



# *The Americans with Disabilities Act in Prison*

ENSURING PROGRAMMATIC  
ACCESSIBILITY

Samantha Reed - Equip for Equality - [Samantha@equipforequality.org](mailto:Samantha@equipforequality.org)

Ashley N. Austin - Alabama Disabilities Advocacy Program - [aaustin@adap.ua.edu](mailto:aaustin@adap.ua.edu)

William Van Der Pol, Jr. – Alabama Disabilities Advocacy Program - [wvanderpoljr@adap.ua.edu](mailto:wvanderpoljr@adap.ua.edu)

*How to  
participate  
today*





# ***Roadmap***

Welcome & Introductions

What the ADA/Rehab Act require in prison

Why prisons get it wrong

Understanding ADA vs. medical care

Once you've identified a violation, what are your options?

How technology is expanding available accommodations

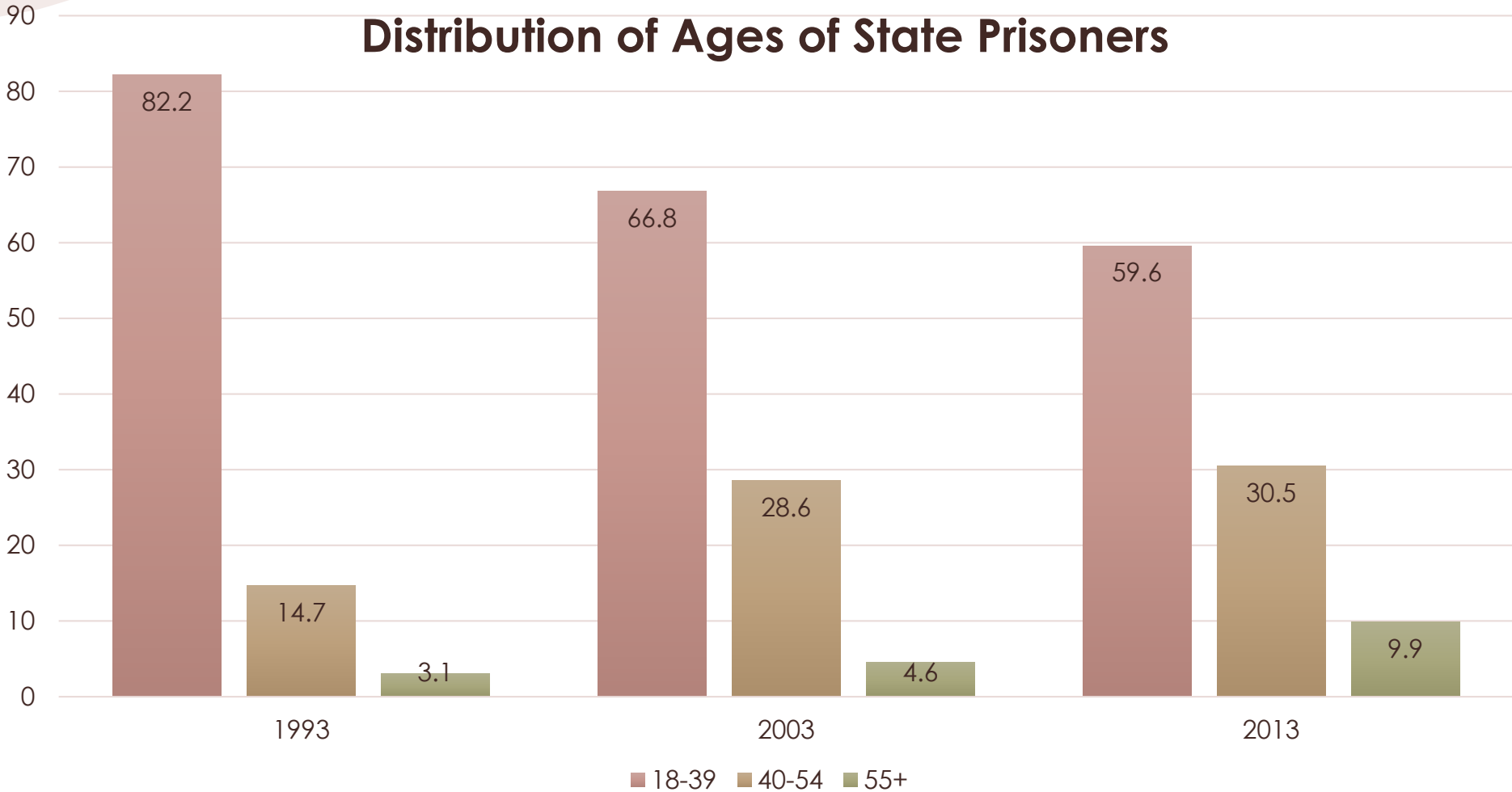
# *Why are we talking about prisons?*

## 1 in 3

Prisoners report having a disability



# ***AGING POPULATION***



***Why are we  
talking  
about aging  
populations?***

Disabilities  
develop

Self-  
identification  
may not be  
accurate

Increasing  
P&A eligibility

Clustering

***We're  
assuming a  
few things...***



General understanding  
of the Prison Litigation  
Reform Act.



Knowledge of the ADA  
definition of a disability



*Which laws  
apply where?*





*Section 504  
of the Rehab  
Act*

What facilities does it  
apply to?



*Section 504  
of the Rehab  
Act*

What facilities does it  
apply to?

- Federal prisons, jails,  
and detention centers



*Section 504  
of the Rehab  
Act*

What facilities does it apply to?

- Federal prisons, jails, and detention centers
  - State prisons that receive federal funds



*Section 504  
of the Rehab  
Act*

What facilities does it apply to?

- Federal prisons, jails, and detention centers
  - State prisons that receive federal funds
  - Private prisons & detention centers that receive federal funds



*Section 504  
of the Rehab  
Act*

What facilities does it apply to?

- Federal prisons, jails, and detention centers
  - State prisons that receive federal funds
  - Private prisons & detention centers that receive federal funds
  - Local jails

What facilities does it  
apply to?



*Title II of the  
ADA*

- State prisons = “public entities”
  - *Pennsylvania Dept. of Corrections v. Yeskey*, 524 U.S. 206 (1998)

What types of facilities  
does it apply to?



*Title II of the  
ADA*

- State prisons = “public entities”
  - *Pennsylvania Dept. of Corrections v. Yeskey*, 524 U.S. 206 (1998)
- Local jails

What types of facilities does it apply to?

- State prisons = “public entities”
  - *Pennsylvania Dept. of Corrections v. Yeskey*, 524 U.S. 206 (1998)
- Local jails
- *But NOT federal prisons/jails*



*Title II of the  
ADA*





***Recap: Which laws apply?***

### Section 504 of the Rehab Act

- Any federal prisons/jails, and any state/local prisons and jails that receive federal funds

### Title II of the ADA

- State prisons, local jails and detention centers are “public entities”
- Includes private prisons and contractors (explicit in regulations)
- *But not federal prisons or jails!*

### Implementing Regulations

***The 3 Theories  
under ADA &  
Section 504***

intentional  
discrimination or  
disparate treatment

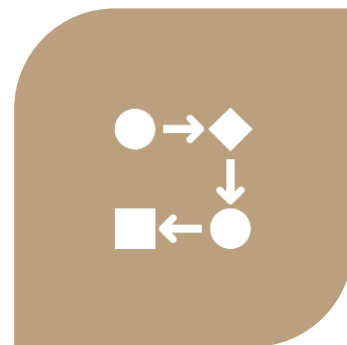


disparate impact



failure to make  
reasonable  
accommodations

***ADA  
Coordinators  
&  
28 CFR  
35.107***



PROCEDURE



RESPONSIBLE  
EMPLOYEE



***Prisoner-  
specific  
Regulation  
s***

28 CFR § 35.152(b)(1)

Public entities must ensure that “qualified inmates or detainees with disabilities” are not excluded from **services, programs, or activities** because the facility is inaccessible/unusable or subject to discrimination

*What is a  
“program,  
service, or  
activity”  
of a prison?*

BASICALLY EVERYTHING!

# *Rehabilitative programming*

- GED classes
- Religious services
- Substance abuse groups
- Vocational training
- Re-entry programming



# *But also!*

- Prison mail
- Access to the courts
- The grievance process
- Family visits
- Legal calls



*And “needs  
related to a  
disability”*





***Reasonable  
Accommodati  
ons***



Affirmative duty to provide **proactive** accommodations



That provide **meaningful access**



May require modifications to prison **policies**

***Reasonable  
Accommodati  
ons***



Affirmative duty to provide  
**proactive** accommodations

When disability is known,  
prisons must act to  
accommodate

“This affirmative duty is seemingly at its *apex* in the context of a prison facility, in light of the uneven power dynamic between prison officials and inmates that inherently and appropriately exists, and also the fact that departments of corrections have complete control over whether prison inmates (disabled or not) receive any programs or services at all.”

Pierce v. D.C., 128 F. Supp. 3d 250, 269 (D.D.C. 2015)

***Reasonable  
Accommodati  
ons***



Affirmative duty to provide **proactive** accommodations



That provide **meaningful  
access**

***Reasonable  
Accommodati  
ons***



Affirmative duty, **proactive**  
accommodations



That provide **meaningful**  
**access**



May require modifications to  
prison **policies**

# *Individualized Assessments*



Prison must conduct **individualized inquiry**



Title II does not explicitly contain a “direct threat” defense, but the regulations do

*Integration  
of prisoners  
with  
disabilities*



28 CFR §35.152

*Integration  
of prisoners  
with  
disabilities*



Prohibits placing inmates  
with disabilities in  
**inappropriate security  
classifications**



28 CFR §35.152

*Integration  
of prisoners  
with  
disabilities*



Prohibits placing inmates  
with disabilities in  
**facilities that do not offer  
same programs as where  
they'd otherwise be  
housed**

28 CFR §35.152

*Integration  
of prisoners  
with  
disabilities*



Prohibits placing inmates  
with disabilities in  
**designated medical areas**  
**(unless actually receiving  
treatment)**

28 CFR §35.152

Prohibits placing inmates  
with disabilities in

**more distant facilities than  
they would otherwise be  
housed in (thereby  
depriving PWDs of  
visitation w/ family)**

*Integration  
of prisoners  
with  
disabilities*





*Other  
Integration  
Issues*

Discharge planning  
and re-entry

*Braggs v. Dunn* and  
Integration

Segregation of  
people with HIV



*Why are we  
talking  
about the  
basics?*

- Alabama



*Why are we  
talking  
about the  
basics?*

- Alabama
- Illinois

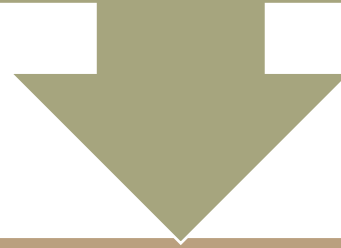


*Why are we  
talking  
about the  
basics?*

- Alabama
- Illinois
- County Jail

*What is an  
accommodation  
required under  
the ADA?*

Not the provision of personal devices



Think of the ADA like a shield, not a sword

Not intended to help someone get an item

Intended to help level the playing field





*ADA vs.  
Medical  
Care*

---

Failure to provide medical  
care *may* violate Title II

---

---



*ADA vs.  
Medical  
Care*

---

Failure to provide medical care *may* violate Title II

---

Must be related to the disability, not the failure of medical care generally

---



*ADA vs.  
Medical  
Care*

---

Failure to provide medical care *may* violate Title II

---

Must be related to the disability, not the failure of medical care generally

---

Denial must be solely related to disability

# *ADA vs. Medical Care*



Can address inadequate healthcare using 42 U.S.C. Sec. 1983



8th amendment applies to prisons; 14th amendment applies to jails



Can simultaneously plead both in litigation

***Hypotheticals***



***Prisoner Jones has  
a hearing  
impairment and  
believes that if he is  
supplied with a  
hearing-aid he will  
be able to hear.***





## *Question 1*

Prisoner Jones has been evaluated for a hearing aid, found to benefit from one, but the Department of Corrections will not supply him with one. Is the failure of the Department to provide him a hearing aid an ADA violation?

# *Question 1*

- Prisoner Jones has been evaluated for a hearing aid, found to benefit from one, but the Department of Corrections will not supply him with one. Is the failure of the Department to provide him a hearing aid an ADA violation?

**A** - Yes, if the failure to provide the hearing aid keeps him from participating in any service, program, or activity on an equal basis as a prisoner without a disability.

**B** - No, the ADA does not require that a covered entity provide specific items, only that the covered entity provide a reasonable accommodation, which might or might not, include the provision of a specific item.





## *Question 2*

Prisoner Jones has a hearing aid but needs batteries, so it is operable. Is the failure of the Department to provide batteries an ADA violation?

## *Question 2*

- Prisoner Jones has a hearing aid but needs batteries, so it is operable. Is the failure of the Department to provide batteries an ADA violation?

**A** - Yes, if the failure to provide a battery is keeping him from participating in any service, program, or activity on an equal basis as a prisoner without a disability.

**B** - No, since the ADA does not require the department give a prisoner a hearing aid, it is not required to provide batteries for the hearing aid.

**C** - No, it is an 8<sup>th</sup> amendment failure to provide constitutionally adequate medical care issue.

**D** - Maybe. It is clearly either an ADA violation or an 8<sup>th</sup> Amendment constitutionally inadequate medical care claim.



## *Question 3*

Prisoner Jones has a hearing disability and has requested that he be evaluated for need. Is the Department's refusal to evaluate him an ADA violation?

## *Question 3*

- Prisoner Jones has a hearing disability and has requested that he be evaluated for need. Is the Department's refusal to evaluate him an ADA violation?

**A** - Yes. The facility has an affirmative duty to evaluate his disability-related needs and determine what accommodations are appropriate, even if some individuals with hearing loss are expected to not benefit from a hearing aid.

**B** - No, since ultimately the ADA does not require the department to give a prisoner a hearing aid, it is not required to assess whether the prisoner needs a hearing aid under the ADA.

***Prisoner Smith is an inmate with a diagnosed mental health issue. He qualifies as a person with a disability.***





## *Question 4*

All prisoners in general population without a mental health diagnosis have access to GED classes. All prisoners with a diagnosed mental health issue are precluded from the GED program. Prisoner Smith is in general population. Is Prisoner Smith's preclusion from the GED program a violation of the ADA?

## *Question 4*

- All prisoners in general population without a mental health diagnosis have access to GED classes. All prisoners with a diagnosed mental health issue are precluded from the GED program. Prisoner Smith is in general population. Is Prisoner Smith's preclusion from the GED program a violation of the ADA?

**A** - Yes. Per se exclusion of a person with mental health disability from the GED program is a violation of the ADA.

**B** - No, prisoner with a mental health issue is not similarly situated to a prisoner without a mental health issue, and hence the department is not required under the ADA to provide him equal access to the GED program.



## *Question 5*

Prisoner Smith is assigned to a residential mental health unit for prisoners with enhanced mental health needs that cannot be adequately treated in general population. The Department refuses to provide GED programming in the residential mental health unit. Is this an ADA violation?



## *Question 5*

- Prisoner Smith is assigned to a residential mental health unit for prisoners with enhanced mental health needs that cannot be adequately treated in general population. The Department refuses to provide GED programming in the residential mental health unit. Is this an ADA violation?

**A** - Yes. A per se exclusion of all prisoners in the unit violates the ADA.

**B** - No, since all prisoners in the unit are excluded from programming, no prisoner is discriminated against since all prisoners in the unit are treated the same.

**C** - Maybe. A per se exclusion for all prisoners violates the ADA. However, there is likely to be a subset of prisoners in the unit who are currently so acutely mentally ill that they cannot participate in the program without a significant material alteration to the program. Hence, the department must provide an individual assessment of each prisoner before they can be excluded from programming.



## *Question 6*

Prisoner Smith is assigned to segregation (also known as Restrictive Housing) for a disciplinary violation. All prisoners, regardless of mental health condition, are precluded from programming while in segregation. Is the exclusion from programming an ADA violation?

## *Question 6*

- Prisoner Smith is assigned to segregation (also known as Restrictive Housing) for a disciplinary violation. All prisoners, regardless of mental health condition, are precluded from programming while in segregation. Is the exclusion from programming an ADA violation?

**A** - No, his behavior caused him to go to segregation, and hence is no longer similarly situated to prisoners with disabilities in general population.

**B** - Yes, he has a mental illness and he is entitled to the same access to programming as all prisoners with mental illness, otherwise he is discriminated against on the basis of his disability.



## *Question 7*

Prisoner Smith is placed in a diversion unit designed for prisoners with a serious mental illness (SMI), who but for their diagnosis, would be placed in segregation for a disciplinary violation. The Department does not consider the diversion unit as a disciplinary unit.

None of the prisoners in segregation have access to programming. All prisoners in non-disciplinary units have access to program without regard to disability status. The Department provides no programming to anyone in the diversion unit. Is this a violation of the ADA?

## *Question 7*

- None of the prisoners in segregation have access to programming. All prisoners in non-disciplinary units have access to program without regard to disability status. The Department provides no programming to anyone in the diversion unit. Is this a violation of the ADA?

**A** - No, he is not similarly situated to prisoners without a disability due to his disciplinary event

**B** - Yes, he has a mental illness and he is entitled to the same access to programming as all prisoners in general population with mental illness, otherwise he is discriminated against on the basis of his disability.

**C** - Yes, since the department does not consider this a disciplinary unit, even though his actions placed him in this unit, he is entitled to access to programming consistent with prisoners in general population.



## *Question 8A*

Same scenario, but the diversionary unit contains the following groups of prisoners:

Group 1: Diagnosed SMI

Group 2: Has a mental health condition and counter-indicated to go to segregation

Group 3: No mental health condition but counter-indicated to go to segregation

Group 4: Inability to understand wrongfulness of actions

Which, if any, group is entitled to programming?



*Question SB*

If any of the other groups is entitled to programming, is the failure of the Department to provide Prisoner Smith with programming a violation of the ADA?

## *Question 8B*

- If any of the other groups is entitled to programming, is the failure of the Department to provide Prisoner Smith with programming a violation of the ADA?

**A** - No, the presence of a group in individuals in the unit does not mean that other prisoners in the same unit needs to be given an equal access. The similarly situated individuals are prisoners in the same status, not in the same housing unit.

**B** - Yes, by the department mixing prisoners who have a right to programming with prisoners who do not have a right to programming, the refusal to provide equal access is now based on a disability, and hence they are discriminating.





*Getting  
Started*

What if you don't  
already have a  
prison class  
action?



*Getting  
Started*

- Monitoring visits



*Getting  
Started*

- Monitoring visits
- Outreach



*Getting  
Started*

- Monitoring visits
- Outreach
- Fact Sheets



*Getting  
Started*

- Monitoring visits
- Outreach
- Fact Sheets
- Other ideas?

# *How to address ADA issues with DOC officials?*

- Individual advocacy
- Monitoring & Reports
- Informal systemic advocacy
- Structured Negotiations
- Systemic Litigation
- OCR/CRIPA complaints



# *Individual Advocacy*



Self Advocacy



Demand letters



Litigation

# ***Monitoring & Reports***



Internal reports



Reports to DOC or  
Governor's Office



Public Reports



***Informal  
Systemic  
Advocacy***



# *Structured Negotiations*



# ***Systemic Litigation***



***CRIPA  
Complaints***

***[ada.gov/complaint](https://ada.gov/complaint)***



# *Cutting Edge: The Growth of Technology*



VIDEO RELAY



SMART  
WATCHES



MESSAGE  
BOARDS



ACCESSIBLE  
TABLETS



*Questions?*