AN EMPIRICAL ANALYSIS OF CALIFORNIA ASSEMBLY BILL 488: ACCESS TO INFORMATION ON REGISTERED SEX OFFENDERS OVER THE INTERNET REDUCES RECIDIVISM

William Encinosa*
Michael Roussis**

Abstract

In September of 2004, California enacted an amendment that enlarged the breadth of the state’s version of Megan’s Law, the universal name for any statute requiring sex offenders to register with their local community upon release from prison.1 This amendment, Assembly Bill 488, mandated the development of a website under the California Department of Justice so the public could search for sex offenders in any community, thereby increasing transparency regarding sex offender registration.2 After the passage of California Assembly Bill 488 in 2004,3 we estimate, using multivariate analyses on all arrests in California from 2001 to 2008, that the rate of four-year recidivism with regard to sex crimes in California dropped 30%, from 15.5% to 10.9%.4 Moreover, the probability that a repeat sex offense involved rape declined from 21% to 16%, and the probability that a repeat sex crime was a felonious crime against a child declined from 46.5% to 26.4%.5 Consequently, Assembly Bill 488 reduced the recidivism rate and the severity of repeat sex crimes; these results indicate that California’s amendment increasing public access to sex offender information over the Internet

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** Michael Roussis, J.D., cum laude, Georgetown University Law Center, 2011; M.P.P., Georgetown Public Policy Institute, 2011; B.S., University of Virginia, 2006. The authors would like to thank the California Department of Justice for providing their Offender-Based Transaction Statistics Report File.
1 See CAL. PENAL CODE § 290.46 (West 2004).
2 See id. § 290.46(a)(1).
3 Id. § 290.46.
4 See infra Part IV.
5 See infra Part IV.
has had a deterrent effect on convicted sex offenders.\textsuperscript{6} However, the odds of a sex offender failing to register updates rose by 5% after the Bill, indicating a need to keep the website’s information current.\textsuperscript{7}

\textbf{Table of Contents}

I. \textbf{Introduction} ................................................................. 431
   A. \textit{Background on Sex Offender Registration} .............. 431
   B. \textit{Sex Offender Registration and the Ex Post Facto Clause} ................................................. 432
   C. \textit{Recent Developments in the Case Law} ............... 434
      1. \textit{United States v. Juvenile Male} ................. 434
      2. \textit{Carr v. United States} ........................... 436
      3. \textit{Exile v. Miami-Dade County} .................... 437
   D. \textit{Statute for Analysis: California Assembly Bill 488} .................................................. 439

II. \textbf{Prior Empirical Research} .............................................. 443
   A. \textit{The Seminal Study} .................................. 443
   B. \textit{Recent Research} .................................... 444
   C. \textit{Difference Between Prior Research and This Article} .................................................. 445

III. \textbf{Method of Quantitative Analysis} ................................. 445
   A. \textit{Description of Data} ................................ 445
   B. \textit{Relevant Variables} .................................. 446
   C. \textit{Quantitative Analysis} ................................ 446

IV. \textbf{Results and Discussion} ................................................. 448

V. \textbf{Conclusion} ................................................................. 449

VI. \textbf{Appendix 1} ............................................................... 451

VII. \textbf{Appendix 2} ............................................................... 452

\textsuperscript{6} \textit{See infra} Part IV.
\textsuperscript{7} \textit{See infra} Part IV.
I. INTRODUCTION

A. Background on Sex Offender Registration

To Catch a Predator is a television show featuring hidden-camera investigations devoted to identifying individuals who contact people whom they believe to be below the age of consent for purposes of engaging in sexual liaisons.\(^8\) This television show, as well as the numerous recent sex scandals involving the Catholic Church,\(^9\) are only a couple of recent phenomena that demonstrate the prevalence of sex crimes in our modern world. “Sex offender policies have been high on state legislative agendas” following the pervasiveness of sex-based offenses in recent years.\(^10\) Due to their heinous nature, society views sex crimes as a distinct category of offenses.\(^11\) This is shown to be true, for example, in the Federal Rules of Evidence. Prior instances of misconduct are generally not admissible to prove a defendant’s guilt,\(^12\) unless the defense “opens the door”\(^13\) to such evidence or the evidence is used for the limited purpose of impeachment.\(^14\) The prohibition on the circumstantial use of character evidence is justified on the basis that al-

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\(^11\) See, e.g., FED. R. EVID. 413 (“[E]vidence of the defendant’s commission of another offense or offenses of sexual assault is admissible, and may be considered for its bearing on any matter to which it is relevant.”).

\(^12\) See FED. R. EVID. 404(d) (“Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.”).

\(^13\) See Michelson v. United States, 335 U.S. 469, 479 (1948) (“The price a defendant must pay for attempting to prove his good name is to throw open the entire subject which the law has kept closed for his benefit and to make himself vulnerable where the law otherwise shields him.”).

\(^14\) See, e.g., FED. R. EVID. 608, 609.
though likely relevant, it poses a great risk of prejudice, confusion, and delay.\textsuperscript{15}

However, the Federal Rules of Evidence make an exception for cases involving sex offenses.\textsuperscript{16} More specifically, “In a criminal case in which the defendant is accused of an offense of sexual assault, evidence of the defendant’s commission of another offense or offenses of sexual assault is admissible, and may be considered for its bearing on any matter to which it is relevant.”\textsuperscript{17} The Federal Rules of Evidence treat sex offenses differently from other forms of misconduct because of the robust “public interest in admitting all significant evidence of guilt in sex offense cases.”\textsuperscript{18} Factors contributing to this intense public interest include:

[T]he typically secretive nature of such crimes, and resulting lack of neutral witnesses in most cases; the difficulty of stopping rapists and child molesters because of the reluctance of many victims to report the crime or testify; and the gravity of the danger to the public if a rapist or child molester remains at large.\textsuperscript{19}

\textbf{B. Sex Offender Registration and the Ex Post Facto Clause}

In \textit{Smith v. Doe}, the Supreme Court of the United States held that Alaska’s version of Megan’s Law, which required that sex offenders register even if they were convicted before the date of legislation, did not violate the Ex Post Facto Clause because the statute was civil,

\footnotesize
\begin{itemize}
\item \textsuperscript{15} See Michelson, 335 U.S. at 476 (“The overriding policy of excluding such evidence, despite its admitted probative value, is the practical experience that its disallowance tends to prevent confusion of the issues, unfair surprise and undue prejudice.”); see also Fed. R. Evid. 403.
\item \textsuperscript{16} See Fed. R. Evid. 413.
\item \textsuperscript{17} Fed. R. Evid. 413(a); see also Fed. R. Evid. 414(a) (“In a criminal case in which the defendant is accused of an offense of child molestation, evidence of the defendant’s commission of another offense or offenses of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant.”).
\item \textsuperscript{18} David J. Karp, \textit{Evidence of Propensity and Probability in Sex Offense Cases and Other Cases}, 70 Chi.-Kent. L. Rev. 15, 20 (1994).
\item \textsuperscript{19} Id. at 20-21.
\end{itemize}
rather than criminal in nature. 20 Earlier, in United States v. L.O. Ward, the Court explained its methodological approach for determining whether a statutory penalty is civil or criminal:

Our inquiry in this regard has traditionally proceeded on two levels. First, we have set out to determine whether Congress, in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other. Second, where Congress has indicated an intention to establish a civil penalty, we have inquired further whether the statutory scheme was so punitive either in purpose or effect as to negate that intention. In regard to this latter inquiry, we have noted that “only the clearest proof could suffice to establish the unconstitutionality of a statute on such a ground.” 21

Returning to the Court’s analysis in Smith, Justice Kennedy’s majority opinion reasoned that the Court should uphold Alaska’s version of Megan’s Law, because “an imposition of restrictive measures on sex offenders adjudged to be dangerous is a ‘legitimate nonpunitive governmental objective and has been historically so regarded,’” 22 and “[n]othing on the face of the statute suggests that the legislature sought to create anything other than a civil . . . scheme designed to protect the public from harm.” 23 Moreover, in order to elucidate the criminal-civil distinction, Justice Kennedy differentiated sex offender registration requirements from probation or supervised release:

Probation and supervised release entail a series of mandatory conditions and allow the supervising officer to seek the revocation of probation or release in case of infraction. By contrast, offenders subject to the Alaska statute are free to move where they wish and to live and

20 Smith v. Doe, 538 U.S. 84, 84-85, 105-06 (2003); see also U.S. CONST. art. I, § 10, cl. 1 (constitutional Ex Post Facto Clause); ALASKA STAT. ANN. § 12.63.010 (West 2010) (Alaska’s version of Megan’s Law); Doe v. Cal. Dep’t of Justice, 93 Cal. Rptr. 3d 736, 744-47 (Ct. App. 2009) (holding that California’s Megan’s Law does not violate the Ex Post Facto Clause).
22 Smith, 538 U.S. at 93 (quoting Kansas v. Hendricks, 521 U.S. 346, 363 (1997)).
23 Id. at 93 (quoting Hendricks, 521 U.S. at 361).
work as other citizens, with no supervision. Although registrants must inform the authorities after they change their facial features (such as growing a beard), borrow a car, or seek psychiatric treatment, they are not required to seek permission to do so. A sex offender who fails to comply with the reporting requirement may be subjected to a criminal prosecution for that failure, but any prosecution is a proceeding separate from the individual’s original offense. Whether other constitutional objections can be raised to a mandatory reporting requirement, and how those questions might be resolved, are concerns beyond the scope of this opinion. It suffices to say the registration requirements make a valid regulatory program effective and do not impose punitive restraints in violation of the Ex Post Facto Clause.24

In upholding Alaska’s version of Megan’s Law, Justice Kennedy further stated that a statute cannot be deemed criminal merely because it may “deter future crimes.”25 Ultimately, the Court found that retroactive application of the nonpunitive statute did not conflict with the Ex Post Facto Clause.26

C. Recent Developments in the Case Law

1. United States v. Juvenile Male

On June 7, 2010, the Supreme Court of the United States certified a question to the Montana Supreme Court to aid in its review of the United States’ petition for a writ of certiorari in the case of United States v. Juvenile Male.27 According to the facts, the respondent was charged with juvenile delinquency in 2005 under the Federal Juvenile Delinquency Act.28 The respondent “pleaded ‘true’ to knowingly engaging in sexual acts with a person under 12 years of age, which would have been a crime under §§ 2241(c) and 1153(a) if committed by an

24 Id. at 101-02 (citations omitted).
25 Id. at 102.
26 Id. at 105-06.
adult.’’ The district court accepted the respondent’s plea later that year and deemed him delinquent, sentencing him to two years official detention and juvenile delinquent supervision until he reached the age of twenty-one. The court further sentenced the respondent to spend the first six months of his juvenile supervision in a prerelease center and to follow the center’s residency requirements.

After the respondent’s case was adjudicated, Congress passed the Sex Offender Registration and Notification Act (SORNA) in 2006. As it pertains to juvenile offenders, SORNA mandates that individuals who have been adjudicated delinquent for certain serious sex offenses must register and keep their information up to date in each jurisdiction where they live, work, and go to school. Subsequently, in 2007, the United States Attorney General issued an interim rule stipulating that the requirements of SORNA “apply to all sex offenders, including sex offenders convicted of the offense for which registration is required prior to the enactment of [SORNA].”

Returning to the specific facts of *Juvenile Male*, the district court revoked the respondent’s juvenile supervision in July of 2007 after finding that he did not follow the conditions of the prerelease program. Consequently, the court increased the respondent’s term of initial detention by six months, and, upon release, the respondent would have to be supervised until he reached the age of twenty-one. In addition, as ‘‘special conditions’’ of his supervision, the court ordered [the] respondent to register as a sex offender [under SORNA’s juvenile registration provisions] and to keep his registration current.” However, the Ninth Circuit later vacated the requirement that the respondent register as a sex offender, reasoning that ‘‘retroactive application of SORNA’s provision covering individuals who were adjudicated juvenile delinquents may be constitutional.”

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29 *Juvenile Male*, 130 S. Ct. at 2518.
30 *Id.*
31 *Id.*
33 42 U.S.C. §§ 16911(8), 16913.
34 Sex Offender Registration and Notification Act, 72 Fed. Reg. 8897 (Feb. 28, 2007) (codified at 28 C.F.R. § 72.3 (2008)).
35 *Juvenile Male*, 130 S. Ct. at 2519.
36 *Id.*
37 *Id.*
quents because of the commission of certain sex offenses before SORNA’s passage violates the Ex Post Facto Clause of the United States Constitution.”

The Ninth Circuit specifically held that “SORNA’s juvenile registration provision may not be applied retroactively to individuals adjudicated delinquent under the Federal Juvenile Delinquency Act.”

In May of 2008, the respondent’s period of juvenile supervision ended; therefore, he is no longer bound by SORNA’s sex-offender-registration requirements. Consequently, the Court found the case moot “unless [the] respondent can show that a decision invalidating the sex-offender-registration conditions of his juvenile supervision would” likely redress accompanying consequences, including “the requirement that [the] respondent remain registered as a sex offender under Montana law.” The Court therefore requested that the Montana Supreme Court determine whether the:

[R]espondent’s duty to remain registered as a sex offender under Montana law [is] contingent upon the validity of the conditions of his now-expired federal juvenile-supervision order that required him to register as a sex offender, or is the duty an independent requirement of Montana law that is unaffected by the validity or invalidity of the federal juvenile-supervision conditions?

2. **Carr v. United States**

In *Carr v. United States*, the Supreme Court held that a convicted sex offender could not be prosecuted under the 2006 SORNA for failure to register when his or her underlying offense and travel in interstate commerce both occurred before SORNA became effective. According to SORNA, when a convicted sex offender travels in interstate commerce:

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38 United States v. Juvenile Male, 590 F.3d 924, 927 (9th Cir. 2009).
39 *Id.* at 928.
40 *Juvenile Male*, 130 S. Ct. at 2519.
41 *Id.*
42 *Id.* at 2519-20 (citations omitted).
commerce, and knowingly fails to register or update a registration, authorities may fine and sentence the sex offender to ten years in prison.\textsuperscript{44} Before Congress enacted SORNA, the petitioner Carr, a registered sex offender in Alabama, moved to Indiana without complying with Indiana’s registration requirements.\textsuperscript{45} After his post-SORNA indictment, Carr entered a conditional guilty plea and was subsequently sentenced to prison.\textsuperscript{46}

After analyzing the statutory text, Justice Sotomayor’s majority opinion reasoned that “the first element of § 2250(a) can only be satisfied when a person ‘is required to register under the Sex Offender Registration and Notification Act.’”\textsuperscript{47} Consequently, “It is far more sensible to conclude that Congress meant the first precondition to § 2250 liability to be the one it listed first: a ‘require[ment] to register under [SORNA].’”\textsuperscript{48} The Court further mentioned that SORNA’s use of the present tense verb “travels” was “a ‘striking indicator’ of [SORNA’s] ‘prospective orientation.’”\textsuperscript{49} Finally, the Court declared that interpreting SORNA as inapplicable to convicted sex offenders whose travel predated the statute would not violate Congressional intent.\textsuperscript{50} Given that Justice Sotomayor grounded her opinion on statutory interpretation grounds, the Court refused to address Carr’s alternative argument that applying SORNA to the facts of his case conflicted with the Ex Post Facto Clause.\textsuperscript{51}

3. \textit{Exile v. Miami-Dade County}

Recently, in the case of \textit{Exile v. Miami-Dade County}, convicted sex offenders in Miami-Dade County challenged the validity of a municipal ordinance prohibiting them from residing within 2500 feet of a school.\textsuperscript{52} The Third District Court of Appeal of Florida affirmed the

\textsuperscript{44} 18 U.S.C. § 2250(a).
\textsuperscript{45} \textit{Carr}, 130 S. Ct. at 2232-33.
\textsuperscript{46} \textit{Id.} at 2233.
\textsuperscript{47} \textit{Id.} at 2235 (quoting 18 U.S.C. § 2250(a)(1) (emphasis added)).
\textsuperscript{48} \textit{Id.} at 2235-36.
\textsuperscript{49} \textit{Id.} at 2236-37 (quoting Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc., 484 U.S. 49, 59 (1987)).
\textsuperscript{50} \textit{See id.} at 2241-42.
\textsuperscript{51} \textit{See id.} at 2242.
\textsuperscript{52} \textit{Exile v. Miami-Dade Cnty.}, 35 So. 3d 118 (Fla. Dist. Ct. App. 2010).
trial court’s holding that state law had not impliedly preempted the local regulation, and that the 2500-foot provision in the ordinance was not at odds with the less restrictive 1000-foot buffer zone specified under Florida state law. The county’s previous scheme of ordinances mandating that sex offenders live at least 2500 feet from places where children gather forced sex offenders to live under the Julia Tuttle Causeway because they were unable to find any affordable housing in a location that would not violate the Miami-Dade ordinances. In April 2010, the Miami-Dade County Homeless Trust was able to relocate about 100 sex offenders who were living under the Julia Tuttle Causeway. Given the potential for this housing problem to linger, Miami-Dade County enacted a new statute effective February 2010 that maintains the 2500-foot restriction but limits it to schools; the revised ordinance “sets a 300-foot restriction to keep offenders from loitering near anyplace where children gather, which many experts call a more practical solution than harsh residency restrictions.”

53 See Exile, 35 So. 3d at 118-19; see also Fla. Stat. § 775.215(2)(a) (stating a person convicted of a sex offense, “in which the victim of the [sex] offense was less than 16 years of age, may not reside within 1,000 feet of any school, child care facility, park, or playground”).


57 See Miami-Dade County, Fla., Code of Ordinances, § 21-281(a) (2010) (“It is unlawful for any person who has been convicted of a violation of Sections 794.011 (sexual battery), 800.04 (lewd and lascivious acts on/in presence of persons under age sixteen (16)), 827.071 (sexual performance by a child), 847.0135(5) (sexual acts transmitted over computer) or 847.0145 (selling or buying of minors for portrayal in sexually explicit conduct), Florida Statutes, or a similar law of another jurisdiction, in which the victim or apparent victim of the offense was less than sixteen (16) years of age, to reside within 2,500 feet of any school.”).

58 Catharine Skipp, A Law for the Sex Offenders Under a Miami Bridge, Time, Feb. 1, 2010 (emphasis added), available at http://www.time.com/time/nation/article/0,8599,1957778,00.html; see also Miami-Dade County, Fla., Code of Ordinances, § 21-285(a) (“It is unlawful for any sexual offender or sexual predator: (1) to loiter or prowl with the intent to commit a sexual offense as listed in Sec. 21-280(11) of this Article; (2) while knowingly within a child safety zone when children are present . . . .”); Miami-Dade County, Fla., Code of Ordinances, § 21-280(3) (“Child
D. Statute for Analysis: California Assembly Bill 488

In September of 2004, California enacted an amendment that enlarged the breadth of the State’s version of Megan’s Law, the universal name for any statute requiring sex offenders to register with the local community upon release from prison.59 California’s amendment, Assembly Bill 488, allows citizens to use their personal computers to acquire information regarding registered sex offenders over the Internet.60 Before the enactment of Assembly Bill 488, members of the community had no other means of acquiring information on registered sex offenders aside from visiting a law enforcement office in person or by calling a 1-900 number.61 Consequently, at least prima facie, Assembly Bill 488 increased public access to information with respect to registered sex offenders.62 On December 15, 2004, the California Department of Justice created a sex offender website so that the public could search for sex offenders in any county in California.63 If Assembly Bill 488 has not actually reduced the rate of recidivism among sex offenders, then the California legislature may need to enact new amendments to the law in order to achieve its goal of thwarting sex crimes.

Per the California Department of Justice website, the passage of California’s official Megan’s Law in 1996 “provides the public with certain information on the whereabouts of sex offenders so that members of [the] local communities may protect themselves and their children.”64 This statute is “named after seven-year-old Megan Kanka, a New Jersey girl who was raped and killed by a known child molester who had moved across the street from the family without their knowl-

61 See Megan’s Law, supra note 59.
62 See id.; see also Penal § 290.46.
64 Megan’s Law, supra note 59.
edge.” After this crime was perpetrated against Megan Kanka, her family wanted to provide local communities with a means of detecting convicted sex offenders who live in nearby areas. In addition to California’s Megan’s Law, the other forty-nine states also have a parallel, although somewhat varied, version of this statute.

Although California officially enacted Megan’s Law in 1996, the State of California had mandated that sex offenders register with their local law enforcement officials for over fifty years. Even though California had been requiring sex offenders to register with the authorities for numerous decades, “information on the whereabouts of these sex offenders was not available to the public until the implementation of the Child Molester Identification Line in July 1995;” this line was shown to have a variety of problems. The Attorney General of California later sponsored Assembly Bill 488, which allows the citizenry to access a large quantity of data regarding registered sex offenders via the Internet.

California’s database of registered sex offenders is administered by the Sex Offender Tracking Program within the state’s Department of Justice; people “convicted of specified sex crimes are required to register as sex offenders with a local law enforcement agency.” Before the sex offenders are discharged from prison, they are “notified in writing of their duty to register, and a copy of the notification form is forwarded to [the California Department of Justice].” Next, “When a sex offender is released into the community, the agency forwards the registr-

65 Id.
66 Id.
68 Megan’s Law, supra note 59.
69 Id.
71 Megan’s Law, supra note 59; see also CAL. PENAL CODE § 290.46 (West 2004).
73 Id.
Following their initial registration, the convicted sex offenders are required to update their information every year within five business days of their date of birth. There is a certain subset of offenders who are obligated to update their information multiple times each year. More specifically, “transients must update every 30 days, and sexually violent predators, every 90 days.”

Although every sex offender must register with his or her local law enforcement organization, the California Department of Justice Internet website does not make information on all convicts publicly available. In reality, roughly 25% of all convicts registered as sex offenders in California are “excluded from public disclosure [under] the law.” The California Department of Justice’s determination involving public disclosure is based on the type of sex crime committed by the offender; an offender’s eligibility for exclusion from the website is determined by the Sex Offender Tracking Program. Individuals convicted of the following sex offenses may petition the California Department of Justice for exclusion: “(1) sexual battery by restraint; (2) misdemeanor child molestation; or (3) any offense which did not involve penetration or oral copulation, the victim of which was a child, stepchild, grandchild, or sibling of the offender, and for which the offender successfully completed or is successfully completing probation.” Even if the state grants a convict’s petition for an exclusion from the publicly accessible website, he or she must nevertheless officially register as a sex offender.
The California Department of Justice Internet website provides the public with information on over 63,000 registered sex offenders.85 The amount of information available to the public varies depending on the offender.86 For instance, “Specific home addresses are displayed on more than 33,500 offenders in the California communities; as to these persons, the site displays the last registered address reported by the offender.”87 While the website contains data on another 30,500 sex offenders, the information provided is limited to the zip code, city, and county where they reside.88 The website generally serves as a means for the public to:

[S]earch the database by a sex offender’s specific name, obtain ZIP Code and city/county listings, obtain detailed personal profile information on each registrant, and use [the] map application to search [a] neighborhood or anywhere throughout the State to determine the specific location of any of those registrants on whom the law allows [the California Department of Justice] to display a home address.89

The most useful feature of the website is that it displays when a registered sex offender is in violation of his or her registration requirements as required by law.90 Consequently, members of local communities can contact law enforcement if they obtain information involving the whereabouts of a registered sex offender who is in violation of his or her duty to provide law enforcement with updates.91 Before accessing the website, the public must agree to a disclaimer,92 which contains, among other material, the following admonition:

Legal and Illegal Uses. The information on this web site is made available solely to protect the public. Any-

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86 See id.
87 Id.
88 Id.
89 Id.
90 See id.
91 See id.
92 Id.
one who uses this information to commit a crime or to harass an offender or his or her family is subject to criminal prosecution and civil liability. Any person who is required to register pursuant to Penal Code section 290 who enters this web site is punishable by a fine not exceeding $1,000, imprisonment in a county jail not exceeding six months, or by both the fine and imprisonment.93

This disclaimer cautions users of the website that the purpose of California’s Megan’s Law is not to have citizens harass registered sex offenders or take the law into their own hands.94 Rather, the website serves as a tool for local communities to notify law enforcement officials of any sex offenders who are violating the law or not abiding by their registration requirements.95

II. PRIOR EMPIRICAL RESEARCH

A. The Seminal Study

The most well-known research into the effectiveness of Megan’s Law, New Jersey’s version in particular, was published in December 2008 by Kristen Zgoba, Ph.D.; Philip Witt, Ph.D.; Melissa Dalessandro, M.S.W.; and Bonita Veysey, Ph.D.96 The United States Department of Justice provided the researchers with federal funds in order to carry out their study.97 The study was commissioned to analyze:

(1) the effect of Megan’s Law on the overall rate of sexual offending over time; (2) its specific deterrence effect on re-offending, including the level of general and sexual offense recidivism, the nature of sexual re-offenses, and time to first re-arrest for sexual and non-sexual re-of-

94 Id.
95 See Megan’s Law Home, supra note 85.
97 Id.
fenses (i.e. community tenure); and (3) the costs of implementing and maintaining Megan’s Law.98

The primary conclusions of this study were that New Jersey’s version of Megan’s Law had no effect on community tenure (i.e., time to first re-arrest) and failed to reduce sexual reoffenses.99 In addition, the law did not have any effect on the type of sexual reoffense or first time sexual offense (for instance, from hands-on to hands-off crimes), and it did nothing to lessen the number of victims of sexual crimes.100 Therefore, “Given the lack of demonstrated effect of [New Jersey’s version of] Megan’s Law, the researchers are hard-pressed to determine that the escalating costs [of implementation] are justifiable.”101

B. Recent Research

J.J. Prescott and Jonah E. Rockoff recently conducted an empirical study involving sex offenses whereby they analyzed crime that occurred after enactment of registration and notification laws in various states.102 In particular, their “analysis focuses on 15 states that were in the [National Incident Based Reporting System (NIBRS) data] by 1998: Colorado, Connecticut, Idaho, Iowa, Kentucky, Massachusetts, Michigan, Nebraska, North Dakota, Ohio, South Carolina, Texas, Utah, Vermont, and Virginia.”103 The authors found that registration reduces the frequency of sex offenses by providing law enforcement with information on local sex offenders; however, this reduction in recidivism only occurred with respect to victims acquainted with the sex offender.104 Moreover, their results indicate that community notification deters individuals not yet registered as sex offenders, but notification sanctions potentially lead to increased recidivism among registered sex offenders.105

98 Id. at 7.
99 Id. at 39.
100 Id.
101 Id.
103 Id. at 13.
104 Id. at 3-4.
105 Id. at 17.
C. Difference Between Prior Research and This Article

Considerable differences exist between prior research and this Article’s novel research using the California Offender-Based Transaction Statistics (OBTS) database. A primary difference is that previous studies, as far as we can tell, have not focused on California. In contrast, the research in this Article focuses solely on sex offenses in the State of California. This is relevant, for example, because versions of Megan’s Law vary from state to state. In addition, each state will make its own determination as it sees fit on how to best administer the law. Consequently, results of studies that concentrate on other states, such as the Zgoba et al. research, do not illustrate an accurate picture of the effectiveness of California’s version of Megan’s Law. Furthermore, our Article focuses only on the effect of Assembly Bill 488, which mandated the creation of an Internet website for the public to keep track of sex offenders. The scope of our Article is limited to an amendment that facially increased the transparency of Megan’s Law, as opposed to all aspects of the statute. More specifically, our research seeks to determine whether California’s 2004 amendment to its version of Megan’s Law, an update that increased access to sex offender information over the Internet, reduced recidivism.

III. Method of Quantitative Analysis

A. Description of Data

In order to test whether Assembly Bill 488 reduced recidivism with respect to sex offenders, we used the OBTS dataset furnished by the California Department of Justice. Each observation in the data is an arrest within the state of California between 2001 and 2008. Because data for the year 2002 was not available, the analysis excludes that year. The category of data provided by the California Department of Justice can be classified as panel because it blends aspects of both cross-sectional and time-series data. Though data is collected annually, each offender is also tracked over an extended period of time. The sampling design is simply observational, as selection into the data is determined

106 CAL. PENAL CODE § 290.46 (West 2010).
by whether an individual has committed a crime. There were 2,498,589 arrests in California between 2001 and 2008.\footnote{See infra Part VI, Appendix 1.}

**B. Relevant Variables**

We identify a sex offender in the California Department of Justice arrest data as any person who has been arrested for a registrable sexual offense. Since the data lists the California state code of law that the arrestee violated, we are able to link the violated code of law to the list of codes of law that are registrable sexual offenses in the state of California, as specified by the California Department of Justice website.\footnote{Registrable Sexual Offenses, CAL. DEP’T OF JUST., http://www.meganslaw.ca.gov/registration/offenses.aspx?lang=ENGLISH (last visited May 5, 2011).} Overall, 169 codes are listed as registrable sexual offenses.\footnote{See id.} Out of all 2,498,589 arrests in California between 2001 and 2008, 2.53\% of those involved a registrable sex offense.\footnote{See infra Part VI, Appendix 1.}

Our main independent variable of interest is “Post-Sex-Offender Website.” This variable indicates the time period when sex offenders can be publicly tracked on the website that Assembly Bill 488 created. Because the sex offender website created by the Department of Justice became functional in mid-December of 2004, we code “Post-Sex-Offender Website” as “0” for years 2001 to 2004, and coded as “1” for years 2005 to 2008. Of all arrests between 2001 and 2008, 51.92\% occurred during this “Post-Sex-Offender Website” period.\footnote{See infra Part VI, Appendix 1.}

**C. Quantitative Analysis**

We estimate two types of probability models to assess the impact of Assembly Bill 488, using multivariate regressions performed with Stata 9.2. First, as shown in Table 1,\footnote{See infra Part VI, Appendix 1.} we estimate the probability that any arrest in California between 2001 and 2008 involves a sex offense. We estimate this probability using multivariate logit regression analysis with the covariates listed in Table 1: post-sex-offender web-
site, new arrestee, male, race, and age quintiles.\textsuperscript{113} We also control for eight “year” variables and sixty “county” variables. Given that we do not have a full difference-in-difference method (since all counties implemented the sex offender website at the same time), our estimates might involve spurious correlations between the sex offender website variable and some underlying trend in arrests. To control for this, we also include a falsification test in Table 1. That is, we test for spurious correlations by testing whether the sex offender website had an impact on arrests totally unrelated to sex offenses. In particular, we examine white-collar crimes (bribery, embezzlement, trade-secret infringement, check and credit card fraud, etc.). In view of the fact that Assembly Bill 488 targets sex offenders, the statute should have no impact on white-collar crimes. Thus, our model can be rejected if the sex offender website has an impact on white-collar crimes. Overall, we hypothesize that the sex offender website will reduce the probability that any arrest is a sex offense, and we predict that the website will have no impact on arrests for white-collar offenses.

Second, in Table 2,\textsuperscript{114} we estimate the probability that a sex offender commits another sex crime (recidivism) subsequent to the perpetration of their first sex crime, as observed in the data. We perform this estimate with multivariate logit regression analysis over a sample constructed in the following manner. Each sex offender is included in the sample for each year following his first sex crime, even if he was not arrested in a following year. Recidivism is coded as 0/1, with “1” indicating that the sex offender had another sex crime arrest in that given year. This resulted in 262,312 person-years, and 6306 person-years with recidivism.\textsuperscript{115} All person-level characteristics (like age) are taken at the time of the first offense: initial rape arrest, initial prison term, new arrestee, male, race, and age quintile.\textsuperscript{116} We include eight “year” variables and eight variables for the number of years since the first sex crime. Since sex offenders appear in this sample multiple times, we correct the standard errors for clustering at the person-level. After performing the regressions, we run simulations to predict the recidivism rate for a four-year period following the first sex crime.

\textsuperscript{113} See infra Part VI, Appendix 1.
\textsuperscript{114} See infra Part VII, Appendix 2.
\textsuperscript{115} See infra Part VII, Appendix 2.
\textsuperscript{116} See infra Part VII, Appendix 2.
In Table 2, we test four hypotheses. First, we hypothesize that the sex offender website will reduce the probability of recidivism for sex offenders. Next, we hypothesize that in repeat sex crimes, the sex offender website will reduce the severity of the crime. In particular, we hypothesize that rapes and sex crimes against children will decrease due to the website. Finally, we hypothesize that the website will induce sex offenders to avoid registration. That is, the sex offender website will increase the probability that sex offenders will be arrested for failing to report address changes, name changes, etc. to the sex offender registry. We consider twenty-eight law codes pertaining to such failure to report crimes.

IV. RESULTS AND DISCUSSION

In Table 1, we estimate the sex offender website reduces the odds that any arrest will involve a sex crime by 18.1%. In the falsification test, the sex offender website had no statistically significant impact on white-collar crimes.\(^\text{117}\) Thus, it is highly unlikely that the impact of the sex offender website on sex crimes is simply due to spurious correlations. Hence, it appears that the website did deter sex crimes. In postestimation simulations, we find that the website reduces the probability that an arrest involves a registrable sex crime from 2.79% to 2.31%. In Table 2, we estimate that the sex offender website reduces the odds of recidivism by 30.1%. Over the four-year period following the first sex crime, the predicted recidivism rate drops 30% from 15.5% to 10.9% due to the website. Moreover, the website reduced the severity of the repeat sex crime. The website reduced the odds that a repeat sex crime involves rape by 33.3%. In particular, the predicted probability that a repeat sex offense involves rape declined from 21% to 16%. The website also decreased the odds that a repeat sex crime involves a felonious sex crime against a child by 63%; the predicted probability that a repeat sex crime is a crime against a child declined from 46.5% to 26.4%.

Other control variables are also of interest in predicting recidivism. Criminals with an initial arrest for rape have five times higher odds of repeating rape, yet they have 16.5% lower odds of a crime against a child, indicating that most of the repeat rape cases are against adults. Sex offenders sentenced to prison under their first sex offense

\(^{117}\) See infra Part VI, Appendix 1.
are less likely to have repeat sex crimes simply because they are in prison. However, if they do commit repeat sex offenses, they have 21% higher odds of committing crimes against children compared to sex offenders who did not serve time in prison. Repeat offenders who are Black have 43.3% lower odds of committing sex crimes against children than repeat offenders who are White. Yet, repeat offenders of “other” races (mainly Hispanic) have almost double the odds of committing sex crimes against children in their repeat offense compared to White repeat offenders.

Finally, as predicted, the sex offender website increases the odds of not reporting to the sex offender registry by about 5%. Blacks have 66.3% higher odds of not reporting than Whites. “Other” races (mainly Hispanic) have 33.2% lower odds compared to Whites of not reporting. Criminals over the age of 43 have more than 8 times higher odds of not reporting compared to 14 to 23 year olds.

V. Conclusion

In September of 2004, California enacted an amendment that enlarged the breadth of the State’s version of Megan’s Law, the universal name for any statute requiring sex offenders to register with their local community upon release from prison. This amendment, Assembly Bill 488, mandated the development of a website by the California Department of Justice so that the public could search for sex offenders in any community, thereby increasing transparency regarding sex offender registration. When compared to the figures four years prior to the passage of Assembly Bill 488, our analysis indicates that the Bill did deter sexual offenses in the four years after the passage of the Bill. Moreover, it reduced the rate of recidivism among sex offenders. In addition, when there was recidivism, the severity of the repeat offense was lower after its passage. In particular, repeat crimes were less likely to involve rape and sexual offenses against children. Thus, Assembly Bill 488 did accomplish its objectives.

Future research should examine the exact mechanisms by which the public website on sex offenders deterred sex crimes. Did the website simply make criminals more fearful to commit crimes? Or, did the website enlighten the community as to the whereabouts of the criminals and help children avoid precarious situations and dangerous locations?
Or, did the website help identify sex offenders in situations where they committed less serious crimes (misdemeanors, traffic offenses, etc.), with such arrests preventing a progression to more serious sex offenses? Or, did such identification by the website cause juries to increase the conviction rate of arrestees charged with sex crimes?

While the website created under the Bill has had much success, our research also shows that there is a need for improvement. The creation of the website was associated with a slight increase in failure to report changes to the sex offender registry. Future research should investigate whether this was simply due to increased policing and enforcement of reporting requirements, or truly due to criminals seeking to avoid being properly recorded on the website.

There are several limitations to our study that future research should address. First, while we could investigate kidnappings and assaults that involved sexual crimes, due to data limitations we could not distinguish homicides that involved sexual crimes. Thus, our study omitted sexual crimes that involved murder. Second, our study omitted sexual crimes prosecuted at the federal level because these federal cases are not immediately registrable offenses under state law. It takes some level of state review before these federal cases become registrable. More specifically, the Sex Offender Tracking Program (a division within the California Department of Justice) makes an individual, case-by-case determination depending on whether the federal crime under which the person is convicted has a comparable provision in the California Code that would require registration for the same offense. Third, we could not track sex offenders that may have moved out of state or to a different country due to the creation of the website. Fourth, we did not have a control group consisting of another state without any public sex offender website during the same period. Thus, we could not tease out national trends from the California arrest data. Future research should examine these limitations to test the robustness of our results and to examine whether they hold across states with similar sex offender websites. Moreover, it is important to examine whether there were unintended consequences of the California Assembly Bill 488 in that sex offenders may have migrated to states that lack a sex offender website, thereby just shifting the sex crimes to other parts of the country where such illegality could go more easily undetected.
### VI. Appendix 1

#### Table 1: Estimated Odds Ratios for the Likelihood of a Sex Crime Falsification Test: White-Collar Crime

<table>
<thead>
<tr>
<th>Variables</th>
<th>Means</th>
<th>Sex Crime</th>
<th>White Collar Crime</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sex Crime</td>
<td>2.53%</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>White Collar Crime</td>
<td>4.41%</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Post-Sex-Offender Website</td>
<td>51.92%</td>
<td>.819***</td>
<td>1.091</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(.014)</td>
<td>(.072)</td>
</tr>
<tr>
<td>New Arrestee</td>
<td>18.80%</td>
<td>1.994***</td>
<td>1.274***</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(.019)</td>
<td>(.071)</td>
</tr>
<tr>
<td>Male</td>
<td>79.21%</td>
<td>13.308***</td>
<td>.372***</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(.361)</td>
<td>(.020)</td>
</tr>
<tr>
<td>Race</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>White</td>
<td>41.59%</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Black</td>
<td>21.08%</td>
<td>1.025**</td>
<td>0.990</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(.012)</td>
<td>(.064)</td>
</tr>
<tr>
<td>Other</td>
<td>37.33%</td>
<td>1.212***</td>
<td>.872***</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(.012)</td>
<td>(.021)</td>
</tr>
<tr>
<td>Age (by quantiles)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14-23</td>
<td>24.21%</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>24-28</td>
<td>18.56%</td>
<td>1.172***</td>
<td>1.084***</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(.017)</td>
<td>(.025)</td>
</tr>
<tr>
<td>29-35</td>
<td>19.83%</td>
<td>1.535***</td>
<td>1.064**</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(.021)</td>
<td>(.026)</td>
</tr>
<tr>
<td>36-42</td>
<td>17.41%</td>
<td>1.975***</td>
<td>.903***</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(.027)</td>
<td>(.025)</td>
</tr>
<tr>
<td>43+</td>
<td>19.99%</td>
<td>2.815***</td>
<td>.725***</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(.035)</td>
<td>(.025)</td>
</tr>
<tr>
<td>8 year fixed effects</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>60 county fixed effects</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>N</td>
<td>2,498,589</td>
<td>2,498,589</td>
<td>2,498,589</td>
</tr>
</tbody>
</table>

*Notes:* Logit regressions are performed on the entire sample of all arrests in California 2001-2008. Standard errors are in parentheses.

*** Significant at 99%. ** Significant at 95%. * Significant at 90%.
VII. APPENDIX 2

Table 2: Estimated Odds Ratios on Recidivism Outcomes for Sex-Offenders

<table>
<thead>
<tr>
<th>Variables</th>
<th>Mean Recidivism</th>
<th>Sex Crime Report To Sex Offender Registry</th>
<th>Failed To Report To Sex Offender Registry</th>
</tr>
</thead>
<tbody>
<tr>
<td>Post-Sex-Offender Website</td>
<td>71.26%</td>
<td>.695***</td>
<td>.667***</td>
</tr>
<tr>
<td>(0.058)</td>
<td>(0.164)</td>
<td>(0.070)</td>
<td>(0.006)</td>
</tr>
<tr>
<td>Initial Rape Arrest</td>
<td>22.90%</td>
<td>.730***</td>
<td>5.145***</td>
</tr>
<tr>
<td>(0.026)</td>
<td>(0.416)</td>
<td>(0.066)</td>
<td>(0.001)</td>
</tr>
<tr>
<td>Initial Prison Term</td>
<td>26.67%</td>
<td>.730***</td>
<td>1.109</td>
</tr>
<tr>
<td>(0.024)</td>
<td>(0.101)</td>
<td>(0.085)</td>
<td>(0.026)</td>
</tr>
<tr>
<td>New Arrestee</td>
<td>28.49%</td>
<td>.788***</td>
<td>1.174*</td>
</tr>
<tr>
<td>(0.025)</td>
<td>(0.103)</td>
<td>(0.142)</td>
<td>(0.005)</td>
</tr>
<tr>
<td>Male</td>
<td>97.62%</td>
<td>2.608***</td>
<td>.820</td>
</tr>
<tr>
<td>(0.365)</td>
<td>(0.258)</td>
<td>(0.405)</td>
<td>(0.372)</td>
</tr>
<tr>
<td>Race</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>White</td>
<td>42.97%</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Black</td>
<td>17.83%</td>
<td>1.453***</td>
<td>1.820***</td>
</tr>
<tr>
<td>(0.057)</td>
<td>(0.191)</td>
<td>(0.053)</td>
<td>(0.060)</td>
</tr>
<tr>
<td>Other</td>
<td>39.20%</td>
<td>1.448***</td>
<td>1.737***</td>
</tr>
<tr>
<td>(0.045)</td>
<td>(0.161)</td>
<td>(0.135)</td>
<td>(0.022)</td>
</tr>
<tr>
<td>Age (by quantiles)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14-23</td>
<td>17.97%</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>24-28</td>
<td>13.49%</td>
<td>.962</td>
<td>.899</td>
</tr>
<tr>
<td>(0.046)</td>
<td>(0.103)</td>
<td>(0.087)</td>
<td>(0.206)</td>
</tr>
<tr>
<td>29-35</td>
<td>18.69%</td>
<td>.978</td>
<td>.699***</td>
</tr>
<tr>
<td>(0.043)</td>
<td>(0.076)</td>
<td>(0.112)</td>
<td>(0.275)</td>
</tr>
<tr>
<td>36-42</td>
<td>19.89%</td>
<td>.893**</td>
<td>.525***</td>
</tr>
<tr>
<td>(0.039)</td>
<td>(0.060)</td>
<td>(0.095)</td>
<td>(0.369)</td>
</tr>
<tr>
<td>43+</td>
<td>29.96%</td>
<td>.755***</td>
<td>.306***</td>
</tr>
<tr>
<td>(0.031)</td>
<td>(0.037)</td>
<td>(0.078)</td>
<td>(0.547)</td>
</tr>
<tr>
<td>N</td>
<td>262,312</td>
<td>262,312</td>
<td>6,306</td>
</tr>
</tbody>
</table>

Notes: Other covariates include 8 year fixed effects and 8 fixed effects for the number of years since the first sex offense. N=262,312 is the number of person-years for all previous sex offenders tracked at each year following the year of their first sex offense. Out of 262,312 person-years, N=6,306 were the person-years with repeat sex offenses. All person-level characteristics (like age) are taken at the time of the first offense. Logit regression standard errors corrected for clustering at the person level are in parentheses. *** Significant at 99%. ** Significant at 95%. * Significant at 90%. 