

Criminal Justice and Disability

Issue Brief – POLS W3245, Summer 2011

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This issue brief explains the definition of a disabled person and how they are considered in American Politics. It also examines the interactions of disabled persons and the criminal justice system.

Key Points

- ⇒ Criminal Justice lack of consideration of persons w/disabilities
- ⇒ Mental illness as precursor to criminal activity
- ⇒ Socioeconomic status
- ⇒ Gun Rights

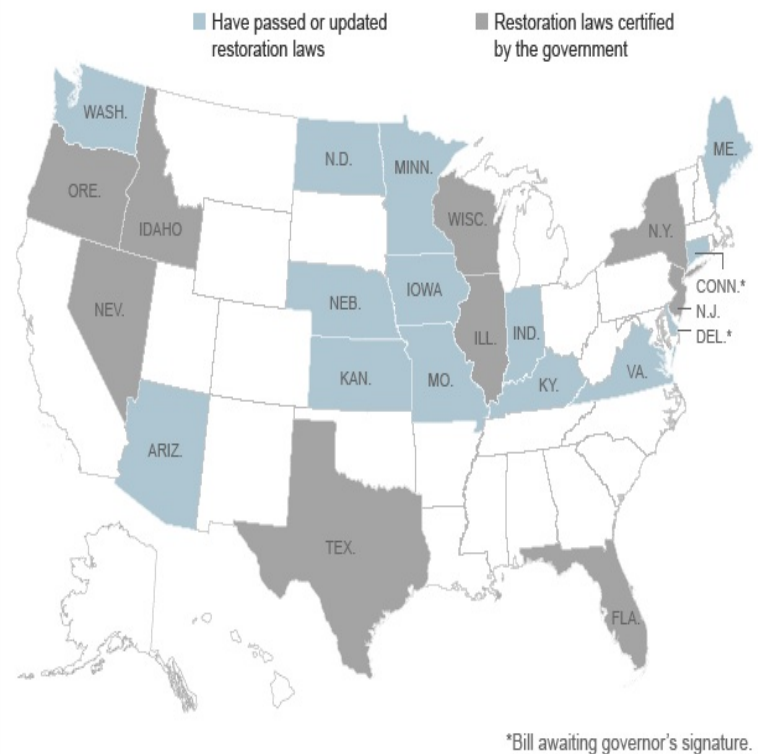
Key Words

Mentally Disabled, ADA, Gun Rights, Crime

The criminal justice system is built upon finding justice for persons who are the victims of crime and maintaining order in society (Smith *et. al*, 2008). While there are protections built into the system to ensure fairness, it is not a system that was developed with a full appreciation of the needs and characteristics of all persons in mind. Persons with disabilities have particular issues that challenge a system that was built to ferret out truth and protect rights (Smith *et. al*, 2008; Fowler *et. al*, 2005).

Restoring Gun Rights

Since 2008, 23 states have passed new laws, or updated old ones, to enable people who lost their rights to buy and possess firearms for mental health reasons to petition to have those privileges restored. [Related Article »](#)



<http://www.nytimes.com/interactive/2011/07/03/us/guns.html?ref=us>

Persons with disabilities are more likely to become involved in the criminal justice system than persons without disabilities (Hall *et. al*, 2007; Lord & McGee, 2001). There are a number of theories as to why this is the case but the overwhelming consensus is that individuals with complex problems confront any number of barriers to services that may leave them vulnerable to criminal justice violations both as a victim or perpetrator of crime.

Criminal Justice and Disability

Sadly, the likelihood of a person with any developmental disability becoming a victim of crime is four to ten times higher than that of the general population of nondisabled individuals (Hall *et. al*, 2007; Sobsey & Doe, 1991). There are some disabled in this group that may feel particularly vulnerable that are subjected to crime such as violence that is perpetrated against women with disabilities. This group can feel marginalized due to gender, the disability, and lack of services and protection.

Moreover, this is exacerbated when it comes to disabled individuals that are incarcerated. According to Jones, offenders with learning disabilities or similar impairments of intellect and/or adaptive functioning, have interference with their ability to cope with the criminal justice system. They are a vulnerable group who may be targeted by other prisoners and are unlikely to be able to engage in and benefit from programs designed to address offending behavior (Jones & Talbot, 2010; Loucks, 2007).

With regard to being perpetrators of crime, there are a number of social and economic factors that cause people with developmental and intellectual disability to have higher a risk of involvement in the criminal justice system. This can be issues such as lack of positive social outlets, access to adequate services before, during and after incarceration; money etc.



Foremost, we need to understand the definition of disabled. According to the Americans with Disabilities Act (ADA) Sec. 12102., “a disabled person has a physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.”

The ADA was established to provide “a clear and comprehensive national mandate for the elimination of discrimination” and “clear, strong, consistent, enforceable standards addressing discrimination” by reinstating a broad scope of protection to be available under the Americans with Disabilities Act.

Taking note of this definition, it is important to consider that many times, achieving development, equality of opportunity and/or protection for people with disabilities depends in large measure on individual transformative experiences (Young, 2010). That is, one has to first identify as a person with a disability and as a part of the disabled community. Interestingly, this is often times not the case for persons with mental illness due to perceived social stigmas and other perceptions about mental illness.

This is important to keep in mind with regard to criminal justice and the disabled. Since the criminal justice system is built upon finding justice for persons who are a victim of crime as well as maintaining social order, the fact that a disproportionate number of individuals that commit crimes

are disabled, requires special consideration in any number of policy issues. According to Young, the disabled community is anything but homogenous and it is difficult to find common ground on any number of policy issues. The same can be said for general population as well.

For example, in Pulaski County of Virginia, Sam French – a 62-year old male with a history of bi-polar disorder and lifelong relapses, successfully petitioned for the reinstatement of his right to possess a firearm after he lost it during his last involuntary commitment to a mental institution. This was the fourth time in five years that he was hospitalized by a court order. The attorney for the County stated, “I don’t believe any reasonable person believes that a mentally ill person needs a firearm. The public has a right to be safe in their community.” It is possible that one could argue of the link between mental illness and violence as outlined in this brief but to what extent are the rights of the disabled being infringed upon as outlined in the ADA and other laws like the Second Amendment?

In the Virginia Tech massacre, the worst mass shooting in American history, we saw a person that was declared mentally ill, murder innocent people. An example such as this might seem clear-cut as to what direction to take with regard to gun rights, however, groups such as the N.R.A. are taking a different stance when it comes to this. The N.R.A. supports restoration of gun rights to veterans who lost their rights after being designated mentally incompetent by the Department of Veteran Affairs.

The N.R.A. stated, “we don’t want to treat our soldiers as potential criminals because they’re struggling with the aftermath of dealing with their service.” At what point then does one consider the linkages and facts of criminal justice and the disabled – particularly mental illness?

Are the facts only applicable to those individuals that may not have been a member of the armed forces? As noted above, “a disabled person has a physical or mental impairment that substantially limits one or more major life activities of such individual.” A designation of mental incompetence can be understood to be a substantial impairment to major life activities. Why would this definition suffice for the ADA but not with regard to the criminal justice system?

Over 33% of incarcerated juveniles have been identified to have a disability that qualifies them for special education and related services under the Individuals with Disabilities Education Act (IDEA) (Munoz, 2008). In terms of rehabilitation and treatment, mental health services in adult correctional facilities are widely regarded as inadequate and particularly so for juvenile institutions. The criminal justice system has not accounted for challenges of persons with disabilities on either side of the criminal justice dilemma.

These are just a few examples of the complicated issue of criminal justice and disability that are in the need of further study and discourse. This does not account for the communities of incarcerated individuals that have no chance for rehabilitation.

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