

# DOES STIGMATIZING SEX OFFENDERS DRIVE DOWN REPORTING RATES? PERVERSE EFFECTS AND UNINTENDED CONSEQUENCES

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Since the early 1990s, sex offenders in the United States have faced a host of new sexually violent predator laws and provisions for registration and public notification.<sup>1</sup> While the efficacy and legality of such provisions have been hotly contested, their broader social impacts have scarcely been explored.<sup>2</sup> Those convicted of sex crimes surely rank among the most stigmatized Americans, as information about their criminal past and their current whereabouts is often widely disseminated via public registries and notification procedures.<sup>3</sup> It is only very recently, however, that critics have begun to ask whether the stigmatization of sex offenders has gone too far.<sup>4</sup> In this article, we consider an unintended consequence of stigmatization that may be producing perverse effects on victims and their families. Has the stigma of sex offending become so great that victims have become less willing to report their sexual victimization by family members or acquaintances?

Some have speculated on this link. For example, Edwards and Hensley suggest,

It is not unreasonable to consider how the reality of public notification may further discourage a victim or nonoffending relative from seeking assistance, as notification would affect the entire family unit, not just the offender. Furthermore, a domestic sexual offender may even use the

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1. *See generally* Pam Lychner Sexual Offender Tracking and Identification Act of 1996, 42 U.S.C. §§ 13701 note, 14071-14073 (2000) and Megan's Law, 42 U.S.C. §§ 13701 note, 14071 (2000) (both amending Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program, 42 U.S.C. § 14071 (1994)); Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, §1(a), 120 Stat. 587 (2006) (codified in 42 U.S.C.A. §§ 16901-16991 (West Supp. 2007) and other scattered sections) (repealing and replacing 42 U.S.C. §§ 14071-14073;); Dru Sjodin National Sex Offender Public Registry, <http://www.nsopr.gov> (last visited Jan. 25, 2008).

2. *See generally* Human Rights Watch, *No Easy Answers: Sex Offender Laws in the US*, 19 HUM. RTS. WATCH U.S. REP., Sept. 2007, at 2-12.

3. *See generally* Dru Sjodin National Sex Offender Public Registry, <http://www.nsopr.gov> (last visited Jan. 25, 2008).

4. *See* Human Rights Watch, *No Easy Answers: Sex Offender Laws in the US*, 19 HUM. RTS. WATCH U.S. REP., Sept. 2007, at 2-12.

specter of public notification as a tool against the victim and other members of the household to secure their silence.<sup>5</sup>

This article stems from the first author's dissertation research on sexual victimization and her advocacy work with victims of rape and sexual assault.<sup>6</sup> Anecdotally, she has observed that adult victims of sexual assault are increasingly mentioning public notification and lack of confidentiality as reasons for not reporting their experiences to law enforcement. More systematically, her dissertation research reveals a variety of barriers to children's disclosures of sexual abuse, including family loyalty and protection.<sup>7</sup> Many children fear the consequences of state intervention for themselves and their families, including the prospect of child protective services breaking up their families.<sup>8</sup> African American children, in particular, express significant fear of the state and distrust of law enforcement when deciding whether to report sexual abuse to others.<sup>9</sup> For example, a 13-year-old African American youth revealed his distrust of law enforcement and his desire to protect himself and the alleged offender from state intervention.<sup>10</sup> At one point he told the forensic interviewer: "I don't trust the cops, some cops be lyin'... I know you all gonna lock [the offender] up but, I, I don't want her locked up, she can get treatment..."<sup>11</sup> In such cases, a youth's fear of sanctions against the offender obstructs sexual abuse reporting.

We will first present a brief overview of the incidence and prevalence of sexual violence in the United States, followed by a review of the victim advocacy literature on trends in sexual victimization reporting. We then consider some potential perverse effects of recent sex offender laws impacting offenders as well as their victims and family members. Sensitive to the idea that many cases of child sexual abuse are not reported,<sup>12</sup> and mindful of the social science

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5. William Edwards & Christopher Hensley, *Contextualizing Sex Offender Management Legislation and Policy: Evaluating the Problem of Latent Consequences in Community Notification Laws*, 45 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 83, 92 (2001).

6. Hlavka, H. (Forthcoming, 2008). *When Discourse Becomes Disclosure: Children's Constructions of Self and Sexual Abuse*. University of Minnesota Department of Sociology Ph.D. Dissertation.

7. *Id.*

8. In many cases, caregivers also instructed children to hide the sexual abuse for fear that child protective services would break up the family.

9. Hlavka, H. (Forthcoming, 2008). *When Discourse Becomes Disclosure: Children's Constructions of Self and Sexual Abuse*. University of Minnesota Department of Sociology Ph.D. Dissertation.

10. *Id.*

11. *Id.*

12. See David Finkelhor & Janis Wolak, *Reporting Assaults Against Juveniles to the Police: Barriers and Catalysts*, 18 J. INTERPERSONAL VIOLENCE 103, 122 (2003). See generally MURRAY A. STRAUS ET AL., *BEHIND CLOSED DOORS: VIOLENCE IN THE AMERICAN FAMILY* 63-64 (1980) (discussing the underreporting of child abuse generally); SHARON D. HERZBERGER, *VIOLENCE WITHIN THE FAMILY: SOCIAL PSYCHOLOGICAL PERSPECTIVES* 8-9 (1996) (noting the underreporting of child abuse generally).

literature that describes sexual assault as the most underreported crime,<sup>13</sup> we look to victimization data rather than official arrest or conviction information. Specifically, we examine changes over time in rape and sexual assault reporting to police using data from the National Crime Victimization Survey. We then explore connections between selected state sex offender provisions and rates of reported child sexual abuse collected by the Department of Health and Human Services. This brings further evidence to bear on our central question: Do strict sex offender registration and notification requirements reduce the likelihood that victims will report rape and sexual assault to the police?

#### SEXUAL VIOLENCE IN THE UNITED STATES

The image of the sex offender as a psychopathic, violent, stranger-predator has a long history in the United States.<sup>14</sup> Sexual crimes against children have received the most media attention and have generated great public concern.<sup>15</sup> These cases typically involve a child who has been kidnapped, sexually assaulted, and killed by a stranger.<sup>16</sup> Of course, such crimes represent only a fraction of crimes against children.<sup>17</sup> 67 percent of victims age 12 and older are sexually assaulted by someone they know, such as family members or acquaintances.<sup>18</sup> National Incident-Based Reporting System (NIBRS) data for

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13. JOANNE BELKNAP, *THE INVISIBLE WOMAN: GENDER, CRIME, AND JUSTICE* 230 (2d ed. 2001); Linda S. Williams, *The Classic Rape: When Do Victims Report?*, 31 *SOC. PROBS.* 459, 459 (1984). See generally Irene Hanson Frieze & Angela Browne, *Violence in Marriage*, in *FAMILY VIOLENCE* 163, 172, 186-90 (Lloyd Ohlin & Michael Tonry eds., 1989) (discussing underreporting of spousal abuse and marital rape); MURRAY A. STRAUS ET AL., *BEHIND CLOSED DOORS: VIOLENCE IN THE AMERICAN FAMILY* 35 (1980) (discussing the underreporting of family violence generally); Holly Johnson, *Rethinking Survey Research on Violence Against Women*, *RETHINKING VIOLENCE AGAINST WOMEN* 23, 25-26 (R. Emerson Dobash & Russell P. Dobash eds., 1998) (discussing the underreporting of violence against women and reasons why surveys fail to report accurate information); SHARON D. HERZBERGER, *VIOLENCE WITHIN THE FAMILY: SOCIAL PSYCHOLOGICAL PERSPECTIVES* 5 (1996) (noting the underreporting of intrafamily violence generally).

14. Christina E. Wells & Erin Elliott Motley, *Reinforcing the Myth of the Crazy Rapist: A Feminist Critique of Recent Rape Legislation*, 81 *B.U. L. REV.* 127, 129, 154 (2001).

15. See, e.g., *id.* at 134; Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C.A. § 16901 (West Supp. 2007) (listing, under its "Declaration of purpose," several high-profile child sexual assaults and murders); Human Rights Watch, *No Easy Answers: Sex Offender Laws in the US*, 19 *HUM. RTS. WATCH U.S. REP.*, Sept. 2007, at 2.

16. See, e.g., Christina E. Wells & Erin Elliott Motley, *Reinforcing the Myth of the Crazy Rapist: A Feminist Critique of Recent Rape Legislation*, 81 *B.U. L. REV.* 127, 134; Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C.A. § 16901 (West Supp. 2007) (listing, under its "Declaration of purpose," several high-profile child sexual assaults and murders).

17. See HOWARD N. SNYDER & MELISSA SICKMUND, *OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT* 33 tbl. (2006).

18. SHANNAN M. CATALANO, U.S. DEPARTMENT OF JUSTICE, NCJ 214644, *CRIMINAL VICTIMIZATION, 2005*, at 9 tbl.9 (2005). See also Mary P. Koss, *The Underdetection of Rape: Methodological Choices Influence Incidence Estimates*, 48 *J. SOC. ISSUES* 61, 68-69 (1992) (discussing two studies, performed in 1987 and 1991, which showed that 16% and 17%, respectively, of victims surveyed reported being raped by a stranger); NATIONAL VICTIM CENTER &

2000-2001 show that sexual assault victims under the age of 18 at the time of the crime knew their abusers in over nine of 10 cases;<sup>19</sup> offenders were family members in 35 percent of cases,<sup>20</sup> and acquaintances in 60 percent of the cases.<sup>21</sup> When the victim was under six years old, over half (56 percent) of the offenders were family members.<sup>22</sup>

In 2005, there were 191,670 recorded victims age 12 and older of rape, attempted rape, or sexual assault.<sup>23</sup> Of the female victims, 73 percent reported a known-offender.<sup>24</sup> Regarding juvenile victims of sexual violence, the NIBRS shows that youth ages 12-17 were 2.5 times more likely to be victims of rape or sexual assault compared to adults.<sup>25</sup> Furthermore, the National Women's Study found that 62 percent of forcible rapes reported by adult women occurred before the age of 18.<sup>26</sup> These figures surely understate the extent of sexual assault, because victim fear, shame, and loyalty to family members contribute to underreporting.<sup>27</sup> In fact, the Bureau of Justice Statistics (BJS) reports that just 31 percent of all sexual assaults reported to law enforcement agencies by those age 12 and older involved offenders who were strangers to their victims.<sup>28</sup> Victims of sexual assault, especially sexual assaults involving non-strangers, are much less likely than victims of other violent crimes to notify the police.<sup>29</sup> In

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CRIME VICTIMS RESEARCH AND TREATMENT CENTER, *RAPE IN AMERICA: A REPORT TO THE NATION* 4 (1992) ("Only 22% of rape victims were assaulted by someone they had never seen before or did not know well.")

19. HOWARD N. SNYDER & MELISSA SICKMUND, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, *JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT* 33 tbl. (2006).

20. *Id.*

21. *Id.*

22. *Id.*

23. SHANNAN M. CATALANO, U.S. DEPARTMENT OF JUSTICE, NCJ 214644, *CRIMINAL VICTIMIZATION, 2005*, at 2 tbl.1 (2005).

24. *Id.* at 9 tbl.9

25. HOWARD N. SNYDER & MELISSA SICKMUND, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, *JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT* 27-28 (2006).

26. Dean G. Kilpatrick & Ron Acierno, *Mental Health Needs of Crime Victims: Epidemiology and Outcomes*, 16 J. TRAUMATIC STRESS 119, 123 (2003).

27. Human Rights Watch, *No Easy Answers: Sex Offender Laws in the US*, 19 HUM. RTS. WATCH U.S. REP., Sept. 2007, at 22. *See also* David Finkelhor & Janis Wolak, *Reporting Assaults Against Juveniles to the Police: Barriers and Catalysts*, 18 J. INTERPERSONAL VIOLENCE 103, 104 (2003) (discussing possible sources of underreporting of juvenile victimization generally).

28. SHANNAN M. CATALANO, U.S. DEPARTMENT OF JUSTICE, NCJ 214644, *CRIMINAL VICTIMIZATION, 2005*, at 9 tbl.9 (2005).

29. *Id.* at 10 (reporting that in 2005 38.3% of rapes/sexual assaults were reported to police); Richard B. Felson & Paul-Philippe Paré, *The Reporting of Domestic Violence and Sexual Assault by Nonstrangers to the Police*, 67 J. MARRIAGE & FAM. 597, 608 (2005). *See also* Linda S. Williams, *The Classic Rape: When Do Victims Report?*, 31 SOC. PROBS. 459, 459 (1984) ("Rape is one of the least-reported of all violent crimes in the United States and Canada"). *See generally* Rosemary Gartner & Ross Macmillan, *The Effect of Victim-Offender Relationship on Reporting Crimes of Violence Against Women*, 37 CAN. J. CRIMINOLOGY 393, 418 (1995) (Canadian study of women found that all violence against women is underreported and that violence committed by a

sum, rape and sexual assault typically involve family members, friends, and acquaintances rather than strangers. The decision to report such crimes may thus trigger sanctions against someone known to the victim, which may profoundly affect others within the victim's circle of family and friends.

#### SEXUAL ASSAULT REPORTING

According to the National Crime Victimization Survey (NCVS), rape and attempted rape are among the least reported of all nonfatal violent crimes (at approximately 45.2 percent and 38.7 percent reported, respectively).<sup>30</sup> According to the same NCVS data, most sexual assaults against females were never reported to law enforcement.<sup>31</sup> Between 1992 and 2000, 63 percent of completed rapes, 65 percent of attempted rapes, and 74 percent of completed and attempted assaults were not reported to the police.<sup>32</sup> Moreover, the closer the relationship between the victim and the offender, the lower the likelihood that victims will report the crime to police.<sup>33</sup> For example, when the offender was a current or former husband or boyfriend, about three-fourths of all victimizations were not reported to the police.<sup>34</sup> When the offender was a friend or acquaintance, 61 percent of completed rapes, 71 percent of attempted rapes, and 82 percent of sexual assaults were not reported.<sup>35</sup> When the offender was a stranger, 54 percent of completed rapes, 44 percent of attempted rapes, and 34 percent of sexual assaults were not reported to law enforcement.<sup>36</sup> In another recent study, researchers again found that reports of domestic violence and sexual assault are much less likely if the offender and victim know each other, and the odds that victims will notify the police are significantly lower if the offender is a family

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known offender is more unlikely to be reported than violence by a stranger); Mary P. Koss et al., *The Scope of Rape: Incidence and Prevalence of Sexual Aggression and Victimization in a National Sample of Higher Education Students*, 55 J. CONSULTING & CLINICAL PSYCHOL. 162, 162-63 (1987) (noting the underreporting of rape generally); Diana E. H. Russell, *The Prevalence and Incidence of Forcible Rape and Attempted Rape of Females*, 7 VICTIMOLOGY: AN INT'L J. 81, 81-83, 87-91 (1982) (discussing a 1978 study focused on showing the that rape is underreported even to then-current statistics gathering agencies). *But see* Michael J. Hindelang & Michael Gottfredson, *The Victim's Decision Not To Invoke the Criminal Justice Process*, in CRIMINAL JUSTICE AND THE VICTIM 57, 66 tbl.4, 69 tbl.6, 70 tbl.7, 74 tbl.10 (William F. McDonald ed., 1976) (showing results of a study that did not rank rape as the most underreported violent crime and showing that rape committed by a strangers was more underreported than a rape committed by one known to the victim).

30. See U.S. DEPARTMENT OF JUSTICE, NCJ 215244, CRIMINAL VICTIMIZATION IN THE UNITED STATES, 2005 STATISTICAL TABLES at tbl.91 (2005).

31. *Id.* at tbl.93 (reporting that 38.5% of rapes/sexual assaults against females age 12 and over are reported to police).

32. Callie M. Rennison, Ph.D., *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992-2000*, U.S. DEP'T OF JUSTICE, NCJ 194530 at 3 (2002), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/rsarp00.pdf>.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

member rather than a stranger.<sup>37</sup> In short, victims are less likely to report family members than to report other known offenders.

Juveniles are more likely than adults to be victims of violence, yet juvenile victimization is much less reported than adult victimization.<sup>38</sup> Numerous studies reveal that a majority of crimes against juveniles, including aggravated assault and forcible rape, are never reported to police or other authorities.<sup>39</sup> For both adults and juveniles, a variety of factors influence decisions to report victimization to legal authorities, including severity of the crime, injury, relationship to the offender, and anticipated negative reactions from others. Common factors that contribute to non-reporting of sexual assault include embarrassment, shame, stigma, desire for privacy, fear of being blamed for the assault, fear of retaliation, fear of disrupting friends and/or family, distrust of the criminal justice system, and, most importantly for our purposes, a desire to protect the offender and others.<sup>40</sup> Several studies reveal why victims are less likely to report sexual assault to police than physical assault.<sup>41</sup> Reasons include embarrassment, describing the crime as a private matter, fear of reprisal, efforts to protect the offender, anticipated police bias, and beliefs that police officers

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37. Felson, R. & Paré, P. (2005). "The reporting of domestic violence and sexual assault by nonstrangers to the police." *Journal of Marriage and Family*, 67: 597-610.

38. Finkelhor, D., & Wolak, J. (2003). "Reporting assaults against juveniles to the police: Barriers and catalysts." *Journal of Interpersonal Violence*, 18: 103-128; Finkelhor, D., Wolak, J., & Berliner, L. (2001). "Police reporting and professional help seeking for child victims: A review." *Child Maltreatment*, 6: 17-30.

39. Boney-McCoy, S. & Finkelhor, S. (1995). "Psychological sequelae of violent victimization in a National Youth sample." *Journal of Consulting and Clinical Psychology*, 63: 726-736; Finkelhor, D. & Ormrod, R.K. (1999). *Reporting Crimes Against Juveniles (NCJ178887)*. Office of Juvenile Justice and Delinquency Prevention Washington, D.C.: U.S. Department of Justice; Shaffer, J. & Ruback, R. (2002). "Violent victimization as a risk factor for violent offending among juveniles." *OJJDP Juvenile Justice Bulletin*. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

40. See, e.g., Bachman, R. (1998). "The factors related to rape reporting behavior and arrest: New evidence from the National Crime Victimization Survey." *Criminal Justice and Behavior*, 25: 8-29; Belknap, J. (2001). *The Invisible Woman: Gender, Crime, and Justice* (2nd ed.). Belmont, CA: Wadsworth; Du Mont, J., Miller, K.L., & Myhr, T. (2003). "The role of 'real rape' and 'real victim' stereotypes in the police reporting practices of sexually assaulted women." *Violence Against Women*, 9: 466-486; Feldman-Summers, S. & Ashworth, C.D. (1981). "Factors related to intentions to report a rape." *Journal of Social Issues*, 37: 53-70; Finkelhor, D. (1984). *Child Sexual Abuse: New Theory and Research*. New York: Free Press; Greenberg, M.S., & Ruback, R.B. (1992). "Self-reports: Surveying crime victims." In *After the Crime: Victim Decision Making* (pp. 151-179). New York: Plenum Press; Kilpatrick, D., Saunders, B., & Smith, D. (2003). "Youth victimization: Prevalence and implications." *National Institute of Justice: Research in Brief*. Washington, D.C.: U.S. Department of Justice; Sauzier, M. (1989). "Disclosure of child sexual abuse: For better or for worse." *Psychiatric Clinics of North America*, 12: 455-469; Whitcomb, D. (1992). *When the Victim is a Child: Issues and Practices* (2nd ed.). Washington, DC: U.S. Department of Justice; Williams, L.S. (1984). "The classic rape: When do victims report?" *Social Problems*, 31: 459-467.

41. *Id.*

either would not believe them or could not do anything to help.<sup>42</sup> Juvenile victims may be especially reluctant to report sexual assault due to the fear of being punished, adolescent desires for personal autonomy, and fear of being taken away from, or breaking up, their family.<sup>43</sup> Finally, family members may dissuade children from reporting their victimization due to concerns about involving them in the justice system.<sup>44</sup>

Fears of reporting are not unfounded. Rape victims often encounter negative reactions in response to their disclosures of sexual assault.<sup>45</sup> In one study, 46 percent of interviewees who filed rape charges indicated dissatisfaction with the police interview.<sup>46</sup> Furthermore, victims often report that others discouraged them from discussing or reporting their assaults to officials.<sup>47</sup> Victims also fear negative reactions from family and community members, including retaliation and shaming.<sup>48</sup> These disincentives to report are especially salient in communities with low baseline levels of trust for police or other officials, including communities of color.<sup>49</sup> A history of negative interactions, whether

42. Felson, R. & Paré, P. (2005). "The reporting of domestic violence and sexual assault by nonstrangers to the police." *Journal of Marriage and Family*, 67: 597-610; Rennison, C. (2002). *Criminal Victimization 2001: Changes 2000-01 with Trends 1993-2001*. Washington, D.C.: Department of Justice.

43. Finkelhor, D., & Wolak, J. (2003). "Reporting assaults against juveniles to the police: Barriers and catalysts." *Journal of Interpersonal Violence*, 18: 103-128.

44. Eastwood, C. (2003). "The experiences of child complainants of sexual abuse in the criminal justice system." *Australian Institute: Trends and Issues in Crime and Criminal Justice*, 250: 1-6; Finkelhor, D., Cross, T., & Cantor, E. (2005). "How the justice system responds to juvenile victims: A comprehensive model." *Juvenile Justice Bulletin: Office of Juvenile Justice and Delinquency Prevention*. Washington D.C.: U.S. Department of Justice; Finkelhor, D. & Wolak, J. (2003). "Reporting assaults against juveniles to the police: Barriers and catalysts." *Journal of Interpersonal Violence*, 18: 103-128.

45. Campbell, R., Ahrens, C., Sefl, T., Wasco, S. & Barnes, H. (2001). "Social reactions to rape victims: Healing and hurtful effects on psychological and physical health outcomes." *Violence and Victims*, 16: 287-302; Ullman, S. (1996). "Correlates and consequences of adult sexual assault disclosure." *Journal of Interpersonal Violence*, 11: 554-571.

46. Monroe, L., Kinney, L., Weist, M., Dafeamekpor, D., Dantzer, J. & Reynolds, M. (2005). "The experience of sexual assault: Findings from a statewide victim needs assessment." *Journal of Interpersonal Violence*, 20: 767-776.

47. *Id.*, note 21; Campbell, R. & Raja, S. (1999). "Secondary victimization of rape victims: Insights from mental health professionals who treat survivors of violence." *Violence and Victims*, 14: 261-275; Fivush, R. (1998). "Children's recollections of traumatic and nontraumatic events." *Development and Psychopathology*, 10: 699-716; Smith, D., Letourneau, E., Saunders, B., Kilpatrick, D., Resnick, H. & Best, C. (2000). "Delay in disclosure of childhood rape: Results from a national survey." *Child Abuse & Neglect*, 24: 273-287.

48. Browne, A. (1991). "The victim's experience: Pathways to disclosure." *Psychotherapy*, 28:150-156; Herman, J. (1981). *Father-daughter incest*. Cambridge, MA: Harvard University Press.

49. Paternoster, R., Brame, R., Bachman, R., & Sherman, L. (1997). "Do fair procedures matter? The effect of procedural justice on spouse assault." *Law and Society Review*, 31:163-204; Sunshine, J. & Tyler, T. (2003). "The role of procedural justice and legitimacy in shaping public support for policing." *Law & Society Review*, 37: 513-547; Tonry, M. (1995). *Malign Neglect: Race, Crime and Punishment in America*. New York: Oxford University Press; Tyler, T. (1990). *Why People Obey the Law*. Yale University Press, New Haven, CT.

through direct or indirect contact with state actors, thus affects the willingness to report future victimizations.<sup>50</sup>

#### PERVERSE EFFECTS OF RECENT SEX OFFENDER LEGISLATION?

Strict sex offender legislation has proliferated in recent years.<sup>51</sup> Public outrage over heinous cases has reintroduced the idea that sexually violent behavior is the product of mental illness and pathology, and that strangers pose the biggest threat to children.<sup>52</sup> Considerable debate exists regarding the efficacy of such laws in accomplishing their purported goals.<sup>53</sup> For example, a recent Human Rights Watch report argues that there is little evidence that strict laws have reduced the threat of sexual abuse to children and others.<sup>54</sup> Today, legal scholars and social theorists are increasingly questioning the legality and constitutionality of these laws,<sup>55</sup> their effects on sex offenders,<sup>56</sup> on the criminal justice system,<sup>57</sup> and on child welfare practitioners.<sup>58</sup> Such concerns hearken

50. Ullman, S. (1996). "Correlates and consequences of adult sexual assault disclosure." *Journal of Interpersonal Violence*, 11: 554-571.

51. For example, The 1994 Jacob Wetterling Crimes Against Children and Sexual Violent Offender Registration Act; Megan's Law, 1994, 1996; the Adam Walsh Child Protection and Safety Act of 2006.

52. Corrigan, R. (2006). "Making meaning of Megan's Law." *Law & Social Inquiry*, 31: 267-312; Wells, C. & Motley, E. (2001). "Reinforcing the myth of the crazed rapist: A feminist critique of recent rape legislation." *Boston University Law Review*, 81, Page 132.

53. See, e.g., Berliner, L. (1996). "Community notification of sex offenders: A new tool or a false promise?" *Journal of Interpersonal Violence*, 11: 294-300; Edwards, W. & Hensley, C. (2001). "Contextualizing sex offender management legislation and policy: Evaluating the problem of latent consequences in community notification laws." *International Journal of Offender Therapy and Comparative Criminology*, 45, 83-101; Presser, L. & Gunnison, E. (1999). "Strange bedfellows: Is sex offender notification a form of community justice?" *Crime & Delinquency*, 45: 299-315; Zevitz, R.G. & Farkas, M.A. (2000). "The impact of sex offender community notification on probation/parole in Wisconsin." *International Journal of Offender Therapy and Comparative Criminology*, 44: 8-21.

54. Authors. (2007). "No easy Answers: Sex offender laws in the US." *Human Rights Watch*, 19, 4G. September.

55. For example, see Levi, R. (2000). "The mutuality of risk and community: The adjudication of community notification statutes." *Economy and Society*, 29:578-601; Zevitz, R. G., Crim, D. & Farkas, M.A. (2000). "Sex offender community notification: Managing high risk criminals or exacting further vengeance?" *Behavioral Sciences and the Law*, 18: 375-391.

56. See, e.g., Levenson, J. & Cotter, L. (2005). "The effect of Megan's Law on sex offender reintegration." *Journal of Contemporary Criminal Justice*, 21: 49-66; Tewksbury, R. (2005). "Collateral consequences of sex offender registration." *Journal of Contemporary Criminal Justice*, 21: 67-81; Finn, P. (1997). Sex Offender Community Notification (NCJ 162364). *National Institute of Justice*. Washington, DC: U.S. Department of Justice; Petrosino, A.J. & Petrosino, C. (1999). "The public safety potential of Megan's Law in Massachusetts: An assessment from a sample of criminal sexual psychopaths." *Crime and Delinquency*, 45: 140-157; Zevitz, R.G. and M.A. Farkas. (2000). "The impact of sex offender community notification on probation/parole in Wisconsin." *International Journal of Offender Therapy and Comparative Criminology*, 44: 8-21.

57. *Id.*

58. See, e.g., Farkas, M.A. & Zevitz, R.G. (2000). "The law enforcement role in sex offender community notification: A research note." *Journal of Crime and Justice*, 23: 125-137; Finn, P. (1997). Sex Offender Community Notification (NCJ162364). *National Institute of Justice*.

back to an earlier era. In the 1970s, anti-rape activists argued that severe penalties for sexual assault might actually discourage reporting and prosecution.<sup>59</sup>

Public stigmatization appears to have increased dramatically since 2000.<sup>60</sup> Research on the effects of new registration and notification practices has shown that sex offenders are facing ostracism, harassment, threats, physical violence, vigilantism, the dissolution of relationships, and an inability to find or retain housing and employment.<sup>61</sup> For example, one California registrant convicted of sexual assault 23 years ago told Human Rights Watch<sup>62</sup>:

Sleep is hard to come by. I stay up at night, worried that I can't find a job, worried that I can't find an apartment, worried that I am going to be killed like other sex offenders have been killed, worried that they will take away my family, won't let me see my children and grandchildren anymore.<sup>63</sup>

Although members of offenders' families are also exposed to harsh reactions from the community, surprisingly little research has examined how these laws affect the friends and families of registered offenders.<sup>64</sup> Preliminary work reports that families are increasingly shamed and harassed as a result of community notification and may even receive "courtesy stigmas" – based on guilt by association.<sup>65</sup> Family members struggle with feelings of culpability for the offense and experience conflict about their relationships with offenders.<sup>66</sup> The stressors for victims and family members include financial problems and stigmatizing responses by neighbors, co-workers, and school officials and

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Washington DC: U.S. Department of Justice; Zevitz, R.G. & Farkas, M.A. (2000). "Sex offender community notification: Managing high risk criminals or exacting further vengeance?" *Behavioral Sciences and the Law*, 18: 375-391.

59. Corrigan, R. (2006). "Making meaning of Megan's Law." *Law & Social Inquiry*, 31: 267-312.

60. *Id.*

61. See, e.g., Dodge, M. and Pogrebin, M.R. (2001). "Collateral costs of imprisonment for women: Complications of reintegration." *Prison Journal*, 81: 42-54.; Levenson, J. & Cotter, L. (2005). "The effect of Megan's Law on sex offender reintegration." *Journal of Contemporary Criminal Justice*, 21: 49-66; Tewksbury, R. (2005). "Collateral consequences of sex offender registration." *Journal of Contemporary Criminal Justice*, 21: 67-81.

62. Authors. (2007). "No easy answers: Sex offender laws in the US." *Human Rights Watch Report*, 19: 1-141.

63. *Id.* at 78.

64. *Id.*

65. Freeman-Longo, R. (2002). Revisiting Megan's Law and sex offender registration: Prevention or problem. In *Hodgson and Kelly 2002*; Levenson, J. & Cotter, L. (2005). "The effect of Megan's Law on sex offender reintegration." *Journal of Contemporary Criminal Justice*, 21: 49-66; Tewksbury, R. (2005). "Collateral consequences of sex offender registration." *Journal of Contemporary Criminal Justice*, 21: 67-81; Zevitz, R. G., Crim, D. & Farkas, M.A. (2000). "Sex offender community notification: Managing high risk criminals or exacting further vengeance?" *Behavioral Sciences and the Law*, 18: 375-391.

66. Breen, P.A. (1995). "Families in peril." *Corrections Today*, 57: 98-118.

classmates.<sup>67</sup> As the wife of one convicted sex offender told Human Rights Watch investigators,<sup>68</sup>

After the sheriff placed the flyers with [my husband's] face all over our neighborhood, neighbors stopped talking to us. People made copies of the flyer and passed it out in front of my son's school. They posted the flyers along my running trail. People came around at night and pounded on our windows. We eventually moved to a more isolated neighborhood. We couldn't handle the humiliation.

Although stranger sexual assaults and abductions of children receive a great deal of media attention, most sexual victimization occurs by known offenders to the victims, including family members and acquaintances.<sup>69</sup> As such, there is growing concern that registration and notification requirements may be affecting the reporting of child sexual abuse, especially abuse within families.<sup>70</sup> A variety of mechanisms might link community notification practices to victims' unwillingness to report abuse by their family members or acquaintances: (a) embarrassment; (b) lack of confidentiality; (c) courtesy stigmas; and, (d) pressure from other family members not to report.<sup>71</sup> In some cases, notification and registration might inadvertently release the identity of victims via the offender's identity and location.<sup>72</sup> Sadly, decreased reporting ultimately interferes with the child protection system and reduces the likelihood that victims will receive therapeutic intervention.<sup>73</sup> Freeman-Longo expresses concern over preliminary reports from New Jersey and Colorado, finding that incest victims are not reporting sexual abuse for fear of identification, the possibility of testifying in court, and/or the impact of notification on their families.<sup>74</sup> Rape advocates in New Jersey similarly expressed concern that

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67. *Id.*

68. Authors. (2007). "No easy answers: Sex offender laws in the US." *Human Rights Watch Report*, 19: Page 50.

69. *Id.* at 24.

70. Jill S. Levenson & Leo P. Cotter, *The Effect of Megan's Law on Sex Offender Reintegration*, *Journal of Contemporary Criminal Justice* 2005; 21; 49, 51.

71. *Id.*

72. Edwards, W. & Hensley, C. (2001). "Contextualizing sex offender management legislation and policy: Evaluating the problem of latent consequences in community notification laws." *International Journal of Offender Therapy and Comparative Criminology*, 45: 83-101; Freeman-Longo, R. (2002). Revisiting Megan's Law and sex offender registration: Prevention or problem. In *Hodgson and Kelly* 2002; Winnick, B. (1998). "Sex offender law in the 1990's: A therapeutic jurisprudence analysis." *Psychology, Public Policy, and Law*, 4: 505-570.

73. Edwards, W. & Hensley, C. (2001). "Contextualizing sex offender management legislation and policy: Evaluating the problem of latent consequences in community notification laws." *International Journal of Offender Therapy and Comparative Criminology*, 45: 83-101; Freeman-Longo, R. (1996). "Prevention or problem." *Sexual Abuse: A Journal of Research & Treatment*, 8: 91-100; Freeman-Longo, R. & Blanchard, G. (1998). *Sexual Abuse in America: Epidemic of the 21st Century*. Brandon, Vermont. Safer Society Press.

74. *Id.*

victims who know their offenders may be less likely to report sexual assault or press charges.<sup>75</sup> As one advocate noted,

The majority of the women and men and children who we treat in our program are victims of...somebody in the family or someone close to the family. I think there are a million reasons why people don't report anyway and this is one more to add to it.<sup>76</sup>

#### PRESENT STUDY AND STRATEGY

The ultimate balance between the positive and negative effects of sex offender notification and registration laws remains unknown. We know little about how recent changes in registration and notification impact sex offenders, but we know even less about the unintended consequences and potential perverse effects on victims and their families.<sup>77</sup> It is clear, however, that the impact of notification certainly ripples outward beyond the offender.<sup>78</sup> In this article, we ask a simple question regarding one such effect: has the stigmatization of sex offender laws become so great that victims are less likely or less willing to report rape and sexual assault? Our review of the literature on sexual victimization and rape reporting trends in the United States sets the stage for three preliminary hypotheses. If the hyper-stigmatization of registration and notification decreases the likelihood of victim reporting, we would expect:

H<sub>1</sub>: A recent decline in reporting rates for rape and sexual assault relative to other types of violent crime. While prior research shows that reports of violent crime to police have generally increased over the past decade,<sup>79</sup> given the nature of sexual assault and the reluctance of victims to report, we would still expect lower rape reporting rates in comparison to other violent crimes. This hypothesis follows from the literature revealing barriers to reporting sex crime, including confidentiality, embarrassment, shame and fear of reprisal.

H<sub>2</sub>: A recent decline in reporting rates for rape and sexual assault when the offender is known to the victim. This hypothesis follows from literature suggesting that the closer the victim – offender relationship, the lower the likelihood that rape victims will report the crime to police.

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75. Corrigan, R. (2006). "Making meaning of Megan's Law." *Law & Social Inquiry*, 31: 267-312.

76. *Id.* at 307.

77. *Id.*

78. *Id.*

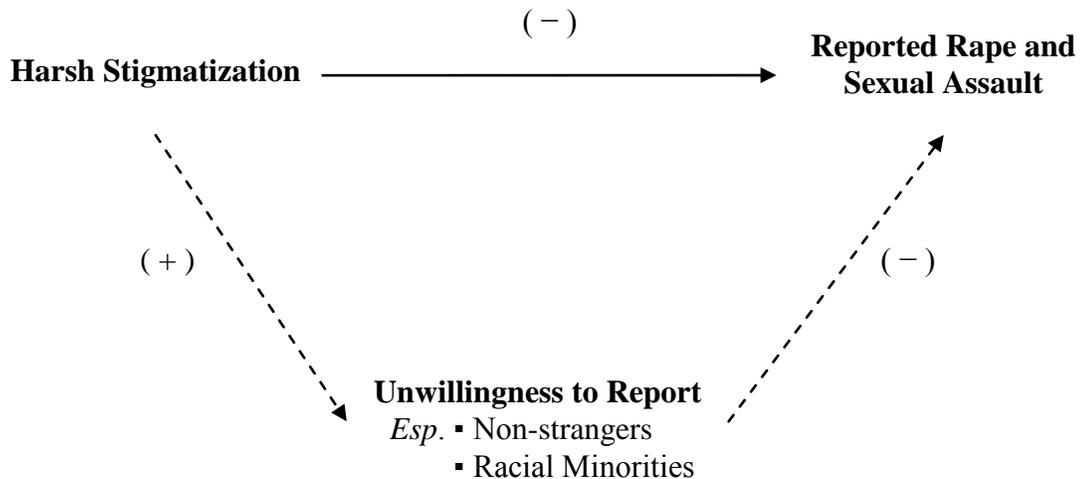
79. See, e.g., Felson, R. & Paré, P. (2005). "The reporting of domestic violence and sexual assault by nonstrangers to the police." *Journal of Marriage and Family*, 67: 597-610; Finkelhor, D., & Wolak, J. (2003). "Reporting assaults against juveniles to the police: Barriers and catalysts." *Journal of Interpersonal Violence*, 18: 103-128.

As stigmatization increases, we would expect a corresponding decrease in reporting rates for non-stranger offenders.

H<sub>3</sub>: A recent decline in reporting rates for rape and sexual assault for African American victims in comparison to White victims. An extensive literature suggests that distrust of police is especially salient in communities experiencing negative direct or indirect interactions with law enforcement. More specifically, this hypothesis follows from research suggesting that African American children and families are more fearful and distrustful of law enforcement than are White children and families.

Our basic model is outlined in Figure 1. Harsh stigmatization may diminish, or perhaps increase, rape and sexual assault directly. Nevertheless, it may also diminish reporting of such crimes, particularly when the offenders are known to victims and their families and in communities in which there is greater distrust of law enforcement and social service agencies.

**Figure 1.** Hypothesized Link between Stigmatization and Reporting of Rape and Sexual Assault



Using existing data sources, it is difficult to test the hypothesized association between hyper-stigmatizing sex offender laws and the willingness of victims to report sex crimes to law enforcement officials. We therefore also explore expected associations between reported rates of child sexual and physical abuse and procedural differences in selected state registries and public notification provisions. States retain some discretion regarding which offenders must register and for how long, as well as how public notification and registration will be

implemented.<sup>80</sup> For example, the Jacob Wetterling Crimes against Children and Sexually Violent Offender Registration Act required states to establish sex offender registries.<sup>81</sup> States that did not comply with this legislation were subject to the loss of federal funding.<sup>82</sup> This legislation authorized, but did not require, state law enforcement officials to release to the public information on registered sex offenders when they determined notification was necessary to protect public safety.<sup>83</sup> The Adam Walsh Act of 2006 has now broadened states' responsibilities with regard to the crimes for which persons must register as sex offenders and the length of time they must do so.<sup>84</sup> The Act also authorized a national registry that would combine offender information from every individual state registry.<sup>85</sup>

While public shaming measures may have salutary effects, they necessarily increase the stigmatization of sex offenders and their families.<sup>86</sup> In strict states such as Florida, broadly defined categories of sex offenders are mandated to register and subject to indiscriminate notification procedures.<sup>87</sup> To the extent that such practices decrease victim reports of non-stranger sex crimes, we would expect that states employing strict but indiscriminate registration and notification procedures will experience greater declines in official reports of sexual abuse. Some portion of these declines may thus be due to increased reluctance of victims and family members to report the abuse.

#### THE NATIONAL CRIME VICTIMIZATION SURVEY

The National Crime Victimization Survey (NCVS) collects data on nonfatal crimes against persons age 12 or older, reported and not reported to the police.<sup>88</sup> The NCVS is an ongoing survey of a nationally representative sample of households in the United States, measuring the rate of both violent and property crimes.<sup>89</sup> Violent crimes include rape or sexual assault, robbery, aggravated assault, and simple assault and property crimes include household burglary, motor vehicle theft, and theft.<sup>90</sup> Victimization rates are based on data collected

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80. *No Easy Answers: Sex Offender Laws in the U.S.*, HUMAN RIGHTS WATCH REPORT, Vol. 19, 4(G) at 36 (Sept. 2007).

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.* at 37.

85. *Id.*

86. *Id.*

87. *No Easy Answers: Sex Offender Laws in the U.S.*, HUMAN RIGHTS WATCH REPORT, Vol. 19, 4(G) at 39-40 (Sept. 2007).

88. See U.S. Department of Justice, National Archive of Criminal Justice Data website, available at <http://www.icpsr.umich.edu/NACJD/NCVS>.

89. *Id.*

90. Shannon M. Catalano, Ph.D., *Criminal Victimization, 2005*, U.S. Dep't. of Justice, Bureau of Justice Statistics, NCJ 214644 at 1 (September 2006).

each calendar year.<sup>91</sup> The survey is the primary source of information on the number and types of crimes that are not reported to law enforcement authorities.<sup>92</sup>

In comparison to reporting systems that measure only crimes reported to law enforcement officials or child protective services,<sup>93</sup> NCVS data are generally considered a reasonably reliable and valid estimate of all victimizations – reported and unreported.<sup>94</sup> Just as other sources of information on criminal victimization, however, the NCVS may suffer from methodological problems of overreporting and underreporting, sampling errors, and inadequate question formats.<sup>95</sup> For these purposes, underreporting may be especially problematic regarding rape and sexual assault, due to embarrassment or fear that victims will be negatively affected if they report these crimes.<sup>96</sup>

We consider three NCVS data series to test our preliminary hypotheses: (1) recent trends in the rate of reporting for rape and sexual assault relative to other violent victimizations;<sup>97</sup> (2) recent trends in the rate of reporting non-stranger rapes and sexual assaults to police, relative to incidents in which the offender was a stranger to the victim;<sup>98</sup> and (3) recent trends in the rate of reporting rape and sexual assault to police for African American victims, relative to White victims.<sup>99</sup>

To explore the possible associations between state registration and notification guidelines and rates of reported child sexual abuse, we use state registration and notification requirements from the National Center for Missing and Exploited Children,<sup>100</sup> selected state sex offender registry websites, and the BJS 2001 Summary of State Sex Offender Registries.<sup>101</sup> We also examine incidence-based data on abused and neglected children known to state child welfare agencies, taken from U.S. Department of Health and Human Services reports. This data source was recently employed by Jones, Finkelhor, and Halter to calculate the percentage change between the peak year for child sexual and

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91. *Id.* at 11.

92. See U.S. Department of Justice, National Archive of Criminal Justice Data website, available at <http://www.icpsr.umich.edu/NACJD/NCVS>.

93. Alternative data sources include the Uniform Crime Reports (UCR) and the National Incidence-Based Reporting System (NIBRS).

94. See U.S. Department of Justice, National Archive of Criminal Justice Data website, available at <http://www.icpsr.umich.edu/NACJD/NCVS/accuracy.html>.

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. See

[http://www.missingkids.com/missingkids/servlet/PageServlet?LanguageCountry=en\\_US&PageId=1345](http://www.missingkids.com/missingkids/servlet/PageServlet?LanguageCountry=en_US&PageId=1345) (accessed December 5, 2007).

101. Adams, D. (2002). Summary of State Sex Offender Registries, 2001 (NCJ192265). *Office of Justice Programs*. Washington, D.C.: U.S. Department of Justice.

physical assault (1990-1995) and 2003. Reported child physical abuse over this period is used as a comparison measurement for child sexual abuse.

### RESULTS AND DISCUSSION

As noted above, rape and sexual assault are generally thought to be underreported to the police, relative to other violent crimes such as aggravated physical assaults. Reasons for not reporting include embarrassment and stigma associated with the crime, lack of confidence in the criminal justice system, desires for privacy, and a desire to protect offenders and others, such as family members. Although reporting rates for sexual crimes have increased since the 1970s, we hypothesized that rates of reporting rape and sexual would begin to show a swift decline in recent years, relative to reporting rates for other violent crimes.

Figure 2 displays NCVS data between 1993 and 2005. Consistent with previous work, we find that in most years sexual assaults are less likely to be reported to the police than are other assaults. There is general stability in reporting violent crime from 1993 to 1999, with about 30 percent of all rapes and sexual assaults reported to police, relative to about 40 to 45 percent of total violent crime. Reporting rates for rape and sexual assault spiked from 2000 to 2002, however, peaking at 54 percent and eclipsing the total violent crime reporting rate. Beginning in 2002 and continuing to 2005, however, there is a sharp decline in rape and sexual assault reporting to 38 percent. Reporting rates for total violent crime remained near 50 percent from 2000 to 2005, with about half of all such crimes reported to police.

Figure 2. Percent reported to the police: Rape/sexual assault compared to total violent crime

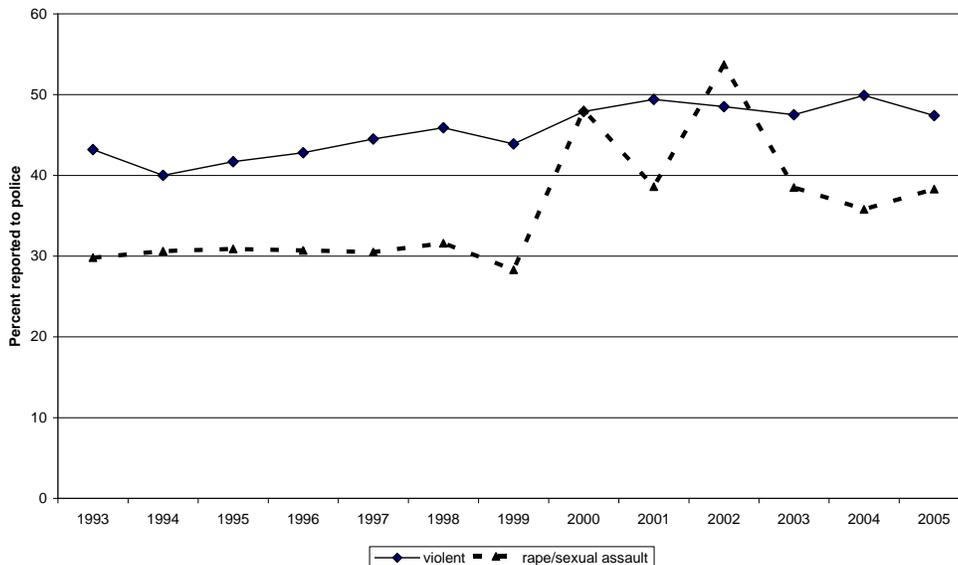
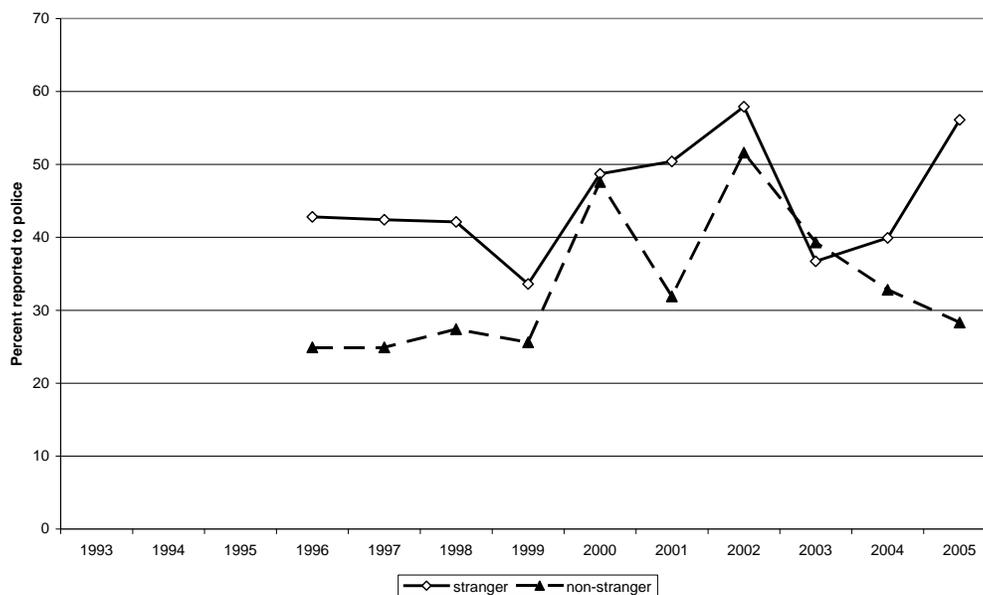


Figure 2 provides only partial support for our first hypothesis, as we observe a decline in sex crime reporting relative to other violent crimes only in the very recent 2002-2005 period. Moreover, rates of reporting for rape and sexual assault remained higher in 2005 than they had been throughout the 1990s. Social problems pass through issue and attention cycles, often driven by sensationalized cases and focused media attention. The major fluctuations in reporting of rape and sexual assault since 1999 suggest a pattern of increasing public attention to an issue followed by a decline in reporting, perhaps associated with the increased publicity of sex offender registration and notification laws. Such temporal patterning is only suggestive, of course, but worthy of further research attention and inquiry. We next consider the important distinction between stranger and non-stranger victimizations.

Given prior research on reporting rape and sexual assault by offenders known to the victim, we also hypothesized that reporting to police would be particularly unlikely when victims were sexually assaulted by non-strangers. Under conditions of harsh stigmatization, we would expect sexual assault committed by family members, dates, and acquaintances to be reported less often than sexual assaults by strangers. Figure 3 is consistent with this pattern for recent years, showing that reports to police decreased for non-stranger rapes and sexual assault between 2002 and 2005. In contrast, the reporting rate for sexual assault perpetrated by strangers declined in 2003 but significantly increased in 2004 and 2005, relative to non-stranger reporting. Similar to the results shown above in Figure 2, after significant, but fluctuating, increases in reporting in the early 2000s, police reports of non-stranger sexual assaults declined from 52 percent in 2002 to 28 percent in 2005. On the other hand, reports of stranger sexual assaults returned to peak levels (57 percent) in 2005.

Figure 3. Percent reported to the police: Stranger rape/sexual assault compared to non-stranger rape/sexual assault



This recent pattern is consistent with our second hypothesis, that reporting rates for non-stranger sexual assault may be decreasing in response to the public stigmatization associated with sex offender registration and notification. Pressures not to report for fear of triggering registration and notification consequences may be especially intense in cases of intrafamilial sexual assault. Scenarios in which other family members exert such pressures are also very likely in cases of repeat incidents for previously convicted perpetrators who remain close to the victim.<sup>102</sup> As such, victims and other third-party reporters such as family members may be less likely to report sexual victimization in light of more stigmatizing new provisions.

Next, we examine our hypothesis that African American victims of rape and sexual assault will be less likely to report victimization to police in comparison to White victims. As predicted, Figure 4 displays a steep drop in sexual assault reports from African American victims beginning in 2000. Reporting to police dramatically declined from 56 percent in 2000 to 17 percent in 2005. Diverging from this trend, reports from White victims of sexual assault steadily increased between 2002 and 2005. In 2005, White victims reported sexual victimization to police much more often than African American victims (44 percent compared to 17 percent). In line with prior literature, African American victims of sexual assault may be less likely than their White counterparts to notify police, due to distrust of law enforcement, beliefs that the criminal justice system is biased, and concern that state agents will be unable to protect family members from disruption and dissolution. Fear of police and breaking up the family can discourage children from reporting sexual abuse to authorities, but these concerns appear to be especially salient for African American children.<sup>103</sup>

Cursory examination of trends in NCVS data can only provide exploratory evidence on our key hypotheses regarding the public stigma associated with new sex offender statutes. Nevertheless, NCVS patterns of reporting appear to be consistent with the idea that such practices may have the perverse effect of decreasing the likelihood that victims will report sexual victimization to police. As previously stated, the relationship between stigmatization and victim willingness to report sexual assault is a difficult idea to test using available data sources.

Further exploratory evidence is presented in Table 1, showing a basic connection between state child sexual abuse reports and procedural differences in state registries and public notification. As expected, states reporting greater declines in child sexual abuse relative to physical abuse are characterized by: (a) larger percentage increases in registered sex offenders from 2001 to 2003; (b)

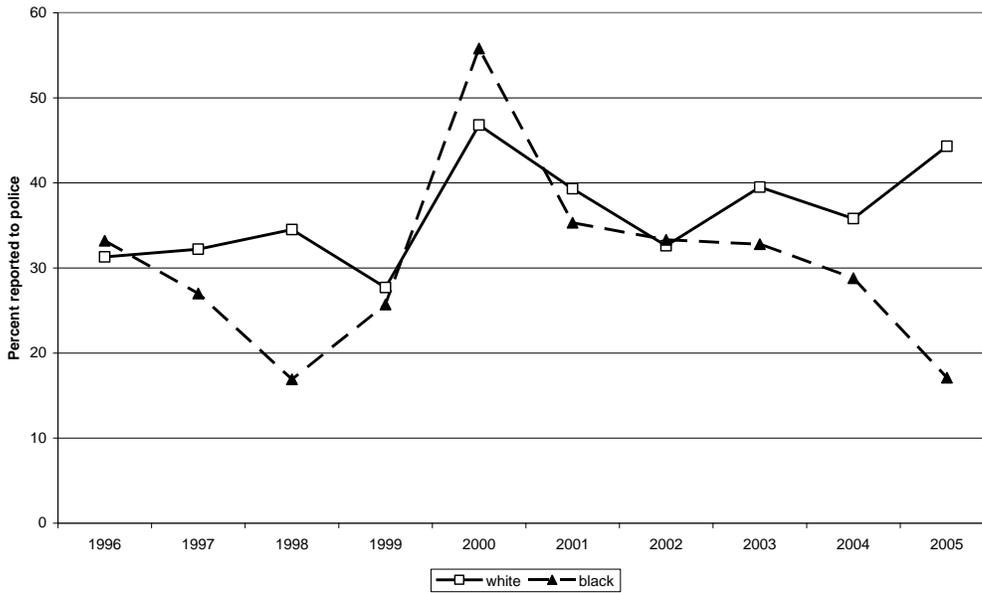
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102. Corrigan, R. (2006). "Making meaning of Megan's Law." *Law & Social Inquiry*, 31: 267-312.

103. Hlavka, H. (Forthcoming, 2008). *When Discourse Becomes Disclosure: Children's Constructions of Self and Sexual Abuse*. University of Minnesota Department of Sociology Ph.D. Dissertation.

broad categories of offenders mandated to register; and, (c) indiscriminate public notification practices.

Figure 4: Percent rape/sexual assault reported to the police by victim race: Black victims compared to White victims



We selected six ideal-typical states to exemplify more and less stigmatizing registration and notification procedures. The information in Table 1 is displayed in two sections, showing three states with more stigmatizing practices in the first section and three states with less stigmatizing practices in the second section. As expected, more stigmatizing states saw big declines in reported child sexual abuse (e.g., 45 percent in Florida; 27 percent in Kansas; and 43 percent in Michigan). At first glance, stigmatizing measures appear to be effective: States reported overall decreases in child sexual abuse. Part of this drop, however, may be due to fear of reporting, as suggested by the NCVS data presented above.

This view is supported by trends in child physical abuse. States with more stigmatizing practices saw big declines in reported child sexual abuse cases that did not mirror reports of child physical abuse. Florida, for instance, experienced a 45 percent decrease in reported child sexual abuse but only a 2 percent decrease in child physical abuse; Kansas, experienced a 27 percent decrease in reported child sexual abuse but a 51 percent increase in child physical abuse over the same period; Michigan reported a 43 percent decrease in child sexual abuse and only a 3 percent decrease in child physical abuse. In contrast, states with less stigmatizing practices saw a decline in reported child physical abuse commensurate with that of reported child sexual abuse. For Arkansas, these declines measured 56 percent and 20 percent, respectively; for Minnesota, the drop was 61 percent and 37 percent, respectively; and, for Missouri, there was a

23 percent reduction in child physical abuse and a 5 percent reduction in child sexual abuse.

**Table 1.** Selected State Sex Offender Registration and Notification Practices

State	Percent change, 2001-2003	Sexual abuse*	Physical abuse*	Community notification by local law enforcement agencies <sup>a</sup>	Internet website
<b>Selected States with More Stigmatizing Practices</b>					
Florida	66%	-45%	-2%	The general public has access to SOR information through the FDLE website, through a toll-free number and through fliers and leaflets produced for community notification on sexual predators.	<a href="http://www.fdle.state.fl.us">www.fdle.state.fl.us</a> Averages about 5 million hits per month (33,246 in registry, 2003).
Kansas	51%	-27%	51%	The general public has access to SOR information through an Internet website. Members of the public may also inspect registration records at a local sheriff's office or at the Kansas Bureau of Investigation.	<a href="http://www.kansas.gov/kbi/ro.shtml">www.kansas.gov/kbi/ro.shtml</a> Averages about 6,800 hits per month (2,704 in registry, 2003).
Michigan	16%	-43%	-3%	Listings by zip code of the registered offenders within a jurisdiction are available for inspection by the general public during normal business hours at local law enforcement agencies, and sheriffs' departments. Agencies make the listing available through computerized, electronic, or other means.	<a href="http://www.mipsor.state.mi.us">www.mipsor.state.mi.us</a> (31,045 in registry, 2003).

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**Selected States with Less Stigmatizing Practices**


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Arkansas	25%	-20%	-56%	Community notification is conducted by local law enforcement agencies, in accordance with guidelines developed by the Sex Offender Assessment Committee. Notification to organizations, schools, and institutions is made for offenders determined to be medium or high risk. As of 2001, there were not procedures for general public access information from the SOR.	<a href="http://www.acic.org/Registration/index.htm">www.acic.org/Registration/index.htm</a> . Provides information on the number of registered sex offenders, but does not post data on individual offenders (3,670 in registry, 2003).
Minnesota	6%	-37%	-61%	All law enforcement agencies in the State are required to have a formal policy on community notification. In general, for Level I (low risk) offenders, information is shared only with law enforcement, victims, and witnesses. For Level II (moderate risk) offenders, schools, day cares or other organizations are notified. For Level III (high risk) offenders, thorough community notification, including community meetings, is conducted.	<a href="http://www.doc.state.mn.us/level3/search.asp">www.doc.state.mn.us/level3/search.asp</a> . Site provides information on the registry program, but does not contain offender-specific information (11,270 in registry, 2003).
Missouri	15%	-5%	-23%	Upon request, a local law enforcement agency will provide a complete list of the sexual offenders registered within that agency's jurisdiction to any member of the public. Affirmative notification to schools or other youth serving organizations is a local law enforcement responsibility.	<a href="http://www.mshp.dps.missouri.gov/MSHPWeb/PatrolDivisions/CRID/SOR/SORPage.html">www.mshp.dps.missouri.gov/MSHPWeb/PatrolDivisions/CRID/SOR/SORPage.html</a> (8,662 in registry, 2003).

\*Percent change from peak year (1990-1995) to 2003. Source: U.S. Department of Health and Human Services, 1992-2005.

Data analyses from Jones, L., Finkelhor, D., & Halter, S. (2006). "Child maltreatment trends in the 1990's: Why does neglect differ from physical and sexual abuse?" *Child Maltreatment*, 11: 107-120.

\*Information from Summary of State Sex Offender Registries, 2001. *Office of Justice Programs*. Washington D.C.: U.S. Department of Justice.

Overall, states with greater declines in reported sexual abuse compared to physical abuse tend to have indiscriminate, broad, and harsh registration and notification guidelines. Florida, Kansas and Michigan statutes require everyone

convicted of sex offenses as an adult to register with the state, unlike Arkansas and Minnesota. Furthermore, Florida, Kansas and Michigan do not exempt low and/or moderate risk offenders from registration and public notification, while Arkansas and Minnesota require public notification only of high-risk offenders. States also have different requirements regarding the duration of registration. Florida requires persons identified as sexual offenders or sexual predators to maintain lifetime registration with the Florida Department of Law Enforcement unless they receive a full pardon, though offenders may petition the court for the purpose of removing the requirement. Minnesota requires an offender to comply with registration requirements until 10 years have elapsed since initial registration in connection with the offense or until probation, supervised release, or condition release expires, whichever occurs later. A person must register in Minnesota for life under certain circumstances, including prior sexual assault convictions and child sexual assault meeting specified conditions.

It is important for our purposes to note that current public notification practices vary tremendously by state. Strict states, such as Florida and Kansas, provide general public access to sexual offender registries for all levels of offenders through various means that include toll-free hotlines, registration records at local law enforcement agencies, and Internet website access. Contrary to these procedures, states such as Arkansas and Minnesota have formal policies on registration and community notification that deem Level I offenders subject to notification only with law enforcement, victims and witnesses; Level II offenders subject to notification with organizations such as schools and daycare centers; and, Level III offenders subject to full community notification, including distribution of fliers and/or community meetings with the general public.

Others have proffered additional reasons for decreased reporting and corresponding declines in reports of child sexual assault. Corrigan suspects that indiscriminate community notification provisions may lead justice professionals (such as police, prosecutors, judges, and juries) to seek alternatives to formal prosecution of sex crimes.<sup>104</sup> In brief, the stigmatization of registration and notification laws is predicted to “significantly decrease rates of arrest, prosecution, plea bargaining, and sentencing, especially in cases on incest, spousal assault, and acquaintance rape. These ‘borderline’ cases may be shifted to nonsex crimes charges to avoid the reach of the law...this could actually decrease the number of individuals convicted of sex crimes.”<sup>105</sup>

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104. Corrigan, R. (2006). “Making meaning of Megan’s Law.” *Law & Social Inquiry*, 31: 267-312. (See Corrigan for a critical feminist analysis of Megan’s Law. Corrigan argues that sex offender registration and notification employ an underinclusive notion of sexual violence, thereby excluding many of the most common offenders. These laws deflect attention away from assaults committed by family and friends in favor of reviving stereotypes of predator strangers. Corrigan outlines some of the challenges for victims, family members, and the criminal justice system in the wake of recent increases in stigmatization.)

105. *Id.* at Page 306.

## CONCLUSION

It has long been known that sexual assault is the most underreported violent crime in the United States. The victim advocacy literature suggests that low rates of reporting can be attributed to the nature of the crime, to the fact that offenders are often well-known to the victim, and to significant cultural and legal barriers to reporting, such as distrust of the criminal justice system and efforts to protect offenders and others. Yet, the issue of whether sex offender stigmatization is so great that victims are less likely or willing to report sexual assault has been virtually unexamined.

There is currently little empirical evidence available to evaluate specific connections between reporting practices and legal and cultural changes such as sex offender registration and notification laws. Using the best available NCVS data, however, we find reporting patterns consistent with our main hypothesis: that the new era of sex offender stigmatization is associated with decreased reporting of rape and sexual assault. This case is strengthened by evidence that non-stranger assaults and assaults involving African American victims are increasingly unlikely to be reported. Because sex offender registration and notification is theoretically aimed at strangers who victimize children, we also considered state sex offender laws in relation to state reports of the percentage change in child sexual and physical abuse from the U.S. Department of Health and Human Services. Though we can only present exploratory evidence at this time, there is some reason to believe that a portion of the decline in child sexual assault cases in more stigmatizing states can be attributed to systematic underreporting.

We do not claim to have established a causal relationship or to have presented strong evidence that would confirm our hypotheses. Nevertheless, we hope that the preceding analysis will raise concerns regarding uncritical discussions of the salutary effects of sex offender registration and notification. This is especially true for highly stigmatized states and for communities at greater risk for underreporting of rape and sexual assault. Of course, as Finkelhor and Jones point out, there is no single explanation for the dramatic decrease in sexual abuse cases in some states but not in others.<sup>106</sup> There are likely multiple factors at work, including demographic changes, declines in the incidence of sexual victimization in general, and changes within child protective services (e.g., more conservative reporting, investigation practices and/or data collection).<sup>107</sup>

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106. Finkelhor, D. & Jones, L. (2004). Explanations for the Decline in Child Sexual Abuse Cases. *Office of Juvenile Justice and Delinquency Prevention*. Washington DC: US Department of Justice; Finkelhor, D. & Jones, L. (2006). "Why have child maltreatment and child victimization declined?" *Journal of Social Issues*, 62: 685-716.

107. *Id.*

Nevertheless, it is clear that reporting practices have been changing since the early 1990s, and that these changes have become far more pronounced since 2002. We speculate that the stigmatization of recent sex offender laws, coupled with increased publicity and media sensationalism, may be driving reporting rates down among the most vulnerable victims. Further research on this question would thus appear to be a fruitful avenue to pursue for researchers, practitioners, and policymakers seeking to understand sexual victimization. The impact of sex offender laws on the attitudes and beliefs of community members is likewise an important issue for future study. Sex offender laws may trigger unforeseen consequences and a host of perverse effects, including community fear and distrust. As Winnick explains, community notification about sexual abuse that occurs within families might further inhibit the reporting of these offenses and, perhaps, perpetuate such intrafamilial sexual abuse.<sup>108</sup>

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108. Winnick, B. (1998). "Sex offender law in the 1990's: A therapeutic jurisprudence analysis." *Psychology, Public Policy, and Law*, 4: 505-570.