

# 2

## Legislative Origins, Reforms, and Future Directions

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**T**hroughout history, criminal laws have been created in order to control as well as to protect members of society. As public sentiment and the definitions of crime have changed throughout time, so too have the laws meant to control criminal behavior and alleviate some of the difficulties experienced by crime victims. Sexual victimization is one such category of crime that has been marked by drastic changes in public sentiment and legislation. These changes have affected not only the manner in which offenders are handled by the criminal justice system but the response to survivors of sexual victimization as well.

The purpose of this chapter is to provide a general overview of the development of legislative reform pertaining to rape and sexual victimization. In the United States, there have been two prominent avenues of reform: those aimed at revising rape statutes<sup>1</sup> and those aimed at controlling sex offenders. Therefore, this chapter begins by addressing the historical evolution of sexual-victimization legislation and the evolving legal definition of rape and sexual assault. The most influential legislative reforms regarding rape began in the 1970s and resulted in what is commonly referred to as the “rape reform movement.” Following a discussion of the rape reform movement, this chapter addresses legislative reform pertaining to the control of sex offenders—in particular, the sexual psychopath laws that developed in the early to mid-1900s and the sexually violent predator laws that evolved primarily in the 1990s. This chapter’s discussion of the historical evolution of these laws also touches on evaluations of their effectiveness.

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## The Emergence of Sex Crimes Legislation

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Dating back to the beginning of the social order, rape was viewed as a property crime. The Code of Hammurabi described rape as “the theft of virginity, an embezzlement of his daughter’s fair price on the market” (Brownmiller, 1975, p. 18). According to this ancient set of laws, rape was defined as an offense in which the theft of a woman’s virginity represented a crime against her father in that his daughter’s marketability had been devalued (Belknap, 2007; Pistono, 1988). Pursuant to this code, if an innocent virgin were raped, she was not culpable. However, if a married woman were raped, she was believed to have somehow precipitated the attack, and both the married rape victim and her rapist were bound and thrown into the river (Brownmiller). In ancient Hebrew culture, any woman who was raped was held responsible for contributing to the attack and was subsequently stoned to death at the side of her rapist (Pistono).

According to Brownmiller (1975), 10th-century English law reflected a similar sentiment regarding sex crimes. During this era, a man who raped a virgin was sentenced to death, and his land and money were given to the victim. Again, rape was viewed as a property crime contingent upon the victim’s virginity. However, the rapist could evade this punishment if his victim agreed to marry him. In fact, “bride capture” was a common practice in which a man raped a woman in order to declare her his property (Belknap, 2007). During this time, the issue of socioeconomic class was also apparent in several laws regarding sex crimes, as the punishment of death and dismemberment was only applicable “to the man who raped a highborn, propertied virgin who lived under the protection of a powerful lord” (Brownmiller, p. 24).

It was not until the 12th and 13th centuries that considerable advances were made in legislation regarding sex crimes (Pistono, 1988). The first advancement enabled a raped virgin to file a civil suit against her attacker, which resulted in a trial by jury (Brownmiller, 1975). Later, during the 13th century, the criminal definition of rape was expanded to include the rape of matrons, nuns, widows, concubines, and prostitutes, as well as the statutory rape of children. After hundreds of years of being viewed as a property crime, rape was finally considered a public safety issue in which survivors had some system of resources available to them (Brownmiller; Pistono). Though this era was marked by some advancement in terms of responding to sexual victimization, several significant changes affecting both sex offenders and survivors of sexual violence remained on the horizon.

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## Rape Statutes in the United States

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Early American rape statutes were heavily influenced by the English common-law definition of rape, which described the offense as “illicit carnal knowledge of a female by force and against her will” (Allison & Wrightsman, as cited in Reddington, 2009, p. 319). Common-law rape consisted of five elements that had to be proven

in a court of law: The act had to be criminal, involve carnal knowledge, victimize a woman, and be committed using force, and the force had to be against the will of the victim. Thus, under common law, the definition of rape was narrow and limited to sexual intercourse between a man and a woman (to the exclusion of spouses), and proving rape centered on the degree of resistance provided by the victim. Evidence of physical harm and corroboration of the victim's claim were requirements for the prosecution of rape offenses.

Legal statutes rooted in common law were the standard from 1642 through the mid-1900s, with the next attempt at modernization occurring in the publication of the Model Penal Code (MPC) in 1962. The MPC provided this revised definition of rape:

A male who has sexual intercourse with a female not his wife is guilty of rape if: (a) he compels her to submit by force or by threat of imminent death, serious bodily injury, extreme pain or kidnapping, to be inflicted on anyone; or (b) he has substantially impaired her power to appraise or control her conduct by administering or employing without her knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or (c) the female is unconscious; or (d) the female is less than 10 years old. (American Law Institute, 1962, p. 142)

The MPC's definition was a conservative revision of the common-law statute. It included a slightly expanded definition of rape and slightly reduced the burden of resistance, but it retained the corroboration requirement and the use of the victim's sexual past as evidence. Thus, the MPC statutes retained many of the elements that future reformers would aim to change (Seidman & Vickers, 2005). While the MPC's definition was adopted in some states, common-law statutes remained intact in the majority of states for another decade.

Rooted in concerns about increasing rates of rape and criticisms of traditional rape laws, reformers in the 1970s lobbied to revise the definition of rape and revise the procedures for handling rape cases, particularly in reference to victim treatment (Spohn, 1999). Women's groups, crime control advocates, and crime victim advocates came together in an effort to change rape laws (Futter & Mebane, 2001; Spohn). Commonly referred to as the "anti-sexual assault revolution" or the "rape reform movement," this effort led to pronounced growth and development in sexual assault legislation as well as victim services between 1970 and 2000. Rape statutes in every state were redrafted with a variety of goals, including improving the experiences of rape victims with the criminal justice system, increasing the likelihood of reporting, deterring the commission of rape, and increasing prosecution and conviction rates (Seidman & Vickers, 2005; Spohn). Some state legislatures adopted completely revised rape statutes that addressed all areas of reform, while others adopted piecemeal changes. The result was that specific reforms varied greatly across states. As Dripps (2010) stated, "The United States thus does not have a single set of rape laws or a single system for enforcement, but instead 51 different rape statutes and 51 different procedural systems" (p. 224).

In spite of this variation, several changes that are reflective of reformers' goals have been widely adopted in some form. These goals centered on enacting change in four areas: (1) redefining the offense of rape, (2) changing the evidentiary rules, (3) addressing the statutory age of consent, and (4) creating a penalty structure (Berger, Seals, & Neuman, 1988; Futter & Mebane, 2001). Each area of reform resulted in several legislative changes, summarized below.

### *DEFINITIONAL REFORMS*

Under common law and the MPC definitions, the act of rape required nonconsensual penile–vaginal intercourse between a man and a woman who were not married. This definition excluded the rape of men, rape committed by women, and the rape of spouses, as well as oral assaults, anal assaults, and assaults conducted with objects (Spohn, 1999). Therefore, the primary goal of definitional reforms was to broaden the acts and circumstances that constituted the crime of rape. Through reform efforts, the majority of legal statutes became sex neutral, no longer excluding males from victim status or females from perpetrator status. The marital exception to rape was eliminated in all states, but not without controversy and resistance (Reddington, 2009).

A third definitional reform had to do with the term *rape* itself. Feminist reformers argued that changing the terminology to reflect the violent, assaultive nature of the crime over the sexual component was crucial to defining and treating the act appropriately (and to move away from historical images associated with *rape*; Berger et al., 1988). Furthermore, using different terms assisted in broadening the definition to include acts other than penile-vaginal penetration (Berger et al.). Many revised statutes removed *rape* verbiage and replaced it with terms such as *sexual assault* or *sexual battery*. States that retained the offense term *rape* added additional offenses, such as *sodomy*, to distinguish between different forms of sexual assault (Futter & Mebane, 2001).

Accompanying changes in terminology was the establishment of graded sexual offense definitions that recognized variation in assaults (e.g., the use of a weapon, the amount of coercion, and the degree of injury; Berger et al., 1988; Spohn, 1999). This led to a distinction between simple and aggravated sexual assault, in a similar manner to nonsexual assault, and a definition of degrees of sexual assault. Emphasis on describing a continuum of offenses was also intended to eliminate consent language by defining the circumstances under which consent would be inherently absent (e.g., in the presence of a weapon; Berger et al.). The primary goal of minimizing consent language was to limit the use of a consent defense that might be based upon arguments that the victim did not resist or did not resist enough. Consent and resistance issues were also addressed through evidentiary reforms.

### *EVIDENTIARY REFORMS*

For reformers, the rules of evidence in rape cases raised numerous concerns, including the emphasis on victims in order to prove consent, resistance

requirements for victims, corroboration requirements, and cautionary jury instructions. Certain definitional reforms mentioned above were aimed at minimizing consent language and, by extension, the use of consent as a defense (Berger et al., 1988). Rape trials commonly included extensive discussion of the victim's character, past sexual history, chastity, dress, and/or recreational activities, all commonly intended to suggest that the victim was likely to have consented or that consent was at least possible. Reformers were concerned that, aside from being improper, scrutiny of the victim was also reducing the willingness of victims to report rape offenses (Reddington, 2009).

Addressing this issue led to the development of "rape shield" laws. Rape shield laws placed restrictions on the admissibility of the victim's sexual history and personal life (Reddington; Spohn, 1999). Among the most prominently discussed reforms of this era, the enactment of these laws has been championed as a success for victim's rights, but it has also been criticized by legal scholars who argue that the laws erode the defendant's rights to due process (see Klein, 2008). In part due to this debate, rape shield laws vary greatly across the states. Some states do not allow any discussion of prior sexual history, while other states allow discussion under certain circumstances (e.g., to illustrate that the victim and defendant had prior consensual sexual contact; Futter & Mebane, 2001; Klein).

By meeting the requirement to resist, presumably physically, rape victims were supposedly proving non-consent. Thus, in conjunction with minimizing consent language and revising evidentiary rules pertaining to discussion of the victim's sexual history, reforms addressed the requirement to show resistance/non-consent (Reddington, 2009). Initially, the "utmost" resistance requirement of common law was replaced by a "reasonable" resistance standard (Reddington). The requirement to display physical resistance was relaxed even further in some states and was removed from the definition or explicitly not required in others (Dripps, 2010; Spohn, 1999). In some states that retained a more serious offense with a resistance requirement, a non-consent rape without physical resistance was included as a lesser offense (Dripps).

In addition to resisting the attack, rape victims historically had to provide corroborating evidence that the attack had occurred. The inclusion of a corroboration requirement reflected long-held beliefs about the propensity for women to lie about rape experiences, using them as a means to explain pregnancies or sexually transmitted diseases resulting from a consensual affair or as a reaction to regretted sexual encounters (Futter & Mebane, 2001; Spohn, 1999). However, research on false reporting has consistently indicated that few women lie about rape experiences. For example, Lonsway, Archambault, and Lisak (2009) analyzed 2,059 rape cases from eight U.S. communities and found that only 7% were classified as false reports. Beyond evidence that false reporting is uncommon, the corroboration requirement was often difficult to meet because rapes tend to occur in private settings. The impact of the corroboration requirement in practice was a reduction in the number of prosecutions (Reddington, 2009). Over time, however, all states that required corroboration eliminated the requirement from their statutes (Reddington).

Finally, evidentiary reforms also aimed to address the implementation of cautionary jury instructions unique to rape trials. These instructions often reminded the jury of the difficulty of both proving and defending rape charges and were therefore prejudicial against the victim (Reddington, 2009). While the elimination of these jury instructions was one of the slower changes to take place, all states have now eliminated them through law or practice (Futter & Mebane, 2001; Reddington). In sum, evidentiary reforms were meant to eliminate differences in the rules of evidence between rape trials and all other types of violent crime trials.

### *AGE REFORMS*

Age-related reforms were made in an attempt to allow sexual activity among consenting teenagers while still protecting children (Berger et al., 1988; Futter & Mebane, 2001). Statutory rape laws were revised in many states, leading to the establishment of specific age differentials required for statutory rape charges. For example, some states created a graded offense scale with harsher penalties for the statutory rape of younger victims and less harsh penalties for the statutory rape of older teenagers still below the age of consent (Berger et al.). In addition, age reforms led to the elimination of the mistake-of-age defense in most states, though some jurisdictions retain a reasonable-mistake defense applied to questions of age and consent (Dripps, 2010; Futter & Mebane).

### *PENALTY REFORMS*

The fourth primary area of reform addresses the punishments for rape. A vestige of the historical treatment of rape as a serious property crime remained evident in the penalties for rape prior to the 1970s, which included the death penalty in many states. In 1977, the Supreme Court ruled in *Coker v. Georgia* that the death penalty was unconstitutional for the offense of rape. Even with the death penalty off the table, there was much debate about how to reform the penalty structure for rape and for the newly developing sexual assault and battery offenses (Berger et al., 1988). Some reformers were concerned that severe punishments might reduce a jury's willingness to convict the offender (Berger et al.). Other reformers were concerned that reducing the penalties would send the message that rape was not a serious offense. In an attempt to find middle ground, most states enacted legislation that both reduced penalties for sexual assault offenses while also establishing mandatory minimums (Futter & Mebane, 2001; Spohn, 1999).

These reforms (definitional, evidentiary, age, and penalty) were intended to have instrumental and symbolic impacts on the handling and treatment of rape cases (Bachman & Paternoster, 1993; Spohn & Horney, 1992). In terms of instrumental impacts, reforms were intended to increase reporting by victims, increase prosecutions, and increase convictions (Reddington, 2009). While evaluations have been somewhat limited, those that have been conducted indicate mixed results but have generally found little evidence of effects on case outcomes (Bachman &

Paternoster; Marsh, Geist, & Caplan, 1982; Reddington; Spohn, 1999; Spohn & Horney). However, some studies have found that criminal justice actors view legal changes favorably, leading Spohn (1999) to conclude that “passage of the reforms sent an important symbolic message regarding the seriousness of rape cases and the treatment of rape victims. In the long run, this symbolic message may be more important than the instrumental change that was anticipated” (pp. 129–130).

## Legislative Reforms and the Sex Offender

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While many reforms in the late 20th century emphasized changing the handling of rape cases and the treatment of the victims, legal reforms have also been directed at offenders. Two prominent sets of legal reforms are sexual psychopath laws and sexually violent predator (SVP) laws. Sexual psychopath laws were introduced in the early to mid-1900s, predating the rape reform movement. In comparison, many SVP laws were enacted in the 1990s, coming on the heels of crime control demands in response to rising violent crime from the late 1980s through the early 1990s. These laws have influenced the handling of sexual assault cases and led to the creation of punishment outcomes unique to sex crimes. Whereas the driving force behind the rape reform movement was an attempt to acknowledge the victimization experience of rape and the unique, often negative, treatment of (adult) rape victims by the criminal justice system, public outcry regarding the sexual abuse of children was the driving force behind the development of sexual psychopath and SVP laws.

### *SEXUAL PSYCHOPATH LAWS*

During the 20th century, sex crimes legislation in the United States was marked by three periods of moral panic that resulted from a number of highly publicized cases of child sexual abuse (Tonry, 2004). Of particular relevance to this discussion is the second period of moral panic, which began in the late 1930s and resulted in the enactment of sexual psychopath laws in 26 states (Tonry). These laws, enacted between 1937 and 1960, were intended to protect children from uncontrollable sexual psychopaths (Pratt, 1998; Sutherland, 1950). Similar laws were enacted by Canada, New Zealand, and Australia throughout the 1940s (Pratt). The belief was that sex crimes were increasing at a rate faster than that of any other type of crime (Sutherland).

The main provision in this legislation was the involuntary commitment of the “sexual psychopath” to a mental health facility until such time that his “malady” had been cured (Reinhardt & Fisher, 1949; Sutherland, 1950). In the District of Columbia, for example, a sexual psychopath was defined as follows:

any person, not insane, who by course of repeated misconduct in sexual matters has evidenced such lack of power to control his sexual impulses as to be dangerous

to other persons because he is likely to attack or otherwise inflict injury, loss, pain, or other evil on the objects of his desire. (Reinhardt & Fisher, p. 737)

Similar verbiage was utilized in other states to define sexual psychopaths (Reinhardt & Fisher, 1949). As can be seen in the definition above, these laws directly targeted males and suggested that all sex offenders were dangerous, uncontrollable predators. In most jurisdictions, qualified experts (e.g., psychiatrists) performed the diagnosis (Reinhardt & Fisher; Sutherland, 1950). However, it is important to note that assessments of sexual psychopathy during this time were based on the subjective opinions of mental health professionals, not the empirically tested instruments available today (e.g., Psychopathy Checklist [PCL-R]; Static-99). Moreover, the definition of sexual psychopath used in many states suggested that any offender who committed more than one serious sex crime was a mentally ill person eligible for commitment to a mental health facility (Sutherland). The presence of this sentiment in sex crimes legislation became apparent in civil-commitment statutes enacted several decades later.

### *SEXUALLY VIOLENT PREDATOR LAWS*

During the latter half of the 20th century, another set of laws targeting sex offenders—commonly referred to as sexually violent predator (SVP) laws—were enacted in the United States. In large part, the impetus for these laws can be traced to a number of horrific sex crimes involving children (e.g., Polly Klaas) and the ensuing public outcry to protect society's most vulnerable members. Although these laws were perceived to be innovative responses to sexual victimization, many states had had similar laws in force for several years (Levenson, 2003). Thus, it is possible that this legislation was primarily symbolic rather than evidence based (Brown, 2009; Harris & Lurigio, 2010). In fact, although the perception was that sex crimes rates were on the rise in the United States, several data sources reveal that sex crimes rates were decreasing during this time and have continued that downward trend since (BJS, 2012; FBI, 2011). It is important to note, however, that underreporting of crimes is endemic and that sexual offenses are one of the most consistently and grossly underreported crimes (BJS, 2003).

The first of the federal SVP laws was the Jacob Wetterling Act of 1994, which was enacted in response to the kidnapping of 11-year-old Jacob Wetterling (Levenson, 2003). Although Jacob was never found, the similarity of his abduction to the case of a boy who was abducted and sexually assaulted in a neighboring town led to the assumption that Jacob was a victim of the same offender (Sample & Bray, 2003). This act mandated that law enforcement in all states create sex offender registries to monitor the whereabouts of released sex offenders (Levenson). All individuals convicted of a qualifying sexual offense—the definition of which varies by state—are required to register with their local law enforcement agency within a specified number of days following their release (Scholle, 2000). Offenders are typically required to provide their name, address, date of birth, Social Security number, photograph, fingerprints, and (in some states) a DNA sample (Scholle). In addition,

they are required to update the information as needed throughout the duration of registration, which typically ranges from 10 years to lifetime (Scholle).

Although the Jacob Wetterling Act was initially intended to protect children from predatory, repeat sex offenders, all individuals convicted of a qualifying sexual offense are now required to register regardless of risk assessment (Levenson, 2003). It could be surmised that requiring such a large portion of sex offenders to register contributes to the perception that all sex offenders are highly recidivistic, untreatable predators who prey on children (Levenson; Quinn, Forsyth, & Mullen-Quinn, 2004; Sample & Bray, 2003). On the contrary, empirical evidence suggests that sex offenders are not a homogeneous group (CSOM, 2001). That is, assumptions made about “sex offenders” as a whole are not necessarily accurate and are often based primarily on the characteristics of the highest-risk offenders (Quinn et al., 2004). It is also important to note that no other group of offenders, including convicted murderers, is subjected to monitoring of this caliber (Sample & Bray). As such, this legislation suggests that convicted sex offenders are more dangerous than any other type of offender. It also suggests that known sex offenders represent the greatest risk when, in fact, statistics show that perpetrators are more likely to be first-time offenders than be listed on the registry (Craun, Simmons, & Reeves, 2011; Quinn et al., 2004).

The second SVP legislation, an amendment to the Jacob Wetterling Act often referred to as “Megan’s Law,” was enacted in 1996 in response to the rape and murder of 7-year-old Megan Kanka by a convicted sex offender living near her home (Scholle, 2000). Megan’s Law required all states to develop a notification policy to alert the community of sex offenders living in the area, and it offered states financial incentives for compliance (Levenson, 2003). In fact, a state’s failure to develop registration and notification policies resulted in a 10% decrease in federal crime funds (Wright, 2003). As with registration policies, notification practices vary by state and can include flyers, phone calls, door-to-door notification, neighborhood meetings, or an online database (Levenson). In some states, the community is notified of all sex offenders in the area, while in others, notification is required only for high-risk offenders (ATSA, 2008).

In addition to registration and community notification legislation, several states enacted civil commitment statutes for sex offenders in the early 1990s, although similar provisions (as discussed above) had been enacted under the sexual psychopath laws in many states decades prior. Current civil commitment policy involves the involuntary, potentially indefinite confinement of sexually violent predators in a psychiatric facility following their release from prison (Levenson, 2003). *Sexually violent predator* is a legal term encompassing dangerous offenders who are likely to recidivate. Once again, the definition of a sexually violent predator and the eligibility requirements for civil commitment vary by state. It is important to note that one of the main differences between the sexual psychopath laws of the early 20th century and the SVP laws is the point at which they impose civil commitment. The sexual psychopath laws imposed commitment in lieu of a criminal sentence, while current legislation imposes commitment after the sentence has been served (Levenson; Reinhardt & Fisher, 1949; Sutherland, 1950).

Residency restrictions for sex offenders have also been implemented in several states to promote public safety (Cohen & Jeglic, 2007). These policies prohibit convicted sex offenders from being within a certain number of feet of schools or day care centers. Offenders are not permitted to live, work, or set foot within these boundaries. It is important to note, however, that such restrictions have been shown to adversely affect offenders' ability to gain employment and reintegrate into society (Willis, Levenson, & Ward, 2010). For instance, in a recent study of sex offender reintegration, Brown, Spencer, and Deakin (2007) found that sex offenders have even more difficulty reintegrating into society and gaining employment than other offenders because of the negative stigma associated with sexual offending. Interviews with employers confirmed this, as more than half indicated they would not employ a convicted sex offender. As such, residency restrictions seem to exacerbate the myriad reintegration barriers that already exist for sex offenders, thus potentially contributing to recidivism and further sexual victimization.

While the bulk of sex offender management legislation was passed in the 1990s, additional legislation continues to appear. For example, in 2006, the Adam Walsh Child Protection and Safety Act (AWA) introduced federal standards to regulate state registration and notification programs and made the failure to register as a sex offender a federal offense (Harris, Lobanov-Robansky, & Levenson, 2010). However, researchers have discovered that the new classification rules under this legislation have elevated many offenders previously assessed as low risk to a high-risk classification. This has the potential to affect the criminal justice agents charged with monitoring sex offenders in their jurisdiction, most notably by giving them increased caseloads that could make it more difficult for them to monitor dangerous offenders.

In terms of public opinion regarding SVP laws, researchers generally find strong support (Kernsmith, Craun, & Foster, 2009; Mears, Mancini, Gertz, & Bratton, 2008; Phillips, 1998; Willis et al., 2010). A number of researchers have also examined the extent to which these laws have reduced sex offender recidivism. In 2010, Zandbergen, Levenson, and Hart examined the impact of sex offender residency restrictions in Florida. Their findings indicated that proximity to schools or day care centers had no effect on sexual recidivism. Tewksbury and Jennings (2010) examined sex offender recidivism in Iowa before and after the passage of sex offender management policies, and they found no effect. Similarly, Letourneau, Levenson, Bandyopadhyay, Armstrong, and Sinha (2010) assessed the impact of sex offender registration and community notification in South Carolina. Registration laws were found to exert a general deterrent effect for first-time offenders only, while notification laws had no effect. Although additional policy evaluations are warranted to examine the effectiveness of this type of legislation, the aforementioned studies suggest it may not serve its intended purpose.

The SVP laws have also been criticized for the messages they convey to the public. Since the focus is on convicted offenders (i.e., those known to authorities), SVP laws suggest that detected sex offenders are more dangerous than undetected offenders, which is not necessarily accurate (Wright, 2003). The net-widening effect that has occurred in recent years has also been a source of contention because

it affirms the myth that all sex offenders are equally dangerous, thus diverting attention away from the high-risk sex offenders who should be more closely monitored (ATSA, 2008). Another criticism of this type of legislation is that it obscures the fact that most offenders are known to their victims (Wright). Despite these criticisms, SVP laws seem to make the public feel safer. However, many have argued that this is a false sense of security that masks the fact that the majority of perpetrators are first-time offenders (i.e., not on the registry) who are known to their victims (Quinn et al., 2004). Protecting society from victimization is undoubtedly a laudable goal. However, when the assumptions upon which these protective behaviors are based are inaccurate, the results are unlikely to do much in the way of reducing sexual victimization.

### PUNISHMENT

In addition to the management of sex offenders in the community, several laws have been enacted to increase the severity of punishment for convicted sex offenders. Despite the Supreme Court's ruling in *Coker v. Georgia* (1977) regarding the use of capital punishment for the crime of rape, several states expanded their use of the death penalty in the 1990s to include offenders convicted of child rape (Mancini & Mears, 2010). This legislation was considered drastic by many since the use of the death penalty has typically been reserved for convicted murderers. Nevertheless, a 1997 CNN poll found that 47% of the public supported the use of the death penalty for rapists and that 65% supported it for child molesters. However, following the case of *Kennedy v. Louisiana* (2008)—in which the defendant was convicted of raping an 8-year-old girl—the U.S. Supreme Court ruled that the imposition of the death penalty for cases of child rape not involving murder violates the Eighth Amendment.

Another method of punishment for sex offenders, the use of which dates back to the Middle Ages, is surgical castration. According to Weinberger, Sreenivasan, Garrick, and Osran (2005), surgical castration was legalized in many European countries during the beginning of the 20th century because it was believed to reduce the sexual urges that lead to criminal sexual behavior. Between 1934 and 1944, approximately 2,800 castrations were performed in Germany as a result of the Nazi German Act of 1933, which allowed for the involuntary castration of sex offenders. Similarly, in Denmark, approximately 1,100 sex offenders were castrated between 1929 and 1973 in an effort to protect society from recidivist rapists. While surgical castration was also used for sex offenders in the United States at the beginning of the 20th century, its legality came under scrutiny in the case of *Weems v. United States* (1910), in which the Supreme Court held that castration was a “barbaric” punishment (Miller, 2008, p. 179). Likewise, in the case of *State v. Brown* (1985), the South Carolina Supreme Court referred to surgical castration as cruel and unusual punishment as outlined in the Eighth Amendment.

Though surgical castration is rarely used as a modern-day punishment for sex offenders, the use of chemical castration began to gain popularity in the 20th century. The procedure involves periodic injections of a female contraceptive

(e.g., Depo-Provera), which is believed to reduce sexual urges in males by lowering testosterone levels (Meisenkothen, 1999). This form of punishment, which is also considered treatment, was first legalized in the United States in California in 1996 for all paroled two-time sex offenders. Similar legislation was later passed in several other states (Miller, 2008). Critics of chemical castration argue its unconstitutionality, most notably in reference to First and Eighth Amendment protections. A handful of studies have been conducted to examine the effectiveness of reducing sex offender recidivism via this treatment. The findings often appear promising, though many of the studies are plagued by methodological issues, most notably small sample sizes (Kutcher, 2010; Miller). Nevertheless, many argue that chemical castration is a more cost-effective and possibly more humane method of dealing with repeat sex offenders than incarceration (Harrison, 2007; Meisenkothen). It is important to note that chemical castration has been found to be useful primarily among male paraphiliacs, who are those plagued by uncontrollable fantasies and urges. As such, sex offenders who are motivated by power and control, anger, or violence or who are female may not be affected by this treatment.

## Conclusion

Legislative responses to sexual victimization have been present in society for millennia. Though the specific provisions of these responses have varied considerably over time and by location, it is clear that sexual victimization has been a prominent focus of societal concern, legislative action, and criminal justice system response. As discussed in the previous sections, the United States has experienced a rape reform revolution since the 1970s, resulting in substantial changes to the definition of rape and the handling of rape cases in the criminal justice system (Spohn, 1999). While many of these changes have been heralded as successful reforms, they have also been met with varying degrees of resistance and skepticism, particularly regarding the balance between victim and offender rights (Klein, 2008). A similar dichotomy in opinion has characterized discussion of sex offender laws. The most recent legislation in the United States targeting offenders who sexually victimize others is the conglomeration of SVP laws that emerged in the 1990s. These laws include sex offender registration and notification, and in many states, they include residency restrictions and civil commitment statutes as well. Historically, these laws are arguably the most stringent in terms of the management of sex offenders in the community. Individuals convicted of a qualifying sexual offense must remain on the registry for a considerable amount of time, their names and addresses are made available to the public, and some may be confined indefinitely after serving their sentence. It could be surmised that society and legislators alike have progressed to a veritable war on sex offenders akin to the war on crime in the 1960s and the war on drugs in the 1980s.

Sexual victimization is a serious offense deserving of appropriately serious treatment and response. Survivors of sexual victimization often experience

extensive trauma such as physical injury, psychological difficulties, and rape trauma syndrome. Thus, a swift and appropriate response from the criminal justice system is indeed warranted to punish the offender, provide support for the victim, and protect society from future victimization. Theoretically, rape reform legislation and the SVP laws were enacted to meet some of these ends. As discussed previously, rape reform may have had a more symbolic impact than an instrumental one. Seidman and Vickers (2005) asserted that for rape law reform to progress and have its desired outcomes, reformers' focus must broaden to the treatment of victims beyond the criminal justice system. In particular, the accessibility of civil remedies must improve and should perhaps be disentangled from the criminal justice system.

The 1994 Violence Against Women Act (VAWA) was the first legislation that attempted to provide a civil rights remedy for victims of domestic and sexual violence (Goldscheid, 2005). Specifically, the VAWA provided women with the civil right to be protected from crimes of violence based on their gender and provided female victims of gender-motivated sexual assaults with access to a civil cause of action in federal courts (Goldscheid; Reddington, 2009). However, the civil rights provision of the 1994 VAWA was declared unconstitutional by the Supreme Court in *United States v. Morrison* (2000). In response to this decision, many states passed their own civil rights provisions for victims of domestic and sexual violence. The provision of the VAWA and the influence it has had on state legislation is one example of broadening the focus of reforms beyond procedural criminal justice reforms.

In addition to reforms that move beyond the criminal justice system, criminal justice reforms have been broadened through federal legislation. Examples of such reforms include the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990 (Clery Act), the Cruise Vessel Security and Safety Act of 2010 (CVSSA), the Debbie Smith Act of 2004, and the Sexual Assault Forensic Evidence Reporting Act (SAFER Act) of 2013. While these acts address crime victims and services in a variety of ways, each contains provisions directed at sexual assault victims in particular. The Clery Act, originally signed into law in 1990 and amended several times since, is intended to provide protections for crime victims on college campuses. In particular, the act has been amended to include basic rights for campus sexual assault victims, protection for victims from retaliation, and provisions for registered sex offender notification (Clery Center for Security on Campus, 2012a, 2012b). Also extending recognition to a specific group of potential victims, the CVSSA of 2010 aimed to improve the safety and security of passengers aboard cruise ships and included emphasis on ensuring availability of resources for sexual assault victims. The Debbie Smith Act, originally passed in 2004 and reauthorized in 2008, provides funding for grant programs specifically aimed at processing rape kits and DNA evidence associated with sexual victimizations (Debbie Smith Reauthorization Act, 2008; RAINN, 2009). The provisions of the SAFER Act (passed as a component of the reauthorization of the VAWA in 2013) authorize the Attorney General to make Debbie Smith grants to state and/or local governments to assist in auditing sexual assault evidence backlogs and to

ensure appropriate and timely processing of DNA evidence (SAFER Act, 2013; Violence Against Women Reauthorization Act, 2013).

The aforementioned legislative reforms illustrate new and continued efforts to develop methods and resources for combating rape and sexual assault. Acts such as Clery and CVSSA illustrate recognition of vulnerable populations (e.g. college students, cruise passengers), while acts such as Debbie Smith and SAFER emphasize the importance of funding forensic science in an effort to assist in apprehending and convicting sex offenders. While the tangible impact of federal legislation requires additional and continued evaluation, reforms such as these have kept rape and sexual assault on the national agenda.

In regard to SVP laws, the majority of research on public opinion finds strong support, yet empirical evidence suggests that SVP laws may not be achieving their main goal of reducing sex offender recidivism and sexual victimization. What's more, although they seem to make much of society feel safer, these laws appear to promote a number of misconceptions regarding sexual victimization risk. One of the most damaging of these is the misconception that sex offenders on the registry pose the greatest risk. Empirical evidence suggests not only that first-time offenders (i.e., offenders not known to authorities) pose the greatest risk, but that 80% to 90% of sexually abused children are molested by a friend or family member and more than 75% of adult rape/sexual assault survivors are victimized by someone with whom they had a previous relationship (ATSA, 2008; CSOM, 2000).

Overall, in terms of what is known about sexual victimization, more effective, evidence-based responses than those currently in place may be in order. These could include educating the public about how to best protect themselves and their loved ones from sexual victimization, encouraging reporting to police, streamlining civil resources (e.g., victim compensation), reserving registry and community notification for high-risk offenders, and improving reintegration and treatment programs for convicted sex offenders. Furthermore, continued evaluation of the instrumental impacts of rape legislation is needed to bridge the gap between symbolic outcomes and instrumental ones. Based on the fervor with which sexual victimization has been regarded throughout history, (a) legislation pertaining to rape and sexual assault should benefit from continued evaluations of existing reforms, as well as from consideration of non-criminal justice remedies that may increase the success of enacted legislative reform, and (b) legislation pertaining to the treatment of offenders should be firmly based on empirical evidence to effectively address and, ideally, reduce the occurrence of sexual victimization.

## Discussion Questions

1. The common-law definition of rape consisted of five elements. List these five elements and describe how they have evolved since the 1970s. What future reforms, if any, should legislators consider?

2. One of the overarching, and often difficult, goals of criminal justice is to balance the rights of offenders (i.e., due process) with the goal of protecting society from victimization (i.e., crime control). Do you believe the sexually violent predator (SVP) laws achieve this balance? Why or why not?
3. Some reformers have argued for changing the term *rape* in legal statutes to *sexual assault* or *sexual battery*. Do your home state's legal statutes use the term *rape*, or has the verbiage changed to *sexual battery*, *sexual assault*, or something else? What is the definition of rape, sexual assault, and/or sexual battery used in your home state? What types of SVP laws are in your state's legal statutes?
4. Overall, do you think that rape reforms have had a more instrumental or symbolic impact? Why? What about SVP laws? Why?
5. Reformers have suggested that efforts need to reach beyond the criminal justice system. For example, civil remedies have been suggested as an alternative, or in addition to, criminal justice processes. Develop one or two additional alternatives (beyond direct criminal justice system responses and civil remedies) that could assist in reforming the handling and treatment of sexual assault cases, their victims, and/or perpetrators.

## Note

1. By *rape statutes*, we mean those laws that define and criminalize the acts that legally constitute "rape." In general, discussion of rape statutes and legislative change has centered on the victims. In fact, the impetus for reforming rape laws was the desire to change the status quo of rape trials, which focused more on the victim and the victim's behavior than on the defendant (Spohn & Horney, 1992).

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