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What's the Real Rate of Sex-Crime Recidivism?

One sentence in a 1986 mass-market magazine continues to sway court cases involving sex offenders.

By Steven Yoder





(Photo: Chris Potter/Flickr)

In the early 1980s, rehabilitation counselor Robert Longo could hardly

have known that his work with convicted sex offenders would make him a minor celebrity. At the time, he was running a program at the Oregon State Hospital to treat and rehabilitate prisoners who had committed sex crimes. It was a new field, and Longo says they were using what at the time were considered innovative approaches: aversive conditioning, administration of Depo-Provera to reduce testosterone levels, and penile plethysmography to measure arousal.

In 1985, documentary filmmaker John Zaritsky heard about Longo's work and gave him a call. Oregon's program was featured prominently in the resulting HBO special, *Rapists: Can They Be Stopped?* While the film was being shot, word got around about Longo's methods, which were seen as a potential solution to ending rape. He started getting invitations to appear on Oprah — he was on five times in all, he remembers — and now he was being quoted in the *New York Times* and national magazines.

The following year, Longo and a colleague were invited to write an article

for *Psychology Today* about what could be achieved through treatment programs like his. In it, they included this line: “Most untreated sex offenders released from prison go on to commit more offenses—indeed, as many as 80 percent do.”

It’s not that the statement was an invention—Longo says it was an estimate based on the numbers he was seeing in his program for some subpopulations of sex offenders who didn’t finish treatment. And he points to other research from that era that reached similar conclusions—for example, the 1990 *Handbook of Sexual Assault* noted in a literature review that up to 71 percent of untreated exhibitionists had been found to re-offend in studies with follow-up periods from four to nine years. Still, Longo’s assertion wasn’t meant as an estimate of rates among offenders in his own program, which he says ranged from 10 to 15 percent depending on the offense. The point of the piece was to show that effective treatment works.

But the sentence, it turned out, would change history.

The Constitution bans *ex post facto* punishment — the retroactive application of new laws to crimes committed before those laws were enacted. In 1994, Alaska’s legislature passed a measure that put those who’d committed a sex offense onto the state’s new Internet registry — even if they’d been convicted before the law passed. In 2003, the United States Supreme Court upheld the law, overturning a lower court’s decision.

In arguing for the majority, Justice Anthony Kennedy relied on his own language from an earlier decision. It characterized the risk of a sex offender committing another sex crime as “frightening and high” — as high as 80 percent, Kennedy held.

In an essay last summer in the journal *Constitutional Commentary*, Arizona State University law professor Ira Ellman traces Kennedy’s “80 percent” reference to a 1998 Department of Justice practitioner’s guide for

treating incarcerated male sex offenders. In turn, Ellman found that the guide cited just one source—Longo's quote in *Psychology Today*.

So how close to the truth is Kennedy's "frightening and high" assertion? "There's no empirical evidence to support that statement," Levenson says. "All of the recidivism studies are remarkably consistent that the number of people re-arrested for a new sex crime is somewhere between 5 and 15 percent."

Ellman contrasts that statement with the numbers from an authoritative 2014 meta-analysis of 21 recidivism studies by a team of leading scholars. It found that 32 percent of sex offenders assessed as a high risk to re-offend did so within 15 years. For offenders judged low risk, the number was 5

percent. And for high-risk offenders who made it 16 years with no re-offenses, their re-offense rate thereafter was zero.

Those low rates seem to show that Kennedy's number was wrong and puncture the logic of the opinion. But are those the right figures? Advocates of harsh sex-crime laws raise a key objection— that these crimes are among the most underreported, and criminal convictions in these cases are hard to get. Because of that, they say, official re-offense rates may be dramatic underestimates.

Take the argument of the Leadership Council on Child Abuse & Interpersonal Violence, a group of about 50 child abuse researchers and experts. The group cites a 1990 study of adult women that found that only 12 percent of those who said they'd been raped actually reported it to the authorities. The Council goes on to offer a hypothetical: If 100 percent of a sample of released sex offenders commit another sex crime but the rate of reporting is only 12 percent and only half of those reported are convicted,

the recidivism rate would be listed as only 6 percent.

Claims like that one are increasingly popular among those who argue for the necessity of sex registries. A March editorial in the Longview, Washington, *Daily News* noted that underreporting “skews the statistics so greatly that it seems nearly impossible to draw any conclusions on recidivism. How can groups claim there is low recidivism if the majority of these crimes are not even reported?”

Those proponents may have been helped by language in a brief released last July by the Department of Justice office responsible for implementing federal sex offender laws. In it, author Roger Przybylski notes that, while published rates of re-offending are low—5.3 percent in perhaps the largest study to date—there is “universal agreement in the scientific community that the observed recidivism rates of sex offenders are underestimates of actual reoffending.”

But a leading researcher says the consistency of findings across hundreds of recidivism studies indicates that we're not underestimating by much.

Elizabeth Letourneau directs the Johns Hopkins' Moore Center for the Prevention of Child Sexual Abuse and has led or participated in several sex offender recidivism studies. "If you have a long enough follow-up period, we believe that you capture [in the data] most recidivists," she says. "You might miss the guy that offends every 10 years, but you're getting those who re-offend with any kind of frequency."

At least one study's use of polygraph tests indicates whether actual re-offense rates are significantly higher than reported rates. In 2007, a team from the Vermont Department of Corrections looked at matched sets of 104 sex offenders who received the same type of treatment and supervision. But one group had to take polygraphs, which increased the likelihood they'd admit to offenses that hadn't been reported. The results showed no significant difference between the two groups: At five years out, recidivism was 6.7 percent in the non-polygraphed group and 5.8 percent in the

polygraphed group.

Meanwhile, more and more re-offenders are likely getting caught because sexual abuse reporting has increased. In a 2011 study led by David Finkelhor of the University of New Hampshire's Crimes Against Children Research Center, researchers asked more than 4,500 children and adolescents (and, for those under age 10, their parents) whether they'd been victimized physically or sexually in the previous year. Of those who reported sexual abuse involving an adult, between 69 and 76 percent said the incident had been reported to authorities. Overall, the likelihood that child victimization of all types gets reported has roughly doubled since 1992, Finkelhor and company concluded.

Re-offenders are especially likely to be caught because they're closely watched, says Jill Levenson, professor of social work at Florida's Barry University who's led or participated in at least 10 studies of sex offender recidivism. "I think there are probably fewer undetected offenses by those

offenders, especially those under parole or probationary supervision and in treatment” than in the general population, she says.

So how close to the truth is Kennedy’s “frightening and high” assertion?

“There’s no empirical evidence to support that statement,” Levenson says.

“We have lots and lots of recidivism research over like 25 years ... and all of the recidivism studies are remarkably consistent that the number of people re-arrested for a new sex crime is somewhere between 5 and 15 percent.”

“It is true that sex crimes are quite underreported,” Alissa Ackerman, a University of Washington criminologist who’s participated in at least two recidivism studies, writes in an email. But the idea that sex offender recidivism is high is “wildly inaccurate,” she adds. “The vast majority of people who commit acts of sexual victimization will desist from that behavior. The evidence on this is compelling and quite clear.”

“It’s, in my opinion, indefensible to continue arguing that sex offenders are

at high risk to offend sexually as a blanket statement,” Letourneau says. “There’s so much evidence that counters that that I really think its unconscionable. The fact of getting caught,” she adds, “appears to be a very powerful intervention all by itself.”

Przybylski didn’t respond to requests for comment, nor did the three executive officers of the Leadership Council on Child Abuse & Interpersonal Violence.

For all of that, Kennedy’s “frightening and high” assertion continues to sway court cases at all levels. Ellman’s Lexis search of legal opinions found it cited in 91 judicial opinions and 101 court briefs involving sex offenders.

But if the Supreme Court was wrong, there are no easy remedies. Ellman thinks a raft of new lawsuits attacking the worst elements of registries could build a foundation for a case that eventually overturns the 2003 decision. “Trying to get legislatures to fix these things is almost hopeless,”

he says. “But trying to get courts to fix them is less hopeless because courts have to provide a rational, reasoned explanation of their decisions.”

Today, Robert Longo runs a North Carolina practice that uses neurofeedback technology to treat, among others, kids who’ve been victims of sexual abuse. Looking back, he wonders how a sentence in a popular magazine could have been so misused. “Somewhere along the way,” he says, “something really got distorted.”

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