

Access Denied

Conditions for People with Physical and Sensory
Disabilities in Washington's County Jails

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Introduction

On any given day, Washington jails serve approximately 12,000 people.¹

National figures indicate that the rate of disability in jail is over four times higher than in the community at large.² People with disabilities other than mental illness make up 40 percent of our country's jail population.³ Within this group are individuals with a variety of physical and sensory disabilities, including 9.5 percent of jail inmates with a disability affecting mobility, 7.3 percent with a vision disability, 6.5 percent with a hearing disability, 2.8 percent having a disability making it difficult to dress or bathe, and another 8.7 percent with some other disability that limits the ability to live independently.⁴

Outside of jail, individuals with these disabilities often have technology, personal support, or modified living and working environments to help them live independently and participate in their communities in a variety of ways. This includes everything from a low-tech option such as a ramp allowing someone who uses a wheelchair to leave home and go to work, to high-tech solutions like tablets with screen reading applications that will read websites aloud to make online commerce, news, and social media available to people who are blind. However, these supports are often non-existent in jails and the jails' physical environments create additional barriers that people do not encounter in the community. This means that the thousands of people with

The rate of disability in jail is over four times higher than in the community at large.



physical and sensory disabilities in Washington’s county jails often cannot access the spaces, services, and therapeutic or rehabilitative programs available to others in jail.



Gonzaga Law student Haley Brown seen in reflection of a mirror during a monitoring visit to Kittitas County Corrections Center

Given the over-representation of people with disabilities in jail, Disability Rights Washington is concerned that our county jails do not focus more attention on designing structural elements of their facilities and modifying the policies and practices of their staff to meet the needs of people with physical and sensory disabilities. Disability Rights Washington’s Amplifying Voices of Inmates with Disabilities (AVID) team is pleased to see there are some standout jails around Washington that have addressed many of the needs of the people with disabilities they serve. Most Washington county jails, however, have significant accessibility problems. Nearly all of our small county jails are mostly or completely inaccessible. Several jails deny inmates access to mobility devices like wheelchairs and walkers. Many jails, large and small, often keep people in prolonged segregation solely because of their disabilities.⁵ Most



Washington jails also do not provide appropriate access to disability-related communication services like sign language interpreters or video relay services.

While each inmate's disability-related experiences and needs are unique, many of the barriers they face in jail are systemic. A facility's lack of resources, inaccessible construction, and other large-scale policy issues cannot be adequately addressed by individual inmates using existing grievance procedures. For this reason, the administration of each jail must proactively devote attention and resources to examining the structural and policy barriers within its facility. Once a jail understands what problems it has in serving those with physical and sensory disabilities, it can create a comprehensive plan to fix its structural and procedural issues.

Background

Disability Rights Washington

Each state and territory has an independent advocacy organization with a federal mandate to monitor any setting serving people with disabilities to ensure their rights are protected and they are not abused or neglected. In Washington, that organization is Disability Rights Washington. As the private nonprofit agency designated as Washington's Protection and Advocacy System by the governor, Disability Rights Washington has the authority to access jails, prisons, homeless shelters, psychiatric hospitals, community hospitals and other healthcare facilities, and even individuals' own homes to monitor and record the conditions of care and treatment of people with disabilities.



Due to the vast number of people with disabilities incarcerated in the adult and juvenile justice systems, Disability Rights Washington created Amplifying Voices of Inmates with Disabilities (AVID), a project focusing specifically on the rights of inmates with disabilities involved in correctional systems. AVID has been recognized across the state and nationally, and has been asked to present at events for the White House, U.S. Senate, National Center on Disability, and at multiple conferences for corrections advocates and administrators across the country.

To address rights violations or abuse and neglect, Disability Rights Washington uses a multi-modal advocacy strategy that includes litigation, investigation, coalition building, video advocacy, and education of the public and policymakers. AVID is staffed by a team of attorneys, video advocates, and volunteer lawyers and law students.



Each year AVID serves thousands of inmates by helping them understand their rights and improve their self-advocacy skills, providing them with short-term legal assistance, investigating individual instances of abuse or neglect, monitoring facility conditions, and providing systemic legal advocacy with state officials and local facility administrators. For more information about Disability Rights Washington and AVID, please visit our website at www.disabilityrightswa.org.

County Jails in Washington State

Jails are generally designed for short-term stays of adults who are awaiting trial or have been found guilty of a crime and sentenced to a year or less.⁶ In



contrast, prisons are designed for long-term stays of adults convicted of felonies with sentences longer than a year.⁷ Nearly every county in Washington State operates a jail.⁸ Some cities also operate jails.⁹ Unlike the Washington State prison system, which the Department of Corrections oversees and operates, local administrators run the jails. These are usually the County Sheriff's department.

Purpose and Scope

The purpose of this report is to illuminate the lack of physical and sensory accessibility in county jails across Washington.¹⁰ This report is intended to describe the human and legal harm created by currently inaccessible jail environments and practices. The report concludes with a call for jails and the local governments that run them to retain experts to assess physical and sensory accessibility issues in their facilities and then develop and implement a remediation plan.

This report is one in a series of reports intended to support an informed dialogue about how Washingtonians with disabilities are treated in county jails. This report builds upon the findings presented in AVID's earlier reports on Washington's county jails:

- **County Jails, Statewide Problems: A Look at How Our Friends, Family, and Neighbors with Disabilities are Treated in Washington's Jails**
- **The Need for Accessible Voting in Jail**
- **You Can't Just "Tell": Why Washington Jails Must Screen for Mental Illness and Cognitive Disabilities**
- **Prescription for Change: Access to Medication for People with Disabilities in Washington's Jails**
- **Cruel but Not Unusual: Solitary Confinement in Washington's County Jails**



Methodology

The information presented in this report was gathered through a review of jail policies and visits to each county jail in the state completed in the spring of 2016. The process for this review is covered in depth in the earlier report, *County Jails, Statewide Problems*. The policy and in-person reviews revealed that, among the many other problems people with disabilities face in jail, those with physical or sensory disabilities are often segregated and cannot access the spaces, services, and programs provided to those without such disabilities.

Most Washington Jails Are Not Accessible for People with Disabilities

Legal standards for accessibility in jails

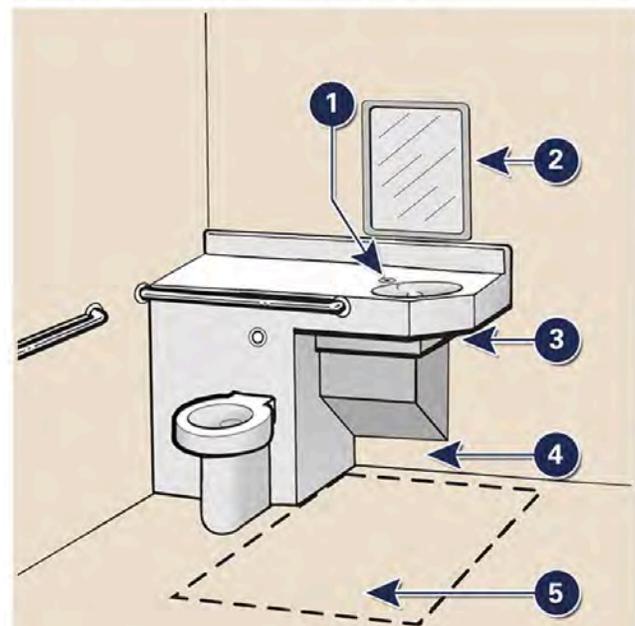
People with disabilities in county jails are protected by federal civil rights laws. Title II of the Americans with Disabilities Act (ADA) extends to inmates in local jails and state-run correctional facilities, and the Rehabilitation Act applies to jails if they receive federal funding.¹¹ Together, these two statutes protect inmates with disabilities from discrimination in jails and serve to ensure that they receive equal access to jail environments and services. This equal access to jail environments and services includes both structural issues as well as policy and practice issues.¹² Jails must ensure that their rules and practices do not create barriers to people with disabilities receiving equal access to the programs and services offered by the jail. This includes rules about



accommodations, access to mobility devices, and classification/housing placement decisions.¹³ There are extensive federal guidelines that describe what accessibility looks like. Additionally, the United States Department of Justice Civil Rights Division has published dozens of technical assistance materials explaining various aspects of accessibility in numerous settings,¹⁴ including one resource specifically on physical accessibility issues in correctional settings.¹⁵ Federal law also requires that jails provide alternative communication avenues, such as sign language interpreters or video relay technology, to accommodate the needs of people with sensory disabilities.¹⁶

However, the problems the AVID project found were not of a nature that someone would need to be well versed with federal regulations and technical assistance materials. Instead, Washington’s county jails are full of examples that anyone with no exposure to the ADA, its regulations, or even people with disabilities would immediately see as inaccessible for people with disabilities. Anyone can see that someone who uses a wheelchair would be completely excluded from areas that are located up a flight of stairs when no alternative route is available. Similarly, anyone would be able to understand that if a jail only gave emergency or even routine orders orally, a Deaf

Features of Accessible Lavatories and Mirrors



Drawing Notes:

- 1. **Faucets:** Faucet handles or controls need to be usable with one loosely closed fist, because some people with disabilities can use only one hand and cannot grasp or twist faucets. Lever-operated, push-type mechanisms, and U-shaped handles are acceptable designs.
- 2. **Mirrors:** If provided, mirrors need to be mounted with the bottom edge of the reflecting surface no higher than 40 inches above the floor.
- 3. **Lavatory knee clearance:** To allow persons who use wheelchairs to pull under the lavatory and to use the faucet hardware, the following features need to be provided -- a 29-inch-high clearance under the front edge of the lavatory, the top of the bowl mounted no higher than 34 inches above the floor, a 27-inch-high clearance for knee space extending at least 8 inches from the front of the lavatory, and a 9-inch-high toe space extending not more than 6 inches from the back wall.
- 4. **Burn protection:** To protect against leg burns, hot water and drain pipes need to be covered or otherwise configured to protect against contact. Some people with disabilities have little or no sensation in their legs and can be burned without knowing it.
- 5. **Clear floor space** is needed for a forward approach to the lavatory.

U.S. Department of Justice, Civil Rights Division - Disability Rights Section. "Americans with Disabilities Act/Section 504 of the Rehabilitation Act - Design Guide: Features of Accessible Lavatories and Mirrors" Web. 8 Feb. 2005. Screenshot. 23 Jan. 2017.



individual would not have an opportunity to follow the directions in the order. While many jails have some individual elements within their fixed environments and their practices that are accessible to individuals with disabilities, the AVID project found that none actually fully meet the requirements dictated by federal law. What follows are examples from specific jails related to 1) physical accessibility of jail facilities, including lack of access to programs and recreation, 2) lack of access to mobility devices, 3) inappropriate segregation of people for reasons related to their physical and sensory disabilities, and 4) lack of access to appropriate disability-related communication services.



Roberto Llerenas, Jr. showing his hearing aids to the camera at Benton County Jail

Examples of jail inaccessibility

In terms of physical accessibility, AVID was pleased to see that several county jails such as Kitsap, Kittitas, Pierce, and Spokane have multiple physically accessible cells. Many of the other areas in these jails, such as visitation rooms



and programming spaces, are also physically accessible to people who use mobility devices. Unfortunately, AVID staff found that in many jails the majority of housing and program areas are entirely inaccessible to people with physical or sensory disabilities. In some jails that have cells designated as accessible, those cells do not include accessible bathrooms and showers.



**Inaccessible bathroom
at Chelan County
Correctional Facility**

Most of Washington’s small county jails are completely physically inaccessible. Walla Walla County Jail is one of the many Washington county jails that lacks physical accessibility throughout its facility. AVID observed a lack of accessible cells, bathrooms, showers, and visiting rooms. Additionally, there is a flight of stairs leading to the recreational yard, making it inaccessible to inmates with mobility impairments. Whatcom County Jail is similarly inaccessible.¹⁷

Stevens County Jail was overcrowded, offered no recreation space, and was generally inaccessible. The only entrance to the jail is down a narrow flight of



stairs. The hallways throughout the facility are extremely narrow, with sharp turns and corners. There is no elevator and there are many steps inside the jail. Even the shower labeled accessible has a step at its entrance, rendering it inaccessible.



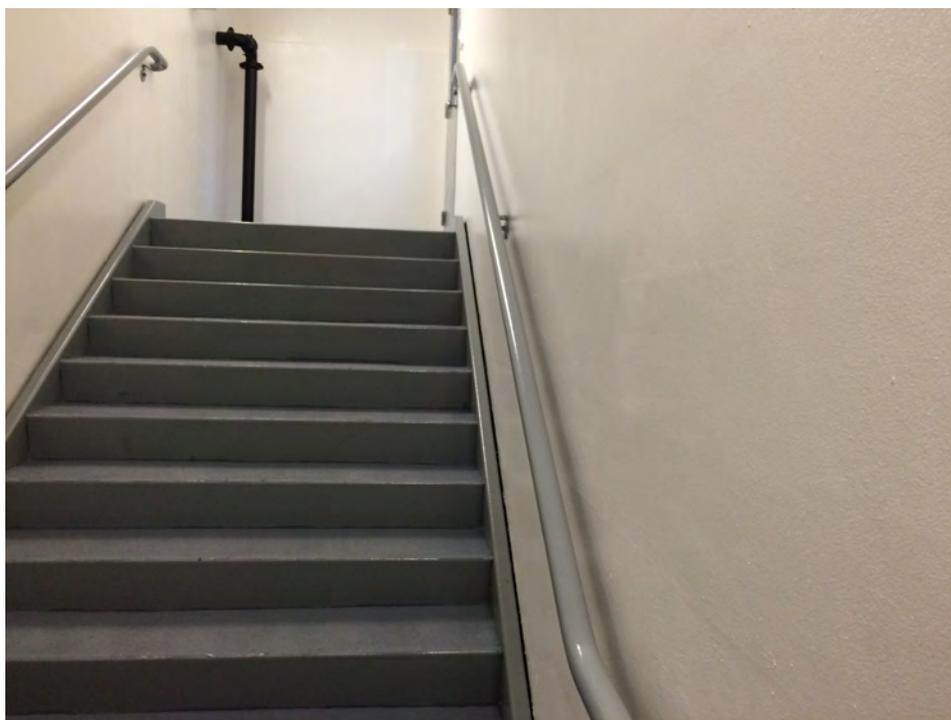
Wheelchair stored in Yakima County Department of Corrections

Despite Mason County's current effort to significantly remodel its facility, there are still inaccessible features. For example, the jail has added a chair lift, a device for carrying people who use wheelchairs and mobility aids from one floor to another. Unfortunately, there is a step to get up to the lift, which defeats the purpose of a lift to help move a wheelchair upstairs.

Even our state's largest jail facility, King County Correctional Facility (KCCF), located in downtown Seattle, is inaccessible for people with physical disabilities and aids to impairment. All housing units at KCCF, including the group medical dorms that house inmates with physical disabilities or medical issues, have a large step in front of the shower and lack grab bars inside the shower. The shower in the infirmary, which inmates with physical disabilities



are sometimes allowed to use regardless of where they are housed at KCCF, has a steep, uneven incline at its entrance. The AVID Project is unaware of any accessible individual cells at KCCF, despite having met with several inmates with physical disabilities housed in individual cells in the restricted housing units. Jail staff have informed the AVID Project that the King County Jail system's second, newer facility, the Regional Justice Center in Kent, is accessible and compliant with ADA requirements. However, the areas within the King County jail system that specifically house inmates with physical disabilities and aids to impairment are located in KCCF, failing to meet accessibility standards and serving no accessibility purpose.



Stairs to the yard at Walla Walla County Corrections Facility

Even jails that had some accessible cells often discriminated against people with disabilities by placing necessary or desirable services in inaccessible locations. Although the Jefferson County Jail does offer a number of accessible cells, the outdoor recreation space is inaccessible. The newer part of the Franklin County Jail is accessible, but its unit for inmate workers is in the old section which is entirely inaccessible for people with mobility disabilities. This



means that by virtue of having a physical disability, inmates at Franklin County Jail cannot generally participate in the inmate worker program. Similarly, at the Yakima County Jail, the inmate worker housing unit is largely inaccessible. Many of the jails that AVID visited confirmed that people with physical disabilities may be categorically barred from participating in worker programs by virtue of their disability. When questioned, many of the jails admitted to having no policy or practice in place for providing accommodations for inmate worker program.

In terms of AVID's findings related to access to mobility devices and other disability-related equipment, AVID was pleased to see that despite the fact that jails do not typically allow people to bring personal effects into the jail, Cowlitz County Jail has rules that allow people to bring their own equipment, such as CPAP machines or wheelchairs, from home. AVID was incredibly impressed that Cowlitz County Jail also provides necessary equipment if a person with a disability does not have it or is unable to bring it to the jail and that most equipment is given to the individual to take home upon release. These rules and practices allow people with disabilities to minimize negative impacts from disabling conditions while in jail, thus allowing people with disabilities to experience jail in a fashion that is more equitable to the conditions faced by people without disabilities.

Many other jails do not have adequate processes for providing access to medical and disability-related devices. For example, Adams County Jail



Inaccessible showers at the Pend Oreille County Correctional Facility

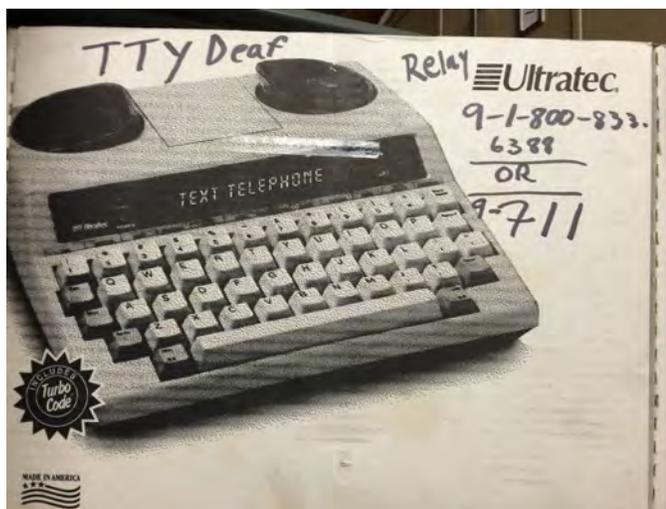


provides no mobility devices, which compounds its serious physical inaccessibility resulting from no accessible bathrooms or showers and steps directly in front of its sole elevator. Franklin County Jail also provides no mobility devices. Clark County Jail provides some, but does not have enough wheelchairs and walkers for everyone its staff knows needs them, thus limiting the movement of some and putting others at risk of unnecessary falls. Similarly, AVID found that the Yakima County Jail denied several people with disabilities reasonable accommodations and aids, including denying access to their canes and crutches. If an inmate did receive an aid to impairment, such as a wheelchair or crutches, it was not always useable because it was either broken, in disrepair, or inappropriate given the person's actual need.

AVID also found that some jails, like Yakima County Jail, may place a person with mobility aids in segregated housing units, simply because they use a mobility aid. Lewis County Jail also keeps anyone with medical needs, including those who use CPAP machines or crutches, in segregation. At that jail, each person with a disability is let out of their cell alone for only one hour each day due to a perceived security risk created by the need for a medical or accessibility-related device. Benton County Jail also places people with physical disabilities in twenty-three hour lockdown. Other county jails only had accessible cells in the booking area or medical unit so people with mobility supports were separated from the general population. These practices segregate people with mobility support needs solely because they have disabilities. This makes the jail experience far more punitive for people with disabilities.¹⁸ That is discriminatory.¹⁹



In terms of access to communication services, AVID is encouraged by Pierce County's practice of providing video relay technology to Deaf inmates who use American Sign Language so they can communicate with people in the community. However, this facility was the exception. Many jails had old text telephone machines, but the devices were packed away in boxes or not in working order. Additionally, it should be noted that text telephone machines are no longer widely used by the Deaf community, as they do not allow for communication in their primary language. Video relay is typically the preferred method of communication with people in remote locations.



A TTY (Text Telephone) machine still in its box at the Okanagan County Jail.

Video Relay Service is a free service provided through federal telecommunication taxes that allows an individual to use either a special set top device or computer with a camera and internet access to make calls to others. The person who is Deaf initiates a call or answers an incoming call. The Deaf individual then signs into the camera, an interpreter sees those signs and translates that language into English or Spanish for a hearing listener, then the interpreter hears the oral words of the hearing participant and signs back to the Deaf caller.

Access to video relay alone, however, is insufficient because technology allowing communication outside of the jail does nothing to assist the individual to communicate inside the jail. There are important conversations that happen from the second someone enters jail until the person leaves. Deaf people must be able to communicate complex thoughts in their primary



language in order to adequately respond to classification or medical questions, follow orders given by corrections staff, or access the services offered within the facility.

No county jail in Washington comes close to meeting the Department of Justice's communication accessibility requirements.²⁰ Moreover, even if a jail were to devote the time and resources into developing a process by which it meets the needs of Deaf individuals, the jail would still need to develop processes for the communication needs of others with disabilities. This includes providing alternative formats for information and access to technologies to allow people who are blind the ability to communicate effectively. Similarly, people with intellectual disabilities or other cognitive disabilities may have limited or no reading ability due to a disability and thus may be entitled to alternative communication avenues.

Conclusion and Recommendations

Many of Washington's county jails are inaccessible for people with physical and sensory disabilities. Fixing the physical plant and technology is straightforward, although it can in certain situations be expensive. Fixing the lack of accommodations caused by jail policies and practices can be much cheaper. However, ensuring policies properly accommodate the particular needs of individuals with disabilities requires flexibility and a constant commitment to respecting an inmate's individuality, two qualities that are not often found in any large facility, let alone a correctional facility.



For all accessibility issues, jails should consult with accessibility surveying professionals who can provide a detailed accounting of what is wrong as well as a roadmap for necessary fixes to remedy any deficiencies. The Washington State Department of Corrections did this by partnering with the Northwest ADA Center, a center at the University of Washington with ADA experts that receives federal funding to assist state and local governments, as well as businesses, to understand how to comply with the ADA. The center helped DOC complete a comprehensive survey of the accessibility of each of its facilities.²¹

Following an expert review of problems, jails and the local governments that operate them must budget and contract with construction companies to complete accessibility reforms for the technological and structural issues in their facilities. For other accessibility issues around communication and accommodations within otherwise rigid rules, jails must implement and train on a number of policies that facilitate individual analyses of inmates' needs and how to weigh various requests for accommodations guaranteed by federal civil rights laws with other correctional interests. With close examination of their obligations and consultation with experts in this field, jails can come into compliance with federal law and better serve the high number of people with numerous disabilities that require accessible environments and practices. On the other hand, if jails continue to disregard these issues, liability resulting from litigation for individual harm and the costs of systemic reform could put a much greater strain on limited local budgets.



About The Author

David Carlson is the director of legal advocacy for Disability Rights Washington. He oversees all of its legal programs, including the AVID

(Amplifying Voices of Inmates with Disabilities) Project, which focuses on both individual and systemic advocacy on behalf of individuals with disabilities in jails and prisons. David and his team have been recognized nationally for their award-winning advocacy. In addition to bringing affirmative system reform litigation to protect the rights of people with disabilities across Washington, David regularly trains attorneys across Washington and the nation on disability-related law and ethical rules. He also teaches disability law as an Adjunct Professor of Law at Seattle University. David graduated Cum Laude from Gonzaga University School of Law where he served as the Editor-in-Chief of Gonzaga Law Review.



End Notes

¹ Wash. Office of Fin. Mgmt., Analysis of Statewide Adult Correctional Needs and Costs 5 (2014), http://www.ofm.wa.gov/reports/Correctional_Needs_and_Costs_Study2014.pdf [hereinafter OFM Analysis].

² Jennifer Bronson, Ph.D., Laura M. Maruschak & Marcus Berzofsky, Dr.P.H., U.S. Dep't of Justice, Bureau of Justice Statistics, *Special Report: Disabilities Among Prison and Jail Inmates, 2011–2012* 1 (2015), <http://www.bjs.gov/content/pub/pdf/dpji1112.pdf>.

³ *Id.* at 3.

⁴ *Id.*

⁵ The uses of segregation examined in this report are those instances in which people with physical and sensory disabilities are placed in segregation due to a lack of accessible housing or policies around the use of assistive devices. This is a related, but different problem from the segregation of people with mental illness resulting from a lack of adequate treatment. The latter issue is explored in an earlier AVID report, **Cruel but Not Unusual: Solitary Confinement in Washington's County Jails.**

⁶ See OFM Analysis, *supra* note 1, at 13.

⁷ *Id.*

⁸ Douglas and San Juan counties do not operate jails. Douglas County sends its inmates to Chelan County Jail and San Juan County operates a short-term holding facility with three cells that it does not consider a jail. This holding facility was monitored along with the other county jails.

⁹ See OFM Analysis, *supra* note 1, at 5.

¹⁰ This report focuses specifically on the barriers identified in county jails. While some of the barriers may be peculiar to these jail settings, the lessons learned have general applicability at any facility providing around-the-clock care and supervision to people with disabilities. This includes city and tribal jails, prisons,



immigration detention centers, public and private psychiatric hospitals and treatment facilities, public and private nursing homes, public and private intermediate care facilities for people with intellectual and developmental disabilities, and the thousands of formal and informal living arrangements in which people with disabilities receive intensive in-home services from care providers who have significant control or influence on the physical environment, services, and communication options available to the people they serve.

¹¹ See 42 U.S.C. § 12132; 29 U.S.C. § 794(a). Because the protections of the Rehabilitation Act are substantially the same as those afforded under Title II of the ADA, our analysis is focused on the protections afforded by Title II of the ADA. See *Bragdon v. Abbott*, 524 U.S. 624, 632 (1998); 42 U.S.C. § 12201(a).

¹² See 28 C.F.R. § 35.152.

¹³ See *id.*

¹⁴ See, e.g., U.S. Dep't of Justice, Civil Rights Division, *Information and Technical Assistance on the Americans with Disabilities Act*, <https://www.ada.gov/ta-pubs-pg2.htm#2010>.

¹⁵ U.S. Dep't of Justice, Civil Rights Division, *ADA/Section 504 Design Guide: Accessible Cells in Correctional Facilities*, <https://www.ada.gov/accessiblecells.htm>.

¹⁶ For example, the U.S. Department of Justice recently settled with the sheriff of Arlington County, Virginia. See Settlement Agreement Between the United States of America and Elizabeth F. Arthur, in her official capacity as the Arlington County Sheriff, U.S. Dept. of Justice DJ # 204-79-325 (2016), https://www.ada.gov/arlington_co_sheriff_sa.html. There, the county jail failed to provide a Deaf person held at the facility with in-person American Sign Language interpreters for in-jail communications and access to video relay technology to communicate with people outside the jail. The jail must now implement many changes, including securing interpreters and new communication technology, and providing extensive training and a process for reviewing the needs of people with disabilities in the jail. Additionally, the jail agreed to pay \$250,000 to the individual.

¹⁷ See also Samantha Wohlfeil, *Whatcom County Jail needs millions in repairs; sales tax could pay for new one*, The Bellingham Herald (Oct. 15, 2016), <http://www.bellinghamherald.com/news/local/article108362182.html> (noting the jail does not comply with the ADA).

¹⁸ For an examination of the extreme harm caused by segregation, review AVID's earlier report, **Cruel but Not Unusual: Solitary Confinement in Washington's County Jails**

¹⁹ See 28 C.F.R. § 35.152(b).

²⁰ See *supra*, note 16.



²¹ See ADA National Network, Region 10 – Northwest ADA Center, <https://adata.org/region-10-northwest-ada-center> (describing partnership with Washington State Department of Corrections).

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