

Criminal Legal Systems in Disability Community

Subjects: [Social Work](#) | [Criminology & Penology](#) | [Sociology](#)

Contributor: Sandra M Leotti , Elspeth M Slayter

Disabled people come into contact with the criminal legal system as suspects, defendants, incarcerated persons, victims, and witnesses. Compared to people without disabilities, disabled people are more likely to experience victimization, be arrested, be charged with a crime, and serve longer prison sentences once convicted. These trends are even more profound for disabled people with intersecting marginalized identities, such as people of color, women, poor people, and those who identify as LGBTQ.

disability

criminal legal system

law enforcement

1. History

Historically, disabled bodies have been policed in various ways, resulting in a disproportionate number of disabled people being confined in carceral spaces ([Appleman 2018](#); [Chapman 2014](#)). While large state institutions for people with psychiatric or intellectual disabilities closed in the 1980s and onward due to deinstitutionalization, many eventually reopened as prisons and detention centers ([Ben-Moshe 2011](#)). This occurred alongside a broader and rapid increase in incarceration. However, it should not be understood that deinstitutionalization caused incarceration rates to rise. Broader social and political mechanisms associated with neoliberalism and racism spawned the mass incarceration of disabled people.

The 1970s marked a period of systematic mass imprisonment and heavy reliance on formal social controls primarily targeting marginalized populations ([Sokoloff 2005](#)). Mass incarceration can be largely attributed to three intersecting phenomena that emerged in the latter half of the 20th Century ([Leotti 2020](#)). The first is the war on drugs, which began in the 1970s and brought about punitive social policies and sentencing enhancements, such as 'three strikes, you're out' laws and mandatory minimum sentencing. Mandatory minimums replaced treatment and community service options when drugs are involved and reflect a policy choice to treat substance use and addiction as a criminal issue versus as a public health problem ([Mauer and King 2007](#)). Such sentence enhancements have increased the number of people in prison and the time they spend there ([Muehlmann 2018](#)). The second issue is the growth of the prison industrial complex, which constitutes a web of economic, political, and legal relations that results in financial gain through the incarceration and surveillance of marginalized populations. The third of these phenomena is neoliberal globalization, which has brought about a fundamental shift in the role of the state. Neoliberal transformations in the economy have contributed to poverty in the United States and have brought an increasing number of poor and marginalized people into contact with the criminal legal system ([Wacquant 2009](#)).

Neoliberalism has driven shifts in policy agendas from a Keynesian approach, which saw government as necessary to ensure the basic social well-being of all, to one of deregulation and privatization ([Abramovitz and Zelnick 2018](#)). Neoliberal ideology thus erodes government commitment to social welfare in favor of policies that focus on individual responsibility and market-based rationalities, and it brings with it a hyper focus on the individual as both the cause of and solution to social problems ([Brown 2015](#)). Consequently, neoliberal policies have produced an increased reliance on disciplinary measures to manage manifestations of social exclusion, such as poverty and homelessness ([Wacquant 2009](#)).

There is a direct relationship between these three phenomena—sentence enhancements, growth of the prison industrial complex, and neoliberal globalization—and the increased criminalization/incarceration of disabled people. The past six decades have seen widespread deinstitutionalization. While deinstitutionalization should be seen as a positive development, it was not accompanied by the public investment necessary to ensure that community supports were made available for disabled people to live independently in the community. As a result, disabled people, particularly those with mental health conditions have been swept up into the criminal legal system, often for non-violent and minor infractions such as sleeping outside (i.e., homelessness) and atypical reactions to social cues which become interpreted as disorderly conduct.

Undoubtedly, the historical processes of ableism, capitalism, and racism have pushed disabled people to the economic margins of society. Historically, people with physical and psychological behaviors and appearances that do not conform to dominant norms have been segregated and isolated and made more vulnerable to shifting mechanisms of surveillance and control (ableism). Disabled people have thus been shunted out of the labor market and into institutions (capitalism). The current day iteration of exclusion manifests itself in mass incarceration of the same people once shut away in institutions for psychiatric and developmental disabilities. Furthermore, the people in these institutions do not represent all segments of society—the majority are poor and people of color (classism and racism). This historical (and ongoing) exclusion from the labor market (e.g., processes of segregation and institutionalization) alongside the onset of neoliberalism has had a profound impact on the material well-being of disabled people. Currently, more than half of disabled people live in long-term poverty ([Purnell 2021](#)). Poverty is known to create a number of disabling conditions and to be linked to behaviors that are commonly criminalized, such as petty theft or sleeping on the street ([Chapman et al. 2014](#)). Coupled with an increasing divestment from public services (e.g., health care, housing services, employment protections, and other social welfare entitlements), disabled people have been disproportionately swept up in the criminal legal system. Such a material historical analysis helps people counteract the often taken for granted assumptions about criminality (those that deviate from ableist understandings of how body-minds are ‘supposed’ to look and behave) that have been attached to disabled people for centuries. Furthermore, it helps people see that criminalization is a product of social and economic processes rather than that of individual deviance and pathology.

2. Prevalence of Disability in the Criminal Legal System

Disabled people are disproportionately impacted by and involved in the criminal legal system ([Oberholtzer 2017](#)). Disabled people come into contact with the criminal legal system as suspects, defendants, incarcerated persons,

victims, and/or witnesses. Compared to people without disabilities, disabled people are more likely to experience victimization, be arrested, be charged with a crime, and serve longer prison sentences once convicted. These trends are even more profound for disabled people with intersecting marginalized identities, such as people of color, women, poor people, and those who identify as LGBTQ ([Vallas 2016](#)).

While disabled people make up 27% of the population in the United States, they represent up to half of people killed by police ([Perry and Carter-Long 2016](#); [Varadaraj et al. 2021](#)) and are more likely to experience violence at the hands of police ([Vallas 2016](#)).

Once in the carceral system, disabled people comprise over 50% of incarcerated adults ([Purnell 2021](#)). According to the Bureau of Justice Statistics, people incarcerated in prisons and jails are three to four times more likely than the general population to report having at least one disability, with an estimated 30–40% of incarcerated individuals reporting at least one disability and about 15% reporting multiple disabilities ([Bronson et al. 2015](#)). Among the most commonly reported disabilities among inmates are cognitive disabilities (e.g., Down syndrome, autism, dementia, intellectual disabilities, and learning disabilities).

3. Challenges Disabled People Face in the Criminal Legal System

Once entangled in the criminal legal system, disabled people face unique challenges, biases, inaccessible services, and lack of accommodations which further perpetuate the length and consequences of criminal legal involvement. Despite long standing federal disability laws, such as the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act, that mandate “equal access to programs, services, and activities” ([Department of Justice 2010, p. 110](#)) for disabled people in custody, they are often deprived of medical care, necessary supports, services, and accommodations while interfacing with law enforcement, the courts, and in carceral settings ([Oberholtzer 2017](#); [Vallas 2016](#)).

Legal, law enforcement, and security professionals often lack experience and accurate knowledge about disability which can lead to misidentification of disabilities, inaccurate assumptions about competency and credibility, and a heightened risk of violence ([Oberholtzer 2017](#)). Lack of knowledge regarding disability among these professionals may also lead to false confessions, lack of necessary accommodations, inappropriate placement in institutions, and the inadvertent waivers of rights. Furthermore, these professionals work according to rules never designed for, or intended to, ‘help.’ Poor conditions in jails and prisons as well as inadequate access to both health and mental health care can exacerbate existing conditions and lead to new physical and mental health problems ([Chandler 2003](#)). For example, limited access to regular physical activity, a common condition of confinement, has been shown to be detrimental to overall health and to intensify existing physical disabilities ([Morgan 2017](#)).

3.1. Policing and Law Enforcement

Symptoms of psychiatric, intellectual, physical, or sensory disabilities are often mistaken for non-compliant or hostile behaviors by law enforcement professionals who are not trained in recognizing the signs of disability or intervening in disability-related crisis situations.

d/Deaf³ people cannot be expected to respond to commands of police when delivered out of sight. Their inability to do so heightens their risk of violence when interacting with the police. Many d/Deaf people also use their eyes, hands, and body to communicate. Police officers often misunderstand these components of d/Deaf culture as threatening and aggressive—once again intensifying the risk of violence ([Lewis 2014](#)). The ADA mandates that law enforcement officers take appropriate steps to communicate effectively with d/Deaf people by providing sign language interpreters and/or auxiliary aids. Yet, assaults against d/Deaf people occur on a regular basis ([Lewis 2014](#)). There is urgent need for police officers to better understand d/Deaf culture and how to communicate with members of the d/Deaf community.

People with intellectual and developmental disabilities, such as Autism and Down syndrome, are more likely to encounter the police and often have trouble understanding, responding to, and obeying police orders ([Hurst 2015](#)). This can be misinterpreted as defiance often resulting in unnecessary use of force and arrest.

By far, the most common type of interaction between the law enforcement and disabled people involves psychiatric disabilities ([Vallas 2016](#)). Due to lack of appropriate community resources systems for calling for help (other than 911), the police are often the first responders to a person experiencing a mental health crisis. It is estimated that up to half of officer shootings involved someone in a mental health crisis ([Perry and Carter-Long 2016](#)) and that in roughly 36% of those cases, 911 was explicitly called to help the person get medical treatment, not for the police ([Oberholtzer 2017](#)). Despite their frequent involvement in mental health crises, police responses are often deeply inadequate and harmful ([Oberholtzer 2017](#)).

3.2. Court Systems

After interaction with law enforcement, disabled people also face enormous barriers in the court system. The ADA prohibits discrimination on the basis of disability, mandating that disabled people be provided with equal opportunity to participate in all aspects of life. Title II of the ADA applies to public and governmental entities and the programs and services they provide, including court services and proceedings ([Department of Justice 2010](#)). It requires that reasonable accommodations are provided when needed. For example, courts must provide 'effective communication,' for example, in the form of qualified sign language interpreters to all persons participating in court processes including witnesses, litigants, jurors, and companions and support people of those participating in the proceedings ([Department of Justice 2010](#)).

3.3. Prisons and Jails

Prisons and jails are ill equipped to meet the diverse needs of disabled people, and often perpetuate horrendous discrimination and abuse. Living in a carceral facility entails activities of daily living (ADLs) that are particularly challenging for the disabled people. Disabilities which can be easily navigated in a community setting can become

serious barriers to health and safety. For example, in addition to regular ADLs such as bathing and dressing, prison life often involves additional ADLs such as dropping to the floor for alarms, enduring excessive background noise, jumping up and down from an upper bunk, and being able to hear and promptly follow orders ([Blanck 2017](#)). States have a responsibility under the ADA to offer accessible programs and services and to provide reasonable accommodations and effective communications for disabled people. Yet, aside from litigation, there appears to be few mechanisms of accountability for ensuring ADA mandates.

3.4. Reentry

A large proportion of disabled people who are incarcerated are eventually released, and their experiences of reentering society have uniquely challenging dimensions, especially when they are denied access to vocational and release planning beforehand. The challenges disabled people face in reentry can be formidable as the culture of punishment and exclusion continues post-incarceration. Incarcerated people, in general, face significant barriers upon re-entering society, including stigma, lack of resources, and a plethora of ‘collateral consequences’ while reintegrating into their communities—“laws and regulations that serve to diminish the rights and privileges of those convicted of crimes” ([Travis 2002, p. 16](#)).

Correctional programs and services, such as vocational and pre-release planning programs, are shown to facilitate a smoother and more successful reentry experience for individuals upon release. However, similar to their widespread lack of access for health and mental health treatment, disabled people are often denied access to such programs while incarcerated or are placed in programs without accommodations ([Seevers 2016](#)). For example, incarcerated people with psychiatric disabilities are frequently released with no plan for reintegration, including no medication prescriptions, no mental health service referrals, and no housing supports ([Rembis 2014](#)). The difficulties formerly incarcerated disabled people face are compounded by lack of pre-release assistance in applying for necessary social supports such as Medicaid and Social Security Disability Insurance, which can take months to become eligible for on the outside.

4. Conclusions

There is increasing recognition of the ways in which disabled people are disproportionately and disparately impacted by the criminal legal system. Disabled people are overrepresented at all points of contact in the legal system. Furthermore, the needs and challenges of disabled people are often overlooked or neglected when they come into contact with the criminal legal system, which perpetuates the length and consequences of their criminal legal involvement. Social workers dedicated to advocacy on behalf of disabled people as well as those working to end mass incarceration need to develop both a critical awareness of disability culture, and a deep appreciation for how disability, situated alongside other intersecting lines of stratification such as race, ethnicity, class, and gender, is central to maintaining the carceral state. Disability justice offers a useful framework for informing social work practice at all levels.

References

1. Appleman, Laura. 2018. Deviancy, dependency, and disability: The forgotten history of eugenics and mass incarceration. *Duke Law Journal* 68: 417–78.
2. Chapman, Chris. 2014. Five centuries' material reforms and ethical reformulations of social elimination. In *Disability Incarcerated: Imprisonment and Disability in the United States and Canada*. Edited by Liat Ben-Moshe, Chris Chapman and Allison C. Carey. New York: Palgrave Macmillan, pp. 25–44.
3. Ben-Moshe, Liat. 2011. *Genealogies of Resistance to Incarceration: Abolition Politics within Deinstitutionalization and Anti-Prison Activism in the US*. Unpublished Ph.D. dissertation, Syracuse University, Syracuse, NY, USA.
4. Sokoloff, Natalie. 2005. Women prisoners at the dawn of the 21st century. *Women and Criminal Justice* 4: 127–37.
5. Leotti, Sandra M. 2020. The discursive construction of risk: Social work knowledge production and criminalized women. *Social Service Review* 94: 445–87.
6. Mauer, Marc, and Ryan S. King. 2007. *A 25-Year Quagmire: The War on Drugs and Its Impact on American Society*. The Sentencing Project. Available online: <https://www.sentencingproject.org/publications/a-25-year-quagmire-the-war-on-drugs-and-its-impact-on-american-society/> (accessed on 7 March 2022).
7. Muehlmann, Shaylih. 2018. The gender of the war on drugs. *Annual Review of Anthropology* 47: 315–30.
8. Wacquant, Loïc. 2009. *Punishing the Poor: The Neoliberal Government of Social Insecurity*. Durham: Duke University Press.
9. Abramovitz, Mimi, and Jennifer Zelnick. 2018. The logic of the market versus the logic of social work: Whither the welfare state? *Social Work & Society* 16: 1–11.
10. Brown, Wendy. 2015. *Undoing the Demos: Neoliberalism's Stealth Revolution*. Brooklyn: Zone Books.
11. Purnell, Derecka. 2021. *Becoming Abolitionists: Police, Protests, and the Pursuit of Freedom*. New York: Astra House.
12. Chapman, Chris, Allison C. Carey, and Liat Ben-Moshe. 2014. Reconsidering confinement: Interlocking locations and logics of incarceration. In *Disability Incarcerated: Imprisonment and Disability in the United States and Canada*. Edited by Liat Ben-Moshe, Chris Chapman and Allison C. Carey. New York: Palgrave Macmillan, pp. 3–24.
13. Oberholtzer, Elliot. 2017. *Police, Courts, Jails, and Prisons All Fail Disabled People*. Prison Policy Initiative. Available online: <https://www.prisonpolicy.org/blog/2017/08/23/disability/> (accessed on 7

March 2022).

14. Vallas, Rebecca. 2016. Disabled Behind Bars: The Mass Incarceration of People with Disabilities in America's Jails and Prisons. Center for American Progress. Available online: <https://www.americanprogress.org/issues/criminal-justice/reports/2016/07/18/141447/disabled-behind-bars> (accessed on 7 March 2022).
15. Perry, David M., and Lawrence Carter-Long. 2016. The Ruderman white Paper on Media Coverage of Law Enforcement Use of Force and Disability; Ruderman Family Foundation. Available online: https://rudermanfoundation.org/wp-content/uploads/2017/08/MediaStudy-PoliceDisability_final-final.pdf (accessed on 7 March 2022).
16. Varadaraj, Varshini, Jennifer A. Deal, Jessica Campanile, Nicholas S. Reed, and Bonnielin K. Swenor. 2021. National Prevalence of Disability and Disability Types Among Adults in the US, 2019. *JAMA Network Open* 4: e2130358.
17. Bronson, Jennifer, Laura M. Maruschak, and Marcus Berzofsky. 2015. Disabilities among Prison and Jail Inmates, 2011–2012; Washington: Bureau of Justice Statistics. Available online: <https://bjs.ojp.gov/content/pub/pdf/dpji1112.pdf> (accessed on 7 March 2022).
18. Department of Justice. 2010. Americans with Disabilities Act Title II regulations: Nondiscrimination on the Basis of Disability in State and Local Government Services. Available online: https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.pdf (accessed on 7 March 2022).
19. Chandler, Cynthia. 2003. Death and dying in America: The prison industrial complex's impact on women's health. *Berkeley Women's Law Journal* 18: 40–60.
20. Morgan, Jamelia N. 2017. Caged in: The devastating harms of solitary confinement on prisoners with physical disabilities. *Buffalo Human Rights Law Review* 24: 81–178.
21. Lewis, Talila A. 2014. Police Brutality and Deaf People; ACLU. Available online: <https://www.aclu.org/blog/national-security/police-brutality-and-deaf-people?redirect=blog/criminal-law-reform-free-speech/police-brutality-and-deaf-people> (accessed on 7 March 2022).
22. Hurst, Adrienne. 2015. Black, Autistic, and Killed by Police. *Reader*. Available online: <https://chicagoreader.com/news-politics/black-autistic-and-killed-by-police/> (accessed on 7 March 2022).
23. Blanck, Peter. 2017. Disability in prison. *Southern California Interdisciplinary Law Journal* 26: 309–22.
24. Travis, Jeremy. 2002. Invisible punishment: An instrument of social exclusion. In *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*. Edited by Marc Mauer and Meda Chesney-Lind. New York: The New York Press, pp. 15–36.

25. Seevers, Rachael. 2016. Making Hard Time Harder: Programmatic Accommodations for Inmates with Disabilities under the Americans with Disabilities Act. AVID Prison Project. Available online: <http://avidprisonproject.org/Making-Hard-Time-Harder/> (accessed on 7 March 2022).
26. Rembis, M. 2014. The new asylums: Madness and mass incarceration in the neoliberal era. In Disability Incarcerated: Imprisonment and Disability in the United States and Canada. Edited by Liat Ben-Moshe, Chris Chapman and Allison C. Carey. New York: Palgrave Macmillan, pp. 139–59.

Retrieved from <https://encyclopedia.pub/entry/history/show/61267>