ADA & Prisons: An Introduction

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Disability in Prison

Over 50% of inmates have mental health problems.*

Over 34% of state inmates had one or more impairments:**
- 23.3% learning
- 25% ADHD
- 10.3% vision
- 7% hearing
- 2.5% mobility
Statutes & Regulations

- Section 504 of the Rehabilitation Act
  - Applies to recipients of federal funding.
  - If any part of the department receives federal funds, entire department covered.

- Title II of the ADA
  - Applies to “public entities” including prisons.
  - Does not include federal gov’t; use 504 regs.

- Both apply to prisons. Yeskey; Bonner.
Elements

1. Individual with disability.

2. Otherwise qualified for the program.

3. Excluded from, denied benefits of, or otherwise discriminated against* by reason of disability.

[*By a covered entity - § 504 cases: program receives federal funding; T2 cases: state or local government entity.]
Definition of Disability

• Includes
  • Substantially limited in major life activity
  • History of disability
  • Regarded as disabled
• ADAAA (2009): easier to satisfy definition.
• Challenges
  • Mental health
  • Developmental disability
  • Addiction
Otherwise Qualified

• Qualified with or without accommodations.
• Argument still often has a circular quality: not qualified for the program by dint of discriminatory rule/policy/criteria.
• Choate: “The benefit itself ... cannot be defined in a way that effectively denies otherwise qualified handicapped individuals the meaningful access to which they are entitled.”
Discrimination

• General non-discrimination
  • Integration required
  • Retaliation prohibited

• Specific to ADA
  • Reasonable modifications to policies.
  • Effective communications.
  • Physical/architectural access.
In enacting the RA and ADA, Congress intended to eliminate discrimination against individuals with disabilities, just as it had earlier passed legislation mandating equal treatment of African-Americans. “If a prison may not exclude blacks from the prison dining hall and force them to eat in their cells, and if Congress thinks that discriminating against a blind person is like discriminating against a black person,” the prison may not exclude the blind person from the dining hall unless allowing him access would unduly burden prison administration.

_Armstrong v. Wilson_, 124 F.3d 1019, 1025 (9th Cir. 1997) (quoting _Crawford v. Indiana Dep't of Corrections_, 115 F.3d 481, 486 (7th Cir. 1997)).
Integration

• Prison-specific issues:
  – cannot automatically house PWD in infirmary or solitary.
  – where required by differential physical access, must have equal access to programs.
  – segregation is safer (physical disability) or more amenable to communication (deafness)?
Integration:
Alabama DOC and Inmates with HIV

- *Harris v. Thigpen* (11th Cir. 1991): Program by program analysis required to determine whether integration was possible.


- *Henderson v. Thomas* (M.D. Ala. 2012): dramatic advances in treatment mean categorical segregation not justified; must consider each inmate’s individual circumstances.
Reasonable Accommodations / Reasonable Modifications

- Modify rules/policies where necessary to avoid discrimination.
- Requires *meaningful* access.
- Accommodation must be
  - Reasonable
  - Necessary because of the disability
- No surcharge permitted.
Reasonable Accommodations / Reasonable Modifications

• Unless fundamental alteration of program.
  • Cost.
  • Administrative burden.
  • *Turner* factors.

• Request required?
  • In some circuits, not required where need is obvious.
  • Generally covered by PLRA exhaustion.
Effective Communication

• Title II has comparative standard: communication as effective as that with others.

• Must provide auxiliary aids and services.

• Must give primary consideration to PWD’s requested mode of communication.
New Construction/Alterations

• Required to be fully accessible.
• New 2010 regs and standards have prison-specific provisions.

EXAMPLE
Program Access

• Each program when “viewed in its entirety” must be accessible.
• Means, in older facilities, that inmates and programs can be moved around in lieu of improving access.
• All programs must be available to similarly-situated inmates with and without disabilities.
Pierce v. County of Orange

- Mobility-impaired inmates housed only in parts of two facilities.
- County not required to integrate IWD into other facilities. However:
  - Those facilities required alterations and accommodations to make them accessible.
  - County had to ensure that programs available to nondisabled IM were, when viewed in their entirety, available to IWD.
Robertson v. Las Animas County Sheriff’s Department

• Deaf arrestee/detainee.
• Satisfied definition of disability though he denied he was disabled.
• Disability was obvious; not required to request interpreter.
• “Meaningful access” meant he had to be able to understand hearing, even though lawyer spoke for him and charges dismissed.
Disability & Solitary: accommodations to progress out of solitary

• Behavior caused by disability results in or prolongs assignment to solitary.

• Because of failure to accommodate, unable to progress out of solitary.

• Accommodation = treatment necessary to comply with progression requirements.
Disability & Solitary: accommodations to remain in solitary

• If disability prevents progression
  • Because discrimination based on disability-caused behavior = disability discrimination.
  • remain in solitary but
  • should have equal access to programs to the extent possible.

• Analogy to segregation of inmates in wheelchairs in accessible facility: must still provide all programs at that facility.
Defenses

• Fundamental alteration.

• Undue burden.

• Direct threat.

• Role of *Turner* factors.
Private Prisons and Other Placements

- Title II prohibits discrimination directly or through contract.
- State liable for inmates in its custody in:
  - Private facilities
  - County facilities
  - Other jurisdictions
- ADA Title III has been held not to apply to private prisons.
Families and Others

• Title II protects those with “relationship or association” with PWDs.

• Have to accommodate
  • Families of inmates with disabilities.
  • Disabled family members of nondisabled inmates.
Notice

- Title II regulations require a covered entity to make available information about the ADA and its application to its services.
- Includes publications, posters, and broadcast.
- Must be effectively communicated.
11th Amendment Immunity

• Under 504, immunity waived – most circuits.
• Injunctive claims always allowed under *Ex Parte Young*.
• Damages claims vs. non-state entities (e.g. counties and municipalities) permitted.
• ADA damages claims vs. the state: Claim-by-claim analysis of validity of abrogation of sovereign immunity, *U.S. v. Georgia* framework.
Remedies

• Injunctive relief.
  Constrained by PLRA provision that injunctive relief “shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs.” 18 U.S.C. § 3626(a).

• Compensatory but not punitive damages.
  • Requires intent = deliberate indifference.
  • PLRA physical injury requirement applies.
  • ADA cases vs. state: address 11th Amd immunity.

• Attorneys’ fees – not limited by PLRA.
Interaction with Other Laws

• PLRA
  • Exhaustion required.
  • Limitation on injunctive relief applies.
  • Physical injury required for damages.
  • Attorneys’ fee limit does not apply.

• 8th Amd. inadequate medical care
  • Inadequate medical care: not covered vs.
  • Care so inadequate inmate can’t participate in other programs.
DOJ Resources

- www.ada.gov

- Title II Technical Assistance Manual.

- Commonly Asked Questions about the ADA and Law Enforcement.

- Communicating with People who are Deaf or Hard of Hearing: ADA Guide for Law Enforcement Officers.

- Accessible Cells in Correctional Facilities.