

LONG-TERM RECIDIVISM STUDIES SHOW THAT DESISTANCE IS THE NORM

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A criminal history record is a valid indicator of the propensity for rule violation, and such records are rightly used in applied decision making both within and outside of the criminal justice system (e.g., employment screening). A criminal conviction, however, is a time dependent risk factor. During the past decade, researchers have examined desistance using statistical models of residual hazards. These studies find that after about 10 years offense-free (5 years for juveniles), the risk presented by most individuals with a criminal record is not meaningfully different from that of the general population. Similar time-free effects are found for both sexual and nonsexual offenses. Given that desistance is almost inevitable, record retention and access policies need to carefully consider the consequences of decisions being based on old records with little information value.

Keywords: recidivism, desistance, criminal risk

We take it for granted that a conviction creates a criminal history record—a more or less publically accessible document that identifies an individual as having broken the law at some time in the past. Such records are intended to promote public safety by identifying individuals at risk for offending. Their information value need to be balanced with their cost, both to the jurisdiction maintaining them and to the individuals identified. In the United States, having a record can limit access to diverse social goods including employment, housing, and social assistance, and the right to vote (Uggen, Manza, & Thompson, 2006). Recently, I was asked for my own fingerprints to conduct research on criminal history records.

There is wide variation in who gets access to criminal history records. In some contexts, access is highly restricted (e.g., juvenile records in Canada and Australia). In other contexts, the government proactively advertises conviction records. Most individuals convicted of a sexual offense in the United States, for example, will have their sexual offense convictions posted on a public website along with their identifying information (Laws, 2016; Logan, 2009).

Past behavior is an excellent predictor of future behavior, and there is strong evidence that individuals with a criminal history are more likely to commit future crimes than individuals with no criminal history. There are, however, time limits to the information value of criminal histories. People change. The most robust evidence for change is that crime is

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disproportionately committed by young people. The low levels of crime among older adults cannot be fully attributed to selective incapacitation and the early demise of chronic offenders. Long-term follow-up studies indicate that desistance is the norm.

A third of all Americans have an arrest record (110 million records in 2016 for a population of 323 million; Goggins & DeBacco, 2018). Approximately one in 10 Canadians has a record for a criminal code conviction (3.8 million records in 2009 for a population of 33.6 million; Public Safety Canada, 2017). Considering that the population numbers include children, and that males are more much likely to be convicted than females, two out of 10 Canadian adult males have a conviction record. Close to half of American males report being arrested by age 35 (Barnes, Jorgensen, Beaver, Boutwell, & Wright, 2015). Although many people in our communities have, at some point, broken the law, the vast majority will have desisted from crime years ago.

TIME TO DESISTANCE

Bushway and colleagues introduced a useful framework for defining and studying desistance (Bushway, Brame, & Paternoster, 2004; Bushway, Piquero, Broidy, Cauffman, & Mazerolle, 2001). Their approach built on the large body of work that has used statistical models to estimate the likelihood of recidivism. Although it is impossible to determine that any individual will never reoffend (until death), it is possible to estimate that their risk of reoffending is very, very low. Desistance, from Bushway et al.'s perspective, is having a recidivism risk below a tolerable level (i.e., below a desistance threshold). Risk levels are dynamic; the risk at the time of criminal conviction is expected to change based on diverse factors. One of the most robust findings from recidivism studies is that the hazard rates are highest in the first year or two following release and predictably declines the longer individuals keep out of (legal) trouble.

Researchers have typically defined a desistance threshold by referring to the rate of spontaneous out-of-the blue offending in the general population (DeWitt, Bushway, Siwach, & Kurlychek, 2017). This hazard rate has been estimated to be between 1% and 3% per year, depending on age and the method by which the "no record" sample was identified (Blumstein & Nakamura, 2009; Bushway, Nieuwebeerta, & Blokland, 2011; DeWitt et al., 2017; Soothill & Francis, 2009). Blumstein and Nakamura (2009) estimated that the 1-year hazard of arrest was 3% for 16-year-olds, and declined to 0.5% for those above 30. In the language of the standardized risk levels, this is Risk Level I—individuals whose criminal recidivism risk is no different from the risk routinely accepted in general population (i.e., young males). Individuals at Risk Level I are unlikely to have risk-relevant problems worthy of correctional intervention, and to have expected recidivism rates of less than 5% after 2 years (Hanson et al., 2017).

Although few will be classified as Level I at the time of arrest, almost all will eventually cross the desistance threshold as they remain offense-free in the community. For individuals whose records included only juvenile convictions, their hazard rates become equivalent to that of other young males after about 5 years offense-free (Kurlychek, Brame, & Bushway, 2007; Soothill & Francis, 2009). In other words, most individuals with a juvenile record will look like other law abiding citizens by their mid-20s.

For individuals who have a conviction as a young adult (18 to 25 years old), it takes about 10 years to resemble the general population (Blumstein & Nakamura, 2009; Bushway et al.,

2011; Soothill & Francis, 2009). For individuals whose first convictions occurred after the age of 40, it takes about 5 years (Bushway et al., 2011). Given the low rate of first time offending after age 40, there is almost nobody over the age of 50 who presents a significant risk of offending. Among the large number of neighbors, coworkers, family, and friends with old criminal history records, few will present any significant risk of criminal behavior.

However, there will be some. The residual risk of offending is proportional to the initial risk. For individuals at the highest risk levels, they remain at higher risk than the general population even after 20 years offense-free (Bushway et al., 2011). Fortunately, such individuals are rare. Less than 5% of routine correctional samples would be expected to be in Risk Level V, the highest of the standardized risk levels (Hanson et al., 2017). These individuals will have multiple, severe, and chronic criminogenic and noncriminogenic needs, and few, if any, strengths. Their short-term recidivism rates are expected to be very high (e.g., 85% within 2 years). Nevertheless, even these individuals become less crime prone over time. The highest risk individuals in Bushway et al.'s (2011) cohort may not have crossed the desistance threshold at 20 years, but their residual risk was a fraction of what it was before.

DESISTANCE FROM SEXUAL OFFENDING

Even if desistance is the norm for general offending, does the same apply to sexual crimes? Individuals convicted of sexual crimes, particularly offenses against children, tend to be older than other individuals in the criminal justice system (Hanson, 2002). As well, only half of all long-term sexual recidivism is detected within the first 5 years after release (Hanson, Steffy, & Gauthier, 1993; Prentky, Lee, Knight, & Cerce, 1997; Soothill & Gibbens, 1978). Many public protection policies are predicated on the assumption that individuals with a history of sexual offending present a lifelong, enduring risk for new sexual offending.

The evidence, however, suggests that we have been overestimating the stability of sexual recidivism risk (Amirault & Lussier, 2011; Hanson, Harris, Helmus, & Thornton, 2014; Hanson, Harris, Letourneau, Helmus, & Thornton, 2018). Although the rate of desistance is slower for sexual crime than for general crime, the initial risk of sexual recidivism is much lower. Follow-up studies typically find sexual recidivism rates of 5% to 15% after 5 years (Harris & Hanson, 2004; Helmus, Hanson, Thornton, Babchishin, & Harris, 2012), compared with rates of around 40% for general recidivism after 2 years (Fazel & Wolf, 2015). Consequently, the amount of time-free required to cross the desistance threshold for individuals with a history of sexual crime is similar to that for individuals with a history of nonsexual crime (approximately 10 years).

A useful reference point for defining a sexual recidivism desistance threshold is the rate of spontaneous out-of-the blue sexual offenses among persons who have a criminal conviction, but no history of sexual offending: 1% to 2% within a 5-year period (Kahn, Ambroziak, Hanson, & Thornton, 2017). Consequently, a 5-year sexual recidivism of less than 2% is a plausible desistance threshold. Desistance means that the individuals' risk of future sexual offending has dropped below a level where there is no longer any public protection benefit to sexual offender specific interventions.

The vast majority of individuals with a history of sexual crime will eventually drop below this desistance threshold. Based on an aggregated sample of 7,740 individuals

followed for up to 25 years, we found that that the risk of committing another sexual offense dropped by approximately 50% for each 5 years sexual offense-free in the community (Hanson et al., 2014). For example, if their risk was 8% at time of release, it would drop to 4% after 5 years, and to 2% after 10 years.

In a subsequent reanalysis of a similar dataset (20 samples, 7,225 individuals; Hanson et al., 2018), we estimated the time to desistance according to initial risk levels (defined by Static-99R scores; Hanson, Babchishin, Helmus, Thornton, & Phenix, 2017; Helmus, Thornton, Hanson, & Babchishin, 2012). All individuals in the lowest risk category (Level I, very low risk) were below the desistance threshold at time of release. Individuals in Risk Level II (below average risk) crossed the desistance threshold between 3 years (Static-99R score of -1) and 6 years (Static-99R score of 0). Individuals assessed as Level III (average risk) crossed the desistance threshold (became Level I) after 8 to 13 years sexual offense-free in the community. Most individuals in Risk Level IV (IVa above average risk and IVb well above average risk) crossed the desistance threshold by years 16 to 20.

Overall, our results indicated that the risk for new sexual offenses has, for practical purposes, been extinguished after individuals successfully remain sexual offense-free for 20 years in the community. In our dataset, there was only one sexual recidivist out of the 394 individuals followed between 20 and 25 years, when our follow-up ended. This corresponds to a 5-year recidivism rate of 0.3%, well below the desistance threshold of 1.9%.

Using the distribution of Static-99R scores (Hanson, Lloyd, Helmus, & Thornton, 2012), it is possible to estimate the proportion of individuals whose risk will drop below the desistance threshold for any specific number of years sexual offense-free. Six out of 100 individuals will already be below the desistance threshold at time of conviction for a sexual offense. This number increases to 14 individuals after 2 years, 24 after 5 years, 57 after 10 years, and 85 after 15 years sexual offense-free. In other words, most individuals with a history of sexual offending will no longer present any significant risk of sexual recidivism after 10 years, and only a small proportion will remain at risk after 15 years sexual offense-free.

THE JAILER'S ILLUSION

If desistance is the norm, why do we have the impression that recidivism rates are so high? Our first consideration is the availability heuristic—the tendency to estimate frequency based on how easily exemplars come to mind (Tversky & Kahneman, 1973). Recidivism by known offenders is widely publicized and highly imaginable. In contrast, it is not clear what nonrecidivism would even look like.

Another reason that we overestimate recidivism is that correctional samples are full of our failures. The individuals most prone to reoffending come back. Rhodes et al. (2016) argued that the rate of return of individuals released from prison is substantially smaller than the usual statistics indicate. Their argument is based on statistical models demonstrating that the proportion of high risk offenders increases as the recruitment window gets shorter. The lowest risk samples have very long recruitment periods (20 years, lifetime) and would capture all individuals who ever enter prison, with equal opportunity of sampling individuals across the full range of risk levels. In contrast, short recruitment periods (1 month, 1 year) oversample individuals who are already recidivists.

The tendency for social services to fill up with unusually difficult cases has been recognized for decades. Because our impressions are based on what we see around us (not

statistics), clinicians tend to overestimate the extent to which typical mental health problems are chronic and difficult to treat. Cohen and Cohen (1984) referred to this overestimation of severity as the clinician's illusion.

CONCLUSION

Criminal history records are an important part of comprehensive crime control strategies. They are essential for risk assessment and treatment (Andrews, Bonta, & Hoge's, 1990, Risk principle), protecting vulnerable populations, and hot spot policing. In some circumstances, however, they can be more prejudicial than informative. The standards presented in the 2012 report of the U.S. Equal Opportunity Employment Commission specified that criminal history records should be used only as one element in risk assessment for candidates; employers cannot summarily reject all candidates whose name appears on a criminal history database (Equal Opportunity Employment Commission, 2012). Furthermore, when employers place little weight on records more than 10 years old, the most qualified individuals are hired first, overall economic productivity is increased, and there is no detriment to public safety (Denver, 2017).

There is still considerable public concern, however, about individuals who have ever been convicted of sexual offense. Long after they no longer present any further risk, jurisdictions continue to enforce sexual offense specific restrictions on such individuals. This does not increase public safety. Instead of devoting limited resources monitoring very low risk individuals, we could do more to address the burden of sexual victimization by redirecting these resources to more productive interventions, such as victim services, primary prevention, and psychological treatment for truly high risk individuals.

The declining importance of old criminal history records over time raises the question as to whether old records should be kept at all. As a researcher, I want all records to be kept for everybody, forever. This may not, however, serve the public good. Even with large investments in public education, decision makers may be unduly influenced by incidents in the distant past that no longer characterize the individual in question. Consequently, all jurisdictions should carefully consider the cost-benefit analysis of their retention and access policies, and update them as necessary based on the best available evidence.

The expectation of desistance also provides a distinct and useful frame for correctional rehabilitation. Rather than trying to change "offenders" into something that they are not, effective rehabilitation can be seen as supporting desistance processes that are naturally occurring and already present to some degree. Whether they are aware of it or not, desistance is their future.

KEY POINTS

1. Criminal history records provided valuable, but time limited, information concerning the propensity to engage in crime.
2. Desistance can be defined (and studied) as a very low likelihood of recidivism, similar to that of first time offending in the general population (1%-3% per year for young men).
3. Most individuals with a criminal conviction will no longer be at significant risk for new offending after 10 years offense-free in the community.
4. The time to desistance varies based on initial risk levels. For low risk individuals, desistance is expected within 5 years. The highest risk offenders (top 5%) may never fully resemble their community peers even after 20 years offense-free.

5. The time to desistance is similar for individuals whose records included sexual offenses as for those whose records only include nonsexual offenses.
6. Because criminal history records lose importance over time, governments should carefully consider the cost-benefit analysis of their retention and access policies, and update their policies as necessary based on the best available evidence.

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