

# Should We Execute the Mentally Ill?

Jenna Birch Contributing Writer August 6, 2015



James Holmes was up for a death penalty sentence. But is it ethical to execute the mentally ill? (Photo: Getty Images)

On Wednesday, the final witness in the sentencing trial of Aurora theater shooter James Holmes testified before the court in Centennial, Colo. Ashley Moser was the mother of the shooting's youngest victim, 6-year-old Veronica Moser-Sullivan, who was shot four times during the massacre.

Ashley Moser herself was also shot. She lost her unborn child and now uses a motorized wheelchair. She wept throughout her testimony, [explaining](#) that the little girl she lost in 2012 was her best friend and her life. "I don't know who I am anymore 'cause I was a mom when I was 18, and that's all I knew how to be," she [told jurors](#).

The young mother's story was just one of the many tragedies underscored in two days of victim testimony leading up to Holmes's sentencing. In 48 hours, the jury listened to a dozen men and women tell personal stories of heartbreak related to the 12 people who were killed and the 70 wounded on July 20, 2012 — and on Friday, they decided whether Holmes lives out the rest of life in prison or dies by lethal injection.

In an announcement at 7pm on Friday evening, the jury sentenced Holmes to life in prison with no chance of parole, rejecting the death penalty. To reach a death sentence, the jurors has to agree unanimously — if there is even one dissenter, the sentence is life in prison.

Last week, the jury heard James Holmes's story.

From family, friends, and others who know the man behind the brutal attack in Aurora, Colo., the jury learned that Holmes was a child loved by his family, uncommonly bright. And then they listened to an account of the 27-year-old's slow descent into schizophrenia.

At age 12, according to a [CNN](#) report, Holmes began isolating himself from other boys instead of playing with friends. In high school, his cross-country running coach described him as otherworldly and uncomfortable with close interaction with his teammates. After college, he returned home, where he'd stay up all night and sleep all day. Colleagues at a pill factory where he worked recounted that he frequently stared into space on the job.

Eventually Holmes went to grad school at the University of Colorado's Anschutz Medical Campus in Aurora to study neuroscience, where he was suddenly failing instead of garnering the straight-A marks he was used to. He said he had a "broken brain," which the neuroscience student finally decided was unfixable.

According to the defense, Holmes had a theory.

He sent his disturbing idea of "human capital" to CU-Denver student psychiatrist Dr. Lynne Fenton through the mail just hours before he entered the theater where he opened fire on the audience. In it, he described how he might increase the value of his own life by taking others' lives — a nonsensical, obsessive notion.

There is no doubt that Holmes is mentally ill and has been for some time. Every doctor who has testified is in agreement. With a family history of mental health issues, the court-appointed forensic psychologist called him "genetically loaded." In jail, Holmes suffered a psychotic break. He licked the walls of his cell, spread feces, and did somersaults, among other bizarre behaviors.

In March 2012, four months prior to the shooting, Holmes admitted to Fenton that he was having thoughts of murder. In July 2012, he carried them out. And while he might be mentally ill, that doesn't mean he's not responsible for his actions. The jury's guilty verdict means Holmes knew right from wrong when he killed 12 people and injured 70.

But [his attorneys say](#) that if he wasn't mentally ill, suffering from hallucinations and delusional thoughts, the shooting never would have happened. So this question stands before jurors in determining whether or not Holmes will serve life behind bars without the possibility of parole or be executed by lethal injection:

"Does the jury unanimously find beyond a reasonable doubt that the mitigating factors that exist do not outweigh the aggravating factors proven by the prosecution?"

What is the jury actually deciding?

If Holmes suffers from a form of psychosis, why didn't his lawyers' insanity defense work? According to Bob Stinson, PsyD, a forensic psychologist at [Stinson & Associates](#) in Columbus, Ohio, that defense is incredibly hard to argue.

“You’re basically saying that the person is not responsible for his actions and shouldn’t be held accountable,” Stinson tells Yahoo Health.

Think of it this way, says Stinson, citing a classic example: “If a paranoid person believes a neighbor is sending X-rays through the walls, directed at him, he might kill the neighbor as a product of his mental illness —but he still understands that the murder is wrong,” he explains. “It’s a fairly high bar to get over.”

So high, in fact, that an insanity plea is rarely attempted. After outcry and major reform following John Hinckley Jr.’s acquittal for attempting to assassinate President Ronald Reagan in 1981, this form of defense is rarely even used. When it is used in high-profile cases, it often makes news, which is why we tend to believe it’s much more common than it is, according to James Eisenberg, PhD, a forensic psychologist in Perry, Ohio.

“With a legitimate insanity plea, it’s probably less than one-tenth of one percent successful in big crimes,” he tells Yahoo Health. “It’s very difficult to prove insanity. And the worse the crime, the less likely it is to be successful.”

So, while Holmes does have a mental health condition, he was aware enough to know what he was doing at the time of the act. Now, it’s up to the jury to answer this question, as laid out more simply by Stinson, in determining his ultimate sentence: “How much weight do we give to the fact that he’s mentally ill?”

“Really, the prosecution has proved the aggravating factors, which are the factors that prove guilt. Now, the jury needs to weigh that against his being mentally ill,” he explains.

Eisenberg says this is one of the reasons it may be difficult for Holmes, and others in such situations, to avoid the death penalty as it stands. “It’s always touchy, when you say a person is mentally ill in the insanity defense,” he says. “As a result, it’s a mitigating factor [evidence that may lead to a lesser charge or sentence]. You’re losing some of your credibility with the jury in sentencing.”

In Holmes’s case, the jury has already decided that mental illness was not enough to excuse him. He faced 165 charges in all. After months of testimony, including 200 witnesses brought forth by the prosecution, [he was convicted](#) of every last one: 24 counts of first-degree murders and 140 counts of attempted first-degree murder (two counts for each victim), along with an additional count of possessing explosives.

But the X-factor in determining a death penalty versus life imprisonment, so easy to forget amid the horror of what happened in Aurora, is still mental illness — something his parents pleaded for people to consider back in December, on the brink of their son’s impending trial.

“We are always praying for everyone in Aurora. We wish that July 20, 2012, never happened,” they wrote in [an open letter to the Denver Post](#), finally adding: “He is not a monster. He is a human being gripped by a severe mental illness. We believe that the death penalty is morally wrong, especially when the condemned is mentally ill.”

Where do we stand on mental illness and the death penalty?

According to the National Alliance on Mental Illness, [we define mental illness this way](#): “medical conditions that disrupt a person’s thinking, feeling, mood, ability to relate to others and daily functioning.” Severe mental illnesses may include schizophrenia, bipolar disorder, panic disorder, PTSD, and borderline personality disorder.

Make no mistake, Holmes’s actions were and still are deplorable, says psychologist Karla Ivankovich, an adjunct professor at the University of Illinois, Springfield, who counsels many patients with mental illness. But many are wondering if execution is the answer for the mentally ill.

“Nothing gives one individual the right to take another individual’s life,” she tells Yahoo Health. “But if he is given the death penalty, mental health advocates will likely say that the system has failed a young man — that, regardless of his actions, he needed the appropriate care to treat his condition.”

Holmes’s parents are not alone in their sentiments regarding capital punishment for the mentally ill. Late last year, Public Policy Research conducted a national poll to gauge Americans’ stance on executing someone who suffers from such a condition. [By a 2-to-1 margin](#), most of the country did not favor the death penalty in these cases. Results held steady regardless of race, religion, political affiliation, region, or gender.

At the time of the poll, Scott Panetti’s fate was also being decided in the state of Texas, where he was convicted of murdering his in-laws while his wife and daughter looked on. He has been diagnosed with schizophrenia. He attempted to serve as his own attorney during his trial in 1992, sputtering through his defense.

Panetti showed up to court wearing cowboy garb. He tried calling Jesus Christ, the pope, and John F. Kennedy to the stand. He believes he is standing in the middle of a struggle between God and the devil — and his lawyers, along with many psychiatrists, protest an execution, saying he is [too mentally ill to receive the death penalty](#).

According to the Supreme Court ruling in the 1986 *Ford v. Wainwright* decision, a mentally ill person cannot be executed unless they understand the reason behind the execution at the time it is to take place. So, if they were sane enough to receive a conviction and death sentence but their mental health declines further while they are in prison — something Eisenberg says we do see, as mental illness tends to worsen with age — a convicted person might never see the death penalty.

But what about full exemptions? There are a couple precedents for exempting groups of people, according to Stinson. “We don’t execute juveniles under the age of 18, because we know their brains are still developing,” he explains. “We don’t execute those with mental retardation. And it’s not a stretch about mental illness. We’re starting to go there — and there’s a fairly spirited discussion about whether or not they should be subject to the death penalty [and] if they are less worthy of it.”

Eisenberg was on an American Bar Association task force in 2006 that recommended those with severe mental illness not receive the death penalty. Since then, similar suggestions have been put forth by the American Psychiatric Association and the American Psychological Association.

The task force examined *Atkins v. Virginia*, saying those with mental disability were ineligible for execution. They took the case of juveniles outlined in *Roper v. Simmons*. “The task force used the same logic in response to mental illness,” Eisenberg says. “It was recommended that we not execute people who are sick. And it’s taken a long time to get this far.”

It’s all still very murky, though. Some states have legislation in the works to prohibit the execution of the mentally ill, but nothing has passed yet. People with severe mental health disorders are still subject to this fate, as their competency and crimes are weighed against their conditions.

In May 2015, [Cecil Clayton was put to death](#) by the state of Missouri. He had an IQ of 71, had lost 20 percent of his frontal lobe in 1972 in a sawmill accident, and suffered from schizophrenia. In 1996, he killed a police officer and was sentenced to death. Lawyers pleaded on his behalf, saying he didn’t understand the reasons for his punishment.

In the wake of recent events, from Aurora to Sandy Hook, mental illness has been at the forefront of the gun control debate. Do guns kill people — or is untreated mental illness to blame? Are we really doing enough to help those who are mentally ill? And would it prevent these tragedies?

How can we better treat and handle mental illness?

In Holmes’s trial, the question of how to deal with and treat a perpetrator’s mental illness has been an important subject of discussion and has sparked widespread debate.

In the trial, much was made of what CU-Denver’s Fenton knew and whether she should have reported Holmes’s condition as a potential threat. He admitted to having homicidal thoughts, sometimes three to four times a day — and those thoughts were getting progressively worse.

Under HIPAA laws, what a patient tells his or her doctor is privileged information except in specific instances. Fenton could not have reported her concerns to Holmes’s parents under those guidelines, and perhaps not even to authorities.

Many states, including Colorado, have “[duty to warn](#)” regulations that lie outside HIPAA laws. Medical providers or health professionals must inform authorities if they suspect a person is a threat to public health or safety. In court, however, [Fenton said](#) her hands were tied. She couldn’t report Holmes, she said, because he never discussed any particular person, group, or area he wished to harm.

Eisenberg explains that those specifics are generally needed to disclose a potential threat to the authorities, and Holmes had no other risk factors, such as “a prior history of violence, aggression, or drug and alcohol abuse” to suggest that he might act on his thoughts.

When it comes to preventing crimes before they happen, experts are still not effective in determining whether violence is likely. [Researchers have found links](#) between mental illness and violent behaviors, and have especially looked into schizophrenia, but risk assessment is far from an exact science.

In an analysis published in 2012 in [the British Medical Journal](#), experts analyzed 68 studies of more than 25,000 people in psychiatric institutions, prisons, or detention centers. They found that when researchers used common means of assessment to determine whether or not a person might commit a violent act, 41 percent of those who were predicted to “violently offend” ended up doing so. In the group predicted to be nonviolent, only nine percent actually committed a violent crime.

To break this down, authorities would have to lock up [two people to prevent one](#) of them from becoming violent, leading the authors to say that “risk assessment tools in their current form can only be used to roughly classify individuals at the group level, and not to safely determine criminal prognosis in an individual case.”

In terms of simply treating mental illness in general, for the sake of doing so and to help reduce crime, society is still struggling. “There is a shortage of mental health professionals and treating facilities,” Ivankovich says. “Those who are trained with advanced degrees in the field are only able to treat a segment of the population. Resources are always limited, and the work is difficult; there is a constant battle within the system relative to who we can treat, and yet only certain classifications are reimbursed.”

Ivankovich says stigma is a major factor keeping those with mental illness from seeking proper care. “Research has shown it negatively impacts an individual’s desire to get help,” she says. “Because this stigma is so pervasive, the likelihood of an individual divulging their mental health condition is less likely.”

She says that, in approximately 50 percent of cases, mental health and substance abuse concerns begin by the age of 14. Roughly 75 percent present symptoms by the age of 24. Some estimates have suggested that one in four people suffers some type of mental health concern, “and we continue to see those numbers climb,” Ivankovich says. “Unfortunately, the number of individuals treated is far less than that. If left untreated, especially with schizophrenia, a patient can end up in crisis.”

Stinson says there was a movement in the 1960s and ’70s to release those with mental illness from psychiatric institutions and offer community mental health centers for care and treatment. “The release happened, but the community mental health centers really did not,” he explains. “Now, we’re often re-institutionalizing the mentally ill in prisons,” where the environment is not optimal for effective treatment.

All in all, it’s a flawed system. And a jury decided how much of this matters as they contemplated Holmes’s fate after closing arguments on Thursday. They weighed compassion for mental illness with due justice for the victims and their hurting loved ones.

Because absolutely nothing takes away from the fact that 12 innocent people are gone, 70 others have been wounded, and countless families are now scarred by loss. This nation is still reeling in the wake of tragedies like the one in Aurora, with mass shootings seemingly occurring at every turn. “It’s a no-win battle,” Ivankovich says.