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# The Victimization of the Misconceived: The Mentally Ill in the Criminal Justice System

## Abstract

It is unfortunate to say that the number of people who suffer from a serious mental illness has been drastically increasing in the criminal justice system since the late 1960s. This drastic change has captivated the minds of the public, forced them to develop a fallacious stereotype, and labeled the mentally ill population as wrongdoers. This image, however, is inaccurate. In reality, these people are the victims of a broken system. This paper establishes the victimization that a person with a serious mental illness experiences as they are processed through the criminal justice system. The following elaborates how victimization is exhibited through the three steps of the system: police interactions, court interventions, and correctional procedures.

## Keywords

mental illness, criminal justice system, deinstitutionalization

The Victimization of the Misconceived: The Mentally  
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*Margarita Trejo*

**Abstract**

It is unfortunate to say that the number of people who suffer from a serious mental illness has been drastically increasing in the criminal justice system since the late 1960s. This drastic change has captivated the minds of the public, forced them to develop a fallacious stereotype, and labeled the mentally ill population as wrongdoers. This image, however, is inaccurate. In reality, these people are the victims of a broken system. This paper establishes the victimization that a person with a serious mental illness experiences as they are processed through the criminal justice system. The following elaborates how victimization is exhibited through the three steps of the system: police interactions, court interventions, and correctional procedures.

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From the start, the criminal justice system's primary focus was to find ways to deter specific marginalized populations from criminality. As noted in a variety of studies, researchers tend to only correlate race, ethnicity, and gender to the concept of criminality. Even though these key factors are important, it is equally important to examine the growing population of those with mental disabilities entering the criminal justice system. As of 2017, there are approximately 43.8 million adults diagnosed with or experiencing a mental illness (National Alliance of Mental Illness, 2017). Although it is not a new field of study, few scholars have been successful in identifying the increase of this marginalized population, the mentally ill, in the justice system as an issue. The central principle of this paper is to illustrate the victimization of severely mentally ill individuals as they are maneuvered through the criminal justice system, starting from police interaction, through the court systems, and into the correctional systems.

Before demonstrating the procedural framework, it is only fair for the audience to note that this paper will bring forth evidence of victimization of those people who have a serious or severe mental disorder. According to the National Institution of Mental Health (2017), a serious mental illness, or SMI, is defined as "a mental, behavioral, or emotional disorder resulting in [a] serious functional impairment, which substantially interferes with or limits one or more major life activities." A few serious mental disorders are known as schizophrenia, bipolar disorder, severe post-traumatic stress disorder, and major depression. However, for the sake of time, this paper will primarily discuss the disorders in terms of a general overview with a variety of examples.

Moving forward, it is also important for the reader to acknowledge why there has been a significant increase in the mentally ill population within both communities and the justice system. Starting in the 1960s, the deinstitutionalization of psychiatric facilities reduced the number of beds from approximately 563,000 to only 98,800 (Markowitz, 2006). This led to the discharging of thousands of severe long-term mentally ill patients, removing them from proper supervision, medication, and treatment. Once discharged, the patients were left to re-enter communities and self-medicate. These individuals, unfortunately, lack the proper support and resources they need to properly re-integrate in to society. This often prevented them from obtaining a permanent residency, thus, endangering them to the life of homelessness (Markowitz, 2006).

Once homeless, their numbers as well as their dependency, begin to increase within the criminal justice system (Steadman, Monahan, & Robinson, 1984). The continuous appearance of mentally ill individuals in the justice system can be linked to the revolving door theory. Scholars indicate that this concept involves the majority of the severely mentally ill individuals who are admitted to hospitals for a short period of time and discharged, only to be re-admitted shortly after (Haywood, Krazitz, & Grossman, 1995). Nevertheless, the introduction to the justice system, whether positive or negative, starts with a police interaction.

### **Literature Review**

#### **Police Interactions with the Mentally Ill**

The following section will highlight the course of action that police officers take when they encounter a mentally ill or disabled person. First and foremost, many will agree that an officer's sole purpose is to correctly apprehend those who are

causing harm to society and to protect those who are unable to fend for themselves. Researchers like Lamb (2004) and Gur (2010) greatly emphasize and agree that the primary job of an officer is to protect their communities. Nevertheless, they also highlight that officers need to critically decide whether 1) the person they are apprehending has a mental disability or is under the influence, 2) if the person has a mental disorder, and 3) decide if they will receive psychiatric treatment or will be placed through the criminal system.

A typical encounter that a mentally ill person has with police officers starts with disrupting a community's peace. When the factor of homelessness is incorporated and if they regularly reside in a specific area or city, that individual could be identified as a constant problem. This continuous identification could, unfortunately, increase the likelihood of encounters with police officers (Markowitz, 2006). In a variety of studies, it is understood that police officers develop frustration over having to consistently deal with the same person and began to institute and utilized the concept of dumping. Dumping is when an officer transports the homeless mentally ill individual into another jurisdiction for another department to deal with (King & Dunn, 2004). This form of action only encourages the victimization and labeling of these people as violent and disruptive offenders who should be removed from society.

Generally, society correlates criminality with the behaviors and actions that the person commits. Researchers note that a large portion of disruptive behaviors are often expressions of the symptoms of mental illnesses. Before, they were managed medically, but, after deinstitutionalization, these behaviors were treated criminally and have been treated as such ever since (Markowitz, 2006). A person with a serious mental illness would

normally display their body's reactions to a psychotic episode to those around them. However, most people are not aware of how psychosis presents and will misinterpret these behaviors as aggressive and threatening actions (Link, Monahan, Stuve & Cullen, 1999). Ultimately, society's misinterpretations or misperceptions of an individual's actions increase that individual's risk of getting in trouble with the law. Nevertheless, it is the interpretations and actions of an officer that fully determine the fate of a mentally ill person.

Other researchers have developed findings that confirm the expected actions a police officer is required to take when addressing certain events. Ogloff and his colleagues (2013) explain that a police officer has two choices. They either send the individual to the emergency department or provide an on-site resolution. This type of decision-making creates a large area left for the officer's discretion. Throughout any confrontation with law enforcement, neither the apprehended person nor the officer will be thinking clearly due to adrenaline, confusion, and fear that the situation will escalate. It would be highly unlikely for officers to critically decide if that person is indeed mentally disabled, under the influence of a substance, or both. Especially if, the factors mentioned previously are taking a toll on the officer's mental state (Lamb, Weinberger, & Gross 2004).

At the moment of an altercation, officers merely respond with survival instincts rather than critical analyses. Unfortunately, this is where many civilians seem to forget that police officers are normal human beings. Like other human beings, police officers have natural reaction and self-responding instincts that occur during a difficult situation. Therefore, both natural and environmental factors greatly influence an officer's

direct action. The stress level during an interaction also depends on the gender of the apprehended person.

It has been noted that the gender of a person can automatically link them to criminality and unintentionally, or intentionally, attract the awareness of law enforcement. A mental disability along with the targeted gender, can, unfortunately, lead a marginalized population to be disproportionately associated with law enforcement (Gur, 2010). As mentioned previously, the behavior of a mentally ill person can sometimes be identical to a person who is under the influence. As Lamb and his colleagues (2004) noted, “mental illness may appear to police as simply alcohol or drug intoxication, especially if the mentally ill person has been using drugs or alcohol at the time of arrest” (112). In addition, it is possible that the mentally ill person could be on medication due to their illness, thus, mentally impairing them even more and increasing the likelihood that an officer will use force to subdue them. An example comes from Engel and Silver’s 2001 study, where police officers were 1.4 to 4.5 times more likely to use force on a person with a mental disorder than one without. Out of the 36 altercations that involved a person with a serious mental illness, there were 11 instances where officers used force tactics such as tasers, pepper spray, and low-lethality gunshots to subdue the person (Engel & Silver, 2001).

Another study also concluded that mentally ill men are twice as likely to be apprehended and arrested as their female counterparts are (White, Chaffetz, & Collins-Bride, 2006). Nevertheless, the likelihood that a mentally ill person will be arrested is far greater than for those without a mental illness. The reason being, during an altercation a mentally ill individual is reacting out of fear and a lack of understanding of what is going on. The reactions of fear are misinterpreted by police officers; as



they see the reactions as hostile and insubordinate behavior (Gur, 2010). Consequently, the responding officers are left to their discretion to determine if the individual should be processed through the criminal system and be left at the mercy of the courts to decide their fate.

### **Court Intervention and the Mentally Ill**

The transition process into the court system is where police officers dictate the next procedural step that the detainee will go through. If the defendant is found to have any mental disability they are removed from the general court system and their proceedings take place within the mental health courts. Mental health courts were developed to process an individual with a mental health disorder, not through a criminal prosecution, but through a strategy that provides aid rather than punishment.

In the case of a mentally ill defendant, defense lawyers try to convince the court that the defendant needs hospitalization and should be deterred from the general prison population at all cost (Hodgins, 2007). The defense tries to plead that their client is too mentally incompetent to commit any form of harm and crime, thus, pleading the insanity defense.

The insanity defense is an argument that the defendant, due to their psychiatric illness, cannot be held accountable for the harmful actions that they may have caused during a psychotic episode (Mann, 2011). Through this defense, it relieves the individual from the allegation of having a premeditated intent to commit the crime. To figure out if the individual is incompetent, the mental health courts provide a screening test to determine the level of disability. If found insane, the court then looks for alternative programs to provide the defendant with proper treatment and rehabilitation. Instead of punishing the defendant

with prison time, the mental health courts try to create problem-solving techniques to prevent future criminality (Mann, 2011). However, if the defendant is not classified as a person with mental disabilities, or an illness is undetected, the individual is processed through the general court system.

Through this system, it is far more probable that the defendant will be found guilty of his or her crime and punished according to the nature of that crime. After a crime is committed and the person is categorized as an offender, it is hard for society to see them as a victim of their illness (Becker, 1963). Although punishments vary, the race of the mentally ill person often has a significant influence on the severity of the punishment, even if the crime is simply a form of annoyance, like public disturbance or trespassing (Hartford, 2007). Nevertheless, like any other proceeding, it is up to the court to decide if that mentally ill person is harmful or harmless to the community. However, society discreetly uses the race of a person to determine their threat level.

As White and her colleagues (2006) mention, mentally ill African American and Latino males are often sentenced to serve about 400 days more (794 total days on average) than their white counterparts (only 362 total days on average). Despite the level of harm in the crime, a mentally ill person of color is sentenced more harshly. Thus, the issue of racism is exposed through the defected criminal justice system once again. Racism, however, is not the only issue that a mentally ill detainee will experience if they continue through to the final step of the criminal justice system. Unfortunately, these detainees become victims of violence, abuse, and brutality when they are passed on to correctional systems.

### **Prisons and the Mentally Ill**

Within the general prison population resides a significant percentage of this marginalized population. There are more than 50% of mentally ill residing in state prisons and slightly less than 70% in jails (Mulvey, 2017). This has ultimately caused complications in the correctional system, regarding both safety and treatment.

Once incarcerated, the safety of the mentally ill rests in the hands of the correctional officers on duty. Individuals suffering from severe mental illness experience higher levels of violence due to lack of comprehension. Wolff and colleagues' (2007) study noted that within six months of their observation, sexual victimization was far more likely for men and women with a serious mental illness. The study identified that violence and sexualized victimization was administered by other inmates and the correctional staff (Wolff et al., 2007). Other studies have also found with the same results. The study Raina and colleagues (2013), for example, concluded that women who were considered to have a serious mental illness are five times more probable to be victims of cruelty and sexual assault. With the lack of institutional protection, these individuals increase their hostility and become more violent toward correctional officer as well as those who may want to treat them. Now, with the increase of aggression, interactions between correctional officers and mentally ill inmates have higher level, of precaution and resistance.

Bennett's study (2014) of the Rikers Island correctional facility calculated that 4,000 of 11,000 inmates were classified as individuals with a mental disability. In addition, she witnessed an altercation between correctional officers and inmates that left more than 100 inmates seriously injured. Of those 100 inmates, over 60% of the individuals had a mental illness. Thus, not only

are mentally ill patients victimized by other inmates but by authority figures as well. This leads to an acceptance of violence, and the lack of proper treatment for the mentally ill.

The mentally ill need some form of direct treatment provided by correctional officers. In comparison to the general population, the mentally disabled need specific medication and psychotherapeutic attention to help them control their illness. However, according to Schaefer and Stefancic (2003), most of the time the mentally ill are not provided with the proper necessities, correctional officers often deny inmates their required medication. When the correctional system neglects these important needs, the inmates presumably get worse, thus, increasing the time that they must serve. For instance, within New York City's jail, Riker's Island, a detainee without a severe mental illness stays an average of 42 days in custody; in comparison, a detainee with a severe mental illness stays an average of 215 days in custody (Gur, 2010). This form of victimization leads to future complications, from increasing the cost of psychological treatment to increasing the medication dosage that the inmate needs to properly function. This lack of understanding regarding the importance of treatment is drastically affecting those incarcerated. This evidence supports the conclusion drawn from Schaefer and Stefancic (2003) that prisons and jails are not adequate places for the mentally ill.

### **Policy Implications**

When investigating prior research, it becomes apparent that the criminal justice system is unfair toward the mentally ill. Therefore, this stresses the importance of scrutinizing the criminal justice system. The only way to properly modify the system is to have researchers scrutinizing the methodologies used by those enforcing the law. The following provides possible

policy implications that will change the approach toward the mentally ill.

A possible implication is creating a program that directly links the mentally disabled and law enforcement officers. This would be partly funded through the police academy, where potential officers will learn how to properly engage with individuals who have a mental illness. Police officers will be obligated to visit a mental facility, observe, and work with the different behaviors displayed by a variety of illnesses. This program will allow positive interaction between the two communities and help create a trusted bond between them. When police officers can personally interact with an individual, they are better able to comprehend and distinguish the symptoms of a mental disorder. Therefore, when they are out in communities and encounter someone who is suffering from an illness, they can critically analyze their behavior and choose the best course of action. A form of determining the effectiveness of this program would be analyzing the number of the mentally ill individuals who are processed through the criminal system. This program must be in effect for about four to six years to properly obtain data to determine its success. If the data provides promising results, a petition for renewal will be placed for future use.

Throughout the research, some studies provided policy implications that could adjust the ways that the mentally ill are perceived within the justice system. One implication was the concept of an alternative to prison; or this is where the courts would fight to prevent the mentally ill from entering prisons. Instead of prison time, the courts should sentence individuals to psychiatric housing (Doak, 2015). Especially since some severe long-term mentally individuals require constant monitoring, a

psychiatric home will be able to fulfill the required medical needs. This implication, relieves unwanted stress from the correctional officers who would have been the ones trying to meet the needs of mentally ill inmates. This implication would be funded through sponsorships and other non-profit organizations that are willing to donate. A way to determine the effectiveness of this program would be to follow up on the individuals who enter the psychiatric housing system and see how well they are integrating with the general population. Especially since they are being provided with a stable residence for some time, it would be required for the patients to obtain a steady job. This will lead to positive interactions between the general population and the marginalized population of the mentally ill.

Another implication is a form of supervision throughout the journey in the correctional systems. For example, Reynolds, Dziegielewski, and Sharp (2004) highlight the impact of social work intervention within the correctional system. This intervention created a sense of connection between the social workers and mentally ill inmates, providing the psychological treatment that some mentally ill inmates need. Once the mentally ill create a safe and trusting bond with another individual, they are more likely to comply and reduce levels of fear and possible hostility. Analyzing the number of serious altercations within correctional facilities will help determine the effectiveness of this implication within two to three years of operation. Although this is a great way to start rehabilitation while the inmates are still incarcerated, society is still in need of an implication post-incarceration.

This leads to a community program that will bring the recently released, mentally ill inmates together to support one

another. This non-profit organization will be operated by university students studying within the justice studies and medical fields to provide them with hands-on experience. This program entails a group therapy session, modified medication treatments, and an equal opportunity employment service. The program would work with employers who will work with their disabilities and prior offenses, thus, hiring those that are constantly outcast by society. Not only will this program benefit the future workforce, but it will also benefit the patients. With the students providing continual care, supervision, and proper treatment, it will deter the mentally ill from criminality and properly rehabilitate them. The program will be funded by a portion of the students' tuition in addition to donations. The effectiveness level will be calculated through student and employer feedback, as well as the number of patients who are employed. Although these programs are not intended to last a lifetime, it will be a starting point to fixing the problematic issue of having the mentally ill population criminalized.

### **Conclusion**

Throughout recent scholarship within the field of criminology, it is irrefutable to note that the mentally ill population is victimized in the criminal justice system. The mentally ill undergo a distinct framework that consists of police interactions, court interventions, and the correctional system. Although other citizens experience a similar procedure, the mentally ill are at a disadvantage because they are incapable of defending themselves against the system. Thus, they are more likely to be targeted with violence by their fellow inmates and authority figures. Although current research has provided a well-rounded perspective of this area of criminology, it still has its limitations. It is highly encouraged that future researchers

continue to explore and scrutinize the criminal justice system when it comes to managing marginalized populations.

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