

Prisons as Institutions: An Overview of Challenges Facing Prisoners with I/DD and Proposed Solutions Under the ADA and Other Disability Rights Laws

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Individuals with disabilities are dramatically over-represented in prisons and jails in the United States. Data on prison and jail populations shows the following (summarized in Figure 1):

- 32% of prisoners and 40% of jail inmates have at least one disability, in contrast to 11% of the general population (Bronson, Maruschak, & Berzofsky, 2015).
- 4%-10% of the prisoner population (here referring to all incarcerated individuals) has intellectual and developmental disabilities (I/DD), in contrast to 1.5% in the general population (Scheyett, Vaughn, Taylor & Parish, 2009).
- 13% of prisoners and 16% of jail inmates report having multiple disabilities (Bronson et al., 2015).

Prisoners with I/DD face significant difficulties, such as a limited understanding of legal processes, difficulty processing information, and heightened suggestibility, and are more vulnerable to victimization (e.g., theft, sexual assault, or being used for illegal acts). While incarcerated, individuals with I/DD rarely receive specialized services (Scheyett, et al., 2009). This article seeks to provide a brief overview of specific barriers faced by prisoners with I/DD, legal tools available to protect their rights, and policy recommendations moving forward.

Figure 1: Over-representation of People with Disabilities in U.S. Prisons and Jails



Barriers for Prisoners with I/DD

Screening

Research conducted in jails in North Carolina and Washington state shows that, with proper training, prison and jail employees should screen individuals for I/DD upon incarceration using standardized and scientifically-validated assessment tools. Scheyett et al. (2009) concluded that, "Early identification [of I/DD] is essential in...ensuring...safety when incarcerated, and maximizing the opportunities to receive services while incarcerated and postrelease" (p. 14). Individuals should be screened in private, as they may otherwise be reluctant to self-identify or to answer honestly out of fear of stigmatization or exploitation (Scheyett, et al., 2009). However, screening rarely happens and, when it does, is "severely lacking" (Disability Rights Washington, 2016, p.5) due to poor training, failure to utilize valid assessment tools, and failure to screen privately (Scheyett et al., 2009). Some corrections professionals report that they can "just tell" if a prisoner has a disability (Disability Rights Washington, 2016, p.13). However, without proper training and use of scientifically-validated assessment tools, it is impossible to accurately and reliably identify whether an individual has I/DD (Scheyett et al., 2009). Absent proper screening, prisoners with I/DD are at risk of:

- Failing to receive supports to understand relevant legal processes/rights and prison rules.
- Experiencing victimization at higher rates.
- Failing to receive adequate supports upon release, increasing the risk of institutionalization.

As Disability Rights Washington (2016) concludes, "Simply put, jails cannot provide legally-required services and reasonable accommodations if they do not know which inmates are entitled to them. When jails fail to effectively screen for disabilities, they violate the rights of people with disabilities."

Discipline

Prisoners with I/DD are at increased risk of discipline for failing to comply with procedures and rules and are disproportionately impacted by certain punishments. Solitary confinement, for example, has an especially detrimental impact on individuals with I/DD who may be placed in solitary as a form of protective custody, rather than being provided with the accommodations needed to keep them safe. They may also be placed in solitary more often or for longer periods of time due to disability-related behaviors.

Program Access

Prisoners with I/DD are often denied accommodations to access programs and services. For example:

- Denial of medical treatment due to inability to fill out forms.
- Loss of parole opportunities because re-entry programs are inaccessible.
- Inappropriate discipline due to rules violations or as a result of staff's failure to understand their disability.
- Difficulty filing complaints or grievances about physical/sexual abuse and lack of assistance with necessary follow-up.

Legal Framework

There are a number of legal tools available to enforce the rights of prisoners with I/DD who are experiencing the challenges described above, among others. The U.S. Constitution, federal statutes, and state constitutions/statutes protect basic needs, such as food, shelter, healthcare and education, as well as basic civil rights and liberties, and freedom from abuse. Some applicable federal laws that prisoners may invoke to protect their rights include:

- Americans with Disabilities Act (ADA)¹: Title II of the ADA² applies to state and local government entities and protects against discrimination based on disability, requiring prisons/jails to provide reasonable accommodations and modifications so as to ensure equal access to programs and services. Title II also requires public entities – including prisons and jails – to administer programs and services in the most integrated setting appropriate.
- Section 504 of the Rehabilitation (Section 504)³: Section 504 provides similar protections as the ADA to institutions that receive federal funding. Together, the ADA and Section 504 provide comprehensive coverage of eligible prisoners in most correctional facilities.
- Individuals with Disabilities Education Act (IDEA)⁴: Those who are eligible for special education services under the IDEA are entitled to educational services while incarcerated. The IDEA limits some types of services for prisoners convicted as adults in certain circumstances (see 34 C.F.R. §300.324).
- Prison Rape Elimination Act (PREA)⁵: This statute "establishes standards to prevent, detect, respond to, and monitor sexual abuse in confinement settings..." (Harrell, Hastings & diZerega, 2015, p. 6) and is an important tool for those with I/DD given their higher rates of victimization.

Policy Recommendations

Implementation of the following recommendations could dramatically improve outcomes for prisoners with I/DD:

- States and the U.S. Department of Justice should vigorously enforce all statutes and regulations that address the rights of prisoners with disabilities.
- ADA coordinators (prison employees charged with ADA compliance) and other corrections professionals should be better trained on the requirements of the ADA and other relevant laws, proper screening techniques, and the specific needs of prisoners with I/DD. Without such training, it will be impossible to ensure that programs and services provide equal and meaningful access to those with I/DD.
- Solitary confinement reform is needed for all prisoners, and especially for prisoners with I/DD. It should not be used for prisoners with I/DD in the first place, and should certainly never be used to punish them for behavior related to their disabilities, or to protect them from abuse.
- Prisons should ensure that all administrative services, sentence reduction programs, and re-entry programs are accessible to prisoners with I/DD, including sick call requests, PREA complaints, and grievance procedures.
- Congress should appropriate new and dedicated funds to support the work of the Protection and Advocacy (P&A) agencies – non-profit organizations with special authorities via their federal enabling legislation – on behalf of prisoners with disabilities.
- States should develop statewide standards for screening for I/DD (and other disabilities) upon incarceration to ensure quality and consistency throughout a state's jails and prisons.

Conclusion

Individuals with I/DD are dramatically overrepresented in prisons and jails and face unique barriers. Powerful laws exist to protect them, but prisoners need accessible resources to assist them in advocating for their rights. The policy recommendations above seek to ensure equity for prisoners with I/DD.

Notes

¹ 42 U.S.C. § 12101 *et seq.*

² The regulations that interpret Title II include some specific requirements for prisons as well. See 28 C.F.R. § 35.152

³ 20 U.S.C. § 794 *et seq.*

⁴ 20 U.S.C. § 1400 *et seq.*

⁵ 42 U.S.C. § 15601 *et seq.*

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