

Vera Institute of Justice

Criminal Justice Issues and Prisoners' Rights

<https://www.vera.org/blog/beyond-innocence/innocent-victimhood-means-justice-denied-for-victims-with-disabilities-1>

Public Facing Advocacy Writing

Crime victims with disabilities who routinely face significant access-related barriers to justice experience additional and unique obstacles when an unrealistic standard of innocent victimhood is applied. The myth that there are expectations of what victims of sexual assault and domestic violence should do and how they should respond results in greater disparity in the pursuit of criminal justice for the millions of people with disabilities and Deaf people. This despite the fact that they are [three times more likely](#) to experience violent victimization than people without disabilities.

Why? For this already marginalized population, justice is often denied because the innocent victim standard distorts two critical components of how the criminal justice system operates in practice:

Though progress has been made rape shield laws, for example, the actions and behaviors of victims are often focused upon in sexual assault cases. The perfect victim often is expected to fight off her or his attacker or tell them to stop. A victim with a physical or neurological disability may not be able to, however. She or he might not be able to either physically resist or call for help or understand the assault is a crime. As a result, she or he may go along with what is happening as a result of lifelong training to comply with the demands of those in charge or a lack of opportunity to learn about personal boundaries, healthy relationships, and healthy sexuality, to name a few. Applying the innocent victims framework deems these people to be less victim-like.

A harmful consequence of this standard is its effects on crime reporting, especially sexual assault. Experience working with this population suggests that victims with disabilities or other people in their lives might not report an assault in fear that they won't be believed or are somewhat responsible for the crimes committed against them. Reporting an assault could also lead to increased scrutiny and greater limitations placed on a victim, such as greater restrictions in their freedom to be out in the community, more rules about what they can and cannot do or whom they can associate with, and increased supervision by people such as guardians, personal care attendants, and residential support staff without disabilities. This increased protection results in greater isolation and loss of self-determination and autonomy in people's lives.

Moreover, many crimes involving victims with disabilities are treated as incidences of abuse or neglect by disability-related services providers within a human services context, not as crimes. Support providers and many victims themselves will view whether to report the incident as a crime (versus an incident in human services systems) through a lens of whether the victim and the circumstances rise to the innocent victim standard. The standard, then, serves as a de facto gatekeeping mechanism to criminal justice.

Due to ingrained stereotypes, this framework also plays out differently depending on the type of disability a person has, and leads to a hierarchy of culpability. For people with intellectual disabilities, there are deeply rooted cultural stereotypes, such as people with Down syndrome considered forever as children and treated as such. Juxtapose that presumption with another deeply rooted stereotype that presumes people with psychiatric disabilities are dangerous and volatile. This disparity leads to a hierarchy of presumed culpability.

The credibility/culpability hierarchy also applies more generally. Experience working with this population suggests that people with disabilities as a whole are often considered less reliable witnesses, more prone to fabrication of stories, and to suffer less as victims than people without disabilities. As a result, every step of a criminal case from the reporting of a crime to the police investigation to prosecution is impacted to the detriment of victims. These deleterious effects result in reinforcing historical beliefs and actions that devalue the lives of people with disabilities.

Society in general and particularly people who sit on juries and other criminal justice stakeholders must abandon the innocent victimization construct and its credibility/culpability hierarchy to ensure that Deaf people and people with disabilities who are victims encounter individuals, organizations, and systems that recognize and respect them. Victims, regardless of ability, are worthy of justice.

The [Beyond Innocence](#) blog series explores the limitations posed by existing frameworks and points to ways forward that better uphold the values of equity, public safety, and human dignity.

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