Further Recommendations for Protecting Rights of Incarcerated Persons with Disabilities

The recommendations below are provided to serve as guidance for corrections officials tasked with implementing the ADA’s mandates within their prisons and jails. Though these recommendations may at times paint with a broad brush, they are offered only to provide potential reforms for common challenges encountered by prisoners with physical disabilities. In practice, practical solutions will require case-by-case assessments into the needs and resources of each correctional entity. Moreover, consistent with the spirit and purpose of the ADA, all reforms must recognize that the needs of persons with physical disabilities are all unique and that blanket approaches to individual cases may not always address the particular need.

System-wide Reforms

- Each corrections institution within the state, whether prison, jail, or detention center, should complete a facility-wide assessment to determine whether their facilities are ADA compliant. Buildings should be assessed to see whether they comply with the 2010 ADA Standards for Accessible Design.
- Each corrections institution should have an ADA Coordinator. The ADA Coordinator should be responsible for serving as the facility expert on the ADA, leading training programs for corrections staff on ADA compliance, coordinating with medical and mental health professionals to understand the needs of persons with disabilities, managing all requests for accommodations from persons with disabilities, and working with the appropriate officials to establish the budget for ADA-related compliance, accommodations, and other measures. The ADA coordinator should be full-time and provided with the autonomy, time, and authority to complete their requisite duties.
- Each corrections institution should establish an ADA Committee to be comprised of prison officials and staff from all aspects of prison services and management (e.g., custody, programming, visiting, classification, mental health, etc.). The ADA Committee is responsible for addressing existing ADA-related challenges, identifying policies to prevent ongoing and future ADA violations, and handling all other issues related to managing and accommodating persons with disabilities, particular those held in isolation system-wide.

Federal Level

- Congress should enact legislation to require that state jurisdictions track the number of persons with disabilities in their state and local corrections institutions;
- Congress should enact legislation to provide increased federal funding for Protection & Advocacy organizations to engage in monitoring and oversight of corrections institutions.
• The Federal Bureau of Protections should investigate the conditions of confinement for persons with disabilities and offer recommendations to address the challenges this group faces in federal prisons.

• The Department of Justice should ramp up monitoring of state prisons and local jails to assess whether those institutions are meeting their obligations under the ADA, including but not limited to evaluating self-assessment plans for state prisons and jails, as well as the provision of reasonable accommodations to persons with disabilities within and across the various state institutions.

State Legislatures

State legislatures should:

• Ban the automatic use of prolonged solitary confinement for prisoners with physical disabilities, except in rare and exceptional cases, for a short duration, and only where the prisoner “poses a credible continuing and serious threat to the security of others or to the prisoner’s own safety.”\(^1\)

• Conduct statewide studies to assess the treatment of persons with physical disabilities in corrections institutions, and issue public reports on findings to provide the public with access and improve transparency and accountability.

• Require state corrections entities to report on the numbers of persons with physical disabilities housed in each facility within the state.

• Collect and monitor data on the provision of reasonable accommodations to persons with physical disabilities, including but not limited to the rates of removal of/refusal of accommodations, use of uncertified interpreters/inmates, the rates of denial for accommodations due to cost, etc.

• Require statewide training for corrections staff on the requirements of the ADA.

Pop Out Quote:

“[V]iolations of the rights of an inmate with a physical disability can occur if staff are not properly trained as to the needs and rights of this population. Training will be needed to educate officers on issues ranging from disability sensitive language and etiquette, to special security problems posed by disability, such as proper means of searching wheelchairs and prostheses, or secure and sensitive use of restraints on inmates with amputations or other physical disabilities. Instruction will also be necessary or appropriate emergency evacuation procedures and other safety precautions. Finally, staff must be educated as to the abilities, not just the limitations, of inmates with disabilities, and must be encouraged to work with the inmates in providing them with meaningful prison job assignments and equal opportunities to participate in all prison programs.”\(^2\)

Prison Management

\(^1\) Mandela Rule 23.2.9.

• Provide training and support for medical personnel and custody staff on working with persons with disabilities (e.g., Deaf culture and sensitivity training, etc.).
• Create policies, procedures, and systems to permit both medical and security/custody to be apprised of all relevant information related to a prisoner’s disability, or reasonable accommodation.
• Improve tracking and monitoring of prisoners with physical disabilities by adopting formal definitions of types of disability, and then tracking persons with disabilities within the prison system on an annual basis.
• Develop robust systems to gather information on persons with disabilities to ensure that medications and accommodations remain with the prisoner even following a transfer within the prison system.
• Develop a clear and comprehensive process by which prisoners may obtain accommodations. The procedure for requesting accommodations should be available in accessible formats.
• At a minimum, medical personnel and the ADA Coordinator should be involved in all decisions on whether to grant or deny a requested accommodation.
• Counselors, medical and mental health personnel, programming staff, and other persons involved in delivering programs, services, and activities within the facility must be provided with the resources, support, and tools to communicate effectively with persons with sensory disabilities. For example, may require that prison officials develop a clear and timely process for submitting requests for sign language interpreters during medical examinations and video relay services on demand for medical emergencies for deaf prisoners.
  o To support this objective, each deaf or hard of hearing, blind or low vision prisoner should have their own communication plan that sets forth
    ▪ The preferred method for communication;
    ▪ The accommodations requested and provided to facilitate effective communications; and
    ▪ The institutional entities that interface with the prisoner (e.g., custody, mental health, etc.), and their specific plan for ensuring effective communications with that prisoner.
• All grievance policies must be accessible to persons with sensory disabilities.
• Visitation policies must be in accessible formats. Visitation must occur in a location of the facility that is physically accessible to prisoners with disabilities and also to visitors with disabilities. Prisoners and their visitors must receive reasonable accommodations to ensure that all prisoners have access to visitation. Department of Corrections policies listed on their public websites must also be made accessible to persons with disabilities.

**Intake/Screening**

• Establish systems that allow for coordination between the court, corrections, and criminal defense attorneys to determine in advance the special needs of defendants with physical disabilities.
a. For example, jurisdictions can create forms for submission to jail authorities so that they are aware of the needs of persons with physical disabilities as soon as practically possible following arraignment.

- Corrections institutions must develop policy for identifying prisoners with disabilities and managing their health care and accommodations.
- All prisoners with disabilities should have individualized plans that outline their daily and long-term accommodations needs and other required support services.
- Visual and audiometric testing should take place during intake and screening at reception centers for prisons and jails.
- Prisons should establish policies and procedures to ensure effective communication with persons with communications disabilities during classification, medical, and other interviews completed during intake.

**Orientation**

- Orientation materials and the prison handbook must be provided in accessible formats to ensure access to critical information, including information on grievance procedures, rights under the ADA, and sexual abuse services under the Prison Rape Elimination Act, to name a few.
  - Information should be conveyed in plain English, avoid legalese. Content material at a 4-6th grade reading level is preferred.  

**Programming**

- Equal access to prison programming must be provided to persons with physical disabilities.
- Accommodations must be provided for persons with sensory disabilities to ensure effective communications.
- Prisoners with ambulatory disabilities must be provided with access to prison programming in buildings free from architectural and other physical barriers.

**Job Assignments**

- Qualified individuals with disabilities—or persons who, without or without reasonable accommodations have the requisite qualifications for the job—must be provided with access to job assignments commensurate with their security classification and on par with non-disabled persons. Prisons must not use categories that screen out, or tend to screen out, persons with physical disabilities.

**Deaf and Hard of Hearing Prisoners**

- Prisons should train all staff in cultural competency around Deaf culture.

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• Sign language interpreters must be scheduled for all critical encounters with medical and mental health staff. If sign language interpreters are unavailable in emergencies, video remote interpreting should be provided. Under no circumstances should a deaf prisoner be forced to rely on interpreting services from uncertified interpreters or other prisoners.
• Where possible, deaf or hard of hearing prisoners should be identified through identification cards that signal to staff that they are deaf or hard of hearing and therefore, may not respond to oral or written commands.
• Screening by an audiologist must take place at intake. If subsequently requested by a prisoner, medical personnel, or an ADA coordinator, the audiometric testing must be provided in a timely manner.
• Hearing aids and telecommunications devices must be in good working condition and there must be a process in place for timely repairs.
• Videophones and Video Relay Services are the preferred and recommended method for providing telephone access to deaf and hard of hearing persons.
• All staff should be trained on how to operate telecommunications devices, procedures in case of malfunctions, and the location of all telecommunication devices.

Access to Telephones

• Deaf prisoners should be provided with access to properly functioning videotelphones. TTY devices are considered obsolete and are no longer the preferred telecommunications device for the majority of deaf individuals.
• Deaf prisoners should be provided with the same amount of actual phone time as hearing persons. This may require allotting deaf prisoners additional telephone time to account for the time it takes to set up, and connect to, end users on the device. In addition, deaf prisoners must be provided with a flexible schedule for accessing phones and should not be constrained to phone use only during early mornings or late nights.
• Telephone locations should be in an accessible location that will not prevent access by persons with ambulatory disabilities.
• The procedures governing phone privileges should be stated clearly in orientation materials and the prisoner’s manual, and must be provided in an accessible format.

Blind and Low Vision Prisoners

• In housing areas where blind or low vision prisoners are held, prison officials should make sure to remove sharp or protruding objects, uneven surfaces, or other building safety hazards that pose a risk of harm to blind or low vision persons as they navigate the facility.
• Where possible, blind and low vision prisoners should be identified through identification cards to signal to staff that they are blind or low vision and may not respond to oral or written commands.
• Blind and low vision prisoners should be provided with access to lower bunks in resident halls, or maximum security cells to ensure safe and easy access to beds.
• Audio books should be provided to persons who are blind or low vision.
Prisoners with Ambulatory Disabilities

- Accordingly, prisons must identify prisoners with physical disabilities who need daily assistance in carrying out basic tasks (self-care, wheelchair assistance, etc.)
- Wheelchairs must be suitable to prisoner’s medical needs (e.g., size, mode, motorized, etc.) and must be in good working condition. Prisons should also establish a clear process for seeking repairs.
- Assistive devices (e.g., prosthetic socks, prosthetic limbs, walkers, etc.) must be provided when requested and must be tailored to the prisoner’s specific medical needs.

Reentry

- As with most prisoners, persons with disabilities face many challenges when returning home, including issues related to housing, employment, voting, health insurance, and medical treatment, among others.
- Each prisoner should be provided with a reentry plan that identifies support systems and resources that are needed to ensure successful, healthy, and productive living. The reentry plan must be conveyed to prisoners with sensory disabilities in an accessible format.

Advocacy

- Advocates working within the criminal justice and disability rights fields should work to increase collaboration and partnerships to support and advocate for persons with disabilities.
- The voices of persons with disabilities should be central to all advocacy work. This requires including the perspectives of persons who are disabled in conversations and decisions on the goals and strategies for achieving reforms.
- Advocates must acknowledge the intersecting and overlapping manner in which race, class, and disability overlap to produce systemic oppression, disparities, acute harms on persons with multiply marginalized identities.