



Incarceration and Persons with Disabilities:

A Guide to Legal Advocacy for Practitioners in Law and Social Services

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Abstract: People with disabilities constitute a disproportionate presence in U.S. penal institutions, and experience harms and deprivations based on disability discrimination and harassment, escalated vulnerability to violence, and lack of access to disability-related resources. In addition, conditions of incarceration can contribute to the development of new physical and mental health challenges, many of which can become disabling, or create “new” people with disabilities, among incarcerated populations. This course reviews some of the imperatives of, obstacles to, and prospects for legal advocacy for incarcerated persons with pre-existing and/or newly emerging disabilities. The emphasis of the course is on advocacy using existing legal doctrine in the areas of prisoner rights and disability rights. However, maximally effective advocacy for persons with various disabilities will often require partnership or consultation between attorneys, and social service providers or mental health clinicians experienced in working with incarcerated persons, or persons with disabilities. For this reason, the course is meant to train both professional audiences – attorneys, and social service providers and clinicians – to play collaborative roles in legal advocacy for incarcerated persons.

Disability is an issue of ongoing significance among incarcerated populations in the U.S. for at least two reasons. First, people with disabilities are disproportionately incarcerated in the U.S.² Second, the cumulative physical and mental health effects of incarceration can generate chronic illnesses, injuries, or impairments that were not already present, or as aggravated, prior to incarceration.³ That is, incarceration itself can be disabling, thereby “creating” new people with disabilities, and generating new, additional disabilities among incarcerated persons with pre-existing disabilities. Many incarcerated persons remain undiagnosed and have disabilities emerging over time⁴, so there are no precise estimates of the prevalence of disability among incarcerated persons. However, even existing conservative statistics indicate that disabilities are very widespread in the U.S. penal system.⁵

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² Vallas R. Disabled Behind Bars: The Mass Incarceration of People with Disabilities in America’s Jails and Prisons. Available at <https://cdn.americanprogress.org/wp-content/uploads/2016/07/18000151/2CriminalJusticeDisability-report.pdf>. Last accessed May 27, 2017.

³ Freudenberg N. Adverse Effects of US Jail and Prison Policies on the Health and Well-Being of Women of Color. *Am J Public Health*. 2002; 92(12): 1895–1899.

⁴ Mader J, Butrymowicz S. Pipeline to Prison: Special education too often leads to jail for thousands of American children. Available at <http://hechingerreport.org/pipeline-prison-special-education-often-leads-jail-thousands-american-children/>. Last accessed May 27, 2017.

⁵ Vallas R. The Mass Incarceration of People with Disabilities. Available at <https://talkpoverty.org/2016/07/18/mass-incarceration-people-disabilities/>. Last accessed May 27, 2017.

Despite the fact that disability is widely present among incarcerated persons, prospects for disability-based legal advocacy will often be overlooked by legal practitioners working with incarcerated persons, whether due to poor cross-training in disability law for criminal justice practitioners, or because incarcerated persons with disabilities are not always recognized as such. One aim of this course involves review of prospects for more effective and competent legal representation for incarcerated persons, using federal and state legal instruments. Psychiatric disabilities are exceptionally prevalent among incarcerated populations, and prospects for ethical and effective legal representation will commonly require that attorneys partner or consult with clinicians or social service providers trained to work with mental illness and/or trauma. “Inter-professional collaboration” between law and social service practitioners can be useful with physical and cognitive disabilities as well, as social service providers can often play a vital role in facilitating communication between attorneys and clients, drawing attention to health and disability issues that may be salient in preparing legal arguments, and providing clinical documentation. Therefore, a second aim of this course involves reviewing some areas of shared concern for legal, social service, and mental health practitioners working with incarcerated persons, including strategies to improve joint or collaborative advocacy efforts.

Some elements of this discussion will have relevance to the full range of incarcerated persons, including youth and adults, and including persons in immigration detention facilities, forensic hospitals, and other sites besides prisons and jails. However, the scope of this course is primarily limited to adult incarceration, meaning that it does not engage specific issues in the juvenile justice system, or rights and issues exclusive to youth with disabilities (such as educational rights for those under 18). In addition, this course also does not engage several important issues of more specific concern to persons in immigration detention, for instance including the role of mental health issues in asylum claims, or to institutionalized persons in mental health facilities (i.e. forensic hospitals) or subject to commitment through criminal courts. Prospects for advocacy can also include more informal mechanisms outside the scope of conventional legal representation. Although such prospects are acknowledged, this course focuses primarily on advocacy that at least in part, utilizes legal instruments and resources.

This discussion utilizes a broad definition of “disability” inclusive of physical, psychiatric, cognitive and developmental conditions. This broad definition is consistent with existing legal norms in the U.S., encompassing disabilities that are chronic or temporary, can be constant or intermittent, and include a range of mental health and medical conditions less commonly associated with the label “disability” than classic stereotypes of motor or sensory impairment. For instance, medical conditions such as diabetes, or psychiatric conditions such as clinical depression, are readily included in the definition of “disability”, so long as the condition has a substantial affect in daily living or longevity.⁶

Disability and U.S. Incarceration: Background and Social Implications

Multiple factors have contributed to the mass incarceration of people with disabilities in the U.S. De-institutionalization, or the process of closing down state-funded mental health facilities, led to increasing rates of incarceration of mentally ill persons in the late 20th century.⁷ Adults with mental

⁶ ADA Amendments Act of 2008, 110 P.L. 325

⁷ Amadeo K. Deinstitutionalization: How Does It Affect You Today? Available at <https://www.thebalance.com/deinstitutionalization-3306067>. Last accessed May 27, 2017.

illness who had been institutionalized, often for long periods without experiences of living independently, were repeatedly turned out of their institutional settings without transitional resources or access to housing. Absent appropriate healthcare or social infrastructure, arrests on charges such as vagrancy became the default systemic response to an influx of mentally ill persons who were unprepared for integration into the social mainstream, and for whom no appropriate housing or treatment options were made available.⁸

While de-institutionalization is responsible for a spike in the proportions of incarcerated persons with mental illness, several other factors help explain the disproportionate incarceration of people with a range of disabilities (including physical, developmental, cognitive, and psychiatric disabilities). The first involves the relationship between disability, poverty, education and race. The relationship between racial inequity and poverty is well-documented in the U.S., particularly disadvantaging Black, Latino/a, indigenous, and many immigrant populations.⁹ Disability and poverty are also strongly associated in the U.S. for dual reasons. Across racial, age, and gender demographics, adults with disabilities are more likely to be under-employed or unemployed even when able to work, and are often simultaneously grappling with specific economic challenges related to costs associated with accessible housing, transportation, technology, healthcare expenses, and/or costs for various forms of disability-related assistance.¹⁰ That is, many forms of disability come with economic costs, while economic opportunities are constrained or less available, often due to disability discrimination.¹¹ This pattern holds true across demographics, meaning that as a general rule and statistical pattern, disability alone will typically depress economic status, when comparing two people who are otherwise similarly situated by race, gender and age, but where one has a disability, and one does not. However, disability also interacts with race, such that the likelihood of poverty is strongest among people of color with disabilities (particularly Black, Latino, and indigenous people), as compared to both people of color without disabilities, and white people with disabilities.¹²

While disability can constrain or cut off economic opportunities, and impose economic burdens, the relationship between disability, race and poverty is not solely defined by disability contributing to economic vulnerability. The conditions associated with poverty can also lead to the disproportionate development of a range of disabilities, including chronic physical and psychological conditions resulting from malnutrition, exposure, deficits in pre- and post-natal healthcare, severe stress, unsafe working

⁸ Pokempner, Jennifer and Dorothy Roberts. Poverty, Welfare Reform, and the Meaning of Disability, *62 Ohio St. L. J.* 425 (2001).; Kanter, Arlene S. A Home of One's Own: The Fair Housing Amendments Act of 1988 and Housing Discrimination Against People with Mental Disabilities, *43 Am. U. L. Rev.* 925 (1993-1994).

⁹ Waters, Mary C., and Karl Eschbach. Immigration and Ethnic and Racial Inequality in the United States. *Annual Review of Sociology* 21 (1995): 419-46.

¹⁰ Elwan A. Poverty and disability: A survey of the literature. Washington, DC: *Social Protection Advisory Service*; 1999 Dec 18.; WHO, W., 2011. World report on disability. *Geneva: WHO.*; Karen E. Lasser, David U. Himmelstein, Steffie Woolhandler. Access to Care, Health Status, and Health Disparities in the United States and Canada: Results of a Cross-National Population-Based Survey. *American Journal of Public Health* 96, no. 7 (July 1, 2006): 1300-1307.

¹¹ Elwan A. Poverty and disability: A survey of the literature. Washington, DC: *Social Protection Advisory Service*; 1999 Dec 18.;

¹² Elwan A. Poverty and disability: A survey of the literature. Washington, DC: *Social Protection Advisory Service*; 1999 Dec 18.; Lasser, K., Himmelstein, D., and Woolhandler, S. Access to Care, Health Status, and Health Disparities in the United States and Canada: Results of a Cross-National Population-Based Survey. *American Journal of Public Health* 96, no. 7 (July 1, 2006): 1300-1307.; Pokempner, Jennifer and Dorothy Roberts. Poverty, Welfare Reform, and the Meaning of Disability, *62 Ohio St. L. J.* 425 (2001).

conditions, and labor exploitation.¹³ The over-representation of people of color below the poverty line in the U.S. creates a disparate disabling effect, such that poor people of color in many environments manifest higher rates of vulnerability to poverty-related disease and injury.¹⁴ The phenomenon of “environmental racism”, in which poor communities of color are exposed to unsafe levels of toxins as a result of corporate practices that neglect safety in poor neighborhoods serves to further escalate the disparate rates of certain disabilities, including asthma and cancer, as a consequence of racial and economic inequity.¹⁵

Both dynamics -- meaning the disabling effects of racism and poverty, and the economic disadvantages associated with disability and race – play a role in facilitating incarceration. While poverty can be disabling, the presence of disabilities and the interactive dynamics of racial and disability discrimination cut off opportunities to mitigate or escape economic vulnerability. These dynamics are communal and affect population health, meaning that individual experiences of disability and poverty have economic consequences for families and communities, as vulnerable populations and families struggle to address health and disability related costs, while grappling with decreased economic opportunities.¹⁶ Challenges associated with economic survival are a well-acknowledged pathway to adult incarceration, and broader racial disparities in arrests, criminal prosecutions, and sentencing help to reinforce and explain the over-incarceration of people of color with disabilities particularly.¹⁷

One of several determinants that helps to explain the loss of economic opportunities among people with disabilities who are able to work involves deficits in K-12 and higher educational access. Although in principle, youth in the United States are entitled to access to a free, public education, and disability discrimination is prohibited, youth with disabilities can still experience substantial barriers to full educational access, before and after a disability is diagnosed.¹⁸ Lack of educational attainment and alienation in school settings are substantial factors influencing the likelihood of youth incarceration. That is, youth with disabilities are at higher risk of juvenile incarceration.¹⁹ The disproportionate incarceration of poor and working-class youth of color is well documented, and predictive both of adult

¹³ Wendell S. *The rejected body: Feminist philosophical reflections on disability*. Psychology Press; 1996: 35-56

¹⁴ Pokempner, Jennifer and Dorothy Roberts. Poverty, Welfare Reform, and the Meaning of Disability, *62 Ohio St. L. J.* 425 (2001).

¹⁵ Cole LW, Foster SR. *From the ground up: Environmental racism and the rise of the environmental justice movement*. NYU Press; 2001.

¹⁶ Elwan A. Poverty and disability: A survey of the literature. Washington, DC: *Social Protection Advisory Service*; 1999 Dec 18.; Lasser, K., Himmelstein, D., and Woolhandler, S. Access to Care, Health Status, and Health Disparities in the United States and Canada: Results of a Cross-National Population-Based Survey. *American Journal of Public Health* 96, no. 7 (July 1, 2006): 1300-1307.; Pokempner, Jennifer and Dorothy Roberts. Poverty, Welfare Reform, and the Meaning of Disability, *62 Ohio St. L. J.* 425 (2001).

¹⁷ Nelson, Camille. Of Eggshells and Thin Skulls: A Consideration of Racism-Related Mental Illness Impacting Black Women, *29 Int’l J. L. & Psych.* 112 (2006).

¹⁸ Erevelles, Nirmala. Educating Unruly Bodies: Critical Pedagogy, Disability Studies, and the Politics of Schooling, *50(1) Ed. Theory* 25 (2000); Ferri, Beth A. & Connor, David J. Tools of Exclusion: Race, Disability and (Re)Segregated Education, *107(3) Teachers College Record* 453 (2005).

¹⁹ Quinn MM, Rutherford RB, Leone PE, Osher DM, Poirier JM. Youth with disabilities in juvenile corrections: A national survey. *Exceptional children*. 2005 Apr;71(3):339-45.; Baltodano HM, Mathur SR, Rutherford RB. Transition of incarcerated youth with disabilities across systems and into adulthood. *Exceptionality*. 2005 Jun 1;13(2):103-24.

incarceration and of loss of economic opportunities.²⁰ Not surprisingly, youth of color with disabilities, as compared to those who are white with disabilities, and those who are of color and have no disabilities, experience the highest rates of juvenile incarceration, contributing to more disruption in educational access, decreased economic potential, and increased likelihood of adult incarceration.²¹

One additional factor bears acknowledging – namely that disability and poverty can cut off or reduce access to competent legal representation. Training in legal advocacy for people with disabilities is not a standard aspect of socialization in legal education or internships. Many attorneys, including those doing criminal defense work, have little or no training related to disability.²² Attorneys therefore, may be under-prepared to work with challenges in attorney-client communication related to motor skills, cognitive capacity, sensory impairments, or traumatic stress. Physical barriers to accessing offices and institutions, and transportation, can also decrease the ability of people with mobility impairments to find legal representation.²³ These obstacles, coupled with economic barriers to hiring private legal counsel, often increase the likelihood that people with disabilities, disproportionately those who are poor and of color, will have fewer resources when navigating criminal proceedings, with a corresponding increase in the likelihood of conviction and incarceration.²⁴

The factors reviewed here are not an exhaustive explanation, but do provide some context for the over-incarceration of people with disabilities, primarily people of color from working- and poverty-class communities, in the United States. As noted, however, the disproportionate incarceration of people with disabilities is not solely explainable by examining why people who have disabilities are initially incarcerated. Incarceration creates new disabilities, and can also aggravate or escalate existing physical or mental health conditions.²⁵ “Disablement”, or the production of new disabilities as a consequence of inequity, exploitation, and systemic violence – occurs in U.S. prisons and jails through multiple mechanisms.²⁶ Factors that contribute to injury or the degeneration of health while incarcerated can include, but are not limited to, increased risk of exposure to infectious diseases such as HIV and hepatitis C, vulnerability to physical and sexual violence, labor exploitation, deficits in healthcare, and problems with nutrition, sanitation and ventilation. The conditions of incarceration, many of which are gratuitously humiliating, dangerous, or difficult, also generate severe physical and psychological stress over time, commonly sufficient to produce new psychiatric disabilities or aggravate

²⁰ Rios VM. The hyper-criminalization of Black and Latino male youth in the era of mass incarceration. *Souls*. 2006 Jul 1;8(2):40-54.

²¹ Erevelles, Nirmala. Educating Unruly Bodies: Critical Pedagogy, Disability Studies, and the Politics of Schooling, *50(1) Ed. Theory* 25 (2000); Ferri, Beth A. & Connor, David J. Tools of Exclusion: Race, Disability and (Re)Segregated Education, *107(3) Teachers College Record* 453 (2005).; Quinn MM, Rutherford RB, Leone PE, Osher DM, Poirier JM. Youth with disabilities in juvenile corrections: A national survey. *Exceptional children*. 2005 Apr;71(3):339-45.; Baltodano HM, Mathur SR, Rutherford RB. Transition of incarcerated youth with disabilities across systems and into adulthood. *Exceptionality*. 2005 Jun 1;13(2):103-24.; Rios VM. The hyper-criminalization of Black and Latino male youth in the era of mass incarceration. *Souls*. 2006 Jul 1;8(2):40-54.

²² Bagenstos SR. Disability Rights Law: Cases and Materials. *Foundation Press*; 2010.

²³ WHO, W., 2011. World report on disability. *Geneva: WHO*.

²⁴ Pokempner, Jennifer and Dorothy Roberts. Poverty, Welfare Reform, and the Meaning of Disability, *62 Ohio St. L. J.* 425 (2001).

²⁵ Ribet, B. Naming Prison Rape as Disablement: A Critical Analysis of the Prison Litigation Reform Act, the Americans with Disabilities Act, and the Imperatives of Survivor-Oriented Advocacy, *17 Va. J. Soc. Pol'y & L.* 281, 317 (2010)

²⁶ *Ibid.*

any that existed before incarceration, and to create physical health problems associated severe stress.²⁷ Prolonged stress can substantially weaken the immune system,²⁸ such that inability to resist a whole host of potential health problems is a prospective outcome associated with incarceration for more than short-term periods, a problem aggravated when there are also deficits in access to healthcare while incarcerated.

The issue of disability also complicates prisoner re-entry. Formerly incarcerated persons with disabilities will commonly face major challenges to economic stability, as the presence of disability, combined with a criminal record, can pose multiple challenges to securing and maintaining stable employment and housing. Emerging from incarceration with physical and/or mental health issues can also create challenges when attempting to reintegrate into families or communities already affected by the stresses of incarceration. Further, when exiting incarceration, persons with disabilities will not necessarily have stable access to any healthcare infrastructure, and it may take significant time and at least some social skills to identify and access resources needed to cope with health and disability-related challenges. In combination, these challenges substantially increase the likelihood of re-incarceration, as individuals who are ill or injured, unable to maintain stable employment and housing, and struggling with reintegration into community are much more vulnerable to future arrests or parole violations.²⁹ It bears emphasizing that health- and disability-related challenges among formerly incarcerated persons are not isolated to a smaller subset. The experience of exiting a jail or prison with at least some physical or mental health challenges that rise to the level of disability by both medical and legal definitions is normative. However, many formerly incarcerated persons will have conditions that have not been diagnosed,³⁰ and whether particular disabilities emerged prior to or during incarceration, will likely not have received proper healthcare, social, or technological supports and accommodations prior to or during incarceration. In other words, formerly incarcerated persons face challenges associated with disability discrimination and disability-based deprivations, combined with deficits in access to healthcare and social services, in addition to any harmful effects that may be associated with particular physical or mental health conditions.

Familiarity with the broader context that links disability and incarceration in the U.S. is helpful both in framing and preparing relevant legal arguments, and in developing a sensitized and respectful approach to working with incarcerated persons with disabilities. Once basic comprehension of the relationship between disability and incarceration is established, disability-conscious legal advocacy for incarcerated persons can involve any of the following areas, singly or in combination:

- **Advocacy for disability-related needs**, including but not limited to access to technologies, equipment, assistive devices or accessible materials, access to specific forms of healthcare, modifications of existing policies or practices, access to disability-related social services including education about disability-related resources, and access to resources to facilitate vocational and employment options upon release

²⁷ Nelson, C. Of Eggshells and Thin Skulls: A Consideration of Racism-Related Mental Illness Impacting Black Women, 29 *Int'l J. L. & Psych.* 112 (2006)

²⁸ Massoglia, M. Incarceration as Exposure: The Prison, Infectious Disease, and Other Stress-Related Illnesses. *Journal of Health and Social Behaviour.* 2008;49.1:56-71

²⁹ Morenoff, Jeffrey D., and David J. Harding. "Incarceration, Prisoner Reentry, and Communities." *Annual review of sociology* 40 (2014): 411–429. *PMC.* Web. 2 July 2017.

³⁰ *Ibid.*; Gorski T. Post incarceration syndrome and relapse. *September.* 2012;7:2012.

- **Advocacy to address disability-based discrimination, harassment or violence**, including but not limited to addressing discriminatory treatment by staff and other inmates, and vulnerability of incarcerated persons with disabilities to physical, sexual, or emotional abuse, violence or harassment while incarcerated. “Disability-based” treatment can include either instances when incarcerated persons are being targeted based on disability (i.e. hostility to disability is part of the motivation for maltreatment), or where an incarcerated person’s disability makes that person more vulnerable or less able to resist to abuse or exploitation. That is, legal advocacy can address differential, harmful treatment based on disability, whether disability is targeted out of overt hostility to persons with disabilities, or whether a person with one or more disabilities is targeted because disability increases their vulnerability to harm (i.e. they appear to be or are an “easy target”).
- **Advocacy to address conditions that are disabling**, encompasses a wide range of potential advocacy related to prison conditions, through traditional areas of legal doctrine in torts and Constitutional law, for instance. In most respects, advocacy in this area of prison legal doctrine will utilize legal instruments that apply to incarcerated persons with and without disabilities, and that are not conventionally thought of as disability-related or “disability law”. However, attention to and clinical documentation of the disabling effects of the conditions of incarceration is often under-explored in legal advocacy for incarcerated persons,³¹ and can potentially substantially strengthen legal claims or actions on behalf of incarcerated persons, by serving as evidence of the injuries inflicted through incarceration, and by highlighting the necessity of remedies, in order to avoid further damage to health.

Barriers to Legal Advocacy for Incarcerated Persons with Disabilities

Practitioners attempting to advance legal advocacy in any of the areas noted above will potentially need to prepare for certain obstacles, related to relevant law, documentation of disability-related issues, ethical and effective communication with incarcerated clients, and client health and safety during the process of legal intervention.

The Prison Litigation Reform Act: General Considerations and Disability-Specific Implications

Since the passage of the Prison Litigation Reform Act (PLRA) in 1995,³² advocates for the rights of incarcerated persons have faced increased and overlapping obstacles in attempting to advance almost all areas of prison litigation related to prisoner rights or conditions in detention, under federal law. The PLRA was initially introduced to the U.S. Congress and the public as a proposed solution to a purported epidemic of “frivolous” prisoner litigation.³³ It was part of a legislative package advanced by

³¹ Ribet, B. Naming Prison Rape as Disablement: A Critical Analysis of the Prison Litigation Reform Act, the Americans with Disabilities Act, and the Imperatives of Survivor-Oriented Advocacy, *17 Va. J. Soc. Pol’y & L.* 281, 317 (2010)

³² 42 U.S.C. § 1997e

³³ Alderstein, David M. In Need of Correction: The Iron Triangle of the Prison Litigation Reform Act. *Columbia Law Review* 101.7 (2001): 1681-1708.

Congressman Newt Gingrich's "Contract with America".³⁴ Subsequent critiques indicate that very little empirical evidence was provided at the time in support of the claim that litigation by or on behalf of incarcerated persons was frequently or normatively "frivolous".³⁵ However, regardless of the actual severity or frequency of "frivolity" in prison-related claims, critics of the PLRA have continued to highlight the problem that the scope and mechanisms of the PLRA create substantial, and sometimes nearly impossible obstacles to most litigation advanced by or for incarcerated persons in federal courts or under federal law, including in instances involving severe harms or violations of rights.³⁶ It should be noted that the reach of the PLRA is limited to claims advanced under federal law, in federal courts,³⁷ meaning that the PLRA does not inhibit claims field grounded solely in state law. However, for incarcerated persons with disabilities, this bears on multiple important legal instruments, including but not limited to the U.S. Constitution, the Americans with Disabilities Act (ADA), and the Civil Rights of Institutionalized Person's Act (CRIPA). In addition, some states have passed legislation mirroring or expanding on the provisions of the federal PLRA, cutting off this alternative in state courts.³⁸ Several provisions of the PLRA are reviewed here. Each generally affects a wide breadth of litigation involving all or most incarcerated persons, including those who may or may not have identified disabilities. Each also has specific implications or creates disproportionate and disparate effects for incarcerated persons with disabilities, delineated briefly.

Section 803 (7)(a) of the PLRA commonly known as the "exhaustion requirement", imposes a burden on incarcerated persons who would like to pursue a legal claim related to the conditions of detention.³⁹ Specifically, incarcerated persons are prohibited from pursuing any claims under Federal Law related to any aspects of the conditions of incarceration, without first having thoroughly exhausted any and all grievance procedures available through the prison, jail or other penal institution.⁴⁰ Critiques and challenges, both in scholarly and legal analyses, and through litigation, have identified multiple ways in which this requirement poses a hazard to the rights, health and safety of incarcerated persons.

A primary concern relates to safety and health of incarcerated persons. Compliance with the exhaustion requirement can often be particularly dangerous, and at least very traumatic, for incarcerated persons who have been abused or tortured by staff.⁴¹ Internal grievance procedures generally are rapidly brought to the attention of any party who is the target of a complaint, and may for instance, require that the incarcerated person who has filed the complaint meet individually with the

³⁴ Gingrich N, Armev RK, Gillespie E, Schellhas B, editors. Contract with America: the bold plan by Rep. Newt Gingrich, Rep. Dick Armev and the House Republicans to change the nation. *Three Rivers Press (CA)*; 1994.

³⁵ Ostrom, Brian J., Hanson, Roger A., Cheesman, Fred L. II. Congress, Courts and Corrections: An Empirical Perspective on the Prison Litigation Reform Act. *Notre Dame Law Review* 78.5 (2003): 1525-1560.

³⁶ Golden, Deborah M. It's Not All in My Head: The Harm of Rape and the Prison Litigation Reform Act. *Cardozo Women's Law Journal* 11.1 (2004): 37-60.

³⁷ 42 U.S.C. § 1997e(a)

³⁸ Brill, Alison. Rights Without Remedy: The Myth of State Court Accessibility After the Prison Litigation Reform Act. *Cardozo L. Rev.* 2008:30:645.

³⁹ 42 U.S.C. § 1997e(a)

⁴⁰ Novikov, Eugene. Stacking the Deck: Futility and the Exhaustion Provision of the Prison Litigation Reform Act. *University of Pennsylvania Law Review* 156.3 (2008): 817-838.; Branham, Lynn S. The Prison Litigation Reform Act's Enigmatic Exhaustion Requirement: What It Means and What Congress, Courts and Correctional Officials Can Learn from It. *Cornell Law Review* 86.3 (2001): 483-547.

⁴¹ Golden, Deborah M. It's Not All in My Head: The Harm of Rape and the Prison Litigation Reform Act. *Cardozo Women's Law Journal* 11.1 (2004): 37-60.

alleged perpetrator to try to resolve conflict.⁴² In instances where the staff person has engaged in assault or other severe abuses against an incarcerated person, having to initiate a grievance against the perpetrator will potentially result in retaliation and further injury. Although the power dynamic involved in filing a complaint against a staff person while under that staff person's authority is a particular concern, compliance with the exhaustion requirement may also occasion retaliation or trauma when the target of a grievance is another incarcerated person. In essence, the exhaustion requirement exposes abused persons to an increased risk of retaliation or injury by perpetrators or the administration of the detention facility, and is likely to be traumatic due to the fear of retaliation, even if no retaliation ultimately occurs.⁴³ In instances where incarcerated persons are dealing with mental health issues resulting from traumatic stress – a predictable consequence during and in the aftermath of abuse – the imposition of additional trauma as a precondition for accessing legal rights or protection generates a particular risk and harm. That is, having to risk or fear retaliation can escalate the health or disabling impact by burdening a mentally ill person with additional traumatic stress, anxiety or panic.

The exhaustion requirement has been criticized for imposing other undue burdens on incarcerated persons.⁴⁴ For instance, there are no baseline obligations imposed on penal institutions under the PLRA to ensure that the grievance procedure is reasonable, and can be completed by incarcerated persons at large without assistance.⁴⁵ Courts have interpreted the exhaustion requirement strictly, meaning that the claims of incarcerated persons have been dismissed for failure to exhaust grievance procedures, even when incarcerated persons attempted to exhaust grievance procedures but were not able to do so due to confusing language, or inability to secure or complete required forms.⁴⁶ This challenge has disability-specific implications, as well as posing challenges for incarcerated persons who are not fluent in English or have literacy challenges. Prior litigation established that even in an instance where a prison failed to provide a blind, incarcerated person with assistance or an accessible alternative to paper grievance forms, the blind inmate was still barred from advancing a legal claim,

⁴² American Friends Services Committee. Torture in United States Prisons. Available at https://www.afsc.org/sites/afsc.civicactions.net/files/documents/torture_in_us_prisons.pdf. Last accessed July 2, 2017

⁴³ Novikov, Eugene. Stacking the Deck: Futility and the Exhaustion Provision of the Prison Litigation Reform Act. *University of Pennsylvania Law Review*. 2008;156.3:817-838.; Branham, Lynn S. The Prison Litigation Reform Act's Enigmatic Exhaustion Requirement: What It Means and What Congress, Courts and Correctional Officials Can Learn from It. *Cornell Law Review* 86.3 (2001): 483-547.; Golden, Deborah M. It's Not All in My Head: The Harm of Rape and the Prison Litigation Reform Act. *Cardozo Women's Law Journal* 11.1 (2004): 37-60.; American Friends Services Committee. Torture in United States Prisons. Available at https://www.afsc.org/sites/afsc.civicactions.net/files/documents/torture_in_us_prisons.pdf. Last accessed July 2, 2017

⁴⁴ Slutsky, A. Totally Exhausted: Why a Strict Interpretation of 42 USC 1997e (a) Unduly Burdens Courts and Prisoners. *Fordham L. Rev.* 2004;73:2289.

⁴⁵ Schlanger, Margo and Shay, Giovanna, Preserving the Rule of Law in America's Jails and Prisons: The Case for Amending the Prison Litigation Reform Act (November 20, 2008). *Journal of Constitutional Law*, Vol. 11, No. 1, 2009; Washington U. School of Law Working Paper No. 08-12-03. Available at SSRN: <https://ssrn.com/abstract=1304787>

⁴⁶ Slutsky, A. Totally Exhausted: Why a Strict Interpretation of 42 USC 1997e (a) Unduly Burdens Courts and Prisoners. *Fordham L. Rev.* 2004;73:2289.; American Friends Services Committee. Torture in United States Prisons. Available at https://www.afsc.org/sites/afsc.civicactions.net/files/documents/torture_in_us_prisons.pdf. Last accessed July 2, 2017.

because he had not exhausted the prison grievance procedures.⁴⁷ Although in principle, failing to make prison procedures accessible to incarcerated persons with disabilities can be challenged as disability discrimination under the Americans with Disabilities Act, the same basic conundrum will apply. In order to file suit under the ADA against a prison for failing to make grievance procedures accessible to persons with disabilities, an incarcerated person would first need to be able to exhaust those inaccessible grievance procedures.

Prior to passage of the PLRA, lawsuits by individual incarcerated persons could sometimes be utilized to advance systemic changes in policies or practices in order to benefit incarcerated persons, in addition to those initiating lawsuits. That is, one incarcerated person could sue to change a policy or practice that had caused him or her harm, and courts had discretion to order a change in the policy or practice more broadly, as part of the relief granted to the individual plaintiff(s). However, section 802 (a)(1) of the PLRA, limits options for relief or remedy to the most “narrowly drawn” means to correct a violation of the rights of the individual plaintiff(s) in the suit.⁴⁸ Therefore, if one plaintiff were for instance, to successfully sue a prison or jail for violations of the Americans with Disabilities Act, a court could only order the prison or jail to stop violating the rights of that individual prisoner, but could not order a general policy change for all affected prisoners.⁴⁹ This limitation has serious implications for incarcerated persons at large, and likely disparate impact for incarcerated persons with more severe disabilities. That is, inmates with disabilities substantial enough to make it very difficult to participate in legal action will generally be far less likely to benefit from prisoner rights litigation initiated by other incarcerated persons, because typically only those who can successfully initiate and win lawsuits would be likely to receive direct benefit from court-ordered changes.

Filing class-action suits would work around this limitation, as class actions can represent all affected persons, including those who are not named plaintiffs. However, class actions filed against detention facilities are generally very labor and time intensive, and require significant investment of resources, usually coming from public interest legal organizations or requiring substantial pro bono attorney commitments. Present capacity of public interest organizations in this area is essentially severely eclipsed by the demand for legal representation among vulnerable incarcerated persons.⁵⁰ Another means to work around this limitation for incarcerated persons with disabilities manifests in federally funded entities empowered to represent the legal interests of persons with severe disabilities who cannot generally represent themselves. That is, the federally funded Protection and Advocacy system, present in each U.S. state for this purpose, has legal standing to represent persons with disabilities who are incarcerated in the U.S., and who need advocacy to protect rights, health or safety.⁵¹ The Protection and Advocacy system has fairly limited resources relative to the demand to address abuses of persons with disabilities, and is covering a range of settings, also commonly including

⁴⁷ Fry v. Al-Abduljalil, No. 05-1179, 164 Fed. Appx. 788 (10th Cir. 2006).; Human Rights Watch. No Equal Justice: The Prison Litigation Reform Act in the United States. Available at <https://www.hrw.org/sites/default/files/reports/us0609web.pdf>. Last accessed July 2, 2017.

⁴⁸ 42 U.S.C. § 1997e

⁴⁹ Americans with Disabilities Act of 1990, 101 P.L. 336

⁵⁰ American Civil Liberties Union. Banking on Bondage: Private Prisons and Mass Incarceration. Available at https://www.aclu.org/files/assets/bankingonbondage_20111102.pdf. Last accessed July 2, 2017.

⁵¹ U.S. Department of Justice, archives. Protection and Advocacy for Individuals with Mental Illness. Available at <https://www.justice.gov/archives/opa/blog/protection-and-advocacy-individuals-mental-illness>. Last accessed July 2, 2017.

psychiatric institutions and nursing homes.⁵² Therefore, as with public interest legal advocacy at large, the Protection and Advocacy system can make specific interventions, but does not have the resources to meet more than a minute fraction of the need for advocacy among incarcerated persons with disabilities.

Given the present landscape, in essence, while incarcerated persons with disabilities face substantial barriers to initiating legal action due to the exhaustion requirement, the limitations of relief to “narrowly tailored” individual remedies for specific plaintiffs⁵³ also minimize the prospect that incarcerated persons facing barriers to participation in legal action will be able to benefit from the broader field of prisoner rights litigation, without being able to secure legal counsel individually, or to pursue legal action without the benefit of an attorney. Additional provisions of the PLRA jeopardize either of these latter prospects.

Section 803 (7)(d) of the PLRA establishes a formula substantially limiting recovery of attorney’s fees from a defendant prison or jail, in the event that a lawsuit by an incarcerated person is successful.⁵⁴ Prior to the passage of the PLRA, under the Civil Rights of Institutionalized Persons Act and other relevant areas of criminal and civil law, attorneys in successful claims against prisons and jails could fund their work by taking cases on contingency. That is attorneys could represent clients -- particularly those who could not otherwise afford an attorney – without charge, and secure payment out of damage awards from prisons and jails. This option is vital for most incarcerated persons, as few incarcerated persons can afford to pay legal counsel privately, and there are too few attorneys available pro bono to meet the vast majority of the need for legal advocacy for incarcerated persons. The PLRA does not entirely negate this option; attorneys can still take cases on contingency, and secure payment from damage awards. However, the limitation on recovery to a fixed rate likely to be substantially lower than the norm prior to the PLRA has worked to ensure that attorneys representing incarcerated persons on contingency will need to work for relatively low wages, calculated to stay close to the federal standards for court-appointed attorneys, and notwithstanding the complexity of a given case.⁵⁵

Prospects for securing damages at all are also further limited by section 803 (7)(e) of the PLRA, commonly known as the “physical injury requirement”, which indicates that monetary relief from prisons and jails can only be awarded if the claim is based in whole or part on demonstrating the infliction of a physical injury or sexual act.⁵⁶ That is, claims for violations of rights, or for mental or emotional injuries in whatever form, cannot be the basis for damages, if the presence of a physical injury or sexual act is not substantiated. Absent showing of a physical injury or sexual act, incarcerated persons can still sue for non-monetary relief, such as court injunctions or orders. However, negating the

⁵² Disability Rights Arkansas. PADD - Protection and Advocacy for Persons with Developmental Disabilities. Available at <https://disabilityrightsar.org/about/padd-protection-and-advocacy-for-persons-with-developmental-disabilities/>. Last Accessed July 2, 2017.

⁵³ Slutsky, A. Totally Exhausted: Why a Strict Interpretation of 42 USC 1997e (a) Unduly Burdens Courts and Prisoners. *Fordham L. Rev.* 2004;73:2289.; American Friends Services Committee. Torture in United States Prisons. Available at https://www.afsc.org/sites/afsc.civicaactions.net/files/documents/torture_in_us_prisons.pdf. Last accessed July 2, 2017.

⁵⁴ 42 U.S.C. § 1997e(d)

⁵⁵ Klotz, Karen M., The Price of Civil Rights: The Prison Litigation Reform Act's Attorney's Fee-Cap Provision as a Violation of Equal Protection of the Laws. *Temple Law Review.* 2000;73.2:759-79

⁵⁶ 42 U.S.C. § 1997e(e)

possibility of monetary damages has the effect of both reducing the likelihood that penal institutions will be motivated to make systemic changes to avoid future suits, as well as reducing options for incarcerated persons to use a financial award to help cover costs associated with recovering from harms while incarcerated.

Both the limitation on attorney's fees, and the physical injury requirement have disability-specific implications. Relative to the former, competent legal representation in cases involving clients with more severe physical and mental health challenges can involve extra time and labor for legal counsel, for any of a number of reasons, including but not limited to challenges in communication related to client mental health, capacity, or speech or hearing impairment, and the work involved in documenting disability and consulting with clinical or social work partners. The federal statutory cap on attorney's fees advanced by the PLRA will generally mean that in instances where competent representation of a client with disabilities makes the time required for legal representation more extensive than it would otherwise be, finding legal representation will be that much harder. That is, incarcerated persons with disabilities will either need to be able to pay privately for legal representation (which most incarcerated persons cannot do), will need to find pro bono representation (which as noted, is in short supply) or will need to find attorneys willing to take on more complex and time-consuming cases on contingency, payable at a fixed low hourly rate in the event that damages are ever awarded. While the landscape for finding competent legal representation is relatively bleak for incarcerated persons at large, in essence, the presence of multiple or more severe disabilities minimizes the likelihood even further.

The physical injury requirement has several implications particularly for incarcerated persons with disabilities. Incarcerated persons with psychiatric, cognitive, and developmental disabilities are disproportionately vulnerable to many harms in detention facilities, not all of which will involve an immediate physical injury.⁵⁷ The limitations on attorney's fees, coupled with the requirement that any relief be narrowly tailored interact with the physical injury requirement to ensure that incarcerated persons with psychiatric disabilities will have difficulty securing counsel for cases not involving physical assaults or discrete injuries, that incarcerated persons with psychiatric disabilities will often not be able to secure damages associated with further damage to mental health, and that prison conditions which are especially hazardous to persons with disabilities will be very difficult to change systemically.

Multiple sections of the PLRA as noted create difficulties for incarcerated persons seeking counsel. As a result, at least some incarcerated persons in need of legal remedies will attempt to file legal claims on their own behalf, and represent themselves. Title 28, section 1915 of the United States Code allows incarcerated persons to file court cases "in forma pauperis", meaning that court filing fees can be waived.⁵⁸ Since most incarcerated persons earn almost no income, this provision is generally vital in order to ensure that lack of funding does not preclude most legal action initiated by incarcerated persons. Section 804 of the PLRA establishes penalties, including recovery of filing fees over time, for

⁵⁷ Human Rights Watch. Ill-Equipped: U.S. Prisons and Offenders with Mental Illness. Available at <https://www.hrw.org/report/2003/10/21/ill-equipped/us-prisons-and-offenders-mental-illness>. Last accessed July 2, 2017.; Human Rights Watch. Mental Illness, Human Rights, and US Prisons: Human Rights Watch Statement for the Record, Senate Judiciary Committee, Subcommittee on Human Rights and the Law. Available at https://www.hrw.org/sites/default/files/related_material/Human%20Rights%20Watch%20Statement%20for%20the%20Record_9_22_09.pdf. Last accessed July 2, 2017.

⁵⁸ 28 U.S.C. § 1915

incarcerated persons who attempt to file legal claims in forma pauperis, in several circumstances.⁵⁹ Although “frivolous or malicious” claims are one of the bases for penalty, two others include failing to properly state a legal claim, and attempting to seek monetary relief from someone immune from monetary damages.⁶⁰ In claims based on grievous and legitimate harms, which can survive all other obstacles posed by the PLRA, failing to state a claim properly, or being unfamiliar with the rules regarding administrative immunity from damages would in essence be very easy pitfalls for anyone without legal expertise. In other words, incarcerated persons who attempt to proceed with legal claims without the benefit of legal counsel, can face punitive and financial consequences. Section 804(d) of the PLRA, commonly known as the “three strikes” provision further indicates that if an incarcerated person has a claim dismissed on three occasions for any of these reasons, all future opportunities to file in forma pauperis will be barred, excepting claims based on an immediate threat of “serious physical injury.”⁶¹ Again, the filing fee provisions have disability-specific implications. While many incarcerated persons will have difficulty navigating court processes without benefit of counsel, for clients with reading disabilities, cognitive impairments, visual disabilities, some specific learning disabilities, as well as several forms of mental illness, the prospects for being able to file the paperwork properly will often be further reduced, or outright impossible, with resulting penalties, and the risk of losing the option to file in forma pauperis in later claims, if legal counsel is eventually secured. Attorneys and clinicians advising or consulting with incarcerated persons can reduce the risk of penalty (even where full legal representation has not been secured) by alerting incarcerated persons about the possibility of penalties in the event claims are filed without benefit of legal counsel.

Identifying and Documenting Disability

The statutory challenges raised by the PLRA are a major barrier to litigation to address prison conditions at large, with particular and disparate impact related to disability. However, attorneys and clinicians involved in cases on behalf of incarcerated persons with disabilities will also need to prepare for several challenges involved in legal action. The legal definitions of “disability” can include conditions which are immediately visible or detectable, and those which are “hidden” unless they emerge in specific circumstances, or the incarcerated person intentionally discloses the presence of disability.⁶² Disability can be present and affecting health, safety, and experience whether or not it has ever been diagnosed, and whether or not an incarcerated person has ever defined a particular physical, cognitive, or psychological condition as a disability, or understood it as such. The landscape is further complicated by the phenomenon of “disablement”⁶³, meaning that where the conditions of incarceration generate physical or psychological illnesses or injuries that are legally cognizable disabilities, practitioners working with incarcerated persons need to anticipate the likelihood that clients may have developed disabling conditions while incarcerated, many of which will not have been diagnosed, and have still-developing consequences. Excepting the rare instances where attorneys are cross-trained as clinicians or social

⁵⁹ 42 U.S.C. § 1997e, section 804.

⁶⁰ Ibid.

⁶¹ Jeffrey, Randal S. Restricting Prisoners' Equal Access to the Federal Courts: The Three Strikes Provision of the Prison Litigation Reform Act and Substantive Equal Protection. *Buffalo Law Review*. 2001:49.3:1099-1162.

⁶² Americans with Disabilities Act of 1990, 101 P.L. 336

⁶³ Stewart, Jean & Russell, Marta. Disablement, Prison, and Historical Segregation. *Monthly Review: An Independent Socialist Magazine*. 2001:53.3

workers, the frequent possibility of emerging and undiagnosed disabilities is one key reason why partnership between legal practitioners and non-legal practitioners (including social workers, case managers, mental health clinicians, or other healthcare providers) can be vital in preparing to recognize the presence and needs of incarcerated persons with disabilities, and to fully explore the legal options available to incarcerated persons with disabilities.

Practitioners working with incarcerated persons at large therefore should be aware of the potential need to screen for the presence of disability, and to anticipate challenges and considerations involved in doing so. Such challenges include deficits in access to comprehensive diagnostic tools and appropriate practitioners needed to identify disabilities while operating within the institutional setting of a detention facility, privacy considerations and other emotional and psychological risks or sensitivities involved in diagnosis or identification of disability, and emotional and physical safety considerations for clients associated with disability stigma in the institutional setting.

Legal and social service advocates should anticipate prospective challenges in the diagnostic process for incarcerated persons, on several fronts. First, prisons and jails typically will have substantial limitations in terms of onsite resources – both relative to equipment and personnel – needed for more complex diagnostics.⁶⁴ Advocates need to be prepared for the following challenges:

- Mis-diagnosis or incomplete diagnosis will be common problems absent comprehensive access to testing resources and personnel. That is, conditions may be mis-labeled in lieu of adequate information for accurate diagnosis.
- There will commonly be some resistance to securing access to off-site diagnostics (whether based on transport of incarcerated persons, or coordinating site visits from off-site personnel) based on expense, security concerns, or administrative burden. Advocates will often need to prepare strong justifications, based on medical necessity, health, and safety, and application of relevant law, in order to overcome such resistance.
- Outside of detention contexts, healthcare institutions will provide some access to health education as part of the process of delivering diagnostic results. However, there is also an unspoken presumption that patients will generally be able to learn and access information at will, through resources available to the public. Since access to communications and educational materials are so restricted in penal settings, and availability of healthcare and health education personnel may also be more restricted, advocates may need to be prepared to advocate for client access to educational content or consultation needed to comprehend and respond to diagnostic information. Legal and clinical advocates may again need to be able to make the case for the necessity of such access as an accompaniment to basic diagnostic results, using relevant law, and grounded in arguments related to medical self-care, safety and management of health conditions.

Legal and clinical advocates should also be prepared for client sensitivities and concerns regarding medical, psychiatric, and disability diagnoses. The Americans with Disabilities Amendment Act of 2008 (ADAA) substantially expanded and clarified U.S. Congressional legal recognition of a wide range of medical, cognitive and psychiatric conditions as “disabilities” for the purposes of membership in the

⁶⁴ Human Rights Watch. Ill-Equipped: U.S. Prisons and Offenders with Mental Illness. Available at <https://www.hrw.org/report/2003/10/21/ill-equipped/us-prisons-and-offenders-mental-illness>. Last accessed July 2, 2017.

protected class of persons with disabilities and corresponding access to disability-based civil rights.⁶⁵ While not all possible medical or psychiatric conditions will presumptively qualify as disabilities under U.S. legal definitions, the current state of civil rights law enables recognition of conditions as disabilities whether they are constant or intermittent, permanent or temporary, whether or not they can be mitigated by assistive devices, medications or technologies, and without any presumption that a condition must be very extreme or severe to be legally cognizable. Provided a condition “substantially affects” at least one “major life activity” or compromises a bodily system or organ, and the condition has been documented, the basic legal standard for acknowledging the presence of “disability” is met.⁶⁶ By this standard, and given prior discussion of the disproportionate incarceration of people with disabilities in the U.S., and the generation of new disabilities due to the conditions of incarceration, legal and social advocates will often be able to rightly presume that among incarcerated persons, the presence of at least one legally cognizable disability is normative, rather than exceptional.

Despite the fact that the presence of disabilities among incarcerated persons is “normal” in the sense of frequent occurrence, attorneys and social service professionals will not necessarily be able to assume that any given incarcerated person who could legally claim to have a disability will in fact self-identify with the term or idea of disability. That is, having a disability by medical and legal definitions will not necessarily mean that a person is comfortable with the idea of being disabled or having a disability.

Although certain rights and resources are attached to disability through U.S. law, legal and clinical advocates should also remain aware that social stigma, and prospective vulnerabilities or social penalties often also attach to disability.⁶⁷ Therefore, inviting an incarcerated person who does not already identify as “disabled” or as a “person with a disability” to make a disability-based legal claim will generally have social and psychological import. Psychological responses to the label “disability” will vary of course, but commonly may include discomfort associated with stereotypes of weakness or incapacity, trauma or grief associated with feeling damaged in instances when disability developed due to prison conditions or other violent or harmful life experiences, fear and anxiety associated with the medical implications of particular diagnoses, and general aversion to the idea of disability as negative.⁶⁸ Ethno-racial, religious, gender, sexual and class identities can also complicate the experience of identifying with disability. For instance, for some men identifying with illness or disability can feel like a threat to masculinity, based on the notion that masculinity is not compatible with vulnerability.⁶⁹ Some women and people of color may also struggle with identification with mental illness particularly, as stereotypes about being “crazy” or “out of control” can have either or both gendered and racial connotations, due to popular stereotypes regarding insanity or emotional disturbance.⁷⁰ So laying claim to a psychiatric disability can essentially feel like playing into a gender and/or racial stereotype. Incarcerated persons from poverty- and working-class backgrounds, who are disproportionately people of color, may also

⁶⁵ ADA Amendments Act of 2008, 110 P.L. 325

⁶⁶ ADA Amendments Act of 2008, 110 P.L. 325

⁶⁷ Bagenstos, Samuel R. Subordination, Stigma, and ‘Disability.’ *Virginia Law Review*. 2000:86.3:397–534.

⁶⁸ Human Rights Watch. Ill-Equipped: U.S. Prisons and Offenders with Mental Illness. Available at <https://www.hrw.org/report/2003/10/21/ill-equipped/us-prisons-and-offenders-mental-illness>. Last accessed July 2, 2017.

⁶⁹ Sandahl, C. Black Man, Blind Man: Disability Identity Politics and Performance. *Theatre Journal* 2004:56.4:579-602

⁷⁰ Nelson, Camille A. Of eggshells and thin-skulls: a consideration of racism-related mental illness impacting Black women. *International journal of law and psychiatry*. 2006:29.2:112-136.

generally feel distrust, anxiety or uncertainty regarding medical diagnoses, based on past experiences with medical neglect, indifference, discrimination, or malpractice within the context of substandard healthcare.⁷¹

Medical privacy is somewhat limited in U.S. incarceration. While the Health Information Portability and Accountability Act does apply in at least some penal institutions to an extent, unauthorized disclosure of personal health information (meaning without the consent of the individual incarcerated person), is legally permissible specifically in the context of incarceration, in a number of circumstances.⁷² However, incarcerated persons do have still have some privacy rights, despite those constraints. Advancing a legal claim based on disability will prospectively require surrendering at least some personal medical information as part of the process of documenting disability and advancing legal action. That is, using disability as part of the basis for legal advocacy will not always be compatible with maintaining privacy (where it already exists) regarding the experience of disability and the medical or clinical details of diagnosis.⁷³ Legal and clinical advocates will therefore need to be prepared to recognize and demonstrate sensitivity to client concerns regarding identifying or claiming the label “disability”, before and after a client potentially consents to assert disability as a basis for legal advocacy. Legal-clinical partnerships are especially helpful in this regard, to ensure that clients are supported and well-prepared to make decisions to pursue disability-related legal claims or actions.

Disability, in U.S. penal systems, is heavily associated with increased risk of vulnerability to violence and victimization while incarcerated, including physical and sexual assaults, and harassment.⁷⁴ Practitioners working with incarcerated persons will need to be mindful that pursuing a disability diagnosis (where a condition is presently undiagnosed) could in at least some instances, potentially increase the vulnerability of that person to disability stigma and related forms of violence and abuse while incarcerated, as well as potentially having social or employment implications after release. The benefits of diagnosis may still be primary, even aside from the prospects for legal advocacy, particularly if diagnosis is a precondition for securing needed treatment. However, collectively assessing the potential risks and benefits of pursuing and formalizing a disability diagnosis should be part of the advocacy process.

After diagnosis, advancing a legal claim or asserting disability-based legal rights (such as a request for reasonable accommodation) often requires disclosure of disability-based information, some of which may have been private previously. Therefore, if a client decides to proceed with legal action, attorneys and social service partners will need to prepare – particularly in instances where disability-related information is not already public or obvious within the incarceration context – for discussion with clients about any concerns regarding physical or emotional safety once disability diagnosis or previously private information is shared with staff, potentially exposed to other incarcerated persons, or to other actors involved in the legal systems. In instances where an incarcerated person does express concern, or in instances where practitioners identify likely significant risks, practitioners and clients can

⁷¹ Villazor, Rose Cuison. Community Lawyering: An Approach to Addressing Inequalities in Access to Health Care for Poor, of Color and Immigrant Communities. *New York University Journal of Legislation and Public Policy*. 2001:8.1:35-62

⁷² Health Insurance Portability and Accountability Act of 1996, 104 P.L. 191

⁷³ Cohen, Fred. The mentally disordered inmate and the law. *Civic Research Institute*. 2008:1

⁷⁴ WHO, W., 2011. World report on disability. *Geneva: WHO*.

ideally plan ahead about legal and practical steps to take in the event of any threat or indication that the client is experiencing harm or in danger.

Communicating with Incarcerated Clients with Disabilities

As indicated in the American Bar Association Model Rules of Professional Conduct regarding Communications (Rule 1.4), in legal action and consultation, clients have a right to be reasonably informed about the progression of legal processes, and to be apprised of any information needed in order to provide informed consent, or make informed decisions.⁷⁵ The presence of one or more disabilities, depending on the specific disabilities and other factors, may not be any impediment to successful communication. However, attorneys should be prepared for the possibility of challenges to or considerations in communication with persons with disabilities, and may need to work actively with social service or clinical providers, to ensure communication is successful. Although there may be additional examples, communications challenges will usually fall into three broad, and sometimes overlapping categories: a) challenges related to speech, hearing or other motor or sensory impairments, b) challenges related to cognition (including concentration, comprehension, and capacity), and c) other challenges related to mental health.

When working with clients with conditions or disabilities that affect speech or hearing, advocates should be basically familiar with and prepared to assist in securing any needed assistive devices, technologies, or other supports (including access to an interpreter) needed to ensure that clients are able to participate as fully and normally as possible in communication. In some instances, securing resources needed for communication will necessitate advocacy or legal action, before other concerns or sites for advocacy can be addressed. Legal advocates who do not already have sufficient awareness of communications-related accommodations, assists, and technologies, should seek collaboration or consultation with social service professionals as needed, or where appropriate, family or community members who possess the relevant expertise. Other motor or sensory impairments may affect communication.⁷⁶ For instance, practitioners should be prepared to work with visually disabled persons in securing or providing forms or print communication in an accessible format where possible and practical, or to advocate for and work with clients who are unable to hold phones due to disabilities that affect motility or muscle control.

Challenges related to cognition are not uncommon and can particularly include memory or concentration deficits due to traumatic stress or other disabilities or injuries, as well as difficulties processing or interpreting information, or general challenges in comprehension due to cognitive

⁷⁵ American Bar Association. *Client-Lawyer Relationship: Rule 1.4 Communication*. Available at https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_4_communications.html. Last accessed July 2, 2017.

⁷⁶ Kroll, T., Jones, G. C., Kehn, M. and Neri, M. T. Barriers and strategies affecting the utilisation of primary preventive services for people with physical disabilities: a qualitative inquiry. *Health & Social Care in the Community*. 2006:14:284–293.; Nind, Melanie. Conducting qualitative research with people with learning, communication and other disabilities: Methodological challenges. *Project Report: National Centre for Research Methods*. 2008

impairments, developmental disabilities or other conditions that affect intellectual capacity.⁷⁷ There is no singular template for how to best interact with clients with such challenges. However, the following are some considerations and strategies that will generally be relevant in recognizing and planning for effective communication.

- Practitioners should be mindful of the possibility that information will need to be repeated, re-stated, or presented in a combination of formats in order to compensate for deficits in memory, concentration, or comprehension. This may remain true, even if it initially appears that the client has grasped information, and/or is generally of average or above-average intelligence. Gratuitous and unsolicited repetition may backfire, running the risk that clients will feel condescended to or bombarded with communication. However, it can be helpful for practitioners to remind clients of particular questions, issues, or subjects bearing on the legal process, and to either ask whether review is helpful, or to invite clients to state their understanding of the issue, in order to determine if the client is fully aware of relevant information.
- In partnerships between legal and social service or clinical advocates, it may be helpful to prepare for meetings with clients by having the attorney first explain the relevant legal issues to a social service or clinical partner, and then consult with the clinician, social worker, or case manager about how best to translate, frame, or explain the issues to the client – particularly when working with clients with diminished capacity or challenges affecting comprehension.
- In determining whether a client with cognitive challenges is “informed” for the purposes of being able to provide informed consent, practitioners should minimally review the following factors:
 - Can the client identify and understand the primary aims or goals of legal action?
 - Is the client able to identify or demonstrate comprehension of any risks or challenges associated with legal action? If so, does the client demonstrate awareness of what legal, social, emotional medical, economic or other consequences could be associated with those risks, in worst-case scenarios?
 - Is the client able to recognize and comprehend the likelihood that the goals or aims of legal action can be achieved (to the extent that likelihood can be predicted by legal counsel)? For instance, if there is a possibility that advancing a legal claim will be successful, but a far stronger likelihood that it will fail, is the client able to recognize and consider those relative probabilities?
- In instances where capacity is so diminished that a client cannot provide informed consent or make legal decisions consistently, or cannot do so without assistance from parties other than legal counsel, in accordance with (ABA model rule), attorneys should be prepared to work actively with clinicians and other parties with legal standing to make decisions for the client, while still to the extent possible, preserving opportunities for clients to remain engaged and informed.⁷⁸ Practitioners should be mindful that even when diminished capacity is present,

⁷⁷ Nind, Melanie. Conducting qualitative research with people with learning, communication and other disabilities: Methodological challenges. *Project Report: National Centre for Research Methods*. 2008

⁷⁸ Kroll, T., Jones, G. C., Kehn, M. and Neri, M. T. Barriers and strategies affecting the utilisation of primary preventive services for people with physical disabilities: a qualitative inquiry. *Health & Social Care in the Community*. 2006:14:284–293.; Ortoleva, Stephanie. Inaccessible Justice: Human Rights, Persons with Disabilities and the Legal System. *ILSA Journal of International & Comparative Law*. 2011:17.2:281-320.

some clients may still be able to engage in competent decision-making with appropriate assistance as opposed to total loss of legal autonomy; client independence should be preserved where it is possible to do so without putting client health and safety at significant risk.

When working with incarcerated persons, including those who have not already been identified by counsel or other parties as mentally ill, practitioners should be routinely aware of the likelihood that at minimum, due to experiences of incarceration, clients will be grappling with some mental health challenges. Practitioners should also be aware that mental health issues can affect and impede communication with clients. Broadly, mental health related challenges in communication can fall into the following categories:

- **Dissociation:** As noted in the prior sub-section, traumatic stress can sometimes contribute to deficits in memory or concentration. Elaborating on this theme, whether mental health issues pre-existed incarceration, or developed in response to the conditions and experience of confinement, it is not uncommon for some incarcerated persons to cope with the traumas associated with incarceration by become disconnected or detached, regularly or intermittently. In some instances, dissociative states – that is where a person is substantially disconnected from emotional or in some instances physical experience, or where a person is disconnected from or “numb” to external realities – can be extreme enough that even when a client is able to hear and cognitively understand communication, decision-making and communication may not be functional.⁷⁹

More specifically, normative decision-making involves simultaneous deployment of a set of cognitive skills and emotional responses. People make use of various aspects of cognition to develop an understanding of the relationships between different facts, and to predict possible outcomes based on available information, and pre-existing beliefs or expectations. However, choices and decision-making also involves processing emotional responses in order to identify whether outcomes are desirable, frightening, or involve difficult or challenging costs, and in order to assess the individual’s own needs and priorities. More severe dissociation can disrupt the process of decision-making, as a person is essentially unable to complete the aspects of decision-making that would normally require being to some extent, emotionally present or aware, or more fully engaged with external events.⁸⁰ To the extent that a dissociative state is detectible in immediate interaction with a non-clinician (in some instances it will not be), a client might appear apathetic or disinterested, or alternately might just seem very distracted or “out of it”. Persons in dissociative states may also not be as prepared to ask the questions needed to clarify information, in order to eventually make decisions or provide genuinely informed consent. Absent communication from a client about gaps in comprehension or engagement, the risk is higher that practitioners will be unaware that dissociation is compromising communication or decision-making.

- **Distorted perceptions:** Perception is subjective and malleable under any circumstances. It is possible for a person who is relatively mentally healthy to have deficits in comprehension, memory or awareness of context, and similarly for a person dealing with severe mental illness

⁷⁹ Perlin, Michael L. 'Striking for the Guardians and Protectors of the Mind': The Convention on the Rights of Persons with Mental Disabilities and the Future of Guardianship Law. *Penn State Law Review*. 2013; NYLS Legal Studies Research Paper No. 12/13 # 54;

⁸⁰ Bechara, Antoine. The role of emotion in decision-making: evidence from neurological patients with orbitofrontal damage. *Brain and cognition*. 2004:55.1:30-40.

to be, at least in some circumstances, acutely perceptive, and able to accurately comprehend context, intent, and import of facts, information or events. Without oversimplifying the relationships between perception and mental health, practitioners working with incarcerated persons dealing with severe or substantial levels of mental illness will need to anticipate the possibility that at least for some clients, mental illness may interfere with or shape perception in a manner that could compromise decision-making, or create challenges in communication. For example, prior traumatic experiences could skew a client's perception of the possibility of a negative or positive outcome, or specifically might result in a client "tuning out" or denying facts, risks, or information that causes distress, or alternately, experiencing a heightened or exaggerated sense of the danger, risk or import associated with legal action or related choices. In the presence of severe mental illness, perception of practitioners – their intentions, roles, or relationships to the client – may also be substantially influenced by mental illness, and this can shape perceptions of information and communication shared by or with practitioners, or inhibit clients from asking questions, raising concerns or collaborating in advancing their legal interests.

- Distress and trauma: Even in instances when clients are substantially connected to immediate concerns, and relatively able to perceive relevant information (and often when clients are not), practitioners will need to be prepared for the prospect that clients will be experiencing distress and/or trauma when communicating and interacting with practitioners. Practitioners should be aware that in some instances client stress or distress is unavoidable – essentially an inherent reaction to the difficulties of incarceration for persons with mental illnesses or disability. Therefore, it is not a presumptive goal of legal (or clinical advocacy) to always avoid the risk of distress, regardless of other legal, medical or social considerations. However, anticipating the possibility, and having a repertoire of strategies ready to respond ethically and constructively while still advancing a client's legal interests, should be an over-arching goal. Some such strategies will not necessarily be viable or appropriate to provide by legal practitioners alone, so again, clinical/legal or social service/legal practitioner partnerships are optimal, in developing strategic responses to client distress and trauma. Some common issues practitioners may want to prepare for include (but are not limited to):
 - *Client's fear and distress about participating in legal processes or action, for fear of possible retaliation:* Note that in incarceration contexts, it is not unwise to anticipate the possibility of retaliation, whether from institutional staff or other incarcerated persons (depending on the legal issues at hand). However, clients with substantial mental illness, especially those related to prior experiences of trauma, may have strong traumatic reactions to the prospect of backlash, punishment or retaliation grounded in prior or ongoing experiences of loss, violence, or victimization.
 - *Client's emotional fatigue or limited emotional resources regarding the stresses and challenges of legal action:* Living with mental illness, even under more supportive or lower-stress conditions than those experienced by incarcerated persons, takes a psychological and physiological toll. For this reason, some mentally ill persons may have more limited capacity to manage or adjust to additional stressful events, become overwhelmed and distressed in response to various events and processes, including those inherent in advancing or participating in legal action.

- *Client reactions to practitioners:* Aside from client reactions or distress in response to the prospects and experience of legal action, legal and social service practitioners should also anticipate the possibility that some clients will experience distress or traumatic reactions in response to practitioners themselves, based on a range of issues, including but not limited to perceptions and ideas associated with client and practitioner demographics such as gender, ethnicity and race, age, socio-economic status, or disability, prior experiences of vulnerability with legal or medical providers, or other persons on whom the client was dependent or vulnerable for support or advocacy, or general panic, distrust or fear related to experiences with other persons in the institutional context. Manifestations of such distress might involve aggressive communication or explicit displeasure, but might as easily involve passivity and fear of upsetting or displeasing practitioners. Relative to obtaining informed consent, practitioners should be mindful that in the most extreme instances, clients can be vulnerable to coercion (even if entirely unintended on the practitioner's part), if for instance, the fear of displeasing a practitioner by going against legal or clinical advice overrides the capacity for independent decision-making. Although specific strategies for responding to clients in these circumstances will be contextual, practitioners can generally be mindful that remaining calm, validating client concerns, and responding non-defensively to client distress are generally helpful responses. Honesty and consistency in sharing information and keeping any commitments (and accountability in the event that the practitioner has to, for instance, break a commitment) are also helpful goals to prioritize, as they can help clients develop more comfort in working through concerns or distress in the context of the client/practitioner relationship.

Identifying and Mitigating Risks to Clients Associated with Legal Advocacy

Incarcerated persons with disabilities face a compound set of risks associated with the conditions of incarceration and in some instances additional medical vulnerabilities.⁸¹ Some of these risks will be exacerbated or triggered by legal action. If practitioners are lax about anticipating those risks, and assisting clients in preparing for them where possible, negative consequences can include both harms to client physical and/or mental health, and the prospect that clients will not be able to participate in legal action or processes effectively, or at least that client participation will be compromised by distress, fatigue, confusion, or illness. In relating to this vulnerable population, attorneys should be mindful that in interpreting the requirements of “diligence” and “competence” mandated under most contemporary approaches to legal ethics, preparation of vulnerable clients with disabilities for the process of legal action should be understood as a part of competent and diligent lawyering, in many instances just as essential to effective representation as familiarity with relevant doctrine and procedure. The American Bar Association for instance, specifically identifies competence in

⁸¹ Vallas R. Disabled Behind Bars: The Mass Incarceration of People with Disabilities in America's Jails and Prisons. Available at <https://cdn.americanprogress.org/wp-content/uploads/2016/07/18000151/2CriminalJusticeDisability-report.pdf>. Last accessed May 27, 2017

the client-lawyer relationship as requiring the “thoroughness and preparation reasonably necessary for the representation”, in Rule 1.1 of the Model Rules of Professional Conduct.⁸²

When working with incarcerated persons with disabilities then, competent legal representation will at least require a) maximizing the prospect that the client is aware of the risks associated with legal action and b) prepared where possible to weather the stresses associated with processes such as hearings, depositions, and negotiations in order to minimize the risk that such stresses will compromise decision-making, capacity to give testimony, or capacity to advance the client’s own interests. Although attorneys working with this population should understand “competency” in this light, it should be noted again that not all attorneys can or should be able to be solely responsible for anticipating or addressing the complex needs of mentally ill incarcerated persons. The integration of legal advocacy with those aspects of clinical care or social service needed to allow the client to engage with legal action more safely, and more effectively relative to their legal interests, is generally optimal, where possible. That is, attorneys working with this population should be anticipating that thorough representation will often require collaboration and partnership with non-legal advocates or practitioners, to the extent practically possible, as an optimal aspect of “preparation”.

A primary purpose of such a partnership involves maximizing and integrating advocacy for a client’s interests, on legal, social, and medical fronts. As noted, proper support and anticipation of client’s health and disability based needs can contribute to effective and potentially successful legal action, by improving the client’s physical and psychological endurance while experiencing the stressors accompanying legal processes, facilitating better attorney-client communication, and potentially by increasing the client’s resilience and ability to remain calm and focused while making decisions or giving testimony. Practitioner partnerships also can help to mitigate or minimize risks of negative health effects otherwise likely to result from the stress of legal action or processes, thereby eliminating or at least reducing the potential conflict between a client’s legal and health interests.⁸³ Given the complexity and variability of health and disability based needs, there can be no common template applicable to all client circumstances. Not surprisingly, part of the purpose of clinical/legal or social service/legal partnerships will therefore be to assess the client’s needs, concerns and capacities and to tailor advocacy strategies to that client in her or his context.

However, some basic areas for consideration in advancing an assessment of risks associated with legal advocacy are delineated below. These areas are starting points, but are not necessarily exhaustive, and practitioners should be prepared to adapt risk assessment to the client’s specific conditions, for instance through open-ended questions about client concerns.

- Challenges associated with informed consent, decision-making and capacity: Practitioners should work with clients to identify any obstacles to or considerations affecting capacity to give consent for legal representation and action, to make relatively independent decisions, or to comprehend practitioner-client communications. These can include communication barriers, literacy challenges, coercion by other parties, or mental health related challenges, such as those

⁸² American Bar Association. *Client-Lawyer Relationship: Rule 1.1 Competence*. Available at https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence.html. Last accessed July 3, 2017.

⁸³ Massoglia, M. Incarceration as Exposure: The Prison, Infectious Disease, and Other Stress-Related Illnesses. *Journal of Health and Social Behaviour*. 2008;49.1:56-71.

discussed in the prior sections on communications. Solutions may in some instances be as simple as obtaining more accessible documents or reading materials, or listening and responding to client concerns. In other instances, practitioners may need to assess more complicated factors affecting capacity. It should be noted that the legal standard for “diminished capacity” will not encompass all instances where disability or other issues have some disruptive or inhibiting effect on capacity or decision-making. And in accordance with Rule 1.14 of the American Bar Association Model Rules of Professional Conduct, even where diminished capacity is present, attorneys should attempt to preserve “normal” aspects of the attorney-client relationship (including client decision-making) to the extent possible, without doing serious harm.⁸⁴ The goal of assessing capacity and decision-making ability in most instances should not result in erosion of client autonomy or opportunities to give consent or make decisions.⁸⁵ Rather, assessment should focus on identifying obstacles, with the goal of mitigating or overcoming such obstacles through legal or clinical counseling, collective collaboration in decision-making where appropriate and desired by the client with other support persons (e.g. involved family or community members), additional time where needed to allow clients to process or consider information, or provision of other health resources needed to improve client mental health or support cognition.

- Risks to safety due to immediate conditions of confinement: Part of the process of preparing for legal action should involve assessment of immediate and serious threats to physical or psychological safety that might disrupt or prevent client participation in legal action, or are otherwise urgent, whether or not those conditions are the subject of that legal action. Confinement is notoriously unsafe, with higher rates of risk of various forms of violence (such as prison rape or battery) for certain vulnerable populations, including persons with disabilities as well as youth, LGBT persons, and people who have been in systems of prostitution.⁸⁶ For persons with physical and mental health conditions requiring access to various forms of treatment, such as medication, deprivation of appropriate health resources can also constitute an immediate danger to physical and/or mental health. Areas requiring assessment may also include harassment, severe isolation, or deprivation of basic resources (e.g. nutrition, hygiene). Next steps once risks are identified will necessarily be contextual, but should at least include review of any legal or other options for eliminating or mitigating risks, identification of resources needed to manage or address any harms that have already been inflicted (such as counseling or medical treatment), and discussion of whether and how to proceed with legal action, particularly if there are risks that cannot be eliminated or substantially mitigated.
- Risk of retaliation: Retaliation against incarcerated persons who initiate legal action, or who participate (for instance, as witnesses) in legal proceedings should be understood as a common risk for incarcerated persons. Not all potential risks of retaliation can readily be anticipated. However, legal and clinical or social service advocates should be prepared to review possible retaliatory dynamics, and to plan with clients about how to document, respond to, and mitigate any retaliatory acts. Retaliation can be initiated by institutional staff, or may involve harassment,

⁸⁴ American Bar Association. *Client-Lawyer Relationship: Rule 1.14 Client with Diminished Capacity*. Available at https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_14_client_with_diminished_capacity.html. Last accessed July 3, 2017.

⁸⁵ Ibid.

⁸⁶ McDonald, CeCe. *Captive genders: Trans embodiment and the prison industrial complex*. AK Press. 2015.

violence, or other harmful acts by other incarcerated persons. The institution may still bear some responsibility and legal liability for acts initiated by other incarcerated persons, to the extent that those actions were foreseeable, and staff were negligent in preventing or responding to harms perpetrated between incarcerated persons.⁸⁷ In addition to reviewing client legal rights and possibilities for legal advocacy in the event that retaliation occurs, clinical and/or social service advocates should work with a client and attorney where possible to plan for accessing or advocating for any health or recuperative resources needed to mitigate harms. Clinical advocates can also contribute to legal interventions to respond to threats of or acts of retaliation, as rapid documentation by a clinician of the mental and physical health consequences of retaliation, or of the stress associated with the threat of or fear of retaliation, can substantially improve prospects for securing relief through legal institutions. Regular clinical or social service consultations can be particularly helpful in logging and documenting harms to client health over time as they are connected to specific events, in order to build the case for legal remedy or relief, and to better establish a causal relationship between violence or negligence by a penal institution, and cumulative damage to health or the development of disability. Practitioners should be prepared to recognize and anticipate retaliation in many forms, including:

- physical or sexual violence,
 - harassment,
 - theft of property,
 - loss of status (i.e. good behavior or “good time” credit) or filing of false reports significant for the purposes of assessing parole prospects or other privileges,
 - deprivation of privileges such as visitation rights, access to the outdoors or any recreational resources, or educational or vocational resources,
 - deprivation of basic resources such as nutrition, clean clothing and bedding, healthcare, disability assistive devices (e.g. glasses, wheelchairs or canes), or access to showers or hygiene resources,
 - or threats of any of the above.
- Physical and mental health risks associated with stress: In addition to assessing urgent safety issues and potential for retaliation, when working with clients with disabilities, discussion of the client’s health or disability-based vulnerabilities, to the extent that the client is comfortable and able to do so, can be important in making informed decisions regarding legal action and proceedings. That is, to the extent that the client has choices about particular courses of action, one aspect of conscientious and healthy decision-making will involve considering the potential stress costs or health consequences associated with each possible choice or outcome in order to assess whether the client feels able to shoulder or manage stressors associated with particular choices, to identify any available resources to mitigate such stress, and to invite the client to consider her or his own best interests comprehensively, inclusive of legal, social, medical, and any related concerns. In instances where clients are not able to or comfortable with discussing medical or psychological vulnerabilities and capacity to manage stress (which can be a sensitive subject), attorneys and partnering clinicians or social service professionals can still assist clients by alerting them to factors that are prospectively important to prepare for, such as combative or

⁸⁷ Farmer v. Brennan, 511 U.S. 825 (1994)

adversarial aspects of legal proceedings, security procedures associated with court appearances, time delays, confusing or intimidating aspects of legal proceedings and language, relative prospects for desired or undesirable outcomes, potential responses from institutional staff or other incarcerated persons to the client's choices or participation in legal processes, limitations of available forms of relief or remedy and any other vulnerabilities a client is likely to experience during particular legal proceedings. Acknowledging some of the ways that other or past clients have experienced the challenges of legal action, including discussion of frustration, stress-related health challenges such as getting sick more often or having more difficulty sleeping, or prolonged feelings of vulnerability can sometimes be useful. Practitioners can also acknowledge, where applicable, that not pursuing legal action or exercising legal rights may also prove stressful; the aim is to consider the relative costs and benefits, not necessarily to frame legal action as presumptively the least healthy or most stressful choice. The purposes of such examples include inviting the client to become and feel more prepared, as well as helping normalize or validate potential subsequent reactions, without the client having to expressly acknowledge his or her own vulnerabilities to practitioners. The aim of such discussion should never presumptively be to discourage the client from exercising decision-making, or potentially pursuing a course likely to be relatively stressful. However, advance and ongoing consideration of client health and disability-related concerns can reduce the risk that legal action will ultimately be unsuccessful or unable to proceed due to client deterioration, as well as helping clients become more prepared to manage stress, and to communicate health and disability concerns to legal, clinical or social service advocates.

What are the Options?: Prospects for Advocacy Using Existing Federal and State Law

Incarcerated persons with disabilities can experience a broad range of needs for legal advocacy, some of which are not, or not as directly, linked or related to disability. In addition, as discussed earlier, disability-related advocacy can broadly fall into three categories including advocacy for disability-related needs, advocacy to address discrimination, harassment, exploitation or violence against incarcerated persons with disabilities, and advocacy to address conditions of confinement that are disabling, in the sense of generating or escalating injuries or illnesses, whether physical or mental. Practically of course, these categories may overlap. For instance, an incarcerated person with a developmental disability might be targeted for violence by staff or other incarcerated persons, might develop depression or post-traumatic stress disorder as a result, and might be denied appropriate access to counseling and other clinical resources needed to address the new mental health challenges. In this instance, comprehensive legal advocacy would essentially encompass all three areas, as pre-existing disability became a basis on which an incarcerated person was targeted and harmed, the harms created an additional disability/mental health issue, and the institution then failed to properly address the incarcerated person's health/disability-related needs for appropriate healthcare or disability resources.

Identifying the most promising or effective legal strategies available will sometimes remain limited to the most classic tools available in prisoner rights litigation, including but not limited to 8th amendment or other Constitutional claims, torts litigation, or litigation advanced under 42 U.S. Code section 1983 (civil action for deprivation of rights) or other areas of the Civil Rights of Institutionalized Persons Act. However, even when these areas of law are primary resources, advocacy for incarcerated

persons with disabilities can sometimes be coupled with or strengthened by incorporation of claims grounded in disability law. In addition, whether or not disability law as such is a primary legal instrument in play, practitioners should be prepared to consider where a disability-conscious approach to legal advocacy might strengthen a claim. For instance, documentation of disability may become a basis for equitable tolling of a statute of limitation, clinical and individual testimony regarding disabling consequences of violence, negligence or deprivation can serve as a powerful evidentiary basis for relief or remedies, and evidence supporting the contention that an institution was aware of an incarcerated person's disability based vulnerability can potentially strengthen a claim for failure to protect that incarcerated person from related harms, or for deprivation of needed resources. The remainder of this section reviews some prospects for using disability law to strengthen advocacy for incarcerated persons, and then reviews potential benefits of intentionally incorporating evidence regarding disability into legal advocacy, whether or not disability law as such is a primary basis for particular legal claims.

Applications of Federal Disability Law in Federal and State Detention Facilities

The Supreme Court's 1998 decision in *Pennsylvania Department of Corrections v. Yeskey* struck down an attempt by a state prison system to contest the application of the Americans with Disabilities Act to state-run prisons and jails.⁸⁸ Since the *Yeskey* decision, it has been better understood that U.S. penal institutions are expected to comply with disability civil rights and anti-discrimination laws, though of course the applications of any civil rights instruments in U.S. detention facilities are limited by the Prison Litigation Reform Act and similar state legislation, and by various obstacles to effective prisoner rights litigation. However, before and since 1998, several areas of legal doctrine serve as the basis for existing disability-based advocacy for incarcerated persons using civil rights legislation, equal protection law, and other relevant instruments to address the rights and needs of persons with disabilities. Before reviewing the major frameworks, it should be prefaced that individual states may sometimes have statutes that provide rights or remedies not available either through federal statutes or U.S. Constitutional Law. It is also worth noting again that the Prison Litigation Reform Act restricts legal action through federal courts, but does not apply to legal action proceeding only under state law and through state courts.⁸⁹ While some states have passed state-level legislation similar to the federal Prison Litigation Reform Act, many states do not operate with such restrictions on prisoner legal action.⁹⁰ Therefore, when developing a legal strategy for advocacy outside of federal prisons or penal institutions, advocates should consider whether federal law (either solely, or in combination with state law) provides the best prospects for successful legal action and appropriate remedies, or whether a legal action proceeding only under state law might be most effective. In states without state-level legislation equivalent to the PLRA, but with existing statutory protections for the rights of incarcerated persons and/or persons with disabilities, the option of proceeding without using federal law may be particularly appealing.

Provided that the legal advocate, client, and any collaborating parties have decided to proceed using federal law (only, or in combination with claims based in state law), there are then several areas of

⁸⁸ *Pennsylvania Department of Corrections v. Yeskey*, 524 U.S. 206 (1998)

⁸⁹ 42 U.S.C. § 1997e

⁹⁰ Brill, Alison. *Rights Without Remedy: The Myth of State Court Accessibility After the Prison Litigation Reform Act*. *Cardozo L. Rev.* 2008:30:645.

disability-based litigation commonly used in advocacy for incarcerated persons. Existing areas of disability law that operate in U.S. prisons, jails, and other detention facilities include the Americans with Disabilities Act (ADA)⁹¹, and the Rehabilitation Act.⁹² In addition, disability legal claims can prospectively be advanced using Constitutional Law, using either 8th amendment litigation, or due process and equal protection (5th and 14th amendment) doctrine.⁹³ Other areas of law that affect health and disability, such as the Health Information Portability and Accountability Act may also come to bear when issues such as medical privacy are at stake.⁹⁴ However, claims proceeding under disability civil rights statutes such as the ADA and the Rehabilitation Act, or using Constitutional bases to challenge disability-based discrimination or maltreatment, are generally the most common doctrinal bases for applying “disability law” as such in U.S. prisons and jails.⁹⁵

The Rehabilitation Act, specifically section 504, applies to entities that receive federal funding, including through the Bureau of Prisons.⁹⁶ So generally, the Rehabilitation Act will be a primary instrument in federal prisons, and also applies in state and municipal institutions that receive funding through the Bureau of Prisons or any other federal entity.⁹⁷ Title II of the Americans with Disabilities Act applies to state and local governmental entities, and therefore can be utilized regardless of whether an entity receives federal funding, but does not apply to federal prisons or institutions.⁹⁸ Liability and damages under the ADA and Rehabilitation Act, and generally under federal civil rights law, remains a complex, and still-evolving area, as state entities will often attempt to assert “sovereign immunity” from monetary damages based on federal law, by invoking the U.S. Constitution, which partially insulates states from liability under various areas of federal law.⁹⁹ The 2006 Supreme Court decision in *Goodman v. Georgia* found that despite state sovereign immunity, an incarcerated person could recover damages under the Americans with Disabilities Act, provided that the acts that served as the basis for the legal claim under the ADA also violated the Due Process Clause of the Constitution (the 14th Amendment).¹⁰⁰ However, for civil rights claims based on acts which violate civil rights, but do not also violate the 14th amendment of other areas of the U.S. Constitution, there is as yet no consistent standard that applies across all federal courts (rulings vary by region/jurisdiction), meaning that it is often unclear whether financial damages are possible based solely on a violation of the ADA. As with other prisoner rights litigation, financial recovery is also limited by the physical injury requirement of the Prison Litigation Reform Act, meaning that as interpreted by most courts, a civil rights violation that does not involve a physical injury or sexual act can be a basis for injunctive relief (a court injunction), but not for monetary damages.

The expanded definitions of disability encompassed in the ADA Amendments Act of 2008 are generally applicable in court interpretations of either the ADA or Rehabilitation Act, meaning that in

⁹¹ Ibid.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ 29 U.S.C. § 794

⁹⁷ 29 U.S.C. § 794

⁹⁸ Americans with Disabilities Act of 1990, 101 P.L. 336

⁹⁹ Brill, Alison. Rights Without Remedy: The Myth of State Court Accessibility After the Prison Litigation Reform Act. *Cardozo L. Rev.* 2008:30:645.

¹⁰⁰ United States v. Georgia, 546 U.S. 151 (2006)

contemporary legal action, a relatively wide range of incarcerated persons are or can conceivably be eligible for protection, including many who have “hidden”, undiagnosed, or emerging disabilities.¹⁰¹ Because the presence of disabilities in penal institutions is so widespread, it should become relatively standard practice for diligent legal advocates when exploring possible bases for action to first verify whether a disability is present, either through existing diagnosis, or via assessment with a social work or clinical partner, and then provided a diagnosis can be verified or obtained, to explore the relevance of or applications of disability law to the particular context, if any. That is, advocates for incarcerated persons should proceed based on the assumption that most prospective clients are people who can have access to the range of protections available to persons with disabilities, under for instance, civil rights and equal protection law.

Disability-Conscious Approaches to Prisoner Rights Advocacy

Aside from those areas of law classically understood as “disability law”, awareness of disability can inform effective legal strategies for incarcerated persons, in a number of ways. Some of these prospects are delineated here.

- Disability as a basis for modification of rules, policies and practices that would otherwise obstruct legal advocacy: In some instances, the presence of disability can help to overcome obstacles to effective legal advocacy. Practitioners should be prepared to attend to and challenge or seek modifications to procedures, policies or rules based on the argument that they create disparate impact or disproportionate barriers for incarcerated persons with disabilities, and/or that modifications are needed as a form of reasonable accommodation. This general guideline can be applied to legal rules – for instance overcoming a statute of limitation based on “equitable tolling” – meaning, in this context, adapting the deadline to accommodate a mental incapacity or illness or other condition which prevented a person from initiating legal action within the normally allotted time period.¹⁰² Although as noted earlier, attempts to challenge inaccessible prison or jail grievance procedures have not consistently been successful in overcoming the obstacles posed by the Prison Litigation Reform Act, there has also been little to no concerted effort to challenge the requirements of the Prison Litigation Reform Act based on the obstacles it creates for persons with disabilities, for instance, using an argument regarding conflict of federal laws – i.e. by asserting that applications of the Prison Litigation Reform Act will violate the Americans with Disabilities Act. Essentially, legal advocates for incarcerated persons have room to explore new and developing legal strategies, highlighting that barriers to prisoner litigation can be – in practice and function – a form of disability discrimination, by obstructing access to the courts for persons with disabilities, or otherwise encumbering due process. Practices and procedures involved in legal proceedings that create disproportionate burdens for incarcerated persons with disabilities can also potentially be modified. For instance,

¹⁰¹ United States Department of Labor. Office of Federal Contract Compliance Programs (OFCCP). The ADA Amendments Act of 2008: FAQ. Available at <https://www.dol.gov/ofccp/regs/compliance/faqs/ADAFaqs.htm>.

¹⁰² Poplar, David E. Tolling the Statute of Limitations for Battered Women after *Giovine v. Giovine*: Creating Equitable Exceptions for Victims of Domestic Abuse. *Dickinson Law Review*. 1996:101.1:161-202; Daggett, Lynn M.; Zirkel, Perry A.; Gurysh, LeeAnn L. For Whom the School Bell Tolls but Not the Statute of Limitations: Minors and the Individuals with Disabilities Education Act. *University of Michigan Journal of Law Reform*. 2005:38.4:717-780.

legal advocates can press for the incorporation of clinically trained advocates and support people into legal discovery processes to help persons with mental illnesses and other disabilities manage or avoid extreme distress or strain during adversarial proceedings, and thereby to decrease the likelihood that people with disabilities will be unable to proceed effectively in advancing their own legal interests.

- Disability as evidence of harm: Thorough documentation of harms inflicted on incarcerated persons as a consequence either of specific prison conditions, or due to physical or sexual violence, is commonly a vital aspect of establishing institutional liability for those harms. With events or conditions severe enough to support a legal claim, it is quite commonly true that resulting trauma or stress will at least have a demonstrable mental health impact, and may either be a primary cause of a new physical or mental injury or illness, or can aggravate or escalate existing physical or mental disabilities, and their symptoms.¹⁰³ To that end, legal and clinical practitioners should be aware that clinical documentation of disabilities ideally should be a routine aspect of preparing a legal claim. That is, the presence of a new disability associated with stress or trauma (or with a specific injury resulting from one or more prison conditions or events), or the escalation or increasing severity of a pre-existing illness or injury as a result of increased stress, trauma, deprivation or injury, can help establish that conditions or events for which the institution is liable have had a measurable and substantial disabling impact. When advancing a legal claim in this regard, in addition to any immediate suffering, legal and clinical advocates should ideally introduce empirical evidence or expert testimony about the impact of disability on longevity, susceptibility to developing “co-morbid”/related physical or mental health diagnoses over time, the impact of disability on likely ability to work upon any prospective release, and in the event of release, the likely economic and social burdens associated with managing the disability. Detailed evidence regarding the long-term likely impact of the disabling harm can both strengthen the case for institutional liability for severe harm, and in instances where a legal claim involves pursuit of monetary damages, may help to increase any ultimate award.
- Physical symptoms of illness as a basis to establish physical injury: The Prison Litigation Reform Act provides no definition of the term “physical injury”.¹⁰⁴ Past controversies over the interpretation of the physical injury requirement after the 1995 passage of the PLRA focused on the question of whether rape or other forms of sexual violence would be clearly recognized by the courts as a “physical injury” (an issue which was contested).¹⁰⁵ This question was resolved subsequently through an amendment to the act which added the term “commission of a sexual act” as a basis to fulfill the physical injury requirement, in addition to other forms of “physical injury”.¹⁰⁶ However, the meaning of “physical injury” has otherwise remained relatively unexplored in litigation regarding prison conditions, at least relative to the question of whether physical symptoms, chronic illnesses or other medical damage arising from prison conditions can

¹⁰³ Parry, John, and Eric York Drogin. *Mental disability law, evidence, and testimony: A comprehensive reference manual for lawyers, judges, and mental disability professionals*. American Bar Association. 2007.

¹⁰⁴ 42 U.S.C. § 1997e

¹⁰⁵ Human Rights Watch. *No Equal Justice: The Prison Litigation Reform Act in the United States*. Section V. The Exhaustion Requirement. Available at <https://www.hrw.org/report/2009/06/16/no-equal-justice/prison-litigation-reform-act-united-states>. Last accessed July 3, 2017.

¹⁰⁶ 42 U.S. Code § 1997e

be understood as an “injury”. While judicial handling of this question will likely vary, legal and clinical advocates can explore the strategy of attempting to overcome the physical injury requirement through documentation of a physical disability or illness resulting from the stresses or deprivations associated with incarceration. This strategy may be particularly helpful, to the extent that it succeeds, in instances where the physical injury requirement would otherwise preclude the option of securing monetary damages, and where securing damages is likely to be vital to an incarcerated person’s ultimate efforts to improve health and survival chances.

- Institutional awareness of disability and failure to protect: The presence of a disability, and the fact that institutional staff are aware of the existence of that disability, can prospectively strengthen 8th amendment claims related to a variety of issues (not limited to disability discrimination). The legal standard of “deliberate indifference” as articulated by the Supreme Court in *Farmer v. Brennan* holds penal institutions responsible for harms to incarcerated persons in instances where institutional staff are or should be aware of harm or serious threat, for instance relative to inmate-on-inmate violence or other risks.¹⁰⁷ Documenting first the presence of disability, and then any institutional awareness of the presence of disability can help lay the groundwork to argue that a penal institution was aware of an inmate’s increased vulnerability or susceptibility to various harms. That is, depending on the disability, an incarcerated person may be more at increased risk of being targeted for physical or sexual violence or exploitation by other incarcerated persons or by staff, or of psychological or medical deterioration related to the conditions of confinement. To the extent that such harms are foreseeable (and they often may be), documenting the presence of disability and staff awareness of the incarcerated person’s disability-related vulnerability can be useful in establishing institutional liability for deliberately ignoring risks to incarcerated persons.

Conclusion: Key Strategies and Recommendations

The dual problems of: a) the over-incarceration of people with disabilities -- particularly those who are poor, mentally ill, and/or people of color – and, b) the disabling effects of the conditions of incarceration, operate to ensure that in the United States, disability and incarceration are inextricably linked, and continually associated. With over 2 million incarcerated persons presently in the United States, over 4.5 million people presently on parole or probation in the U.S., and federal estimates indicating that at least 5% of people in the U.S. will be incarcerated during their lifetime, the social impact of the incarceration of people with disabilities should not be underestimated.¹⁰⁸ Many states continue to witness rising rates of incarceration in the U.S., with African-American women as the fastest growing incarcerated population, and African-American men as the most disproportionately incarcerated.¹⁰⁹ For communities of color, particularly Black, Latino/a and indigenous populations, the collective impact of mass incarceration on families is particularly aggravated, and can manifest in

¹⁰⁷ *Farmer v. Brennan*, 511 U.S. 825 (1994)

¹⁰⁸ Vallas, Rebecca. Center for American Progress. *Disabled Behind Bars: The Mass Incarceration of People With Disabilities in America’s Jails and Prisons*. 2016. Available at <file:///C:/Users/F%20A%20Hernandez/Downloads/2CriminalJusticeDisability-report.pdf>. Last accessed July 3, 2017.

¹⁰⁹ Pew Research Center. *King’s Dream Remains an Elusive Goal; Many Americans See Racial Disparities*. 2013. Available at <http://www.pewsocialtrends.org/2013/08/22/kings-dream-remains-an-elusive-goal-many-americans-see-racial-disparities/>. Last accessed July 3, 2017.

dynamics of long-term challenges for families and communities in attempting to care for or grapple with the injuries and illnesses sustained by formerly incarcerated persons, and in the losses and grief associated with premature deaths.¹¹⁰ The traumas suffered by children deprived of contact with incarcerated parents can themselves contribute to the development of psychiatric disabilities, and increased risk of juvenile and adult incarceration, making cyclical incarceration of people of color with physical and mental health conditions an inter-generational pattern.¹¹¹

Legal advocacy for incarcerated persons with disabilities has suffered from a set of obstacles and resource deficits. The Prison Litigation Reform Act, coupled with a shortage of pro-bono legal resources has served to radically reduce the access of incarcerated persons to the courts, since the mid-1990s. Absent opportunities for legal intervention to challenge prison conditions or defend basic human and civil rights, too many incarcerated persons experience severe deprivations and abuses, at least some of which create new disabling conditions. Limitations in timely access to comprehensive medical and mental health resources further escalate the problem, maximizing the likelihood that otherwise temporary injuries or traumas will become permanent disabilities. Incarcerated persons with more severe disabilities, and often with multiple diagnoses are particularly likely to be under- or un-represented when in need of legal advocacy.¹¹² Collectively these realities mean that most incarcerated people with disabilities are unable to defend their legal rights and interests, and are at high-risk for medical and psychological deterioration, and premature death.¹¹³

Despite this relatively bleak landscape, there are also under-utilized opportunities for intervention. Intentional legal-clinical and legal-social service partnerships increase the likelihood that the challenges involved in legal advocacy for persons with severe and complex disability diagnoses can be met. Clinicians, social workers, and case managers can serve a direct role in legal advocacy by providing testimony and documentation of disability (or by managing appropriate specialized medical referrals) as part of the process of preparing for legal interventions. Clinicians and social service providers can also provide support for incarcerated persons in identifying their needs, managing the challenges of communication and engagement in legal interactions, and coping with the stresses and traumas of the immediate context, and of prospective legal action. These supports increase the likelihood that attorneys will be better positioned to advance legal action for particularly vulnerable clients, to be aware of disability in more of its social and psychological complexity, and to advance legal representation without unwittingly inflicting further trauma (for instance, when already traumatized clients are under-prepared or under-resourced when entering an adversarial legal interaction).

¹¹⁰ Crutchfield, Robert D., and Gregory A. Weeks. The Effects of Mass Incarceration on Communities of Color. *Issues in Science and Technology*. 2015:32.1.

¹¹¹ Schnittket, J., Massoglia, M. & Uggen, C. Incarceration and the Health of the African American Community. *Du Bois Review: Social Science Research on Race*. 2011:8.1:133-141; Hagan, John, and Ronit Dinovitzer. Collateral consequences of imprisonment for children, communities, and prisoners. *Crime and justice*. 1999:26:121-162.

¹¹² Davis, Leigh A. The Arc. People with Intellectual Disabilities in the Criminal Justice Systems: Victims & Suspects. Available at <http://www.thearc.org/document.doc?id=3664>. Last accessed July 3, 2017. Kroll, T., Jones, G. C., Kehn, M. and Neri, M. T. Barriers and strategies affecting the utilisation of primary preventive services for people with physical disabilities: a qualitative inquiry. *Health & Social Care in the Community*. 2006:14:284-293.; Ortoleva, Stephanie. Inaccessible Justice: Human Rights, Persons with Disabilities and the Legal System. *ILSA Journal of International & Comparative Law*. 2011:17.2:281-320.

¹¹³ Ortoleva, Stephanie. Inaccessible Justice: Human Rights, Persons with Disabilities and the Legal System. *ILSA Journal of International & Comparative Law*. 2011:17.2:281-320.

Further, increased awareness of the fluid and ongoing relationship between incarceration and disability enables prospects for more effective legal advocacy. For attorneys, clinicians and social service providers who routinely work with incarcerated persons, increased awareness of the prospective applications of disability civil rights doctrine may open up additional bases for productive intervention, including for incarcerated persons who are not currently identifying as a “person with a disability”, but whose medical and/or psychological status implicates eligibility for protection under the Americans with Disabilities Act and related federal and state instruments. Moreover, as discussed in the prior section evidence related to disability may be practically helpful in several areas of prisoner rights legal advocacy, including but not limited to navigating the physical injury requirement of the Prison Litigation Reform Act, extending or tolling statutes of limitation, modifying problematic rules and procedures, providing more delineated evidence of harm, and helping to establish institutional liability for “deliberate indifference” to the vulnerabilities of incarcerated persons.

Key recommendations for practitioners can be synthesized as follows:

- **Inter-professional Collaboration:** Where possible, legal advocates should work in partnership with clinicians and social service providers when attempting to address the complex needs and vulnerabilities of incarcerated persons, particularly those with complex and multiple psychiatric and medical conditions.
- **Identification and Diagnosis of Disabilities:** Practitioners should explore whether all existing medical and psychiatric symptoms and conditions evinced or reported by clients have been appropriately diagnosed, and should consult with clients about the possible benefits and risks associated with pursuing diagnosis, where not already present. Where needed and/or when sought by clients, practitioners should be prepared to advocate for access to providers or diagnostic tools required to secure accurate and appropriate diagnoses.
- **Exploration of Prospective Disability-Conscious Approaches to Legal Advocacy:** Advocacy for incarcerated persons can be strengthened by consideration of integrating disability legal doctrine into legal advocacy strategies (where not already present), and by the prospective use of disability-related testimony and information in advancing conventional legal strategies to challenge harmful conditions of incarceration, or advance the rights and safety of incarcerated persons.
- **Consultation with Clients in Developing a Comprehensive Advocacy Strategy:** Before advancing an advocacy strategy that relies in any part on a disability-conscious approach, clients should be invited to consider and prioritize their own interests holistically and comprehensively, including legal, social, safety and health concerns. Clients can be supported in expressing and weighing any concerns about disability stigma, risks associated with disability status, and concerns about the stresses or challenges involving in taking legal action. Proceeding with a legal strategy cognizant of client vulnerabilities and concerns about disability is more likely to minimize risks that clients will be traumatized or put at psychological or physical risk in the process of advancing their legal interests.

Given the present landscape for incarcerated persons, including ongoing domestic and international reports of human rights violations, and substantial empirical indications that incarceration frequently has degenerative health effects, it is imperative that practitioners and advocates comprehend both the disabling impact of incarceration, and the extreme vulnerabilities of incarcerated (and formerly

incarcerated) persons with disabilities. Creative, collaborative and ethically nuanced approaches to advocacy for incarcerated persons is vital, in supporting the survival of individuals, and in addressing the social costs of incarceration for families and communities affected by the disproportionate incarceration of people of color and people with disabilities.

Resources:

Center for Prisoner Health and Human Rights

<http://www.prisonerhealth.org/news-and-events/news/incarceration-and-mental-health/>
prisoner.health@lifespan.org

Disability Benefits Help

<http://www.disability-benefits-help.org/about-us>
help@disability-benefits-help.org

Disability Rights Advocates

<http://dralegal.org/>
1-510-665-8644 (Berkeley office)
1-212-644-8644 (New York office)

Disability Rights Education & Defense Fund

<https://dredf.org/>
info@dredf.org

Disability Rights: Washington

<http://www.disabilityrightswa.org/avid-prison-project>
info@dr-wa.org

Disabled World

<https://www.disabled-world.com/disability/ada/prisons.php>
admin@disabled-world.com

Helping Educate to Advance the Rights of the Deaf (HEARD)

<http://www.behearddc.org/>
1-202-455-8076

Judge David L. Bazelon Center for Mental Health Law: What Happens to Your Benefits If You Go to Jail or Prison?

<http://www.kitsapgov.com/pubdef/Forms/LinkClick.Benefits.pdf>
pubs@bazelon.org

National Association of the Deaf: Rights of Deaf and Hard of Hearing Inmates

<https://www.nad.org/resources/justice/jails-and-prisons/rights-of-deaf-and-hard-of-hearing-inmates/>
nad.info@nad.org

National Center on Criminal Justice and Disability (NCCJD)

<http://www.thearc.org/NCCJD/resources/by-audience/disability-advocates>
1-800-433-5255

National Reentry Resource Center

<https://csgjusticecenter.org/nrrc/>
info@stepuptogether.org

Prison Activist Resource Center

<https://www.prisonactivist.org/resources>
info@prisonactivist.org

Social Security Administration: What Prisoners Need to Know

<https://www.ssa.gov/pubs/EN-05-10133.pdf>
1-800-772-1213
1-800-325-0778 (TTY)

Social Security Administration: Entering the Community After Incarceration

<https://www.ssa.gov/pubs/EN-05-10504.pdf>
1-800-772-1213
1-800-325-0778 (TTY)

Social Security Insider

<http://socialsecurityinsider.com/>
1-719-359-9311

United Nations Office on Drugs and Crime: Handbook on Prisoners with Special Needs

https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf

U.S. Department of Justice: Examples and Resources to Support Criminal Justice Entities in Compliance With Title II of the Americans With Disabilities Act

<https://www.ada.gov/cjta.pdf>
1-800-514-0301

Vera Institute of Justice

<https://www.vera.org/>
1-212-334-1300