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>Those required to register because of an out-of-state offense, level 1 sex offenders</td>
<td>Level 2 sex offenders</td>
<td>Level 3 sex offenders, habitual sex offenders, and those convicted of an aggravate sex offense</td>
</tr>
<tr>
<td>State</td>
<td>10 to 15 years</td>
<td>16 to 25 years</td>
<td>Life</td>
</tr>
<tr>
<td>---------------------</td>
<td>----------------</td>
<td>----------------</td>
<td>-------------------------------------------</td>
</tr>
<tr>
<td>Oregon</td>
<td></td>
<td></td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>1st sex offense</td>
<td>2nd sex offense</td>
<td></td>
</tr>
<tr>
<td>Rhode Island</td>
<td></td>
<td></td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>South Carolina</td>
<td></td>
<td></td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>South Dakota</td>
<td></td>
<td></td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Tennessee</td>
<td>All registered sex offenders</td>
<td></td>
<td>Violent sex offenders and those convicted of more than one sex offense</td>
</tr>
<tr>
<td>Texas</td>
<td>Offenders convicted of prohibited sexual conduct, indecent exposure, online solicitation of a minor and any attempt, conspiracy or solicitation to commit a sex offense</td>
<td></td>
<td>All other registered sex offenders</td>
</tr>
<tr>
<td>Utah</td>
<td>All registered sex offenders</td>
<td></td>
<td>Repeat sex offenders, sex crimes involving children, aggravated sex crimes</td>
</tr>
<tr>
<td>Vermont</td>
<td>All registered sex offenders</td>
<td></td>
<td>Sexually violent predators</td>
</tr>
<tr>
<td>Virginia</td>
<td>All registered sex offenders</td>
<td></td>
<td>Sexually violent offenders</td>
</tr>
<tr>
<td>Washington</td>
<td>Class “a” felony without “forcible compulsion”; class “c” felony</td>
<td>Class “b” felony</td>
<td>Sexually violent offenders, forcible crimes, and sex offenses involving minors</td>
</tr>
<tr>
<td>West Virginia</td>
<td>All registered sex offenders</td>
<td></td>
<td>The offender has one or more prior convictions, is a sexual predator, has committed sex crimes involving children, has a documented mental illness</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>All registered sex offenders</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wyoming</td>
<td>All registered sex offenders</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Table 4.3. Group to which Community Notification Law Applies, as of 2008

<table>
<thead>
<tr>
<th>State</th>
<th>Notification Applies to</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>All juvenile and adult registered sex offenders, where risk is high</td>
</tr>
<tr>
<td>Alaska</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Arizona</td>
<td>More serious (level 2 and level 3) registered sex offenders</td>
</tr>
<tr>
<td>Arkansas</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>California</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Colorado</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Connecticut</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Delaware</td>
<td>More serious (tier 2 and tier 3) sex offenders</td>
</tr>
<tr>
<td>Florida</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Georgia</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Hawaii</td>
<td>More serious (felony) registered sex offenders</td>
</tr>
<tr>
<td>Idaho</td>
<td>All registered adult sex offenders</td>
</tr>
<tr>
<td>Illinois</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Indiana</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Iowa</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Kansas</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Kentucky</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Louisiana</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Maine</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Maryland</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>More serious (level 2 and level 3) registered sex offenders</td>
</tr>
<tr>
<td>Michigan</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Minnesota</td>
<td>More serious (level 2 and level 3) registered sex offenders</td>
</tr>
<tr>
<td>Mississippi</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Missouri</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Montana</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Nebraska</td>
<td>More serious (level 3) registered sex offenders</td>
</tr>
<tr>
<td>Nevada</td>
<td>More serious (tier 2 and tier 3) registered sex offenders</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>Sex offenders convicted of aggravated sex crimes and sex crimes against children</td>
</tr>
<tr>
<td>New Jersey</td>
<td>More serious (tier 2 and tier 3) registered sex offenders</td>
</tr>
<tr>
<td>New Mexico</td>
<td>Sex offenders convicted of aggravated sex crimes and sex crimes against children</td>
</tr>
<tr>
<td>New York</td>
<td>More serious (level 2 and level 3) registered sex offenders</td>
</tr>
<tr>
<td>North Carolina</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>North Dakota</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Ohio</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Oregon</td>
<td>Predatory and sexually violent registered sex offenders</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>More serious (level 2 and level 3) registered sex offenders</td>
</tr>
<tr>
<td>South Carolina</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>South Dakota</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Tennessee</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Texas</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Utah</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Vermont</td>
<td>Sex offenders convicted of aggravated sex crimes and sex crimes against children</td>
</tr>
<tr>
<td>Virginia</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Washington</td>
<td>More serious (risk 3) registered sex offenders</td>
</tr>
<tr>
<td>West Virginia</td>
<td>All registered sex offenders</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>Sexually violent registered sex offenders</td>
</tr>
<tr>
<td>Wyoming</td>
<td>All registered sex offenders</td>
</tr>
</tbody>
</table>
Table 4.4. Residency Restrictions, by State, as of 2008

<table>
<thead>
<tr>
<th></th>
<th>500 to 999 ft.</th>
<th>1,000 to 1,499 ft.</th>
<th>1,500 to 1,999 ft.</th>
<th>2,000 ft.</th>
<th>&gt; 2,000 ft.</th>
<th>General Law&lt;sup&gt;2&lt;/sup&gt;</th>
<th>Other Law&lt;sup&gt;3&lt;/sup&gt;</th>
<th>Child Victim&lt;sup&gt;4&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arizona</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Arkansas</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>California</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Delaware</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Delaware</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Georgia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Idaho</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Illinois</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Indiana</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Iowa</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Kentucky</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maryland</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Michigan</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minnesota</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mississippi</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Missouri</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Montana</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nebraska</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nevada</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Carolina</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ohio</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oklahoma</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Oregon</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Carolina</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>South Dakota</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tennessee</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Texas</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Utah</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Virginia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Washington</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>West Virginia</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

<sup>2</sup> These laws do not specifically list an exact distance, allowing local municipalities to specify a boundary restriction.

<sup>3</sup> Refers to laws that restrict offenders from living within close vicinity to certain types of persons (e.g., victims, college students).

<sup>4</sup> These statutes only apply to offenders previously convicted of sex crimes against children.
Figure 4.1. Percentage of States with Multiple Sex Crime Laws, as of 2008
CHAPTER 5

SEX OFFENDERS—AMERICA’S NEW WITCHES?
A THEORETICAL ANALYSIS OF SEX CRIME LAWS

Introduction

Few theoretical accounts exist that explain the rapid growth of sex crime laws in the 1990s. This proliferation is notable because the emergence and spread of such laws does not appear to reflect trends in sex crime rates. For example, Finkelhor and Jones (2004b:685) reported that from 1990 through 2004, substantiated cases of child sexual abuse in the U.S. declined by almost 50 percent. The country also witnessed decreases in reports of forcible rape among individuals 12 and older. The nation’s forcible rape rate per 100,000 people in 1990 was 41.1, by 2004 that estimate fell to 32.4 (Federal Bureau of Investigation, 2007). Despite these trends, sex offender laws have flourished (Greenblatt, 2006; Palermo and Farkas, 2001).

The recent rise in these laws also bears attention because their emergence does not parallel the appearance of a general “get tough” sentencing movement. Clearly, the 1980s and early 1990s represent an era of “get tough” justice. During this time, the federal government and states greatly enhanced penalties for offending (Garland, 2001; Petersilia, 2000). However, the period of a rapid increase of sex offender laws, which spanned the mid-to-late 1990s, is noticeably distinct from this era. Put differently, the trajectory of the enactment of sex crime laws does not appear to follow the trajectory of “get tough” sentencing laws.

In reviewing the emergence of sex offender laws, it is evident that prior to the mid-90s, few sex crime laws existed. During this era, only a small handful of states required sex offenders to register, virtually no states practiced systematic community notification or restricted where sex offenders could live, and many had repealed their civil commitment laws previously enacted in the 1940s and 1950s. Yet, close to the middle of the decade, “as the crack panic began to lose steam, the sex crime panic was reenergized . . .” (O’Hear, 2008:69). It is clear that the nation “got tough” on sex offenders along a host of dimensions during this time.
In 1994, after the abduction of 11 year-old Jacob Wetterling by a suspected sex offender, the federal government penned the Jacob Wetterling Crimes against Children and Sexually Violent Offender Registration Act, which required states to develop and implement sex offender registries. Two years later, following the abduction and murder of 7 year-old Megan Kanka by her neighbor, a convicted sex offender, Megan’s Law was enacted. In addition to strengthening the Wetterling Act, Megan’s Law mandated that states notify the public about sex offenders living in the community or risk losing funding for criminal justice programs (Center for Sex Offender Management, 1999).

Throughout much of the mid-to-late 1990s, states went beyond these federal requirements. The laws enacted during this time not only focused on harsher sentencing for sex offenders, but have also included increasing sanctions for released offenders. Several states adopted or considered adopting a host of sanctions exclusively targeting sex offenders such as: residency restrictions, civil commitment, lifetime supervision, Halloween restrictions, and laws requiring sex offenders to carry state-issued identification cards (Janus and Prentky, 2008; Meloy et al., 2008; National Conference of State Legislatures, 2003, 2008; Spalding, 1998).

Juxtaposed against these observations, few theoretically informed studies exist that explain the rapid proliferation of sex offender laws. Several scholars have proposed that recent efforts to prevent sexual offending and sexual victimization are sufficiently punitive and extreme enough to constitute a witch hunt. Indeed, some critics have remarked that modern sex offender statutes are “reminiscent of the witch hunts of the past” (Fontana-Rosa, 2001:125). In a recent commentary, Krueger (2007:M1) observed that “demonizing [sex offenders] rather than treating them makes little sense, and passing laws that are tough but mindless in response to political pressure won’t solve the problem either.”

Despite these claims, few accounts have explored the similarities between the emergence of sex crime laws and theories centered on explaining witch hunts. This void provides a unique opportunity to test these theories with a different measure of the dependent variable (the emergence of sex offender laws), and more generally may assist in exploring trends of sex crime laws in recent decades.

This chapter draws on scholarly work and theoretical accounts, specifically those that have been used to explain the outbreak of witch hunts (Erikson, 1966; Jensen, 2007), to examine whether these frameworks also explain the proliferation of sex crime laws in the mid-1990s.
First, it examines support for the assertion that sex offenders are the nation’s “new witches.” Second, it discusses two prominent theories about witch hunts. Third, the chapter applies these theories to known facts about sex offenders and sex offender laws. From there, it describes the potential role of other factors, such as the advent of the internet and changes in media reporting, in the shaping of sex crime laws in the last twenty years. Finally, it discusses theoretical, research, and policy implications for future research. We turn now to examining the assertion that sex offenders are the country’s modern day witches.

**Background: Sex Offenders—America’s New Witches?**

The literal definition of a witch hunt is a search for individuals practicing witchcraft. More broadly, the description has been extended to refer to a legislative and moral targeting of specific behaviors. For instance, in Arthur Miller’s *The Crucible* (1953), the author sought to compare the hysteria about witches in Salem, Massachusetts in the early part of the country’s history with the search for Communists in 1950s America. In this sense, “witch hunt” as Adams (2008) and other scholars have explored (Gross, 2008; Victor, 1998), can refer to an actual hunt for witches, or more generally to a frenzied political search for deviant individuals.

Scholars have identified two distinct patterns that characterize witch hunts. First, there is a sudden, rapid onset of public concern and “passionate fear” about some specific type of behavior (Rapley, 2007:25). In the age of the 1692 Salem witch hunt, there were several swift and punitive responses to punish witchcraft, such as subjecting the accused to “trials by test” and hanging those convicted of practicing witchcraft (Breslaw, 1997). In total, the trials lasted close to one year and hundreds of people were accused or convicted of practicing witchcraft (Erikson, 1966). Given the era, the number of individuals apprehended and tried in a relatively short period of time represents a fairly speedy response to a deviant type of behavior.

Hundreds of years later, in the 1940s and 1950s, Senator Joseph McCarthy, along with other members of the U.S. Congress, sought to detect Communism by forming special investigative panels such as the House Un-American Activities Committee (HUAC). Over a four-year time span, the “demonizing of Communism” led to thousands of Americans being
accused, imprisoned, harassed, and in some cases, executed for crimes against the country (Schrecker, 1998:5).

A second characteristic of witch hunts identified by scholars is the portrayal of a specific group as demonized, possessed, inhuman, and as a fundamental threat to society (Rapley, 2007). Starting with our Salem example, prior analyses have reported that suspected witches were described as “evil,” “malevolent,” and “demonic” (Erikson, 1966:153; Rapley, 2007:75). We see comparable terms used to describe alleged Communists hundreds of years later. These more figurative “witches” of the McCarthy era, individuals sympathetic to Communism, were similarly thought to “subvert the American way of life” (Stone, 2005:1389). In a speech to the nation in 1950, Senator McCarthy commented that Communism is the “religion of the immoral,” and described Communists as “enemies within” (Friedman, 2005). Scholars have observed similarities between the 1692 Salem witch hysteria and the search for Communists in the 1950s. In a review of McCarthyism and its effect on free speech, Stone (2005:1400) commented that “like the Puritans in the Salem witch trials, HUAC demanded public denunciation, purgation, humiliation, and betrayal.”

With these descriptions in mind, is it reasonable to characterize sex offenders as modern day witches? Let us return to our first criterion of a witch hunt—mainly that public concern about a particular behavior increases dramatically in a relatively short period of time. This description certainly appears to fit the known facts of sex crime laws. Consider the following parallels. It is difficult to understate how rapidly sex crime laws have been enacted and the extent of their reach. Since the implementation of the Wetterling Act and Megan’s Law, the country has witnessed a substantial increase in the number of offenders required to register with law enforcement. The National Center for Missing and Exploited Children (2008) estimated that there are over 600,000 registered sex offenders living in the U.S. as of 2008, compared to 277,000 in 1998 (Adams, 2002:1). This figure represents a more than 100 percent increase in the number of registered sex offenders in the last decade.

In addition to sex offender registries and community notification laws, national and state legislatures have also enacted a range of laws specifically targeted sex offenders. These laws include residency restriction laws, castration laws, Halloween restriction laws, and laws requiring sex offenders to display special identification. States have even gone so far as to adopt “gateway legislation” or “predicate” laws that require specific types of non-sex offenders (such
as burglars) to register as sex offenders. As Sample and Bray (2003:60) explained, “In much the same fashion as marijuana has been identified as the ‘gateway’ drug, currently burglary is being considered as the ‘gateway’ offense to sex offending.” Thus, support exists for the assertion that sex offending garnered significant public concern in a relatively rapid period of time. Indeed, in describing this era of intense policymaking, Logan (2003a:1288) observed that “the 1990s [sex crime] panic was unique in its force and scope, taking tangible form in what has been aptly called a ‘legislative’ panic.”

For a witch hunt to emerge, not only does there need to be a rapid surge in punitive measures, but also the targeted group should be characterized as demonic and particularly dangerous to society. It is, in fact, difficult to find accounts that do not portray sex offenders as demonic, particularly in the 1990s.

For example, scholars have observed that sex offenders have been “demonized and ostracized by society to a greater extent than has any other group of offenders” (Fabelo, 2000:4). Perceptions about unusually high sex offender recidivism rates have lead to the image of the sex offender as a particularly dangerous type of criminal. To illustrate, Dowler (2006:383) explored the extent of media coverage of sex crime and found it to be “distorted” and based on “inaccuracies” about sex offenders and the nature of sex offenses. However, such characterizations as those portrayed in the media run counter to findings from extant sex crime research. Prior studies have found that sex offenders have lower rates of recidivism than generally assumed. For example, in a study of recidivism rates among various types of offenders (burglars, drug offenders, etc.), Sample and Bray (2003:76) highlight this misconception by reporting that “empirical research suggests that sex offenders are not as dangerous as sex offender policies would lead us to believe . . . based on rates of reoffending, sex offenders do not appear to be more dangerous than other criminal categories.” Put differently, despite evidence suggesting sex offenders may not reoffend more than other criminal groups, misconceptions about their dangerousness abound and states continue to enact punitive sex offender laws. We now move toward discussing relevant theoretical frameworks that may assist in explaining the rise of these laws in the mid-1990s.
Witch Hunt Theories

At first blush, it might appear that the proliferation of sex crime laws tracks well with the rise in sex crime rates. Clearly, this is not the case. Reports of sex offenses significantly decreased beginning in the early 1990s and this drop has continued throughout the 2000s (Federal Bureau of Investigation, 2007). By all accounts, the decline appears real. There is, for instance, little evidence to attribute the decrease in sex offenses to a change in reporting of sexual victimization in the last two decades. If anything, scholars argue, reporting has likely increased in the last twenty years, perhaps due primarily to efforts designed to reduce stigma associated with sexual victimization (Clay-Warner and Burt, 2005).

It is also not clear if the emergence of sex offender laws is causally linked to the substantial decline in sex offenses in the last twenty years (Velázquez, 2008). Many experts have asserted this explanation is likely not the case. In a study examining the effectiveness of a state sex offender registry, Zgoba, Witt, Dalessandro, and Veysey (2006:37) noted that “sex offense rates began to decline well before the passage of Megan’s Law, [and so] the legislation itself cannot be the cause of the drop in general. It may, in fact, be the case that continuing reductions in sex offending in New Jersey, as well as across the nation, are a reflection of greater societal changes.” In a different study, Vásquez and colleagues (2008) explored the impact of sex offender laws on reports of forcible rape across ten states from 1990 to 2000. They concluded that “sex offender legislation seems to have had no uniform and observable influence on the number of rapes reported in the states analyzed” (p. 188).

A second likely candidate that might explain the emergence of these laws is that perhaps they are attributable to a general “get tough” sentencing philosophy. Again, this explanation is less than compelling. Several “get tough” sentencing laws were enacted well before the proliferation of sex crime laws in the mid-1990s. Put differently, many of these “get tough” laws were enacted in the late 1980s and early 1990s, whereas sex crime laws did not ascend into prominence until the mid-1990s. In addition, “get tough” legislation has declined in recent years whereas sex crime laws have continued to emerge throughout the last two decades (Listwan, Jonson, Cullen, and Latessa, 2008). Given these observations, the question remains—does a witch hunt explanation accurately account for the emergence of sex crime laws?
What is needed to investigate this question are theories that have been used to explain the emergence of witch hunts. Fortunately, at least two such works exist. In particular, Erikson (1966) and Jensen (2007) provide us with two theories that have been used to explain the emergence of witch hunts. Given the parallels between witch hunts and the proliferation of sex offender laws in the mid-1990s, we turn now to briefly exploring the significance of their work.

**Significance of Erikson’s and Jensen’s Theories about Witch Hunts**

In his study of the Salem witch trials in 1692, Erikson (1966) observed that when threats or crises occurred in the community, punitive legislation usually followed as a way to enforce the state’s authority and restore social order. Drawing heavily on Durkheim, Erikson theorized that once set boundaries shift, a focus on deviant behavior (“often a valuable resource in society”) preserves “the stability of social life” (pp. 4, 13). Erikson further theorized that the witch hunt hysteria of 1692 in Salem, served to clarify early Americans’ position “in the world as a whole, to redefine the boundaries which set New England apart as a new experiment in living” (p. 67).

Jensen’s theory covers many of the same themes as Erikson’s, but further extends his work about witch hunts. His theory draws on three factors or “apocalyptic variables” to explain the emergence of witch hunts across Europe in the 1400s and 1500s as well as those in Salem, Massachusetts in 1692. According to Jensen’s (2007) theory, the outbreak of disease, lack of war, and economic hardship are factors positively associated with witch hunts.

Although several other theoretical explanations about witch hunts exist, these particular frameworks are chosen for several reasons. Erikson’s work, published over forty years ago, has influenced criminology and shaped theories about moral panic and scapegoats. His work remains one of the most heavily cited in the sociology of deviance literature (Miller, Wright, and Dannels, 2001). Jensen’s work is selected because it is a comprehensive extension of many prior efforts to theorize about factors associated with witch hunts and has recently garnered considerable attention from scholars (Ben-Yehuda, 2008:1845).

Both studies explore factors associated with the occurrence of witch hunts, yet each work takes a different approach toward measuring these factors. Virtually no studies have examined whether there are parallels between these theoretical explanations about witch hunts and the emergence of sex crime laws in the 1990s. Thus, by studying both accounts, we have contrasting perspectives that may be particularly useful in unpacking the factors related to the appearance of
sex crime laws. Below, I review Erikson’s and Jensen’s theoretical perspectives about witch hunts.

Review of Erikson’s and Jensen’s Theories about Witch Hunts

Kai Erikson’s *Wayward Puritans* (1966) is considered a classic in the sociological and criminological literatures (Miller et al., 2001). In this work, Erikson explored deviance among Puritans in the early part of American history. Perhaps most notable about this study was his discussion about the Salem witch hysteria which began in early 1692 and lasted close to one year. At this time in the Massachusetts Bay Colony, a group of young women ranging in age from nine to twenty years-old accused fellow neighbors of practicing witchcraft. In the months that followed, several trials were held and ultimately twenty-two people had been either executed or imprisoned until their deaths (p. 149). Three-hundred and fifty people had been either detained or accused of witchcraft. In the fall of 1692, the hysteria eventually subsided once the women accused prominent members of the community (p. 150). The witch trials lasted close to one year. This account leads us to explore two questions related to our study of sex offender laws. First, why did the Salem witch hunt emerge? Second, who were the accused?

With respect to the first question—why did public hysteria about witches emerge—Erikson (1966) recounted that the 1692 witch hunt was not unique to Salem. He reported that several other accounts suggest that concerns about witchcraft are as “old as history” (p. 153). Europe experienced a series of witchcraft hysteria beginning in the fourteenth century. Yet, the most contentious witch hunt in England occurred in 1647 and lasted well before Salem’s witch crisis in 1692. Despite the witch fervor in England at this time period, “New England remained relatively calm . . .” (p. 154) and few concerns were voiced about witches in this time period. Clearly, 1692 marked the beginning of the Salem witch hysteria. But, what changed?

Erikson (1966) claimed that 1692 marked the “end of the Puritan experiment in Massachusetts” mainly because “the people of the Bay were left with few stable points of reference to help them remember who they were” (p. 155). Although the Colony had originally seen itself as “actors in an international movement,” the separate sects of Puritans were scattered across the world and ultimately “the Protestant Reformation had lost much of its momentum without achieving half the goals set for it” (p. 156). In turn, the Puritans in Salem lost some of their religious identity. Settlers moved from a ‘sense of mystery’ to a ‘consciousness of
mastery,’ transitioning from a “helpless reliance on fate to a firm confidence in their own abilities” (p. 157). The emerging image of the “self-reliant Yankee” left the settlers with “no clear definition of the status they held as the chosen children of God” (p. 157). The surrounding wilderness also played a role in the development of the Puritan identity. Originally settling in a land full of ‘wild beasts and wilder men,’ the surrounding landscape changed after the Puritans’ initial landing. Since the “visible traces of that wilderness had receded out of sight, the settlers invented a new one by finding the shapes of the forest in the middle of the community itself” (p. 157). Thus, according to Erikson, the emergence of the Salem witch hunt occurred at a time of community insecurity. The settlers, “during this fateful interval . . . tried to discover some image of themselves by listening to a chorus of voices which whispered to them from the depths of an invisible wilderness” (p. 159).

This brings us to our second question. Who was vulnerable to these witch allegations? In discussing how deviance served as an integral aspect of a healthy society, Erikson wrote, “One of the surest ways to confirm an identity, for communities as well as for individuals is to find some way of measuring what one is not (emphasis in original, p. 64). Drawing on Durkheim’s theory of social functionalism, Erikson surmised that the emergence of the 1692 witch hunt served a critical role in the Massachusetts Bay Colony. He explained that “the deviant act, then, creates a sense of mutuality among the people of a community by supplying a focus for group feeling” (p. 4). The deviants, then, were considered “outsiders.”

Indeed, in discussing the first group of women initially accused of witchcraft, Erikson commented that “three better candidates could not be found if all the gossips in New England had met to make the nominations” (p. 143). Tituba, a slave from Barbados had a reputation for conjuring voodoo and the “black arts” (p. 141). Sarah Good, the second accused witch, neglected her children and begged others for financial support. The third suspect, Sarah Osbourne, had been the subject of a scandal a year earlier involving living with a man before he became her husband (Erikson, 1966:143). As the witch hunts proliferated, the types of people accused included citizens of higher standing. Erikson reported that the Salem witch hunt eventually faltered after the girls accused prominent members of society, such as Harvard University President Samuel Willard (p. 149). In short, at least initially, the individuals most vulnerable to accusations of witchcraft were people on the fringes of society, with little social
clout to cast doubt on the accusers’ claims. Clearly, the hysteria waned once the “pillars of the community” were subjected to claims of witchcraft.

Erikson’s analysis leads us to several conclusions. First, the emergence of the Salem witch hunt was associated with changes in the larger community. Citizens became disenchanted with the Protestant Reformation Movement and as Erikson (1966:155) noted “were left with few stable points of reference to help them remember who they were.” The witch hunts served a purpose—it unified members of the community and presented a common enemy—witches—to which they could rally against. Second, the individuals initially accused of witchcraft were “few of the less savory figures who drifted around the edges of the community,” and thus, drew little sympathy from the community (p. 159). Put differently, one way for communities to establish a collective identity is to “find some way of measuring what one is not.” Clearly, Erikson’s work suggests this mechanism was indeed an avenue through which the witch trials flourished.

Gary Jensen’s study, Path of the Devil: Early Modern Witch Hunts (2007) also explored factors associated with witch hunts. In contrast to Erikson’s (1966) work, Jensen (2007) not only examined the Salem witch hunt in America, but he also investigated witchcraft hysteria in Europe in the 1400s and 1500s. Jensen explored a number of issues related to the witch craze globally. We focus specifically on Jensen’s discussion about why these hunts emerged and also who was targeted as witches.

Drawing on many historical accounts, Jensen provides us with several hypotheses about the emergence of witch hunts in Europe. In particular, he claimed these events were associated with three “apocalyptic” factors—disease, war, and economic hardship. His first hypothesis was that witch hunts were positively correlated with plague epidemics. A second hypothesis was that witch hunts were inversely related to war and other forms of violent conflict. A final hypothesis was that witch hunts were positively associated with climatic and/or economic hardship, such as famine. By and large, Jensen found support for these three hypotheses. Jensen points to exceptions. For example, Jensen (2007) observed no association between the emergence of disease (the bubonic plague) and the Scottish witch hunt of 1661-1662. Notwithstanding such exceptions, Jensen (2007:139) concluded that study findings were “generally consistent” with his three hypotheses.

In addition to his study of European witch hunts, Jensen also examined the 1692 Salem witch hunt. Here, he also found support for his hypotheses. He concluded (2007:214) “when all
of the converging conditions surrounding the trials are considered,” the 1692 Salem witch trials fit the “perfect storm” theory. Jensen (p. 222) observed that although residents there experienced war in the 1690s (e.g., King William’s War), they were “not immediately threatened” by these outbreaks. In examining whether the emergence of disease was associated with the Salem witch hysteria, Jenkins reported that the worst epidemic of smallpox occurred in 1690 and another significant outbreak, although less intense, occurred two years later. At the time of the 1692 trials, settlers also experienced unprecedented hardship in the form of drought and severely cold weather. Jensen cited these events in support of his apocalyptic theory (p. 214).

Also relevant to our study is Jensen’s discussion about the targets of witch hunts. Jensen found earlier that witch hunts were negatively associated with war. Thus, in environments “where it is difficult for people to define an enemy or coalesce in opposition to a common enemy, they are likely to pursue troublesome people within their own communities as scapegoats” (p. 172). He further proposed that such “scapegoats are likely to be chosen from among groups and people that have been involved in prior conflicts” and present no immediate threat if persecuted. Jensen theorized that women were often the targets of witch hunts because they were seen as “a source of hidden, organized conspiracies . . .” (p. 172). He also noted that other groups such as homosexuals, prostitutes, and lepers were sometimes targeted as witches because their behavior and/or condition was attributed to “sin,” and thus such individuals served as “credible targets of blame” (Jensen, 2007:164).

In addition to discussing actual witch hunts, Jensen devotes one chapter to metaphorical witch hunts. Jensen noted that in more modern times, minority groups, such as Communists in 1950s America, were targeted as political witches. He further described the 1987 McMartin preschool case in California in which daycare employees were accused of molesting children. The story made media headlines and parents were encouraged to question their children about possible sexual abuse. Ultimately, 360 children cared for across ten separate preschools claimed to have been sexually abused and forced to partake in satanic rituals. Although many students recounted these allegations, no physical evidence emerged in the cases. Close to one hundred preschool teachers became suspects. Given that several investigations found no evidence of abuse, almost all charges against the teachers were dismissed.

Jensen noted several parallels between this account and the Salem witch trials. First, a substantial number of teachers accused were female (85 percent), which is close to the identical
proportion of women accused in most early modern witch hunts. Second, themes of satanic abuse in the McMartin cases had parallels to the Salem witch hunt. Third, the type of evidence considered, such as children’s testimony about being sexually abused, was suspect. Many child witnesses were asked leading questions on the stand and when they recanted their stories, most were ignored (Jensen, 2007). This type of evidence is similar to the “spectral” testimony of the afflicted young women accusers in the Salem witch trials.

Overall, Jensen provides us with testable hypotheses that may be particularly relevant to our study about the emergence of sex crime laws. According to Jensen, the spread of disease and economic hardship are positively related to witch trials, precisely because such events require explanation and witches may serve as scapegoats. By contrast, war is negatively associated with witch hunts, simply because community members are preoccupied with an “outside enemy.” Next, I apply these theories to known facts about sex offenders and sex offender laws.

Analysis

We turn now to examining the extent to which Erikson’s and Jensen’s theories provide a compelling explanation for the rapid proliferation of sex offender laws in America. We then focus on the likely effects of other factors such as the advent of the internet and changes in media technology. We begin first with Erikson’s theory.

Wayward Puritans

To recap, Erikson (1966) observed that when threats to social order appeared, policymakers often respond by enacting tougher and more punitive laws. He theorized that the Salem witch trials were an attempt to resolve social crisis stemming from the rapidly changing Puritan colony. In turn, such action contributed to the “collective identity” of the group and reestablished social order. Although there are several factors that could be classified as “social threats” to collective solidarity in explaining the emergence of sex offender laws in the mid-90s, a few are especially consistent with Erikson’s theory. These factors include the rise in crime rates in the 1980s and early 1990s, particularly violent crime, which likely spurred public fear
about victimization, the Christianity and moral traditionalism movement, and the special status of children in the 1990s (Moon, Sundt, Cullen, and Wright, 2000).

**Violent Crime in the 1980s and Early 1990s.** Clearly, one threat to established boundaries that Erikson highlighted in his account was a rapid surge in violent crime. Crime trend analyses reveal that violent crime such as homicide and sexual assault “shot up sharply in the mid-1980s and continued to climb until 1991” (Blumstein and Wallman, 2000:iii). For instance, the homicide rate from 1985 until 1991 increased nearly one-quarter from 7.9 per 100,000 people to 9.8 per 100,000 people. As inspection of figure 5.1 (provided at the end of the chapter) shows, soon after 1992, the nation experienced a substantial drop in violent crime. In a five-year period following 1992, the national homicide rate continued to drop to 6.8 per 100,000 people (Blumstein and Rosenfeld, 1998).

Concomitantly, rates of forcible rape also increased in the mid-1980s. Estimates of forcible rape increased from 19 per 100,000 people over age 12 in 1985 to 22 per 100,000 people over age 12 in 1991. From 1991 on, the nation’s forcible rape rate began to decline, hitting 9 per 100,000 people age 12 and older in 1997 (Federal Bureau of Investigation, 2007).

Despite the consistent decrease in violent crime during much of the 1990s, studies examining the public’s fear of crime concluded that concern about crime remained an important social issue (Romer, Jamieson, and Aday, 2003). As described in figure 5.1, a 1994 Gallup poll found that Americans’ fear of crime peaked in this year, with thirty-seven percent of citizens reporting that crime is their “top worry.” In turn, some scholars suggest the public’s high level of fear of crime (perhaps due in part to the sharp crime increase in the 1980s) contributed to the emergence of punitive crime policy. There is some evidence that the public was also particularly punitive throughout this decade. Support for the death penalty, often used by scholars as an indicator of punitiveness, peaked in 1994, with nearly eighty percent of Americans supporting the sanction (Saad, 2008). Notwithstanding a decrease in crime, the public expressed substantial concern about crime and significant levels of punitiveness throughout the 1990s.

These findings are particularly relevant to our study investigating the emergence of sex offender laws. Erikson (1966:44) noted that fear of crime, perhaps an extension of the “excitement generated by crime . . . creates a sense of mutuality among the people of a community by supplying a focus for group feeling.” Clearly, during the 1980s and early 1990s, the nation experienced a substantial increase in violent crimes such as homicide and sexual
assault. Notably, the bulk of sex crime laws were enacted after the initial spike in violent crime, beginning in the mid-1990s. At first glance, the emergence of violent crime does not appear to explain the emergence of sex crime laws. Note, however, that concern about crime remained high well into the 1990s, a time when crime declined sharply.

If public opinion studies are any indication, the public expressed substantial concern about victimization and offending in the 1980s (Tonry, 2004). Public concern about crime continued well into the 1990s—a time when violent crime decreased sharply (Garland, 2000). Given that even when violent crime was declining, fear about crime was high, the increased public concern may have translated into harsher laws toward sex offenders. We turn now toward discussing why sex offenders may have been the target of these policies.

The Christianity and Moral Traditionalism Movement. In his study of Puritan society and witchcraft hysteria, Erikson (p. 154) concluded that “outbreaks of witchcraft mania have generally taken place in societies experiencing a shift of religious focus—societies, we would say, confronting a relocation of boundaries.” Certainly, this was the case in the early 1990s in the U.S. With the formation of a powerful religious organization dedicated to reestablishing “conventional norms” and preserving traditional families, the nation witnessed the emergence of the Moral Majority Movement (later designated the Christian Coalition of America) in the beginning of the decade (Martin, 1997). During this time, as figure 5.1 illustrates, the Christian Right—“with its emphasis on traditional families, moral values, and committed parenting”—became one of the most powerful religious groups in the nation (Sylvester and Reich, 2002:8).

Studies suggest the movement had a wide following. For instance, according to a Gallup poll conducted in 1992, over one-third of Americans identified themselves as “born-again” or “evangelical Christian” (The Gallup Organization, 2009). High among the conservative Christian agenda in the 1980s and 1990s was highlighting the consequences of engaging in deviant sexual behavior (Jenkins, 1998; Watson, 1997). Early in the 1980s and 1990s, prominent Christian conservatives claimed that homosexuality was the sole contributor of the spread of HIV/AIDS. For instance, Jerry Falwell, founder of the Moral Majority movement, proclaimed in the early 1980s that HIV/AIDS was the “gay plague . . . God’s way of “spanking us” for tolerating “perverted lifestyles” (McGrory, 1985:A2).
Other accounts suggest Christian groups were instrumental in linking homosexuality to child molestation in the 1990s (Mirkin, 1999). For instance, despite the absence of convincing empirical evidence, Peter Sprigg, senior director of culture studies at the conservative Family Research Council, claimed that “homosexuality is a clear risk factor for child sexual abuse.” He further opined that exclusionary “anti-gay” policies, such as prohibiting homosexuals from serving as Boy Scout leaders are “looking better all the time” (Sprigg, 2002:A19). Stepping back and viewing these observations in an Eriksonian lens, it is plausible that the Christian Right’s campaign to draw attention to homosexual practices and linking them with deviant and criminal behavior may have heightened fears about sexuality and may explain why sex offenders were the targets of “get tough” legislation in the mid-1990s.

Clearly, as inspection of figure 5.1 shows, the conservative Christian movement preceded the enactment of a plethora of sex offender laws. Accounts suggest Christian groups, with their emphasis on preserving “traditional” families, were primarily responsible for linking homosexuality to child molestation in the 1990s (Mirkin, 1999). Juxtaposed against these observations, it is plausible that the Christian Right’s campaign to highlight homosexual practices and connect them with child sexual abuse may have heightened fears about sex crime. In turn, the attention also explains why sex offenders were the targets of “get tough” legislation in the mid-1990s. Under this backdrop, we find support for Erikson’s contention that witch hunts typically “take place in societies experiencing a shift of religious focus” (p. 154). Perhaps motivated in part by the group’s emphasis on protecting children and preserving families, the nation also witnessed the emergence of increased public concern about the rights of children in the early 1990s.

**Special Status of Children in the 1990s.** Historically, children in America have not always enjoyed a “special status.” This changed with the emergence of the first juvenile court in 1899, and several pieces of legislation enacted throughout the 1900s designed to protect children and sanctify childhood (Zimring, 2002). This philosophy pervaded much of the 1990s. Accounts suggest that by the early part of the decade, “a full-fledged children’s rights movement existed, with two distinct and highly competitive wings, the one being those who believed in the liberation of the child . . . the other being more paternalistic and traditional, concerned with a comprehensive program of adult protection for children” (Cravens, 1993:23). During this time, the country was active in highlighting special issues concerning children. For instance, as
inspection of figure 5.1 shows, in 1990 the U.S. participated in the World Summit on Children, a
global conference organized by the United Nations. Among other objectives of the Summit, the
U.S., along with other participating countries, pledged to “promote awareness of child rights
among children and adults, and foster changes in attitudes and values that undermine respect for
the rights of children, especially those that result in violence against children” (Annan, 2001:79).
Rooted in the premise that children are vulnerable members of the population, this movement in
America stressed increasing protections for children (Cullen, Vose, Johnson, and Unnever, 2007;
Greer, 2003).

From the perspective of Wayward Puritans, one question is how do you identify the
targets of a witch hunt? If we view these events under Erikson’s perspective, we can look
toward this movement to identify where threats would be seen as especially damaging to the
moral fabric of society. In his study, Erikson (p. 158) observed that witchcraft was heavily
punished because of its potential to threaten the fundamental character of early Americans—their
religious identity. The more general point Erikson alluded to was threats that weaken the moral
fabric of society are seen as particularly detrimental to the stability of the community. In the
context of the 1990s, children were esteemed and popular accounts characterized them as the
“the future of America” (Rush, 1991:68). By extension, under Erikson’s theory any threat to
children in the 1990s is akin to threats against the religious identity of Puritans in 1692 Salem.
Lending support to this observation is Jenkins (1998:141) assertion that “[In the 1990s] at the
height of the abuse panic . . . new legislation poured forth at both federal and state levels . . .
These laws reflected the view that a war on child abuse necessitated extreme measures and
perhaps the sacrifice of liberties.” As Jenkins noted, many of these laws exclusively target
offenders that prey on children. Figure 5.1 describes the emergence of residency restriction laws
during the late 1990s. With rare exception, these laws are designed to prohibit offenders from
residing near places children frequent such as a school, school bus stop, or playground (Meloy et
al., 2008).

Examining this development under Erikson’s perspective, we can look toward this
movement to identify where threats would be seen as especially damaging to Americans’ sense
of collective solidarity. In discussing the Salem witch hunt, Erikson (p. 158) theorized that
witchcraft was heavily punished then because of its potential to threaten the distinguishing
caracter of early Americans—their religious piety. By all accounts, in the 1990s children were
viewed as America’s future (Rush, 1991). Separately, children were also depicted as vulnerable to criminal victimization, particularly physical and sexual abuses (Greer, 2003). Extending Erikson’s theory further, any threat to them might be perceived as an assault on the very fabric of American society. Juxtaposed against these observations, we find broad support for Erikson’s social threat theory in explaining the rapid increase in sex offender laws in the mid-1990s. In short, the emergence of increased concern about children in the early 1990s appears promising in explaining why the country then experienced the widespread enactment of various sex offender laws later in the decade.

Path of the Devil

In contrast to Erikson’s theory, Jensen’s (2007) theory focused on the culmination of three specific factors or “apocalyptic variables.” According to Jensen (2007), the emergence of disease, an absence of war, and economic hardship were often driving forces behind witch hunts. Here, I apply Jensen’s theory to observations about the proliferation of sex crime laws in the mid-1990s.

**Disease.** Jensen (2007:66) noted that disease was historically linked with “sexual excess and hedonism.” He further associated sexual deviance and disease to witchcraft—“the sexual content of the depictions of witches is that sexual content of the depiction of all heretical groups . . . Jews, lepers, homosexuals . . . these were the traditional targets of persecution when epidemics were spreading” (p. 67). Given this explanation, it may be particularly relevant to review the emergence of disease in the later part of the 20th century. In the 1980s, a potentially fatal sexually transmitted disease, HIV/AIDS, emerged in the U.S. As shown in figure 5.1, by 1990, the disease afflicted 100,000 Americans (Karon, Fleming, Steketee, and De Cock, 2001).

Not just Jensen, but other scholars have proposed that the emergence of HIV/AIDS drew attention to sexual practices and increased concern about the repercussions of sexual victimization (Jenkins, 1998; Parker, 2001). Beginning in the 1990s, several states have enacted laws that require alleged sex offenders to undergo HIV/AIDS testing. In a National Conference of State Legislatures report, Dietrich (2001:1) explained that states have adopted these laws primarily because the “public has a compelling interest that outweighs the privacy rights of alleged perpetrators.” Since the mid-1990s, states have also enacted laws criminalizing the intentional spread of HIV/AIDS through consensual sexual activity. Lazzarini, Bray, and Burris
(2002) reported that as of 2002 close to half of all states have adopted such laws. The sanctions are significant. As Myers (2006:1) reported, “under U.S. law, knowingly transmitting HIV to a sexual partner is treated under murder/manslaughter statutes” and in some jurisdictions, can fall under sex offense statutes. For instance, in Tennessee offenders convicted of knowingly spreading the disease are required to register with state law enforcement as a sex offender (Velázquez, 2008).

Jensen, in fact, argues that concern about HIV/AIDS contributed to a particular witch hunt concerning children, the McMartin preschool scandal, but did not apply this factor to the emergence of sex offender laws. In describing this event, Jensen (p. 237) noted that “fear and anxiety surrounding this new disease . . . heightened fears about threats to children.” Supporting his contention, is the emergence of legislation designed specifically to require the disclosure of alleged offenders’ HIV status and to criminalize sexual acts committed by individuals afflicted with HIV/AIDS.

As inspection of figure 5.1 shows, less than seven years after more than 100,000 Americans were diagnosed as HIV positive (Karon et al., 2001), one of the most prominent sex crime acts, Megan’s Law, emerged in the U.S. Furthermore, we see the enactment of laws designed to require sex offenders to undergo HIV/AIDS testing (Dietrich, 2001). Given these types of laws and mounting concern about the spread of the disease, many states required alleged sex offenders to undergo testing for HIV/AIDS and also implemented laws criminalizing the intentional spread of the disease through consensual sexual activity (Lazzarini et al., 2002). Taking these observations into account, we find support for Jensen’s hypothesis about disease and the emergence of witch hunts.

War. Jensen (2007:70) contended that although some historians doubt a connection between warfare and witch trials, “the dominant opinion is that involvement of an area in actual warfare inhibits witch hunts.” In short, war should decrease concern about other social problems occurring on the home front. As figure 5.1 describes, in the early 1990s, Desert Storm was a prominent conflict involving the U.S. and Iraq (Hiebert, 2003). Here, Jensen’s contention that war should inhibit a witch hunt does not seem valid. Having said that, he also noted that although “witches and political enemies might both be ‘enemies’ of God, and coconspirators with the Devil . . . [a full-scale] war should direct attention toward the most immediate threat [outside enemies].” By contrast, less serious conflicts (what Jensen described as “war on the
fringes”), are likely positively correlated to the outbreak of witch hunts. In the 1990s, the nation experienced what historians have described as a “forgotten war” fought half a world away (Bin, Hill, and Jones, 1998:1). Furthermore, scholars have observed that compared to other prominent conflicts such as World War II or Vietnam, the causalities suffered during Desert Storm were minimal (Fisher, Klarman, and Oboroceanu, 2008).

At first blush, Jensen’s hypothesis that the outbreak of war should inhibit witch hunts does not seem to fit known facts about the emergence of sex crime laws. For example, as illustrated in figure 5.1, the nation experienced the Gulf War from 1990 through 1991, which would suggest there should be no witch hunts during this time. However, upon further inspection, the Desert Storm conflict appears to fit Jensen’s description as a “war on the fringes.” Jensen explained “during times of apparent ‘peace’ within a system, witch hunts might correlate positively with the extent of warfare outside or on the fringes of the system” (p. 71). Under this logic, we find a closer fit with Jensen’s hypothesis concerning war.

**Economic Hardship.** The relationship between economic hardship and the outbreak of witch hysteria has been well-documented in the literature. Jensen (p. 77) explained that “witch hunts were common during periods of population growth, labor competition, economic recession . . . the period of most intense witch hunts occurred during a period of declining wages . . . hence, increases in prices can be considered indicative of increases in hardship” (Jensen, 2007:101). Jensen (p. 73) theorized that witchcraft accusations emerged during times of economic crisis because they served as “a method for resolving social tensions.” Leading with this hypothesis, let us now turn to examining the economic climate in the U.S. during the 1990s. As depicted in figure 5.1, the U.S. economy fell into a recession that began in 1990 and ended a year later (Brenner, 2002). Peterson (1994) reported that fifteen million Americans were laid off from their jobs during the height of the recession. Although millions of people lost their jobs in this period, soon after the U.S. experienced relative economic prosperity (Gainsborough and Mauer, 2000). Yet, the federal government and states continued to enact laws even after the economy steadily improved throughout the rest of the decade.

Claiming that disease and economic hardship are “correlated phenomena,” Jensen (p. 60) also hypothesized that worsening economic conditions such as falling wages were associated with witch trials. There were a number of economic concerns early in the decade. In particular, a recession in the early part of the decade led to economic and social hardship, especially among
the middle classes in the U.S. Despite this time of decline, the U.S. enjoyed economic stability and growth throughout the rest of the decade (Blumstein and Wallman, 2000). Taking these facts into account, we find mix support for Jensen’s theory concerning the emergence of sex offender laws. Given that the economy for most of the 1990s was depicted as “strong” and “flourishing” (Blumstein and Wallman, 2000:i-iii), Jensen’s “hardship” explanation is not especially compelling. Put differently, this dimension of his theory does not explain why sex crime laws continued to emerge even after the economy rebounded.

Assessment of Theories

We now turn to assessing Erikson’s and Jensen’s frameworks in the context of this study. Each work provides fairly compelling arguments for explaining the rise in sex offender laws in the mid-1990s. Erikson stressed that social threats to society creates collective insecurity, and in turn, witch hunts serve to reaffirm the group identity. We explored several factors that would characterize threats to social solidarity. These variables include an increase of violent crime, the Christianity and moral traditionalism movement, and the special status of children in the 1990s. Inspection of figure 5.1 shows that many of these events preceded the enactment of sex crime laws, such as Megan’s Law (passed in 1996), castration laws (enacted in 1997) and sex offender residency restriction laws (which emerged toward the latter part of the decade) lending broad support for Erikson’s hypothesis that perceived social threats increase punitive responses to problematic behavior.

Jensen’s theory also appears powerful in explaining the proliferation of sex crime laws. Recall Jensen’s discussion about the outbreak of disease, absence of war, and the emergence of economic hardship. Inspection of figure 5.1 shows that Jensen’s hypotheses about disease and economic hardship are in the predicted direction. Having said that, Jensen’s contention that economic hardship contributes to the emergence of a witch hunt does not fully explain why sex crime laws continued to emerge even after the U.S. economy improved. At first glance, we find little support for Jensen’s hypothesis about war and witch hunts. Recall that according to his theory, the outbreak of war should inhibit witch hunts, as attention is focused on the country’s most immediate threat—an outside enemy (p. 71). The U.S. experienced the Desert Storm conflict in the early 1990s, an event that should preclude the emergence of witch hunts. However, Jensen also maintained that a “war on the fringes,” or a less serious conflict would not
necessarily divert attention to outside threats. By extension, such an event may be positively associated with the emergence of witch hunts. Juxtaposed against this logic, we find some support for this facet of Jensen’s theory.

To summarize, both works provide us with insight about factors related to the emergence of witch hunts. If study findings presented here are any indication, the characterization that sex offenders are among America’s latest witches appears apt. Having said that, there are, of course, a number of other factors that likely contributed to the emergence of these laws.

The Advent of the Internet and “Media Pervasiveness”

Before concluding, we turn to a discussion of two particular factors that may have contributed to the rise in sex offender laws. The first is the advent of the internet in the mid-to-late 1990s. Prior to 1990, the internet did not exist for public consumption. As examination of figure 5.1 shows, less than a decade later, close to fifty-seven million Americans reported using the internet (Newburger, 1999). This shift in internet availability exposed Americans to instant information about sex crime on a number of dimensions. Online sex offender registries, which also emerged at this time, gave citizens instant access to information about sex offenders living in their communities. News accounts about sexual victimization also pervaded the internet and could be shared with others with the simple click of one’s mouse. The emergence of the internet also heightened concerns about internet predators and the distribution and access of child pornography.

In addition, the 1990s also witnessed the birth of the 24-hour news program. The descriptions, “CNN Effect,” and ‘media pervasiveness’ capture the content of these programs (Robinson, 1999:301). Increasingly, despite substantial national declines in reports of sex crime “the media’s interest . . . in sex offenders has increased exponentially over the last two decades” (Quinn, Forsyth, and Mullen-Quinn, 2004:221) In describing the media’s role in shaping public concern about sex offenders, Quinn et al. (2004:221) further recounted that “the growth of 24-hour news means that major offenses against children, and especially unusual ones such as stranger-abductions, help assure increased attention to this type of crime.” Given these observations, it is clear that throughout the 1990s, Americans were confronted with news accounts about violent sex offenses and tragic cases, often involving child victims.
Collectively, these innovations increased Americans’ exposure to violent and grisly news accounts, especially those highlighting child sexual victimization and child pornography (Anderson and Sample, 2008). Zgoba (2004:385) observed that “media broadcasts of a rash of child abductions, molestations and homicides have led to a nationwide moral panic concerning the safety of children. The media frenzy . . . has created a ‘fear factor’ among parents and caregivers.” Given these observations, it seems reasonable to confer that these two factors contributed to the view that the nation was permeated with sex offenders. Undoubtedly, scholars have pointed to “media effects” when explaining the appearance sex offender laws in the 1990s. However, few studies about witch hunts have explored the impact of changes in media technology during the 1990s such as the internet and 24-hour television news programs. In short, future extensions of Erikson’s and Jensen’s theories should explore the role of technological changes in the emergence of witch hunts.

Discussion and Conclusion

Virtually no theoretical studies exist that explain the surge in sex crime laws in the mid-1990s. This void is striking because the emergence and spread of such laws does not appear to reflect trends in sex crime rates. The country experienced a decrease in reports of child sexual abuse and forcible rape throughout the 1990s (Federal Bureau of Investigation, 2007). Despite the remarkable decline in sex crime, the country experienced an unprecedented growth in sex offender laws (Palermo and Farkas, 2001:154).

It also does not appear that the rise of sex crime laws fits a pattern of “get tough” justice reminiscent of the 1980s and early 1990s. For example, prior to the mid-1990s, only a handful of states had adopted sex offender registries, virtually none had implemented community notification policies, or restricted where sex offenders could live (Abner, 2006). After the passage of Megan’s Law in 1996, all fifty states had implemented sex offender registries and community notification programs. It was also during this decade that states experimented with an array of other laws including sex offender residency restrictions, chemical castration, civil commitment, and lifetime supervision (Velázquez, 2008). Indeed, the mid-1990s represented a unique time when lawmakers “most enthusiastic for predator statutes and internet regulation”
enacted a variety of measures to prevent sexual offending and sexual victimization (Jenkins, 1998:238). Put differently, the enactment of many of these laws occurred after a general era of “get tough” policymaking. In short, we are left with significant questions about the appearance of sex offender laws in the mid-1990s. Recently critics of sex offender legislation have opined that the intense focus on sex offenders represents a modern “witch hunt” (Krueger, 2007). This study explored this claim by systematically examining two prominent theoretical accounts about witch hunts.

This study found that both Erikson’s (1966) and Jensen’s (2007) theories about witch hunts appear promising in explaining the recent emergence of sex crime policies. Starting first with Erikson, we indeed found that the nation witnessed several threats that occurred during the 1990s. Although many factors could be considered broad social threats, we focused on three that appear especially relevant to the emergence of sex offender laws. These events include an increase of violent crime and concern about crime, the Christianity and moral traditionalism movement, and public concern about children. The study found broad support for Erikson’s theory concerning all three factors. Jensen’s (2007) apocalyptic variable theory provides us with insight about how the outbreak of disease, emergence of war, and the extent of economic hardship might have spurred the increase of sex crime laws in the 1990s.

At the same time, several limitations should be noted. First, Erikson’s (1966) theory is, as Jensen (2007:56) observed, “vague” and Erikson’s (1966) explanation that crises and threats to social order motivated witch hunts is “unfalsifiable since something that could qualify can always be found” (Jensen, 2007:56). Second, Jensen’s hypotheses were not entirely consistent with events that occurred during an era of intense sex crime policymaking. For example, Jensen’s hypothesis about economic hardship is not consistently supported when reviewing the economic climate during much of the 1990s. Jensen theorized that an economic recession should increase the probability of a witch hunt because the latter provides a forum for expressing anxiety about declining economic productivity. Yet, despite an initial economic recession in 1991, the country experienced relative economic prosperity for the duration of the decade. It is not clear then how the extent of the recession should affect subsequent public hysteria. Several implications flow from this analysis.

First, beginning with theoretical implications, future efforts should develop accounts that synthesize Erikson’s, Jensen’s, and similar work about witch hunts, using these frameworks to
explain the rapid emergence of other types of legislation, such as drug offender laws. This line of research may be especially fruitful considering that there are clear parallels between the emergence of drug offender statutes in the early 1980s and the proliferation of sex offender laws in the mid-1990s. Recall that two key ingredients for the emergence of witch hunts are first an increase in public concern about particular behaviors. A second catalyst is the characterization about certain individuals as “demonic” and especially dangerous to society. Certainly, in the context of drug offender legislation, these criteria were met during the 1980s. As Myers (1989) reported, public concern about drug offending was particularly high when many “get tough” drug laws were enacted by the federal government and states in the mid-to-late 1980s.

Some support is found for the second criteria of a witch hunt—that offenders are portrayed as demonic and especially threatening to society. For example, accounts suggest that throughout the 1980s, crack cocaine, linked with a “threatening group” was vilified as a “demon drug” and was blamed “for an array of social problems” (Reinarman and Levine, 1997:5). Other scholars have echoed these observations. In describing drug offender laws in the U.S., Friedman (1998:25) observed that past and current criminal justice policy has resulted in the “dehumanizing of drug users in the public eye.” Taking these parallels into account, future work should more fully investigate whether accounts about witch hunts explain the emergence of other types of punitive policies.

In addition, future studies should consider clearly outlining additional factors that may assist in explaining the emergence of these laws. Missing from both theories was a discussion about the impact of technological changes on public hysteria. Several accounts have suggested that the advent of the internet and increased media attention about sex offending in the 1990s contributed to the development of a plethora of sex crime laws.

As media transforms (e.g., the development of “Twitter” and other online social networking websites), arguably these changes can create moral panics and help target these panics toward specific offenses. For example, this study found that the advent of the internet and increased “media pervasiveness” in the late 1990s was associated with the emergence of sex offender laws in the mid-to-late 1990s. Indeed, other accounts have identified changes in media as contributing to the proliferation of these laws. For instance, in a recent study assessing policymakers’ views about sex crime laws, Sample and Kadleck (2008:60-61) concluded that “sex offender policies appear to be based on personal opinion, public perception, and media
coverage of sex offenders and specific sex crimes, particularly those against children.” Notably, several other scholars have linked media attention about sex offenders during the 1990s to the emergence of a panoply of sex crime laws (Kitzinger, 2004). Lieb et al. (1998:44) found that beginning in 1990, the U.S. had “significantly changed criminal and civil law policies regarding sex offenders . . .” A driving force behind this push for tougher laws was the emergence of increased media attention and “an anxious public” (Lieb et al., 1998:59).

In short, the factors related to the emergence of sex offender policies parallel factors associated with hunts. Having said that, sex crime laws may have emerged for a number of reasons. Under this backdrop, future research should study factors that contribute to increasing public concern about particular behaviors. Such work may further extend theories about witch hunts and may point to additional factors associated with the rapid proliferation of sex crime laws.

Study findings also provide us with research implications. This study sought to identify factors related to sex crime laws, in turn examining the extent to which sex offenders could be characterized as America’s newest witches. Jensen’s (2007:80) critique of prior studies about witch hunts was that they “made little effort to quantify potential explanatory variables.” Taking Jensen’s lead, studies may want to quantitatively assess the effects of various factors on the development of sex offender laws. For example, in this study we found that worsening economic conditions in the early 1990s were associated with the emergence of sex crime laws later in the decade. Given that the country experienced significantly greater economic stability later on in the decade, the extent of this relationship is not clear, as sex offender laws continued to emerge throughout the decade, even after the economy improved. This relationship could be quantitatively assessed by operationalizing both variables—economic recession and the emergence of sex crime laws—and then conducting a series of multivariate analyses to assess the extent of their association.

The study also offers lessons for policy. Prior work has suggested that public hysteria and exaggerated concerns about particular behaviors are typical catalysts behind the development of witch hunts. One illustrative example to consider is the McMartin preschool center trials that occurred in Manhattan Beach, California and lasted well into the 1990s. After one allegation of child sex abuse, law enforcement sent letters to hundreds of parents whose children attended the school naming the alleged defendant, Raymond Buckey, an aide at the
center, as a child molester. Shortly after parents learned about the accusation, numerous children recounted similar allegations characterized as “bizarre if not impossible on their face” (Gross, 2008:185). For instance, Judy Ann Johnson, the first mother to allege abuse, claimed that her son had “not only been molested but had been injured by a lion and an elephant while on a McMartin outing . . . and was involved in a ritual that involved human sacrifice and drinking a baby’s blood” (Fukurai, Butler, and Krooth, 1994:46-47). Shortly after, these “bizarre accusations” became media headlines (Fukurai et al., 1994:49).

Following these reports, several other teachers at the school were accused of sexually abusing their students. Virtually all childcare employees involved in the case were eventually exonerated (Gross, 2008:185). In the wake of the “massive publicity and mass hysteria” following the case, law enforcement investigated several other preschools in the area (Fukurai et al., 1994:48). Ultimately, after six years of investigations and trials, little evidence was found to corroborate any of the children’s allegations, which led to the release of practically all accused teachers (Eberle and Eberle, 1993). The intense questioning of children by both parents and investigators was initially spurred by the belief that “encouraging, cajoling, and even threatening the children” would lead to “the truth” (Pendergrast, 1996:365). Put differently, scholars claim this “nationwide witch hunt” was motivated primarily by hysteria and panic about child sexual victimization (Pendergrast, 1996:365).

Experts have also identified hysteria about child abduction and murder as a catalyst for the enactment of prominent sex offender laws currently in place in the U.S. Sample (2006:230) stated that despite the rarity of sex crimes involving murder, “it is clear that most of the current sex offender policies we have today, and those being proposed for the future, are the result of sexually related homicides against children committed by previously convicted sex offenders.” She further observed that “Megan Kanka, Jacob Wetterling, and Jessica Lunsford were all children who were abducted, sexually assaulted, and killed by repeat sex offenders, and all share the distinction of having sex offender legislation passed in their names” (p. 230). What is striking is that these laws are not designed to address the bulk of sexual victimization.

Snyder (2000) reported that only seven percent of sex crimes reported in the U.S. involve a stranger assault. In examining the extent to which sex offenders murder their victims, Sample (2006) found that only two percent of arrests that included a sex offense charge also included a homicide charge. Despite the infrequency of these offenses, “public fear of rape and sexual
abuse has almost become a panic” (Sampson, 1994:i). Much like the hysteria surrounding witchcraft in 1692 Salem, much of today’s fear about sex offenders appears disproportionate to one’s relative risk of sexual victimization.

Policymakers are in a unique position to quell fears and reign in public panic and hysteria by empowering citizens with information and providing them with safety tips. Promising approaches include developing and implementing public service campaigns that cite the relatively rarity of sexual assault, particularly by strangers, and give guidance about ways to prevent sexual assault. For example, the Darkness to Life Foundation (2007:1), a non-profit organization dedicated to preventing child sexual abuse in the U.S., recently partnered with the Lifetime Network to run a series of public service announcements that “emphasize the reality that child sexual abuse is most often perpetrated by someone the child and their family knows and trusts.” Given that most citizens gain information about sex offenders from the internet or television programs (Zgoba, 2004), policymakers may want to consider designing similar campaigns in an attempt to control public panic and encourage proactive responses to prevent sexual victimization.

We have few accounts that explain the rapid growth of sex crime laws that has occurred in the last twenty years. Despite a substantial decline in sexual victimization among children and adults, the country has experienced an unprecedented surge in sex crime laws. The trajectory of the emergence of these laws appears distinct from an earlier “get tough” movement in the criminal justice system. Critics of these “hastily passed” laws proclaim that sex offenders have become the modern-day equivalent of the 1692 Salem witches (Fortney et al., 2007:1).

Using two prominent accounts of witch hunts, this study found some support for this contention. Lacking from Erikson’s and Jensen’s accounts about witch hunts were discussions about the role of technology, such as the advent of the internet and changes in media technology. Scholars have proclaimed that “the internet brought an unprecedented ease of access to sexually explicit materials . . . offered new opportunities for predators . . . and increased fears of new technology” (O’Hear, 2008:74). Future studies should explore if this and other additional factors may assist in further unpacking the correlates that explain the emergence of sex offender laws. Other theoretical extensions include synthesizing accounts about witch hunts and applying such frameworks to explain the proliferation of other laws, such as drug offender legislation. Furthermore, next steps for future research include quantitatively assessing the relationship
between identified correlates and the emergence of sex crime legislation. The current study also presents us with policy implications. Given that most Americans access information about sex crime from news, television programs, and increasingly, the internet, campaigns designed to educate the public about the reality of sexual victimization may be especially effective in curtailing disproportionate public panic about sex offenders.
Christian Coalition formed\(^1\)

100,000 Americans are HIV positive\(^2\)

Gulf War ends\(^3\)

U.S. economic recession improves\(^4\)

World Summit on Children held\(^5\)

Violent crime declines\(^6\)

Public’s fear of crime peaks\(^7\)

States develop and implement Megan’s Law\(^8\)

FL and CA pass castration law\(^9\)

57 million Americans report internet use\(^10\)

States enact residency laws\(^11\)


Figure 5.1. Timeline of Sex Offender Laws and Related Events, 1990-2000
CHAPTER 6

GUIDED BY GOOD OR BAD CAUSAL LOGIC?
THE THEORETICAL UNDERPINNINGS OF PROMINENT SEX OFFENDER POLICIES

Introduction

Over the last two decades, the American public has expressed increased concern about sex crime (Velázquez, 2008). In response, the federal government and states have adopted a variety of laws aimed at reducing sexual offending and victimization. Some of the more widely implemented laws include sex offender registration and community notification, residency restrictions, and chemical castration. Since many of these reforms have been enacted relatively recently, research that has "examined the efficacy of these laws is limited" (Vásquez, Maddan, and Walker, 2008:176). This void is perhaps problematic because emerging studies suggest that many members of the public and policymakers subscribe to myths about sex offending (Sample and Kadlec, 2008). Given these observations, it is unclear if extant sex crime reforms rest on these misconceptions or on sound theoretical and empirical foundations.

Evaluating the theoretical or causal logic behind a program is an important first step in policy development and implementation. The underlying logic as to why a policy should achieve stated goals is "just as subject to critical scrutiny within an evaluation as any other important aspect of the program" (Rossi et al., 2004:135). Sex offender policies have proliferated in recent years, and as Kruttschnitt et al. (2000:66) have noted, "Decisions about what to do with sex offenders are often made without the benefit of theoretical insights or sound empirical evaluations." The emergence of these recently implemented policies provides a unique opportunity to examine their causal and theoretical logic and to assess whether the assumptions behind them accord with theoretical accounts of sex offending, general logic, and prior research.

The goal of this study is to contribute to research about the likely efficacy of sex offender legislation by exploring the theoretical logic underlying prominent laws, in particular, sex offender registration and community notification laws, residency restrictions for sex offenders, and chemical castration laws targeting sex offenders.
Background

For a policy to achieve its intended goals and objectives, it is often necessary to understand why the program should work, from a theoretical or causal standpoint. Understanding the causal logic behind a policy can also assist in modification or improvement of the initiative, likely increasing the effectiveness of the policy. Causal logic evaluations are used in the public policy field to assess various social programs (Rossi et al., 2004). Typically, these evaluations focus on causal pathways and immediate and distal goals of the program or policy.

Consider, for example, a dietary awareness program instituted at school that targets overweight children and includes nutritional classes and exercise. The causal logic behind this program is that exposing children to dietary knowledge and encouraging exercise in school should lead to immediate weight loss. A more distal goal is that children will adopt healthy eating habits as adults, resulting in a reduced risk for specific illnesses such as diabetes and heart disease.

Note, however, that some of the assumptions about nutrition and weight loss underlying this program may be faulty. For instance, studies suggest that changing the dietary habits of children while at school may have little impact on overall weight loss and nutrition, as most meals are consumed at home (Golan and Crow, 2004; McLean, Griffin, Toney, and, Hardeman, 2003). Thus, for such a program to effectively achieve weight loss among students it also would have to target parents and educate them about proper nutrition and the importance of exercise. In addition, research has found that poor eating habits may be linked to unmet emotional and psychological needs, suggesting that for a weight loss program to achieve its long-term goals, it should also include psychological counseling (Braet, Tanghe, Decaluwé, Moens, and Rosseel, 2004). This example is illustrative of the importance of outlining a policy’s causal pathway or theoretical logic, which can assist in evaluating and improving the program (Rossi et al., 2004).

Broadly, there have been “increased calls from policymakers for ‘evidence-based practice’ in health and human services that have extended to criminal justice” (Lipsey et al., 2006:272). The recent proliferation of sex offender policies, for instance, has affected a large number of offenders and communities, without the benefit of systematic theoretical evaluations. Indeed, Fortney et al. (2007:1) recently concluded that “sex offender policies are often hastily passed and are not based on scientific evidence, but on emotional reactions to high profile,
violent, disturbing cases.” Evaluating whether these relatively new policies accord with theory, logic, and prior research can provide policymakers with a better understanding of their rationales and may offer guidance about how to examine their impact and about how to modify or improve them to increase their likely effectiveness.

This chapter examines three sex crime policies—sex offender registration and community notification, residency restrictions, and castration of sex offenders and the extent to which they accord with theory, logic, and prior research. The chapter focuses on these policies because they are highly controversial, far-reaching, and are among those most widely implemented across the country. After presenting analyses, I discuss implications stemming from this work.

**Sex Offender Registration and Community Notification Laws**

In recent years, a number of sex offender policies have been enacted in response to growing concern about sex crime. Three prominent policies have been instituted across the country and have been the subject of debate such as sex offender registration and community notification, residency restrictions for sex offenders, and castration policies (Meloy, 2005; Terry, 2005; Wright, 2008). The theoretical or causal logic behind them has been questioned by scholars and public policy experts (Kruttschnitt et al., 2000; Logan, 2003b). In this analysis, I describe each policy and then discuss whether the policy’s assumptions accord with theory, general logic, and prior research.

**Description of Policy**

In response to growing concern about sexual victimization in past decades, virtually all states have enacted some type of sex offender registration and community notification policy. Registration and community notification laws require that state agencies maintain and update online databases and make attempts to notify community members about sex offenders living in their neighborhoods.

Typically, convicted sex offenders living in the community are required to register with the state police, departments of public safety, offices of the attorney general, or departments of corrections (Lees and Tewksbury, 2006). The public is then notified about sex offenders living in the community via a state website that lists sex offenders by name, posts their pictures, and in
some cases, displays their addresses (Tewksbury, 2005). In reviewing notification methods across the nation, Matson and Lieb (1996) reported that community notification methods may also include press releases, flyers, phone calls, door-to-door contact, and neighborhood meetings coordinated by law enforcement. In some instances, registration is only required for certain, high-risk sex offenders. Almost fifty percent of states assign offenders to one of three risk levels and notify the public according to the recidivism risk of the offender. In contrast, other states rely on a more liberal community notification approach, publicizing the location of all sex offenders without regard to recidivism risk (Matson and Lieb, 1996).

Theory

At least two causal logics exist to describe this policy. The first causal logic is that these laws alert community members to potentially dangerous offenders living in close proximity to neighborhoods. As community members become better “capable guardians” it follows that offenders may encounter significantly less opportunities to offend, which should then deter them from committing future sex crimes (Cohen and Felson, 1979; Levenson, Brannon et al., 2007; Tewksbury and Lees, 2006). Figure 6.1 depicts a visual presentation of how this policy is expected to achieve its stated outcomes.

As Tewksbury and Lees (2006:310) observed, sex offender registries and notification policies were “also created with the intent of promoting public shaming and societal ostracism.” Thus, a second causal logic is that registered sex offenders will be cast as social outcasts, which in turn reinforces both the moral code and serves as retributive action, which ultimately should cause a decrease in sex crime among these offenders. Lending support to this assertion is Quinn et al.’s (2004:219) comment that “the belief that sex offenders are unredeemable predators is so widely accepted in modern society that it provides a rallying point for victims’ groups, conservative politicians, and others with the desire to build consensus on the need to make penal sanctions harsher.” Thus, under this logic, sex offender registries and notification laws serve to both establish social solidarity and also to act as retributive sanctions (Blair, 2004). Figure 6.2 describes how sex offender registration and community notification affects sex offenders’ status in the community and how this ultimately may lead to a decrease in sex crime among registered sex offenders.
Logic

Figure 6.1 suggests there are two goals of registration and notification policies. An immediate goal of these two policies is increased monitoring of sex offenders. This is likely a goal that is presumed to be achieved soon after registration occurs. Proponents of registration and notification laws claim that a long term goal is that these policies should reduce overall sex crime rates among registered offenders (Tewksbury, 2005). As figure 6.1 shows, a couple of intervening mechanisms are in play.

As inspection of figure 6.1 suggests, there are several intervening mechanisms by which this process should follow. First, sex offender registration and community notification should lead to more effective monitoring of sex offenders from community members. In this instance, citizens are acting as capable guardians and upon learning about sex offenders’ locations take precautionary steps to reduce sexual victimization (e.g., install additional locks, monitor children more closely). A second pathway is that closer monitoring of sex offenders should result in reduced opportunities to sexually offend. A third and final mechanism by which these policies should achieve success, is by specific deterrence which should ultimately cause a decrease in the sexual recidivism among registered sex offenders.

Conversely, a second causal logic by which registries and notification may affect sex crime rates is depicted in figure 6.2. Here, registries and notification result in sex offenders labeled as “social outcasts.” In turn, proponents of these laws assert that such labeling serves two functions—it reinforces the moral code that sex offending will not be tolerated in the community and, also it serves as a retributive sanction possibly resulting in specific deterrence and eventually a decrease in sex crime among registered sex offenders (Presser and Gunninson, 1999).

The pathways by which these policies should work depend on several assumptions about the criminal justice system, citizen behavior, and sex offenders. First, these policies assume law enforcement can effectively keep track of sex offenders living in the community. Second, both laws require that efforts to notify the public about sex offenders’ whereabouts are actually successful. These laws assume the public uses information about sex offenders and takes precautions based on that knowledge. Third, registries and community notification laws are assumed to have been created with the intent of shaming potential offenders. Fourth, sex offender registration and community notification laws hinge on the assumption that the bulk of
sex offending is committed by sex offenders already formally convicted and unknown to community members. Thus, these policies reflect a “stranger-danger” rationale, as opposed to “acquaintance-danger” logic.

Prior Research

To recap, the theoretical or causal logic underpinning these policies is buttressed by four main assumptions about sex offenders and sex crime. The following assumptions are presented here and further discussed below:

1) law enforcement can effectively track sex offenders living in the community
2) the public will use information obtained from sex offender databases and take proactive measures to avoid victimization
3) sex offender registries were created with the intent of promoting public shaming
4) the bulk of sex offending is committed by convicted sex offenders unknown to community members

1) Law Enforcement Can Effectively Track Sex Offenders Living in the Community. In most states, law enforcement or other state agencies monitor and update online sex offender registries and also inform citizens about sex offenders living in close proximity. Few studies have examined whether these agencies can effectively supervise and monitor sex offenders, and accurately notify communities about dangerous sex offenders. However, among those that have, results suggest law enforcement faces significant challenges in maintaining these registries and notifying the public.

Avrahamian (1998) and Tewksbury (2002) both found that a significant number of sex offenders either do not register as required or, upon registration, provide a false address to law enforcement. For example, in a study of a state sex offender database (n=537), Tewksbury (2002:23) found that a significant percentage of registered and listed sex offenders (around 25 percent) did not have sufficient information provided about them to allow identification by the public or gave inaccurate information about their actual whereabouts, questioning law enforcement’s ability to adequately maintain sex offender records. Levenson and Cotter (2004) found similar results in a study examining whether sex offender databases list accurate
information about offenders. In particular, the authors reported that more than half of their sample of convicted sex offenders (n=183) relayed that information posted about them (e.g., address, offense history) on Florida’s online registry was incorrect.

Having said that, Tewksbury (2002:25) cautioned against making definitive assumptions about law enforcement’s ability to manage the sex offender population as “the need for additional research is clear,” but, also acknowledged that “doubts voiced by some observers appear credible.” In short, extant research suggests that law enforcement has experienced significant challenges in monitoring the sex offender population in the community (Bedarf, 1995).

2) The Public Will Use Information Obtained from Sex Offender Databases and Take Proactive Measures to Avoid Victimization. Proponents of online sex offender registries claim that such tools enable citizens to become better capable guardians, and thus, subsequent changes in potential victims’ behaviors should reduce sex offenses. However, there is little empirical evidence to support this assumption. In a recent review of whether the public makes use of sex offender registries, Zevitz (2006) points to a limited literature. He asserted, “There are only two known studies in the scholarly literature that deal with how sex offender notification affects communities” (Zevitz, 2006:204). Both studies that Zevitz (2006) identified, Matson and Lieb (1996) and Zevitz and Farkas (2000), focused on community members’ reactions to the knowledge that sex offenders were living in their neighborhoods.

As Zevitz mentioned (2006), there are many voids in this area of research. For instance, few studies have examined the extent to which citizens access sex offender databases or the extent to which they take adequate precautions to reduce sexual victimization. Extant research suggests that among citizens that do view such sites, few take significant precautions to prevent sexual victimization (Anderson and Sample, 2008; Phillips, 1998). For instance, in a study that examined whether sex offenders were recognized by community members, Tewksbury (2006:5) concluded that “registered sex offenders often do not experience very close monitoring, as measured by community members recognizing them and law enforcement officials having contact with them.” In examining a sample of Washington residents (n=400), Phillips (1998:3) found that although eighty percent of the public endorsed support for a community notification law, more than half reported that they took no precautions (such as monitoring their children more closely) based on learning that sex offenders were living in their communities.
In a more recent study exploring whether Nebraska residents accessed the state’s sex offender registry and the extent to which they reported taking precautions, Anderson and Sample (2008; n=1,821) reported similar results. Here, the authors found that although most respondents knew the registry existed, “the majority of citizens had not accessed registry information and few respondents took any preventative measures as a result of learning [about] sex offender information” (p. 371).

Overall, extant research has not systematically addressed a) the prevalence of public use of sex offender databases and b) the intervening mechanisms by which self-protective measures translate into reduced sex crime rates (Beck, Clingermayer, Ramsey, and Travis, 2004, Craun, 2008; Duwe, Donnay, and Tewksbury, 2008). This void likely represents a significant research gap, considering that a key assumption about sex offender registries and community notification is that they lower sex crime rates precisely because the public regularly makes use of them and also takes proactive measures to protect themselves. In short, based on prior study findings, it is clear that sex offender registries are rarely accessed by citizens, and even among those members of the public that report accessing these sites, few take the necessary precautions to prevent sexual victimization. Taking these observations into account, it is doubtful these laws will affect sexual offense rates via a capable guardian mechanism.

3) **Sex Offender Registries were Created with the Intent of Promoting Public Shaming.** As Tewksbury and Lees (2006:310) observed, sex offender registries and notification policies were “also created with the intent of promoting public shaming and societal ostracism.” In a study of whether sex offender registration represents a form of community justice, Presser and Gunnison (1999:307) concluded that “sexual violence and notification laws share the logic of dominating and harming another.” Few studies exist that speak to whether these laws were indeed intended to express society’s disdain for sex offenders. However, some research has found that the public tends to view sex offenders as “being ‘qualitatively’ different from other types of violent and serious offenders . . .”

In examining views about recidivism, Levenson et al. (2007) found that the public perceived sex offenders as most likely to recidivate, compared to other offender groups. In particular, the authors observed, “Sex offenders in general were seen by our sample as the criminals most likely to reoffend, even though in toto they have lower rearrest rates for their crime of choice than other types of offenders” (Levenson et al., 2007:153; emphasis in original).
Sixty-eight percent of the total respondents (n=193) surveyed in the Levenson et al. (2007:149) study agreed that “sex offenders reoffend at much higher rates compared to other criminals.”

Manza, Brooks, and Uggen (2004:281) found similar attitudes in their study of felon disenfranchisement. In that study, the public (n=234) was least likely to support restoring voting rights to sex offenders (fifty-two percent supported restoring voting rights), compared to other violent offender groups (sixty-six percent supported restoring voting rights). Thus, although these studies have not explicitly tested the assumption that registry and notification laws serve to shame and ostracize sex offenders, extant research suggests sex offenders are viewed by the public as distinct from other types of offenders.

4) The Bulk of Sex Offending is Committed by Convicted Sex Offenders Unknown to Community Members. In discussing views about sex offenders, scholars have identified several misconceptions about sex offenders and the nature of sexual offenses. One belief is that most sex offenders will attack stranger victims. Such a characterization “distracts attention from more common types of offenders in a manner that unnecessarily inflates public fear and antagonism. It creates unnecessary fear among parents while diverting attention . . . from the fact that most child molesters are known and trusted by the families they victimize” (Quinn et al., 2004:222). Supporting this assertion is a growing body of research that has found that sex offenders typically have some type of prior relationship with their victims (Levenson et al., 2007; Terry, 2005). Indeed, several reports suggest that the vast majority of sex crimes are committed by offenders intimately known to victims—such as a family member, close friend, spouse, neighbor, and other such individuals (Greenfeld, 1997; Sample and Bray, 2003; Terry, 2005). This consistent finding appears at odds with the overall assumption that underpins sex offender registries and community notification laws—namely that sex crimes are often committed by offenders unknown to the victim.

Sex Offender Residency Restriction Laws

Description of Policy

As of 2006, more than twenty states in the nation had enacted residency restrictions that prohibit sex offenders from residing in close proximity to places where potential victims
frequent, such as a school, park, day care center, or school bus stop (Mercado et al., 2008). Law enforcement typically is responsible for ensuring that certain offenders do not live within a specified number of feet near areas that are outlined in the law (Tewksbury and Levenson, 2007). States differ in the type of boundary restriction. Nationally, boundary restrictions range from five hundred feet (Illinois) to one mile (California) (Levenson and D’Amora, 2007:168). Figure 6.3 depicts how such policies are expected to achieve stated outcomes.

Theory

The causal logic behind such policies is that by restricting sex offenders from living near certain locations, the supply of potential sex crime victims will be greatly reduced. First, residency restrictions should present reduced opportunities for sex offenders to reoffend in places where children frequent, such as a school or playground. Offenders should then face reduced exposure and proximity to children. A decrease in sex offender recidivism among affected offenders should then follow.

Logic

An immediate goal of this policy is that residency restrictions will keep offenders away from areas in which children congregate. Ultimately, this separation should result in a decrease in the number of reported sex crimes.

There are several intervening mechanisms by which residency restrictions should effectively reduce sex crime. Since offenders cannot live within close proximity to areas in which large groups of children frequent, opportunities to sexually offend are presumed to be significantly limited. This reduction in exposure to potential victims and reduced proximity to them, in turn, should lead to reduced recidivism among offenders affected by the law. The theoretical or causal logic behind restricting where sex offenders can live rests on three beliefs about the nature of sex crime. First, this policy assumes that sex offenders have high rates of recidivism and must, therefore, be isolated from certain segments of the population. Second, residency restrictions assume that sex crimes are committed close to places children frequent. Third, this policy assumes that the bulk of sex crime victims are children. Recall that restrictions typically prohibit an offender from living near certain areas such as a school, park,
day care center, or school bus stop. Note that these locations are places where children usually frequent, not necessarily adults.

Prior Research

The theoretical or causal logic underpinning sex offender residency restriction policies appear to make three primary assertions about sex offenders and sex crime. These claims are further addressed below:

1) Sex Offenders Have High Rates of Recidivism. The majority of studies suggest that sex offenders as a group, compared to other types of offenders, have relatively low levels of sex recidivism (Center for Sex Offender Management, 2001; Craig, Browne, and Beech, 2008; Hanson, 1998). In a recent analysis of Canadian sex offenders (n=4,274), Harris and Hanson (2004) found that after 15 years, 73 percent of sex offenders had not been charged with, or convicted of another sex offense. Their study findings echo results found in Hanson and Bussière’s (1998) quantitative review of recidivism studies which found an average recidivism rate of 13.4 percent after a follow-up period of four to five years (n=23,393). A similar study by Langan, Schmitt, and Durose (2003) of U.S. sex offenders (n=9,691) found a recidivism rate (measured by criminal conviction) of 5.3 percent after three years.

In their study of Illinois offenders (n=146,918), Sample and Bray (2003:76) found that only 6.5 percent of convicted sex offenders were re-arrested for a sex crime five years later. Among the burglar, stalker, and kidnap offenders, approximately two to three percent were re-arrested for a new sex crime. The difference suggests “that the overwhelming majority of offenders in all listed crime categories were not rearrested for a sex crime, including those persons classified as sex offenders” (Sample and Bray, 2003:74). The authors concluded that “empirical research suggests that sex offenders are not as dangerous as sex offender policies would lead us to believe” (p. 76). Based on prior findings, extant literature does not support the assumption that sex offenders have unusually high rates of recidivism.
2) A Significant Proportion of Sex Crimes Are Committed Near Places Children Congregate. There is little empirical evidence that suggests that sex crimes are committed near schools, school bus stops, day care centers, playgrounds, and other locations where children frequent (Barnes, Dukes, Tewksbury, and De Troye, 2008; Levenson and Cotter, 2005). For example, a study of sex offenders living in Colorado found that pedophiles who recidivated while under parole supervision were randomly scattered throughout the city and did not live closer to areas children frequent, compared to pedophiles that did not recidivate (Colorado Department of Public Safety, 2004). In another state study, researchers found no statistically significant relationship between proximity to schools or parks and sex offender recidivism (Minnesota Department of Corrections, 2003). In a recent review of the literature, Tewksbury and Levenson (2007) offered a potential explanation for the absence of significant findings. They concluded that “residency restrictions control where sex offenders sleep, but do little to prevent a motivated predator from visiting places where he or she can cultivate relationships with children and groom them for sexual abuse” (p. 56).

3) The Majority of Sex Crime Victims Are Children. Because residency restrictions prohibit offenders from living near places children usually frequent, it appears as if a central belief underlying sex offender residency restrictions is that most sex crime victims are children (Levenson et al., 2007). Indeed, empirical studies suggest a substantial proportion of sex crime victims are children. For example, Greenfeld (1997:1) reported that “in self-reported victimization surveys of the public age 12 and older, teenagers report the highest per capita rates of exposure to rape and sexual assault” (p. 1). He further noted that almost half (44 percent) of rape victims were under the age of 18.

Extant research appears to suggest that around half of sex crime victims are children. Bearing this finding in mind, recall that residency restrictions assume that almost all victims of sex crime are children, as evidenced by the types of locations that are listed in the law, such as playgrounds and school bus stops. For instance, bars, nightclubs, and colleges/universities (places adults tend to frequent) are typically not included as restricted locations in these statutes. Given that half of all sex crime victims are over the age of 18, this is perhaps a potentially serious oversight, as this policy does not address sexual victimization of adults.
Castration Laws

Description of Policy Description of Policy

Castration policies are perhaps the most unique and controversial response to sex crime in the U.S. (Lösel and Schmucker, 2005). Typically, these policies require that sex offenders are administered medroxyprogesterone acetate (MPA), a synthetic hormone, to induce reversible chemical castration (Stalans, 2004). Wright (2008:46) reported that some states have enacted castration policies and that a number of other states are considering such legislation. Castration can be a court-ordered sanction or an offender can volunteer to undergo the procedure in exchange for a reduced sentence.

Although states vary in their implementation of castration policies, it appears that overall, castration is a sanction reserved for repeat or dangerous sex offenders (Lösel and Schmucker, 2005). Typically, it involves a multi-step process. To assess risk, an offender is first psychologically evaluated. Then, if deemed eligible for castration, the offender may go through a lengthy legal proceeding. If the sanction is eventually handed down, the offender is then required to take medication that reduces sexual urges (Scott and Holmberg, 2003; Wright, 2008). Figure 6.4 illustrates the causal pathways by which castration is expected to accomplish its stated objectives.

Theory

A theoretical assumption behind castration laws is that if males are physically restrained from maintaining an erection, they will be unlikely to commit sexual offenses involving penile penetration. By extension, such policies assume that sexual battery is the most prevalent type of sex crime, and also a crime primarily committed to fulfill sexual urges.

Logic

The underlying rationale underpinning castration is that if male sex offenders are physically unable to experience an erection, sex crimes will decline. As figure 6.4 shows, castration is thought to achieve its stated outcomes via a few intervening mechanisms.
Chemically castrated males should experience a reduction in sexual urges which should specifically deter them and result in reduced sexual offending involving penile penetration.

Prior Research

Three main rationales are typically offered to support castration policies. Below, these claims are presented and their logic further explored.

1) only males commit sex crimes
2) sexual battery is the most prevalent type of sex crime
3) sex crime is motivated by sexual desire

1) Only Males Commit Sex Crime. Since castration only affects male offenders, a central belief about this sanction is that only males commit sex crime. Overall, empirical evidence appears to support this assertion, but it also points to instances in which females commit sex acts. Greenfeld (1997:2) reported that nearly all arrestees for forcible rape in 1995 were male (99 percent) and that almost one in ten arrestees for other sex offenses were female. In a later study, the Center for Sex Offender Management (2007) relayed that approximately one percent of women were arrested for forcible rape and less than six percent were arrested for other types of sex crimes.

Although the assertion that males commit the majority of sex crimes appears soundly supported by empirical research, female offenders still account for almost ten percent of sex crimes reported to law enforcement. Castration policies only target male offenders and do not address female sex offending. Extant research focusing on “this unique segment of the sex offender population” remains quite limited and there appears to be little “evidence-based guidance or other consensus” about the most effective approaches toward working with female offenders (Center for Sex Offender Management, 2007:1). Experts appear to agree, however, that understanding female sex offenders “remains a significant area of need within the criminal and juvenile justice fields” (Center for Sex Offender Management, 2007:1).

2) Sexual Battery is the Most Prevalent Type of Sex Crime. Another belief surrounding castration policies is that sexual battery or forcible rape (defined, typically, as sexual contact involving the penis, another body part, or foreign object) occur more frequently than other types of sex crime (Terry, 2005:5-6). Empirical literature suggests that although sexual battery or rape accounts for a substantial number of sex offenses, the vast majority of sex crimes
reported to law enforcement involve other types of victimization, including sexual assault (e.g., fondling, touching, or threatening sexual violence), lewd and lascivious acts (e.g., allowing children to view pornography, exposing children to inappropriate sexual conduct), and other sex acts (Terry, 2005). In a national study of sex offenses, Langan et al. (2003:7) reported that of the released 9,691 sex offenders in 1994, 3,115 were considered “rapists” and 6,576 were identified as “sexual assailters.” In a similar study of sex crime, Greenfeld (1997:8) reported that in 1995, state law enforcement agencies recorded approximately 34,650 arrests for forcible rape and 94,500 arrests for other types of sex offenses.

Thus, the clear majority of sexual offenses can be described as acts other than sexual battery or forcible rape. By extension, the bulk of sex crimes can be described as conduct other than sexual contact involving penetration of the penis, body part, or other object (Greenfeld, 1997; Langan et al., 2003), suggesting that castration policies would likely only reduce acts involving sexual battery.

3) Sexual Crime is Motivated by Sexual Desire. A widespread belief held about sex crime is that such offenses are motivated primarily by the sexual urges of offenders. Some experts claim that such crime is often motivated more by a need to control a victim than for purely sexual reasons. In a review of the literature, Terry (2005:72) explained that certain types of sex offenders, in particular, the “power-control rapist” and the “mass rapist” are more likely to offend out of a need to express power over victims. However, Terry (2005:72) claimed that other types of sex offenders, such as the “exclusively sexual” or “sadistic” rapist, appear to commit sexual battery for purely sexual needs. In a 1977 study, Groth, Burgess, and Holmstrom examined the motivation behind sexual battery. In this study, 133 offenders and 92 victims were interviewed to assess whether the sex crime was motivated by power, anger, or to fulfill sexual needs. The authors found that there were “no rapes in which sex was the dominant issue; sexuality was always in the service of other, nonsexual needs,” such as a need to control or impose power over a victim (Groth, Burgess, and Holmstrom, 1977:1239).

By contrast, other studies have found support for the view that rape is primarily an act driven by sexual urges. For example, in a study examining differences in public perceptions about the motivation for sexual assault, Fonow, Richardson, and Wemmerus (1992) found that men were significantly more likely to report that typically sex is the primary motive behind rape. Moreover, in a review of research, Palmer, DiBari, and Wright (1999) argued that empirical
studies to support the view that sex is motivated by violence rather than by sexual needs are virtually nonexistent.

Other scholars have pointed to the difficulties in ascertaining the motivations behind rape. Baker (1997:566) noted that extant research suggests that “all rapes are not alike . . . some are predominately about sex, some rapes are predominately about masculinity.” An empirical limitation of this research is that assumptions about the motivation behind an offense are often made based on responses of offenders or victims. Offenders may be unwilling or unable to accurately recall the primary motivation behind the sex crime. Moreover, victims may be traumatized from the offense and may not be able to report the reason behind the sexual offense. The assumption that sex crime is motivated by sexual desire appears only partially supported by the literature, calling into question the efficacy of castration policies (Jenkins, 1998; Terry, 2005; Wright, 2008).

**Discussion and Conclusion**

Although sex offenses have declined in the past twenty years, the “1990s ushered in an unprecedented amount of sex offender legislation” (Sample and Kadleck, 2008:40). Scholars claim that these laws have been developed and implemented with little regard to theoretical accounts of sex offending and research findings. Thus, studies of this sort can be particularly helpful in identifying how these laws should achieve intended goals. In particular, analyses suggest that widely implemented sex offender policies lack any clear coherent theoretical based or empirical based foundation. Below, I highlight the more salient findings of this chapter.

Sex offender registries and community notification laws have been enacted nationwide. However, many of the assumptions surrounding these laws do not appear to accord with theoretical accounts of sex offending or extant research. For instance, one main premise behind these laws is that the public frequently visits state sex offender registry websites and upon learning about sex offenders’ whereabouts adopt behaviors to reduce victimization. Although research is limited, extant studies suggest a majority of citizens do not visit these sites and that if they do, many fail to take any precautionary measures to reduce sexual victimization (Phillips, 1998; Zevitz and Farkas, 2000). Another premise underlying registry and notification laws is that state agencies can effectively main sex offender websites. At least two studies suggest law
enforcement often faces difficulties in accurately maintaining sex offender databases (Levenson and Cotter, 2005; Tewksbury, 2002).

Sex offender residency restrictions have also been implemented across the nation. A central assumption underlying these laws is that sex offenders often commit crimes near places children regularly congregate. However, there is virtually no empirical evidence that suggests that sex crimes are committed near schools, school bus stops, day care centers, playgrounds, and other locations where children typically frequent (Barnes et al., 2008; Minnesota Department of Corrections, 2003). Instead, emerging studies have suggested that residency restrictions have “created unintended consequences that may do more harm than good” (Walker, 2007:863).

States have also experimented with castration laws, which are designed to chemically castrate convicted sex offenders. These laws rest on a number of faulty assumptions. One being that most sex crimes involve sexual battery. However, the clear majority of sex offenses can be described as sexual acts other than sexual battery or forcible rape. The bulk of sex crimes can be described as conduct other than sexual contact involving penetration of the penis, body part, or other object (Greenfeld, 1997; Langan et al., 2003), suggesting that castration policies would only reduce acts of sexual battery.

Prior research suggests that although sex offender legislation was passed with the intention of preventing sex crime, “many of these laws were passed quickly without fully understanding the consequences” (Walker, 2007:863). Indeed, this study found that many of these laws have been developed and implemented with “little theoretical insights” (Kruttschnitt et al., 2000:66).

Several implications emerge from this study. First, the study examined the causal or theoretical logic of prominent types of sex offender laws—sex offender registries and community notification, residency restrictions, and castration, and found along a host of dimensions, that these laws lack clear theoretical foundations. Notably, states across the nation have not just implemented the three laws studied here. In recent years, a plethora of other laws have been enacted across the U.S. These laws include sexual predator laws, civil commitment, Halloween restrictions, laws requiring sex offenders to carry special identification cards, lifetime supervision of sex offenders, and an assortment of other sanctions. If study findings are any indication, it might also be the case that these other policies lack a clear theoretical foundation. Should such problems be enduring to these laws, it suggests these newer types of laws should be modified in some way to increase their likely effectiveness.
Such efforts may also inform subsequent impact studies of these reforms. A natural next step then is to examine the impacts of these laws. Leading with the premise that America’s sex offender laws have been developed and implemented with little theoretical guidance, this study examined the theoretical basis for prominent sex crime laws. It did not, however, assess the actual impacts of these laws. Notably, in the past twenty years, states have enacted a broad array of other reforms not examined in this study. Many scholars have questioned not only the theoretical and empirical basis behind sex offender legislation, but have also doubted the likely effectiveness of these reforms. Indeed, scholars have observed that impact studies about these laws are virtually “non-existent” (Vásquez, Maddan, and Walker, 2008:175). Heeding calls for additional research in this area, future studies, ideally informed by prior causal logic evaluations, should conduct evaluations of these laws.

Study findings presented here also present implications for policy. Similar to findings from other studies, this study found that several sex crime policies lack an obvious coherent theoretical based or empirical based foundation. For example, a central assumption behind sex offender registries and community notification laws is that citizens will view these sites and upon learning about the whereabouts of sex offenders, will better protect themselves and their children. Given that prior research has found that citizens do not access online registries and make behavioral changes after viewing them, policymakers may want to consider developing and implementing public relations campaigns in which they disseminate information about these registries and community notification procedures and encourage members of the public to visit these sites.

An overriding lesson that emerged here is that sex crime constitutes a significant problem in America. It is understandable that policymakers, often in response to mounting public concern about sex offenders, feel compelled to act, to ‘do something’ about sexual offending and sexual victimization (Sample and Kadleck, 2008:43). However, to conserve limited criminal justice resources, and to more effectively respond to sexual crime, such efforts should, ideally, be guided by theory and research.
Registries and Notification

Capable Guardianship

Reduced Opportunities for Sex Offending

Specific Deterrence

Decrease in Sex Crime among Registered Sex Offenders

Figure 6.1. Causal Pathway Model of Sex Offender Registration and Community Notification Laws: Capable Guardianship
Figure 6.2. Causal Pathway Model of Sex Offender Registration and Community Notification Laws: Shaming/Retribution
Residency Restrictions

Reduced Opportunities to Offend in Places near Children

Reduced Exposure to Children

Reduced Proximity to Children

Decrease in Sex Offenses against Children

Figure 6.3. Causal Pathway Model of Sex Offender Residency Restriction Laws
Chemical Castration through MPA

Reduced Sexual Desire

Specific Deterrence

Reduced Sexual Offending involving Penile Penetration

Figure 6.4. Causal Pathway Model of Sex Offender Castration Laws
CHAPTER 7

EQUALLY DESPISED BY ALL?
SOCIAL AND DEMOGRAPHIC VARIATION IN PUBLIC SUPPORT
FOR PUNITIVE SEX CRIME POLICY

I have little doubt that, in the eyes of ordinary Americans, the very worst child rapists—predators who seek out and inflict serious physical and emotional injury on defenseless young children—are the epitome of moral depravity . . . The harm that is caused to the victims and to society at large by the worst child rapists is grave. It is the judgment of the Louisiana lawmakers and those in an increasing number of other states that these harms justify the death penalty. — U.S. Supreme Court Justice Samuel Alito quoted in *Kennedy v. Louisiana*, 2008

Introduction

Although public opinion about support for capital punishment of murderers has received considerable attention from researchers, few empirical studies have examined support for the execution of other types of criminals, such as sex offenders. By extension, little research exists that has investigated social and demographic factors that may explain variation in support for capital punishment. The gap is notable for at least two reasons. First, death penalty eligible offenses include crimes other than homicide. Treason, perjury resulting in death, and aircraft hijacking are examples of other capital crimes (Snell, 2005). In addition, states have considered adopting or have adopted legislation that permits the execution of sex offenders (Bell, 2008). Second, although other studies have established that the majority of the public supports capital punishment for murderers, little is known about whether they also support it for a range of offenders, such as sex offenders. Much of the research in this area has measured death penalty support by asking respondents whether they favor or oppose capital punishment for convicted murderers (Cullen, Fisher, and Applegate, 2000; Radelet and Borg, 2000). Thus,
although crimes other than homicide are considered capital offenses, we know little about how the public feels toward executing non-homicide offenders.

Some scholars claim that the extension of the death penalty for crimes other than homicide may be part of a national move to increase penalties for sex crime (Wright, 2008). In the 1990s, for instance, several sex crime policies were enacted across the country including sex offender registration and community notification, civil commitment, residency restrictions, and a host of other sanctions (Bell, 2008). In 1995, Louisiana became the first state to enact a sex crime law that permitted the execution of child rapists. Other states soon followed in enacting similar laws (Hobson, 2005). Relatively little is known about whether the public supports these sanctions and whether there are social and demographic divides in support for these laws (Velázquez, 2008).

Against that backdrop, there is an opportunity to explore several, to date, unaddressed and important questions. First, do levels of support for the death penalty vary when considering a range of offenders? Second, do factors that predict support for the use of capital punishment for homicide offenders also predict support for the death penalty of sex offenders? Given the distinction between child and adult victims, do the same factors that predict death penalty support for rapists of adults also predict support for sex offenders convicted of crimes against children? Drawing on prior work and studies of public opinion, I seek to advance research on public views about capital punishment. To this end, I use data from a 1991 Minneapolis Star Tribune national survey to test hypotheses about the effects of social and demographic factors on levels of support for capital punishment of murderers, sex offenders convicted of crimes against adults, and sex offenders convicted of offenses against children. I then discuss the study’s implications for theory, research, and policy.

Background

Death Penalty Research

Several studies have explored trends of public support for capital punishment. Gallup polls reveal that death penalty support has waxed and waned since 1937, hitting a low of 42 percent in 1966 and peaking to a high of 80 percent recorded in 1994. Today, capital
punishment support hovers at approximately 65 percent (Saad, 2008). In addition to trends, research has also identified several correlates of support for the death penalty.

A large literature focused on public opinion suggests that social and demographic factors influence levels of capital punishment support. For instance, most studies consistently find a race effect—with Whites endorsing greater levels of support for capital punishment of homicide offenders (Messner, Baumer, and Rosenfeld, 2006; Unnever and Cullen, 2007). Other studies find that gender significantly influences support for the death penalty. Generally, males report greater levels of support for capital punishment (Applegate, Cullen, and Fisher, 2002). Prior work has also investigated the effects of education on support for capital punishment. Many studies find an inverse relationship, mainly that lower educational attainment increases support for capital punishment (Fox, Radelet, and Bonsteel, 1991). Studies have also examined the effects of age on support. Some studies find a positive effect—with older respondents more likely to support the sanction, whereas other studies find no effect (Rossi and Berk, 1997).

Because of the strong themes of retribution and deterrence inherent in many religious doctrines, studies have explored whether religious affiliation affects support for the death penalty. Several studies have found fundamental Protestant membership to increase support for capital punishment (Britt, 1998). Conservative ideology has also been a consistent indicator of support—with conservatives more likely to support the sanction than other political groups (Unnever, Cullen, and Roberts, 2005).

The effects of other social and demographic variables such as prior victimization are less clear. Some studies find that previous victimization increases support for the death penalty, whereas other studies find no effect (Unnever, Cullen, and Fisher, 2007).

In addition to demographic characteristics, studies have found that views and beliefs about the criminal justice system influence levels of support for the death penalty. One finding from the public opinion literature is that negative perceptions about the criminal justice system (e.g., the belief that violent crime is increasing, criminals reoffend at high rates, etc.) are positively associated with increased death penalty support (Sprott, 1998; Unnever and Cullen, 2007).
Sex Crime and the Death Penalty

Most studies focusing on opinions about capital punishment have used measures that ask about support for the death penalty of convicted murderers. What is striking is that the death penalty has historically applied to offenses other than homicide. Recently, several states such as Georgia, North Dakota, Oklahoma, South Carolina, and Texas have adopted or have considered enacting statutes that permit the execution of child rapists (D’Avella, 2006). For example, Louisiana’s child rape statute permits the execution of offenders convicted of aggravated sexual battery (vaginal or anal penetration) of a child under twelve (Palmer, 1998). Conversely, in other states, such as Texas, offenders convicted of aggravated sexual battery of a child (under age 14) are only eligible for the death penalty if they have at least one prior child rape conviction (Bell, 2008). In Kennedy v. Louisiana (2008:27), a case challenging Louisiana’s child rape law, the U.S. Supreme Court ruled that “the death penalty should not be expanded to instances where the victim’s life was not taken.” Although this case invalidated statutes permitting capital punishment for sex offenders, little is know about whether the public supports capital punishment for sexual violence and whether social and demographic divides exist among support.

Only two public opinions polls have explored public willingness to sentence sex offenders to death. A Time/CNN survey conducted in 1997 examined support for the death penalty of various types of offenders. A central finding from this poll was that public support for the death penalty varied based on offender type. Specifically, 74 percent of the public supported the death penalty for convicted murderers, 47 percent for convicted rapists of adults, and 65 percent for child sexual abusers. The finding that the public supports capital punishment more so for child sex offenders may be due, in large part, to children being viewed as vulnerable and deserving of special protection from sexual violence (Mears et al., 2008). In a review of sex crime legislation, Levesque (2000:332) observed that laws today “serve to highlight the special focus placed on those who offend against children as policymakers respond to the perception that sex offenders should be treated differently.” More recently, a 2008 Quinnipiac University poll focused on views about the death penalty asked respondents whether they “favor or oppose the death penalty for persons convicted of child rape?” Fifty-five percent of respondents favored the
sanction for child rapists. This percentage of endorsement was almost 10 percentage points less than support for executing convicted murderers (63 percent).

However, beyond these two polls, there is a void of research in this area. Because both studies failed to examine social and demographic characteristics and levels of support, we know little about whether these factors predict endorsement for capital punishment.

To address these voids, I examine three dependent variables—support for capital punishment of convicted murderers, support for capital punishment of sex offenders convicted of crimes against adults, and support for capital punishment of sex offenders convicted of crimes against children. In so doing, I also explore whether social and demographic divides exist in opinions about these sanctions.

Data and Methods

The data used in this study were collected by the Minneapolis Star Tribune in August of 1991 using telephone interviewing. They are housed in the Roper Center for Public Opinion Research data archives under the name, “The Minnesota Poll # 1991-AUGNAT: Crime and Sex Offenders.” The study sought to gauge public opinion about sex crime, sex offenders, and sex crime policy. The data (n=1,101) are national in scope and include measures previously unexamined.

Given the goals of comparing what is known about the death penalty and illuminating and exploring factors that might predict support for capital punishment, I examine a core set of factors: support for the death penalty of convicted murderers, sex offenders convicted of crimes against adults, and sex offenders convicted of crimes against children. Below, I describe the measures that will be used in this analysis, the justification for including them, hypotheses about their effects, and their coding. For several of the variables, I include expectations about whether there are specific instances where views may differ depending on the type of offender being considered for the death penalty. Table 7.1 presents descriptive information about the measures.
Dependent Variables

Support for Capital Punishment of Convicted Murderers. This study uses a question that has been used in prior research focusing on capital punishment and public opinion. Respondents were asked, “Do you favor or oppose the death penalty for people convicted of murder?” The coding for this variable is “1=favor” and “0=oppose.”

Support for Capital Punishment of Sex Offenders. The Minneapolis Star Tribune data are unique in that they explore a range of views about capital punishment. In particular, they include two questions about whether the death penalty is appropriate for two types of sex offenders: those convicted of crimes against adults and those convicted of crimes against children. Respondents were asked, “Do you favor or oppose the death penalty for people convicted of rape of an adult?”

To tap into respondents’ views about the death penalty for sex abusers of children, respondents were asked, “Do you favor or oppose the death penalty for people convicted of sexual abuse of a child?”

Social and Demographic Factors

Here I focus on the following set of social and demographic variables—age, gender, race, education, religious affiliation, political conservatism, and victimization. These correlates are some of the main ones that have been studied in the public opinion literature.

Age. Research on age and support for capital punishment is mixed. Some studies have reported an age effect, with older respondents endorsing greater support for punitive sanctions such as the death penalty, whereas, other studies have found no consistent effect (Moon, Wright, Cullen, and Pealer, 2000; Rossi and Berk, 1997). Absent are studies that have explored the effects of age and views about sex offender punishment (Brannon et al., 2007). To account for its effects, I include age as a predictor in the models. In line with similar studies of public opinion about crime and justice (Durham, Elrod, and Kinkade, 1996; Sims and Johnston, 2004) age is coded as follows (percentages of respondents falling in each category are provided parenthetically): “1=18-29” (24.5 percent), “2=30-39” (22.8 percent), “3=40-49” (21.2 percent), “4=50-59” (12.8 percent), and “5=60 and older” (18.2 percent).
Gender. Research consistently indicates that women are less supportive of the death penalty than men (Applegate, Cullen, and Fisher, 2002; Barkan and Cohn, 1994; Sandys and McGarrell, 1995; Skovron, Scott, and Cullen, 1989). A smaller literature has examined gender differences in views about sex offender punishment. At least one study examined gender variation in support for community notification laws and views about sex offenders. Levenson et al. (2007) reported that females were more likely than males to endorse support for community notification laws. In a review of the literature, Wood and Viki (2004:18-19) reported that women were generally less punitive than males toward most crimes, with the exception of rape. In that instance, women were significantly more likely to endorse more stringent sanctioning. Similar to prior studies, I expect women to be less supportive of capital punishment for murderers. However, because of their greater risk of sexual victimization and higher levels of fear of crime, I expect women to express greater support for capital punishment of sex offenders convicted of crimes against adults. Because prior work has suggested that women, compared to men, appear more nurturing and concerned about children and predisposed to an “ethic of care” (Steffensmeier and Allan, 1996:476), I hypothesize that women will endorse greater levels of support for capital punishment of sex offenders convicted of crimes against children. Interviewers recorded the gender of each respondent. Gender is dummy coded (“1=male” and “0=female”).

Race. Extant studies suggest that “race is one of the strongest known correlates of attitudes toward the death penalty and other punitive forms of social control,” with Whites consistently more likely to endorse support for these sanctions (Messner et al., 2006:566; see also, Unnever and Cullen, 2007). I expect to find, similar to prior work, that Whites will be more likely to endorse support for capital punishment of all three types of offenders—convicted murderers, sex offenders with adult victims, and sex offenders with child victims. Race here was measured using the following question: “Which of the following do you consider yourself to be: White, Native American, Black, or Asian?” Eighty-one percent of the sample reported being White, less than one percent indicated they were Native American, almost 12 percent reported they were Black, and less than 4 percent were Asian. Because few respondents reported being another race besides White or Black, and to have a measure that more closely corresponds to those used in prior research (Borg, 1998; Moon, Sundt et al., 2000), race is coded as “1=white” and “0=non-white.”
**Education.** The effects of educational attainment on support for capital punishment have been studied extensively in the public opinion literature. Most studies have found an inverse relationship—respondents with higher education are generally less supportive of capital punishment and less punitive toward offenders (Britt, 1998; Fox, Radelet, and Bonsteel, 1991; Grasmick and McGill, 1994; Halim and Stiles, 2001; Nice, 1992; Payne, Gainey, Triplett, and Danner, 2004). Given the consistency of these findings, I anticipate that highly educated respondents will be likely to support the death penalty for all three offender types. Education is measured by asking respondents, “How many years of schooling have you completed?” The mean of education in the sample is 13.7 years.

**Religious Affiliation.** Several studies have found that conservative Protestants are consistently more likely to support the use of capital punishment (Britt, 1998; Grasmick, Davenport, Chamlin, and Bursik, 1992). Given these observations, I expect that respondents who identify as conservative Protestants will be more likely to support capital punishment for all three offender types—convicted murderers, sex offenders with adult victims, and sex offenders with child victims. Conservative Protestantism is measured by two questions. Similar to measures used in prior studies (Unnever, Benson, and Cullen, 2008:176), respondents were asked, “Is your religious preference Protestant, Catholic, Jewish, something else, or would you say you have no religious preference?” Then, they were asked, “Would you say you are ‘born-again’ or had a ‘born-again’ experience?” If respondents were Protestant and also reported having a ‘born-again’ experience, they were coded as “1=conservative Protestant,” if not, they were coded as “0=all others.”

**Political Conservatism.** A large literature has examined views about capital punishment and political ideology. Most find that politically conservative respondents express greater support for capital punishment (Applegate, Cullen, Fisher, and Ven, 2000; Borg, 1998; Unnever and Cullen, 2005). Since political conservatives tend to support capital punishment at greater levels than other political groups, I include a measure of political conservatism in the analyses. Similar to prior studies, I expect to find that political conservatism increases support for capital punishment of all three offender types—convicted murderers, rapists convicted of crimes against adults, and offenders convicted of sex crimes against children. To measure respondents’ political orientation, they were asked, “When it comes to politics, do you consider yourself a
liberal, a moderate, or a conservative?” In line with previous studies of public opinion (see, e.g., Chiricos et al., 2004), this variable is coded as “1= conservative” and “0=other.”

**Victimization (excluding sexual victimization).** The effects of victimization on death penalty views are unclear. Some studies have reported that victimization increases support for the death penalty (Durham et al., 1996), whereas other studies have reported no effect (Blumstein and Cohen, 1980; Cullen, Clark, Cullen, and Mathers, 1985; Langworthy and Whitehead, 1986; Taylor, Scheppene, and Stinchcombe, 1979). I include a measure of non-sexual victimization in the models to account for its effects. Respondents were asked, “Have you yourself ever been the victim of a crime such as burglary or non-sexual assault?” Victimization is coded as “1=yes” and “0=no.”

**Views about Sex Crime and Sex Offenders**

Recall that studies have found that views and beliefs about the criminal justice system influence levels of support for the death penalty (Sprott, 1998). The variables described below measure respondents’ views about sex crime and perceptions about sex offenders. These variables may affect respondents’ support for the death penalty of convicted sex offenders, but are not necessarily predictive of capital punishment support for convicted murderers. Thus, these measures are only included in the models examining support for capital punishment for sex offenders (tables 7.3 and 7.4).

**Perception of State Sex Crime Rate.** Many studies have found that public perceptions about crime may influence opinions about appropriate punishment (Sprott, 1998; Tyler and Weber, 1982). In a 1988 study, Finckenauer concluded that “it is believed widely . . . that crime rates are rising rapidly . . . and that punishment provides an effective means for controlling deviant and criminal behavior” (p. 86). Similar to findings from this study, the majority of work in this area suggests that perceiving violent or serious crime as increasing may drive support for punitive laws. I anticipate finding that respondents that think the state sex crime rate has increased recently will endorse greater support for capital punishment of sex offenders convicted of crimes against adults and those convicted of offenses against children. Respondents were asked, “In your state, would you say the number of sexual assaults in the past five years has increased, remained about the same, or decreased?” Because so few respondents reported that
the state rape rate had decreased (1.7 percent), this variable is dummy coded as “1=increased” and “0=remained the same or decreased.”

**Knowledge about Sex Offender Recidivism Risk.** Beliefs about offender recidivism may also influence support for offender punishments. Some studies have found that members of the public that believe offenders are at increased risk of recidivism endorse higher levels of support for capital punishment (Roberts, 1996; Tyler, 1997). This tendency, explained Roberts (1996:493) reflects a public willingness to “punish recidivist offenders for defiance of authority.” In the context of sex crime, extant studies suggest that the public frequently overestimates sex offender recidivism (Levenson et al., 2007; Quinn et al., 2004:220-222). One recent study found that the public “overwhelmingly endorsed the belief that the vast majority of offenders will be rearrested for new sex crimes” (Fortney et al., 2007:15). Those respondents that believe sex offenders are highly likely to reoffend no matter what the punishment may be particularly more punitive toward offenders that sexually abuse children. Several accounts suggest that children are seen as deserving of protection from crime (Jenkins, 1998, 2001; Levesque, 2000). Juxtaposed this view against the belief that sex offenders cannot stop offending, and children, in this instance, may be seen as especially vulnerable to sexual victimization. Thus, I expect that respondents that believe sex offenders will not stop reoffending will be especially more likely to support capital punishment of child sex abusers. To evaluate respondents’ knowledge about sex offender recidivism risk, they were asked, “Do you agree or disagree that most sex offenders continue to repeat their crimes no matter what the punishment?” Because only a small number of respondents strongly disagreed (3.8 percent) or disagreed (2.8 percent) with the statement, these responses were combined. The coding for this measure is “1=agree strongly or agree” and “0=disagree strongly or disagree.”

**Fear of Sexual Assault.** Research examining the relationship between fear of crime and punitive views has been “quite inconsistent” (Chiricos, Welch, and Gertz, 2004:365). At least two studies exploring fear of crime and punitive attitudes toward offenders found no effect (Secret and Johnson, 1989; Sprott, 1998). However, other studies have detected an effect. In a national public opinion study, Langworthy and Whitehead (1986) found that high levels of fear of crime increased punitive attitudes toward offender punishment. Using General Social Survey (GSS) data, Young and Thompson (1995) found that fear of victimization increased support for capital punishment. At least two other studies found that fear of crime increased support for the
death penalty (see Finckenauer, 1988; Keil and Vito, 1991). To tap into fear of sexual victimization, respondents were asked, “How worried would you say you personally are about being sexually assaulted? Would you say you are very worried, somewhat worried, or not worried at all?” The coding for this measure is “1=very worried or somewhat worried” and “0=not worried at all.”

Belief in the Efficacy of the Courts. Studies have found that citizens’ views about the criminal court system may sway opinions about capital punishment (Cullen et al., 2000). Prior work has found that citizens that feel the court system leniently sanctions offenders are more likely to favor capital punishment. The belief that courts are ineffective appears to be one that is widespread among citizens. At least one study found that three in four Americans reported that the courts in their communities are “not sufficiently punitive” (Maguire and Pastore, 1998:134-135). In turn, such views may drive public support for harsher sanctions (Cullen et al., 2000; Roberts and Stalans, 1997; Steiner, Bowers, and Sarat, 1999). Fox et al. (1991:512-513) observed that “the public’s insistence on the death penalty may reflect its distrust in how murderers are handled by the criminal justice system.” Similar to prior studies, I anticipate finding that respondents that express the court system is ineffective in punishing sex offenders will be more likely to support capital punishment for both types of sex offenders. To gauge respondents’ views about the court system, they were asked, “Do you agree or disagree: the state court system does not do enough to prevent sexual assault?” This measure is coded as “1=strongly agree or agree” and “0=strongly disagree or disagree.”

Previous Sexual Victimization

Adult Victimization. There are two competing hypotheses that may explain the effect of adult sexual victimization. The effect may be positive—victims of sex crime may feel angry and hold hostile views of sex offenders. Alternatively, the effect may be negative. Given the highly intimate nature of sex crime, victims may be less likely to endorse punitive punishment for sex offenders. This assertion is based on theoretical and empirical accounts about sex crime. First, the majority of sex offenses are committed by offenders previously known to victims (Greenfeld, 1997; Terry, 2005). Second, some accounts suggest that a significant proportion of sex crime victims “wanted the person they trusted or loved to get help, not for the offender to spend a mandated lengthy or life sentence behind bars” (Velázquez, 2008:8). Against this backdrop,
adult sex crime victims may be hesitant to support the death penalty for sex offenders convicted of crimes against adults (especially if the perpetrator is a family member or close friend). To measure adult sexual victimization, respondents were asked: “As an adult have you yourself ever been sexually assaulted?” The coding for this measure is “1=yes” and “0=no.”

**Child Victimization.** Few studies have examined whether prior sexual victimization affects levels of support for sex offender sanctioning. At least one study hypothesized that child victims of sex crime would be significantly more “fearful and angry, and less tolerant of sex offenders” (Levenson et al., 2007:152). However, in this same study, the authors found no significant differences in views about punishment between respondents reporting that they had been “sexually abused before the age of fifteen” and respondents that indicated they had not. Arguably, child sex victims may be particularly punitive toward offenders convicted of crimes against adults. Child sexual victimization was measured by asking respondents: “Looking back on your own childhood, would you say you yourself were ever sexually abused?” This variable is coded as “1=yes” and “0=no.”

**Vicarious Victimization.** Vicarious sexual victimization is also included as a predictor of views about capital punishment. Few studies have examined vicarious victimization and support for the death penalty. In a study of capital punishment support, Borg (1998:561) found that vicarious homicide victimization—that is, “losing a personal acquaintance, friend, or family member to homicide”—decreased support for capital punishment. At least two competing perspectives are offered to explain the effects of vicarious victimization on support for capital punishment (Borg, 1998). First, the effect may be positive—respondents who know about the sexual assault of a close family member or friend may become sensitized to the effects of sexual victimization and may hold hostile views toward these types of offenders. On the other hand, knowing about the sexual assault of a family member or friend may decrease support for the death penalty since the bulk of sex crime is committed by offenders closely known to the victims. Under this scenario, it is possible that vicarious victims also know the offender (if the offender is a close family friend, for instance) and thus, may endorse less support for sentencing a family member or friend to death. Vicarious sexual victimization was gauged by asking, “Do you have a relative or a close friend who has been sexually abused as a child or raped as an adult?” The variable is coded as “1=yes” and “0=no.”
Analytic Plan

I seek to examine three research questions. First, is support for the death penalty different when considering a range of offenses? Second, do factors that predict support for the use of capital punishment for murderers also predict support for the death penalty of sex offenders? Third, do the same factors that predict death penalty support for rapists of adults also predict support for offenders convicted of sex crimes against children?

I begin first with the question of whether support for the death penalty varies depending on the type of offender. Here, I examine the percentage of respondents that supported capital punishment for each type of offender. I then turn to the question of whether factors that predict support for the use of capital punishment for murderers also predict support for the death penalty of sex offenders. Using logistic regression, I test the effects of social and demographic variables used in prior studies—age, sex, race, education, religious affiliation, political ideology, and prior victimization on levels of support for capital punishment of convicted murderers. Next, I explore the effects of several blocks of variables on levels of support for capital punishment for sex offenders convicted of crimes against adults. These groups of variables include social and demographic characteristics, views about sex crime and sex offenders, and previous sexual victimization. Logistic regression is used to examine the effects of these variables on support for capital punishment of sex offenders convicted of crimes against adults. Finally, I explore whether the same factors that predict death penalty support for rapists of adults also predict support for offenders convicted of sex crimes against children. Using logistic regression, the models here examine the effects of demographic characteristics, views about sex crime and sex offenders, and previous sexual victimization on levels of capital punishment support for convicted child sex abusers.

Findings

Starting first with the question of whether support for the death penalty varies depending on offender type, I turn to the three dependent variables. As inspection of Table 1 suggests, almost four out of five respondents support the death penalty of convicted murderers. Turning to sex offenders, we see a marked decline in support. Twenty-seven percent of respondents endorse
the punishment for rapists of adults. For children, the percentage of support (51 percent) is much less than for murderers, but substantially greater than for offenders of adults. Consistent with the Time/CNN (1997) poll, Table 7.1 shows that significantly more respondents support the death penalty for child sex abusers than for rapists of adults.

We turn next to the question of whether factors that predict support for the use of capital punishment for murderers also predict support for the death penalty of sex offenders. Inspection of table 7.2 shows that five predictors significantly explain variation in levels of support for capital punishment of convicted murderers. Similar to findings from prior work, I find that gender, race, education, fundamental Protestantism, and political conservatism impact views about capital punishment (Applegate et al., 2000; Applegate et al., 2002; Britt, 2002; Messner et al., 2006). In particular, men, Whites, those with lower educational levels, fundamental Protestants, and political conservatives are all significantly more likely to support the death penalty for convicted murderers than other groups.

Next, in table 7.3, I examine whether these predictive factors are different for offenders convicted of raping adults. This set of analyses explores the effects of several blocks of variables on levels of support for capital punishment of sex offenders convicted of crimes against adults. These groups of variables are social and demographic correlates, views about sex crime and sex offenders, and previous sexual victimization.

Starting first with model 1 from tables 7.2 and 7.3, I examine whether social and demographic correlates are predictive of capital punishment views. We see that most of these factors do not appear to significantly predict support for capital punishment for offenders convicted of sex crimes against adults. Only education emerges as a significant predictor of reduced support for capital punishment. Specifically, the odds of highly educated respondents supporting the death penalty are 13 percent lower than the odds of less educated respondents.

The next model from table 7.3 examines whether views about sex crime and perceptions about sex offenders influence support for capital punishment of sex offenders. Recall that prior work has suggested that citizens’ perceptions about crime and the criminal justice system significantly impact views about capital punishment for murderers (Finckenauer, 1988; Tyler, 1982). Drawing on this research, model 2 tests whether respondents’ perceptions about the sex crime rate, fear of sexual victimization, beliefs about sex offender recidivism, and views about the court system in preventing sexual victimization affect support for capital punishment. Here,
we see that two of these variables—the view that sex offenders reoffend no matter what the punishment and the belief that criminal courts are ineffective in dealing with sex crime, emerge as statistically significant. Respondents who endorse these views are more likely to support the death penalty for this type of sex offender. Also in this model gender becomes statistically significant. Compared to females, males are significantly more likely to support capital punishment of sex offenders. Education remains statistically significant and in the same direction in this model.

Then, I explore whether sexual victimization variables—prior adult victimization, child victimization, and vicarious victimization—affect support for capital punishment. Although prior studies have found inconsistent results about victimization and support for capital punishment, at least one study hypothesized that sex crime victims may be more “fearful and angry” and “less tolerant” of sex offenders (Levenson et al., 2007), and may therefore, be more likely to endorse support for capital punishment. On the other hand, because sex crime tends to be one in which the victim and perpetrator are closely familiar, prior sexual victimization (including vicarious victimization) may drive down support for the death penalty.

Inspection of the model 4 of table 7.3 shows that vicarious victimization significantly predicts the likelihood of support for the death penalty. The odds ratio of 0.67 for this variable suggests that the odds of vicarious victims supporting the death penalty for sex offenders are 33 percent lower than the odds of non-victims. Again, this finding may result because of the intimate nature of sex crime. Respondents who are aware of sexual assault of a close friend or family member may also know the offender (e.g., if the offender is a family friend, for instance) and thus, may be less supportive of sentencing a family member or friend to death.

Next, we turn to the question of whether respondents will feel differently about sex offenses committed against children. The distinction between adult and child offenders is warranted because some accounts suggest that respondents may view crimes against children as more serious, and more deserving of punitive punishment (Levesque, 2000). This last set of models in table 7.4 examines the effects of demographic and social variables, views about sex crime and sex offenders, and prior sexual victimization experience on support for capital punishment of sex offenders convicted of crimes against children.

We start first with the model that examines social and demographic factors of support for capital punishment. Similar to model 1 in the previous outcome models, model 1 here shows
that only education emerges as a significant predictor of support for capital punishment of child sex abusers. Highly educated respondents (O.R. = 0.80) are less likely to favor capital punishment for these types of sex offenders.

Moving to exploring whether views about sexual offenses and offenders influence support, model 3 examines the effects of the following variables: perceptions about whether the sex crime rate has increased, fear of sex crime, beliefs about sex offender recidivism, and views about the criminal courts in preventing sexual violence. In the previous models examining death penalty support for convicted sex offenders of adults, two of these measures, views about sex offender recidivism and judgments about the courts, emerged as significant predictors of support. In this model, we see a similar pattern. The belief that sex offenders continue to reoffend and the view that the criminal courts are ineffective in preventing sexual violence are significant predictors of increased support for capital punishment of child sex abusers. As hypothesized, these variables increase support for capital punishment of child sex offenders. The odds ratio for this variable (4.57) is significantly greater than the odds ratio in the adult rapist model (3.25), suggesting that believing sex offenders recidivate “no matter what the punishment” drives capital punishment support more for child sex abusers than for rapists of adults.

Finally, I examine whether prior sexual victimization influences support for capital punishment. Similar to model 3 in the table 7.3, we see that vicarious sexual victimization decreases the likelihood of support for capital punishment (O.R. = 0.70).

**Conclusion and Implications**

Although a considerable body of research has investigated public opinion about capital punishment for homicide offenders, few accounts have examined support for the execution of sex offenders. This study aims to address this research gap and contribute to capital punishment and public opinion scholarship, and to also add to an emerging sex crime literature. Like findings of extant work, this study found that Americans overwhelmingly support the death penalty (79 percent) for convicted murderers. This percentage accords with other estimates of support for capital punishment of convicted murderers in the 1990s (see, e.g., Unnever, Cullen, and Roberts, 2005; Cullen et al., 2000; see also, Gallup and Newport, 1991). Support for capital
punishment of sex offenders was supported less so, with 27 percent supporting the sanction for convicted rapists of adults, and 51 percent endorsing it for convicted child molesters.

The study also sought to explain variation in factors that predict support for three outcomes—support for capital punishment of murderers, rapists of adults, and convicted child sex abusers. Similar to findings of other studies, I found that conservative Protestant affiliation, and political conservatism were significant predictors of increased support for capital punishment of convicted murderers. Gender, race, and education were significant predictors of decreased support for the sanction. However, a different pattern emerged in the models examining support for capital punishment of sex offenders convicted of crimes against adults. Here, respondents that believed sex offenders reoffend no matter what the punishment and that the courts are ineffective in preventing sex crime were more likely to support capital punishment for rapists of adults. Conversely, I found that education and vicarious sexual victimization decreased support for capital punishment for these offenders. Similar findings emerged in the child sex abuser models. Specifically, the perception that sex offenders reoffend at high rates and the belief that courts are ineffective in reducing sex crime increased support for the death penalty. Notably, the belief that sex offenders recidivate “no matter what the punishment” increased capital punishment support more for child sex abusers than for rapists of adults. This finding is perhaps due to the belief that children are particularly vulnerable to sexual victimization, and are in need of special protection. In contrast, education and vicarious victimization emerged as predictors that drove down support. Highly educated respondents and those respondents who knew of family members or close friends’ sexual victimizations were significantly less likely to support capital punishment for child sex abusers.

Several implications flow from this study. First, future studies should develop theoretical perspectives that explain why respondents make distinctions about sex crime involving vulnerable victims, such as children. In this study, public support for executing offenders convicted of sex crimes against children was nearly double that than support for executing rapists of adults. In addition, respondents that believed sex offenders recidivated “no matter what the punishment” were more likely to endorse support for capital punishment of child sex abusers. Other studies have found that victim vulnerability affects levels of support for capital punishment of homicide offenders (Paquette Boots, Heide, and, Cochran, 2004). Children, in this instance, may be seen as a vulnerable population, deserving of protection from
sexual predators. Thus, future studies should develop theoretical frameworks that explore the extent to which victim vulnerability affects levels of support for punitive reforms.

Second, future research should investigate capital punishment support over time. This study used cross-sectional data to test hypotheses about capital punishment support, providing a “snap-shot” of public views. Notably, public support for the death penalty hit peak levels in the early 1990s (Saad, 2008), thus estimates in this study may have been an artifact of generally higher levels of support for capital punishment in that time period.

Third, policymakers should consider educating the public about sex crime and sex crime laws. Several variables related to public views about sex crime and sex offenders were examined as predictors of support for capital punishment of sex offenders. At least two of these measures—the belief that offenders reoffend at high rates and the perception that criminal courts fail to prevent sex crime—emerged as significant predictors of increased support for capital punishment. Importantly, research has not supported many of these beliefs. Studies suggest that, as a group, sex offenders have relatively low rates of general recidivism, and that a significant proportion of sex offenders benefit from treatment, and also that courts, in the last twenty years have increased penalties for sex crime (Caputo and Brodsky, 2004; Fuselier et al., 2002; Levenson et al., 2007; Lösel and Schmucker, 2005). A recent review of sex crime laws revealed that “the general public, in spite of its strong support for tough sexual offense laws, is not well-informed about the nature and extent of sexual offending” (Velázquez, 2008:7). By all accounts, the public appears largely uninformed about the extent of sex crime, the behavior of sex offenders, and sex crime laws. Given these findings, policymakers should consider taking steps to educate citizens about the reality of sex offending and offer suggestions about how to curtail the risk of sexual victimization.

The death penalty has been a “significant part of the American response to crime since the early colonial period” (Durham et al., 1996:705). Recently, debates about capital punishment for sex offenders have been at the forefront of public discourse. For example, the issue emerged in the most recent presidential election, with both presidential candidates denouncing the Kennedy decision (Barnes, 2008). Most often, proponents of the death penalty claim that such a sanction has strong public backing and its use is based, in part, on a “national consensus” (D’Avella, 2006). Yet, few studies have gauged public support for capital punishment of sex offenders. This research gap is potentially problematic because although public opinion does not
necessarily drive criminal justice policy, a large body of evidence suggests that it can (Roberts and Stalans, 1997). Given this observation, understanding nuances in public views the death penalty and what influences them, and also what accounts for social and demographic divides in support, is salient.
Table 7.1. Descriptive Statistics

<table>
<thead>
<tr>
<th></th>
<th>Mean</th>
<th>S.D.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Dependent variables:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital punishment support for...</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Convicted murderers (1=favor, 0=oppose)</td>
<td>0.79</td>
<td>0.41</td>
</tr>
<tr>
<td>Sex offenders convicted of offenses against adults (1=favor, 0=oppose)</td>
<td>0.27</td>
<td>0.44</td>
</tr>
<tr>
<td>Sex offenders convicted of offenses against children (1=favor, 0=oppose)</td>
<td>0.51</td>
<td>0.50</td>
</tr>
<tr>
<td><strong>Independent variables</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Social and demographic</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Age (1=18-29, 2=30-39, ..., 5=60+)</td>
<td>2.77</td>
<td>1.42</td>
</tr>
<tr>
<td>Gender (1=male, 0=female)</td>
<td>0.50</td>
<td>0.50</td>
</tr>
<tr>
<td>Race (1=white, 0=all others)</td>
<td>0.81</td>
<td>0.39</td>
</tr>
<tr>
<td>Education (in years)</td>
<td>13.70</td>
<td>2.97</td>
</tr>
<tr>
<td>Conservative protestant (1=yes, 0=no)</td>
<td>0.25</td>
<td>0.43</td>
</tr>
<tr>
<td>Politically conservative (1=yes, 0=no)</td>
<td>0.37</td>
<td>0.48</td>
</tr>
<tr>
<td>Victimized (excluding sexually) (1=yes, 0=no)</td>
<td>0.32</td>
<td>0.47</td>
</tr>
<tr>
<td>Views about sex crime and sex offenders</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sex crime rate has increased (1= increased, 0=decreased/remained the same)</td>
<td>0.78</td>
<td>0.41</td>
</tr>
<tr>
<td>Fear of sexual assault (1=somewhat worried/very worried, 0=not worried)</td>
<td>0.41</td>
<td>0.49</td>
</tr>
<tr>
<td>Sex offenders highly likely to reoffend (1=strongly agree/agree, 0=strongly disagree/disagree)</td>
<td>0.93</td>
<td>0.26</td>
</tr>
<tr>
<td>Courts not harsh enough (1=strongly agree/agree, 0=strongly disagree/disagree)</td>
<td>0.84</td>
<td>0.37</td>
</tr>
<tr>
<td>Previous sexual victimization</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Victimized as an adult (1=yes, 0=no)</td>
<td>0.05</td>
<td>0.21</td>
</tr>
<tr>
<td>Victimized as a child (1=yes, 0=no)</td>
<td>0.08</td>
<td>0.27</td>
</tr>
<tr>
<td>Knows someone who was victimized (1=yes, 0=no)</td>
<td>0.33</td>
<td>0.47</td>
</tr>
</tbody>
</table>
Table 7.2. Logistic Regression of Public Support for Capital Punishment on Social and Demographic Variables: Convicted Murderers

<table>
<thead>
<tr>
<th></th>
<th>b</th>
<th>Odds Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intercept</td>
<td>1.03 (0.55)</td>
<td>2.80*</td>
</tr>
<tr>
<td>Age</td>
<td>0.09 (0.07)</td>
<td>1.10</td>
</tr>
<tr>
<td>Gender</td>
<td>0.06 (0.19)</td>
<td>1.82**</td>
</tr>
<tr>
<td>Race</td>
<td>1.60 (0.21)</td>
<td>4.97***</td>
</tr>
<tr>
<td>Education</td>
<td>-0.11 (0.04)</td>
<td>0.89***</td>
</tr>
<tr>
<td>Conservative Protestant</td>
<td>0.58 (0.24)</td>
<td>1.79*</td>
</tr>
<tr>
<td>Political conservative</td>
<td>0.48 (0.20)</td>
<td>1.61*</td>
</tr>
<tr>
<td>Victimization</td>
<td>-0.12 (0.20)</td>
<td>0.89</td>
</tr>
<tr>
<td>Nagelkerke R2</td>
<td>0.17</td>
<td></td>
</tr>
</tbody>
</table>

*p ≤ .05   ** p ≤ .01   *** p ≤ .001

Note: Unstandardized coefficients (with standard errors in parentheses) and odds ratios are presented.
Table 7.3. Logistic Regression of Public Support for Capital Punishment on Social and Demographic Variables: Sex Offenders Convicted of Crimes against Adults

<table>
<thead>
<tr>
<th></th>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>b</td>
<td>Odds Ratio</td>
<td>b</td>
</tr>
<tr>
<td>Intercept</td>
<td>1.10 (0.51)</td>
<td>3.00*</td>
<td>-1.58 (0.79)</td>
</tr>
<tr>
<td>Social and demographic variables</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Age</td>
<td>-0.10 (0.06)</td>
<td>0.91</td>
<td>-0.08 (0.07)</td>
</tr>
<tr>
<td>Gender</td>
<td>0.25 (0.16)</td>
<td>1.29</td>
<td>0.58 (0.23)</td>
</tr>
<tr>
<td>Race</td>
<td>-0.02 (0.21)</td>
<td>0.98</td>
<td>-0.29 (0.25)</td>
</tr>
<tr>
<td>Education</td>
<td>-0.15 (0.03)</td>
<td>0.87***</td>
<td>-0.10 (0.04)</td>
</tr>
<tr>
<td>Conservative Protestant</td>
<td>-0.02 (0.19)</td>
<td>0.98</td>
<td>-0.13 (0.21)</td>
</tr>
<tr>
<td>Political conservative</td>
<td>0.25 (0.17)</td>
<td>1.28</td>
<td>0.16 (0.18)</td>
</tr>
<tr>
<td>Victimization</td>
<td>-0.06 (0.17)</td>
<td>0.94</td>
<td>-0.13 (0.20)</td>
</tr>
<tr>
<td>Views about sex crime and sex offenders</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sex crime rate has increased</td>
<td>-0.24 (0.22)</td>
<td>0.79</td>
<td>-0.20 (0.23)</td>
</tr>
<tr>
<td>Fear of rape</td>
<td>0.32 (0.24)</td>
<td>1.37</td>
<td>0.30 (0.24)</td>
</tr>
<tr>
<td>Sex offenders highly likely to reoffend</td>
<td>1.10 (0.44)</td>
<td>2.99*</td>
<td>1.18 (0.45)</td>
</tr>
<tr>
<td>Courts not harsh enough</td>
<td>0.73 (0.29)</td>
<td>2.08*</td>
<td>0.66 (0.30)</td>
</tr>
<tr>
<td>Sexual victimization</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adult victim</td>
<td>-0.94 (0.62)</td>
<td>0.39</td>
<td></td>
</tr>
<tr>
<td>Child victim</td>
<td>0.43 (0.31)</td>
<td>1.53</td>
<td></td>
</tr>
<tr>
<td>Vicarious victim</td>
<td>-0.41 (0.21)</td>
<td>0.67*</td>
<td></td>
</tr>
<tr>
<td>Nagelkerke R2</td>
<td>0.05</td>
<td>0.07</td>
<td>0.09</td>
</tr>
</tbody>
</table>

* p ≤ .05    ** p ≤ .01    *** p ≤ .001

Note: Unstandardized coefficients (with standard errors in parentheses) and odds ratios are presented. N=1,101
Table 7.4. Logistic Regression of Public Support for Capital Punishment on Social and Demographic Variables: Sex Offenders Convicted of Crimes against Children

<table>
<thead>
<tr>
<th></th>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>b</td>
<td>Odds Ratio</td>
<td>b</td>
</tr>
<tr>
<td>Intercept</td>
<td>3.20 (0.48)</td>
<td>24.4***</td>
<td>0.94 (0.65)</td>
</tr>
<tr>
<td>Social and demographic variables</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Age</td>
<td>0.02 (0.05)</td>
<td>1.00</td>
<td>0.02 (0.06)</td>
</tr>
<tr>
<td>Gender</td>
<td>0.01 (0.15)</td>
<td>1.00</td>
<td>0.24 (0.21)</td>
</tr>
<tr>
<td>Race</td>
<td>-0.12 (0.19)</td>
<td>0.89</td>
<td>-0.20 (0.21)</td>
</tr>
<tr>
<td>Education</td>
<td>-0.23 (0.03)</td>
<td>0.79***</td>
<td>-0.20 (0.03)</td>
</tr>
<tr>
<td>Conservative Protestant</td>
<td>-0.15 (0.17)</td>
<td>0.86</td>
<td>-0.13 (0.19)</td>
</tr>
<tr>
<td>Political conservative</td>
<td>0.22 (0.15)</td>
<td>1.24</td>
<td>0.11 (0.17)</td>
</tr>
<tr>
<td>Victimization</td>
<td>0.17 (0.15)</td>
<td>1.19</td>
<td>0.07 (0.18)</td>
</tr>
<tr>
<td>Views about sex crime and sex offenders</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sex crime rate has increased</td>
<td>0.17 (0.21)</td>
<td>1.18</td>
<td>0.10 (0.21)</td>
</tr>
<tr>
<td>Fear of rape</td>
<td>-0.19 (0.21)</td>
<td>0.98</td>
<td>0.02 (0.22)</td>
</tr>
<tr>
<td>Sex offenders highly likely to reoffend</td>
<td>1.41 (0.34)</td>
<td>4.11***</td>
<td>1.52 (0.34)</td>
</tr>
<tr>
<td>Courts not harsh enough</td>
<td>0.62 (0.23)</td>
<td>1.87**</td>
<td>0.58 (0.23)</td>
</tr>
<tr>
<td>Sexual victimization</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adult victim</td>
<td>-0.02 (0.40)</td>
<td>1.00</td>
<td></td>
</tr>
<tr>
<td>Child victim</td>
<td></td>
<td>0.16 (0.29)</td>
<td>1.18</td>
</tr>
<tr>
<td>Vicarious victim</td>
<td>-0.35 (0.18)</td>
<td>0.70*</td>
<td></td>
</tr>
<tr>
<td>Nagelkerke R2</td>
<td>0.11</td>
<td>0.13</td>
<td>0.14</td>
</tr>
</tbody>
</table>

* p \leq .05  ** p \leq .01  *** p \leq .001

Note: Unstandardized coefficients (with standard errors in parentheses) and odds ratios are presented. N=1,101
CHAPTER 8

U.S. SUPREME COURT DECISIONS:
EVIDENCE-BASED POLICY?

Introduction

U.S. Supreme Court decisions constitute the “law of the land” and, as such, have the potential to affirm, modify, or overturn public policy. For example, the 1972 U.S. Supreme Court decision, Furman v. Georgia, prohibited the death penalty in the U.S. Four years later, after states revised their death penalty statutes, the Court lifted the moratorium and permitted capital punishment (Gregg v. Georgia, 1976). This is but one example of the policymaking ability of the Supreme Court. Notably, findings from social science research have “figured prominently in several criminal cases recently decided by the Supreme Court” (Acker, 1990:4), including, Roper v. Simmons (2005) (juvenile death penalty), McCleskey v. Kemp (1987) (racial discrimination and capital punishment), and Ballew v. Georgia (1978) (five-person juries).

In short, the U.S. Supreme Court, through its decisions, is a prominent policymaker (Stolz, 2002). Yet, the bulk of criminal justice research has focused on evaluating policies or programs, such as domestic violence interventions or boot-camps (Lipsey et al., 2006). Few studies have assessed whether U.S. Supreme Court decisions, which constitute policy, rest on a theoretical and empirical foundation.

A goal of this chapter is to contribute to scholarship on and debates about U.S. Supreme Court decisions. To this end, it focuses on a largely neglected area of study—the U.S. Supreme Court’s role in upholding, modifying, and reversing sex crime policy. The focus on sex offender laws is pertinent for a few reasons. First, sex crime laws have proliferated recently—every state has enacted sex offender registries and community notification policies and many others have adopted additional types of sex crime statutes. Second, sex crime laws are controversial, and according to some scholars, have been developed and implemented “without the benefit of theoretical insights” (Kruttschnitt et al., 2000:66). Third, although a sizable body of research
exists, experts claim sex offender laws are centered around myths about sex offenders and have been enacted in response to “unusual and compelling cases” (La Fond, 2005:9).


A broader literature has examined judicial decision-making and has suggested that the accessibility of emerging social science research “has made American law receptive to valid science to an unprecedented degree” (Faigman and Monahan, 2005:631). The U.S. Supreme Court decision, Daubert (1993), requires justices to “evaluate the research methods supporting expert evidence and the principles used to extrapolate from that research to the task at hand” (Faigman and Monahan, 2005:654).

This requirement likely presents “a daunting task, especially for justices who, on average, have little formal training in statistics and research methods” (Faigman and Monahan, 2005:654). In a recent U.S. Supreme Court decision, Justice Antonin Scalia (2005:12) remarked, “Given the nuances of scientific methodology and conflicting views, courts—which can only consider the limited evidence on the record before them—are ill equipped to determine which view of science is the right one.” Juxtaposed against these concerns, there has been relatively little investigation about whether justices draw on and accurately assess theoretical and empirical work from a larger body of criminal justice research. Heeding calls for further examination of U.S. Supreme Court decisions, this chapter first explores the role of the U.S. Supreme Court and national policy, its use of social science research, and a spate of recently enacted sex offender laws. Given the focus on sex offender laws, it then reviews relevant cases involving these laws. Next, it presents study findings. It concludes with a discussion about study implications.
Background

The U.S. Supreme Court as Policymaker

Several scholars have observed that U.S. Supreme Court decisions reflect public policy. For instance, Stolz (2002:177) noted that the U.S. Supreme Court, through its interpretation of the law “has engaged in criminal justice policy making” and that “through its decisions, the Court has affected the rights of adult criminal and juvenile defendants, as well as setting expectations for law enforcement and corrections practice.” In the 1960s, for example, the Court heard a series of cases involving juvenile justice processing. Several of the decisions, most notably, In re Gault, transformed both the practice and policies of the juvenile justice system. Indeed, these cases led to greater constitutional protections for juveniles which “precipitated a procedural revolution that has transformed the juvenile court . . .” (Feld, 1984:141).

Juxtaposed against these observations, there are several restraints on the Court’s ability to affect policy. Most notably, the Supreme Court can only hear cases brought to it. Thus, the social issues addressed in decisions are solely the product of the types of cases available for judicial review. In addition, the Supreme Court tends to rely on precedent or the doctrine of “stare decisis” or “let the decision stand.” Finally, the Court has no formal way to ensure decisions are implemented by other actors in the criminal justice system. The Court “generally has success in achieving the effective implementation of its decisions [but] there may be gaps between its decisions and the actions of those who implement its decisions” (Stolz, 2002:179). Even so, U.S. Supreme Court decisions represent “the law of the land,” and as such have the potential to uphold, modify, or overturn criminal justice policies (Segal, Spaeth, and Benesh, 2005).

The U.S. Supreme Court and Social Science Research

Before the turn of the 20th century, the U.S. Supreme Court rarely mentioned social science research to establish issues of fact. In Muller v. Oregon (1908), Louis Brandeis, acting as a litigator, submitted a brief to the Court that cited research describing the negative effects of long industrial work hours. The justices cited research mentioned in this famous “Brandeis
brief” in the Muller majority opinion. The recognition of this empirical work is considered a “watershed in the Supreme Court’s use of social science research evidence” (Acker, 1990:2).

Almost half a century later, the Court’s decision in Brown v. Board of Education (1954) rested heavily on its assessment of psychological and educational research. In this case, social scientists and psychologists presented briefs that contained citations of studies suggesting that minority students attending predominantly African American schools performed worse academically than students attending mostly White schools (Monahan and Walker, 1991:573).

Since then, U.S. Supreme Court decisions have reflected an increased use of social science research for a range of cases. In a review of research in this area, Monahan and Walker (1991:581) observed, “Social science research used as a social framework is becoming common in American courts.” More recently, Bushway and Piehl (2007:479) noted that “it is clear that social science can and will be taken into account by legal actors such as the Supreme Court.”

Social science evidence enters the U.S. Supreme Court through a few mechanisms. Frequently, justices obtain information about the case from petitioner and respondent briefs and amicus curiae (“friends of the court” or “Brandeis”) briefs. Some accounts suggest that justices may occasionally conduct independent literature searches (Erickson and Simon, 1998:32) although proactive research is rarely conducted (Tanford, 1990).

The literature examining the use of social science in U.S. Supreme Court cases is varied. Studies have focused on several issues, including the number of citations mentioned in court decisions, the role of amicus curiae briefs and judicial decision-making (O’Connor and Epstein, 1982), and the influence of expert testimony (Roesch, Golding, Hans, and Reppucci, 1991). Barring this large literature, scholars point to several research gaps. In a study of how social science research impacts U.S. Supreme Court decision-making, Acker (1990:3) concluded that “we know little about such basic matters as . . . what kinds of references are utilized” and also whether the Court accurately summarizes research findings (Haney and Logan, 1994). These gaps present an opportunity to explore whether the U.S. Supreme Court cites social science evidence and whether its interpretation accords with findings from a larger body of work when deciding cases centered on sex offender laws. I focus on sex offender laws because these laws are numerous and widespread, controversial, and although a large body of research exists on the topic, experts claim legislation has been grounded in myths about sex crime (Levenson and D’Amora, 2007).
Sex Offender Laws

In response to growing concern about sexual victimization in the 1990s, virtually all states have enacted some type of sex offender policy. For instance, per federal legislation (Jacob Wetterling Act, 1994 and Megan’s Law, 1996), all states have adopted sex offender registries and community notification policies which require states to maintain sex offender databases and notify communities when sex offenders move into their neighborhoods. Sex offender registration and community notification policies “aim to both promote community awareness of offenders’ presence and deter offenders via reductions in their opportunities to locate and access unsuspecting and vulnerable victims” (Tewksbury, 2005:67; see also Tewksbury, 2002). Although these laws require every state to maintain a sex offender registration and have some type of community notification policy in place, each state carries out these requirements differently. Typically, convicted sex offenders living in the community are required to register with a state agency (Tewksbury, 2005; 2006). Community members are notified about sex offenders living in the community via a state website that lists sex offenders by name, posts their pictures, and in some cases, displays their addresses (Anderson and Sample, 2008).

Beginning in the 1990s, civil commitment statutes proliferated. These laws require that correctional departments detain released high-risk sex offenders in a mental health facility. While detained in the facility, offenders are evaluated, required to attend treatment, and monitored. They are released when mental health professionals deem them as no longer a threat to the community (Doren, 2002).

Perhaps more than any other offender, sex offenders are viewed as “being in need of therapeutic treatment and management different from that of the general population of criminal offenders” (Burdon and Gallagher, 2002:88). Some states have required that convicted sex offenders receive mandatory treatment such as mental health counseling and therapy while incarcerated. These programs can range from cognitive behavioral treatments to biomedical treatments, such as chemical castration (Grossman, Martis, and Fichtner, 1999).

In response to growing concerns about internet sex crimes, legislators have enacted child pornography laws, requiring strict penalties for individuals convicted of accessing and distributing child pornography (Wolak, Finkelhor, and Mitchell, 2005). These laws typically
require that individuals serve time in prison or jail and restrict even virtual or computer-generated images of children engaging in sex acts (Jenkins, 2001).

Several states such as Georgia, North Dakota, Oklahoma, South Carolina, and Texas have adopted or have considered enacting statutes that permit the execution of child rapists (D’Avella, 2006). For example, Louisiana’s child rape statute permits the execution of offenders convicted of aggravated sexual battery (anal or vaginal penetration) of a child under twelve (Palmer, 1998). Conversely, in a number of other states, such as Texas, offenders convicted of aggravated sexual battery of a child (under age 14) are only eligible for the death penalty if they have at least one prior child rape conviction (Bell, 2008).

**Sex Offender Laws and the U.S. Supreme Court**

The U.S. Supreme Court has heard a wide range of cases involving sex offender laws around a broad range of issues including: the constitutionality of civil commitment for convicted sex offenders, laws prohibiting accessing and distributing virtual or computer-generated child pornography, laws requiring mandatory treatment for convicted sex offenders, sex offender community notification policies, sex offender registries, laws that extend the statute of limitations for sexual offenses, and the use of capital punishment for sex offenders. These broadly are the main types of policies the Court has addressed in the last decade. Below, I discuss particular cases that represent each of these different policies.

*Kansas v. Hendricks* (1997): Respondent Hendricks claims that Kansas’s civil commitment statute, the Sexually Violent Predator Act (1994), violates the due process, double jeopardy, and ex-post facto clauses of the Constitution. The Court found that the law provided strict procedural safeguards and that the act “does not establish criminal proceedings” and therefore is not punitive (p. 369).

*Ashcroft v. Free Speech Coalition* (2002): The U.S. Supreme Court considered whether the Child Pornography Prevention Act of 1996 (CPPA), which bans virtual or computer-generated images of children engaging in sex acts, unduly restricts freedom of speech. The Court ruled that the CPPA was overly broad and restrictive, and therefore unconstitutional.

*Mckune v. Lile* (2002): Respondent Lile, a convicted sex offender in the custody of the Kansas Department of Corrections, challenged the tenets of a treatment program that required him to admit his guilt. Lile argued that such an admission would violate his Fifth Amendment
privilege against self-incrimination. The U.S. Supreme Court ruled that the incentive system serves a “vital penological purpose” and does not violate Lile’s fifth amendment privilege against self-incrimination.

Connecticut Department of Public Safety v. Doe (2003): Respondent Doe, a convicted sex offender, challenged a Connecticut community notification law that required pictures of all sex offenders and their locations to be posted on a state website. Doe claimed that because the act does not allow him to demonstrate he is a low-risk sex offender, the posting of his picture and personal information on the state website violates his constitutional rights, specifically, the due process clause of the 14th Amendment. The U.S. Supreme Court rejected Doe’s claims and found that because the state website includes a disclaimer alerting the public to the fact that the recidivism risk of offenders has not been determined, the website functions to protect the interests of the public and is not intended as retributive action toward offenders.

Smith et al. v. Doe et al. (2003): Respondents Doe I and Doe II challenged an Alaska law requiring retroactive registration for offenders who committed sex crimes prior to the passage of the 1994 act. Both petitioners were released from prison and completed rehabilitative programs for sex offenders. Although Doe I and Doe II were convicted of their sex crimes before the Act’s passage, respondents are still covered by the law and must register with local law enforcement. In particular, the respondents claim that the law is retroactive and punitive in nature. The U.S. Supreme Court decided that the law is non-punitive in nature, thus the retroactive aspect of Alaska’s registration act does not violate the ex-post facto clause.

Stogner v. California (2003): Petitioner Stogner challenged a California statute that permitted prosecution for sex-related child abuse where the prior limitations period has expired if the prosecution is begun within one year of the victim’s report to law enforcement. The U.S. Supreme Court found that the law was retroactive, and thus, unconstitutional.

Kennedy v. Louisiana (2008): Petitioner Kennedy was convicted of an aggravated sex crime in Louisiana and sentenced to death. He challenged that the sentence violated the Eighth Amendment clause against cruel and unusual punishment. The U.S. Supreme Court agreed that the law constituted cruel and unusual punishment and invalidated the Louisiana statute.
The Present Study

The goal of this chapter is to contribute to scholarship on and debates about U.S. Supreme Court decisions and sex crime policies. To this end, I focus on a largely neglected area of study: U.S. Supreme Court decisions involving sex offender laws. Using several decisions focused on the above issues—*Kansas v. Hendricks* (1997), *Ashcroft v. The Free Speech Coalition* (2002), *McKune v. Lile* (2002), *Connecticut Department of Public Safety v. Doe* (2002), *Smith et al. v. Doe et al.* (2003), *Stogner v. California* (2003), and *Kennedy v. Louisiana*—this chapter examines whether the Court draws on theoretical and empirical accounts of sex crime when deciding cases and examines the extent to which the Court accurately assesses the state of evidence. In particular, I examine the following research questions. First, does the U.S. Supreme Court refer to theoretical accounts of sex crime and empirical research when deciding whether sex offender policies are legally permissible? Second, does the Court’s overall assessment of the literature accord with a larger body of theoretical and empirical work about sex crime? This chapter examines these decisions, and the extent to which the Court’s assessment of sex crime and policy correlates with findings from a larger literature.

Given that the 1990s marked the beginning of “get tough” sex offender laws, cases that emerged in the years 1990 through 2008 were selected for analysis. The seven cases were chosen in the following manner. First, a search of Lexis-Nexis Lawyers’ Edition was conducted to identify relevant decisions. Using keywords “sex offender,” “sex offenders,” “sex offender laws,” “sex crime laws,” and “sex crime policy,” seventeen potential matches were indicated. Seven of these cases did not focus on sex offender laws. For instance, *Blakely v. Washington* (2004), a case identified by the search, did not focus directly on sex offender policy, nor did the decision have implications for sex offender laws.

Review of these nine remaining cases revealed that they centered on the following policies: civil commitment laws, statutes banning virtual or computer-generated child pornography, treatment for sex offenders, sex offender community notification policies, sex offender registries, challenges against laws that extend the statute of limitations for sexual offenses, and capital punishment for convicted sex offenders. For all but one of these policies, there was one case per policy with the exception of civil commitment. Notably, the Court has heard four cases centered on this policy—*Kansas v. Hendricks* (1997), *Seling v. Young* (2001),
Kansas v. Crane (2002), and McDeid v. Mooney (2004). Analysis of these four cases revealed they were nearly identical in their content. Given this overlap, and the fact that the Kansas v. Hendricks decision provided a foundation for the other subsequent cases, it is the only civil commitment law examined in analyses. The primary justification here is to ensure proportionality. Thus, excluding the other decisions guarantee analyses focus on one case per issue.

In the end, seven cases remained. Analyses consisted of combing through each majority decision and identifying any reference to social science research. For the purpose of this study, such research was identified using the criteria advocated by Erickson and Simon (1998:3), who operationalized social science data as “information dealing with social, social psychological, and psychological issues.” In particular, I focused on citations from journal articles, reports, or public opinion polls.

It bears emphasizing, as Acker (1990:3) has cautioned that “the mere citation of a social science reference does not, of course, necessarily signify that the writer was influenced by the work, nor that it was intended as supporting authority for the associated proposition.” However, citations are generally considered “as among the best evidence available of the judicial reasoning process” (Acker, 1990:3) and are arguably indicators of whether empirical work influenced the Court’s decision. Thus, exploring the Court’s citations to criminological research about sex offenders, and the extent to which the Court’s majority decisions reflect an accurate understanding of this research, may assist with uncovering whether sex crime laws represent “evidence-based” policy or “best practices” in the criminal justice system.

Findings

This study seeks to examine two research questions. Starting first with the question of whether the U.S. Supreme Court refers to theoretical accounts of sex crime and empirical research when deciding cases involving sex offender policies, I find, similar to prior studies, (e.g., Erickson and Simon, 1998), that the U.S. Supreme Court indeed references such work. As tables 8.1 through 8.5 show, the Court mentioned a total of twenty-one scholarly findings in six cases, roughly 3.5 citations per case. Note that the Court made no references to social science in
the *Kansas* (1997) decision concerning civil commitment. This estimate accords with findings from other studies. For example, Acker (1990:10), in an analysis of the U.S. Supreme Court’s use of social science in criminal justice cases, reported that the average number of social science citations was 1.3 in his study (n=240). In a similar study of the Court’s use of social science research in death penalty cases, Acker (1993:72) found approximately eight citations per case (n=28 cases). Thus, the finding of approximately 3.5 citations per case fits squarely within these estimates. A second question was whether the Court’s interpretation of the literature accords with findings from a larger body of scholarly work. Here, I find variation—instances where the Court’s summary of the literature accords with general findings and instances where the Court’s interpretation is misleading or overstated.

In examining the patterns of research cited in these decisions, several categories of research emerged. The categories are conceptually important because each highlights a strand of sex offender research. Organizing citations in this fashion can assist in examining whether the Court accurately summarizes theory and research in these areas. The Court’s citations hit upon five substantive themes of research: sex crimes involving children, sex offender recidivism and reentry, prevalence of sex crime, sex offenders and treatment, and the effects of sexual victimization. There is likely variation because each case deals with different aspects of sex offender laws, therefore the Court is likely expressing different concerns for each case. For instance, in discussing the prevalence of sex crime in America and the efficacy of treatment for sex offenders, the Court focused exclusively on these issues in *McKune v. Lile* (2002), a case that challenged a component of treatment for convicted sex offenders. Thus, all of the social science citations concerning treatment programs came solely from this case. A similar pattern emerged for the effects of victimization category. Here, theory and research from only one case is cited—*Kennedy v. Louisiana* (2008), which outlawed the death penalty for child rapists. For the other categories, sex crimes involving children and sex offender recidivism and reentry, there is more variation, with no clear pattern in citations.

**Sex Crimes Involving Children**

Starting with our first category—sex crimes involving children—inspection of table 8.1 shows there are six references to research in this area. Moving chronologically, the Court first made observations about the literature on child pornography in the *McKune* decision. In
particular, the Court stated, “There are subcultures of persons who harbor illicit desires for children and commit criminal acts to gratify the impulses.”

Here, the Court’s assessment is partially accurate. The first part of the Court’s assertion is supported by prior work. For example, Jenkins (2001:102) identified certain enclaves of individuals (“child porn enthusiasts”) that visit child porn websites, download pornographic images of children, and participate in child porn message boards. However, the second part of the Court’s statement that such individuals “commit criminal acts to gratify the impulses,” is questionable. Few studies have examined the link between viewing child pornography and committing child sex offenses. Some scholars claim there is no causal relationship between viewing child pornography and sex offenses. In a review of child pornography studies, Jenkins (2001:128) concluded that “statistics establish no causal link between child porn materials and actual behavior.” Moreover, other studies suggest “only a modest association of general pornography crimes with child victimization” (Finkelhor and Ormrod, 2004:6-7). For example, in a majority (92 percent) of the child exploitation pornography offenses in the U.S. from 1997-2000, police were unable to link the offender with an identifiable victim (Finkelhor and Ormrod, 2004). Given these observations, the Court’s assertion is partially supported by extant work.

Next, the Court turned to research examining the extent and prevalence of child sexual victimization. In the McKune decision it stated, “The victims of sexual assault are most often juveniles. In 1995, for instance, a majority of reported forcible offenses were committed against persons under 18 years of age. Nearly 4 in 10 imprisoned violent sex offenders said their victims were 12 or younger.” The Court also cited research about the prevalence of child sexual victimization in the Connecticut case: “The victims of sex assault are most often juveniles.”

Extant studies support both claims. According to national estimates of sex crime from 1991 to 1996, one percent of victims of these crimes was age 54 or older. Seven percent of victims were over age 34. Twelve percent were ages 25 through 34, and 14 percent were between the ages of 18 and 24. The remainder, exceeding two-thirds (67 percent) of all victims of sexual assault reported to law enforcement agencies, were juveniles (under the age of 18 at the time of the crime). More than half of all juvenile victims were under age 12 (Snyder, 2000:2). Overall, the Court’s assessment of the literature is accurate.

Then, the Court considered research about child molesters in the Smith decision concerning sex offender registration. In reviewing the literature, it pointed to a study about
recidivism of such offenders. It claimed, “Empirical research on child molesters, for instance, has shown that ‘contrary to conventional wisdom, most reoffenses do not occur within the first several years after release,’ but may occur ‘as late as 20 years following release.’”

By and large, this assessment has been supported by extant work. Child molesters have lifetime reoffense rates that range from 52 percent (Doren, 1998) to 70 percent (Langevin et al., 2004), compared to 3 to 20 percent for sex offenders as a group (Grubin and Wingate, 1996; La Fond, 2005; Terry, 2005). Studies also suggest that child molesters are at risk of reoffending several years after their first arrest. For example, Hanson, Steffy, and Gauthier (1993:650) reported in their sample of 196 child molesters, “forty-two percent were eventually reconvicted, with 23 percent of the recidivists being reconvicted more than 10 years after they were released.”

In this instance, the Court was making the more general point that child molesters have high rates of lifetime recidivism, and thus, “the duration of the reporting requirements [of the Alaska registry] is not excessive” (Smith, p. 17). However, the Court does not consider that child molesters only represent one type of sex offender. Alaska’s sex offender registry applies to a wide range of offenders, not just child molesters. By extension, in declining to draw attention to this nuance, the Court appears to equate all sex offenders with child molesters. Thus, its assessment about child molester recidivism is correct, but it lacks context about the scope of the registry law.

The Court then moved to discussing delayed child sexual abuse allegations in the Stogner case concerning statutes of limitations for reporting sex crimes. It stated, “Memories fade, and witnesses can die or disappear. Such problems can plague child abuse cases, where recollection after so many years may be uncertain, and ‘recovered’ memories faulty, but may nonetheless lead to prosecutions that destroy families.” In short, the Court cited research questioning the reliability of child sexual abuse recollections after many years. There are reasons to suspect, however, that child sexual abuse is most likely underreported, rather than fabricated (Terry, 2005). For example, Widom and Morris (1997:35) found that “a significant risk of distortion and loss of information is associated with the recollection of events from a prior time period,” and also, “given society's disapproval of various forms of family violence, a person may be embarrassed to report such experiences or unwilling to reveal such private information.” Given such findings, it is difficult to assess the extent to which memories are “faulty,” and the effects of
such allegations in subsequent prosecutions. The Court’s assertion indicates a lack of knowledge about the likelihood of underreporting among sexually abused children.

Turning next to prevalence data, the Court estimated the number of child sexual victimizations in the U.S. in the Kennedy decision. Using National Incident-Based Reporting System (NIBRS) data, the Court claimed that, “Approximately 5,702 incidents of vaginal, anal, or oral rape of a child under the age of 12 were reported nationwide in 2005; this is almost twice the total incidents of intentional murder for victims of all ages (3,405) reported during the same period.”

In discussing extending the capital punishment for child rapists, the Court claimed that executions would likely greatly increase considering that incidents of child rape occur more frequently than homicide in the U.S. The Court’s concern here was that efforts to permit the death penalty for child rapists would substantially increase the number of capital punishment eligible cases for prosecution. Notably, the Court’s summary is correct. Yet, the Court neglected to mention a few limitations about the NIBRS data. Approximately 25 percent of the population is covered by NIBRS reporting, representing 26 percent of the nation’s reported crime and 37 percent of law enforcement agencies. Given the limited coverage of these data, estimates may not represent national incidents of child rape and homicide prevalence (Finkelhor and Ormrod, 2004; Justice Research and Statistics Association, 2008; Maxfield, 1999).

**Sex Offender Recidivism and Reentry**

Inspection of table 8.2 reveals that the Court alluded to four citations when reviewing sex offender recidivism and reentry. Starting with its first observation, cited in the McKune and Connecticut decisions, the Court reported, “When convicted sex offenders reenter society they are much more likely than any other type of offender to be rearrested for a new rape or sex assault.”

At the very least, the Court’s assertion is technically correct, but misleading. A prevalent empirical finding is that sex offenders as a group have low rates of general recidivism (Center for Sex Offender Management, 2001; Hanson and Bussière, 1998). Although research suggests that certain types are more likely to sexually recidivate (e.g., child molesters with a male victim preference), it may be misleading to characterize sex offenders as “much more likely” to be re-arrested for a new sex crime, as the baseline of sex offenses is very low to begin with (Craig et
al., 2008; Sample and Bray, 2003). In Sample and Bray’s (2003) study of offender recidivism (n=146,918), 6.5 percent of sex offenders were rearrested for a new sex crime—thus, an overwhelming majority of Illinois sex offenders, 93 percent, were not rearrested for a new sex offense (p. 76). Notably, among the burglar, stalker, and kidnap offenders, approximately two to three percent were re-arrested for a new sex crime. The difference suggests “that the overwhelming majority of offenders in all listed crime categories were not rearrested for a sex crime, including those persons classified as sex offenders” (Sample and Bray, 2003:74). Given these observations, the Court’s summary here is correct, but also misleading.

Next, the Court reviewed research about risk factors for sexual recidivism. In particular, the Court summarized in the Smith decision, “Alaska could conclude that a conviction for a sex offense provides evidence of substantial risk of recidivism.”

In this instance, the Court emphasized evidence of substantial risk of recidivism. For certain types of sex offenders, (e.g., incest offenders and statutory rapists) their risk of offending may not be as great as other groups (e.g., child molesters, rapists), suggesting the importance of considering other types of risk factors for recidivism. Sex offense conviction is not necessarily the only risk factor predictive of future sexual recidivism (Seto and Barbaree, 1999).

Researchers have recently identified dynamic risk factors which, in contrast to static or unchangeable characteristics like prior offense, are more predictive of recidivism risk, such as employment status. The consideration of dynamic factors “improves predictive accuracy provided by static risk factors [such as prior offense history] alone” (Hanson, 2006:18; Hanson and Harris, 2000). For instance, Hanson and Bussière (1998) found that sexual recidivism was best predicted by measures of sexual deviancy, such as prior sexual offense record and deviant sexual preferences, and to a lesser extent by general risk factors (such as age or prior offense history). In a more recent meta-analysis, Hanson, Morton, and Harris (2003) identified four sets of variables that predicted sex recidivism. These factors included deviant sexual interests, such as sexual interest in children, measured by penile plethysmograph, criminal history, often measured by number and severity of prior offenses, demographic variables, including age (younger offenders) and martial status (never married), and treatment experience (whether offender completed a treatment program).

Further casting doubt on the Court’s claim about prior sex offenses and recidivism, are studies finding that sex offenders as a group have markedly varied recidivism rates. For
instance, in a study of sex offender recidivism, Harris and Hanson (2004) found that the factors associated with increased risk were preference for male victims, prior sexual offenses, and offender young age. The authors studied several types of sex offenders and found, similar to other studies, that child molesters (with a male victim preference) and rapists had the highest rates of recidivism at a twenty-five year follow-up—35 percent for child molesters and 24 percent for rapists. In a similar study of sex offenders, Doren (1998) found slightly higher recidivism rates for child molesters with a male victim preference (52 percent) and for rapists (39 percent). Terry (2005) summarized extant research on sex offender recidivism rates and found, similar to prior investigations that deviant sexual interests, in particular, deviant fantasies and impulses experienced by offenders were identified as key risk factors for future sex offending. In short, when considering the heterogeneity of sex offenders, prior sex offense history alone may not be “substantial evidence” of the likelihood of future recidivism for all types of sex offenders.

In exploring the recidivism rates of sex offenders, the Court asserted in Smith, “The legislature’s findings are consistent with grave concerns over the high rate of recidivism among convicted sex offenders and their dangerousness as a class. The risk of recidivism posed by sex offenders is frightening and high.”

Here, the Court neglects to consider several studies which have found that sex offenders, compared to other offender types, have lower levels of general recidivism and lower than assumed levels of sex recidivism (Center for Sex Offender Management, 2001; Craig et al., 2008; Hanson, 1998). In a recent analysis of Canadian sex offenders (n=4,274), Harris and Hanson (2004) found that after fifteen years, 73 percent of sex offenders had not been charged with or convicted of another sex offense. Their study findings echo results found in Hanson and Bussière’s (1998) quantitative review of recidivism studies which found an average recidivism rate of 13.4 percent after a follow-up period of four to five years (n=23,393). A similar study by Langan et al. (2003) of U.S. sex offenders (n=9,691) found a recidivism rate (measured by criminal conviction) of 5.3 percent after three years.

That said, the relative risk of sex offending is higher for sex offenders than for other types of offenders. For example, in a study of the recidivism of diverse offender types, Sample and Bray (2003) reported that compared to other types of offenders, such as burglars, sex offenders were most likely to be rearrested for a new sex crime five years after arrest. However,
the overwhelming majority of Illinois sex offenders, approximately 93 percent, were not rearrested for a new sex offense. The authors concluded (p. 76) that “empirical research suggests that sex offenders are not as dangerous as sex offender policies would lead us to believe.” To be clear, prior studies suggest compared to other offender types, sex offenders are most likely to recommit sexual offenses, however, their relative risk of sexually offending is lower than assumed. Taking prior findings into account, the Court’s assessment neglects to highlight these significant nuances.

Finally, the Court discussed sex offender reentry into the community in the Smith decision. The Court asserted, “‘The procedures employed under the Alaska statute are likely to make [respondents] completely unemployable because employers will not want to lose business when the public learns they have hired sex offenders.’ This is conjecture.”

In discussing the effects of sex offender registries in the Smith decision, the Court stated, essentially, that extant research to support the contention that sex offenders face significant employment challenges is largely absent. This assertion is misleading. Emerging research has suggested that registered sex offenders may face significant employment discrimination (Edwards and Hensley, 2001; Logan, 2003b). In particular, at least one study found that a majority (57 percent; n=30) of sex offenders suffered from employment discrimination based on their criminal history (Zevitz and Farkas, 2000). Notably, these studies were in print when the Court rendered the Smith decision. Furthermore, at the same time of the decision, there was a relatively large literature on prisoner reentry documenting the many employment challenges that offenders face upon release from prison (see Lynch and Sabol, 2001; Petersilia, 2000). Based on these findings, the Court’s assertion here is incorrect.

Sex Crime Prevalence

As examination of table 8.3 shows, the Court also discussed general facts about sex crime prevalence in the McKune decision. There were two instances in which the Court cited research about the frequency of sex offenses nationally. First, the Court stated: “In 1995, an estimated 355,000 rapes and sexual assaults occurred nationwide.”

This fact was used in the decision with the intent of suggesting an unusually large number of these offenses occurred in 1995. Although correct, the assertion lacks context. According to national estimates, in 1995, there were: 1,099,179 aggravated assaults, 2,594,995
burglaries, 580,545 robberies, and 21,597 homicides (Federal Bureau of Investigation, 1996). Thus, the number of sex crimes that occurred in 1995 compared to the number of other types of crime (with the exception of homicide offenses) was relatively low. However, the Court’s assertion appears to suggest this number is abnormally high compared to other offenses. Thus, the Court’s claim about the prevalence of sex offenses is correct, but it lacks information about other types of offenses that would better place the estimate in context.

Next, in discussing the prevalence of incarcerated sex offenders, the Court reported: “Between 1980 and 1994, the population of imprisoned sex offenders increased at a faster rate than for any other category of violent crime.” This observation is correct, but may reflect the adoption of punitive policy rather than actual increases in reports of sex offenses. For instance, experts claim sex crime rates have been decreasing since the 1990s. Finkelhor and Jones (2004) found that from 1992 to 2000, the number of substantiated claims of child sexual abuse decreased by 40 percent, from an estimated 150,000 cases to 89,500 cases. Further, estimates of the national rape rate from 1973 to 2003 suggest a decline in the sexual battery victimization rate from 2.5 per 1,000 people age 12 and older in 1973 to 0.3 per 1,000 persons age 12 and older in 2005 (Catalano, 2006). Thus, although the population of incarcerated sex offenders has proliferated from 1980 to 1994, it does not follow that the actual rate of sex crime has also increased.

**Sex Offender Treatment**

As examination of table 8.4 describes, the Court made three observations about research focused on exploring the efficacy of sex offender treatment in the *McKune* case. First, the Court reported, “Therapists and correctional officers widely agree that clinical rehabilitative programs can enable sex offenders to manage their impulses and in this way reduce recidivism.”

Put differently, the Court claimed that practitioners agree that rehabilitative programs can help offenders control impulses and thus, reduce recidivism. However, some accounts suggest this is not the case. For example, Marques (1999:14) acknowledged that “despite the efforts of many talented clinicians through the past several decades, the question of whether sex offender treatment works is still hotly debated.” In a more recent review, Terry (2005:139) noted that “results of sex offender treatment programs are conflicting and researchers are largely divided as to the benefits of treatment.” In a meta-analysis of sex offender treatment programs, Hanson et
al. (2006:170) concluded that “despite more than 35 review papers since 1990, and a review of reviews, researchers and policy-makers have yet to agree on whether treatment effectively reduces sexual recidivism.” Thus, there appears to be little consensus among researchers about how rehabilitative treatment should affect sexual recidivism.

Second, the Court observed that: “The rate of recidivism of treated sex offenders is fairly consistently estimated to be around 15 percent,’ whereas the rate of recidivism of untreated offenders has been estimated to be as high as 80 percent.’”

The Court points to a significant finding in the sex crime literature—that treatment can effectively reduce an offender’s risk of recidivism. Although the Court is technically correct, the assertion overstates research findings suggesting that sex offenders are heterogeneous offenders, with varying rates of recidivism, and overlooks other research findings showing that not all sex offenders benefit from treatment. There has been research to suggest that sex offender treatment may actually increase sexual recidivism among certain offenders (Quinsey, Khanna, and Malcolm, 1998). Also, the claim is rather vague in describing “treated sex offenders.” Studies suggest varying rates of recidivism based on the type of treatment received by sex offenders. For instance, “multi-modal cognitive-behavioral treatment programs have the greatest potential of all treatment regimes to reduce recidivism” (Terry, 2005:163). Here, the Court accurately summarized prior study findings, but declined to acknowledge this important nuance in the literature.

In discussing the efficacy of sex offender treatment and rehabilitation, the Court strung together a series of assertions: “‘Denial is generally regarded as a main impediment to successful therapy . . .’ Therapists depend on offenders truthful descriptions of events leading to past offenses in order to determine which behaviors need to be targeted in therapy . . . Research indicates that offenders who deny all allegations of sexual abuse are three times more likely to fail in treatment than those who admit even partial complicity.’” In short, the Court explained that for sex offenders to benefit from treatment, they need to acknowledge past crimes so that therapists can better treat them. However, the “research is inconclusive about the linkage between denial and recidivism” (Levenson and Macgowan, 2004:52). One study found no statistically significant relationship between denial of offense and subsequent reoffense (Hanson and Bussière, 1998). Conversely, other research has found that denial interfered with the willingness to engage in therapy and to increase resistance (Hunter and Figueredo, 1999), which
could lead to a reduced effect of treatment. In short, the Court does not consider these distinctions in the literature.

**Effects of Sexual Victimization**

Finally, the Court discussed research about the effects of sexual victimization in the *Kennedy* decision. Table 8.5 presents six arguments about prior findings. In describing the effects of rape, the Court stated, “Rape has a permanent psychological, emotional, and sometimes physical impact on the child.”

Similar to the effects of other types of abuse, several studies have found negative outcomes of sexual abuse. Child sexual victimization is linked to several negative outcomes such as posttraumatic stress disorder (PTSD), depression, suicide, sexual promiscuity, victim-perpetrator cycle, and poor academic performance (Paolucci, Genuis, and Violato, 2001; Terry, 2005). Thus, the Court appears to accurately review study findings in this area.

Next, the Court opined: “It is not at all evident that the child rape victim’s hurt is lessened when the law permits the death of the perpetrator.”

As the Court observed, few studies exist that speak to whether a “child rape victim’s hurt is lessened when the law permits the death of the perpetrator.” Quas et al. (2005:1) noted that “surprisingly little is known from scientific research about how legal involvement affects children’s long-term mental health and legal attitudes.” Some accounts suggest that a significant proportion of sex crime victims “wanted the person they trusted or loved to get help, not for the offender to spend a mandated lengthy or life sentence behind bars” (Velázquez, 2008:8). In a longitudinal study of child sexual assault victims (n=218), Quas et al. (2005:110) found that victims who testified about their assault and “whose cases resulted in a severe sentence for the perpetrator had higher internalizing and externalizing symptoms relative to individuals who did not testify and whose case resulted in a similarly severe sentence.” In short, the Court is correct in its assessment of the literature examining the effects of sexual victimization on children.

Then, the Court turned to the reliability of the children’s testimony. The Court claimed, “Studies conclude that children are highly susceptible to suggestive questioning techniques like repetition, guided imagery, and selective reinforcement.”

The Court noted that research suggests that children are susceptible to suggestive questioning techniques. Research tends to support this assertion. Although suggestive
questioning of children about sexual assaults “will yield answers that lead to criminal prosecutions . . . children’s memories, especially young children’s, are highly susceptible to distortion from suggestive questioning” (Brainerd and Reyna, 2005:295).

The Court also described the prevalence of reporting among child sex abuse victims: “Underreporting is a common problem with respect to child sexual abuse.”

Many studies have found that compared to other types of crime, sex crime is extensively underreported to law enforcement (Finkelhor and Omrod, 2001). In a review of research, Terry (2005) estimated that only one-third of all sex crimes are reported to authorities and that, in particular crimes against children are especially likely to go undetected. Further studies comparing Uniform Crime Report (UCR) estimates of sex crime to National Criminal Victimization Survey estimates have found that only a minority of sexual offenses are reported to law enforcement (Hart and Rennison, 2003). Based on the totality of these findings, it appears that the Court is correct in its review here.

In describing the factors related to underreporting, the Court surmised, “One of the most commonly cited reasons for nondisclosure is fear of negative consequences for the perpetrator, a concern that has special force where the abuser is a family member.”

The Court identified studies that have found nondisclosure is prevalent when the perpetrator is a family member. Other studies have reported similar findings (Bachman, 1998; Tjaden and Thoennes, 2000). Results from a study using NCVS data about individuals over the age of 12 who reported their sexual assaults to police from 1992 to 2000, indicate that victims were more likely to report the sexual abuse to police when the offenders were strangers (41 percent) than family members or intimates (27 percent) (Hart and Renninson, 2003:5). Another retrospective study found that victims of sexual abuse as children reported “fear of retaliation by offenders” as a significant barrier in reporting the abuse (Sable, Danis, Mauzy, and Gallagher, 2006:160). In sum, the Court’s summary of the literature is supported by extant work centered on this topic.

Finally, the Court spoke about the consequences of applying the death penalty to sex offenders, “Assuming the offender behaves in a rational way, as one must to justify the [death] penalty in some respects gives less protection, not more, to the victim, who is often the sole witness to the crime.”
The Court stated that imposing the death penalty on sex offenders may increase the chance that the victim will be murdered. There has been little empirical research that has investigated this question. However, critics of the death for child rapists claim that the punishment may actually increase harm suffered by victims as offenders may kill the victim to escape detection (Bell, 2006; Liptak, 2006). Scholars have noted such a theory “for obvious reasons, would be extremely hard to prove,” however, is a “commonsense argument” (Glazer, 1997:105).

**Discussion and Conclusion**

Findings from this study accord with findings from other studies that have examined U.S. Supreme Court decision-making. For example, based on their analysis of U.S. Supreme Court decision-making, Erickson and Simon (1998:149) concluded that “the Supreme Court uses social science data in its decisions.” This study examined seven cases involving sex offender laws that spanned the last decade. It found that the U.S. Supreme Court made mention of social science studies in majority opinions in six separate cases, *Ashcroft v. Free Speech Coalition* (2002), *McKune v. Lile* (2002), *Connecticut Department of Public Safety v. Doe* (2003), *Smith et al. v. Doe et al.* (2003), *Stogner v. California* (2003), and *Kennedy v. Louisiana* (2008) a total of twenty-one times. In *Kansas v. Hendricks* (1997) which was also examined, the Court made no social science references. The case focused on the use of civil commitment for sex offenders. It is not entirely clear why the Court did not mention scholarly work here. It appears as if the case hinged more on the legality of the practice, rather than its efficacy. Indeed, Heilburn, Nezu, Keeney, Chung, and Wasserman (1998:138) observed that the decision primarily upheld “the provisions of the statute from constitutional challenges under substantive due process, double jeopardy, and the prohibition against ex-post facto legislation. Beyond the constitutional question, however, *Hendricks* highlights important questions for the behavioral sciences . . .”

The findings presented here build on a growing body of work investigating the U.S. Supreme Court’s use of social science. Of the six remaining cases that referenced social science research, each case averaged about 3.5 citations. Prior research has found citations to average between one and eight per case (Acker 1990, 1993). This estimate fits within this range.
The studies referenced here were mostly exclusively government reports, however, when discussing sex crimes involving children, the efficacy of sex offender treatment, and the effects of sexual victimization, the Court also relied on a number of scholarly articles. In examining the use of sex offender community notification in the *Connecticut* decision, the Court asserted that it would be “conjecture” to argue that sex offender status results in employment discrimination or social stigma. However, at the time of the decision, at least three empirical articles existed that found registered sex offenders face significant employment discrimination (Edwards and Hensley, 2001; Logan, 2003b; Zevitz and Farkas, 2000). Moreover, a large prisoner reentry literature documenting employment challenges that offenders typically experience after release existed at the time of the decision. Taking these findings into account, several implications can be gleaned from this study.

First, some theoretical perspectives have been offered about the extent to which the U.S. Supreme Court relies on social science research when reaching decisions of policy importance. Threat theory, for example, argues that judges may intentionally avoid technical or complicated social science research, as such research represents a threat to their power and prestige (Tanford, 1990). One finding from this study was that the Court relied primarily on government reports. Perhaps the Court relied on this type of research in lieu of peer-reviewed articles due to its less technical nature. Such assumptions were not explicitly tested in this analysis. Future theoretical accounts may want to consider testing these types of theoretical hypotheses about U.S. Supreme Court decision-making.

Second, future research approaches should include analyses of various U.S. Supreme Court opinions on a range of policies to examine if the Court accurately applies empirical findings when rendering decisions. The cases examined in this study are likely illustrative but not necessarily representative of the types of cases heard by the U.S. Supreme Court. In addition, this study only examined seven cases; future studies should expand this area of research and examine a larger number of decisions. Moreover, because lower courts’ opinions often influence the Court’s decisions, future research should consider applying the methodology used in this study to examine trial, appellate, and district courts’ rulings.

Third, scholars have observed that judges typically have a legal and not a social science or empirical background (Faigman and Monahan, 2005). The study here suggested the Court was able to accurately summarize some empirical work, but may benefit from additional social
science information delivered by disinterested third parties. In a review of social science and the U.S. Supreme Court, Rosen (1972:202) concluded that “the proper conclusion to be drawn is that the Court requires more and not less exposure to the work of social scientists.” One possible enactment that may assist justices in their assessments is the use of independent expert testimony. Justices are likely compromised when there is a dearth of quality empirical evidence on certain social issues, such as the nature of sex crime or the impact of sex offender policies. Perhaps what is required is an independent third party (comprised of experts in the field) that presents facts about scientific and empirical research to U.S. Supreme Court justices in an accessible manner.

The U.S. Supreme Court is often overlooked as a national policymaker. However, its decisions shape the implementation of many criminal justice laws. We know relatively little about whether its interpretation of research rests on a theoretical and empirical foundation. In an era that has called for “evidence based policy” and “best practices,” we may benefit from learning more about the Court’s use of social science research in the decision-making process.
Table 8.1. The U.S. Supreme Court’s References to Social Science Research in Deciding Prominent Sex Offender Cases: Sex Crimes Involving Children

<table>
<thead>
<tr>
<th>Claim</th>
<th>Supported by Theory and Research?</th>
<th>Citation Source</th>
<th>Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>“The victims of sexual assault are most often juveniles. In 1995, for instance, a majority of reported forcible offenses were committed against persons under 18 years of age. Nearly 4 in 10 imprisoned violent sex offenders said their victims were 12 or younger.”</td>
<td>Correct</td>
<td>(Crimes against Children Research Center, 2000; U.S. Department of Justice, 1997)</td>
<td><em>McKune v. Lile</em> (2002:5)</td>
</tr>
<tr>
<td>“The victims of sex assault are most often juveniles.”</td>
<td>Correct</td>
<td>(Greenfeld, 1997)</td>
<td><em>Connecticut Department of Public Safety v. Doe</em> (2003:2)</td>
</tr>
<tr>
<td>“Empirical research on child molesters, for instance, has shown that ‘contrary to conventional wisdom, most reoffenses do not occur within the first several years after release,’ but may occur ‘as late as 20 years following release.’”</td>
<td>Correct, but lacks context</td>
<td>(Prentky et al., 1997)</td>
<td><em>Smith et al. v. Doe et al.</em> (2003:17)</td>
</tr>
<tr>
<td>Claim</td>
<td>Supported by Theory and Research?</td>
<td>Citation Source</td>
<td>Case</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-----------------------------------</td>
<td>-----------------------------------------------------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td>“Memories fade, and witnesses can die or disappear. Such problems can plague child abuse cases, where recollection after so many years may be uncertain, and ‘recovered’ memories faulty, but may nonetheless lead to prosecutions that destroy families.”</td>
<td>Correct, but underreporting of such abuse likely more prevalent</td>
<td>(Holdsworth, 1998)</td>
<td>Stogner v. California (2003:631)</td>
</tr>
<tr>
<td>“Approximately 5,702 incidents of vaginal, anal or oral rape of a child under the age of 12 were reported nationwide in 2005; this is almost twice the total incidents of intentional murder for victims of all ages (3,405) reported during the same period.”</td>
<td>Correct, but data are not nationally representative</td>
<td>(U.S. Department of Justice and the Federal Bureau of Investigation, 2005)</td>
<td>Kennedy v. Louisiana (2008:28)</td>
</tr>
</tbody>
</table>
Table 8.2. The U.S. Supreme Court’s References to Social Science Research in Deciding Prominent Sex Offender Cases: Sex Offender Recidivism and Reentry

<table>
<thead>
<tr>
<th>Claim</th>
<th>Supported by Theory and Research?</th>
<th>Citation Source</th>
<th>Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>“When convicted sex offenders reenter society they are much more likely than any other type of offender to be rearrested for a new rape or sex assault.”</td>
<td>Correct, but misleading</td>
<td>(Beck and Shipley, 1997; Greenfeld, 1997)</td>
<td>McKune (2002:5; Connecticut 2003:2)</td>
</tr>
<tr>
<td>“Alaska could conclude that a conviction for a sex offense provides evidence of substantial risk of recidivism.”</td>
<td>Correct, but overstated</td>
<td>(Beck and Shipley, 1997; Greenfeld, 1997)</td>
<td>Smith et al. v. Doe et al. (2003:16)</td>
</tr>
<tr>
<td>“The legislature’s findings are consistent with grave concerns over the high rate of recidivism among convicted sex offenders and their dangerousness as a class. The risk of recidivism posed by sex offenders is frightening and high.”</td>
<td>Correct, but misleading</td>
<td>(Beck and Shipley, 1997; Greenfeld, 1997)</td>
<td>Smith et al. v. Doe et al. (2003:16)</td>
</tr>
<tr>
<td>“The procedures employed under the Alaska statute are likely to make [respondents] completely unemployable because employers will not want to lose business when the public learns they have hired sex offenders.’ This is conjecture.”</td>
<td>Incorrect</td>
<td>(Beck and Shipley, 1997; Greenfeld, 1997)</td>
<td>Smith et al. v. Doe et al. (2003:13)</td>
</tr>
</tbody>
</table>
Table 8.3. The U.S. Supreme Court’s References to Social Science Research in Deciding Prominent Sex Offender Cases: Sex Crime Prevalence

<table>
<thead>
<tr>
<th>Claim</th>
<th>Supported by Theory and Research?</th>
<th>Citation Source</th>
<th>Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>“In 1995, an estimated 355,000 rapes and sexual assaults occurred nationwide.”</td>
<td>Correct, but lacks context</td>
<td>(Federal Bureau of Investigation, 1996; Greenfeld, 1997)</td>
<td>McKune v. Lile</td>
</tr>
<tr>
<td>“Between 1980 and 1994, the population of imprisoned sex offenders increases at a faster rate than for any other category of violent crime.”</td>
<td>Correct, but does not imply an actual increase in sex offenses</td>
<td>(Greenfeld, 1997)</td>
<td>McKune v. Lile</td>
</tr>
</tbody>
</table>
Table 8.4. The U.S. Supreme Court’s References to Social Science Research in Deciding Prominent Sex Offender Cases: Sex Offenders and Treatment

<table>
<thead>
<tr>
<th>Claim</th>
<th>Supported by Theory and Research?</th>
<th>Citation Source</th>
<th>Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Therapists and correctional officers widely agree that clinical rehabilitative programs can enable sex offenders to manage their impulses and in this way reduce recidivism.”</td>
<td>Incorrect</td>
<td>(Schwartz and Cellini, 1998)</td>
<td>McKune v. Lile (2002:5)</td>
</tr>
<tr>
<td>“‘The rate of recidivism of treated sex offenders is fairly consistently estimated to be around 15 percent,’ whereas the rate of recidivism of untreated offenders has been estimated to be as high as 80 percent.”</td>
<td>Correct, but overstated</td>
<td>(Schwartz and Cellini, 1998)</td>
<td>McKune v. Lile (2002:5)</td>
</tr>
<tr>
<td>“‘Denial is generally regarded as a main impediment to successful therapy,’ and ‘therapists depend on offenders truthful descriptions of events leading to past offenses in order to determine which behaviors need to be targeted in therapy’ . . . Research indicates that offenders who deny all allegations of sexual abuse are three times more likely to fail in treatment than those who admit even partial complicity.”</td>
<td>Correct, but overstated</td>
<td>(Barbaree, 1991; Maletzky and McGovern, 1991).</td>
<td>McKune v. Lile (2002:6)</td>
</tr>
</tbody>
</table>
Table 8.5. The U.S. Supreme Court’s References to Social Science Research in Deciding Prominent Sex Offender Cases: Effects of Sexual Victimization

<table>
<thead>
<tr>
<th>Claim</th>
<th>Supported by Theory and Research?</th>
<th>Citation Source</th>
<th>Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>“It is not at all evident that the child rape victim’s hurt is lessened when the law permits the death of the perpetrator.”</td>
<td>Correct</td>
<td>(Goodman et al., 1992)</td>
<td><em>Kennedy v. Louisiana</em> (2008:32)</td>
</tr>
<tr>
<td>“Studies conclude that children are highly susceptible to suggestive questioning techniques like repetition, guided imagery, and selective reinforcement.”</td>
<td>Correct</td>
<td>(Ceci and Friedman, 2000; Gross et al., 2005; Quas et al., 2007)</td>
<td><em>Kennedy v. Louisiana</em> (2008:33)</td>
</tr>
<tr>
<td>“Underreporting is a common problem with respect to child sexual abuse.”</td>
<td>Correct</td>
<td>(Hanson, 1999; Smith et al., 2000)</td>
<td><em>Kennedy v. Louisiana</em> (2008:34)</td>
</tr>
</tbody>
</table>
Table 8.5—continued.

<table>
<thead>
<tr>
<th>Claim</th>
<th>Supported by Theory and Research?</th>
<th>Citation Source</th>
<th>Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>“One of the most commonly cited reasons for nondisclosure is fear of negative consequences for the perpetrator, a concern that has special force where the abuser is a family member.”</td>
<td>Correct</td>
<td>(Goodman-Brown et al., 2003; Hanson et al., 1999; Smith et al., 2000;)</td>
<td>Kennedy v. Louisiana (2008:34)</td>
</tr>
<tr>
<td>“Assuming the offender behaves in a rational way, as one must to justify the penalty in some respects gives less protection, not more, to the victim, who is often the sole witness to the crime.”</td>
<td>Logical inference, but few studies exist to support this argument</td>
<td>(Rayburn, 2004)</td>
<td>Kennedy v. Louisiana (2008:35)</td>
</tr>
</tbody>
</table>
Clearly, in the last twenty years, the nation has experienced significant efforts to prevent sexual offending and victimization. The federal government and states have recently enacted a plethora of sex crime laws. Not only have these reforms required harsher sentencing of sex offenders, but they have also focused on increasing sanctions for released offenders. For instance, some of the current legislation in the U.S. consists of residency restrictions, civil commitment, lifetime supervision, Halloween restrictions, and laws requiring sex offenders to carry state-issued identification cards (Janus and Prentky, 2008; Meloy et al., 2008; National Conference of State Legislatures, 2003, 2008a; Spalding, 1998).

Opponents of this legislation have leveled two main criticisms against these laws. First, the emergence of these laws does not appear to track well with rates of sex offenses. The country experienced a substantial decline in sex crime before the emergence of many sex offender laws (Bureau of Justice Statistics, 2007; Finkelhor and Jones, 2004a). Furthermore, their trajectory does not appear to fit a pattern of general “get tough” justice reminiscent of the 1980s and early 1990s. In short, little is known about factors related to the proliferation of these laws.

Second, scholars claim these relatively new laws are “panic-driven” responses to sex crime and are not likely to impact the prevalence of sexual offenses (Meloy et al., 2007:423). Although such laws might “make the public feel safer, they are unlikely to result in meaningful reductions in sexual violence primarily because they focus on averting statistically rare events, children attacked by strangers” (Meloy et al., 2007:423-424). Lending support to this assertion is the fact that few studies have examined the impact of these laws, and among those that have, virtually none has detected a reduction in sex offenses. For example, a recent study exploring whether Megan’s Law had any affect on monthly rape rates in ten states found no significant or consistent effect of the law (Vásquez et al., 2008). Two other state studies investigated the likely effectiveness of laws restricting where sex offenders can live. Both concluded that residency restrictions would have little effect on sex crime because sex offenders were not significantly
more likely to live near places children congregate (Colorado Department of Public Safety, 2004; Minnesota Department of Corrections, 2003). Notwithstanding this handful of studies most sex crime policies remain largely unexamined.

Consequently, many questions surround the emergence and likely effectiveness of sex offender laws in contemporary America. Building off of prior work, and heeding calls for more closely exploring the emergence and likely impacts of sex crime laws (Tewksbury and Levenson, 2007), this dissertation examined the following five questions. First, what is the range of the types of sex crime laws nationally, and the extent to which there is variation across states and within the content of these laws? Second, to what extent do Erikson’s (1966) and Jensen’s (2007) accounts about witch hunts explain the emergence of sex crime laws in mid-1990s America? Third, to what extent are sex crime laws guided by theory and research? Fourth, is there variation in public support for capital punishment of convicted sex offenders? Fifth, does the U.S. Supreme Court refer to criminological theory and research in deciding cases about sex offender policy, and if so, does the Court’s review of such work accord with the actual state of the literature? I now turn to discussing study findings.

**Summary of Study Findings**

**Emergence of Sex Crime Laws**

Given that sex crime laws emerged at a time when sex offenses were declining, and after a general “get tough” sentencing movement in the U.S., investigating their proliferation requires examining other possible factors. Chapters 4, 5, and 7 speak directly to studying the emergence of these laws. I discuss chapter 4 findings below.

To establish that the nation has indeed enacted a range of sex crime laws and to more generally investigate the claim that the country has gotten universally tough on sex offenders, the dissertation first explored in chapter 4 the variability across states and within specific types of sex crime laws—sex offender registries, community notification, residency restrictions, civil commitment, lifetime supervision, sex offender driver license notation requirements, and castration laws.
Chapter 4 found moderate support for the contention that states have “gotten tough” on offenders by enacting an array of sex crime laws. However, clearly, there is wide variation across the states in the types of laws they have, and also within the content of these laws.

Given the focus on examining the variability across states, chapter 4 first explored the regional enactment of sex offender laws. Analyses reveal mixed findings here. First, consider study findings that support the contention that laws vary by region. Compared to other regions in the U.S., the South had the greatest number of sex offender laws, whereas the Northeast had the least number of laws. Another notable pattern existed when examining specific types of laws adopted by regions. All states in the Southern region had enacted sex offender residency restriction laws, while no states in the Northeast region had. Using the sheer number of laws as an indicator of punitiveness, both observations lend support to the hypothesis that regional variation exists in the adoption of “get tough” laws. However, additional analyses suggest otherwise. Also examined was whether states with the greatest number of sex offender laws were concentrated in any one region. Findings here reveal no relationship. The states with the most sex crime laws could be found throughout the country, indicating no regional pattern of the enactment of sex offender laws.

Also explored in this set of analyses was the intensity of sex offender laws in the U.S. A majority of states (90 percent) have gone beyond the federal requirement of enacting sex offender registries and community notification laws and have enacted a broad range of other types of laws. Put differently, only a handful of states have enacted just the federally mandated laws.

Recall that the second question explored in chapter 4 was the extent to which variability exists within the content of sex crime laws. Analyses indicate that depending on the sanction, there is considerable variation within these laws. The length of sex offender registration and the types of offenders required to register in their respective states differs substantially. For instance, some states require offenders register for only ten years, whereas other states require lifetime registration of all convicted sex offenders. Concerning community notification laws, most states publicize identifying information about all registered sex offenders, without distinction to risk level. It is also clear that significant variability exists within widely implemented residency restrictions. Of the two-thirds of states that have adopted this policy, restrictions range from 500 feet to over 2,000 feet. Moreover, there is variation in the types of
offenders affected by the residency law. In most states, the residence restriction universally applies to all offenders, regardless of whether their prior offenses involved child victims.

By contrast, when exploring the other types of sex offender laws—civil commitment, lifetime supervision, driver’s licenses notation laws, and castration policies—we see much less variability within these policies. The commitment process across the nation is largely similar across states and involves a psychological evaluation and legal proceedings. When discussing sex offender lifetime supervision provisions, here again this law can be easily described. By and large, the law is consistent across states. Virtually all of these laws apply to repeat or high-risk sex offenders. Among the states that have this law in place, almost half require that sex offenders convicted of crimes against children receive lifetime supervision upon release. In addition, we see less variation when we study recently implemented driver’s license notations which were enacted by states to enhance monitoring of released sex offenders. Only a small number of states have enacted these laws, and among these, most require certain types of sex offenders either to carry an identification card or possess a driver’s license with a special sex offender notation. With rare exception, the nation’s castration laws target high-risk and repeat offenders. In short, findings from chapter 4 suggest a vast range of sex crime laws exist nationwide, with substantial variability across states and within the content of these laws.

Chapter 5 also examined the emergence of sex crime laws. In exploring the recent proliferation of these laws in the 1990s, critics have observed that their emergence represents a modern-day witch hunt. In investigating this claim, chapter 5 focused on testing two prominent theories about witch hunts—Erikson’s and Jensen’s accounts. Analyses suggest Erikson’s work, concentrated primarily on the role of social threats and Jensen’s account, with its emphasis on three “apocalyptic” factors, appear to fit known facts about the recent rise of sex offender laws. Other factors, not identified by either theorist, such as the advent of the internet and changes in media technology in the mid-to-late 1990s, also appear to have contributed to the emergence of these laws. Thus, accounts about outbreaks of witch hunts share some parallels to the recent emergence of sex offender laws in America. However, there are a number of other possible social factors, like the emergence of the internet and changes in media reporting in the mid-1990s that likely contributed to this proliferation.

Chapter 7 tackled the emergence of sex crime laws by examining the extent to which the public supported a particularly punitive sanction for sex offenders—the death penalty. It also
investigated social and demographic factors, as well as views about sex crime and sex crime policy that may explain variation in such support. Few social and demographic correlates emerged as significant. Drawing on prior research, analyses also tested whether respondents’ perceptions about the sex crime rate, fear of sexual victimization, beliefs about sex offender recidivism, and views about the court system in preventing sexual victimization affect support for capital punishment. Two of these factors—the view that “sex offenders reoffend no matter what the punishment,” and the belief that “criminal courts are ineffective in dealing with sex crime,” emerged as statistically significant. Respondents who endorse these views were significantly more likely to support the death penalty for both sex offenders convicted of crimes against adults, and those convicted of sex crimes against children. To conclude, chapter 7 found that perceptions about sex crime and sex offender laws significantly impact the level of support for punitive sex crime laws, such as capital punishment.

Chapter findings shed some light on the emergence of sex crime laws. Taken together, dissertation findings suggest that the confluence of multiple factors likely contributed to the rapid proliferation of sex offender laws in modern America. Consider the following observations from chapters 4, 5, and 7. Clearly, as chapter 4 established, federal and state efforts to control the sex offender population increased substantially during the mid-1990s. It does not appear that the emergence of these laws track with national rates of reported sex offenses. Their emergence also did not occur during a general “get tough” movement within the criminal justice system.

In exploring other compelling candidates, findings from chapter 5 suggest that many factors that explain the emergence of witch hunts (e.g., the outbreak of disease, economic hardship), also fit known facts about the proliferation of sex crime laws in the mid-1990s. The advent of the internet and changes in media reporting appear to be additional factors associated with the public panic about sex offenders. Heeding calls to further assess how public perceptions about sex crime have influenced the emergence of these laws (Brannon et al., 2007), chapter 7 investigated public support for executing sex offenders. Findings suggest that views about sex crime and sex offender laws shape opinions about appropriate punishment for sex offenders, namely, the death penalty.

Coupled with changes in technology throughout the latter part of the decade, Americans were confronted with grisly accounts about sex offenders. Indeed, as chapter 7 explored, although the nation’s sex crime rate has remained stable or declined since the late 1970s, close to
80 percent of Americans in 1991 believed the sex crime rate in their state had increased in the last five years. Collectively, these findings provide some explanation for the emergence of these laws, and also provide some insight about why efforts to prevent sexual offending and victimization have continued throughout the 2000s. I turn now to study findings examining the likely effectiveness of sex crime laws.

**Likely Effectiveness of Sex Crime Laws**

Recall that in addition to questioning the motivation behind the emergence of these laws, questions exist about whether these laws do, or are likely to have a discernable effect on sexual offending (Cohen and Jeglic, 2007). Chapter 6 and chapter 8 investigated the likely impacts of various sex crime laws.

Chapter 6 explored the theoretical logic behind widely implemented sex crime laws to contribute to debates about the merits of sex offender policy. Analyses suggest these policies lack a clear coherent theoretical based or empirical based foundation. Clearly, the causal logic behind most types of sex offender legislation ascribes to myths and stereotypes about sex crime and sex offenders. For example, sex offender registries, primarily developed to “expose offenders to the public” (Tewksbury and Lees, 2007:380), assume citizens regularly access these sites, modify their behavior upon visiting them, and that these sites are regularly maintained and updated by the state. As chapter 6 reported, this likely is not the case.

By contrast, leading with the premise that U.S. Supreme Court decisions constitute the “law of the land,” chapter 8 systematically described the Court’s references to social science research and determined if the Court’s understanding of sex crime and policy correlates with findings from a larger body of theoretical and empirical work. Here, I found that the Court indeed referenced criminological studies in its decisions about sex crime policy. However, in a number of decisions the Court overstated or misconstrued study findings, and overlooked potentially relevant work. Juxtaposed against these observations, we are led to the conclusion that the premises behind many of these laws lack theoretical and empirical insights.

These analyses raise substantial questions about the likely effectiveness of these laws. Prominent policies and several U.S. Supreme Court cases rest on inaccurate assumptions about sex crime. To be clear, these laws may have an effect on sexual offending and sexual victimization. However, at this point in time, there is little theoretical or empirical work to
support the assumptions behind most of these laws. Having said that, analyses also suggest these laws can be modified and improved to better achieve their stated goals. Below, I present theoretical, research, and policy implications that flow from this study.

Theoretical Implications

The dissertation presents us with theoretical implications. First, future theoretical accounts should work towards accurately characterizing the state of sex offender laws in America. Using as a crude measurement, the number of laws adopted nationally, chapter 4 found support for the contention that states have “gotten tough” on sex offenders. For instance, the study explored the intensity of these laws across states. It found the vast majority of states (90 percent) had adopted at least one additional law beyond the federally mandated registries and notification laws. Leading with the premise that certain regions have “gotten tough” on offenders compared to others (see Borg, 1997), the study also explored the extent to which region was associated with sex crime laws. It found a number of South-Northeast differences. For instance, the South had the greatest number of sex offender laws, whereas the Northeast region had adopted the fewest number of laws. Moreover, all Southern states had enacted sex offender residency restrictions while no Northeastern states had residency restrictions in place. Few notable differences emerged when examining the Midwest and West regions. The study also explored regional patterns among the most punitive states. Here, we see no clear theme. Among the states with the greatest number of sex crime laws (Arizona, California, Florida, Illinois, Louisiana, Oregon, Texas, West Virginia, and Wisconsin) there are no apparent regional effects.

Factors that influence state and regional variability in the enactment of sex offender laws are not entirely evident. An obvious next step is to explore why some states have not pursued “get tough” sex offender laws. Such analyses help make sense of findings presented here, and may in turn, inform research efforts to evaluate the impacts of these laws.

Second and more broadly, future research should examine why sex offender laws so rapidly emerged in the mid-1990s, and why sex offenders were the targets for this type of legislation. The nation witnessed a substantial increase in the number of these laws in the mid-
1990s. By all accounts, this emergence is striking for two reasons. First, the proliferation of these laws occurred during a time of consistent declines in sex offenses. Second, the emergence of these policies does not appear to be linked with a general “get tough” sentencing movement that occurred earlier in the U.S. in the 1980s and early 1990s. To further investigate this emergence, chapter 5 explored whether accounts about witch hunts fit known facts about the proliferation of sex offender laws. It found moderate support for these theories, but also pointed to the effects of changes in technology at the time—namely the advent of the internet and the emergence of 24-hours news programs.

Juxtaposed against these observations, future studies should consider clearly outlining additional factors that may assist in explaining the emergence of these laws. Notably absent from both theories was a discussion about the impact of technology and its role in the formation of public panic. Other studies have linked increased media attention about sex offending in the 1990s to the development of a plethora of sex crime laws. Indeed, in a recent study assessing policymakers’ views about sex crime laws, Sample and Kadleck (2008:60-61) concluded that “sex offender policies appear to be based on personal opinion, public perception, and media coverage of sex offenders and specific sex crimes, particularly those against children.” Several other scholars have connected media attention about sex offenders during the 1990s to the proliferation of sex crime laws in the mid-90s in the U.S. (Kitzinger, 2004). For example, Lieb et al. (1998:44) concluded that beginning in 1990, the nation had “significantly changed criminal and civil law policies regarding sex offenders . . .” A propelling force behind this push for tougher laws was the emergence of unprecedented media coverage of sex crimes, which the authors argued, led to the development of “an anxious public” (Lieb et al., 1998:59). Future efforts further exploring the role of this change in technology, and possibly the effect of other factors may provide for more adequate accounts about the proliferation of sex offender laws in America.

Third, future research should investigate the causal logic beyond what the current study explored. Findings from chapter 6 present us with theoretical implications concerning the causal logic of various sex offender policies. Here, the dissertation examined the causal or theoretical logic of widely implemented sex offender laws—sex offender registries and community notification, residency restrictions, and castration. In addition to these laws, states have enacted a broad array of other reforms not explored in this study such as Halloween restrictions, civil
commitment, laws mandating that sex offenders possess and display special identification, and lifetime supervision statutes. Taking into account many scholars’ criticisms concerning the apparent lack of theoretical and empirical insights behind sex offender legislation, it may be fruitful to conduct similar causal or theoretical logic evaluations of these other types of laws. In turn, such efforts may also inform subsequent impact studies of these reforms.

Fourth, given the assumption that public opinion and the recent proliferation of sex offender laws appear closely linked, studies should systematically assess public perceptions. In turn, such analyses may provide explanations for why there is variation in public support for executing sex offenders. Findings from chapter 7 revealed that respondents made distinctions about sex crime involving vulnerable victims, such as children. In this study, public support for executing offenders convicted of sex crimes against children was nearly double that than support for executing rapists of adults. In addition, respondents that believed sex offenders recidivated “no matter what the punishment” were more likely to endorse support for capital punishment of child sex abusers. Prior studies have found that victim vulnerability increases levels of support for capital punishment of homicide offenders (Paquette Boots et al., 2004). Indeed, in defending the recent spate of sex crime laws, proponents claim such measures are necessary because they protect children (Meloy et al., 2008). Given the context of sexual victimization, children are clearly viewed as a vulnerable population, deserving of protection from predators. Thus, future studies should further develop theoretical frameworks and test hypotheses that explore the extent to which victim vulnerability affects levels of support for punitive reforms.

Fifth, future research efforts should further elucidate how policymakers such as the U.S. Supreme Court come to support particular types of laws. One assumption is that U.S. Supreme Court decisions represent “evidence-based” policy. Chapter 8 investigated this claim and found the U.S. Supreme Court consulted criminological studies when deciding cases involving sex crime policy. However, there were a number of decisions where the Court overlooked relevant and available studies, and relied primarily on government reports. It is not entirely clear why some types of research were examined whereas other studies were not. Threat theory, for example, argues that judges may intentionally avoid technical social science research, as such research represents a threat to their power and prestige (Tanford, 1990). Perhaps the Court shies away from certain types of literature or research. Such assumptions were not explicitly tested in this analysis. Future theoretical accounts may want to consider testing these types of theoretical
hypotheses about U.S. Supreme Court decision-making, and perhaps extending such efforts to include lower courts’ decisions as well.

In short, dissertation findings concerning the emergence and likely effectiveness of sex crime laws suggest there are a number of theoretical avenues that have yet to be explored. Given the claim that sex offender laws have been developed and implemented with few theoretical insights, further theoretical development about the emergence and efficacy of these laws has the potential to contribute to scholarship on and debates about sex crime policies.

**Research Implications**

Findings presented from analyses in chapters 4, 5, 6, 7, and 8 have implications for future research studies on several dimensions. First, as chapter 4 reported, wide variation exists across sex crime laws nationally and within specific types of policies, suggesting future studies take this variation into account when investigating the effects of these laws, and when generalizing their effects across states. The majority of states have enacted laws in addition to the federally required sex offender registries and community notification laws. Given that the various effects of these laws have not yet been identified by a large body of research, it bears emphasizing that finding significant variation across states and within the types of laws has significant implications for research evaluations and for extending the generalizability of findings from one state to another. Furthermore, studies examining the effect of any one law in a particular state that has adopted several sex offender laws would have to account for the effects of the other laws. This undertaking would entail a much different type of evaluation than one that examines the effect of any one law in a state that has only two sex offender laws.

Separately, detecting such variability underscores the need for caution in generalizing the effects of one policy to a variant of that policy. For example, if an evaluation shows that residency restrictions that prohibit a sex offender from living within 500 feet of an elementary school reduces subsequent sexual offenses, it does not automatically follow that prohibiting offenders from living within a 2,000 feet or higher interval would equally decrease levels of sex crime.
Second, considering that significant questions exist about the emergence of sex crime laws, future research endeavors may want to consider quantitatively assessing the effects of factors related to their emergence. Chapter 5 explored whether specific factors related to witch hunts such as social threats, and the outbreak of disease, absence of war, and emergence of increased economic hardship were associated with the appearance of sex crime laws. By and large, both witch hunt frameworks appeared promising in explaining the proliferation of sex offender laws in recent decades. However, the analysis did not quantitatively assess the influence of these factors on the emergence of recent sex crime reforms. Future efforts should consider operationalizing these identified factors and developing analyses designed to test the relationship between them and the emergence of sex offender laws in America.

Third, taking into account chapter 6 findings that suggest prominent sex offender policies lack a clear theoretical based or empirical based foundation, future approaches should explore the causal logic of newer policies, and then assess the impacts of these laws. In recent years, states have enacted a broad array of other sex offender laws such as legislation requiring sex offenders to display special driver’s licenses or identification cards. As a recent review observed, there are virtually no studies testing the impacts of this law (Janus and Prentky, 2008). Mapping the causal and theoretical logic of the law and other types of legislation is an important first step in evaluation efforts designed to assess the effects of these recently adopted policies. Future studies may want to pursue such efforts before tackling impact evaluations.

Having said that, a logical next step is to evaluate the impacts of these laws. Findings from chapter 6 reveal many voids in prior research concerning evaluation studies of these policies. Indeed, experts have also noted that given the number of laws recently enacted in the U.S. it is striking how few impact studies have been conducted. To illustrate, in a recent study of sex offender registries and community notification laws, Vásquez et al. (2008:175) observed that “empirical studies on the efficacy of this policy are relatively nonextant.” Taking this account into mind, future studies should consider undertaking research that has the potential to uncover the effects of these laws.

Fourth, scholars should further explore public views about sex crime and sex crime laws. Prior research investigating public views and sex crime policy has been characterized as being “largely silent” (Mears et al., 2008:533). Chapter 7 explored views about the death penalty and found that citizens who believed that sex offenders reoffend “no matter what the punishment,”
and that “the state court system does little to prevent sex crime” were significantly more likely to endorse support for capital punishment. Notably, these beliefs are not supported by extant work on sex offenders. Lending support to these findings is Velázquez’s (2008:7) observation that “the general public, in spite of its strong support for tough sexual offense laws, is not well-informed about the nature and extent of sexual offending.” To overcome this methodological shortcoming, future studies may want to investigate how views about sex crime influence levels of punitiveness over time, using longitudinal data. One limitation of chapter 7 was that the data were cross-sectional in nature, covering a “snap-shot” of national views about sex crime in 1991. Clearly, the country has enacted a range of sex crime laws since then. Given that the public appears largely uninformed about the extent of sex crime, the behavior of sex offenders, and sex crime laws, future research studies further examining public perceptions about these recently enacted laws may contribute to a growing body of research focused on explaining levels of punitiveness toward offenders across time.

Fifth, future efforts should also examine policymakers’ views toward sex crime laws (Sample and Kadlec, 2008). With this assertion in mind, chapter 8 explored the extent to which the U.S. Supreme Court consulted criminological literature and determined if the Court’s understanding of sex crime and sex offender policy correlates with findings from a larger body of theoretical and empirical work. Findings revealed that the Court indeed cited prior studies, and also that in a number of places, the Court overstated or misconstrued some study findings, or overlooked potentially relevant and available studies. Future research approaches should include analyses of various U.S. Supreme Court opinions on a range of policies to examine if the Court accurately applies empirical findings when rendering decisions. This study only examined seven cases; future studies should expand this area of research and examine a larger number of decisions. Furthermore, since lower courts’ opinions typically influence the Court’s rulings about public policy, future research should consider examining trial, appellate, and district courts’ decisions.

In sum, there are a number of areas concerning sex crime and sex offender laws that have yet to be explored by researchers. In particular, future studies may want to investigate how variability across states and within specific types of sex crime laws impacts the likely effects of these policies. In addition, promising approaches also include further examining the emergence of sex offender laws by systematically developing quantitative analyses designed to account for
the effects of identified correlates related to the appearance of these laws in the mid-1990s in the U.S. Heeding calls to evaluate the impacts of sex offender laws, studies may want to first assess the various causal logics behind these laws, and then, once the theoretical logic is identified, evaluate their impacts. Given the strong link between public concern about sex crime and subsequent policy enactment, studies should further pursue this line of research to gauge opinion over time, and to assess opinions about the newer types of laws recently enacted by states. Finally, leading with the premise that U.S. Supreme Court decisions constitute national policy, future studies should further analyze the Court’s opinions about sex crime laws to determine if such decisions represent “evidence-based” policy.

**Policy Implications**

Undoubtedly, the United States has witnessed an unprecedented growth in sex crime laws in recent decades. Critics have characterized these laws as “knee-jerk” responses to increased concerns about sex crime (Meloy et al., 2007:424). In addition, it bears emphasizing that many experts have questioned the emergence of these laws, and have asserted that they are not likely to impact sex crime offenses. Drawing on several research questions and analyses, the dissertation found moderate support for these concerns. These observations present unique opportunities for policymakers. First, prior studies suggest that despite a significant decline in sex offenses in the last twenty years, public fear about sex offenders remains high (Levenson et al., 2007). Other studies have linked public opinions about crime and justice with subsequent public policy initiatives. In their study of legislators’ views about sex offender laws, Sample and Kadlec (2008) concluded that increasing public concern about sex offending was an important catalyst driving sex offender reforms in the 1990s and 2000s. Indeed, according to several scholars this level of public concern and fear is extreme enough to constitute a contemporary “witch hunt” reminiscent of 1692 Salem (Fontana-Rosa, 2001:125; Krueger, 2007:M1).

Yet, many of the views the public holds about sex offenders appear rooted in myths and misconceptions. Chapter 7 found that respondents that endorsed the view that “sex offenders reoffend no matter what the punishment,” and those that agreed with the statement that “criminal courts are ineffective in dealing with sex crime,” were significantly more likely to express
punitive attitudes toward sex offenders. Notably, these beliefs run counter to a large body of research suggesting that a significant proportion of sex offenders are rehabilitatable and that the criminal justice system often responds harshly to these types of offenders (Lösel and Schmucker, 2005).

It is not entirely clear why public anxieties about sex offenses have increased while reports of both sexual abuse of children and forcible rape of adults have decreased. One explanation is that the U.S. has experienced technological advances in that last twenty years that have highlighted accounts of sex crime. For example, chapter 5 found an association between the advent of the internet and 24-hour news programs, which regularly featured high profile cases of child abduction, sexual assault, and murder (Sample, 2006) with the emergence of several sex crime laws enacted in the mid-1990s. Similarly, Zgoba (2004:385) commented that the “media frenzy surrounding these publicized cases has created a ‘fear factor’ among parents and caregivers.” Given such findings, policymakers are in a position to reign in public fears about sex crime. One avenue to explore is the development of public service campaigns that educate citizens about the reality of sex offending and feature guidelines to prevent sexual victimization.

Second, policymakers have the ability to respond to criticisms about current sex crime legislation by reconsidering these laws and modifying them in ways that increase their overall effectiveness in preventing sexual offenses. One finding from chapter 4 was that the vast majority of states have enacted several diverse types of sex crime laws in relatively the same time period—the mid-to-late 1990s. Virtually no studies have attempted to control for the effects of these laws when examining the effect of any one law, say for example, sex offender registries. Although this is an important methodological consideration, it is also one that is relevant to policymaking. Under this backdrop, policymakers might consider implementing a moratorium of sex crime laws until the different effects of the various policies have been identified. This is not a practice without precedent. Recently, lawmakers in Maryland and New Mexico proposed a suspension of capital punishment citing escalating costs and a lack of compelling evidence showing its deterrent effect (Urbina, 2009).

Policymakers might also consider modifying extant types of sex crime laws. Similar to findings from other studies, chapter 6 found that several sex crime policies lack an obvious coherent theoretical based or empirical based foundation. For example, a central assumption
behind sex offender registries and community notification laws is that citizens will access these online sites regularly and after their visit, will take measures to better protect themselves and their children. Given that prior research has found that citizens do not access online registries and make behavioral changes after viewing them (Anderson and Sample, 2008), policymakers may want to consider developing and implementing public relations campaigns in which they disseminate information about these registries and encourage members of the public to visit these sites. Improving policies in this way may lead to a greater reduction in sex crime.

In exploring whether sex crime laws reflect “evidence-based” policy, chapter 8 examined U.S. Supreme Court decisions, and found in a number of places, areas in which the Court’s understanding about sex offenders and sex crime laws could be better improved. This finding suggests the Court’s rulings may rest on inaccurate assumptions about sex crime, and thus, may not constitute “best practices.” Perhaps one promising strategy for improving the likely efficacy of these laws would be the formation of an objective panel of experts that provides literature reviews and technical information to the Court, so its decisions can be better theoretically and empirically informed.

Some experts opine that current sex crime laws have been “hastily” enacted in response to the public’s extreme fear about sex crime (Fortney et al., 2007:1). Policymakers are in a unique position to disseminate accurate information about legislation, and to also reconsider and implement strategies to modify existing laws as to improve their efficacy. Given that most Americans access information about sex offenders from internet and television accounts, policymakers may want to consider designing public campaigns that expose citizens to facts about sex offending, and offer tips to prevent sexual victimization. They may also want to reassess current policy and/or modify existing sex crime laws as to increase their effectiveness. With these implications in mind, we now move to exploring future avenues for sex offender research.
Future Directions

Taking into account the findings and implications of this dissertation, there are several additional lines of research that should be pursued in the future. Below I present two possible avenues that appear especially fruitful to explore.

First, future research should extend analyses presented in chapter 4 and further examine variation within specific types of sex crime laws at the county-level. Such examination may further contribute to efforts to evaluate the impacts of these laws. For example, residency restriction laws, designed to prohibit offenders from living near potential sex crime victims, such as children, are not only determined at the state-level, but in many jurisdictions, as Velázquez (2008:19) has noted, cities and counties have also implemented their own restrictions to “avoid becoming a local haven for sex offenders.” For instance, Florida has faced national criticism concerning Miami-Dade’s residency restriction boundaries. The restrictions in the Miami-Dade area have become so extreme that a sizable group of convicted sex offenders have resorted to living under the Julia Tuttle Causeway in Miami Beach (Carlton, 2007). Notably, the restrictions in other counties of the state are much less extreme. Thus, studies that assess the impact of these laws at smaller ecological levels may further assist with efforts to determine the ideal boundary restrictions to deter sex offenders.

Furthermore, although findings from chapter 6 suggest that a number of sex crime laws are built around assumptions about sex crime and sex offenders that are not theoretically and empirically based, there are a number of ways these laws can be modified to better reflect criminological theory and extant empirical research. Consider this illustrative example. Sex offender registry laws and community notification policies have been developed primarily to empower citizens with information about sex offenders so that citizens can become more capable guardians. A small handful of state-level studies suggest that a majority of citizens fail to regularly visit their state’s online registries and among those that do, few report taking precautions to prevent sexual victimization (Anderson and Sample, 2008; Phillips, 1997). One explanation for the relatively low access rate may be due to the sites themselves, and the type of information presented to citizens.
Given the dearth of research in this area, one concern is that the online registries may be difficult for citizens to access. Virtually no research has evaluated the “user-friendliness” of these sites (Malesky and Keim, 2001). In addition, there appears to be wide variation in the type of offender information made available online. Some online sites publicize an offender’s address, picture, offense history, and other types of identifying information. Other sites are more conservative and present minimal information about an offender, such as the name of his or her general street address, with no numerical information (e.g., “Main Street” instead of “123 Main Street”) (Velázquez, 2008). With these observations in mind, an ideal study would be one that uses objective criteria to “rate” the accessibility of state sites, and one that reports on the type of information publicly available to citizens. Study findings would present policymakers with a number of recommendations to improve these registries by increasing citizen use of them.

The United States has experienced an unprecedented rise in sex offender legislation in the last twenty years. Experts have questioned the emergence and spread of these laws, and also their likely effectiveness. Heeding calls to further investigate these policies, this dissertation sought to contribute to scholarship on and debates about sex crime legislation by examining five key research questions. Given the importance of reducing sexual offending and sexual victimization, future studies should extend such efforts, with an eye toward improving the success of these laws.
APPENDICES

A. STATE SEX OFFENDER STATUTES

Alabama Statutes, Title 13A, Chapter 11
Alabama Statutes, Title 15, Chapter 20
Alaska Statutes Annotated, Title 12
Alaska Statutes Annotated Title 18, Chapter 65
Arizona Revised Statutes Annotated, Title 13, Chapter 38, Article 3
Arizona Revised Statutes Annotated, Title 36, Chapter 37
Arkansas Code Annotated, Title 12, Chapter 12
California Health and Safety Code, Division 2, Chapter 3
California Health and Safety Code, Section 1564
California Penal Code, Part I, Title 9, Chapter 5.5
California Welfare and Institutions Code, Section 6600 et. seq
Colorado Revised Statutes, Title 16, Article 22
Connecticut General Laws, Section 54-251
Delaware Code, Title 11, Chapter 41
Delaware Code, Title 11, Chapter 5
Florida Statutes Annotated, Title XLVI, Chapter 775
Florida Statutes Annotated, Title XLVI, Chapter 794
Florida Statutes Annotated, Title XLVII, Chapter 943
Illinois Compiled Statutes Annotated, Chapter 720, Act 5
Illinois Compiled Statutes Annotated Chapter 725, Act 207
Illinois Compiled Statutes Annotated, Chapter 730, Act 150
Illinois Compiled Statutes Annotated, Chapter 730, Act 152
Indiana Annotated Code, Title 11, Chapter 8
Indiana Annotated Code, Title 35, Chapter 38
Indiana Annotated Code, Title 26, Chapter 2
Indiana Annotated Code, Title 35, Chapter 42
Iowa Statutes Annotated, Title VI, Chapter 229A
Iowa Statutes Annotated, Title XVI, Chapter 692A
Kansas Statutes Annotated 59-29a01
Kansas Statutes Annotated, 22—4901-4910
Kentucky Revised Statutes, 17.510
Kentucky Revised Statutes, 17.545
Louisiana Revised Statutes, 15:542
Louisiana Revised Statutes, 15:542.1
Maine Revised Statutes, Ch. 15, Title 34-A, Section 11222-27
Texas Health and Safety Code, Chapter 841
Utah Code, Title 77, Chapter 27
Vermont Statutes Annotated, Title 13, Chapter 167
Annotated Code of Virginia, Title 9.1, Chapter 9
Annotated Code of Virginia, Title 18.2, Chapter 8
Annotated Code of Virginia, Title 37.2, Chapter 9
Revised Code of Washington Annotated, Chapter 9A.44
Revised Code of Washington Annotated, Chapter 9A.64
Revised Code of Washington Annotated, Chapter 9.68A
West Virginia Code, Chapter 15, Article 12-2
West Virginia Code, Chapter 15, Article 12-5
West Virginia Code, Chapter 61, Article 8B
West Virginia Code, Chapter 61, Article 8C
West Virginia Code, Chapter 61, Article 8D
West Virginia Code, Chapter 61, Article 8-7
West Virginia Code, Chapter 61, Article 8-12
Wisconsin Statutes Annotated, Chapter 301
Wisconsin Statutes Annotated, Chapter 940
Wisconsin Statutes Annotated, Chapter 948
Wyoming Statutes Annotated, Title 6, Chapter 2 and 4
Wyoming Statutes Annotated, Title 6, Chapter 4
Wyoming Statutes Annotated, Title 7, Chapter 19, Article 3
B. U.S. SUPREME COURT CASES CITED

Connecticut Department of Public Safety v. Doe, 538 U.S. 1 2003
Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 1993
Furman v. Georgia, 408 U.S. 238 1972
Kansas v. Crane, 534 U.S. 407 2002
Kennedy v. Louisiana, 554 U.S. ____ 2008
McCleskey v. Kemp, 481 U.S. 279 1987
McDeid v. Mooney, 543 U.S. 1024 2004
McKune v. Lile, 536 U.S. 24 2002
Miranda v. Arizona, 384 U.S. 436 1966
Muller v. Oregon, 208 U.S. 412 1908
Roper v. Simmons, 543 U.S. 551 2005
Seling v. Young, 531 U.S. 250 2001
Smith et al. v. Doe et al., 538 U.S. 84 2003
Specht v. Patterson, 386 U.S. 605 1967
Stogner v. California, 539 U.S. 607 2003


C. INSTITUTIONAL REVIEW BOARD APPROVAL LETTER

Office of the Vice President for Research
Human Subjects Committee
Tallahassee, Florida 32306-2742
(850) 644-8673  FAX (850) 644-4392

APPROVAL MEMORANDUM

Date: 8/19/2008

To: Christina Mancini [cnmancini@fsu.edu]

Address: 634 West Call Street Tallahassee, FL 32306-1127
Dept.: CRIMINOLOGY AND CRIMINAL JUSTICE

From: Thomas L. Jacobson, Chair

Re: Use of Human Subjects in Research
Sex Crimes in America: Theory, Research, and Policy Considerations

The application that you submitted to this office in regard to the use of human subjects in the proposal referenced above have been reviewed by the Secretary, the Chair, and two members of the Human Subjects Committee. Your project is determined to be Exempt per 45 CFR § 46.101(b) 4 and has been approved by an expedited review process.

The Human Subjects Committee has not evaluated your proposal for scientific merit, except to weigh the risk to the human participants and the aspects of the proposal related to potential risk and benefit. This approval does not replace any departmental or other approvals, which may be required.

If you submitted a proposed consent form with your application, the approved stamped consent form is attached to this approval notice. Only the stamped version of the consent form may be used in recruiting research subjects.

If the project has not been completed by 8/17/2009 you must request a renewal of approval for continuation of the project. As a courtesy, a renewal notice will be sent to you prior to your expiration date; however, it is your responsibility as the Principal Investigator to timely request renewal of your approval from the Committee.

You are advised that any change in protocol for this project must be reviewed and approved by the Committee prior to implementation of the proposed change in the protocol. A protocol change/amendment form is required to be submitted for approval by the Committee. In addition, federal regulations require that the Principal Investigator promptly report, in writing any unanticipated problems or adverse events involving risks to research subjects or others.
By copy of this memorandum, the Chair of your department and/or your major professor is reminded that he/she is responsible for being informed concerning research projects involving human subjects in the department, and should review protocols as often as needed to insure that the project is being conducted in compliance with our institution and with DHHS regulations.

This institution has an Assurance on file with the Office for Human Research Protection. The Assurance Number is IRB00000446.

Cc: Daniel Mears, Advisor [dmears@fsu.edu]
HSC No. 2008.1597
REFERENCES


York: Oxford University Press.


Carlton, Sue. 2007. “Overpass Last Refuge for Sex Offenders.” The St. Petersburg Times, November 30, p. 1B.


Greenfeld, Lawrence A. 1997. Sex Offenses and Offenders: An Analysis of Data on Rape and Sexual Assault. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.


Sable, Marjorie, Fran Danis, Denise L. Mauzy and Sarah K. Gallagher. 2006. “Barriers


Christina Mancini received her Bachelor of Science (summa cum laude) and Master of Science degrees from Florida State University’s College of Criminology and Criminal Justice. She will join the faculty at Florida Atlantic University’s Department of Criminology and Criminal Justice in August 2009. She has published in *Criminology, Journal of Research in Crime and Delinquency*, and *Crime and Delinquency* on such topics as public views about juvenile justice, supermax prisons, and concern about crime. One of her recent studies, which will appear in a forthcoming issue of *Criminal Justice Policy Review*, involved analysis of public support for taxes to provide programs and services for incarcerated offenders. She currently is involved in studies of sex offender policies and public views toward crime, the death penalty, and criminal justice policy.