

Get real, Justice Alito! Stop misrepresenting the facts.

written by admin | June 22, 2017



By Michelle Ye Hee Lee . . .

*“Repeat sex offenders pose an especially grave risk to children. ‘When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault.’”-Supreme Court Justice Samuel A. Alito Jr., concurring opinion in *Packingham v. North Carolina*, June 19, 2017*

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In 2008, North Carolina passed a law banning convicted sex offenders from accessing websites where minors can sign up. Two years later, Lester Packingham, a registered sex offender who in 2002 pleaded guilty to a sex crime involving a kid, ran afoul of the law. He posted a picture of himself on Facebook under an alias account, celebrating a win in traffic court. A police officer spotted this post and arrested him.

Packingham challenged North Carolina's law, and on June 19, the Supreme Court, in essentially a unanimous vote, ruled in favor of his right to free speech. The court found the state's ban was too broad-reaching – it could even apply to sites like Amazon.com and WebMD.com, they found – and a violation of First Amendment rights.

Alito, Chief Justice John G. Roberts Jr., and Justice Clarence Thomas partially agreed with the majority's opinion. They agreed that the North Carolina law's "extraordinary breadth" violated the First Amendment, but stressed that states have a responsibility to try to stop the abuse of children before it occurs. Alito, who authored the opinion expressing partial agreement, said convicted sex offenders are "much more likely than any other type of offender to be rearrested for a new rape or sexual assault."

The Fact Checker normally doesn't fact-check Supreme Court justices, and we certainly do not fact check opinions. But the topic of sex offender recidivism is worth clarifying because it is often misconstrued, so we found Alito's claim newsworthy. And this specific claim is an assertion of fact, rather than the justices' actual opinion.

What do the data show?

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There are many limitations in recidivism data for sex offenders, so it's difficult to use rearrest rates to accurately measure their threat to public safety. Many sex offenses are not reported to police, so there are problems of underreporting. Rearrests are not the same as reconvictions or reincarceration, and researchers are inconsistent in their method of calculating recidivism.

Sex offenders have a relatively low rate of committing the same sex crime after being released from prison. Yet policymakers often base policies on rearrest rates or the fear that sex offenders are more likely than other convicted

criminals to commit the same crime after release.

Alito's claim in this opinion reflects a common misrepresentation of sex offender recidivism.

Alito quotes a sentence from an opinion by Justice Anthony M. Kennedy in the 2002 case [McKune v. Lile](#): "When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault."

There are two citations. The first is a reference in *McKune* to a 1997 Bureau of Justice Statistics (BJS) report on recidivism among prisoners released in 11 states in 1983. The report found: "Released rapists were 10.5 times more likely than nonrapists to have a subsequent arrest for rape. Prisoners who had served time for other sexual assaults were 7.5 times more likely than those who had not served time for sexual assault to be arrested for a new sexual assault."

The second citation is a 2013 Supreme Court opinion in [United States v. Kebodeaux](#), which cites an updated version of the 1997 report. This report, published in 2003 using data from 1994, is considered one of the most comprehensive studies on sex offender recidivism. The 2013 opinion cites the report's finding that released sex offenders were four times more likely to be rearrested for a sex crime than non-sex offenders, and 5.3 percent of sex offenders were rearrested for a sex crime within three years after release.

When you dig into the data, it's clear Alito has fallen for an apples-and-oranges comparison – one that unfairly compares sex offenders to non-sex offenders.

The 5.3 percent figure represents 517 of the 9,691 released sex offenders in 1994. But that's measured against a much larger pool of 262,420 non-sex offenders, of whom 1.3 percent were arrested for a sex crime.

On the surface, comparing 1.3 percent to 5.3 percent makes it

seem like sex offenders are four times more likely to commit a sex crime after release. But the 1.3 percent represents 3,328 of 262,420 released non-sex offenders. So out of the total of 3,845 people arrested post-release on sex crimes, 13 percent were prior sex offenders.

Moreover, this comparison doesn't tell you much about the dangers posed by sex offenders after release

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Original source: [The Washington Post](#)