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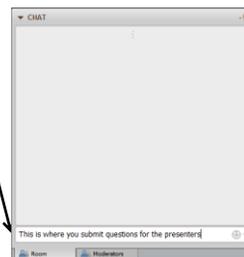
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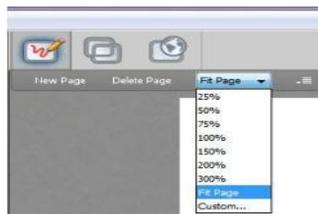
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ADA ONLINE LEARNING

Criminal Justice and the ADA

Presented by Equip for Equality

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September 21, 2016



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Outline of Today's Webinar

- Background & Overview of Relevant Laws
- ADA & Law Enforcement
- Questions
- ADA & Correctional Facilities
- ADA & Re-Entry Issues
- ADA & Criminal Proceedings
- Questions

Continuing Legal Education Credit for Illinois Attorneys



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Background & Overview of Relevant Laws

Criminal Justice is An Issue of Critical Importance

- News media, political campaigns, government entities, and local communities are discussing criminal justice issues
- Public discussion not always focused on disability
- Recent statistics = people with disabilities encounter criminal justice system more frequently than people without disabilities
- Essential to understand applicable federal laws
 - ❖ ADA & Rehabilitation Act
 - ❖ U.S. Constitution
 - ❖ Apply across criminal justice system: law enforcement, correctional facilities, re-entry planning, criminal court

www.bjs.gov/content/pub/pdf/dpji1112.pdf

Which Laws Apply?

- **Title II of the ADA:** Applies to all programs, services and activities of state and local governments
 - ❖ 42 U.S.C. §§ 12131–12134
- **Section 504 of the Rehabilitation Act:** Entities that receive federal funds
 - ❖ 29 U.S.C. § 794
- **But...** virtually all entities involved in the criminal justice system are state or local entities that receive federal funding so both ADA and Rehab Act apply

Query: Which law or laws apply to facilities and programs managed by the federal government, such as federal prisons?

What Do These Laws Do?

- General non-discrimination requirements
 - ❖ Provide equal access to programs, services, and activities to people with disabilities
- Specific non-discrimination requirements
 - ❖ Provide auxiliary aids necessary to ensure effective communication (28 C.F.R. § 35.160(b))
 - ❖ Make reasonable modifications of policy (28 C.F.R. § 35.130(b)(7))
 - ❖ Provide legally required architectural and programmatic access (28 C.F.R. § 35.149)
 - ❖ Provide programs and services in the most integrated setting available (28 C.F.R. § 35.130(d))
- What does this mean in each area of criminal justice? We will examine...

ADA & Law Enforcement

Preliminary Legal Issue = Does the ADA Apply to Arrests?

- **DOJ:** ADA applies to law enforcement personnel in nearly every facet of their work, including interrogating witnesses, booking and holding suspects, enforcing laws, operating 911 centers, and arrests
 - ❖ ADA Guidance Document: www.ada.gov/q&a_law.htm
 - ❖ Statement of Interest in ***Robinson v. Farley, 15-cv-00803*** (D.D.C. filed June 20, 2016)
 - Cites broad scope of Title II
 - Cites legislative history
 - Notes that the majority of circuits to have considered this issue say yes
 - www.ada.gov/briefs/robinson_soi.pdf
- **But:** Current dispute in the courts

Does the ADA Apply to Arrests?

Hainze v. Richards

207 F.3d 795 (5th Cir. 2000)

- Woman called 911 asking for help transporting Hainze, her nephew, to the hospital for mental health treatment
- Put police on notice that Hainze had threatened suicide or “suicide by cop,” was under the influence of alcohol and anti-depressants, and had a knife
- Police arrived – saw Hainze with a knife talking to people in a truck
- Officer drew his weapon and ordered Hainze to walk away
- Hainze responded with profanities, walked toward the officer
- Again ordered to stop. Hainze did not and was shot twice in the chest. He survived.

Categorical Exemption for Certain Arrests

- **5th Circuit holding** = ADA does not apply to an officer’s on-the-street responses to reported disturbances prior to securing the scene and ensuring that there is no threat to human life
 - ❖ Law enforcement faces the “onerous task” of having to “instantaneously identify, assess, and react to potentially life-threatening situations” so it would pose an “unnecessary risk to innocents” to require officers to comply with the ADA “in the presence of exigent circumstances” prior to “securing the safety of themselves, other officers, and nearby civilians.”
 - ❖ Congress could not have intended the goals of the ADA to be attained at the expense of public safety
 - ❖ Cited other remedies for relief (Section 1983 or state law)
- **Other courts have applied the *Hainze* “exception”**

Other Courts Decline to Adopt the *Hainze* Categorical Exception

- However, most courts have held that Title II applies to arrests
- But exigent circumstances and criminal activity factor into the analysis of whether the police officer's actions were reasonable
- ***Bircoll v. Miami-Dade County*, 480 F.3d 1072, 1085 (11th Cir. 2007)**
 - ✦ “[T]he question is not so much one of the applicability of the ADA because Title II prohibits discrimination by a public entity by reason of [a person's] disability. The exigent circumstances presented by criminal activity and the already onerous tasks of police on the scene go more to the reasonableness of the requested ADA modification than whether the ADA applies in the first instance.”
- ***Waller ex rel. Estate of Hunt v. City of Danville*, 556 F.3d 171, 175 (4th Cir. 2009)**
 - ✦ “[C]onstraints of time . . . bear on what is reasonable under the ADA.”

The Supreme Court Agrees to Hear Case About the ADA's Application to Arrests

***Sheehan v. City & Cty. of San Francisco* 743 F.3d 1211 (9th Cir. 2014)**

- Sheehan had schizoaffective disorder, lived in group home
- Social worker contacted the police for help transferring Sheehan b/c she had threatened to kill the social worker with a knife
- Officers arrived and used a key to enter room
- Sheehan threatened violence, officers retreated, called for backup
- Instead of waiting for backup, reentered room immediately (due to concern that Sheehan was unstable and might harm herself)
- Officers attempted to pepper spray Sheehan, which proved ineffective at subduing her and she approached them with a knife
- Officers shot Sheehan; she survived

Modifications of Policy and Practices for Individuals with Mental Illness

- Alleged ADA violation: Failure to accommodate or modify policy
 - ❖ Officers should not have forced entry into her room
 - ❖ Due to her mental illness, should have used less violent tactics - “respected her comfort zone, engaged in non-threatening communications and used the passage of time to defuse the situation rather than precipitating a deadly confrontation.”
- **District court:** Relied on *Hainze* = ADA does not apply
- **9th Cir:** Found for Sheehan (reversed and remanded)
 - ❖ ADA applies to anything a public entity does
 - ❖ Exigent circumstances inform the reasonableness analysis
 - ❖ On merits – reasonable jury could have found for Sheehan
 - Situation had already been diffused when Sheehan returned to her room, making it reasonable to employ less confrontational tactics, such as waiting for backup

Supreme Court Review

City & Cty. of San Francisco, Calif. v. Sheehan 135 S. Ct. 1765, 1772, 191 L. Ed. 2d 856 (2015)

- **Supreme Court** agreed to hear argument:
 - ❖ Whether the ADA requires law enforcement officers to provide accommodations to an armed, violent, and mentally ill suspect in the course of bringing the suspect into custody
- **But:** San Francisco changed its argument before the Court
 - ❖ Abandoned argument about on-the-street exception
 - ❖ Argued Sheehan posed a direct threat and was not qualified
- **Supreme Court:** ADA claim was “improvidently granted”
 - ❖ Result = 9th Circuit’s decision is good law, but no further clarity

DOJ amicus brief: www.justice.gov/sites/default/files/crt/legacy/2015/01/21/sheehansctbrief.pdf

Cannot Overly Rely on Exigent Circumstances & Effective Communication

Issues: Impact of exigent circumstances; effectiveness of communication

Williams v. City of New York 121 F.Supp.3d 354 (S.D.N.Y. 2015)

- Police arrived after plaintiff's husband called about a dispute when they were evicting tenants
- Plaintiff and husband are deaf; called through video relay
- Police did not obtain ASL interpreter, despite plaintiff's request
- Police declined tenant's offer to help interpret and only questioned tenants/tenant's boyfriend
- Plaintiff was arrested for assault and held overnight
- No interpreter provided; no one communicated why she was arrested or how long she'd be in custody

Effective Communication

- Plaintiff brought lawsuit under Section 1983, and state law tort claims of assault, battery and false imprisonment and ADA
- **NYPD argued:** No ADA until *after* the individual has been arrested and booked
 - ❖ **Court:** Rejected this argument – called it “extraordinary”
- **NYPD argued:** Unreasonable to provide an accommodation prior to arrest because they needed to secure the scene
 - ❖ **Court:** Rejected this argument
 - ❖ Facts suggested that that no one was in any imminent danger, so cannot overly rely on exigent circumstances
- **Settlement:** \$750,000

Exigent Circumstances Preclude Interpreters

Bircoll v. Miami-Dade County

480 F.3d 1072 (11th Cir. 2007)

- Plaintiff was deaf and not provided with oral interpreter
- Given field sobriety tests and taken to station for Intoxilyzer test
- **Court:** Interpreter was not a reasonable modification
 - ❖ Exigent circumstances = DUI stop on the side of the highway, on-the-spot judgment, serious public safety concerns
 - Waiting would alter results of blood alcohol level
 - Communication was effective b/c plaintiff was given verbal instructions and physical demonstrations; admitted he understood; and he could read lips (though understood 50%)
 - ❖ At station, still exigent circumstances, communication was short, plaintiff could read short consent form

Other Cases Turn on Perceived Effectiveness of Communication

Valanzuolo v. City of New Haven

972 F.Supp.2d 263 (D. Conn. 2013)

- Deaf individual arrested for failing to appear in court
- Not provided with an ASL interpreter during his arrest or interactions with law enforcement at hospital
- **Court:** Found for City (judgment in favor of defendant)
 - ❖ Effective communication through the use of pen and paper
 - ❖ During initial arrest, plaintiff had a pen/paper at his door with which he regularly used to communicate
 - ❖ Plaintiff had communicated using that method previously
 - ❖ Plaintiff had read the arrest warrant
 - ❖ Plaintiff communicated via note with the police on 3-4 pages of the officer's pad in complete sentences and proper spelling

DOJ Settlement Agreement with Police Departments

City of Columbia, South Carolina Police Department

- Complainant said he was not provided with an ASL interpreter for police questioning over a 3-month period, including at his arrest
- Comprehensive settlement agreement – good template for law enforcement agencies evaluating their own practices
- Resolution reached on May 3, 2016

www.ada.gov/columbia_pd/columbia_pd_sa.html

Highlights:

- Designate at least one employee as the ADA coordinator
- Revise policies and training requirements
- Provide appropriate auxiliary aids and services, including qualified sign language interpreters

DOJ Settlement

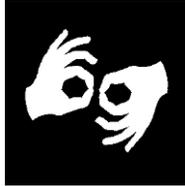
- Create “communication cards” to aid in communication with persons who are deaf or hard of hearing during **routine** interactions in the **field**



www.ada.gov/columbia_pd/columbia_pd_sa_attb.html

DOJ Settlement

- Use pictogram to determine if someone requires an interpreter in all **non-exigent** circumstances



Sign language interpreter?



www.ada.gov/columbia_pd/columbia_pd_sa_atta.html

DOJ Settlement

- Use a communication assessment form
 - ✦ Form asks questions about:
 - Nature of disability
 - Deaf, HOH, speech impairment
 - Need for an onsite professional sign language or oral interpreter (provided free of charge)
 - ASL, signed English, oral interpreter, other
 - Which other accommodations would be helpful (free of charge)
 - TTY, assistive listening device, note-takers, writing

www.ada.gov/columbia_pd/columbia_pd_sa_attc.html

DOJ Settlement: Exigent Circumstances

- Provisions re: exigent circumstances
 - ❖ OK to use what is available consistent with an appropriate law enforcement response
 - Examples:
 - Exchanging written notes
 - Using the services of a person who knows sign language but who is not a qualified interpreter
 - ❖ Interim period of time only – during imminent threat
 - ❖ When there is no longer an imminent threat, must follow procedure to provide appropriate auxiliary aids and services, including interpreters

DOJ Settlement: Other Provisions

- Department will maintain relationships with one or more qualified oral/sign language interpreter agencies to ensure interpreter availability on a priority basis 24/7
- Modify its handcuffing policy by handcuffing an individual in front of his body to enable sign language or writing
- Ensure sufficient number of working TTYs and videophones at each station, but no fewer than one of each
- Provide signage to inform the community about their availability

ADA Claim for Failure to Train / Modify Policing Procedures

- Many cases re: excessive force against people with disabilities
 - ❖ Most brought under constitutional provisions
 - ❖ Some include ADA claims for:
 - Failing to provide proper training regarding interacting with people with disabilities
 - Failing to modify policing policies when necessary for people with disabilities

Estate of Saylor v. Regal Cinemas, Inc. **54 F.Supp.3d 409 (D. Md. 2014)**

- Tragic outcome because police refused to make simple modifications to their typical policing practices

Estate of Saylor v. Regal Cinemas, Inc.

- Ethan Saylor was a 26-year-old man with Down Syndrome
- Avid theater-goer
- After seeing a movie, he entered the theater again w/o paying
- Three off-duty county sheriffs were working as security guards, and spoke to Saylor's aide about the situation
- Aide explained Saylor's disability, asked that he not be approached and that they let her attempt to address it
- Officers approached Saylor, told him he needed to leave the theater
- Saylor refused. Officers grabbed his arms, dragged him from the theater while yelling that he would go to jail
- Saylor was heard screaming "mommy, mommy" and "it hurts"
- Officers handcuffed Saylor, with one on top of him, fracturing his larynx, and making it difficult to breathe
- Saylor died from asphyxiation

Estate of Saylor v. Regal Cinemas, Inc.

- Estate brought lawsuit under Section 1983 for excessive force and various state law claims (wrongful death, gross negligence, battery)
- Also brought an ADA claim for “failure to train”
- **Court:** Found for estate on ADA claim (denied motion to dismiss)
 - ❖ “[C]ourts have recognized an implicit duty to train officers as to how to interact with individuals with disabilities in the course of an investigation or arrest.”
 - ❖ Rejected Defendant’s argument Title II could not put them on notice of all possible accommodations for all disabilities
 - ❖ Here, “most logical accommodation” would have been to follow the advice of the caregiver of a clearly disabled individual
 - ❖ Officers not trained to make any modification for PWD
- Denied MSJ, [2016 WL 4721254 \(D. Md. Sept. 9, 2016\)](#)

ADA Claim for Failure to Train / Modify Policing Procedures

Buben v. City of Lone Tree **2010 WL 3894185 (D. Colo. Sept. 30, 2010)**

- Police found the plaintiff throwing items off of a third story balcony, and then in his apartment, nude and covered in blood
- He did not follow the officer’s commands due to his “impaired mental state” and was tased 2x. Then fell off a balcony.
- **Court:** Plaintiff’s ADA claim can move forward
 - ❖ City should have policies and training “to recognize and reasonably accommodate individuals exhibiting signs of ‘excited delirium,’ mental illness or disability.”
 - ❖ Falls outside of *Hainze* b/c plaintiff is not challenging the conduct that occurred on the scene, but failure to institute policies giving officers the tools/resources to handle the situation peacefully

Cause of Action? Courts are Divided

- Some courts recognize failure to train cases
 - ❖ ***Broadwater v. Fow*, 945 F. Supp. 2d 574, 590-91 (M.D. Pa. 2013)** (denying motion to dismiss on plaintiff's ADA claim that the state police failed to "properly train troopers to have peaceful encounters with mentally and physically disabled persons and failed to establish a proper policy for handling such encounters").
- Some courts do not recognize ADA failure to train claim
 - ❖ ***Buchanan v. Maine*, 469 F.3d 158, 177 (1st Cir. 2006)** ("An argument that police training, which was provided, was insufficient does not present a viable claim that [plaintiff] was "denied the benefits of the services ... of a public entity" by reason of his mental illness, as required under 42 U.S.C. § 12132") (internal citations omitted).

Cause of Action? Courts are Divided

- Other courts have opted not to make a determination on the issue
 - ❖ ***Sanders v. City of Minneapolis*, 474 F.3d 523, 527 (8th Cir. 2007)** (declining to determine whether to find a cause of action for failure to train under the ADA); ***Thao v. City of Saint Paul*, 481 F.3d 565, 567-68 (8th Cir. 2007)** (same).
- Other courts have stated that a failure to train claim must have "caused some violation of law."
 - ❖ ***Waller ex rel. Estate of Hunt v. Danville, VA*, 556 F.3d 171, 177 (4th Cir. 2009).**

Discrimination: Treated Differently Because of a Disability

Jones v. Lacey

108 F.Supp.3d 573 (E.D. Mich. 2015)

- Plaintiff and companion were stopped for a broken taillight
- Officer smelled marijuana when he approached the car, and plaintiff showed an expired medical marijuana license
- Officer suggested they wouldn't be penalized – then learned of plaintiff's HIV status
- Officer became upset. Commented: "Okay, that's probably something to tell me ... I want to make sure I put gloves on."
- Plaintiff cited for marijuana and companion for broken taillight
- Officer said "if it wasn't for [HIV disclosure], I don't think I would have wrote anybody for anything, but that kind of really aggravated me."
- **Court:** Found for plaintiff
 - ❖ Facts suggested that officer issued tickets due to HIV status

ADA & Correctional Facilities

Title II Applies to Correctional Facilities

Yeskey v. Pennsylvania Department of Corrections 524 U.S. 206 (1998)

- The U.S. Supreme Court resolved any dispute about Title II's applicability to state prisons
- Held: Title II of the ADA applies "to any department, agency . . . or other instrumentality of a State," including state prison

Note: Inmates' opportunities for recovery are limited by the Prison Litigation Reform Act (PLRA)

- PLRA requires prisoners to exhaust administrative remedies before filing in federal court
- See [42 U.S.C. § 1997e](#)

Requirements for Architectural Access

***Pierce v. Cty. of Orange*, 526 F.3d 1190 (9th Cir. 2008)**

- A group of pretrial detainees housed in the county jail facilities brought claim – county failed to provide accessible bathrooms, sinks, and showers, and other fixtures or curative measures

***Jaros v. Illinois Dept. of Corr.*, 684 F.3d 667 (7th Cir. 2012)**

- Illinois prison lacked grab bars and thus prevented plaintiff from using his shower and transporting himself to meals
- IDOC refused to add accessibility features b/c facility not designated as ADA-accessible, but also refused to transfer him to an ADA-accessible facility because he would not be incarcerated long enough to meet the Department's criteria for transfer

Both cases: Appellate courts reversed/remanded – found for plaintiff

Providing Assistance Instead of Providing Architectural Access

Clemons v. Dart

2016 WL 890697 (N.D. Ill. Mar. 9, 2016)

- Inmate who used wheelchair not assigned to an accessible room
- Nurses on call to help him access the sink, shower, and toilet
- **Sheriff:** No ADA violation b/c nursing staff allowed plaintiff to access all the same facilities
- **Court:** On-demand nursing support was not equivalent to providing an accessible cell b/c it reduced plaintiff's ability to engage in independent living to the fullest extent possible
- **Note:** Clarifies that Title II "requires affirmative, proactive accommodations necessary to ensure meaningful access to public services and programs, not accommodation upon request."

Reasonable Modifications for Prisoners with Physical Disabilities

Wright v. New York State Department of Corrections

2016 WL 4056036 (2nd Cir. July 29, 2016)

- Inmate with cerebral palsy and scoliosis who could operate a motorized wheelchair, but not a manual wheelchair, successfully challenged ban on motorized chairs in prison due to safety concerns
- **Court:** Policy prevented plaintiff from accessing prison services
 - ❖ Rejected option of "inmate mobility aids" as "in tension" with ADA's emphasis on independent living
 - ❖ Also said inmate mobility assistant program was ineffective in practice b/c it required advanced scheduling

See also *Reaves v. Department of Corrections*, 2016 WL 4124301 (D. Mass July 15, 2016) (successfully challenging procedure that prevented plaintiff from going outdoors in 16 years finding the procedures could be modified)

Most Integrated Setting Possible

Henderson v. Thomas

289 F.R.D. 506 (M.D. Ala. 2012)

- Group of prisoners with HIV successfully challenged Alabama Department of Corrections' HIV policy that:
 - ❖ Categorically restricted inmates with HIV to certain housing units
 - ❖ Limited their ability to participate in prison programs
 - ❖ Required them to wear a white armband
- **Court:** ADA violation - "segregation policy" was not supported by any scientific or medical evidence, and violated the ADA

See also DOJ Letter of Findings, Nevada Department of Corrections (NDOC discriminates against inmates with HIV by requiring them to share rooms with other inmates with HIV or live alone, and by excluding them from transitional housing settings and certain vocational opportunities) - www.ada.gov/briefs/ndoc_lof.docx

Effective Communication in Prison: Interpreters and Assessments

Pierce v. D.C.

128 F. Supp. 3d 250 (D.D.C. 2015)

- Deaf individual was incarcerated for 51 days
- Prison staff never assessed Plaintiff's communication needs
- Assumed lip-reading and written notes were sufficient
- Plaintiff asserts he asked for an interpreter for medical intake, health services and various classes
- **Court:** Granted summary judgment for Plaintiff on effective communication and intentional discrimination
 - ❖ Denied prison's motion for summary judgment
- **Court:** Prison violated ADA/504 as a matter of law by failing to evaluate Plaintiff's need for accommodation when taken into custody

Pierce v. D.C.

Violation: Failure to assess needs of deaf inmate

- Prisons have an affirmative duty to assess the accommodation needs of inmates with known disabilities taken into custody
- Even if the individual has not made a specific request
- Prison officials cannot rely solely on their own assumptions

Violation: Plaintiff was not provided with required interpreter

- Requested interpreter – evidenced by notes, testimony
- Needed interpreter – evidenced by differences in ASL/English
 - ❖ Dealing with complex communications
 - ❖ Rejected argument that District employees said they believed Pierce understood them (“nonstarter”)
- No undue hardship/fundamental alteration

Effective Communication in Prison

Holmes v. Godinez 311 F.R.D. 177 (N.D. Ill. 2015)

- Plaintiffs (deaf/hard of hearing inmates) argued that prisons fail to provide effective communication, including:
 - ❖ Visual alarms and notifications, access to TTYs, hearing aids and batteries, other auxiliary aids
- **Court:** Found for plaintiffs (denied MSJ) and granted class cert.
- Case demonstrates the wide range of programming requiring access, including:
 - ❖ Religious services, disciplinary hearings, medical, mental health and rehabilitation programs, educational and vocational programming

See also *Bearden v. Clark Cty.*, 2016 WL 1158693 (W.D. Wash. Mar. 24, 2016)

Effective Communication: Video Phones

Advocates argue that effective communication requires prisons to provide videophones, not just TTYs

Recent agreements out of Maryland and Kentucky

- Deaf and hard of hearing inmates will have access to videophones to communicate with people outside of prison
- Other select provisions:
 - ❖ Visual notification of oral announcements re: emergencies
 - ❖ Access to interpreters and other auxiliary aids and services
 - ❖ Broad scheme of policy implementation, training, outreach, and monitoring to ensure equal treatment

<http://nad.org/news/2015/6/landmark-settlements-reached-maryland-and-kentucky-deaf-prisoners>

Mental Health in Prison: Solitary Confinement

- Advocates contend that correctional facilities far-too-frequently refer people with mental illnesses to solitary confinement
 - ❖ Result: exacerbates disability
 - ❖ www.aclu.org/stop-solitary-briefing-paper
- Class action litigation has been successful at reducing amount of hours inmates with mental illness spend in isolation
 - ❖ Ex: ***Rasho v. Walker, 07-CV-1298 (C.D. Ill.)***
- DOJ Statement of Interest in ***G.F. v. Contra Costa County***
 - ❖ Opined that under the ADA, prisons cannot confine an inmate to solitary confinement because of that person's mental illness
 - ❖ www.justice.gov/sites/default/files/crt/legacy/2014/02/14/contractosta_soi_2-13-14.pdf

Rasho v. Walker

Allegations raised in class complaint (filed in 2007)

- Lack of adequate treatment:
 - ❖ Space for individual or group therapy
 - ❖ Lack of private areas for treatment
 - ❖ Trained and licensed personnel
 - ❖ Hospital level of care
- Unmonitored use of psychotropic medication
- Punitive approach to mental illness
 - ❖ Physical restraints
 - ❖ Crisis cells
 - ❖ Use of fines and segregation
- Physical and verbal abuse by guards

Rasho v. Walker

Case settled in 2015

- Hospital for prisoners who need in-patient services
- Significantly increased staff, including more than 300 new clinical staff and 400 new security staff
- Construction of four new residential treatment units
- Drastic improvement of treatment systems
- Significant reduction of solitary confinement

www.clearinghouse.net/detail.php?id=12369

Mental Health in Prison: Failure to Accommodate Disability

Wright v. Texas Department of Criminal Justice 2013 WL 6578994 (N.D. Texas 2013)

- Mother sued the Texas Department of Criminal Justice after her son took his own life while in prison
- Son had severe bipolar and schizophrenia
- Classified by prison doctors as “high risk suicide status”
- **Allegations:** Prison failed to provide accommodations that would have reduced likelihood of committing suicide – such as:
 - ❖ A roommate
 - ❖ A cell without “tie off” points
- **Court:** Failure to make these accommodations could constitute discrimination under the ADA

ADA & Re-Entry

Background on Re-Entry

- 95% of incarcerated people will eventually re-enter the community
- Quality of discharge planning and services may significantly impact the success of their transitions into the community
- For inmates with disabilities, an absence of appropriate discharge services often results in:
 - ❖ Lack of access to appropriate public services
 - ❖ Decline in mental and physical well-being
 - ❖ Recidivism or institutionalization
- Emerging legal issue = Whether these barriers occur in violation of the ADA and the Rehab Act, including the ADA's integration mandate

<http://bjs.ojp.usdoj.gov/content/pub/pdf/reentry.pdf>

Early Re-Entry Case (Not under ADA)

Brad H. v. City of New York **185 Misc.2d 420 (Sup. Ct. 2000)**

- Inmates challenged City's failure to provide inmates with mental illness with discharge planning services – under NY state law
- City released inmates w/ a few dollars and no referrals
- Inmates with mental illness were denied access to psychiatric medication/services needed to transition into the community
- 2003 settlement: https://mhp.urbanjustice.org/sites/default/files/The_settlement.pdf
 - ❖ Inmates who spent 24+ hours in NYC jails w/ psychiatric treatment will have comprehensive discharge planning services
 - ❖ Including mental health assessment; case management; access to medication and prescriptions; and assistance accessing public benefits, housing, and transportation

Recent Re-Entry Case (Under ADA)

U.S. v. Los Angeles County

2016 WL 2885855 (C.D. Cal. May 17, 2016)

- U.S. filed a complaint for violations of the Civil Rights of Institutionalized Persons Act and the Violent Crime Control and Law Enforcement Act with settlement agreement
- Individuals intervened to challenge settlement – said portions about discharge planning violate the ADA
 - ❖ Argued: Without meaningful discharge planning, intervenors were denied **access to public benefits**, including transportation, shelter, medical care, psychiatric care, and other services
- County argued: Not discrimination b/c all inmates treated equally
- **Court:** Denied Defendant's judgment on pleadings
 - ❖ Lack of planning disproportionately impacts PWD

U.S. v. Los Angeles County

- Settlement agreement: Inmates with an “intense need for assistance” referred to an Institution for Mental Disease (IMD)
- Intervenors: Agreement conflicts with the ADA's requirement that public entities to “administer services, programs, and activities in the **most integrated setting appropriate**” and ***Olmstead***
- **Court:** Denied Defendant's judgment on pleadings
- **Court:** Also emphasized importance of meaningful re-entry programs and referenced cycle of **homelessness and recidivism**
 - ❖ Some individuals have been arrested “hundreds of times”
 - ❖ Inmates w/ MI often “released onto the streets...in a more vulnerable, less stable state than when they entered the jail”
 - ❖ Many ex-inmates with mental illness will end up back in prison *if* released without proper access to services

Additional Incarceration

Without meaningful re-entry programs, many inmates are held at jails and prisons beyond their release dates

Patient A. v. Vermont

2:15-cv-00221 (D. Vt. 2015)

- Plaintiff w/ schizoaffective disorder in prison 2+ years after his minimum sentence
- Alleged that continued incarceration was b/c of State's failure to identify appropriate supports and services in the community
- Compared himself to inmates without disabilities who were released at or close to the completion of their minimum sentences
- Case settled in 2016
- **Note:** Issue applies to inmates with varying disabilities (e.g., failure to identify accessible placements for those with physical disabilities)

ADA & Criminal Proceedings

Legal Issue: Sovereign Immunity

Tennessee v. Lane

541 U.S. 509 (2004)

- Two individuals brought an action against the State of Tennessee for failing to provide physically accessible courtrooms and facilities
 - ❖ Beverly Jones: Court reporter who was denied opportunities to work because she was unable to enter several county courtrooms
 - ❖ George Lane: Compelled to appear on the second floor of a courthouse to answer to criminal charges against him
 - 1st visit: Crawled up stairs b/c there were no elevator or ramp
 - 2nd visit: Refused to crawl, arrested/jailed for failure to appear

Legal Issue: Sovereign Immunity

- **State argued:** Immune from suits under the 11th Amendment / sovereign immunity
- **Supreme Court:**
 - ❖ Congress had clearly intended to abrogate states' Eleventh Amendment immunity when it enacted Title II of the ADA
 - ❖ Congress had authority to abrogate immunity
 - ❖ Title II was an appropriate response to a long history of discrimination against people with disabilities in the criminal justice system
 - ❖ Emphasized that its holding applied only to the "class of cases implicating the accessibility of judicial services."
 - ❖ Money damages may be awarded for lack of courtroom access

Courtroom Access: Effective Communication Requirements

Prakel v. Indiana

100 F. Supp. 3d 661 (S.D. Ind. 2015)

- Plaintiff was deaf and used ASL as his primary language
- His mother was a criminal defendant
- He wanted to attend his mother's criminal proceedings, including pretrial hearings, and made multiple requests for interpreters
- Proceedings included a fact-finding hearing, a sentencing hearing, and a hearing to address his request for a sign language interpreter
- State argued that these hearings were not "judicial services" because they were not part of formal trial proceedings
- **Court:** Found for Prakel - ADA applies to all gov't operations
 - ❖ Any public judicial proceeding/trial is a judicial service

Prakel v. Indiana Application to Spectators

- State denied interpreter request, in part, because Prakel was not a witness or criminal defendant
- **Issue:** Who is entitled to effective communications in courtroom?
- **Court:** Found for Prakel
 - ❖ Cited plain language of Title II
 - "A public entity shall take appropriate steps to ensure that communications with applicants, participants, *members of the public*, and companions with disabilities are as effective as communications with others."
 - ❖ Members of the public may participate in criminal proceedings
- **Note:** *Prakel* and *Lane* helped to firmly establish the right of all people to participate in every stage of criminal proceedings

Don't Forget the U.S. Constitution

- Claims discussed today are regularly brought in conjunction with constitutional claims:
 - ❖ **First Amendment:** Freedom of Speech, Freedom of Religion
 - ❖ **Fourth Amendment:** Freedom from Unreasonable Searches and Seizures (Excessive Force During Arrests)
 - ❖ **Fifth Amendment:** Due Process
 - ❖ **Eighth Amendment:** Cruel and Unusual Punishment
 - ❖ **Fourteenth Amendment:** Due Process

Conclusion

- Non-discrimination in the field of criminal justice is crucially important to all individuals – including people with disabilities
- Criminal justice system has great power over individuals
- Impact of an individual's exposure to the criminal justice system is long-lasting
- To ensure non-discrimination, it is important to understand rights and responsibilities under the ADA and the Rehabilitation Act

Continuing Legal Education Credit for Illinois Attorneys



- This session is eligible for 1.5 hours of continuing legal education credit for Illinois attorneys.
- Illinois **attorneys** interested in obtaining continuing legal education credit should contact Barry Taylor at: barryt@equipforequality.org
- Participants (non-attorneys) looking for continuing education recognition should contact the Great Lakes ADA at 877-232-1990 (V/TTY) or webinars@ada-audio.org

ADA ONLINE LEARNING

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Criminal Justice and the ADA

Presented by:

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September 21, 2016

Equip for Equality is providing this information under a subcontract with the Great Lakes ADA Center, which is funded by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR), a Center within the Administration for Community Living (ACL), Department of Health and Human Services (HHS).



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Save the Date

November 16, 2016

Legal Webinar Series Session

Topic: To be announced



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