

“Had to be Held down by Big Police”: A Therapeutic Jurisprudence Perspective on Interactions between Police and Persons with Mental Disabilities

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Abstract:

It is a truism that the largest mental health facilities in the nation are the nation’s largest urban jails. Most of the predictable solutions that are offered to curb the influx of individuals with mental illness into jails-- especially those that urge the loosening of civil commitment standards and the return to large psychiatric institutions -- are dreary at best, unconstitutional at heart, and mean-spirited at worst.

However, we pay remarkably little attention to one of the primary causes of this reality: the decision-making processes "on the street" by police officers who choose to apprehend and arrest certain cohorts of persons with mental disabilities, rather than seeking other, treatment-oriented alternatives in dealing with them. There is robust valid and reliable literature demonstrating that certain methods of training programs designed for police officers-- the "Memphis model" of crisis intervention training (CIT) is the most well-known -- have resulted in dramatic reductions of arrests for "nuisance crimes" and have avoided contributing to the over-incarceration of this population. Yet, these approaches are far from widespread, so far appearing in only a handful of cities with any consistency, and as a result, populations of persons with mental disabilities in urban jails like Riker’s Island continue to skyrocket.

For the past 20 years, lawyers, forensic psychologists, criminologists and scholars have turned to therapeutic jurisprudence (TJ) as a new modality of solving a full range of seemingly-intractable social problems, ranging from mental disability law and corrections law to gay rights and domestic violence. TJ teaches us that voice, validation and voluntariness -- and embracing an “ethic of care” -- are central to any efforts to remediate the sort of issues we discuss here. But there has been virtually no attention paid to the potential use of TJ as a tool to remediate this most serious of problems.

In this paper, we (1) discuss the current state of affairs with regard to the over-arrests of persons with mental disabilities, and focus on some of the alternatives such as CIT that have proven to be successful in solving this issue, (2) explain why embracing TJ would offer a bold new approach to the problems, and (3) offer some suggestions for behavioral change to remediate the situation.