

**THE KINSEY REPORTS:
THE AUTHORITY FOR "ABOLISHING"
COMMON LAW PROTECTIONS FOR
WOMEN AND CHILDREN IN THE
STATES' CRIMINAL CODES**

*Legal Revolution in the Guise of
"Science-Based" Legal Reform
1923 - 2000*

A Work in Progress: For Discussion Purposes Only.
Preliminary draft - not intended for application or distribution.

"Virtually every page of the Kinsey Report
touches on ... the legal code."

*Morris Ernst,
ACLU Attorney for the
Indiana University Kinsey Institute.*



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THE KINSEY REPORTS: THE AUTHORITY FOR “ABOLISHING” COMMON LAW PROTECTIONS FOR WOMEN AND CHILDREN IN THE STATES’ CRIMINAL CODES

*Covert Legal Revolution in the Guise of “Science-Based” Legal Reform
1923 - 2000*

Justice Louis D. Brandeis said;

“...the conduct of life is to so large an extent determined by the existing legal institutions, that an understanding of the legal system must give you a clearer view of human affairs in their manifold relations, and must aid you in comprehending the conditions, and institutions by which you are surrounded.”¹

In assessing America’s current “conduct of life,” in August 2000, a team of researchers for the *RSVP America* Campaign prepared, “A Report of Illegitimacy and Violence in Kansas, Kentucky, Minnesota, Missouri, New Jersey, and Maryland” from *Statistical Abstracts of the U.S.* and *Vital Statistics of the U.S.* This six state study revealed the nation’s serious condition related to rates of illegitimacy, rape, and sexual violence as levels have skyrocketed from very low rates in 1950. If understanding the legal system gives you a “clearer view of human affairs” and aids in “comprehending conditions...by which you are surrounded,” as Justice Brandeis declared, then the question to be answered is evident: What, within the nation’s “legal institutions,” changed to account for the significant changes in “the conduct of life” in America regarding illegitimacy, rape, and sexual violence?

Which change came first: Law or Culture?

Today a great deal is made of the changes to American “culture” beginning in the 1960s. Many say the sexual revolution is the reason America’s “conduct of life” changed, but, in fact, it is an outcome or a symptom of the upheaval that has occurred to the condition and conduct of life.

Prior to the 1960s there was an outcry of American people demanding stricter enforcement of the already strong laws that protected marriage, feminine virtue and childhood modesty. At that time the only lawful sexual congress between the sexes was heterosexual coitus in marriage. Despite the outcry for stronger enforcement, it was a time when sex crime rates were very low when compared to the high rates today.

¹Leonard Baker, 1986. *Brandeis and Frankfurter: A Dual Biography*. Washington Square, NY: New York University Press, p. 29.

The Father of “Sex Offense” Laws

Based on the seminal work of Dr. Judith A. Reisman⁶, the *RSVP America* Campaign confirmed that the changes to pre-1948 laws protecting marriage, women and children are directly traced to the flawed sex science of Indiana University zoologist professor Alfred C. Kinsey. There had been other research into human sexuality deviant and otherwise, but until Kinsey’s research there was never so grand a project – 18,000 interviewees - undertaken to inquire into the behavior of normal Americans.

The year after the first Kinsey Report, *Sexual Behavior in the Human Male*, on May 8, 1949, *The New York Times* reported,

Dr. Alfred Kinsey, [speaking at a Columbia University forum on crime prevention] author of the Kinsey Report, asked that the laws on sex offenses be changed. He said: ‘Not more than 5 percent of the persons who pass through the courts are involved in behavior which damages other individuals’. The other 95 percent ‘are involved in sexual behavior that transgresses laws that have no function other than to preserve custom,’ he said.⁷

Kinsey’s Flawed Statistical Evidence of Normal Sexuality

Kinsey’s statistics disprove his *NYT* proposal. As Dr. Reisman has pointed out in her book, *Kinsey: Crimes & Consequences*, Kinsey’s data largely reflect the conduct of criminals and sex deviates.⁸ Of 18,000 subjects in the Male sample, the Kinsey Male Report claims to reflect a normal distribution of 5,300 white males. Of that number, the Kinsey Reports denominates 2,446 as convicts, 946 as homosexuals, 57 as a special group of homosexuals, 117 as mentally ill, 342 as “others” and 650 as boys. That means that the data in the Kinsey Report (1948) are based on 4,628 aberrant and a mere 873 normal males.⁹ Dr. Reisman’s report of 86% of Kinsey’s sample being aberrant males was finally conceded by Kinsey’s co-author Paul Gebhard in 1990.¹⁰

An additional problem with the sample was pointed out by renowned psychologist Abraham Maslow, who warned Kinsey that only women (and men) engaged in unconventional, exhibitionist sexual behavior would be most likely to share their sexual experiences with strangers. Maslow’s counsel garnered Kinsey’s ire, but he continued on. As Maslow warned, Kinsey could locate almost no “normal” married women to interview so he redefined prostitutes as “married” if they ever lived over a year with a man. In

⁶ Reisman, J. A. 2000. *Kinsey: Crimes and Consequences*. (2nd ed.). Crestwood, KY: Institute For Media Education.

⁷ *New York Times*, May 8, 1949, page 59, column 3.

⁸ Reisman, J. A. 2000. *Supra.*, p. ii. Correspondence from Allen Wallis, Past President of the American Statistical Association, former editor of the *Journal of the American Statistical Association*, former Chancellor of the University of Rochester.

⁹ For a complete discussion of the Kinsey Reports fraudulent statistical methodology, see Reisman, *Kinsey: Crimes & Consequences*, 2nd ed., pp. 49-68.

¹⁰ Letter from Paul Gebhard to Director June M. Reinisch at the Kinsey Institute, December 6, 1990.

addition, he purged prison and black female interviews due, he said, to their larger percentage of early sexual experiences.

These data were received by the legal profession as “scientific evidence” of an overwhelming and impossible problem with the then common law standard in force in state law across the nation. It led one legal sage to despair over Kinsey’s claim that, if “a total clean up of sex offenders is demanded, it is in effect a proposal to put 95% of the male population in jail.”¹¹

The Call for Criminal Law Reform based on The Kinsey Reports

A small radical element within the bar and in allied therapeutic fields published 4 books discussing the “scientific evidence” revealed in Kinsey Reports, with its 87% aberrant Male sample.¹² This they said was the proof that the common law was anachronistic and in need of conformity to the most current knowledge of what was now revealed by science to be “normal” human behavior. In one of the 1948 books, the introduction enthused that;

...virtually every page of the Kinsey Report touches on some section of the legal code...a reminder that the law, like...our social pattern, falls lamentably short of being based on a knowledge of facts.¹³

With the debut of the Kinsey Reports, it was obvious to all with 95% of “normal” American males classified as sexual criminals under the 1948 justice system, the laws

¹¹ Ploscowe, M. 1948. *Sex Habits of American Male*, Deutsch, p. 121, Quoting Kinsey, *Sexual Behavior in the Human Male*, 1948, p. 392.

¹² Dr. Judith Reisman developed the following principle findings claimed in The Kinsey Reports to be indicative of “normal” human sexual behavior:

- Kinsey spoke of orgasms as “outlets” and considered all outlets equal – whether between husband and wife, boy and dog, man and boy, girl, or baby – for there is no abnormality and no normality.
- As the aim of coitus is orgasm, the more orgasms from any “outlet,” at the earliest age- the healthier the person.
- Masturbation is critical for sexual, physical and emotional health. It can never be excessive or pathological.
- All sexual taboos and sex laws are routinely broken; thus all taboos and sex laws should be eliminated, including that of rape, unless serious “force” is used. •Since sex is, can, and should be commonly shared with anyone and anything, jealousy is passé. •All sexual experimentation before marriage will increase the likelihood of a successful long-term marriage and venereal disease and other disorders will be reduced dramatically.
- Children are sexual and potentially orgasmic from birth (“womb to tomb”); are never harmed by adult/child sex, even incest, and often benefit thereby. •There is no medical or other reason for adult-child sex, or incest, to be forbidden. •People left on their own are naturally bisexual. Religious bigotry and prejudice forces people into heterosexuality and monogamy. •All sodomy is natural and healthy. Homosexuals represent 10-37% of the population or more. (Kinsey’s findings were always very fluid on this point.) Some educators have interpreted his findings by saying that only 4% to 6% of the population is exclusively heterosexual so the “heterosexual” bias in the U.S. should be eliminated.

¹³ Ernst, M., & Loth, D., *American Sexual Behavior and the Kinsey Report*, Graystone Press, New York, n. 28, 132. See also Reisman, J. A., 2000, *Kinsey: Crimes & Consequences*. Crestwood, KY: Institute for Media Education, 204.

which largely protected women and children were unenforceable. Therefore, legal pillars like Columbia University law professor Herbert Wechsler said that state criminal laws were in need of revision because they were “ineffective, inhumane and thoroughly unscientific” based on the truth now available through “objective scientific pursuit.” Dr. Reisman documents in her book how a carefully orchestrated media blitz across the nation reinforced the Kinsey Reports to be just that - “science.”¹⁴

Examining the Evidence Today of Legal Change in the States

The examination of state laws relating to “sex offenses” began with a pilot study in Missouri. The *RSVP America* research has now expanded from six to thirty states. A preliminary examination of 30 state law schools and Bar Journals chronicle a period generally spanning the mid-1950s through 2000. From Professor Wechsler’s call in 1952 to a period ranging from the early 1960s to the late seventies, state criminal code reform was conducted in the thirty states we have examined. The state laws pre-Kinsey generally provided these protections:

Age of Consent	18 and 16 years old; (21 in Tennessee)
Statutory Rape Penalties	From Death (16 states) to minimum years
Rape Penalties	From Death, (18 states) to a minimum 2 years ¹⁵

The Model Penal Code

Prompted by Kinsey’s findings of what constituted “normal” sexuality, a full chorus of legal and therapeutic elites joined in the call for criminal law reform in state law. The 1955 Model Penal Code Draft 4, was sent to each state in answer to their call. The American Bar Association’s educational arm, the American Law Institute (ALI), produced the “Model Penal Code” (MPC), fulfilling a goal spanning the entire history of the ALI. According to Professor Wechsler, “a study of the defects of American criminal law was begun by the Institute as early as May, 1923,”¹⁶ the year ALI was founded. Writing in 1968 Psychiatrist Manfred Guttmacher, a MPC Advisor, reported that the ALI had sought funds from the Rockefeller Foundation “a quarter of a century” before their funding was finally granted in 1950. The delay in Rockefeller funding was reportedly due to assistance needed from the behavioral sciences, which was not yet ready.¹⁷ The assistance came in 1948 with the publication of the first Kinsey Report, *Sexual Behavior in the Human Male*.

¹⁴ Geoffrey Gorer, writing in the *American Scholar* (Vol. 17, 1948, p. 281) says that “The [Kinsey Reports] pre-publicity campaign, with vetted articles strategically placed, was one of the most ingenious and carefully executed in recent publishing history.”

¹⁵ Bensing, R. 1952. A Comparative Study of Sex Statutes. *Journal of Criminal Law, Criminology and Police Science*, Vol. 42, pp. 57-72. Also includes data on Adultery, Jail and/or fines, “Fault Divorce,” Fornication, Jail and/or fines, 73% of States; Seduction Jail and/or fines, 76% of States.

¹⁶ Wechsler, H. 1952. The Challenge of a Model Penal Code. *Harvard Law Review*, 65(7), p. 1097, fn 1.

¹⁷ Guttmacher, M.S. 1968. *The Role of Psychiatry in the Law*. Springfield, IL: Charles C. Thomas, p. v, vi.

Exclaiming high hopes for releasing what the “social sciences” now said was “scientifically” verified “normal” human pursuits from outdated custom and moral fetters, Professor Wechsler made it official. Writing in a 1952, *Harvard Law Review*, he called the legal profession and the justice system’s attention to the need for a revision of the Common Law by the writing of a Model Penal Code to serve as a guide to the states in updating penal codes. Professor Wechsler said the main objective of the MPC was nothing more than to simply, merely, “define and clarify, the Common Law principles that exist in our country.” Professor Wechsler led the MPC team, as the Code’s chief author.

The Turning Point of the Revolution

There was more afoot than a simple clarification of the law that had ordered the American way of life and justice to that time. In 1948, (seven years before the MPC was generally released), Louis B. Schwartz, who claimed to have authored the “Sex Offense”¹⁸ section of the MPC, was one to declare the real intention of the MPC authors, before the Code was funded in 1950 or announced in 1952. Schwartz said of the Code embedded with the Kinsey Report’s 87% aberrant Male sample:

Sexual penal reforms can “eventually... ease themselves into the written law, especially if it can be done in the course of a general revision of the penal code. This avoids the appearance of outright repudiation of conservative moral standards, by presenting the changes in a context of merely technical improvements.”¹⁹

Model Penal Code Sent to States

Draft #4 of the privately funded MPC was completed in 1955 and sent to the states. Generally the process worked like this: In each state, a committee was formed to undertake criminal law reform. Each state committee was made up of leading lawyers, psychiatrists, sociologists, legal scholars, judges, etc., who used the MPC as a guide to “define and clarify, the Common Law principles” that existed in their state. Most declared their intention and actions in state Bar Journals and Law School Journals to reform the state penal laws which Herbert Wechsler dubbed “ineffective, inhumane, and thoroughly unscientific.”²⁰ The MPC (Draft 4) cites to Kinsey as an authority in the sex offenses chapter nine times, in addition to a complete appendix of quotes from the Kinsey Male Volume containing 18 citations. (Section 207.5, Appendix A). The MPC relied for its “Sex Science” data defining America’s sexual practices on the sole authority of the Kinsey Reports.

¹⁸ The MPC ushered in the term “sex” which appears to enter the Legal cannon in 1955 (and in the common parlance with The Kinsey Reports post 1948). “Crimes Against Persons” and “Offenses Against Morality”—under the common law—became “Sex Offenses” in the MPC.

¹⁹ Schwartz, L. B. *Sexual Behavior in the Human Male*, Book Review. *University of Pennsylvania Law Review*, vol. 96, 1948, p. 917.

²⁰ Wechsler, H. 1952. *Supra.*, p. 1103.

States conformed the laws providing protections for women and children to the MPC, even though comparatively the related disease, dysfunction and sexual violence so prevalent today could be said to unknown under the old and “outdated” penal system. Although this is a time when people were demanding stronger enforcement of laws protecting women and children from rapists and child molesters, the penal reformers were guided by “social science” and legal and therapeutic elites to reduce penalties and/or sought to eliminate these laws. The state codes were uniformly weakened as result.

An Example: Missouri Rape Law

Kinsey and the MPC are consistently cited as the authorities for revising each state’s “Sex Offenses” law we have reviewed. For example, in 1949 Missouri law, rape was common law, simple and concise. Still in effect in 1976, a writer in the Missouri Law Review described its protection as “absolute.”²¹ It said:

...any person carnally and unlawfully knowing any female child under the age of sixteen years or ...forcibly ravishing any woman...sixteen years or upward, shall suffer death, or be punished by imprisonment in the penitentiary for not less than two years, in the discretion of the jury. (1949 Mo. Rev. Stat., “Offenses Against Persons”, sec. 559.260)

Under the guidance of the Model Penal Code, this simple common law rape law was ultimately redefined and graded by the amount of force used and the age of the victim. These considerations were previously left to the judge and the purely American phenomenon of the “jury of one’s peers.”

Harmless Sexual Offenses Fosters Sympathy for the Perpetrator

Concurrently, as forces within the therapeutic field fostered sympathy for the perpetrator and eschewed harsh common law penalties, *Sexual Behavior in the Human Female* (1953) added to the mix the stunning finding that no real harm from rape or molestation were found in the 4,441 female interviews that comprised the second Kinsey Report. If no measurable harm from rape and molestation occurred in the lives of “normal” American women, then the penalties for such crimes were unwarranted.

The Kinsey Reports went further and claimed that half of American women in the 1940s and 50s are not virgins when they married. With this kind of prodigious sexual activity Kinsey said he found, in the absence of legal contraception and abortion, do statistics support the high level of the inevitable illegitimate births? It is not found in the public health report data of the day. Nevertheless, to the men writing the Model Penal Code, the goal of protecting the chastity of women and the modesty and innocence of children loses value at law when the “scientific” evidence demonstrates that it is so freely given away.

²¹ Admissibility of Character Evidence in Rape Prosecutions in Missouri. *Missouri Law Review*, vol. 41, 1976, p. 507.

Consequently, in various state MPC-driven “revisions,” the rapist has evolved to “actor,” the victim is redefined as “complainant,” and rape itself is redefined as sexual misconduct, or nonconsensual intercourse, or peer sex play. The therapeutic field, psychiatrists and social scientists, derive power over the justice system from the judge and jury, many becoming advocates for the perpetrator (rather than the victim) of a crime, whose freedom is limited by repressive cultural mores represented in the pre-1950 criminal code.²² For, as the author of the “Sex Offenses” section of the Missouri code, Judge Richardson said:

The label ‘rapist’ is a damaging one and should not ordinarily be used in the statutory non-consent cases... The Code reserves that term for the most heinous sexual offender. . . In 1955, eleven states fixed the age of consent for sexual intercourse at 12 and in several jurisdictions, the age was lower.” (citing to MPC draft 4, 1955, p. 251, n. 126).²³

One MPC author, New York Magistrate Morris Ploscowe, put The Kinsey Report’s sexual dogma into what ALCU Attorney Morris Ernst called “stream of the law.” The Report’s “finding” that 95% of the male population are “sex offenders” under the common law is reflected in the light and sympathetic treatment the MPC authors have for “sex offenders” whose victims are largely women and children. Ploscowe laments;

One of the conclusions of the Kinsey Report... the sex offender is not a monster... but an individual who is not very different from others in his social group....²⁴

Penalties & Crimes Reduced by Redefinition and Reclassification

Lightening penalties for sex offenses is enabled through redefinition and reclassification of the crime and the criminal. For example, what was a felony under common law is devalued to a misdemeanor and the level of injury is calculated and must be proven by the victim. For example, citing to the MPC the Maine Crime Commission declares; “Only threats of serious bodily injury, kidnapping, or death will suffice to make out the crime of rape.”²⁵ Current law in Minnesota fails to mention the word “rape” at all. In Missouri, Maine, and a number of other states there continues to be a concern for the use of the damaging label of “rapist.”

As American Law began its evolution from fixed principles early in the last century, the role and authority of the therapeutic sciences has enlarged to guide the “stream of the law.” A leader in that movement is MPC advisor and psychiatrist Manfred Guttmacher,

²² Enforced, according to Judge Richardson, by a “shrinking fringe of maniacal moralists.” *Missouri Law Review*, Vol. 38, 1973, p. 372.

²³ Vernon’s Annotated Missouri Statutes, 2000, 555.040, Comment to 1973 Proposed Code; also, 1973 Missouri Symposium, pp. 382, 384.

²⁴ Morris Ploscowe, *Sexual Patterns and the Law*, 1951.

²⁵ Sex Offenses. *Maine Law Review*, Vol. 28, 1976, p. 69.

who, testifies to the importance of the Kinsey Reports to their efforts; "Kinsey's findings were the points by which we steered. The debt that society will owe to Kinsey and his co-workers for their research on sexual behavior will be immeasurable."²⁶

Draft 4 (1955) of the Model Penal Code publishes 20 pages of correspondence between Guttmacher and the MPC's chief author, Herbert Wechsler, outlining therapeutic intervention for determining criminal responsibility.²⁷ Guttmacher's "Group for the Advancement of Psychiatry" (GAP), undertook to shape psychiatry's intervention into the process of legislative and judicial lawmaking by providing the psychological language to support Kinsey's sexual claims.

The Assessment of The Kinsey's Report's Application in the Law

The all-encompassing impact of the Kinsey Reports on American Law is summarized in the 1950 comments of Frank Horack, Jr., acting Dean of the Indiana University Law School writing in the *Illinois Law Review*:

The principle impact of the Kinsey Report will be at the level of the administration of the law. It will provide the statistical support which police officers, prosecutors, judges, probation officers and superintendents of penal institutions need for judging individual cases. . . Officials will read it. Defense counsel will cite it. Even when it is not offered into evidence, it will condition official action. Psychiatrists, psychologists, penologists, juvenile and probation officers all participate in modern penal procedures—they will use the data and their professional advice will be heeded by the judge. Here the Report will control many decisions and dictate the disposition and treatment of many offenders."²⁸

Child Molestation and Statutory Rape

The "Sex Offense" section of the Model Penal Code also deals with child molestation and statutory rape. Based on Dr. Reisman's 1981 finding of 317 to over two thousand infants and children sex abused for the Kinsey "research,"²⁹ the Reports claim to prove sexual capacity and desire in humankind from birth which in effect released man from biological constraints. Thus, in accordance with the Kinsey Reports, the MPC trivialized penalties for child sexual abuse, by recommending age 10, but accepting age 12, as a proper "age of consent." This means, with reclassification and redefinition of statutory rape, a ten-year-old child would have to "prove" that force was used beyond her control, otherwise the rape would be considered merely corruption of a minor or sexual misconduct, a minor crime or misdemeanor.

²⁶ David Allyn. "Private Acts/Public Policy: Alfred Kinsey, the American Law Institute and the Privatization of American Sexual Morality." *Journal of American Studies* 30, 1996, pp. 3, 405-428.

²⁷ Model Penal Code, Draft 4, 1955, pp. 182-201.

²⁸ *Illinois Law Review*, Vol. 44, 1950, p.156, 158.

²⁹ Kinsey, Pomeroy, & Martin. 1948. *Sexual Behavior in the Human Male*. Table 34, p. 180.

In 1955, the MPC cites the Kinsey Report's groundless claim that criminal recidivism rates are lowest for predatory pedophiles and pederasts.³⁰ Because the brutal results are in after nearly 50 years, Congressman Matt Salmon, with 64 co-sponsors, introduced "Amiee's Law" in 2000, which passed both House and Senate,³¹ because "Released murderers, rapists and child molesters are more likely to [reoffend] than the general prison population. Released murders are 5 times more likely...and rapists 10.5 times more likely... to subsequently rape."

Impossible before the MPC, younger and younger children are prepared, often through contraception and abortion programs presented in the classroom, to decide for themselves when they should become sexually active. Through the efforts of private organizations like the Sex Information and Education Council of the United States (SIECUS), founded in 1964 at the Kinsey Institute, (for the stated purpose of purveying the Kinseyan model to American education), children are exposed to explicit sex and taught to assume an autonomous sexual role from kindergarten onward.³² SIECUS' 1991 "Guidelines for Comprehensive Sexuality Education, Level 1 Guidelines target 5 to 8 year olds, instructing teachers use explicit language with these little girls and boys to mold attitudes about sex, marriage, abortion, homosexuality, and masturbation.

These classes would have been illegal in Missouri as late as 1975, before the Criminal Law Reform was adopted there in 1978 (effective January 1, 1979), because it was unlawful until then to talk to anyone under 21 years of age about sexual intercourse.³³ State laws protective of childhood modesty would have to change to teach sexual intercourse and masturbation, and sodomy, or, "outercourse" as they are referred to in school contraception and abortion programs.

And the MPC, relying on Kinsey, was often cited in "revised" state codes as authority for what could be called the peer rape rule to weaken statutory rape penalties. On Kinsey's claim that children are sexual from birth, the MPC recommended legalizing the sexual abuse of children, if the age difference between victim and offender is seen as minimal. For example, in many states if a 16 year old boy rapes a 12 year old girl, the rapist could be adjudicated as engaging in harmless "peer sex play."³⁴ Citing the Kinsey Reports, MPC author and New York Magistrate Morris Ploscowe said;

[O]nly where the age disparity between the man and the girl are very great is it possible to say that the rape may be the work of a mentally abnormal individual, a psychopath, or a potentially dangerous sex offender.³⁵

³⁰ California Sex Crimes Report 1950-1953, Cited by Model Penal Code, Draft 4 (1955), section 207.4 Rape and related offenses, fn 97, p. 241.

³¹ H.R.3244, Sec. 2001. Victims of Trafficking and Violence Protection Act of 2000.

³² 1991 Guidelines for Comprehensive Sexuality Education: Kindergarten through 12th Grade. New York: Sex Information and Education Council of the United States.

³³ Richardson, O. Missouri Law Review. Vol. 38, 1973, p. 397.

³⁴ Model Penal Code, Draft 4, 1955, Section 207.4 (12), p. 253.

³⁵ Morris Ploscowe. 1951. Sex and the Law. New York: Prentice Hall, 217.

And in 1973, Missouri's Judge Richardson writes utilizing the latest "science" revealing for the first time that children have venereal desires from birth, that "those 12-13 years of age...may not only have consented, but deliberately solicited the sexual act."³⁶

The Concept of "Consent" to Sexual Congress Enters the Law

The following national data reflect our current "conduct of life." Prior to this time, when the only lawful sexual congress was heterosexual coitus in marriage, consent is not a concept relevant to this area of the criminal law. In other words, under the common law any sexual acts, natural or unnatural, outside of marriage were unlawful and criminal. Whether consent was given or not was irrelevant. These prohibitions were in place to protect the institution of marriage, historically the smallest building block of any successful society. Consent enters the Law with a burden of proof on the victim through MPC-driven state penal code revisions. Did the victim give consent to the crime, and if not, or it can't easily be proven, it's the "complainant's" word against the "actors" word. That is the burden of proof predicament for the victim under the new penal code, unless the use of excessive force is evident by convincing injuries or by death of the victim.

As Law has pointed the way in determining the conduct of American life, is it possible to say that the changes in the law have brought about the sexual freedom and peace the Kinsey Reports promised when put into the stream of the Law through criminal code reform? The following data are from the Statistical Abstracts of the United States, annual books, and include all data available from 1951 to 2000.

Years of available data	Evidence of conduct	Increase in behavior
1962-1990	"Forcible" Rape	366% increase
1955-1995	Unwed pregnancy, under 15	150% increase
1951-1996	Unwed pregnancy, 15-19	215% increase
1951-1996	Single Parent Households	213% increase
1976-1982	Child Sexual Abuse	1028% increase
1951-1997	Violent Crime	993% increase

³⁶ Richardson, O. 1973. Missouri Law Review, vol. 38(3), p. 392.

What Impact Can 50 Year Old Sex Science Possibly Have Today?

“Are the Kinsey Reports of fifty long years ago having an impact today and, if so, how?” The evidence found in our 30 state review has consistently shown the Kinsey Reports to be foundational to current laws related to marriage, women and children.

The impact of the Kinsey reports also continues in our educational institutions, law schools, medical schools, and divinity schools. A tenured professor is expected to continue lifelong research, which is published in scholarly journals to direct the respective discipline. Who do our leading scholars today cite as authority in the legal and social science fields? The Westlaw database, America’s most prestigious law Journal, cites to Kinsey in over 700 separate journal articles from 1982 through 2000. This is a collection of credits unmatched by any other “Sex Scientist.” The Kinsey Reports are annually cited by ivy league law school journals. The Kinsey Reports today are cited double that of Freud in Social Science and Science Citation Indices, 1.5 times more than Masters and Johnson and 4 times more than Piaget. The Kinsey Reports continue to impact attitudes and behavior among researchers and their readers.

An important question was also posed to two Supreme Court Justices: “If it can be demonstrated that Laws have been changed based on flawed or junk science what, if anything, can be done?” Their unqualified response: “Those laws changed can be recalled.” But why should we recall laws or reconstitute our law system sans junk science? Laws protecting marriage, women and children were changed based on the Kinsey Report through the Model Penal Code. It is time to assess the outcomes, the costs and the benefits, both human and economic. The National Center for Health Statistics, Department of Health and Human Services reports:

National surveys claim that nearly 1 million teenagers become pregnant each year. About a third abort their pregnancies, 14% miscarry, and 52% give birth. Of those half million who give birth, 72 percent are out of wedlock (called pre-Kinsey, illegitimate). More than 80% of mothers 17 and younger end up in poverty and on welfare, many for the majority of their children’s developmental years.³⁷ Another study by Child Trends Research reports 494,456 teen births in 1998, 79% to unmarried mothers.³⁸

From 1950 to 1987, the proportion of out-of-wedlock births in the United States increased sixfold, from 4% to 24% of all births, respectively. In 1988, 56% of black families and 38% of white families, with no male head of household, were classified as living below the poverty level. In 1990, the US Bureau of the Census published “Children’s Well-Being: International Comparison to other Developed Nations.” The U.S. was reported to have:

³⁷ U.S. Dept. of Justice, Fact Sheet #50, January 1997. Statistics are from the report of the Robin Hood Foundation on the Costs of Adolescent Childbearing.

³⁸ www.childtrends.org. Source of statistics from the National Center for Health Statistics, Department of Health and Human Services.

- The highest rate of births outside of marriage.
- The highest proportion of children likely to live with only one parent.
- The highest level of abortions among young women.
- The highest level of infant mortality among developed nations.
- The highest divorce rate among young couples.
- The highest rate of male homicide among developed nations; and
- The highest poverty rate for children among developed nations.³⁹

According to the *Colorado Statesman*, January 1996, Colorado spent \$11,992,519.00 for care, treatment, and education for HIV/AIDS, and \$913,123.00 on the control of other sexually transmitted diseases.⁴⁰ Moreover, according to a 1984 Juvenile Justice task force, an estimated 600,000 child prostitutes, roughly half of whom are boys, currently work the streets of this once great nation.⁴¹

Conclusion

The Legal Revolution carried out in state legislatures across the country that began in the 1950s, preceded and permitted the cultural “Sexual Revolution” of the 1960s. In his book, *The Challenge to Liberty*, former President Herbert Hoover described the too often misunderstood concept of “revolution.” His definition aptly describes what happened in America with the Kinsey Reports:

Revolution... is a hard term to define. Too often we use it colloquially for normal change. Any definition of revolution in democracies implies something more than the peaceful fruition of their philosophies and ideals matured by honest discussion and submitted to the ballot. It means some violent wrench in the whole philosophy of a people – a wrench from their ideas and ideals whence sprang their institutions and their form of government. In many democratic states it has meant the imposition of a new philosophy, changed ideas and changed ideals without their open submission to the people, and often without the people recognizing its approach until it has become a reality.⁴²

It is often said today that; “Morality can not be legislated.” But it was in America prior to 1950, and the rates of disease, dysfunction and violent sex crime were very low. Despite frantic contraception and abortion programs in African nations plagued with HIV, nations like Tanzania are finding that strict enforcement of stringent marriage-protective laws like outlawing pornography, bawdy festivals, and all sexual congress

³⁹ Fagan, P. “Social Stability in the United States.” www.catholiceducation.org.

⁴⁰ Friends First: Economic & Social Costs of Sexually Transmitted Disease Fact Sheet. www.friendsfirst.org.

⁴¹ Green, R. 1992. *Sexual Science and the Law*. Cambridge: Harvard University Press, 192. See also, Lloyd, R. 1976. *For Money or Love*. New York: Ballantine Books, 39.

⁴² Hoover, H. 1934. *The Challenge to Liberty*. NY: Charles Scribner’s Sons, pp. 14-15.

except heterosexual coitus in marriage have brought down the otherwise skyrocketing levels of the deadly HIV virus.⁴³

Consent on the part of either person involved in breaking these Tanzania laws makes no difference. In American Law prior to 1950, the only concept of “consent” was to marriage, a public act, when the bride and groom consented by saying “I do.” This was a public act because society along with the man and wife had an interest in the security and solvency of every marriage, that it be able to remain intact for life and provide for the progeny of the union.

The unabashedly anachronistic common law system which was based largely on the law and governing principles of the Old and New Testaments, governed at time in America when marriages were stronger, women were protected and revered, children were healthier at a lower cost to our nation. The following statistical charts (Appendix 2) tracking disease and dysfunction since the law incorporated the data and claims of the The Kinsey Reports prove that “...the conduct of life is to so large an extent determined by the existing legal institutions, that an understanding of the legal system must give you a clearer view of human affairs in their manifold relations, and must aid you in comprehending the conditions, and institutions by which you are surrounded.”⁴⁴

⁴³ Michael Phillips, “To Help Fight AIDS, Tanzanian Villages Ban Risky Traditions,” *The Wall Street Journal*, January 12, 2001, p. 1.

⁴⁴ Leonard Baker, 1986. *Brandeis and Frankfurter: A Dual Biography*. Washington Square, NY: New York University Press, p. 29.

APPENDIX 1: DATA FROM LAW JOURNALS, MEDIA AND MPC AUTHORS

Law Journals using Kinsey as their authority:

Duke University (1960) cites Kinsey 9 times in its sympathetic discussion of boy prostitutes who are described as “a self-styled delinquent proprietor who purveys an illegal service at a price fixed by fair-trade agreements.” “As Kinsey and others have shown, total sexual outlet is derived from a variety of types of sexual behavior . . . as Kinsey observes, the frequency distribution is continuous for any kind of sexual behavior; any cutting point chosen on that curve, therefore, is arbitrary.”⁴⁵

Maine (1976) cites Kinsey to liberalize prostitution. “Kinsey estimated that in the United States 69% of the white males will have experience with prostitutes during their lives.”⁴⁶

Colorado (1967) pornographer Hugh Hefner writes in the University of Colorado Law Review, “Kinsey reports that in some groups among the lower social levels, it is virtually impossible to find a single male who has not had sexual intercourse by the time he reaches his mid-teens.”⁴⁷

1959-**Ohio State Law Journal**. Kinsey is quoted as authority for lightening sex crime penalties based on “scientific objectivity.”⁴⁸

1968 **South Dakota Law Review**, “Dr Kinsey says that nearly twenty per cent of American females and fifty per cent of American males have engaged in a homosexual act at least once in their lives.” proving the “unenforceability of present laws...”⁴⁹

1969 The **Georgia Law Review** claims Kinsey as authority to show we should not prosecute most sex crimes. Children are often “the seducers.” The treatment of “pedophiles, exhibitionists and voyeurs calls for beneficent concern by state governments. As long as every voyeur, exhibitionist and pedophile is considered a potential rapist and murderer, no rational criminal policy can emerge. Statutes providing for treatment centers and for training of more psychiatrists, psychologists and sociologists are the types of laws currently needed.”⁵⁰

1970 **Oklahoma Law Review**. “According to Kinsey, over 95 percent of the male population have violated these laws... [so] legal writers have urged reform.”⁵¹

⁴⁵ Sex Offenses: The marginal status of the adolescent. 1960. Law and Contemporary Problems, Vol. 25, Duke University School of Law, pp. 311-312.

⁴⁶ Sex Offenses. Maine Law Review, vol. 28, 1976, p. 78.

⁴⁷ Hefner. The Legal Enforcement of Morality. University of Colorado Law Review, 1967, p. 200.

⁴⁸ Ohio State Law Journal, Vol. 20, 1959, p. 347.

⁴⁹ South Dakota Law Review, Spring, 1968, pp. 395-396.

⁵⁰ Georgia Law Review, Vol. 4, no. 1, Fall, 1969, p. 152.

⁵¹ Oklahoma Law Review, Vol. 23, 1970, p. 459.

1972 **Oregon Law Review**. "According to Kinsey, ninety-five percent of American males were "guilty" of sex acts which were and still are felonies."⁵²

1975 **North Carolina Law Review**, begins its call to legalize sodomy with the sentence, "More than two decades have passed since...Kinsey stated that "[s]ex laws are so far at variance with general sex practices that they could not conceivably be rigorously enforced."⁵³

Missouri, 1973. "The Kinsey Institute found it necessary and appropriate to classify sex offenders by types. One of the variables was the age of the victim. Another was whether force had been used. Obviously, the younger the child the more difficult it is to say whether force was used."⁵⁴

1952 **Pennsylvania Law Review**: "On sex cases, the decisions of the judge on the bench are often affected by the mores of the group from which he originated . . . Their severe condemnation of sex offenders is largely a defense of the code of their own social level. (Footnote citing Kinsey's Male Volume, pp. 390-392)⁵⁵

Quotes to the Model Penal Code:

1971 **The New Jersey Penal Code** "The American Law Institute's Model Penal Code...has been the principle basis of our study...[and] recommendation..."⁵⁶

1968 **Kentucky** "The Crime Commission has thoroughly studied and will use as guidelines the recent revisions in New York and Illinois, the proposed revisions in Michigan and Delaware, and the Model Penal Code."⁵⁷

1968 **Kentucky**: "Since Kentucky has adopted by statute most of the recommendations of the Model Penal Code relating to parole, and since these are largely in accord with what are considered good practices, it is difficult to suggest new or novel procedures for the state."⁵⁸

1976 **Maine**: Referring to the grading of rape crime, "'serious bodily injury' refers to such injury as creates a substantial risk of death or which causes permanent disfigurement or extended impairment of any part of the body. The drafters of the Model Penal Code add the threat of infliction of extreme pain to the list of serious threats."⁵⁹

⁵² Oregon Law Review, Vol. 51, Spring, 1972, p. 517.

⁵³ North Carolina Law Review, Vol. 53, April, 1975, p. 1037.

⁵⁴ Missouri Law Review, Vol. 38, 1973, p. 383.

⁵⁵ University of Pennsylvania Law Review, vol. 100, March, 1952, p. 733.

⁵⁶ The New Jersey Penal Code, Final Report of the New Jersey Criminal Law Revision Commission, October, 1971, p. x.

⁵⁷ Kentucky Law Journal, vol 57, 1968-69, p. 491.

⁵⁸ Kentucky Law Journal, vol. 57, 1968-69, p. 81

⁵⁹ Sex Offenses. Maine Law Review, vol. 28, 1976, p. 69.

1972, University of Florida Law Review, “[T]he... Model Penal Code [recommends] that criminal sanctions be removed from all forms of sexual conduct between consenting adults.”⁶⁰

1970 Michigan Journal of Law Reform. The director of the Criminal Law Revision Commission in California describes the advisory board’s reaction to its “revision”: “. . . its product at first inspection struck most of the members of the Board, unfamiliar with the Model Penal Code or another contemporary criminal law revision, as a strange and baffling departure from all of the familiar landmarks of conventional law. The style of the Model Penal Code, its rigorously logical order and its general abandonment of common law terminology does pose difficulties for anyone whose entire educational and professional experience has been circumscribed by the eighteenth century common law concepts still preserved in the criminal law of California. The staff, of course, was greatly influenced by the Model Penal Code.”⁶¹

General Quotes:

Kansas Law Review 1966-67: “Of all the revolutions sweeping the world today, political, economic, social, scientific, and moral, the last may prove to be the most far-reaching, the most deep-going of all. Usually referred to as the Sexual Revolution, it could more accurately be called the Erotic Revolution.”⁶²

Missouri Law Review, 1976. “Missouri law defines rape as either forcibly having intercourse with a female 16 years of age or older, or having intercourse with a female under that age regardless of her consent. The latter act is commonly referred to as “statutory rape.” the purpose of this part of the statute is clearly to protect a girl under the age of 16 from her own immaturity and weakness. The protection is absolute.”⁶³

MPC Advisor Manfred Guttmacher, “Philosophically a sex offense is an act which offends against the sex mores of the society in which the individual lives. And, it offends chiefly because it generates anxiety among the members of that society. Moreover, prohibited acts generate the greatest anxiety in those individuals who themselves have strong unconscious desires to commit similar or related acts and who have suppressed or repressed them.”⁶⁴

The New York Times, July 4, 1954, Manfred Guttmacher, speaking at a symposium of the American Association for the Advancement of Science, said, “the [Kinsey] report was ‘one of the most important and provocative works on human behavior that has ever appeared.’ Facts on sex behavior are necessary to fight the ‘blind emotional biases’ and

⁶⁰ University of Florida Law Review, vol. 25, 1973, p. 140.

⁶¹ University of Michigan Journal of Law Reform, Vol. 4, 1970-1971.

⁶² Lipton, *The Erotic Revolution* xiii (1965). Quoted in Slovenko, *Sex Mores and the Enforcement of the Law on Sex Crimes: A Study of the Status Quo*. *Kansas Law Review*, Vol. 15, 1966-67, p. 265.

⁶³ *Missouri Law Review*, Vol. 46, 1976, p. 507.

⁶⁴ *Georgia Law Review*, vol. 4, no. 1, Fall, 1969, p. 149.

hysteria that lead to proposals for strict laws to punish sex offenders, Dr. Guttmacher commented.”

FBI Uniform Crime Report 2000: Forcible Rape increases 5 fold above murder from 1960-1999. 70% increase in murder, 418% increase in forcible rape.

**The Model Penal Code Authors:
Herbert Wechsler, Louis B. Schwartz, Paul Tappan, and Morris Ploscowe**

Herbert Wechsler writes, “It is widely urged that the responsibility for the determination of the treatment of offenders should not, in any case, be vested in the courts; that judges have no special expertise or insight in this area that warrants giving them decisive voice; and that they should be superseded by a dispositions board that might include the judge but would draw personnel of equal weight from social work, psychiatry, penology and education.”⁶⁵

[MPC Author] “Professor Paul Tappan has concluded that ‘[United States] sex offenders are among the least recidivous of all types of criminals. They do not characteristically repeat as do . . . burglars, arsonists, and thieves.’”⁶⁶

Tappan reported to the New Jersey Legislature, “[I]n spite of the anxiety invested in the dangerous sexual criminal, careful studies have revealed very clearly that numerically the problem is not large. There are to be sure, very numerous minor sex deviates in every large community, as Professor Kinsey’s studies have shown. Aggressive and dangerous sexual assaults, however, are less common than other prevalent types of felonious crime. Moreover, both recidivism and parole violation rates are extremely low relative to other crimes.”⁶⁷

Louis B. Schwartz writes, “One has only to stroll along certain streets in Amsterdam to see that prostitution may be permitted to flourish openly without impairing personal security, economic prosperity, or indeed the general moral tone of a most respected nation of the Western World.”⁶⁸

In a book review of Kinsey’s Male Volume, Schwartz writes, “Beyond this is the reality of life, that the criminal law is never more than fractionally enforced, and should not be in view of the ridiculously inconvenient consequences of 100 percent enforcement.”⁶⁹

In 1963, Schwartz wrote, “The image of America which influences our friends, enemies and neutrals throughout the world is not solely a reflection of our material resources or

⁶⁵ Wechsler, H. 1952. Harvard Law Review. Vol. 65, p. 1128.

⁶⁶ Washington University Law Quarterly, vol. 1965, April, 1965, p. 235, FN 92, quoting Department of Criminal Science, Cambridge University, Sexual Offences (1957) at 513.

⁶⁷ Tappan, Paul W. 1967. Sex Offender Laws and Their Administration. Federal Probation. Vol. 14, p. 32.

⁶⁸ Schwartz, L. B. 1971. Morals Offences and the Model Penal Code. In Wasserstrom, R. A. (Ed.), Morality and the Law. Belmont, CA: Wadsworth Publishing, p. 87.

⁶⁹ Schwartz, L. B. 1948. University of Pennsylvania Law Review, vol. 96, p. 916.

military power [but] . . . by the practices of our system of justice. We cannot afford to be content with a primitive or arbitrary penal system.⁷⁰

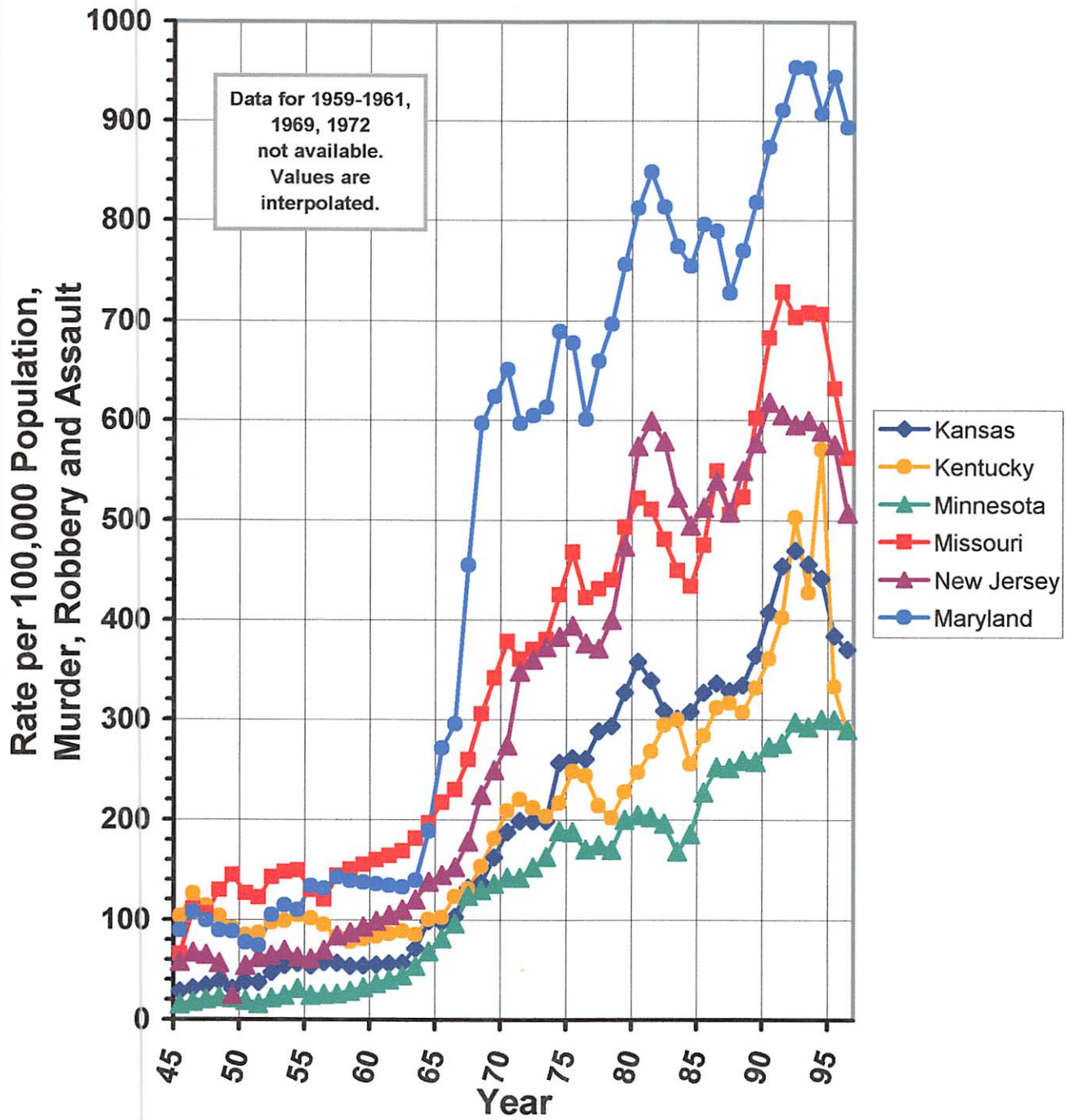
Morris Ploscowe writes, "In our opinion, a girl at puberty fully understands what she is doing when she engages in an act of sexual intercourse and the fiction of non-consent, which the law sets up, does not correspond to the facts."⁷¹

⁷⁰ Schwartz, L. B. 1963. The Model Penal Code: An Invitation to Law Reform. Journal of the American Bar Association, vol. 49, p. 455.

⁷¹ Ploscowe, M. 1966. Sex offenses in the New Penal Law. Brooklyn Law Review, Vol. 32, p. 274-275.

Six States - Violent Crime, 1945 - 1996

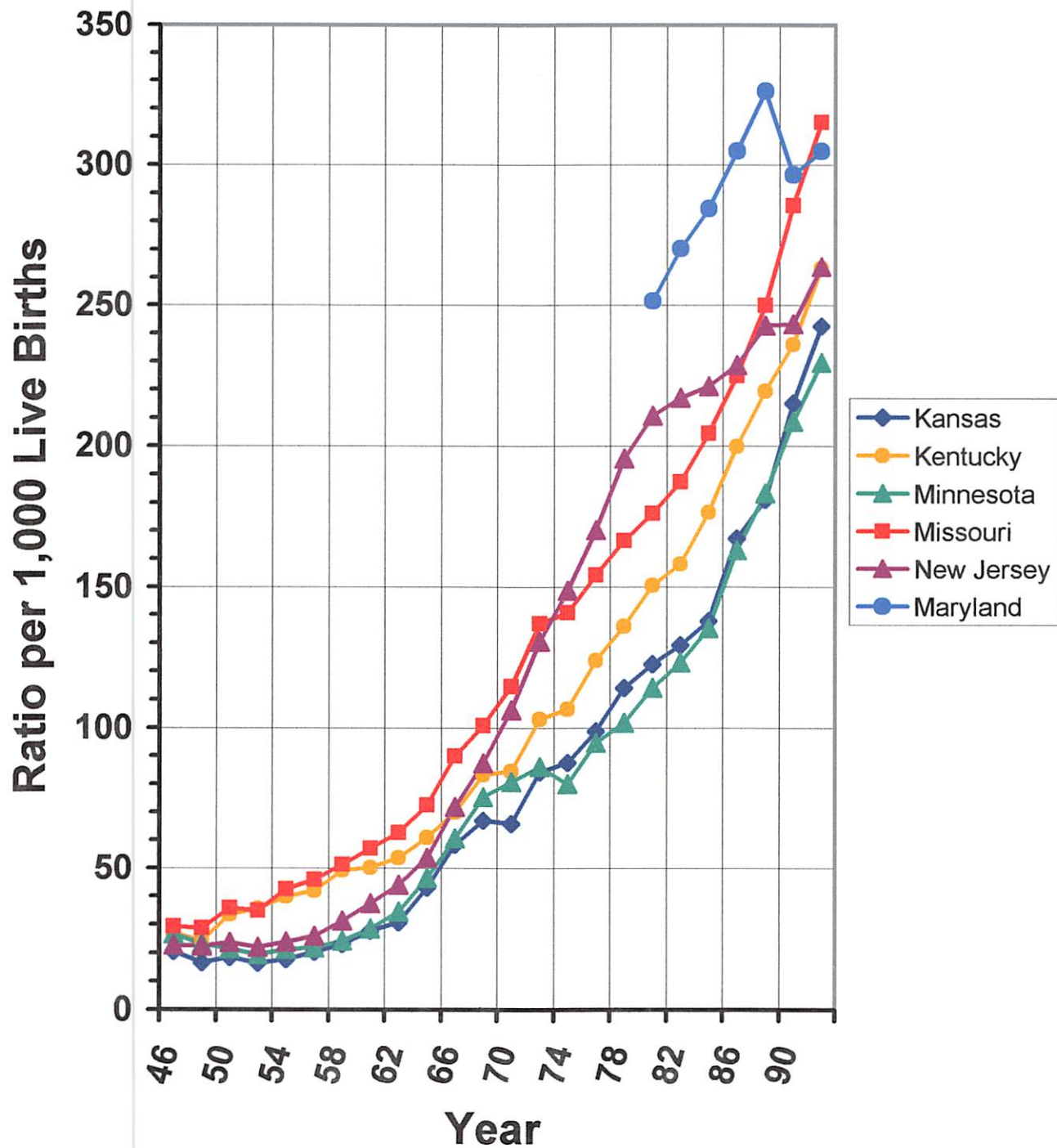
Source: Statistical Abstracts of the United States



Note: Data for 1945-1956 are normalized from urban population data, 1957 basis

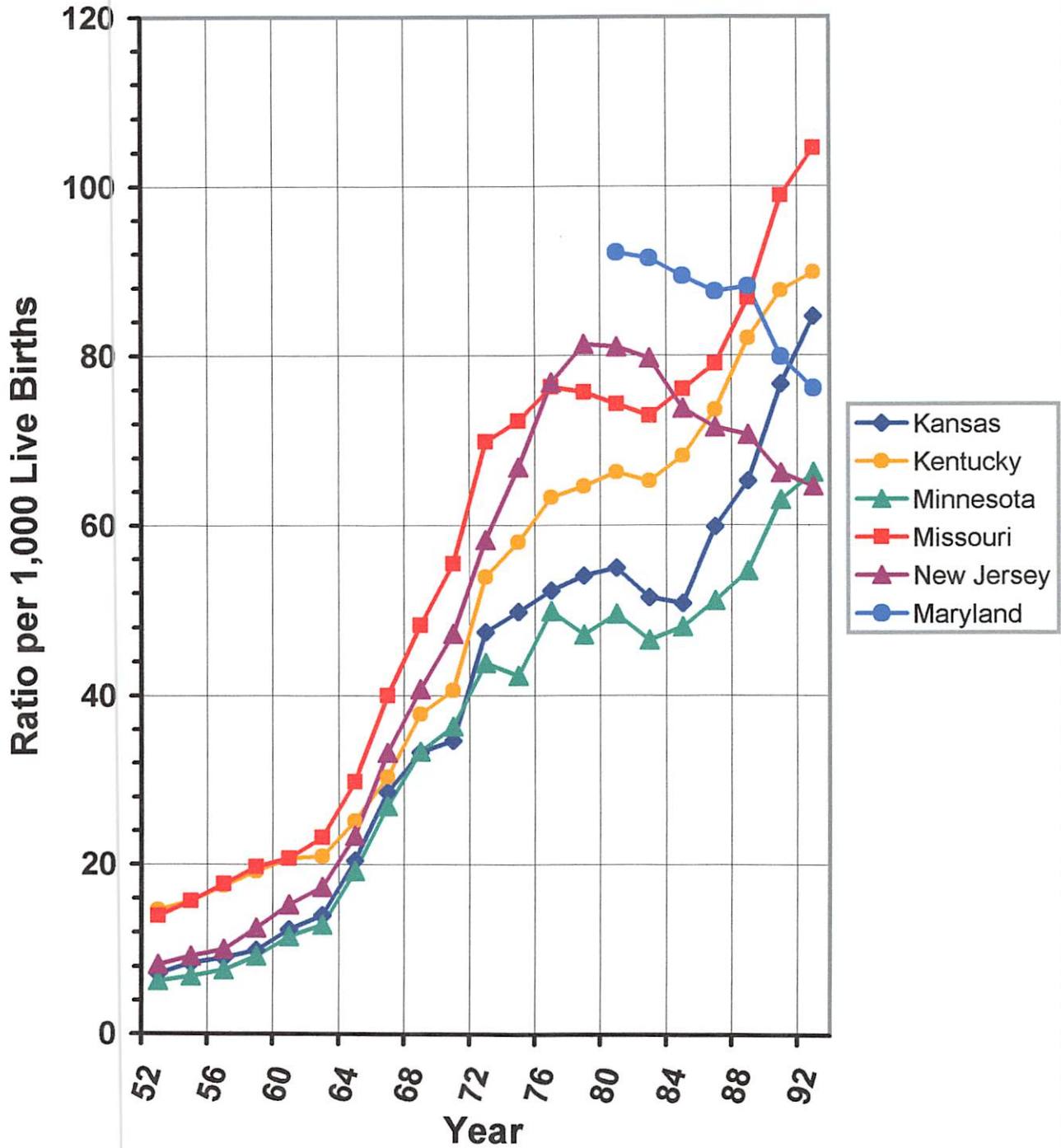
Illegitimate Live Births per 1,000 Live Births

Source: Vital Statistics of the United States, Vol. 1 Natality



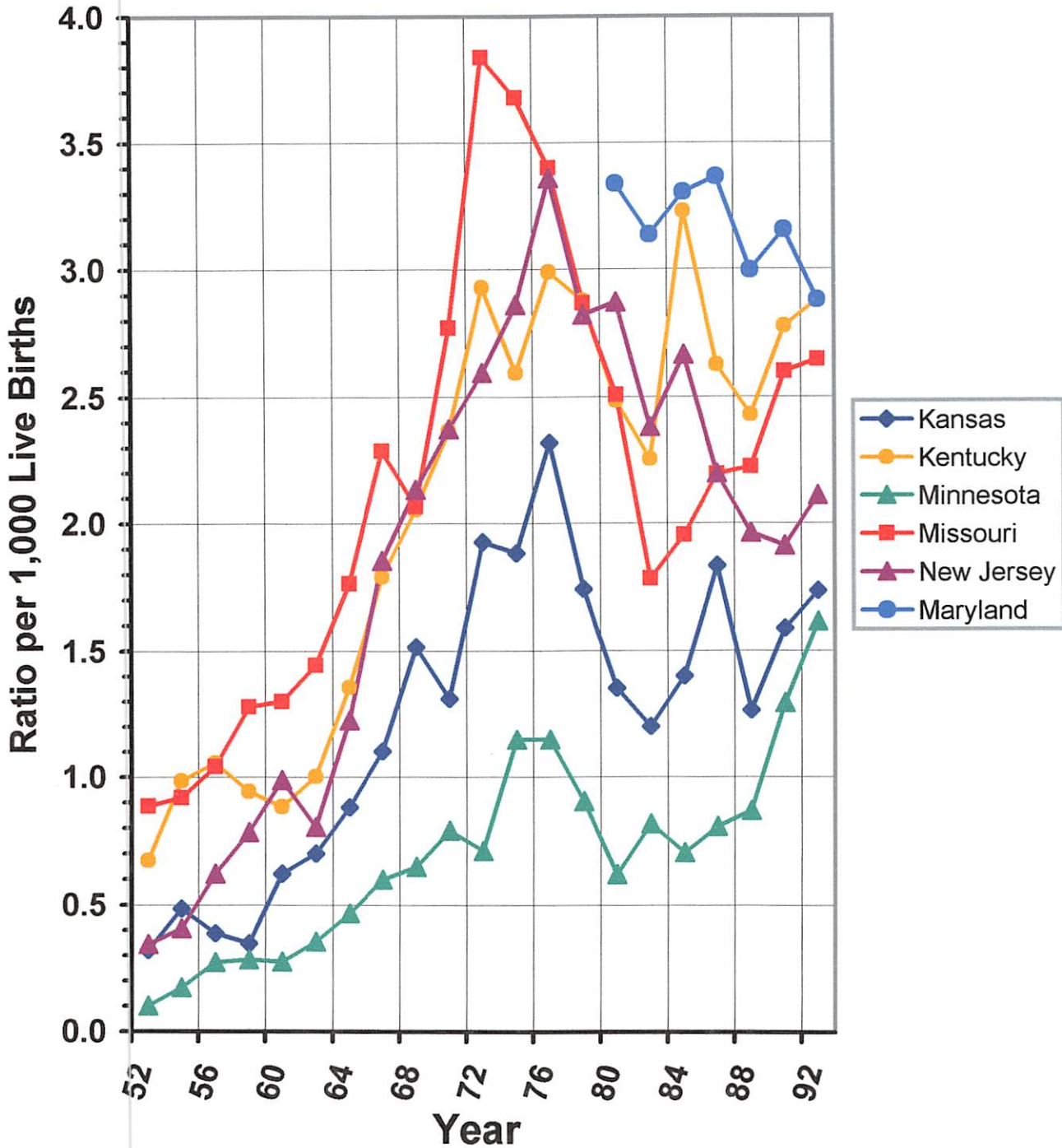
Six States - Illegitimate Live Births to Girls of Age 15-19, per 1,000 Live Births

Source: Vital Statistics of the United States, Vol. 1 Natality



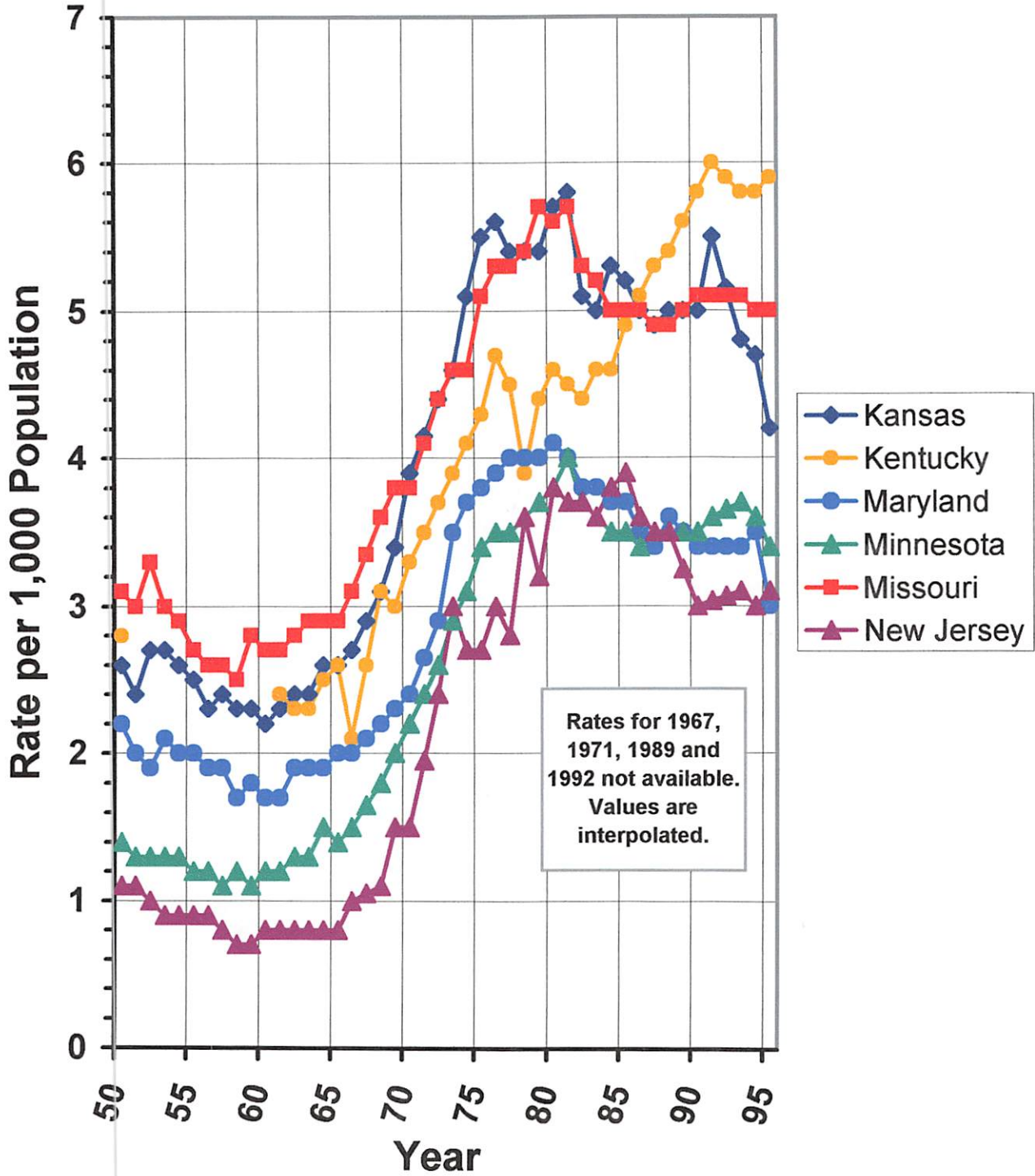
Six States - Illegitimate Live Births to Under 15 Girls, per 1,000 Live Births

Source: Vital Statistics of the United States, Vol. 1 Natality

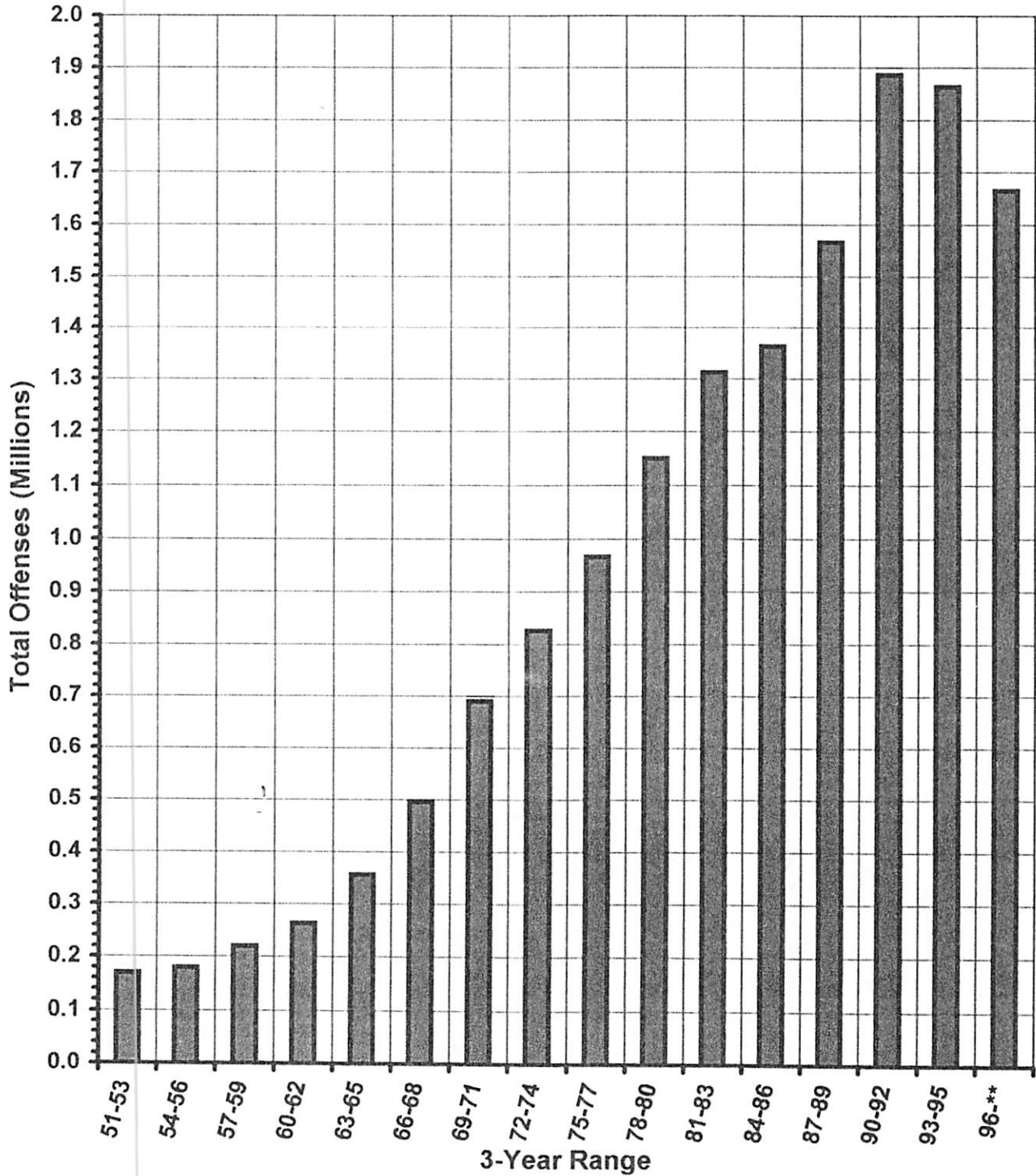


Six States - Divorce Rate

Source: Statistical Abstracts of the United States



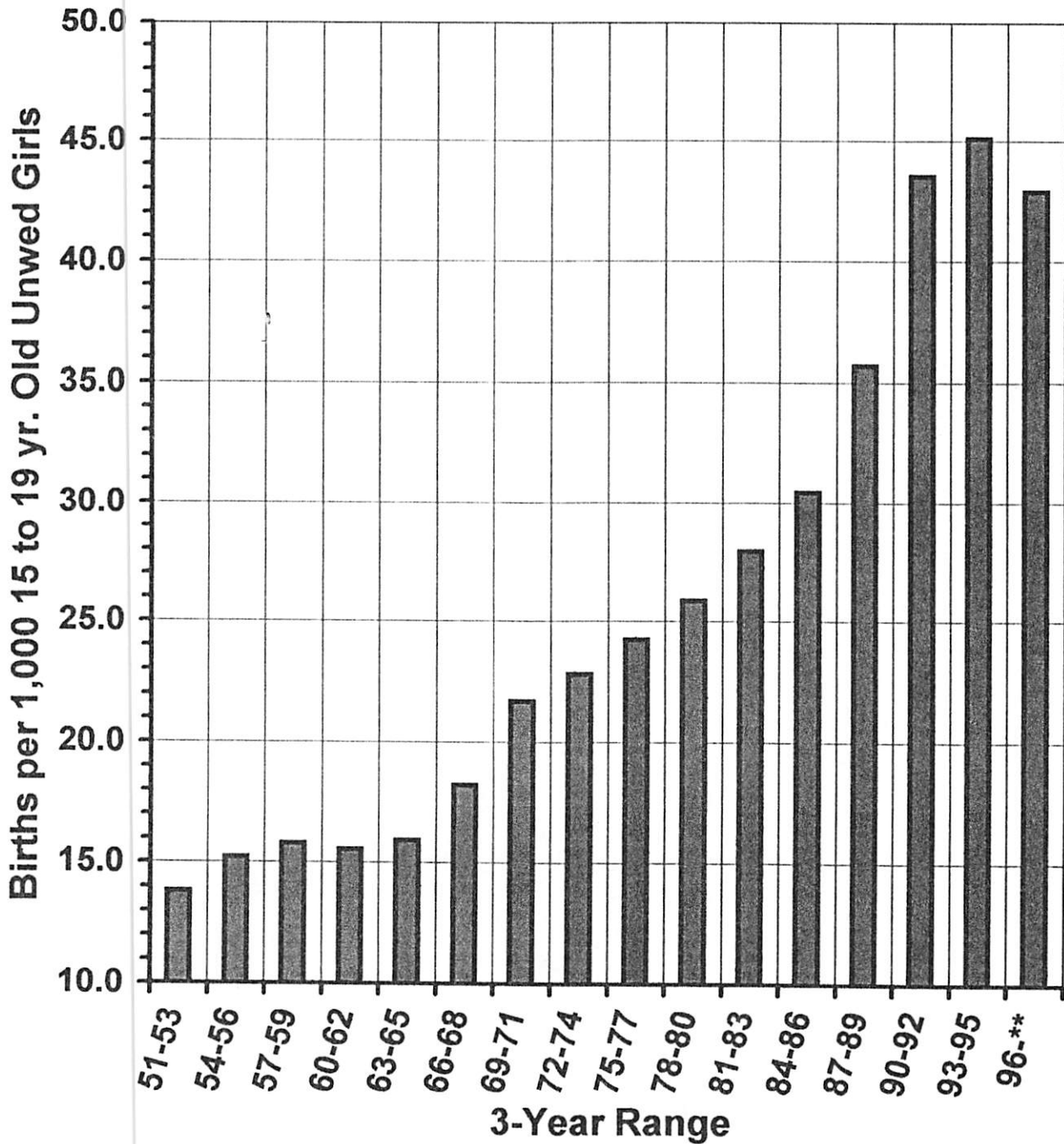
Violent Crime 1951-1997, Number of Offenses



Basic data from *Statistical Abstracts of the United States*,
and the Department of Commerce, Census Bureau

** - 1997 is latest published data

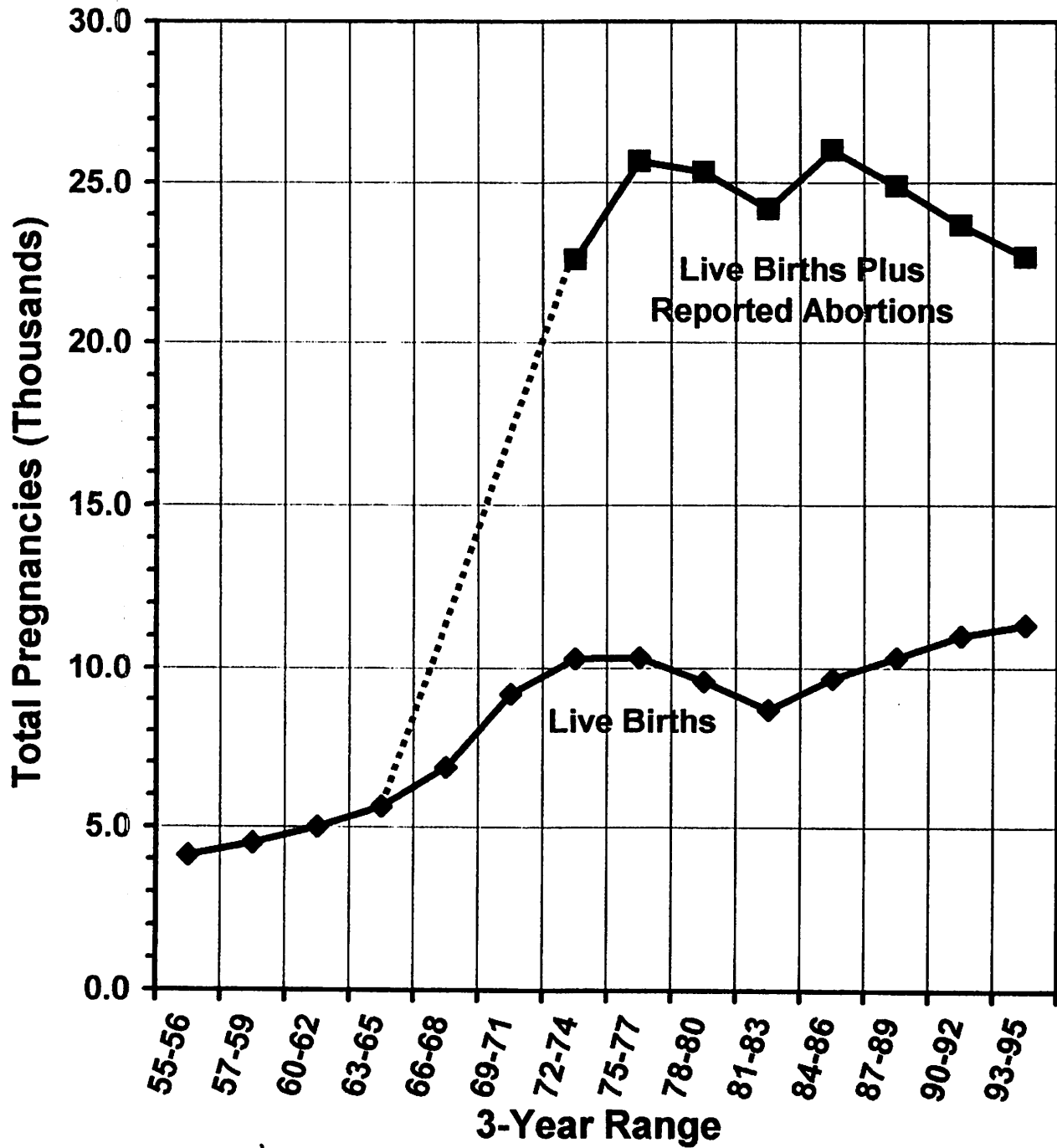
Birth Rates for Unwed Girls 15-19 Years of Age



Basic data from *Statistical Abstracts of the United States*,
and the Department of Commerce, Census Bureau

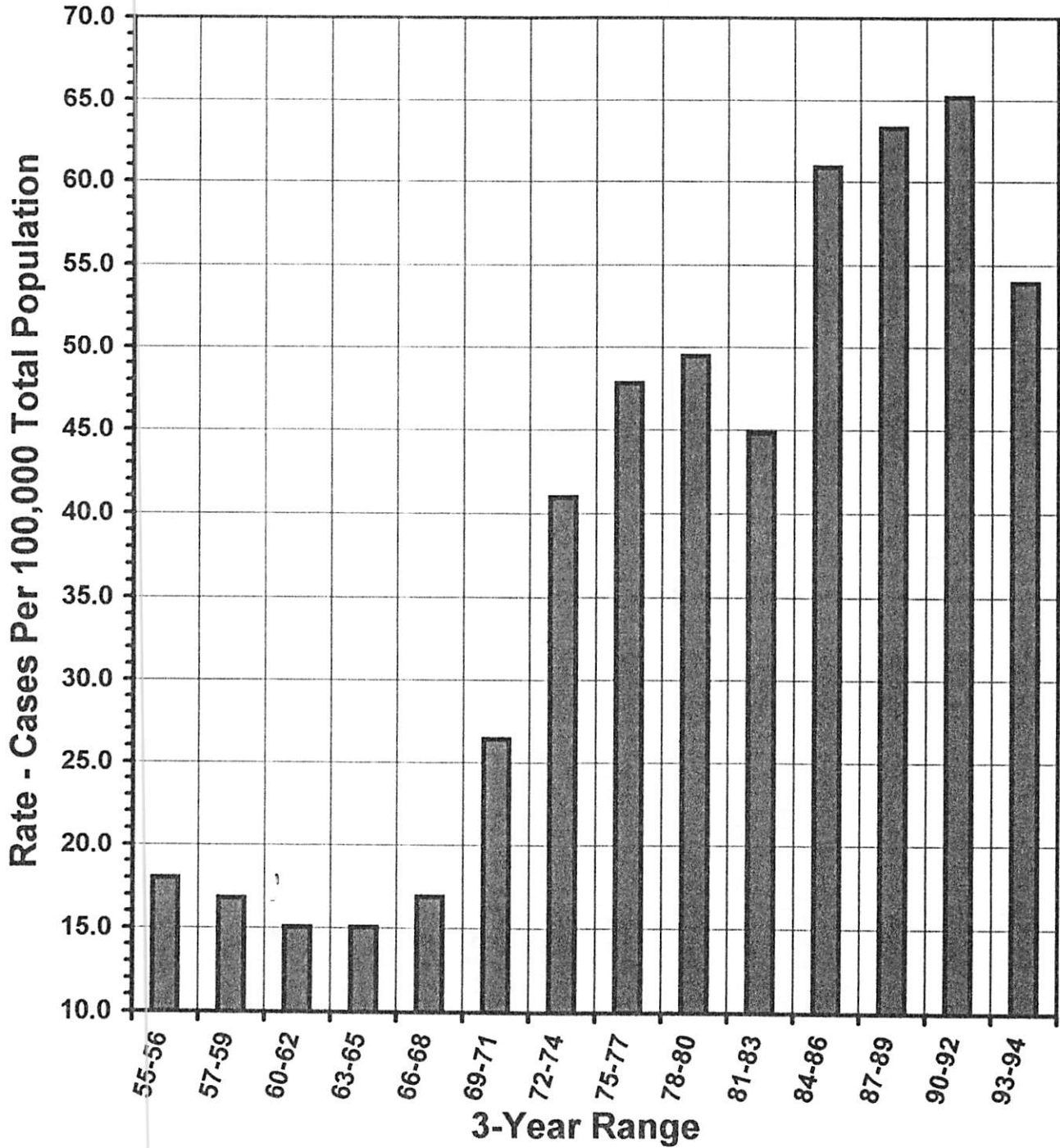
** - 1996 is latest published data

Pregnancies to Unwed Girls Under 15 Years of Age



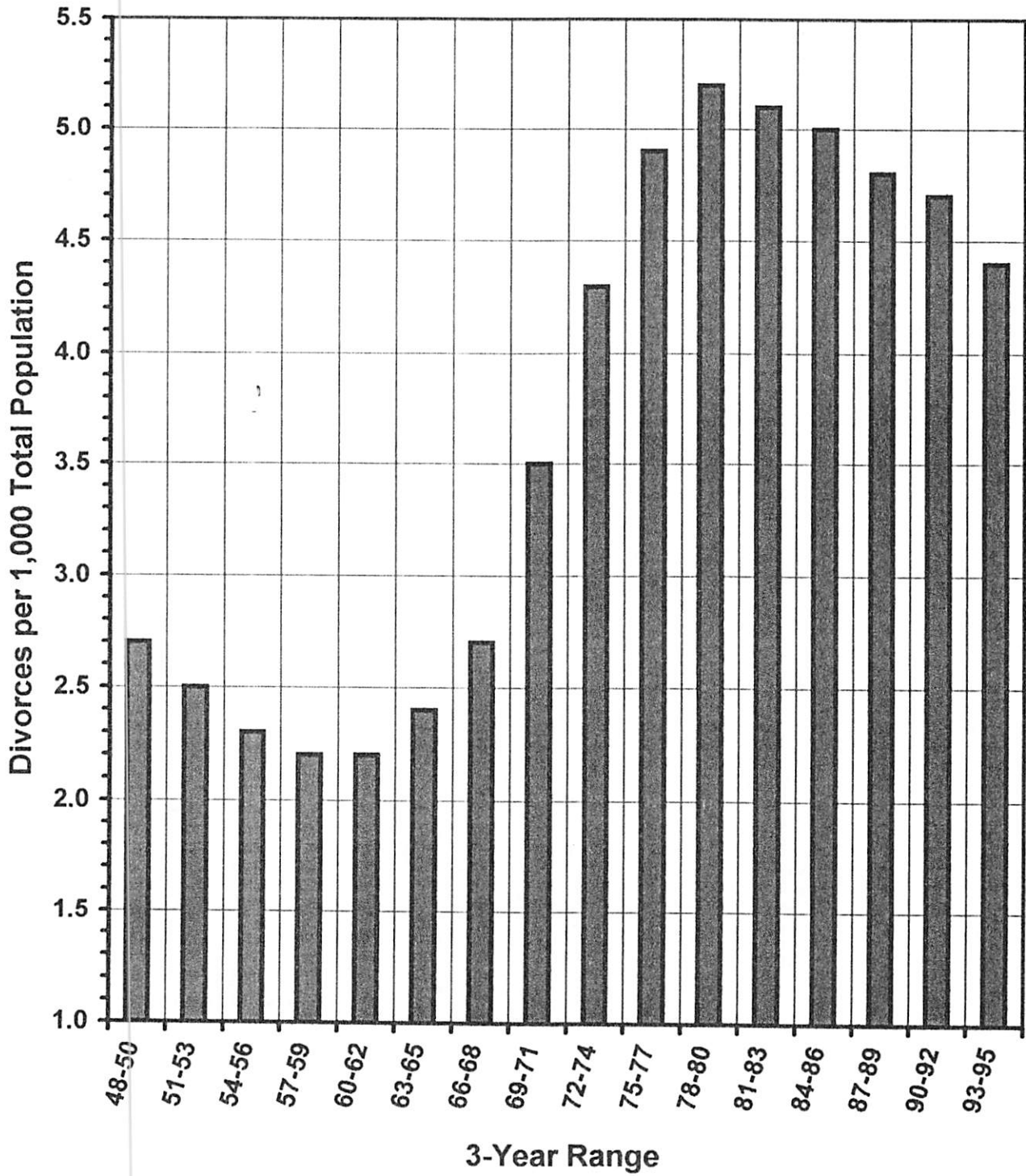
Basic data from *Statistical Abstracts of the United States*,
and the Department of Commerce, Census Bureau

Sexually Transmitted Diseases, Gonorrhea - Age Group 10-14



Basic data from *Statistical Abstracts of the United States*,
and the Department of Commerce, Census Bureau

Divorce Rate



Basic data from *Statistical Abstracts of the United States*,
and the Department of Commerce, Census Bureau

Addendum I

Missouri “Science-Based” Legal Reform 1949-2000

Addendum I: Missouri “Science-Based” Legal Reform **Pilot Study: 1949-2000**

The previous section gives a short overview of the development, at the national level, of the American Law Institute’s Model Penal Code. The *RSVP America* Campaign sought to determine to what extent the Model Penal Code influenced criminal laws in the states. Our investigation began with Missouri’s laws, reform commission reports, and Bar reviews. The process of revision in Missouri was summarized in an article published in *The Missouri Law Review* entitled,

Symposium--Proposed Missouri Criminal Code, The Modern Criminal Code for Missouri (Tentative Draft) A Challenge Fulfilled and the Challenge Presented. The new Missouri Criminal Code represented “the first comprehensive revision of the criminal laws of Missouri since 1835,”¹ (Enacted by Laws 1977, S.B. no. 60, p. 662, effective January 1, 1979) after four years of research and revision of the criminal laws.²

Following is an overview of the ALI-MPC “revision” process in Missouri. Thirty states’ have been reviewed for evidence of ALI-MPC influence from 1949 to the present. This report deals only with two sex offenses of particular concern to women and children: rape and child abuse. As a preliminary finding, we have determined that states followed a pattern of reliance on the Model Penal Code for their state reforms.

As mentioned in the previous section, the national call for penal code reform, (which is state law), began in 1952, with Professor Wechsler’s article in the very prestigious and respected *Harvard Law Review*. The fourth draft of the ALI-MPC was sent to the states in 1955. Generally between the 1960s through the 70s, state criminal law reform committees formed to “define and clarify the [state’s] common law principles” aided by the latest “science” and guided by the ALI-MPC. Numerous articles were published about the penal code revision in state academic and professional journals. When finished, the state drafting committees delivered to the legislature a penal code for passage that defined and clarified, the state’s Common Law principles.

Changes to Missouri’s Criminal Code Post-1950

In 1968, the U.S. Congress passed the Omnibus Crime Control and Safe Streets Act and appropriated funds to establish the Legal Enforcement Assistance Administration (LEAA) for “law enforcement purposes and other purposes.” The Missouri Law Enforcement and Assistance Council (MLEAC) was created to administer a grant of LEAA funds. Missouri Attorney General John C. Danforth submitted a proposal to the MLEAC for the “revision of the substantive criminal laws of Missouri.”

¹ *Vernon’s Annotated Missouri Statutes, Vol. 40*. 1978. St. Paul: West Publishing, preface, p. III.

² Danforth, J. C., 1973, Symposium—Proposed Missouri Criminal Code. The Modern Criminal Code for Missouri (Tentative Draft)—A Challenge Fulfilled and the Challenge Presented. *Missouri Law Review*, 38(3) Columbia: University of Missouri Law School, p. 362.

The 1973 Symposium published in *Missouri Law Review* heralded the turning point in the Missouri penal law and the acceptance of the American Law Institute Model Penal Code (MPC).³ In fact, Attorney General Danforth, as author of the "Introduction" to the Symposium, declared the need for "reform" was "clearly indicated by the work of the American Law Institute in its Model Penal Code (MPC)."⁴

The *Missouri Law Review* informs readers that the work on the state penal code began in 1969. Missouri lawyers and judges formed the Committee to Draft a Modern Criminal Code to benefit from the work of the "distinguished committee of the American Law Institute which prepared the Model Penal Code," along with "recently enacted or proposed criminal codes from approximately twenty-five states."⁵ Earlier code revisions in three states were often cited by states that followed as authority and justification for changes in the state penal code. The three states were Wisconsin (1956), Illinois (1962), and Minnesota (1963).

In the 1973 article, Attorney General Danforth advised state legislators that the punishment should fit the crime, but that Missouri's laws were obsolete, vague, deficient, with uneven punishment, and with little reflection of present-day thought.⁶ Yet the 58-page Missouri "Symposium" ends with a two-page summary affirming, very much like Professor Wechsler did in the 1952 *Harvard Law Review* that, "The proposed Code would make no essential change in most respects in the present Missouri law of sexual offenses."⁷

Those serving on the Committee for a Modern Criminal Code represented a "who's who" of Missouri lawmakers:

Chairman, Judge Norwin D. Houser
Vice-Chairman, , Judge Donald J. Murphy
Senator Donald L. Manford
Senator Ronald L. Somerville
Representative George E. Murray
Representative James E. Spain
Prosecuting Attorney Frank Conley
Prosecuting Attorney Byron L. Kinder
Prosecuting Attorney Gene McNary
Prosecuting Attorney James Millan
Prosecuting Attorney John Crow
Judge Joseph Simone
Judge Orville Richardson
Honorable Norman S. Landon, Esq.
Honorable Manford Maier, Esq.
Judge Theodore McMillan
Judge Frank Cottey
Senator Ike Skelton
Senator Paul L. Bradshaw

³ Danforth, J. C., 1973, Symposium—Proposed Missouri Criminal Code. The Modern Criminal Code for Missouri (Tentative Draft)—A Challenge Fulfilled and the Challenge Presented. *Missouri Law Review*, 38(3) Columbia: University of Missouri Law School, p. 361.

⁴ *Id.*, 362.

⁵ *Id.*

⁶ *Id.*, p. 361-362.

⁷ Richardson, O. 1973. Sexual offenses under the proposed Missouri Criminal Code. *Missouri Law Review*, 38(3) Columbia: University of Missouri Law School, p. 392.

Representative Harold Holliday
Representative Robert O. Snyder
Representative Harold L. Volkmer
Judge Harry Wiggins
Assistant Attorney General Gene Voigts
Prosecuting Attorney Harold Barrick
Prosecuting Attorney David Dalton
Honorable Curt Vogel
Honorable Raymond R. Roberts

Four reporters also assisted the committee: Professors Edward Hunvald, Jr., Gary Anderson, of the School of Law at Missouri University Columbia, and Professors Gene Schultz and Alan G. Kimbrell, of the law faculty of St. Louis University.

Ten years passed from the first Committee meeting in 1969, to the enactment of the new code. Throughout that process the Committee reports cite multiple authorities for legislators to consider. The Symposium lauded the proposed changes to the Missouri penal code recommended by the Committee, and Attorney General Danforth advised the *Law Review* readers that after all changes were made, the final draft would be completed and incorporated in a bill for presentation to the 87th Session of the Missouri General Assembly.

Judge Orville Richardson, Author of Sex Offenses Section

St. Louis Circuit Judge Orville Richardson served on the Committee drafting the Sexual Offense section. In the 1973 Symposium article Judge Richardson echoed the Kinsey Reports, stating that sex crime statutes that were “obsolete and seldom used by prosecutors should be scrapped. Most of them abound with archaisms, euphemisms and emotionally charged words.”⁸ Richardson made no attempt to hide the bias of his “emotionally charged words” declaring that rape, sodomy and child molestation;

carry extremely severe punishment. . . Those few who are punished are dealt with cruelly, to the satisfaction of no one except a shrinking frenetic fringe of maniacal moralists.⁹

The Kinsey Reports’ preeminent influence was established in the first few paragraphs of Richardson’s discussion of the penal Committee recommendations. Stressing the familiar Kinsey Reports’ themes, Judge Richardson addresses the “unenforceable” nature of current sex laws; the tragic labels of rapist or sodomist and sympathy for perpetrators:

Unenforceable and unenforced laws lead to disrespect for law in general...The sex deviate is driven underground and into houses of male and female prostitution. The few who are caught are branded as “rapists” or “sodomists” and sent away to prison to enjoy their perversions with others deprived of heterosexual outlets. The many who escape prosecution lead uneasy lives of fear, evasion, and guilt.¹⁰

⁸ Richardson. *Supra*, 371.

⁹ *Id.*, 372.

¹⁰ *Id.*, 372.