

ADA & Prisons: An Introduction

Amy F. Robertson
Civil Rights Education and
Enforcement Center
www.creeclaw.org

Susan Mizner
Disability Counsel
American Civil Liberties Union
www.aclu.org

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.

Non-Discrimination

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.
- *Onishea v. Hopper* (11th Cir. 1999): Threat of death, analyzed under *Turner*, means no accommodation possible to permit integration.
- *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.

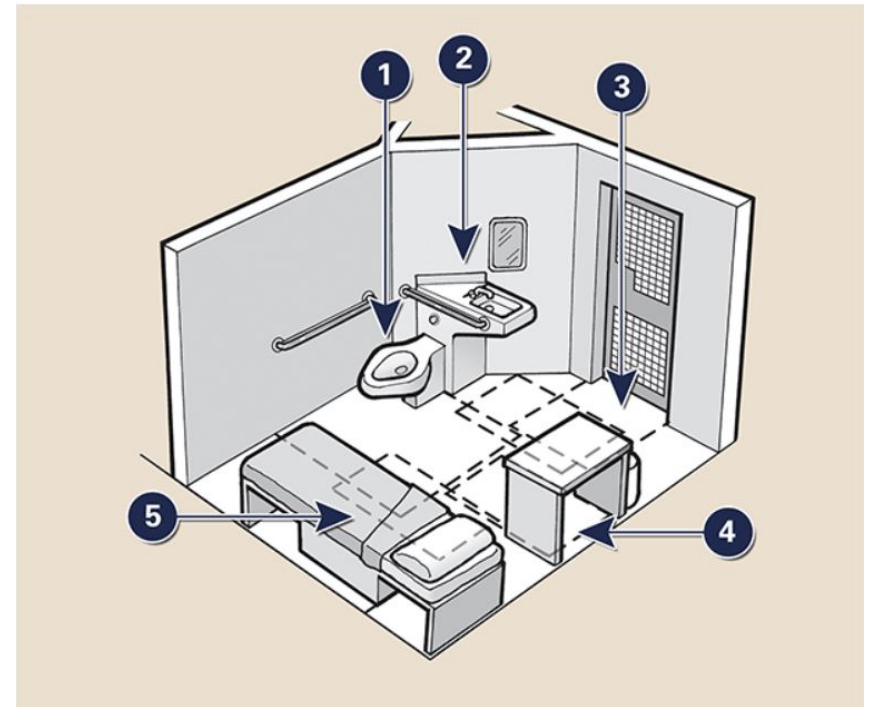
Effective Communication

- 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.