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### **Issue Brief: People with Disabilities and Criminal Justice**

#### **Key Words**

Disabilities, Victims, Death Penalty, Prison Conditions

#### **Description**

In this issue brief, there will be a discussion of the unfair persecution of person with disabilities, how they are more likely to be victimized, and once trialed, if the death sentence is an appropriate sentence.

#### **Key Points**

- Criminal Justice lack of consideration of person's with disabilities
- Intellectual Disabilities makes it more likely for a person to have participated or involved in crime
- People with Learning Disabilities are more susceptible of being victims of crime
- Rights are undermined by the criminal justice system

### **People with Disabilities and Criminal Justice**

The purpose of the criminal justice system is to hold accountable for persons who are victims of a crime in order to maintain order in a society. This system becomes complicated when people with intellectual or developmental disabilities are involved as either victims or suspects/offenders. The persons with disabilities frequently encounter an absence of justice within this system, as it does not acknowledge the difficulties and illnesses that this group of people undergoes in their lives. Before discussing the

interaction between disabled and the criminal justice system, it is essential to define disabled. According to the American Disabilities Act (ADA) “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.”

Those with disabilities have a 4 to 10 times higher risk of becoming victims of crime when compared to those without disabilities (Sobsey 1994). Some of the factors that increase their vulnerability to victimization include impaired cognitive abilities and judgment, lack of knowledge to protect themselves, or living in high-risk environments. Due to their incapability, people with disabilities, particularly those with learning disabilities, are often subject to violence. When adjusted to age variation, surprisingly people with disabilities experienced higher rates of violence than those without a disability. Although experiencing higher rates, often times when a crime is committed against those with disabilities such as assault, rape or murder, it is rather labeled as abuse and neglect instead. The law enforcement agency also undermine crimes committed against those with disabilities as police failed to respond to about 23% of reported violent crimes against persons with disabilities compared to about 10% of reported violent crimes against victims without disabilities.

**Table 2. Violent victimization of persons with and without disabilities, by age, 2007**

| Victim characteristics | Unadjusted rate per 1,000 persons age 12 or older |                              |
|------------------------|---|------------------------------|
|                        | Persons with disabilities                         | Persons without disabilities |
| <b>Age</b>             |   |                              |
| 12-15                  | 81.2*   | 40.0                         |
| 16-19                  | 82.7*   | 47.0                         |
| 20-24                  | 35.1  | 35.4                         |
| 25-34                  | 30.9  | 24.9                         |
| 35-49                  | 31.2*   | 16.1                         |
| 50-64                  | 12.2  | 11.6                         |
| 65 or older            | 2.1   | 3.0                          |

Note: Rates are based on the noninstitutional U.S. resident population age 12 or older, in the American Community Survey, 2007, U.S. Census Bureau. In 2007 approximately 39,566,790 persons age 12 or older in the U.S. had a disability. See *Methodology*.

\*Difference is significant at the 95%-confidence level.

On the other side of the spectrum, persons with disabilities also are subject to unfair judgment as suspects and victims. There are numerous factors that allow for a person with disabilities to be more susceptible in committing crimes. Whether utilized by other criminals as assistance with their activities' while not understanding their involvement, unable to be fairly represented by a lawyer, or their incompetency to stand trial. As perpetrators of violence, people with intellectual disabilities have a greater risk of committing crime. This is attributed to the current socioeconomic status of people with disabilities, including access to adequate services, money and education.

On June 20, 2002 the U.S. Supreme Court reached a historic ruling that prohibited the execution of individuals with mental retardation. The Court held that it is a violation of the Eighth Amendment ban on cruel and unusual punishment to execute death row inmates with mental retardation (Davis). However it is up to the state to determine what the definition of "mental retardation" constitutes. Laws vary from state to state on how a defendant can prove whether or not he or she has mental retardation. Controversy over

this definition is evident in the Aurora Colorado shooting. The defense claims that James Holgan has severe personality and mental disorders; hence they argue capital punishment should not be the outcome in his trial. However, the state needs to determine whether he actually is mentally disabled, for if he is they have no choice but to sentence him to life in prison.

Controversy has aroused in terms of sentencing and the conditions of jails and prisons that include persons with disabilities. Although approximately 2 % of the population of the United States may be identified as having a developmental or intellectual disability, common estimates are that between 4-5 % and 10% of the prison and jail populations in this country have been identified as having such a disability (Bowker 1994). Once in prison, the conditions may appear harsher to these people as they are inadequate to live in prison conditions. In some instances, prisoners fail to receive proper medication, are abused by fellow inmates, lack timely access to mental health staff, and various under unfair conditions. While it may cost more for the state to screen and ensure the proper conditions for the prisoners, that it not to say they should not be treated with equality.



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