Belgium, Germany, England, Denmark and the United States: The Implementation of Registration and Castration Laws as Protection Against Habitual Sex Offenders
Belgium, Germany, England, Denmark and the United States: The Implementation of Registration and Castration Laws as Protection Against Habitual Sex Offenders

I. Introduction

Natalie Aster was once a happy seven-year-old girl from Bavaria, free to play in the streets of her small town without a care in the world. Then an event occurred that changed the lives of her family and the German community forever. Natalie was abducted on her way to school, sexually assaulted, battered, rendered unconscious and dumped into a nearby river. Her assailant was a repeat sex offender who was released early from jail after serving only two-thirds of a five-and-a-half year sentence imposed after he sexually molested two young girls and raped three women. This disgrace has thrown the conservative Roman Catholic community of Landsberg into mourning and awakened Bavarians to the very real danger of repeat sex offenders.

1. Ian Traynor, Call to Castrate Sex Abusers: Murder of Seven-year-old Girl by Released Convict Shocks Bavaria and Sparks Agonized Debate, GUARDIAN, Sept. 25, 1996, at 12.
2. Id.
3. Id.
4. Id.
5. Id.
The debate over effective methods that will deter repeat sex offenders has ignited considerable controversy worldwide. The most recent cases mourning such tragedy have occurred in Germany, Belgium, and the United States. While Belgium has uncovered a line of sexual abuse committed by a repeat sex offender, Germany is reacting to the rape and murder of a little girl. Although Belgium has not yet implemented the harsh punishment of castration or the preventative measure of mandatory sex offender registry, Germany has offered offenders a choice between imprisonment and surgical castration since 1970. The United States represents a medium between these two countries, as it recently passed mandatory registration and notification laws.

Strict measures are crucial to the effective elimination of a repeat sex offender's ability to strike again. Therefore, this Comment analyzes the punishment of sex offenders and the use of registration and castration laws to ensure the future deterrence of sex offenders in Belgium, Germany, England, Denmark, and the United States. Part II discusses the history of castration laws and the difference between surgical and chemical castration in relation to the individual offender and society as a whole. Part III gives an overview of the present policies of these countries, their implementation of registration and castration laws and the effectiveness of their enforcement. Part IV compares constitutional limitations, community reaction, government intervention and the resulting flaws in government measures and policies in the United States and Europe. Finally, Part V discusses the future implications of these policies, their impact on society and the likelihood that these countries will make further changes in the law in order to effectively achieve societal protection.

This Comment proposes that mandatory registration laws in the United States should serve as models to combat sex offenders because such laws effectively protect the public from repeat offenders who have not been rehabilitated before being released from prison. Furthermore, chemical and surgical castration laws and treatment programs presented as probationary requirements

---

6. Traynor, supra note 1.
represent additional avenues for the suppression of such criminal acts on a more individual level.

II. Castration as a Deterrent to the Commission of Sex Offenses

Castration has been used throughout history to prevent undesirable procreation and to punish criminals. In the Middle Ages, men were castrated for rape and adultery. In 1892, Switzerland became the first European country to castrate an offender. Most other European countries followed suit, except for predominantly Catholic countries, such as Spain, Portugal, Belgium and France, because of that religion's conflict with the practice of castration. The Nazi German Act of 1933 provided mandatory castration for sex offenders, paving the way for the castration of at least 2800 sex offenders until the Act was abolished in 1945. By 1915, thirteen states in the United States had passed compulsory sterilization laws for criminals. Today, many countries have returned to castration laws as a means to punish convicted sex offenders and to deter them from striking again. While surgical castration has proven to be an effective deterrent, some countries are hesitant to advocate such a permanent provision because of its harsh and irreversible nature. Thus, chemical castration is the latest measure implemented to remedy the problem of recidivism in sexual offenders.

A. Surgical Castration as a Deterrent to Recidivism

Surgical castration is an irreversible procedure that involves the removal of a man's testosterone-producing testicles to suppress

13. Id. at 282.
14. Id.
15. Id.
16. RATA, supra note 11.
18. Castration is "the removal of the testes or ovaries and involves the cessation of hormonal production by these organs with a sex drive decrease that varies from person to person." RESNIK AND WOLFGANG, SEXUAL BEHAVIORS 361 (1972).
his sex drive.\textsuperscript{19} This procedure reduces a man's level of testosterone to the extent that his sex drive is drastically diminished, typically to a level similar to that before puberty.\textsuperscript{20} The side effects of this procedure include increased perspiration, loss of facial and body hair, weight gain and the softening of the skin.\textsuperscript{21} Overall, however, the results are positive.\textsuperscript{22} Statistics show that castrated offenders have only a three percent recidivism rate, as opposed to a forty-six percent recidivism rate for sex offenders who have not been castrated.\textsuperscript{23} In addition, statistics show that castrated offenders' sex drives diminish and sometimes cease, and they feel more calm, passive and happy.\textsuperscript{24} Furthermore, these renewed feelings suppress violent urges and transform offenders into more acceptable members of society.\textsuperscript{25}

This transformation is evidenced in the case of a habitual sex offender who was admitted to the Langley Porter Neuropsychiatric Institute.\textsuperscript{26} The molester in this case was a white, male sex offender who began molesting boys when he was only twelve years of age.\textsuperscript{27} He was first institutionalized at the age of fifteen, committed to a state hospital at the age of twenty-one, and paroled when he was twenty-four years old.\textsuperscript{28} Soon after his release he began molesting again, at which time he was imprisoned for two years and admitted to an institute where he was subsequently castrated.\textsuperscript{29} An examination conducted one year later revealed that this particular offender had improved socially, physically and physiologically.\textsuperscript{30} He not only interacted better with others, but


\textsuperscript{21} Vanderzyl, \textit{supra} note 19, at 116. A European study found that the side effects of surgical castration include hot flashes, brain pressure, flutters, vertigo, sleep disorders, heart palpitations and tiredness. \textit{See Heim & Hursch, supra} note 10, at 287.

\textsuperscript{22} Nadel, \textit{supra} note 20.

\textsuperscript{23} \textit{Id.}

\textsuperscript{24} Heim & Hursch, \textit{supra} note 10, at 292.

\textsuperscript{25} \textit{RATA, supra} note 11, at 144.

\textsuperscript{26} Karl Bouman & Guy Hamilton Crook, \textit{Emotional Changes Following Castration}, in \textit{PSYCHIATRIC RESEARCH REPORTS} 81, 84 (1954).

\textsuperscript{27} \textit{Id.}

\textsuperscript{28} \textit{Id.}

\textsuperscript{29} \textit{Id.} at 85.

\textsuperscript{30} \textit{Id.}
he also seemed to be in control of himself, whereas prior to the operation he had perverse fantasies and engaged in perverse sexual behavior. After surgery, he noted a rapid decrease in sexual drive during the first two or three months. Indeed, this man’s strong sex drive was diminished by castration, and he was able to function safely in social situations.

There are historically two types of surgical castration: judicial castration and therapeutic castration. While judicial castration is considered a punishment for sex crimes, therapeutic castration is used as a treatment to deter offenders from committing sex crimes. The results of castration depend on two factors: (1) the physiological changes produced in the individual and (2) the individual’s psychological reaction to the operation. Indeed, theorists believe that removing the organ that produces the “hormone of sexual desire” will cure the offender of sexual interests. However, such reasoning does not fully consider the controversial nature of the remedy. While the effects are primarily positive, they are also irreversible, and they may trigger anger in offenders who are required to undergo the procedure. Furthermore, forcing such offenders into irreversible surgery may increase anxiety and tension and actually worsen their mental problems.

B. Chemical Castration as a Deterrent to Recidivism

Chemical castration is a non-surgical, reversible chemical procedure that involves a weekly injection of hormone suppressors that inhibit testosterone production. This procedure has proven

31. Bouman & Crook, supra note 26, at 85.
32. Id.
33. Id. at 95. Castration does reduce the sex drive and enables individuals with aggressive sex drives to feel calm; so, where aggressiveness is the catalyst, castration is an effective solution. Id.
34. RESNIK AND WOLFGANG, supra note 18, at 362.
35. Id. Judicial castration was enforced in the law of the territory of Kansas in 1855. Kansas’s law demanded castration of a Negro male who had raped or attempted to rape a white woman. Id. at 363.
36. Id. at 362.
37. Bouman & Crook, supra note 26, at 94.
38. RATA, supra note 11.
39. Id.
40. Id.
41. Bouman & Crook, supra note 26, at 94.
42. Nadel, supra note 20. The use of anti-androgen drugs has proven to be more favorable than surgical castration because it is less intrusive and reversible. RATA, supra note 11, at 145.
to be most effective on offenders who are motivated by sexual fantasies. The theory behind this procedure is that the injections will decrease the production of testosterone, which should subsequently decrease the sex drive in offenders. "The injections are reported to reduce sexual interest, sexual fantasies, erections and sexual activity, producing what some researchers call a sexual calm." This "sexual calm" is believed to reduce the occurrence of repeat offenses.

The drug most commonly used is known as Depo-Provera, which is a female hormone compound that suppresses testosterone production and decreases a man's erections and sperm count. Research shows that the drug interferes with pituitary glands and the central nervous system. Research also shows that an effective dose of the drug results in an almost total loss of genital functions; the penis is unable to become erect, semen is not produced and orgasm does not occur. Side effects include hypertension, fatigue, weight gain, cold sweats, nightmares and muscle weakness. Even though Depo-Provera remains in the body for six to nine weeks, levels of the drug are significantly reduced within days of the injection. Thus, patients must get weekly injections. The procedure consists of giving a sex offender an intramuscular injection, containing 300 to 400 milligrams of the drug, every ten days. Within one month, this

43. Nadel, supra note 20.
44. Id. Large doses of both testosterone and estrogen were used in the 1970s to depress libido in the female as well as in the male. RATA, supra note 11, at 147.
46. Id.
47. Depo-Provera is a synthetic steroid known for its progestinic effect on sex offenders. RESNIK AND WOLFGANG, supra note 18, at 351.
48. Ernestine Williams, Chemical Helps Sap Sex Drive, Pedophiles Treated with Synthetic Hormone, DAYTON DAILY NEWS, March 18, 1994, at 8A. Depo-Provera is the depot-injectable form of medroxyprogesterone acetate that is only injected into male sex offenders because it drastically decreases circulating testosterone. RATA, supra note 11, at 148.
49. Vanderzyl, supra note 19, at 117.
50. RATA, supra note 11, at 148.
51. RESNIK AND WOLFGANG, supra note 18, at 354.
52. Vanderzyl, supra note 19, at 117.
53. Williams, supra note 48.
54. Id.
55. RESNIK AND WOLFGANG, supra note 18, at 352.
dosage lowers plasma testosterone levels to that of a female.\textsuperscript{56} This procedure creates a reversible "hormone castration" effect.\textsuperscript{57}

Alternatively, other drugs can be used to achieve the desired effect of decreased testosterone production as well. For example, Phenothiazines are drugs that decrease testosterone levels, but do not have the side effects most noted in Depo-Provera.\textsuperscript{58} Impotence is the main effect associated with the use of Phenothiazine.\textsuperscript{59}

A combination of both therapy and drugs is thought to be an effective deterrent of recidivism.\textsuperscript{60} Indeed, it is reported that offenders are more responsive to behavioral therapy in conjunction with such chemical suppressants.\textsuperscript{61} Therapy not only examines the many factors causing deviant sexual behavior, but it also identifies the source of a sex offender's anxiety and problems.\textsuperscript{62} Furthermore, a therapist can examine the deviant's neurotic structure and recognize sexual distortions in his mind.\textsuperscript{63} Thus, it is rare for either a purely operative procedure or dosage of hormones to effectively deter a sex offender from committing future offenses without therapeutic resources.\textsuperscript{64}

III. Belgium, Germany, England, Denmark and the United States: Different Responses to the Same Crime

Many European countries have already implemented surgical castration as a partial means to stop sex offenders from offending again.\textsuperscript{65} In fact, thousands of sex offenders who were surgically castrated in Denmark, Germany, Sweden, Norway, Holland, Switzerland and Czechoslovakia have only a 2.2 % recidivism rate, compared to a fifty percent repeat rate in Texas, which has not yet

\begin{itemize}
\item \textsuperscript{56} Id. at 352. Potency and ejaculation are drastically lowered after castration. Id.
\item \textsuperscript{57} Id.
\item \textsuperscript{58} RATA, supra note 11, at 149.
\item \textsuperscript{59} Id. at 149.
\item \textsuperscript{60} Vanderzyl, supra note 19, at 117.
\item \textsuperscript{61} Reinisch, supra note 45.
\item \textsuperscript{62} RESNIK AND WOLFGANG, supra note 18, at 217.
\item \textsuperscript{63} Id. at 220. Indeed, once sex offenders and therapists interpret the symbolic meaning of the sex offender's acts, they can then recognize a pattern of associated behavior and treat it properly. Id. at 219.
\item \textsuperscript{64} Id.
\item \textsuperscript{65} Vanderzyl, supra note 19, at 114. Germany, Finland, Norway, Estonia, Iceland, Latvia, Switzerland and Sweden all use such measures to decrease the number of repeat offenders. Id. at 140.
\end{itemize}
approved such procedures. In addition, many countries, including England, Sweden and Denmark, have turned to chemical castration as another option because of its reversible nature; the effects of the procedure last only a certain number of weeks.

A. Belgium's Response to Repeat Sexual Offenders

Belgium has perhaps the least-developed system for dealing with sex offenders, and it has just approved new measures to make it harder for sex offenders to attain an early release from prison. This new focus on sex offenders has been brought on by the recent wrath of Marc Dutroux, a repeat sex offender who kidnapped as many as fifteen young girls before raping and torturing them. He was released from prison in 1992 on the condition that he would enter therapy. The laxity of Belgian laws in relation to repeat offenders paroled from prison is readily apparent, and officials are now looking at chemical castration as a solution. While there is little literature on Belgium's response to repeat sex offenders, the rise in such offenses will surely promote a change in Belgium's laws that address such crimes.

B. Germany's Strict Use of Optional Surgical Castration and Sex Offender Registration as Deterrents to the Commission of Sexual Offenses

Germany is perhaps the most ardent supporter of surgical castration. The Nazi German Act of 1933 mandated sex offender castration, but was abolished in 1945 because of the procedure's association with Nazism. The laws thereafter were quite strict

---

67. Restraining Sex Offenders, HERALD ROCK HILL (South Carolina), Sept. 5, 1996, at 11A.
68. Neuffer, supra note 7.
69. Id.
70. Id.
71. Id.
72. Heim and Hursch, supra note 10, at 282.
73. See id. This Act was quite strict and provided for castration of a man more than 21 years old:
1. who was convicted of forcing someone to indecency, of raping children, or of having committed a sex crime, and who, therefore, was imprisoned for at least six months, and who, in addition, had been thus sentenced for a sex offense once before and was evaluated as a dangerous sex criminal; or
2. who was convicted and sentenced to imprisonment for a period of not less than one year and, in addition, was evaluated as a dangerous sex criminal; or
and advocated castration for offenders who were more than twenty-one years of age.\textsuperscript{74} However, German laws soon became more lenient.\textsuperscript{75} For example, a subsequent regulation passed in 1970 provided for voluntary castration of male sex offenders older than twenty-five years of age.\textsuperscript{76}

Despite a history of statutory backing, Germany still does not regularly use surgical castration to prevent repeat sexual violations because of its harsh effects, and the number of offenders who were castrated has decreased from four hundred after 1970, to only five per year.\textsuperscript{77} Indeed, the use of castration has diminished with the rise of sexual liberalization in German society.\textsuperscript{78} However, statistics with regard to the effects of surgical castration are favorable because they demonstrate that only three percent of German sex offenders who have had the operative procedure have committed another sex offense.\textsuperscript{79}

Furthermore, Germany has not yet implemented chemical castration as a means to protect its children.\textsuperscript{80} However, the rape and murder of seven-year-old Natalie Aster has thrown Germany into turmoil, and pushed Claudia Nolte, the federal minister for family affairs in Germany, to consider chemical castration as a means to protect its children.\textsuperscript{81} In fact, politicians in Bavaria are pushing for a mandatory chemical castration law in response to the German public's outrage at Natalie Aster's horrible death.\textsuperscript{82} Moreover, Claudia Nolte has begun a new campaign for the protection of children after the Stockholm international conference on child sex abuse.\textsuperscript{83} Indeed, the increase in public attention has pushed the problem of repeat sex offenders to the forefront of Germany's political agenda.

The leader of Bavaria's Christian Social Union, Theo Waigel, has directed attention to Bavaria's probation procedures for sexual

\begin{thebibliography}{99}
\item who had committed murder in order to satisfy his sexual drive. \textit{Construed in} RESNIK AND WOLFGANG, \textit{supra} note 18, at 364.
\item RESNIK AND WOLFGANG, \textit{supra} note 18, at 364.
\item Id.
\item Id.
\item Heim & Hursch, \textit{supra} note 10, at 282. The statute's language advocates the implementation of surgical castration only where the procedure will prevent offenders with abnormal sex drives from committing further sexual offenses. \textit{Id.}
\item Oxford, \textit{supra} note 8.
\item Id.
\item Id.
\item Id.
\item Id.
\item Id.
\item Id.
\item Id.
\item Id.
\item Id.
\item Id.
\item Neuffer, \textit{supra} note 7.
\item Traynor, \textit{supra} note 1.
\item Traynor, \textit{supra} note 1.
\end{thebibliography}
offenders and seeks to incorporate more therapy into the offenders' regimens before their release into society. In addition, Bavarian officials also want to increase a sex offender's maximum prison sentence from ten to fifteen years.

Germany has been concerned with the international exploitation of children as well, and it supports the creation and use of an international database of sex offenders. This international database may be the key to future deterrence, as it will help disable a sex offender's ability to travel to another country to commit crimes which he already committed in his own country. Indeed, this system parallels the goals of the mandatory registration procedures spreading throughout the United States, but attacks the problem on a larger scale.

C. England's Use of Chemical Castration and Intent to Mandate a National Registry to Deter Sexual Offenders

England offers only chemical castration to offenders when they ask for the procedure, because the British government sees surgical castration as "brutal" and "barbaric." For example, a repeat offender in Great Britain with a forty year history of sex abuse against children campaigned for the right to be surgically castrated, but to no avail. After threatening suicide, refusing to eat, and attempting to castrate himself, the offender was only given access to chemical castration, which he did not want because of its temporary solution to his problem of being unable to control his violent sexual tendencies. The offender's belief was not unfounded. Chemical castration involves the administering of small doses of Depo-Provera or a comparable drug for a definitive period of time. After this time period expires, there is no guarantee that a sex offender will not go back to his old ways. On the other hand, surgical castration is more permanent. Thus, while

84. Id.
86. Neuffer, supra note 7.
87. Id.
88. Vanderzyl, supra note 19, at 180.
90. Vanderzyl, supra note 19, at 107.
91. Id. at 108.
92. Id. at 116.
93. Id.
some repeat offenders see this permanency as a blessing, others see it as a nightmare.\textsuperscript{94}

In addition to the implementation of chemical castration, England provides treatment in rehabilitation facilities for offenders who are on probation.\textsuperscript{95} Thus, criminals are not only physically aided, but they are also given a psychological remedy to prevent future violent outbreaks.

In order to combat the problem of the sexual exploitation and abuse of children, British officials plan to create a mandatory registry for child sex offenders that will track offenders' movements after they are released from jail.\textsuperscript{96} This registry will enable the British police to keep a close watch on and pinpoint the location of suspects.\textsuperscript{97}

\textit{D. Denmark's Implementation of Chemical Castration and Therapy to Replace Surgical Castration}

Denmark was the first European country to legalize surgical castration.\textsuperscript{98} Its first castration was performed in 1925.\textsuperscript{99} From 1935 to 1970, Denmark provided surgical castration in place of a prison sentence to those offenders who volunteered for the procedure, but such irreversible practices were later banned because they were deemed inhumane.\textsuperscript{100} In fact, Denmark had gone further than most countries in using surgical castration to curb repeat offenders because it combined such a permanent remedy with psychiatric therapy.\textsuperscript{101} Chemical castration was implemented in 1973 to replace this inhumane and irreversible surgical procedure.\textsuperscript{102} Chemical castration is now used after therapeutic remedies fail.\textsuperscript{103} The procedure of chemical castration has also been

\textsuperscript{94} Id.
\textsuperscript{95} Oxford, \textit{supra} note 8.
\textsuperscript{96} Dominic Kennedy, \textit{Sex Tourists To Be Tried by Courts in Britain}, \textit{TIMES} (London), Aug. 27, 1996.
\textsuperscript{97} Id.
\textsuperscript{99} \textit{RESNIK AND WOLFGANG}, \textit{supra} note 18, at 365.
\textsuperscript{100} Jan M. Olsen, \textit{Crime Stopper: Chemical Castration Cures a Sex Criminal}, Aug. 31, 1996, at 11A. Denmark only offered voluntary castration to offenders who were twenty-one years of age or older, and they had to petition for a permit. \textit{RESNIK AND WOLFGANG}, \textit{supra} note 18, at 368.
\textsuperscript{101} \textit{RESNIK AND WOLFGANG}, \textit{supra} note 18, at 376.
\textsuperscript{102} Olsen, \textit{supra} note 100.
\textsuperscript{103} Neuffer, \textit{supra} note 7.
used as an avenue for early release from prison, although it is not a requirement for parole as in other countries. Perhaps a better answer to the problem of recidivism would be to make chemical castration a probationary requirement rather than a choice.

The Herstedvester Institute for Abnormal Criminals is Denmark's only jail for sex offenders. It puts sex offenders into therapy both before and after the operative procedure. Doctors at the Institute recognize that many offenders who have sexually abused their victims were abused as children. Therefore, therapy is an integral factor in curbing the commission of further offenses.

The physicians at the Hervester Penal Institute report positive results. While twenty-six prisoners have been given the injections since 1989, only one chemically castrated offender out of the sixteen offenders who were released has committed another offense. The Institute maintains such a success rate by treating patients with a combination of two drugs, known as Androcur and Decapetyl, which suppresses the hormones that further the sex drive. Critics of this combination emphasize that Decapetyl's long-term effect is irreversible chemical castration, and the side effects include obesity and mood swings. Presently, Denmark is the only country to combine these two drugs.

The total time spent by offenders in the Institute is one year, during which time each offender engages in "individualized integrating growth therapy." Parole is not even suggested until five to six months after the operation so that the therapy has time to work and the offender is given enough time to adjust to the procedures. Perhaps part of the Institute's effectiveness can be

104. Id.
105. Katherine Seligman, supra note 9.
106. Olsen, supra note 100.
108. Id.
109. Olsen, supra note 100.
110. Seligman, supra note 9.
111. See Jan M. Olsen, Sex Offenders in Denmark Opt for Chemical Castration, FORT WORTH STAR-TELEGRAM, Sept. 8, 1996, at A5.
112. See Neuffer, supra note 7. Androcur suppresses the production of testosterone and Decapetyl hinders the remaining hormones' stimulation of sexual aggression and violence. See Olsen, supra note 111.
113. See Olsen, supra note 111.
115. RESNIK AND WOLFGANG, supra note 18, at 375.
116. Id. at 374.
attributed to its allowance of time for an offender to change his ways. Indeed, for some repeat sex offenders, sexual violence has been their way of life for years, and it will take time for them to learn how to control such criminal urges.

E. The United States' Response to Repeat Sex Offenders

Through Chemical Castration and Registration Laws

Through the years, many American states have adopted laws in response to the problems of repeat sex offenders. However, the recidivism rates have led communities to believe that sex offenders cannot be cured. What society must remember is that a sex offender’s behavior cannot change unless his mind is treated first. The problem with garnering support for therapy programs is that no statistical evidence exists to corroborate the beneficial long-term results of therapy. Indeed, the success of therapy depends largely on each patient’s individual situation and his degree of psychopathic disorder. Comparatively, statistics reveal that recidivism rates do decrease when offenders are castrated.

1. California Passes a Law Mandating Chemical Castration for Repeat Sexual Offenders.—Because recidivism rates reflect the prison system’s ineffective deterrence in the United States, California passed the first law mandating chemical castration for those convicted of a second crime against a child under thirteen years of age. Governor Pete Wilson signed the chemical castration bill into law in response to society’s anger toward repeat offenders and the previous law’s inability to protect victimized children. The regulation mandates the implementation of chemical castration a week before each offender’s release from

---

117. MARCIA J. WALKER & STANLEY L. BRODSKY, SEXUAL ASSAULT 94 (1976). For example, Wisconsin enacted a Sex Crimes Law in 1951 to provide treatment for habitual sex offenders through a Sex Crimes Treatment Center in the State’s prison. Treatment included individual, family and behavioral therapies. Id. at 95.
118. Id. at 93.
119. Id. at 95.
120. Id.
121. Seligman, supra note 9.
122. Id. Montana is the second state to allow the use of chemical castration on repeat sex offenders who commit rape or incest. The treatments begin one week before the offender’s release and may continue indefinitely. Montana Adopts Chemical Castration, SAN DIEGO UNION & TRIBUNE, Apr. 27, 1997, at A10. See also MONT. STAT. ANN. § 45-5-512 (1997).
prison and continuance of such treatment throughout the parole period.\textsuperscript{123} The drug used in California is Depo-Provera and its effect is similar to that of the Decapetyl drug used in Denmark.\textsuperscript{124} Offenders in California who do not want to be chemically castrated may opt for surgical castration.\textsuperscript{125}

While this new legislation is another small step toward deterrence, the law does not reach all sex offenders who commit sexual offenses against minors.\textsuperscript{126} California's chemical castration law covers only "those convicted of sodomy, oral sex, insertion of a foreign object or lewd and lascivious conduct with minors."\textsuperscript{127} In addition, the California law does not cover males convicted of having vaginal sex with females less than thirteen years of age, and it exempts heterosexuals who engage in conventional sex with minors.\textsuperscript{128} While California's new law is a start in the right direction, it should mandate chemical castration for child rapists as well. The law's failure to include these child sex offenders in its mandate for chemical castration exempts a large segment of the criminal population, thereby leaving California further from its ultimate goal of deterrence.

While some European countries offer chemical castration as a supplement to therapy in prisons, such therapy is not available in California's prisons because there are just too many inmates.\textsuperscript{129} For example, in addition to the 6000 sex offenders on parole in California, its prisons house about 14,000 inmates who are sex offenders.\textsuperscript{130} Indeed, it seems as if medicine must make up for

\textsuperscript{123} Seligman, supra note 9.  
\textsuperscript{124} Jan M. Olsen, Sex Offenders in Denmark Opt for Chemical Castration to Stop Child Molesters, FORT WORTH STAR-TELEGRAM, Sept. 8, 1996, at 5. The use of Depo-Provera is also being considered in Texas, Massachusetts and Wisconsin. Id. In addition, Hawaii, New Mexico, and Washington have proposed bills mandating castration for those convicted for sexual assault and penetration. Kenneth Fromson, Beyond an Eye for an Eye: Castration as an Alternative Sentencing Measure, 8 N. Y. L. SCH. J. HUM. RTS. Part Two, 311, 315 (1994).  
\textsuperscript{125} See Seligman, supra note 9. Critics of the law claim that any form of castration violates the Eighth Amendment as cruel and unusual punishment because such a punishment is unusually severe, and its penal purpose has not proven to be more effective than a less severe punishment. Fromson, supra note 124, at 317.  
\textsuperscript{126} Daniel C. Tsang, California Returns to Dark Ages, BUFF. NEWS, Sept. 29, 1996, at H5.  
\textsuperscript{127} Id.  
\textsuperscript{128} Id.  
\textsuperscript{129} See Seligman, supra note 9.  
\textsuperscript{130} Id. California has more than 15,000 jailed sex offenders and only offers one treatment program to forty-six rapists and child molesters. Fromson, supra note 124, at 317.
the prison system's failure to cure repeat sex offenders of their violent urges. To make up for the absence of rehabilitative programs in prisons, California's new law advances medical remedies to deter offenders when their time behind bars expires. However, under California's sentencing procedures, this time is not long. While a judge may give the maximum term for a prison sentence, most offenders are released after only half of their sentence is served because prisons are overcrowded and the correctional system tends to award brownie points toward early release for good behavior. As a result, many offenders who have not been rehabilitated have been able to slip through the system. However, this new mandatory chemical castration law will catch a few of them before they are released.

In response to the problem of early release and the lack of rehabilitative measures, California enacted mandatory registration laws to monitor paroled sex offenders. Under this system, sex offenders are required to register with local police and are identified when a sex crime occurs in their communities. As of January 1987 there were 64,700 offenders registered in California, but this number does not include the many parolees who have failed to register. Indeed, the recidivism rate illustrates the need for such tracking devices. A study of 286 convicts paroled in 1978 revealed that three out of four were arrested again within three years.

California represents the norm for recidivism problems throughout the United States. The prison population in the United States increased by twenty percent from 1988 to 1990, and the increase in sex offenders was forty-eight percent. Indeed, the increasing number of sex offenders is a growing problem that must be addressed.

131. Jeff Weir, Examining How a Sex Offender Gets Back on the Street, ORANGE COUNTY REG., Feb. 15, 1987, at A22. Incarceration is failing to rehabilitate sex offenders, as recidivism rates are not decreasing. Fromson, supra note 124, at 316.
132. Weir, supra note 131.
133. Id.
134. Id.
135. Id.
136. Id.
137. Weir, supra note 131.
138. Id.
139. Id.
140. See Fromson, supra note 124, at 317.
141. Id. at 316.
2. New Jersey Passes a Law Mandating Registration of Released Sex Offenders.—New Jersey passed "Megan's Law"\textsuperscript{142} in response to the dangers created by repeat sex offenders with regard to children.\textsuperscript{143} This law permits enforcement officials to notify the public when sex offenders enter their communities\textsuperscript{144} and requires sex offenders to register with their local enforcement agencies before their release.\textsuperscript{145} Furthermore, officials are permitted to disseminate information regarding the sex offenders to the neighboring communities that may interact with them, including their names and photographs.\textsuperscript{146}

Despite the increased protection that registration laws provide for persons living near a sex offender, the laws have still been constitutionally challenged.\textsuperscript{147} Indeed, deprivation of an offender's privacy has become a controversial issue in the courts.\textsuperscript{148} In addition, critics of the laws claim that the stigma of such disclosure constitutes cruelly excessive punishment.\textsuperscript{149}

Nevertheless, supporters of Megan's Law and other registration laws believe these measures effectively protect communities from repeat sex offenders where penal measures have failed.\textsuperscript{150} Indeed, this public protection from and deterrence of sex offenders may overcome such constitutional roadblocks. Perhaps such statutes will become even more effective in deterring sex crimes and protecting the public when the courts iron out the inconsistencies and controversial stigmas surrounding registration laws, thereby permitting officers to use them on a larger scale.

\begin{itemize}
  \item \textsuperscript{142} See generally N.J. STAT. ANN. tit. 2C § 7 (West 1995).
  \item \textsuperscript{143} Fred Cohen, Sex Offender Registration Laws: Constitutional and Policy Issues, CRIM. LAW BULL., March-April 1995, at 151.
  \item \textsuperscript{144} Id. at 157.
  \item \textsuperscript{145} Id. at 158.
  \item \textsuperscript{146} Id. at 152. The records are "open to any law enforcement agency in this State, the United States or any other state," and New Jersey agencies are "authorized to release relevant and necessary information regarding sex offenders to the public when the release of the information is necessary for public protection in accordance with the provisions." N.J. STAT. ANN. tit. 2C § 7 (West 1995).
  \item \textsuperscript{147} Cohen, supra note 143, at 152.
  \item \textsuperscript{148} Id. at 153.
  \item \textsuperscript{149} Id.
  \item \textsuperscript{150} Id.
\end{itemize}
IV. Potential Problems in Europe and the United States: Constitutional Limitations, Community Reactions, and Government Intervention

While statistical evidence illustrates the positive results of both surgical and chemical castration laws, countries still hesitate to implement such remedies due to their harsh nature. Indeed, even as members of society abhor the sexual abuse of children, they hold conflicting views with regard to the correct way to eliminate this violence without infringing upon principles of individual privacy.

A. Constitutional Limitations

Both surgical and chemical castration may infringe upon the constitutional rights of citizens. First, such measures may interfere with an individual’s right to privacy under the Due Process Clause of the Fourteenth Amendment, which protects childbearing and contraception. For example, the act of offering castration to convicted sex offenders as an alternative to imprisonment may interfere with an individual’s decision to have children. Thus, castration laws may go against an individual’s fundamental right to procreate, as surgical castration does disable a sex offender from ever having a child. In addition, the right to refuse medical treatment has been recognized, in some cases, as another right to privacy that may be affected by castration laws. While some courts do offer voluntary castration, opponents of the law argue that a choice between castration and imprisonment is too coercive to be considered voluntary. However, the growing threat of repeat sex offenders may give legislators the compelling interest needed to validate such infringements. Indeed, castration may not be severe or arbitrary because it may be the only measure that will put an end to the increasing numbers of sex offenses. Regardless, the problem may present itself in court when the government is asked to show that castration is the least restrictive means to achieve its objective of deterrence. The hard truth of the matter is that statistics support both sides of

151. Id.
153. Id.
154. Id. at 122.
156. Id. at 125.
the coin, and the only way to determine castration’s effectiveness, during a time when nothing else is working, may be to try it.

B. Community Reaction

Dissatisfaction with castration laws in European and American societies stems from historical disfavor. While some Europeans disfavor castration because it resembles the experiments performed by Third Reich doctors in Nazi Germany, 157 Americans challenge castration as unconstitutional because of its cruel and unusual nature. 158 Indeed, the American Civil Liberties Union (ACLU) will likely challenge California’s implementation of chemical castration legislation. 159 The ACLU argues that such measures violate an individual’s right to privacy and subject individuals to adverse medical side effects. 160 Both the Michigan and Montana Supreme Courts have already held the use of Depo-Provera (as a condition of probation) unconstitutional because the drug is only in its experimental stages. 161

However, American groups such as the Women’s Coalition support castration legislation as an effective means to protect helpless children. 162 As the president of the Women’s Coalition in Pasadena stated, “I don’t care about the rights of serial child molesters. To me, they’ve lost their rights once they rape, molest and violate small children. This, by the way, is not a punishment. [Chemical castration] is a help for their problem. . . . It does not sterilize them. It merely lowers their testosterone level.” 163

Indeed, castration is becoming a more acceptable sentencing alternative among state legislatures as incarceration is failing to rehabilitate sex offenders. 164 As recidivism rates increase, society is gradually favoring castration laws as well. 165 Castration is no longer deemed so inhumane, as more victims are subjected to torture at the hands of repeat sex offenders who have been through

157. Daniel C. Tsang, Cruel, Unusual Border Crossed in Drive Against Sex Offenders, CAP. TIMES, Oct. 9, 1996, at 11A.
158. Id.
159. Id.
162. See Bond, supra note 160.
163. Id.
164. See Fromson, supra note 124.
165. Id. at 320.
the system and are not rehabilitated. Hence, castration may prove to be a last resort where numerous other measures have failed.

C. Flaws in Analyses: Misunderstanding the Dual Roles of Chemical Castration and Therapy

A potential flaw in surgical castration laws is that they may deter only those sex offenders who commit crimes for sexual relief. For example, in Denmark, eighteen of thirty-eight rapists were castrated. While none of the castrated offenders committed another sexual crime, six committed non-sexual, violent crimes. Thus, while proponents of castration laws think that all sex crimes stem from an untamable sex drive, the truth is that many sex crimes are the result of uncontrolled violent urges. Hence, surgical castration may solve part of the problem, but does not solve it in its entirety. Perhaps this gap in reasoning advocates increased use of chemical castration since this procedure reduces the testosterone levels that incite the aggression in sex offenders which leads to violence.

Furthermore, many people in society do not like to “give” free therapy to sex offenders because they want to punish offenders and give them something more harsh so that offenders will pay for their crimes. However, psychiatric help may be the only way to protect society from recidivism. Many physicians favor a middle road that combines chemical injections with rehabilitative therapy. Doctors recognize the psychologically rooted problems that cause many offenders to commit such shocking acts, and they believe that using drugs to reduce an offender’s sexual desire, in conjunction with therapy that deals with an offender’s psychological motivations, can be effective.

166. Id. at 321.
168. Id.
169. Id.
170. Id. at 301. In fact, studies show that some sex offenders actually suffer from sexual dysfunction; offenders suffer from an underdeveloped sexual drive rather than a sexual overdrive. Id.
171. Id.
172. Tsang, supra note 157.
173. Id.
Indeed, such psychological motivations generally stem from sexual abuse when the offender was young.\textsuperscript{174} This early sexual behavior may cause an offender to confuse aggressive and sexual impulses that are manifested in the sex offender’s sexual deviation.\textsuperscript{175} Thus, ignoring the psychological reasons behind such violent sexual acts will not cure the problem, especially in a system where most offenders are released back into society.\textsuperscript{176}

Hence, treatment must become an integral part of an offender’s sentence, especially when such offenders are youths. Society does not always realize that sex offenders can be juveniles as well.\textsuperscript{177} Indeed, “research shows that more than half of adult sex offenders began molesting as juveniles.”\textsuperscript{178} If the system were to treat offenders when they first began offending, perhaps there would be less recidivism today.\textsuperscript{179}

The Pines Treatment Center in Portsmouth, Virginia, treats juvenile sex offenders through group therapy, family therapy, individual counseling, and community meetings.\textsuperscript{180} A 1995 study showed that out of the sixty individuals who completed the program, only thirteen percent committed another sex crime.\textsuperscript{181} In comparison, of the fifteen juvenile offenders who did not complete the program, forty percent committed another offense.\textsuperscript{182} Thus, as more treatment centers are established and people in the judicial system realize that therapy is essential to curing its victimizers, perhaps recidivism rates will decrease in the years to come.\textsuperscript{183}

In fact, group therapy may be a key factor in curing sex offenders of their violent urges.\textsuperscript{184} Some sex deviants are diagnosed with “sociopathic” personalities and are, therefore, unresponsive to psychotherapy because they do not respond to therapists on

\begin{itemize}
\item 175. \textit{See} \textit{RATA}, supra note 11, at 33. “The study of sexual deviation is very largely the study of sex divorced from love.” \textit{Id.} at 14.
\item 176. \textit{Id.} at 94.
\item 177. \textit{Id.} at 96.
\item 178. \textit{Id.}
\item 179. \textit{Id.}
\item 180. Horowitz, supra note 174, at 94.
\item 181. \textit{Id.} at 97.
\item 182. \textit{Id.}
\item 183. \textit{Id.}
\item 184. \textit{RESNIK AND WOLFGANG}, supra note 18, at 255.
\end{itemize}
an individual level.\textsuperscript{185} Thus, the small-group therapy approach works because peers with similar problems can socialize and relate to one another, thereby making such unresponsive individuals more likely to participate in the program.\textsuperscript{186} Consequently, the therapy alleviates the offender's social isolation and enables therapists to get to the root of the offender's problem more quickly.\textsuperscript{187}

\textbf{D. Government Intervention}

On a larger scale, the increasing number of offenses committed by repeat sexual offenders has moved the European Union to unify and improve its methods of tracking missing children by establishing a national registry.\textsuperscript{188} In addition, the European Commission has proposed to the European Parliament various provisions to establish a mandatory registry for sex offenders.\textsuperscript{189} European governments are recognizing the growing problem of recidivism and acknowledging the need for coordinated efforts to eliminate such a threat to society.\textsuperscript{190}

\textbf{V. Future Implications}

The future of the varying measures used in response to the growing problem of sex offender recidivism will depend on the effectiveness of present policies and society's response to and implementation of such mandates. While European countries are less hesitant to advance chemical castration legislation because of its historical influence and success, as illustrated in Germany, England, and Denmark, the United States is only now acknowledging the beneficial impact of such legislative and medical measures. Indeed, it may be years before the legislature and the judiciary iron out the wrinkles in the new laws so that they coincide with constitutional and societal sentiments. Nevertheless, the high recidivism rates will decrease only after chemical castration is

\begin{itemize}
  \item \textsuperscript{185} \textit{Id.} Furthermore, many offenders are suspicious of their therapists and perceive them as adversaries because they suspect that their therapists are connected with the police. \textit{Id.}
  \item \textsuperscript{186} \textit{Id.} at 256. In addition, small-group therapy helps sex offenders through their initial denial phase more quickly because many of their peers have already accepted their own criminality. \textit{Id.}
  \item \textsuperscript{187} \textit{Id.}
  \item \textsuperscript{188} Stephen Bates, \textit{Tracking EU's Lost Children}, GUARDIAN (London), Sept. 19, 1996, at 2.
  \item \textsuperscript{189} \textit{Id.}
  \item \textsuperscript{190} \textit{Id.}
\end{itemize}
implemented to help cure offenders of the urge to victimize those outside of the prison walls.

Along with this line of reasoning, the governments in both Europe and the United States must acknowledge the psychological roots of such criminal acts, and recognize the fact that the body will conform to the norms of society only when the mind is corrected. Denmark's Herstedvester Institute is a step in the right direction because it combines therapy and chemical castration to successfully deal with the roots of such violence. Perhaps the ensuing success rate of such measures will convince others that this combination is essential in the establishment of a long-term cure for repeat habitual offenders.

Aside from the rehabilitative measures necessary to reduce the recidivism rates plaguing society, it is necessary to acknowledge that such remedies may take years to develop and produce results. Until such offenders are able to repress their violent urges, California, New Jersey, and the European Commission have enacted mandatory registration statutes to provide society with a way to protect itself. After all, if the prison system cannot protect society from offenders for an effective length of time, and rehabilitative measures either do not work or are not pursued, society must be armed to deal with such offenders when they are released onto the streets.

Thus, a combination of chemical castration, therapy and sex offender registration may be the answer to society's nightmare. Furthermore, both chemical castration and therapy should be offered to sex offenders as a probationary requirement. As the problem of recidivism becomes more publicized and child abuse continues to make news headlines, nations will slowly come together in a joint effort to find a solution to one of society's most malignant problems.

In conclusion, the government organizations in Belgium, Germany, England, Denmark and the United States are gradually recognizing the need for more effective measures but have not yet reached total enlightenment. All five countries hesitate to crack down on offenders in fear of overstepping the bounds of individual privacy and public acceptance, yet simultaneously open the public to dangers that could and should be prevented. Thus, they shy away from the strict policies that are the only answer to the growing need for protection from repeat sexual offenders. All governments and their respective societies must remember that most sex offenders kill and rape as a result of both sexual deviance and violent tendencies, and they will not be cured of such rage by
being caged within the walls of a prison. Rather, they will be even more dangerous when they are unleashed onto an unsuspecting society. Until offenders can be effectively cured, society has a right to be notified and protected from such individuals when their time behind the bars that separate them from their next victim expires.

*Alison G. Carpenter*