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ARTICLE: **Sexual Violence Legislation: A Review of Case Law and Empirical Research**

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LEXISNEXIS SUMMARY:

... In examining the specific restrictions involved in these legislative efforts, many sex offense policies seem rooted in stereotypical images of sex offenders that derive from cases garnering extraordinary media attention, despite a great variation in the nature of the offenses that sex offenders commit, the types of victims they target, and their motivations for committing such crimes. ... In this article, we examine various forms of legislation geared toward sex offenders and sexual violence prevention, including sexually violent predator (SVP) statutes, registration and community notification laws (RCNLs), residence restrictions, and global positioning system (GPS) monitoring. ... Actuarial risk assessment, which estimates likelihood of recidivism using factors that have been empirically shown to predict recidivism, is regularly used in the evaluation of offenders being considered for SVP commitment. ... Similarly, Levenson (2004) found average scores on the Static-99 (M = 6), Mn-SOST-R (M = 10), and Rapid Risk Assessment for Sex Offense Recidivism (RRASOR; M = 4; Hanson, 1997) for those offenders selected for commitment to be significantly higher than those of offenders not selected for commitment, Static-99 (M = 4), MnSOST-R (M = 3), and RRASOR (M = 2), respectively. ... Although research examining the recidivism rates of offenders determined to be SVPs (and later released from commitment facilities) would offer the best evidence of the dangerousness of this subclass of offenders, preliminary evidence from the states of Washington and New Jersey suggest that these offenders are likely to have higher rates of recidivism compared with other groups of sex offenders. ... Although "Megan's Laws" varied from state to state with regard to the amount and type of information available to the public, these notification statutes allowed community members to become aware of a sex offender's presence in their neighborhoods. ... The power to protect society from sex offenders is part of the general police power that the Framers reserved to the States or the people. ... On the other hand, the Supreme Court has agreed that the interstate travel restrictions contained in SORNA do not apply to sex offenders whose interstate travel occurred before SORNA's effective date (Carr v.

HIGHLIGHT: Sexual violence is a serious problem that affects those victimized, their families, and the community

around them. Much sex offense legislation appears designed to respond to the collective fear that sexual violence engenders, with legislative efforts (intentionally or unintentionally) tending to target low-base-rate "stranger danger" types of offenses. This article reviews prevailing forms of sex offense legislation, providing a summary of recent case law and an examination of empirical findings that bear upon the functioning and impact of common legislative responses to these "stranger danger" fears, including sexually violent predator laws, registration and community notification statutes, residence restrictions, and electronic monitoring. Although it is difficult to conduct well-controlled studies that test whether sex offense legislation works, extant research provides, at most, limited support for the value of much current legislation. This article concludes by suggesting areas of research need and outlining how empirical data may help to shape sex offense legislation so as to most successfully reduce sexual violence.

Keywords: sex crime, sexual offense, offending

TEXT:

[*443] The last couple of decades are marked by increasing public concern, media attention, and, ultimately, crime control efforts directed toward sex offenders and sexual violence. These crime control efforts spawned an influx of new policies specifically tailored to address sexual violence. Many of these policies rely heavily on restrictions and regulations for those who plead guilty or complete a prison sentence for a sex offense. Ongoing debate about sex offense legislative efforts centers on the legality (i.e., can they be implemented?) and effectiveness (i.e., should they be implemented?) of these policies. Legal questions abound concerning the scope and constitutionality of sex offense statutes. Because they are often applied retroactively to offenders whose crimes predate enactment of the policies, issues commonly addressed by the courts include whether these policies violate constitutional principles such as the prohibition against double jeopardy and ex post facto laws.

Meanwhile, questions about the effectiveness of current sex offense legislation arise from implicit assumptions reflected in the policies and concern over how best to reduce sex crime. In examining the specific restrictions involved in these legislative efforts, many sex offense policies seem rooted in stereotypical images of sex offenders that derive from cases garnering extraordinary media attention, despite a great variation in the nature of the offenses that sex offenders commit, the types of victims they target, and their motivations for committing such crimes. In fact, the term "sex offender" may itself be something of a misnomer; there is considerable variation within the nature of the sex offenses committed, and most offenders show versatility in their offense patterns, having more general (i.e., nonsex) offenses than sex offenses in their criminal record. The majority of those labeled sex offenders are never arrested for another sex offense (Miethe, Olson, & Mitchell, 2006). Thus, the label "sex offender" may be based upon the mistaken perception that sex offenders are highly specialized offenders who exclusively commit sex offenses. Consistent with this proposition, one survey found that 75% of the general public believed that sex offenders are a specific type of specialized and chronic offender (Levenson, Brannon, Fortney, & Baker, 2007). The evidence, however, shows that sex offenders are much more versatile in their offending patterns (Harris, Smallbone, Dennison, & Knight, 2009; Miethe et al., 2006), leading researchers to question whether legislation targeted toward stereotypical ideas of sex offenders could be effective in reducing sex crime.

In this article, we examine various forms of legislation geared toward sex offenders and sexual violence prevention, including sexually violent predator (SVP) statutes, registration and community [*444] notification laws (RCNLs), residence restrictions, and global positioning system (GPS) monitoring. Each section of the article provides a brief description and a summary of case law pertaining to each form of sex offense legislation, followed by a review of empirical literature that sheds light on the functioning and utility of such legislation. Given the uniqueness of such legislation, the speed at which some of these measures have been enacted, and the regularity of court challenges to legislative schemes, the review of case law is especially important. The article concludes by offering a summary of trends in sex offense legislation and analysis of the extent to which these forms of legislation have, or can, reduce the overall incidence of sexual violence.

Forms of Sex-Offender-Specific Legislation

SVP Legislation

Currently, the federal government, 20 states, and the District of Columbia (see Table 1) have some form of sex-offender-specific civil commitment legislation that allows for the indeterminate confinement of a subclass of offenders deemed to be at particularly high risk for sexual reoffense. Although variation exists among statutory criteria, SVP legislation typically requires (a) a history of sexually violent behavior, (b) a current mental abnormality or personality disorder, (c) a risk of future sexually violent behavior, and (d) some link or relationship between the mental abnormality and the likelihood of sexual violence (*Kansas v. Hendricks*, 1997).

Most recent estimates suggest that the 20 states with SVP commitment laws spent more than \$ 500 million in 2010 alone to detain an estimated 5,200 offenders ("Sex Offender Confinement," 2010). SVP statutes differ considerably from traditional civil commitment schemes that generally require the state to demonstrate that the individual is an imminent threat and also suffers from a *mental illness* before he or she can be involuntarily committed. SVP statutes require only evidence of some future threat and the presence of a *mental abnormality*. These criteria are vague, and the term "mental abnormality" is not commonly used in the diagnostic world; thus, the criteria for SVP commitment are looser and more open to interpretation than that of traditional civil commitment. The nature of mental impairment that must be established under SVP legislation is not of the gravely disabling sort that would support ordinary civil commitment, including, for example, severe thought disorders that affect reality testing or orientation (Mercado, Schopp, & Bornstein, 2005; Schopp, Scalora, & Pearce, 1999). Nor does SVP commitment require the state to establish that an individual represents an imminent danger (Jackson & Richards, 2007).

SVP commitment statutes have generated controversy (Douard, 2007), both because the statutes rely upon questionable constitutional foundations (Janus & Prentky, 2003) and because of the relaxed and vague mental impairment and violence requirements. La Fond (2008) argues that SVP commitment conflates the foundational premises of the mental health and criminal justice domains by first holding offenders responsible for their acts and later finding them so mentally impaired and incapable of controlling behavior that they must be committed indefinitely. Though SVP statutes have received their share of critique, as detailed in this article, most court challenges to SVP legislation have resulted in decisions finding they do not violate the U.S. Constitution.

Summary of case law pertaining to SVP legislation. The Adam Walsh Child Protection and Safety Act (2006; AW A), which became law in 2006 (Pub. L. No. 109-248, 120 Stat. 587 [2006], codified at 42 U.S.C. §§ 16901-62), established the Jimmy Ryce Civil Commitment Program for Dangerous Sex Offenders, now codified at 18 U.S.C. §§ 4247, 4248. The District Courts soon split on the constitutionality of 18 U.S.C. § 4248, with courts in Massachusetts, Minnesota, and North Carolina declaring § 4248 unconstitutional, and courts in Hawaii and Oklahoma upholding the statute. The overarching issue confronting the courts was whether the U.S. Congress (hereafter "Congress") had the constitutional authority to pass a civil commitment law. In defending the law, the United States sought to justify the law based upon the broad grant of authority set forth in the Commerce Clause (U.S. Const, art. I, § 8, cl. 3), inasmuch as it regulated the movement of offenders between states.

Despite disagreement among lower courts (cf. *United States v. Comstock*, 507 F. Supp. 2d 522 [E.D.N.C. 2007] *aff'd*, 551 F.3d 274 [4th Cir. 2009] *rev'd*, 560 U.S. One hundred twenty-six [2010] and *rev'd*, 627 F.3d 513 [4th Cir. 2010]; *United States v. Tom*, 2009), the U.S. Supreme Court (hereafter "Supreme Court" or "Court") rejected the government's argument that SVP commitment was permissible under the Commerce Clause; however, the Supreme Court found that SVP commitment was constitutionally within Congress's power under the Necessary and Proper Clause of the Constitution (*United States v. Comstock*, 2010, 560 U.S. 126; U.S. Const, art. I, § 8, cl. 18). In *Comstock*, the Court based its decision on Congress's authority to "create federal criminal laws, to punish their violation, to imprison violators, to provide appropriately for those imprisoned, and to maintain the security of those who are not imprisoned but who may be affected by the federal imprisonment of others" (p. 149).

One of the other early legal questions that arose from the enactment of SVP legislation was whether civil

commitment at the conclusion of an offender's prison term violated due process rights. Two due process issues in particular arose and have been addressed by the courts. The first issue was whether SVP commitment violates double jeopardy, that is, the outlawed practice of trying a person multiple times for the same offense. Under double jeopardy principles, SVP commitment would be unconstitutional if it were considered a distinct, additional punishment for prior sex offenses for which an offender was already incarcerated. Similarly, if SVP commitment were considered punishment, it could also be considered a constitutional violation because of ex post facto principles, which prohibit a new law from imposing new or additional punishment for an act committed before the law's implementation. In the context of SVP commitment, the question thus arose as to whether sex offenders whose offenses occurred prior to the passage of SVP commitment laws could still nonetheless be subjected to SVP commitment.

In upholding the postsentence civil commitment of sexual offenders, the Supreme Court found the Kansas SVP statute had a protective purpose, not a punitive one. Based on this interpretation of SVP commitment as protection rather than punishment, the ex post facto and double-jeopardy protections of criminal proceedings were deemed inapplicable. The Court, in *Hendricks (Kansas v. Hendricks, 1997)*, observed that when evaluating an ex post facto claim, it must "initially ascertain whether the legislature meant the statute to establish 'civil' proceedings" (p. 361). If the Court is satisfied that the legislative intention was to enact a regulatory scheme that is civil and nonpunitive, the Court further examines whether "the statutory scheme is so punitive either in purpose or effect as to negate the State's intention to deem it 'civil'" (p. 361). In the Court's view, the Kansas commitment scheme was regulatory, civil, nonpunitive, and, therefore, constitutional.

[*445] Table 1

American Sex Offense Laws Survey

Jurisdiction	Sexually violent predator law (year enacted)
Federal	18 U.S.C. § 4248 (2006); 42 U.S.C. § 16971 (2006) [Provides grants to states for Civil Commitment SVP programs]
Alabama	Ala. Code § 15-20-25.3 (2001)
Alaska	
Arizona	Ariz. Rev. Stat. §§ 36-3701-3717 (1995)
Arkansas	Ark. Code Ann. § 12-12-906 (1997) [Enhanced RCNL Status]
California	Cal. Wel. & inst. Code §§ 6600-6609.3 (1995)

Colorado	Colo. Rev. Stat. § 39-13-203 (1963) [Revised by Colo. Rev. Stat. § 18-1.3-904 (2002)]; Colo. Rev. Stat. § 18-3-414.5 (1997)
Connecticut	
Delaware	
D.C.	D.C. Code §§ 22-3803-3811 (1994)
Florida	Fla. Stat. §§ 394.910-394.932 (1998)
Georgia	Ga. Code Ann. § 42-1-14 (2006)
Hawaii	Haw. Rev. Stat. § 846E-13 (2005) [Enhanced RCNL Status repealed in 2008]
Idaho	Idaho Code Ann. § 18-8314 (1998) [Enhanced RCNL Status] [Held constitutionally infirm in Smith v. State, 203 P.3d 1221 (2009)]
Illinois	725 Ill. Comp. Stat. §§ 207/1-99 (1997)

Residency restriction law

Jurisdiction	(year enacted)
Federal	42 U.S.C. § 13663 (1998) [Owner of federally assisted housing shall prohibit housing for household w/a S.O.]
Alabama	Ala. Code § 13A-11-204

	(2007); Ala. Code § 15-20-26 (1999)
Alaska	
Arizona	Ariz. Rev. Stat. § 13-922 (2005); Ariz. Rev. Stat. § 13-3727 (2007)
Arkansas	Ark. Code Ann. § 5-14-128 (2003); Ark. Code Ann. § 5-14-131 (2007); Ark. Code Ann. § 25-10-134 (1995)
California	Cal. Penal Code § 3003.5 (1998); Cal. Wel. & Inst. Code § 6608.5 (2004)
Colorado	
Connecticut	
Delaware	Del. Code Ann., tit. 11, § 1112 (1995)
D.C.	
Florida	Fla. Stat. § 794.065 (2004); Fla. Stat. § 947.1405 (2004); Fla. Stat. § 948.30 (1995)
Georgia	Ga. Code Ann. § 42-1-15 (2003); Ga. Code Ann. § 42-8-35 (1992)
Hawaii	
Idaho	Idaho Code Ann. § 18-8329 (2006); Idaho Code Ann. § 18-8331 (2008)
Illinois	720 Ill. Comp. Stat. § 5/11-9.3 (1997); 720 Ill. Comp. Stat.

§ 5/11-9.4 (1999); 730 Ill.
 Comp. Stat. § 5/3-3-11.5; 45
 Ill. Comp. Stat. § 20/2
 (1995)

RCNL

Jurisdiction	(year enacted)
Federal	42 U.S.C. § 14071-14080 (1994) [Revised by 42 U.S.C. §§ 16901-16962 (2006)]
Alabama	Ala. Code §§ 13A-11-200-204 (1967); Ala. Code §§ 15-20-20-38 (1996)
Alaska	Alaska Stat. §§ 12.63.010-100 (1994)
Arizona	Ariz. Rev. Stat. §§ 13-3821-3829 (1983)
Arkansas	Ark. Code Ann. §§ 12-12-901-923 (1987)
California	Cal. Penal Code § 290-294 (1994) [Revised by Cal. Penal Code §§ 290-294 (2007)]
Colorado	Colo. Rev. Stat. § 18-3-412.5 (1991) [Revised by Colo. Rev. Stat. §§ 16-22-101-115 (2002)]
Connecticut	Conn. Gen. Stat. § 54-102r (1994) [Revised by Conn. Gen. Stat. §§ 54-251-261 (1998)]
Delaware	Del. Code Ann., tit. 11, §§ 4120-4122 (1994)
D.C.	D.C. Code §§ 22-4101-4117 (1997) [Revised by D.C. Code §§ 22-4001-4017 (2000)]

Florida	Fla. Stat. § 775.21 (1993) [Revised by Fla. Stat. §§ 943.0435-943.0437 (1997)]
Georgia	Ga. Code Ann. §§ 42-9-44.1-44.2 (1994) [Revised by Ga. Code Ann. §§ 42-1-12-15 (2005)]
Hawaii	Haw. Rev. Stat. Act 160 (1995) [Revised by Haw. Rev. Stat. §§ 846E-1-12 (1997)]
Idaho	Idaho Code Ann. §§ 18-8301-8331 (1993)
Illinois	730 Ill. Comp. Stat. §§ 150/1-150/12 (1986); 730 Ill. Comp. Stat. §§ 152/101-152/999 (1996)

GPS/electronic monitoring law
(year enacted)

Jurisdiction	
Federal	42 U.S.C. § 16981 (2006) [Fed. program giving 3 yr grants to states for S.O. GPS monitoring programs]
Alabama	Ala. Code § 15-20-26.1 (2005)
Alaska	
Arizona	Ariz. Rev. Stat. § 13-902 (2006)
Arkansas	Ark. Code Ann. § 12-12-923 (2006)
California	Cal. Penal Code § 1202.8

	(2006); Cal. Penal Code §§ 3000.07, 3004 (2006)
Colorado	Colo. Rev. Stat. § 18-1.3-1005 (2002)
Connecticut	Conn. Gen. Stat. § 54-260a (2006) [Calls for annual report on S.O.s under elect. monitoring]
Delaware	Del. Code Ann., tit. 11, § 4121 (2007)
D.C.	
Florida	Fla. Stat. §§ 947.1405, 948.30 (2008)
Georgia	Ga. Code Ann. § 42-1-14 (2006); Ga. Code Ann. § 42-8-35 (2004)
Hawaii	
Idaho	Idaho Code Ann. § 20-219 (2008)
Illinois	725 Ill. Comp. Stat. § 207/40 (2000); 730 Ill. Comp. Stat. § 5/3-3-7 (2000)

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Sexually violent predator law

Jurisdiction	(year enacted)
Indiana	Ind. Code §§ 11-8-8-18; 35-38-1-7.5 (2006, 1998)

Iowa	Iowa Code §§ 229A.1-16 (1998)
Kansas	Kan. Stat. Ann. §§ 59-29a01-29a22 (1994)
Kentucky	
Louisiana	La Rev. Stat. Ann. 15:560.3 (2006)
Maine	
Maryland	Md. Code Ann., Crim. Proc. § 11-707 (2001)
Massachusetts	Mass. Gen. Laws ch. 123A, §§ 1-16 (1998)
Michigan	
Minnesota	Minn. Stat. § 253B.185 (1994)
Mississippi	
Missouri	Mo. Rev. Stat. §§ 632.480-632.513 (1998)
Montana	Mont. Code Ann. § 46-23-509 (1997)
Nebraska	Neb. Rev. Stat. §§ 71-1201-1226 (2006)
Nevada	Nev. Rev. Stat. § 179D.530 (1997)
New	N.H. Rev. Stat. §§ 135-E:1-24 (2006)

Hampshire

New Jersey N.J. Rev. Stat. §§ 30:4-27.24-27.35 (1998)

Residency restriction law

Jurisdiction

(year enacted)

Indiana	Ind. Code § 11-13-3-4 (1994); Ind. Code § 35-38-2-2.2 (1994); Ind. Code § 35-38-2-2.5 (2002); Ind. Code § 35-42-4-11 (2006)
Iowa	Iowa Code § 692A.114 (2002)
Kansas	Kan. Stat. Ann. § 59-29a11 (2006)
Kentucky	Ky. Rev. Stat. Ann. § 17.545 (2006)
Louisiana	La Rev. Stat. Ann. 14:91.1 (2001); La Rev. Stat. Ann. 14:91.2 (2006); La Rev. Stat. Ann. 15:538 (2004)
Maine	
Maryland	Md. Code Ann., Crim. Proc. § 11-724 (2006)
Massachusetts	
Michigan	Mich. Comp. Laws § 28.735 (2005)
Minnesota	Minn. Stat. § 244.052 (1999)
Mississippi	Miss. Code Ann. § 45-33-25

	(2006)
Missouri	Mo. Rev. Stat. § 566.147 (2004); Mo. Rev. Stat. § 211.181 (2005)
Montana	Mont. Code Ann. § 46-18-255 (2001)
Nebraska	Neb. Rev. Stat. § 29-4017 (2006)
Nevada	Nev. Rev. Stat. § 176A.410 (2007); Nev. Rev. Stat. § 213.1243 (2007)
New Hampshire	
New Jersey	

Jurisdiction	RCNL (year enacted)
Indiana	Ind. Code §§ 5-2-12-1 to 5-2-12-9 (1994) [Revised by Ind. Code §§ 11-8-8-1-22 (2006)]
Iowa	Iowa Code §§ 692A.1 - A.16 (1995) [Revised by Iowa Code §§ 692A.101 - A.130 (2009)]
Kansas	Kan. Stat. Ann. §§ 22-4901-4913 (1993)
Kentucky	Ky. Rev. Stat. Ann. §§ 17.500-991 (1994)
Louisiana	La Rev. Stat. Ann. 15:540-552 (1992)
Maine	Me. Rev. Stat. 34-A, §§ 11001-11005 (1991) [Revised by Me. Rev. Stat. 34-A, §§ 11201-11256 (1999)]
Maryland	Md. Code art. 27, §§ 790-797 (1995) [Revised by

	Md. Code Ann., Crim. Proc. §§ 11-701-727 (2001)]
Massachusetts	Mass. Gen. Laws ch. 6, §§ 178C - 178Q (1996)
Michigan	Mich. Comp. Laws §§ 28.721-736 (1994)
Minnesota	Minn. Stat. §§ 243.166-167 (1989)
Mississippi	Miss. Code Ann. §§ 45-33-1-19 (1994) [Revised by Miss. Code Ann. §§ 45-33-21-59 (2000)]
Missouri	Mo. Rev. Stat. §§ 566.600-625 (1994) [Revised by Mo. Rev. Stat. §§ 589.400-426 (1997)]
Montana	Mont. Code Ann. §§ 46-23-501-520 (1989)
Nebraska	Neb. Rev. Stat. §§ 29-4001-4014 (1996)
Nevada	Nevada Laws of Nevada 1961, page 197, ch. 147, enacted Mar. 24, 1961. [Revised by Nev. Rev. Stat. §§ 179D.441-850 (2007)]
New Hampshire	N.H. Rev. Stat. Ann. §§ 632-A:11, A:19 (1992) [Revised by N.H. Rev. Stat. Ann. §§ 651-B:1-12 (1996)]
New Jersey	N.J. Rev. Stat. §§ 2C:7-1-23 (1994)

GPS/electronic monitoring law

Jurisdiction	(year enacted)
Indiana	Ind. Code § 35-38-1-7.5 (2006)
Iowa	Iowa Code § 692A.124 (2005)

Kansas	Kan. Stat. Ann. § 22-3717 (2006)
Kentucky	
Louisiana	La Rev. Stat. Ann. 15:560.4 (2006)
Maine	
Maryland	Md. Code Ann., Crim. Proc. § 11-724 (2006)
Massachusetts	Mass. Gen. Laws ch. 127, § 133D 1/2 (2006); Mass. Gen. Laws ch. 265, § 47 (2006)
Michigan	Mich. Comp. Laws § 750.520n (2006); Mich. Comp. Laws § 791.236 (2006)
Minnesota	
Mississippi	Miss. Code Ann. § 99-19-84 (2006)
Missouri	Mo. Rev. Stat. §§ 217.735, 559.106 (2005)
Montana	Mont. Code Ann. § 46-18-206 (2005)
Nebraska	Neb. Rev. Stat. § 83-174.03 (2006)
Nevada	Nev. Rev. Stat. §§ 176A.410, 213.1243 (2007)
New Hampshire	

New Jersey	N.J. Rev. Stat. §§ 30:4-123.89-123.95 (2005)
	Sexually violent predator law (year enacted)
[*447]	
Jurisdiction	
New Mexico	
New York	N.Y. Mental Hyg. Law §§ 10.01-10.17 (2007)
North Carolina	N.C. Gen. Stat. §§ 14-208.20-24 (1997)
North Dakota	N.D. Cent. Code §§ 25-03.3-01-3-24 (1997)
Ohio	Ohio Rev. Code Ann. §§ 2971.01-07 (1996) [Enhanced RCNL Status]
Oklahoma	
Oregon	Or. Rev. Stat. §§ 137.765-771 (1999); Or. Rev. Stat. §§ 144.635-639 (1999); Or. Rev. Stat. §§ 426.510-680 (1977)
Pennsylvania	42 Pa. Cons. Stat. §§ 6401-6409 (2003)
Rhode Island	R.I. Gen. Laws § 11-37.1-4 (1996) [Enhanced RCNL Status]
South Carolina	S.C. Code Ann. §§ 44-48-10-170 (1998)
South Dakota	

Tennessee	Tenn. Code Ann. §§ 33-6-301-311 (1984) [Revised by Tenn. Code Ann. §§ 33-6r 801-805 (2000)]
Texas	Tex. Health & Safety Code §§ 841.001-150 (1999)
Utah	Utah Code Ann. §§ 77-16-1-5 (1990) [Non- SVP civil commitment after conviction-- repealed in 2002]
Vermont	Vt. Stat. Ann. Tit. 13, § 5405 (1995)
Virginia	Va. Code Ann. §§ 37.2-900-920 (1999)
Washington	Wash. Rev. Code §§ 71.09.010-903 (1990)
West Virginia	W. Va. Code § 15-12-2a (1999)
Wisconsin	Wis. Stat. §§ 980.01-980.14 (1993)
Wyoming	
	Residency restriction law (year enacted)
Jurisdiction	
New Mexico	
New York	
North Carolina	N.C. Gen. Stat. § 14-208.16 (2006)
North Dakota	
Ohio	Ohio Rev. Code Ann. § 2950.034 (2003); Ohio

	Rev. Code Ann. § 5321.051 (2003)
Oklahoma	Okla. Stat. tit. 57, § 590 (2003); Okla. Stat. tit. 57, § 590.1 (2006)
Oregon	Or. Rev. Stat. § 137.540 (2005); Or. Rev. Stat. § 144.270 (2001); Or. Rev. Stat. §§ 144.642, 644 (2001)
Pennsylvania	
Rhode Island	R.I. Gen. Laws § 11-37.1-10 (2008) [S.O. residing w/in 300 ft. of school = felony w/max penalty of 5 yrs or \$ 5K]
South Carolina	S.C. Code Ann. § 23-3-465 (2005); S.C. Code Ann. § 23-3-535 (2008) n
South Dakota	SD Codified Laws § 22-22-7.5 (1997); SD Codified Laws § 22-24B-23 (2006)
Tennessee	Tenn. Code Ann. § 40-39-211 (2004)
Texas	Tex. Gov't Code Ann. § 508.187 (1997)
Utah	
Vermont	Vt. Stat. Ann. Tit. 28, § 710 (2005)
Virginia	Va. Code Ann. § 15.2-2283.1 (2007) Va. Code Ann. § 18.2-370.3 (2006)
Washington	Wash. Rev. Code § 9.94A.712 (2006); Wash. Rev. Code

§ 59.20.080 (1998); Wash.
 Rev. Code § 72.09.340
 (1996)

West Virginia W. Va. Code § 62-12-26
 (2003)

Wisconsin Wis. Stat. § 301.48 (2006);
 Wis. Stat. §§ 980.08 (2001)

Wyoming

RCNL

Jurisdiction	(year enacted)
New Mexico	N.M. Stat. §§ 29-11A-1-10 (1995)
New York	N.Y. Correct. Law §§ 168-168w (1995)
North Carolina	N.C. Gen. Stat. §§ 14-208.5-45 (1995)
North Dakota	N.D. Cent. Code § 12.1-32-15 (1991)
Ohio	Ohio Rev. Code Ann. § 2950 (1963) [Revised by Ohio Rev. Code Ann. §§ 2950.01-99 (1996)]
Oklahoma	Okla. Stat. tit. 57, §§ 581-590.2 (1989)
Oregon	Or. Rev. Stat. §§ 181.517-519 (1989) [Revised by Or. Rev. Stat. §§ 181.592-606 (1997)]
Pennsylvania	42 Pa. Cons. Stat. §§ 9793-9795 (1995) [Revised by 42 Pa. Cons. Stat. §§ 9791-9799.9 (2000)]
Rhode Island	R.I. Gen. Laws §§ 11-37-15-16 (1992) [Revised by R.I. Gen. Laws §§ 11-37.1-1-20 (1996)]

South Carolina	S.C. Code Ann. §§ 23-3-400-550 (1994)
South Dakota	SD Codified Laws §§ 22-24B-1-32 (1994)
Tennessee	Tenn. Code Ann. § 38-6-110 (1994) [Revised by Tenn. Code Ann. §§ 40-39-201-215 (2004)]
Texas	Tex. Rev. Civ. Stat., tit. 110A, art. 6252-13c.1 (1991) [Revised by Tex. Code Crim. Proc. art. 62.001-408 (1997)]
Utah	Utah Code Ann. §§ 77-27-21.5-21.9 (1987)
Vermont	Vt. Stat. Ann. Tit. 13, §§ 5401-5415 (1996)
Virginia	Va. Code Ann. §§ 19.2-387-392.02 (1994) [Revised by Va. Code Ann. §§ 9.1-900-922 (2003)]
Washington	Wash. Rev. Code §§ 9A.44.130-145 (1990)
West Virginia	W. Va. Code §§ 61-8F-1-10 (1994) [Revised by W. Va. Code §§ 15-12-1-10 (1999)]
Wisconsin	Wis. Stat. §§ 301.45-48 (1993)
Wyoming	Wyo. Stat. Ann. §§ 7-19-301-308 (1994)
	GPS/electronic monitoring law
Jurisdiction	(year enacted)
New Mexico	N.M. Stat. § 31-21-10.1 (2007) [GPS for S.O.s on parole]
New York	N.Y. Mental Hyg. Law § 10.11 (2007)

North Carolina	N.C. Gen. Stat. § 14-208.40 (2006)
North Dakota	N.D. Cent. Code § 12-67-02 (2007)
Ohio	Ohio Rev. Code Ann. § 2971.05 (2005)
Oklahoma	Okla. Stat. tit. 57, § 510.10 (1993); Okla. Stat. tit. 22, § 991a (2005)
Oregon	
Pennsylvania	42 Pa. Cons. Stat. § 9798.3 (2006)
Rhode Island	R.I. Gen. Laws § 11-37-8.2.1 (2006) [GPS for life, parole or probation of S.O.s]
South Carolina	S.C. Code Ann. § 23-3-540 (2005)
South Dakota	
Tennessee	Tenn. Code Ann. §§ 40-39- 301-306 (2004)
Texas	Tex. Health & Safety Code § 841.082 (1999)
Utah	
Vermont	

Virginia	Va. Code Ann. §§ 19.2-295.2: 1, 19.2-303 (2006)
Washington	Wash. Rev. Code § 9.94A.715 (2006) [Revised by Wash. Rev. Code § 9.94A.704 (2009)]; Wash. Rev. Code Ann. § 9.95.435 (2001)
West Virginia	W. Va. Code §§ 62-11D-1-3 (2006)
Wisconsin	Wis. Stat. § 301.48 (2006)

Wyoming

[*448] The Supreme Court did not address the due process issue in *United States v. Comstock* (2010), its most recent opinion on the AWA (2006), but instead remanded the case to the 4th Circuit for a decision. The 4th Circuit on remand decided that requiring only "clear and convincing evidence" that a person should be civilly committed under the statute, rather than proof beyond a reasonable doubt, did not violate due process because the findings were made in a civil proceeding, where "state power is not exercised in a punitive sense" (*United States v. Comstock*, 627 F.3d 513, 521 [4th Cir., 2010]). Again, the legality of SVP commitment was supported greatly by the fact that it was considered an act of societal protection and regulation rather than an act of individual punishment.

The Supreme Court considered another ex post facto challenge to a civil commitment statute in *Seling v. Young* (2001). Young appealed his civil commitment, asserting that Washington State's SVP act (Sexually Violent Predators, 2007) was punitive as applied. The Court rejected Young's argument, noting that SVP commitment had already been determined to be civil *as opposed to* punitive, and thus could not be reevaluated on an individual as-applied basis.

In *Kansas v. Crane* (2002), the Supreme Court revisited Kansas's civil commitment law and elaborated on the statute's definition of "mental abnormality" and its relationship to volitional impairment and future dangerousness. The Court held that it was sufficient to civilly commit an offender if, as to the mental abnormality prong, the prosecution proved that the abnormality caused the offender to have "serious difficulty," as opposed to total inability, controlling his sexual behavior.

In *United States v. Timms* (2012), the 4th Circuit Court of Appeals considered another constitutional angle: whether involuntary commitment under the AWA (2006) violated the defendant's federal constitutional right to equal protection under the law. The defendant argued that the law was unjustified in targeting only SVPs under the custody of the Bureau of Prisons (BOP) and not applying it to SVPs outside of BOP custody. The trial court agreed with the defendant and stated that if "the federal government does not have the power to equally apply its civil commitment scheme to everyone, then it should not civilly commit anyone" (p. 449). The appellate court, however, found this distinction permissible because the federal government has an interest in protecting the public from reasonably foreseeable harm, and the law was rationally limited in scope to those within BOP custody given the federal government's limited police power. Likewise, in *United States v. Sahhar* (1990), the 9th Circuit Court of Appeals found that the government has "legitimate and compelling" interest in protecting society from those charged with crimes.

All the aforementioned cases illustrate the judicial system's reluctance to limit the scope of civil commitment for

those convicted of sex offenses, with the courts relying heavily on the protective--as opposed to punitive--intent of SVP commitment. Meanwhile, the empirical research on the topic, some of which is presented in this article, calls into question the value of civil [*449] commitment to truly serve a protective function and make communities safer, especially when subjected to a cost-benefit analysis. A better understanding of how civil commitment works in practice may go a long way in aiding future challenges to civil commitment legislation

Empirical findings related to SVP legislation. As noted, one of the primary goals of this article is to examine the efficacy of various sex offense policies. Despite judicial decisions consistently based on the stance that SVP commitment is not punishment, empirical research has found that decisions surrounding commitment are driven by the desire for retribution (i.e., motivations are punitive) rather than incapacitation and public protection (Carlsmith, Monahan, & Evans, 2007). Leaving moral and constitutional questions about this form of confinement aside, there can be little doubt that SVP commitment "works" to reduce recidivism by keeping a subset of offenders locked up indefinitely. Essentially, an SVP has zero opportunity to offend in the community while detained, whereas being in the community technically provides an opportunity to offend, even if the risk of doing so is small. SVP commitment is, however, an especially costly remedy, and one that arguably commands an inordinate share of the available resources for sexual violence prevention (Janus, 2006). Per offender, civil commitment costs, on average, \$ 96,000 yearly ("Sex Offender Confinement," 2010), nearly 4 times that of general correctional costs, which average \$ 26,000 per offender per year (Gookin, 2007). Given the extraordinarily costly nature of implementing SVP schemes, empirical data can help address both the functionality (in terms of adherence to statutory criteria) and impact (in terms of how many sex offenses SVP statutes might be expected to deter) of this approach.

Criminal history and risk for recidivism among offenders committed as SVPs. If SVP statutes are, in fact, narrowly applied to the most dangerous class of sex offenders, those selected for commitment would be expected to have more extensive criminal histories than those not selected. The New York State Office of Mental Health (2009) compared those recommended and those not recommended for civil management, and found that those recommended averaged more felony arrests and felony convictions, both for general and sex offenses, than those not recommended. Similarly, Levenson (2004) found that offenders selected for commitment in Florida averaged a significantly higher 3.4 prior sexual arrests than those not selected for commitment, who averaged 2.1 prior sexual arrests. A similar pattern emerged with regard to history of general offenses, with those committed as SVPs averaging 9.1 prior nonsexual arrests, whereas those released averaged a significantly fewer 7.0 nonsexual arrests (Levenson, 2004).

Actuarial risk assessment, which estimates likelihood of recidivism using factors that have been empirically shown to predict recidivism, is regularly used in the evaluation of offenders being considered for SVP commitment. Actuarial risk tools estimate probability of future offending by comparing an offender against group data of individuals known to have recidivated. To date, the most commonly used tools in SVP evaluations include the Static-99 (Hanson & Thornton, 2000) and Minnesota Sex Offender Screening Tool-Revised (MnSOST-R; Epperson et al., 1999). As with prior criminal history, it would be expected that offenders selected for commitment, or who were referred but ultimately not committed, would have higher actuarial risk scores than offenders who were not committed or referred. The New York State Office of Mental Health (2009) observed differences in Static-99 actuarial risk scores among groups evaluated for SVP commitment. Those recommended for SVP commitment had the highest Static-99 scores ($M = 6.2$), followed by those referred for a second level of review but not ultimately recommended for civil management ($M = 5.3$), followed by those not referred for in-depth review ($M = 2.3$). Similarly, Levenson (2004) found average scores on the Static-99 ($M = 6$), Mn-SOST-R ($M = 10$), and Rapid Risk Assessment for Sex Offense Recidivism (RRASOR; $M = 4$; Hanson, 1997) for those offenders selected for commitment to be significantly higher than those of offenders not selected for commitment, Static-99 ($M = 4$), MnSOST-R ($M = 3$), and RRASOR ($M = 2$), respectively.

Despite popular belief that all sex offenders inevitably reoffend (Hanson, 2003), the best empirical research on the base rates of sexual reoffending suggests that, in fact, only a minority of sex offenders recidivate. Hanson and Morton-Bourgon (2004), who conducted a meta-analysis examining sex offender outcomes across 73 studies, found a sexual offense recidivism rate of 13.7%, using an average follow-up period of 5 to 6 years. Because a relatively small percentage of offenders have been released from commitment facilities, no research has directly examined the

recidivism rates of individuals civilly committed under SVP statutes. Milloy (2007), however, examined the recidivism rates of 135 nearly committed sex offenders (referred for commitment, but where no commitment petition was filed), and found that 50% of those referred for commitment were convicted of any type of new felony offense, whereas 23% were convicted of a new felony sex offense. Mercado, Jeglic, and Perillo (2010) also examined the rates of recidivism of 102 offenders highly considered for commitment, but ultimately not committed, finding these offenders to have double (10.5%) the rate of sexual recidivism as that observed in their general offender sample (5%) in New Jersey. These findings suggest that sex offenders referred for SVP commitment are more highly recidivistic than sex offenders not referred. Although research examining the recidivism rates of offenders determined to be SVPs (and later released from commitment facilities) would offer the best evidence of the dangerousness of this subclass of offenders, preliminary evidence from the states of Washington and New Jersey suggest that these offenders are likely to have higher rates of recidivism compared with other groups of sex offenders.

Psychopathy, a characterological lack of empathy and tendency toward antisocial conduct typically measured by the Psychopathy Checklist-Revised (PCL-R; Hare, 2003), is also sometimes considered in the evaluation of offenders under SVP statutes (Jackson & Hess, 2007; Levenson & Morin, 2006) because of its association with violence and sexual violence (Hanson & Bussière, 1998; Hanson & Morton-Bourgon, 2004; Quinsey, Harris, Rice, & Cormier, 1998). Levenson (2004) found that those selected for SVP commitment in Florida had significantly higher ($M = 26$) PCL-R scores than those not selected ($M = 14$) for commitment, and Jackson and Richards (2007) found nearly 28% of those committed as SVPs in a Washington State sample had a PCL-R score exceeding the widely used cutoff (>30) for psychopathy. Despite findings that those selected for commitment have higher risk scores than those not selected, it should be noted that at least some evidence suggests that actuarial risk scores, and particularly the PCL-R and the Mn-SOST-R, may be influenced by partisan [*450] allegiance (Boccaccini, Turner, & Murrie, 2008; Murrie, Boccaccini, Johnson, & Janke, 2008; Murrie et al., 2009).

Diagnoses of offenders committed as SVPs. As noted, commitment under SVP statutes requires a finding of a mental abnormality or personality disorder that is demonstrably associated with sexual offending. Although most forensic evaluators use the *Diagnostic and Statistical Manual of Mental Disorders* (American Psychiatric Association, 2013) to communicate symptom patterns, the precise characteristics of a qualifying mental disorders or abnormalities under SVP statutes have not been made clear by the courts. In *Kansas v. Crane* (2002), the Supreme Court acknowledged that those characteristics will not be "demonstrable with mathematical precision" and held that

the severity of the mental abnormality itself must be sufficient to distinguish the dangerous sexual offender whose serious mental illness, abnormality, or disorder subjects him to civil commitment from the dangerous but typical recidivist convicted in an ordinary criminal case. (p. 413)

Frances, Sreenivasan, and Weinberger (2008), however, note the conceptual difficulty in distinguishing ordinary criminal behavior from mental illness, given imprecise statutory and judicial definitions of the type and nature of qualifying mental impairment. This difficulty is evident when comparing decisions made by clinicians during SVP evaluations, which show significant disagreement on what mental illness may actually be present in an offender (Perillo, Spada, Calkins, & Jeglic, 2014).

The most prevalent psychiatric disorders among those committed as SVPs are sexual deviance disorders, such as pedophilia or other paraphilias (Becker, Stinson, Tromp, & Messer, 2003; Elwood, Doren, & Thornton, 2010; Jackson & Richards, 2007); diagnostic comorbidity is, however, common with co-occurring alcohol or substance use (Elwood et al., 2010; Jackson & Richards, 2007), and antisocial personality disorders (Becker et al., 2003; Elwood et al., 2010; Jackson & Richards, 2007) are especially common. More severe forms of mental illness are less common. Indeed, Jackson and Richards (2007) reported that fewer than 25% of offenders held under an SVP statute in Washington suffered from schizophrenia or schizoaffective disorder. Vess, Murphy, and Arkowitz (2004) report that SVPs are less frequently psychotic than individuals committed under other state mental health statutes. For example, although just over 10% of SVPs in Vess and colleagues' sample were diagnosed with a psychotic or severe mood disorder, well over 90% of those committed under other mentally disordered offender statutes were diagnosed with schizophrenia,

schizoaffective disorder, bipolar disorder, or major depression. As relatively few SVPs are diagnosed with psychotic or severe mood disorders, there is some support for the argument that SVP commitment schemes loosened the severity of diagnoses previously required to involuntarily commit an individual.

In summary, the difficulty in examining the effectiveness of SVP commitment is evident by a general shortage of empirical studies. Nonetheless, some important findings about SVP commitment's potential impact on public safety have emerged. Inconsistency across SVP evaluations suggests that decision making related to SVP commitment is a challenging endeavor. It is nonetheless encouraging that decisions about which offenders are committed as SVPs appear to be overall consistent with research. Those selected for commitment tend to have higher actuarial risk scores, and those recommended for commitment but ultimately not committed have indeed reoffended at higher rates than those not recommended for commitment. It should be noted, however, that despite higher recidivism rates, most of those sex offenders recommended for commitment (but not committed) did not reoffend. It is thus reasonable to wonder whether we are indefinitely committing a group of sex offenders that, although at higher risk, would nonetheless not reoffend. Combined with the exorbitant costs of SVP commitment relative to other interventions and ordinances related to sex offending, there is a persuasive argument that the resources dedicated to SVP commitment could be more effective if dispersed to other alternatives that reduce sexual recidivism. More research, particularly follow-up data on offenders released from SVP commitment, is needed to arrive at stronger conclusions about the effectiveness of SVP commitment in reducing sexual violence.

SVP legislation is unique in that it involves continued detainment (albeit in a different context) of those convicted of sex offenses. The other forms of sex offense legislation have focused on how the general public can remain safe once convicted sex offenders are returned to the community. These policies primarily involve regulations and restrictions placed on convicted sex offenders that, it might be argued, allow the public to better monitor those with a record of sex offenses and to better insulate itself from being vulnerable to sexual violence. These sex offense policies are detailed next.

RCNLs

A variety of laws have been enacted to monitor the whereabouts of sex offenders who are released back into the community after serving their criminal sentences. These laws, broadly referred to as RCNLs, aim to (a) allow community members to know the whereabouts of convicted sex offenders so they may take measures to protect themselves, (b) deter individuals from committing sex offenses, and (c) aid law enforcement in the investigation of sex offenses by giving them access to the whereabouts of known sex offenders (Lovell, 2001; Phillips, 1998). In addition to a current photograph, registries typically include information such as offender name, home address, work address, license plate number, physical description, and offense history.

Summary of case law pertaining to RCNLs. In 1994, Congress enacted the Jacob Wetterling Crimes Against Children and Sexually Violent Offenders Registration Act (1994), Pub. L. No. 103-322, 108 Stat. 1796 (codified at 42 U.S.C. §§ 14071-80; hereafter "the Wetterling Act"). The Wetterling Act compelled states to enact a registration program for offenders convicted of sexual crimes against children or sexually violent crimes; states that did not comply would see a 10% reduction of grant allotments under the Byrne Memorial Justice Assistance Grant Program, 42 U.S.C. § 14071(g)(1), (2), (3). The act also created a national sexual offender registry that all states are required to participate in. By tying federal law enforcement funds to the promulgation of registration legislation, the Wetterling Act sent a clear mandate to the states to enact registration laws.

In 1996, following the rape and murder of 7-year-old Megan Kanka in New Jersey by a twice-convicted sex offender, the Wetterling Act was amended to provide for public dissemination [*451] of information from states' sex offender registries. This federal legislation, commonly known as Megan's Law (1996; Pub. L. No. 104-145, 110 Stat. 1345, codified at 42 U.S.C. §§ 14071-72), mandated that all 50 states maintain a publically available database containing information on convicted sex offenders. In relatively short order, most states passed a dizzying array of sex offender registration laws (Wright, 2008a, b). Although "Megan's Laws" varied from state to state with regard to the

amount and type of information available to the public, these notification statutes allowed community members to become aware of a sex offender's presence in their neighborhoods.

In 2003, the Supreme Court was called upon to rule on the constitutionality of state registration and notification statutes. In *Smith v. Doe* (2003) and *Connecticut Department of Public Safety v. Doe* (2003), the defendants argued that registration and notification requirements were forms of additional punishment that violated ex post facto and procedural justice rights (Yung, 2009). The Court rejected these arguments, holding that the registration and notification laws at issue, in Alaska and Connecticut, respectively, were constitutional. Similarly, the 9th Circuit Court of Appeals found an expanded registration law in Nevada did not violate due process (*ACLU v. Masto*, 2012).

More recently, in an effort to standardize sex offender legislation, Congress passed the AWA (2006). The AWA was a massive overhaul and extension of federal sex offender law and included the Sex Offender Registration and Notification Act (2006; SORNA). SORNA required federal registration by sex offenders (see 42 U.S.C. § 16913[a]), and created a nationwide online sex offender registry and notification system. The law imposes sanctions of up to 10 years of incarceration for anyone who is required to register and knowingly fails to do so (18 U.S.C. § 2250). In 2007, the U.S. Attorney General retroactively applied SORNA's registration requirements to sex offenders convicted prior to SORNA's enactment in 2006 (72 Fed. Reg. 8896, codified at 28 C.F.R. § 72.3).

Under SORNA, a separate tiering system was developed to maintain consistency across jurisdictions with regard to the duration of registration, the frequency of in-person appearances for verification, and the extent of website disclosure for offenders in each tier. The SORNA tiering system of classification allows uniform classification of sex offenses, the nomenclature for which differs from state to state. Under the SORNA classification system, Tier I refers to the lowest level of classification, which includes misdemeanor crimes such as registration violations and possession of child pornography. Tier II crimes include most felony sexual abuse or sexual exploitation crimes in which the victims are minors. Tier III crimes are those that are considered to fall into the highest classification level, which include sexual assaults involving sexual acts, sexual contact offenses with minor victims, kidnapping of minors, and attempts or conspiracies to commit such acts (AWA, 2006). SORNA mandates minimum time frames for registrations for offenders in each tier. Tier I sex offenders must register for 15 years, Tier II sex offenders must register for 25 years, and Tier III sex offenders must register for life. Tier I offenders who maintain a clean record for 10 years may have their registration period reduced by 5 years (AWA, 2006).

Not surprisingly, given its depth and breadth, SORNA has generated an enormous amount of litigation. Courts have been called upon to determine the scope and constitutionality of the registration and notification regime in the face of constitutional ex post facto, Commerce Clause, and Due Process Clause challenges.

Most recently, in *United States v. Kebodeaux* (2013), the Supreme Court upheld SORNA as a constitutional exercise of Congress's power through the Necessary and Proper Clause and the Military Regulation Clause. The defendant, a member of the U.S. Air Force convicted of a federal sex offense, had served his sentence and had been discharged from the U.S. Air Force for several years before SORNA was enacted. Regulations required that SORNA be applied retroactively to sex offenders who had already served their sentences, and the Court decided to review the case to determine whether it was within Congress's power to enact SORNA and apply it retroactively. The Court, noting the broadness of the Necessary and Proper clause, which allows Congress to pass any law necessary to facilitate its exercise of an enumerated power, found that Congress was authorized to punish crimes through incarceration and establishing conditions upon release, including a civil registration requirement. The decision to enact such legislation was found "eminently reasonable," given that the registration requirements protect the public and address public safety concerns. The Court included, in its analysis, evidence of higher recidivism rates among sex offenders than others convicted of crimes. Although it also acknowledged evidence showing low levels of recidivism and the limited efficacy of registration requirements on recidivism, the Court noted that it was the role of Congress, and not the Court, to weigh the evidence. Justice Thomas critiqued the majority opinion for surpassing the limits the Court created in *United States v. Comstock* (2010), in which it upheld the civil commitment provision of the AWA (2006), in part because it applied only to individuals in federal custody. Justice Thomas, joined in his dissent by Justice Scalia, wrote

It is clear from the face of SORNA and from the Government's arguments that it is not directed at "carrying into Execution" any of the federal powers enumerated in the Constitution, Art. I, § 8, cl. 18, but is instead aimed at protecting society from sex offenders and violent child predators . . . The power to protect society from sex offenders is part of the general police power that the Framers reserved to the States or the people. (United States v. Kebodeaux, 133 S. Ct. 2496, p. 2503)

Several state courts have held state sex offender registration and notification schemes to be ex post facto violations when applied to sex offenders who were convicted before the statutes at issue were enacted. The Alaska Supreme Court held that retroactive application of offender registration violated the state's ex post facto laws (*Doe v. Alaska*, 2008). The Indiana Supreme Court reached a similar conclusion (*Wallace v. Indiana*, 2009), as did the Maine Supreme Court, which held that the state's sex offender registration scheme violated state and federal guarantees against ex post facto laws when it was applied retroactively to offenders (*Maine v. Letalien*, 2009).

On the other hand, the Supreme Court has agreed that the interstate travel restrictions contained in SORNA do not apply to sex offenders whose interstate travel occurred before SORNA's effective date (*Carr v. United States*, 2010). The Court limited its ruling to the temporal question of when the travel occurred, and, having done so, addressed neither the ex post facto question nor the more fundamental question of whether Congress had exceeded [*452] its authority under the Commerce Clause in enacting legislation to regulate sex offender travel.

Similar to their general reluctance to limit SVP commitment laws, the courts' upholding of SORNA through abstract constitutional bases like the Commerce Clause indicates an underlying commitment to RCNLs. Despite the fact that SORNA legislation has been found to have a reasonable basis, at least in part because of its community protection goals, it is notable that there is scant evidence as to whether registration and community notification laws have any actual impact in reducing rates of sexual violence.

Empirical findings related to RCNLs. Empirical findings with respect to the utility of RCNLs in reducing recidivism have, at best, been mixed. In one of the first RCNL outcome studies, Schram and Milloy (1995) found no differences in recidivism rates between registered and unregistered offenders, though sex offenders who were registered were more quickly arrested for new crimes than those who were not. More rapid detection was also found by Freeman (2012), who found that registered sex offenders were rearrested twice as quickly for sexual offenses and 47% more quickly for nonsexual offenses, compared with those offenders who were not registered, but no discernible differences in the rates of recidivism were found between groups. Zevitz (2006), who examined differences in recidivism rates between sex offenders under extensive notification, and those under limited notification schemes, found little support for the effectiveness of RCNLs. Sandler, Freeman, and Socia (2008), who conducted a time-series analysis of New York State's RCNL, found no evidence to support the effectiveness of RCNLs. Furthermore, they found that over 95% of all sex offenses were committed by first-time sex offenders, meaning only 5% of sex offenses were committed by persons that would be on a registry. Notably, this ratio of sex offenses being committed by repeat offenders remained steady at 5% in the years before and after New York State's RCNL was implemented, which is significant for two reasons. First, this suggests that the extensive the resources put into RCNLs do not account for 95% of sex offenses. Second, it appears that RCNLs did not improve abilities to catch repeat offenders, given that the relative rates of arrests for sex offenses committed by those who would be on a registry (i.e., repeat offenders) remained stable.

Vasquez, Maddan, and Walker (2008) conducted a time-series analysis to retroactively look at the incidences of sexual assaults against adults (rape) before and after the implementation of RCNLs in 10 states. They found that six of the 10 states showed no statistically significant changes in their incidences of rape. Of the remaining four, three showed statistically significant decreases, and one showed a sharp increase, in the incidence of rape. Based upon these findings, the authors concluded that RCNLs do not appear to have consistent or observable influence on the number of reported rapes, but also that registration and notification policies may have differing deterrence effects depending upon the state. Zgoba and Bachar (2009) compared a sample of sex offenders in New Jersey who had been released before and after the implementation of Megan's Law (1996), and they found that Megan's Law did not reduce the number of rearrests for sex offenses, nor did it decrease the number of victims of sexual offenses. Finally, Tewks-bury, Jennings, and Zgoba (2012)

conducted a longitudinal analysis of offenders who were released prior to and following the implementation of registration and notification policies in New Jersey, and found that registration and notification status was not a significant predictor of either sexual or general recidivism.

Bamoski (2005), on the other hand, found that the 1990 enactment of an RCNL in Washington State significantly reduced the rates of both violent and sexual felony recidivism by sex offenders. The Bamoski study did not account for natural changes in offending patterns across time (McDowall & Loftin, 2005), but Letourneau, Levenson, Bandyopadhyay, Armstrong, and Sinha (2010) also found a significant deterrent effect for registration and notification statutes following the 1995 implementation in South Carolina. They found an 11% reduction in first-time sex offense arrests following implementation, even after accounting for the overall decline in sex offenses nationally. Similarly, Prescott and Rockoff (2008) studied the effects of RCNLs on the frequency of sex offenses and the incidences of sex offenses across victims. They found that although RCNLs actually increased recidivism by registered sex offenders, they appeared to deter first-time sex offenders. Prescott and Rockoff reported that RCNLs were successful in decreasing new sex offenses against individuals known to the sex offender (such as family, friends, and acquaintances), but did not serve to decrease the number of sex offenses against strangers. Additional research has found that risk assessment data, when used, are unevenly applied in decisions about notification (Blasko, Jeglic, & Mercado, 2011; Shaffer & Miethe, 2011). Notably, the AWA (2006) mandates use of an offense-based classification system, which focuses on circumstances of the offense rather than recidivism risk, to determine the tier level that an offender will be subject to in the community (Zgoba et al., 2012). The neglect of risk-relevant information in decisions about tierlevel assignment may help to explain why this legislation has had little impact on recidivism.

Collateral consequences of RCNLs. Researchers have also investigated the effects of RCNLs on sex offenders. Studies have found that RCNLs interfere with sex offenders' ability to obtain and maintain employment, housing, and prosocial relationships. This, in turn, can destabilize offenders, resulting in increased levels of transience, instability, isolation, shame, harassment, feelings of depression and hopelessness, and lack of social support (Edwards & Hensley, 2001; Jeglic, Mercado & Levenson, 2012; Lasher & McGrath, 2012; Lees & Tewksbury, 2006; Levenson & Cotter, 2005a, 2005b; Levenson & D'Amora, 2007; Levenson, D'Amora, & Hern, 2007; Levenson & Hern, 2007; Mercado, Alvarez & Levenson, 2008; Zevitz, 2006; Zevitz & Farkas, 2000). Tewksbury and Levenson (2009; Levenson & Tewksbury, 2009), who also studied the effects of RCNLs on the family members of registered sex offenders, found that those family members report property damage or vigilantism, and increased levels of social isolation, stigmatization, harassment, fear, and shame. Considering that many of these collateral consequences are associated with increased risk for sexual recidivism (e.g., Hanson & Harris, 1998), it can be argued that RCNLs may indirectly *increase* risk for sex offenses, as they place offenders in situations that can inadvertently leave them at higher risk for recidivism.

In addition to affecting the offenders and their families, RCNLs may also affect those who live in communities with registered sex offenders. Beck, Clingermayer, and Ramsey (2004) surveyed community [*453] members who were and were not notified of sex offenders living within their neighborhoods and found that knowing the location of a sex offender did not make the community members feel more safe; notified community members reported feeling more at risk of victimization for themselves and their family members. Similarly, Beck and Travis (2004) found that individuals who had received notification of a sex offender living nearby were significantly more likely to fear personal victimization than people who had not been notified. These findings suggest that RCNLs may actually create an atmosphere of fear in neighborhoods where sex offenders reside.

In summary, research on the effectiveness of RCNLs in addressing sex offending has produced mixed results across studies. A significant number of studies have found RCNLs to have little to no impact on sex offending rates when accounting for changes in general crime rates over time, but a few studies have indeed found RCNLs to reduce offending or serve a deterrent function. At the present time, there is no clear explanation for the different out-comes across studies and across different districts and states. In general, though, RCNLs have been effective at apprehending offenders more quickly following reoffense. Future research should further examine the long-term impact RCNLs may indirectly have on sex offender, as the collateral consequences of these ordinances place offenders in situations commonly associated with *increased* risk for sex offending.

Residence Restrictions

A geographical approach to regulating sex offenders emerged in the mid-1990s with the first appearance of state residence restrictions in Delaware and Florida (Meloy, Miller, & Curtis, 2008). These laws make it illegal for sex offenders to live, and sometimes loiter, within a specified distance of "places where children congregate," often including schools, parks, day-care centers, bus stops, and churches (Dallas, 2009). Although there is no federal analogue, state and local governments have been quick to pass a bevy of residence restriction laws. These laws generally appear in two forms: (a) child safety or exclusionary zones, and (b) distance markers (Dallas, 2009). Safety or exclusionary zone laws prohibit offenders from loitering near places where children congregate, whereas distance markers prohibit offenders from permanently residing within specific distances of child-dense community structures (Dallas, 2009). Local ordinances, passed pursuant to municipal police powers, have caused a cascade of neighboring towns adopting laws that render large swaths of land--and even entire cities--off-limits to sex offenders.

Residence restrictions barring sex offenders from living near certain statutorily defined public places have been enacted in at least 30 states and hundreds of local municipalities (Council of State Governments, 2007; Meloy et al., 2008). These statutes vary with regard to the types of places that are off-limits (which may include schools, churches, day-care facilities, public parks, bus stops, etc.); the size of the buffer zones (though they typically prohibit offenders from living within 500 to 2,000 feet of these "hotspots"); the group of offenders to whom they are applied (whether they are applied to all or only certain high-risk sex offenders); whether they apply only to offender residence or also to offender employment; and, finally, what happens when a child-dense community structure moves into an area where an offender is already established (i.e., whether there are move-to-the-offender exceptions). The means and manner of locale restrictions enacted by state and local governments have no apparent end; in 2008, for example, the City of Albuquerque, New Mexico, issued a one-paragraph "Administrative Instruction" banning all registered sex offenders from using any of the city's public libraries (*Doe v. City of Albuquerque*, 2012).

Summary of case law pertaining to residence restrictions. Many residence restriction ordinances are passed at the local or municipal level, and, as a result, raise questions about whether local rules are preempted by state law. For example, in *People v. Oberlander* (2009) and *People v. Blair* (2009), local rules were found to be invalid in the face of prevailing New York State law (see also *G.H. v. Twp. of Galloway*, 2008 [New Jersey]; contra, *People v. Diack*, 2013 [New York], and *United States v. King*, 2009 [Oklahoma]).

Although the Supreme Court has not yet decided whether residence restrictions are constitutional, a number of state and federal appellate courts have weighed in. In *Doe v. Miller* (2005), the defendant challenged an Iowa statute that prohibited convicted sex offenders from residing within 2,000 feet of a school or child-care facility. The federal appellate court held that the statute did not violate procedural or substantive due process, was not an ex post facto law, and did not infringe improperly on any constitutional liberty interest.

Cases decided by State Supreme Courts present the issues in stark relief. In *R.L. v. State of Missouri Dept. of Corrections* (2008), the defendant pleaded guilty in 2005 to a sexual offense and was required to register as a sex offender. At the time of his plea, there was no law affecting where he could live. The defendant had lived at his residence since 1997, but in 2006, Missouri passed a law that prohibited registered sex offenders from living within 1,000 feet of a school. A grade school that had been in existence since 1988 was within 1,000 feet of the defendant's residence, and the defendant was ordered to leave his home. The Missouri Supreme Court found the residence restriction to be an invalid retrospective law in violation of the Missouri Constitution. On similar facts, the Indiana Supreme Court, in *State v. Pollard* (2009), held that the residence restriction statute of the Indiana Sex Offender Registration Act constituted retroactive punishment forbidden by the ex post facto clause in the Indiana Constitution (see also *Kentucky v. Baker*, 2009, which held that Kentucky's residence restriction law violated ex post facto clause). The Ohio Supreme Court held that the state's residence restriction law was not meant to apply retroactively to those offenders who committed their offenses before the law went into effect (*Hyle v. Porter*, 2008). For these courts, residence restrictions, unlike registration and notification statutes, had no demonstrable regulatory purpose, and, as a

result, were deemed to be punitive and in violation of the ex post facto clause. In contrast, several other state and federal courts have denied ex post facto challenges to residence restriction laws, for example, *Formaro v. Polk County* (2009; Iowa), *Boyd v. State* (2006; Alabama), *People v. Leroy* (2005; Illinois), *Denson v. State* (2004; Georgia), *Cunningham v. Parkersburg Housing Authority* (2007), and *Weems v. Little Rock Police Dept.* (2006).

In addition to the ex post facto application challenges, residence restrictions have prompted numerous substantive and procedural due process challenges. Generally speaking, courts have ruled against several types of challenges brought with respect to residence [*454] restrictions, including substantive due process challenges under the 14th Amendment (U.S. Const, amend. XIV, § 1) and challenges under the Double Jeopardy; Cruel and Unusual Punishment; Equal Protection; Takings; and Preemption Clauses. State residence restrictions have almost always been found to advance a legitimate government interest in protecting children and not infringe upon any constitutional right to reside in a particular place with family members (see, i.e., *Weems v. Little Rock Police Dept.*, 2006). Indeed, legal allowance of residence restriction schemes seems closely tied to the long-standing legal conclusion that there is no fundamental constitutional "right" to choose one's place of residence (*Prostrollo v. University of South Dakota*, 1974). If a law does not infringe upon a fundamental right, of course, a rational basis for the law is all the government need establish to pass constitutional muster. Similarly, courts have generally rejected claims that residence restrictions are unconstitutionally overbroad or vague, even when they prohibit actions as seemingly ambiguous as "loitering" or "observing" (*State v. Stark*, 2011; South Dakota).

There have been some successful challenges around the edges of residence restrictions. For example, in *Mann v. Department of Georgia Corrections et al.* (2007), Georgia had a residence and employment restriction prohibiting registered sex offenders from residing or being employed within 1,000 feet of any child-care facility, church, or school. Mann was a registered sex offender when he and his wife bought a home and opened a restaurant. Subsequently, a child-care facility moved in nearby, and he was faced with the prospect of having to move and being unable to work at his restaurant. The court found an unconstitutional taking of the defendant's home without just compensation, but no constitutional violation with respect to his business (because the defendant could perform most of his duties from home via computer). The court went on to distinguish between homeowners and renters, limiting residence restrictions to renters. It remains to be seen whether the distinction between homeowners and renters will be subject to other constitutional challenges. Future challenges to this type of sex offender legislation should incorporate the empirical research presented next regarding the inefficacy of residence restriction laws in reducing recidivism.

Empirical findings related to residence restrictions. To date, the answer to the question of whether residence restrictions prevent or decrease sex offender reoffending would appear to be "no." Two studies from the Minnesota Department of Corrections and one from the Colorado Department of Public Safety found the data do not support the--as Meloy et al. (2008, p. 212) phrased it--"proximity-recidivism thesis," and a recent empirical analysis found no significant relationship between sex offender recidivism and proximity to schools or day-care facilities (Zandbergen, Levenson, & Hart, 2010). Meloy and colleagues (2008) point out, however, that some studies have found there *may* be some positive effect.

Furthermore, media and anecdotal reports suggest that sex offender residence restrictions have led to offenders going underground, with nearly 3 times as many offenders unaccounted for after Iowa enacted a 2,000-foot buffer around schools and day cares, compared with before enactment of the law (Council of State Governments, 2007; "Iowa's Residency Rules," 2006). In an examination of the locations of sex offenses, the Colorado Department of Public Safety (2004) found that recidivistic offenders were no more likely to live near schools or day-care facilities than nonrecidivistic offenders. The Minnesota Department of Corrections (2003) also found that residential proximity to schools or parks did not appear to be a factor in any of the 13 cases examined in which a known sex offender was rearrested for a sexual offense after release from prison. In a later report examining the reoffense patterns of 224 recidivists who could have been subject to a residence restriction law were it in place, the Minnesota Department of Corrections (2007) concluded, "Not one of the 224 sex offenses would likely have been deterred by a residency restrictions law" (p. 2). Socia (2012) examined residence restrictions in New York State and found that residence restrictions did not appear to prevent recidivistic sex offenses against children or adults, though he did find some

evidence that residence restrictions have a slight deterrence effect for *nonrecidivistic* sex offenses against adults. Nobles, Levenson, and Youstin (2012) examined changes in sex offenses after implementation of an expanded residence restriction policy in Florida, finding no evidence that residence restrictions succeeded in reducing sex offenses. Overall, empirical data and anecdotal reports provide very little evidence for the value of residence restrictions in reducing sexual recidivism.

Collateral consequences of residence restrictions. Not unlike RCNLs, research has revealed that unintended consequences associated with residence restrictions can inadvertently increase, rather than decrease, the risk of sexual recidivism. Indeed, survey data show that sex offenders report a number of collateral consequences that they perceive as stemming from residence restrictions, including social isolation, increased stress, and problems finding suitable housing (Levenson, 2008; Levenson & Cotter, 2005b; Levenson & Hem, 2007; Mercado et al., 2008). More than half (57%) of the offenders surveyed by Levenson and Hem (2007), for example, reported difficulties in finding affordable housing as a result of residence restrictions, with a significant percentage (44%) also reporting that residence restrictions prohibit them from living with supportive family members. Similarly, over 60% of the offenders sampled by Mercado and colleagues (2008) reported financial hardship, and 40% reported having to live further from employment opportunities as a result of residence restrictions. Notably, lack of employment is predictive of recidivism (Kruttschnitt, Uggen, & Shelton, 2000; Laub & Sampson, 2001). Because housing and lifestyle instability also tend to inhibit successful community reentry and increase risk for recidivism (Andrews & Bonta, 2003; Hanson & Harris, 1998; Williams, McShane, & Dolny, 2000), these collateral consequences may undermine the goal of enhanced community safety.

The utility of geographic constraint. As Mulford, Wilson, and Parmley (2009) note, residence restriction statutes are premised on the fear that offenders "will be hunting for victims because they live in proximity to where children congregate" (p. 3). This basic premise may be flawed. Researchers have tested the proximity-recidivism thesis, analyzing sex offenders' proximity to schools and other child-dense community structures, specifically examining whether sex offenders live closer to these "hotspots" than community counterparts. Zgoba, Levenson, and McKee (2009), for example, examined the residential patterns of sex offenders in an urban area and did not find that sex offenders lived any closer to schools and day-care facilities than nonoffending community members. Chajewski and Mercado (2008, 2009) found that sex offenders in an urban area were more likely to live closer [*455] to schools than randomly selected community members, but that offenders in rural and suburban areas were not any more likely to live near schools than other community members. Although findings are mixed, there is little consistent support for the proposition that sex offenders are any more likely to live near schools or day-care facilities than are randomly selected community members.

Other research has looked more specifically at offender subtypes with regard to residence location. Walker, Golden, and VanHouten (2001) found that offenders in Arkansas with child victims were more likely (48%) to live near places where children congregate than offenders who did not have child victims (26%). Zgoba et al. (2009), in contrast, found that offenders who victimized adults lived significantly closer to schools and parks than did those who victimized children. Sex offenders with stranger victims have not been found to live any *closer* to schools or day-care centers than offenders with family or acquaintance victims (Chajewski & Mercado, 2009; Zgoba et al., 2009). Again, though there are some variations in the findings, data fail to provide consistent support for the thesis that sex offenders, or even specific types of sex offenders, choose to reside near locations where children congregate. Perhaps unsurprisingly, research suggests that economic factors, rather than desire to live near potential victims, may best predict offenders' residential location (Tewksbury & Mustaine, 2008).

This finding is not surprising in light of research suggesting that most offenders find an opportunity for offending through interpersonal, rather than geographic, proximity to victims (Minnesota Department of Corrections, 2003). Between 79% (Minnesota Department of Corrections, 2007) and 93% (Snyder, 2000) of sexual offenses are committed by someone already acquainted with the victim, and Smallbone and Wortley (2000) observed the most common (40%) place of initial contact between extrafamilial offenders and their victims to be a friend's home, leading to the conclusion that "extrafamilial and mixed-type offenders seek victims close to home--among the children of friends or other children with whom they already have some social relationship" (p. 42). The majority of sex offenses in Smallbone and

Wortley's (2000) sample took place in private settings, with 69% of offenses taking place in the offender's residence and a minority of offenses (<10%) taking place in a public park setting. Examining a sample that also included intrafamilial offenders, Colombino, Mercado, and Jeglic (2009) found that over three quarters (77%) of sex offenders in their sample *met* their victims in private or residential locations, and over 82% of offenses *took place* in private residential locations. Colombino, Mercado, Levenson, and Jeglic (2011) found just over 4% of the sex offenders in their sample to have met their victims in locations typically designated as off-limits under residence restriction laws. Looking only at sexual reoffending, data suggest that about 85% of sexual reoffenses take place in private residential settings, whereas 15% take place in public locations such as streets or parks (Duwe, Donnay, & Tewksbury, 2008; Minnesota Department of Corrections, 2007). In summary, the data suggest that offenders are most likely to offend against individuals known to them, and, moreover, that they are likely to find their victims and carry out offenses in private, as opposed to public, locations.

Spatial functioning of residence restrictions. The survey research noted here (Levenson, 2008; Levenson & Cotter, 2005b; Levenson & Hem, 2007; Mercado et al., 2008) reveals that offenders frequently report difficulties in locating suitable housing. Findings from geospatial mapping analyses corroborate these reports. For example, research in Orange County, Florida, revealed that more than 95% of residential properties are within 1,000 feet of child-dense areas, and nearly 100% of residential properties were found to be located within 2,500 feet of off-limits areas (Zandbergen & Hart, 2006). Although Barnes, Dukes, Tewksbury, and De Troye (2009) did not find that 1,000-foot buffer zones influence offender access to treatment facilities, 1-mile exclusion zones were found to increase distance to treatment by 14%, on average.

Examining the impact that residence restrictions would have in South Carolina, Barnes and colleagues (2009) found that 1,000-foot buffer zones would prevent 20% of registered sex offenders from maintaining their current residence, and 5,280-foot (i.e., 1 mile) restriction zones would prevent a much higher 80% from maintaining their current residence. In a similar hypothetical examination of the impact of residence restrictions, Chajewski and Mercado (2008) found that 65% of registered sex offenders would have to relocate if 1,000-foot residence restrictions were enacted in Newark, New Jersey, and 98% of offenders would have to move if a 2,500-foot residence restriction were enacted.

Barnes and colleagues (2009) noted that residence restrictions result in the clustering of offenders in specific areas, with offenders typically being relegated to more rural areas. Consistent with this finding, Chajewski and Mercado (2009) found housing short-ages for offenders to be most pronounced in more urban areas, noting that only 7% of land space would remain available if 2,500-foot residence restrictions were enacted in a highly urban area. Zgoba and colleagues (2009) also examined the functioning of residence restrictions in a mostly urban area, finding 80% of residential opportunities to be within 2,500 feet of a school or day-care facility. This suggests that housing options would be very limited were such zoning restrictions enacted. The Iowa County Attorneys Association (2006) noted that with residence restrictions in place for sex offenders, "realistic opportunities to find affordable housing are virtually eliminated in most communities" (p. 2).

As noted in the case law review, residence restrictions have been successfully argued to advance a legitimate government interest in protecting children. The empirical data on residence restrictions suggest, however, that they do not work as intended for a number of reasons. Although intended to protect the community by placing sex offenders at a distance, residence restrictions are logically inconsistent with what we know about sex-offending patterns. The vast majority of sex offenses occur against victims known by the offender in a private context, with little relation to geographic proximity. Instead, the type of offending that would be affected by residence restrictions--that where the offender met a child or initiated an offense in a public context--represents a small subset of offenses dissimilar to how most offending occurs. It is thus no surprise that data to date have failed to find a drop in sex offending after implementation of residence restrictions. Further, there is evidence that these ordinances have unintended consequences that create additional challenges in accounting for released offenders and set up environmental pitfalls that can unintentionally increase risk for sexual recidivism. Taken altogether, data suggest that residence restrictions affect offenders and the community in ways [*456] that are counterintuitive to sexual violence prevention, and can potentially make sex offenders more susceptible to reoffending.

Electronic Monitoring Laws

Supervision of offenders through electronic monitoring has increased in the last two decades. In the typical case, the offender wears a GPS device that allows law enforcement officials to monitor his whereabouts. This trend is conceptually linked to the assumptions underlying residence restrictions inasmuch as GPS devices are thought to be especially valuable in alerting law enforcement officials in the event the offender enters particular off-limits areas like schools or day-care centers.

In theory, electronic tracking technology allows the state to punish, supervise, and rehabilitate offenders while reducing prison and jail populations (Crowe, Sydney, & Bancroft, 2002). In practice, the primary objective of electronic monitoring with the sex offender population, specifically, is to monitor sex offenders' movements to ensure they do not go near schools and other exclusion zones (Yung, 2007). Currently, every state in the United States uses some form of electronic monitoring to supervise offenders, and the AWA (2006) requires electronic monitoring for offenders having a child victim or a failure-to-register offense.

Electronic monitoring has traditionally taken two forms: radio frequency (RF) and GPS. The RF system uses a transmitter that is connected to the offender's phone that receives radio signals from a bracelet worn by the offender. The transmitter sends messages to a computer indicating whether or not the offender is within a certain distance of the receiver. Typically, the offender would be expected to be near the receiver in the evening and away from the receiver when he was supposed to be at work or at treatment (Crowe et al., 2002). With the advent of newer technologies, electronic monitoring has turned to systems based on GPS. Offenders are required to wear GPS receivers that allow a central monitoring agency to oversee all offender movement by using a network of 24 satellites to calculate the location of the GPS receiver (Gowen, 2001). With sex offenders, this allows the central monitoring agency to be notified whenever a sex offender is within an unauthorized area (Demichele, Payne, & Button, 2008). The GPS tracking systems cost approximately \$ 3,650 per year, exclusive of wages for state employees who are charged with monitoring and preparing the GPS reports (Russell, 2005).

Summary of case law pertaining to electronic monitoring. Although there is, as of yet, no federal law requiring GPS or similar electronic monitoring, the AWA (2006) provided grants to states that mandated certain kinds of sex offender electronic monitoring. Not surprisingly, 41 states and the District of Columbia now have laws specifically addressing electronic monitoring of sex offenders (Dante, 2012). Florida's Jessica Lunsford Act makes it mandatory that a court order certain child molesters designated as sexual predators to wear a GPS-based electronic monitor for the rest of their lives (Russell, 2005; FL Annotated Statutes § 948.30(3), 2010). The Florida statute imposes electronic monitoring based upon the defendant's offense, without regard to an assessment of the likelihood the particular defendant will recidivate. Fourteen states have adopted the Florida offense-determinative model for electronic monitoring (Dante, 2012). The California model also imposes mandatory lifetime monitoring by GPS for a broader list of offenses than in the Florida statute (Dante, 2012).

Although courts have ruled on the constitutionality of GPS devices in other contexts (i.e., as a condition of parole or supervised release, or in 4th Amendment search and seizure cases), the U.S. Supreme Court has not yet ruled on the constitutionality of GPS devices as applied to sex offenders postrelease. Nevertheless, cases are bubbling up from state and federal courts. Virtually all of these cases focus on the constitutionality of the retroactive application of GPS monitoring. In one case, the Sixth Circuit Court of Appeals denied an ex post facto challenge to a Tennessee monitoring statute that required the offender to wear a GPS device (*Doe v. Bredesen*, 2007). In *Doe v. Schwarzenegger* (2007), the court held that California's Sexual Predator Punishment and Control Act, which required that offenders wear a GPS device, was a prospective law. As such, the law did not apply to those convicted and paroled, given probation, or released from incarceration prior to its effective date. The court stated that to hold otherwise would raise serious ex post facto issues. In *Commonwealth v. Cory* (2009), the Supreme Court of Massachusetts held that state law requiring anyone placed on probation after conviction of a designated sex offense to wear a GPS device for the duration of their probation was punitive in effect and an ex post facto violation when applied to persons placed on probation for

qualifying offenses committed before the law's effective date (see also *Doe v. Chairperson of the Massachusetts Parole Board*, 2009; ex post facto violation to require parolees convicted before the law went into effect to wear GPS devices).

As GPS devices become ever more commonplace, there is little doubt that states will continue to implement monitoring schemes for sex offenders. With its capacity to track offenders' movements on a second-to-second, ongoing basis, GPS monitoring presents additional constitutional issues beyond those raised by registration and notification laws. This nascent area of litigation presents an opportunity for advocates to leverage empirical findings illuminating the limited benefits as well as the added costs and dangers of GPS monitoring.

Empirical evidence related to electronic monitoring. To date, research examining how GPS monitoring affects recidivism has been somewhat limited (Minnesota Department of Corrections, 2006). One study conducted by the Colorado Department of Public Safety (2004) found that only about 1% of sex offenders were detected using GPS monitoring. Other states have also conducted pilot studies of GPS monitoring. The Tennessee Board of Probation and Parole (2007) conducted a pilot study of GPS monitoring using certain sex offenders and concluded that no statistically significant differences were observed between treatment and control groups in terms of the number of violations, new charges, or the number of days before the first violation. One study of offenders in California, which requires certain released sex offenders to wear GPS monitoring devices for life, similarly found that GPS monitoring had little effect on recidivism (Turner & Jannetta, 2007). In contrast, a more recent and comprehensive study of high-risk sex offenders released in California between 2006 and 2009 found a rate of a sex-related violation nearly 3 times as great for subjects who received traditional parole supervision as for those who received the GPS supervision (Gies et al., 2012)

Demichele et al. (2008), Payne and Demichele (2011), and Bishop (2010) have described some of the unanticipated consequences [*457] that follow from GPS monitoring of sex offenders, including a false sense of security among the public, stacked sentences (meaning that this is an additional avenue for imposing sanctions upon sex offenders on supervision), increased or restructured workloads for corrections employees, isolation of the offender, and legal fallout by increasing liability. For example, a study of statutorily based GPS monitoring of sex offenders convicted of dangerous crimes against children in one Arizona county found that GPS monitoring resulted in a significant number of false alarms caused by lack of satellite signal, as well as significant increases in staff workload (Armstrong & Freeman, 2011). Both Armstrong and Freeman (2011) and Payne and Demichele (2011) concluded that GPS monitoring should be viewed as a tool to enhance community supervision but not as a way of solving sex-related crimes.

As the use of this technology for monitoring sex offenders is still in its relative naissance, it is difficult to draw formal conclusions on its effectiveness. Although electronic monitoring may be a more cost-effective solution to the management of sex offenders, and although there appear to be fewer collateral consequences compared with some other sex offender laws, the full benefits have yet to be demonstrated. That said, research here offers promise that electronic monitoring could serve as a useful tool in the community management of sex offenders. As with other sex offender policies, legal questions have centered on the retroactive application of electronic monitoring policies to offenders and the punitive nature of such laws. Should further research confirm that electronic monitoring has some benefit in reducing recidivistic sex crimes, this data would be helpful in addressing whether such laws meet community protection goals.

Summary and Future Directions

Our side-by-side review of sex offender legislation--and studies testing the assumptions that appear to underlie legislative policy choices--reveals that the approaches taken in legislation aimed at sex offender recidivism reduction find weak support in empirical evidence. Our concomitant review of judicial decisions interpreting sex offender legislation reveals a strong trend in both state and federal courts to find postconviction regulation of sex offenders by legislatures constitutionally permissible. Although courts have offered varying opinions on the specific reasoning for upholding the constitutionality of these regulations, a general theme of perceiving these laws as protective of the community, rather than punitive toward the offender, prevails over many of the court decisions. In essence, judicial rulings suggest sex offense legislation currently enacted is legal as long as it is related to the government's legitimate

interest in promoting public safety. Though the courts note that the policies are meant to be regulatory as opposed to retributive, it is notable that empirical data suggest punitive intent in the application of some policies (Carlsmith et al., 2007).

Even if the courts have seemingly given a general constitutional stamp of approval to most forms of extant sex offense legislation, the overarching question remains whether such legislation *should* be implemented in its current form. Given that the legal purpose of current sex offense statutory schemes places community protection as priority over retributive punishment, research data that confirms successful and effective prevention of sexual violence would support the use of such policies. Instead, research suggests that many of the current laws aimed at sex offending are questionable (at best) in making communities safer.

Nonetheless, there remains a lack of consensus from research as to what specific policies should replace the present legislative regime. General trends regarding possible alternatives exist (e.g., outpatient treatment), but these trends do not yet build to a specific approach that can be readily translated to legislative regulation. Although a majority of those labeled sex offenders are never arrested for another sex offense, public concern about sex offenders remains high (Bonnar-Kidd, 2010). Legislators are understandably loath to remain idle in the face of public concern over the perceived risk of sex offender recidivism (Hynes, 2013). As pointed out, there is no question that SVP commitment--by keeping possible reoffenders in custody--must necessarily reduce recidivism to some extent simply by eliminating all exposure to the public. But given the substantial massive individual liberty deprivation, the especially high costs of commitment policies, and what would likely be a very small impact on the overall sexual violence problem (Janus, 2003, 2006), the question becomes whether this and other legislative schemes we reviewed are reasonable. Less restrictive and less costly alternatives, such as electronic monitoring, more readily meet a reasonableness test, especially if preliminary empirical evidence continues to show that monitoring does actually serve the goal of community protection.

Were government budgets infinite, one might comfortably answer questions about reasonableness in the affirmative. In reality, however, budgets are effectively zero-sum--every dollar spent on housing a civilly committed offender, electronic monitoring, and administering and enforcing RCNLs is a dollar that is not spent somewhere else, whether on evidence-based treatment of sex offenders, primary prevention efforts, victim services, or research aimed at bettering secondary prevention efforts, including early identification of those who exhibit behaviors associated with sexual violence. Hypothetically, if the costs to enforce a RCNL were to reduce sexual violence at a significantly worse rate than would be the case if those monies were redistributed to prevention efforts, it would bring into question whether our communities would be safer if our approach to sexual violence prevention focused less on RCNLs and more on primary or secondary prevention. In fact, effective primary prevention strategies for sexual violence have been identified by the Centers for Disease Control and Prevention (DeGue et al., 2014). Although continued and rigorous evaluation of prevention initiatives is still needed (DeGue et al., 2012, 2014), and economic costs of these initiatives should be considered along-side their impact on rates of sexual violence in the community, available evidence suggests that these policies can more effectively reduce rates of sexual violence in our community, and at lower cost than more downstream approaches (i.e., criminal justice initiatives) to sexual violence.

Perhaps the most downstream approach is that of SVP commitment, which costs, on average, \$ 96,000 annually per offender ("Sex Offender Confinement," 2010), nearly 4 times that of general correctional costs, which average \$ 26,000 per offender per year (Gookin, 2007). Given these high costs, it has been argued that the cost-benefit ratio of SVP commitment is low and may divert taxpayer dollars from prevention or other more broad-based sex offender management schemes to the commitment of a relatively small group of high-risk offenders who may be responsible for a small fraction of the sexual violence problem (Gookin, 2007; [*458] Janus, 2003). This is to say nothing of the human cost of keeping some individuals in custody indefinitely, based upon a legal standard that does not require a diagnosis of any mental disorder before an offender is committed, instead settling for a more relaxed standard of mental abnormality or personality disorder.

Although current legislative approaches to sex offender recidivism reduction are of questionable value in terms of

evidence-based support, the imprimatur of the courts suggests that it is unlikely that the trend will reverse itself, at least in the absence of budgetary pressure. As a result, the need for research into empirically supported treatment options and prevention strategies could not be more pressing. Indeed, given that the large majority of sex offenses are committed by first-time offenders (Sandler et al., 2008), future research should be directed at development and testing of primary prevention policies to help curb the pool of new sexually violent offenders. It is clear that existing policies have, at best, limited effectiveness in reducing the overall problem of sexual violence; this is not surprising, given that most policy efforts have been directed, even if inadvertently, toward preventing the recidivistic "stranger danger" types of offenses that only represent a very small portion of the overall incidence of sexual violence. Still, we have little data that might inform the development of primary prevention policies. A recent report from the Centers for Disease Control and Prevention (DeGue et al., 2012) indicates that there is a serious gap in community-level strategies to prevent sexual violence. Future research should aim to gather data about community-level risk factors for sexual violence, or the characteristics of institutional or social settings that increase risk for victimization. (DeGue et al., 2012). This type of research can guide the development, and later testing, of primary prevention approaches that aim to stop sexual violence before it occurs. These approaches are likely to have a far broader impact on reducing rates of sexual violence than imposing a flood of postconviction sanctions. Indeed, shifting the dialogue from a focus on known sex offenders to the enactment of empirically based prevention policies will ultimately reduce the costs--both to individual victims and society--of sexual violence.

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