



Disability Rights  
WASHINGTON

# Prescription for Change

Access to Medication for People with Disabilities  
in Washington's Jails

October 2016





# Prescription for Change

## Access to Medication for People with Disabilities in Washington’s Jails

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**The AVID Jail Project is a project of Disability Rights Washington.**



# Introduction

Every day in Washington State, countless citizens with disabilities visit their doctors, call in prescriptions to the local pharmacy, and take medications that improve their health and sometimes save their lives. A man with type I diabetes may be prescribed insulin to avoid diabetic ketoacidosis and possible death. A woman with schizophrenia may rely on antipsychotic medication to manage hallucinations or delusions. A doctor may give anticonvulsants to someone with epilepsy to treat seizures. Whatever the situation, people in the community often take for granted their relatively easy access to medication.

Unfortunately, being arrested and held in jail can endanger a person's access to medication. This disproportionately affects people with disabilities, who are incarcerated in jail at a far higher rate than people without disabilities. A recently published study by the U.S. Department of Justice's Bureau of Justice Statistics found that jail inmates were over four times more likely than the general population to report having at least one disability.<sup>1</sup> About four out of ten individuals in U.S. jails have a disability; 16 percent have multiple disabilities.<sup>2</sup>

During its recent survey of all county jails in Washington State, Disability Rights Washington found that people with disabilities frequently cannot obtain important prescription medication. Disability Rights Washington made five findings regarding access

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to prescription medication in our county jails. First, jails lack effective screening mechanisms to learn about people’s existing prescription medication quickly after they enter jail. Second, even when a jail learns about existing prescriptions right away, many will routinely delay providing these medications. Third, many jails discontinue or make significant changes to existing prescriptions without first communicating with the person or their outside healthcare provider. Fourth, some county jails fail or refuse to provide new prescription medication when such treatment becomes necessary during incarceration. Finally, Washington’s jails have inconsistent, and often inadequate, practices surrounding provision of prescription medication when a person is released from jail. In addition to potentially violating the constitutional right to adequate medical and mental health care in jail, these widespread problems can have serious negative and potentially irreversible effects on a person’s health. This report describes these five findings in more detail and ends with prescriptions for change – recommendations to improve access to medication in Washington’s county jails.



A cell in the medical unit of Spokane County Jail



# 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.

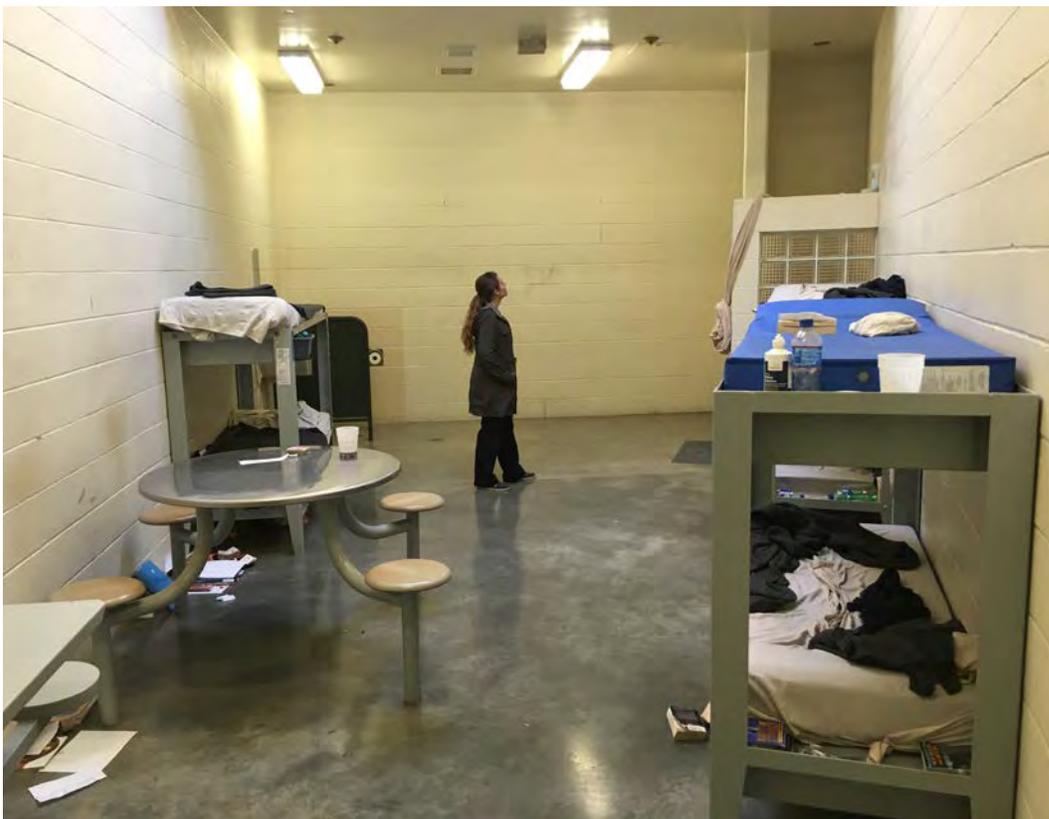
Due to the vast number of people with disabilities incarcerated in the adult and juvenile justice systems, Disability Rights Washington created Amplifying Voices of Inmates with Disabilities (AVID), a project focusing specifically on the rights of inmates with disabilities in Washington’s correctional systems. AVID is staffed by a team of attorneys, video advocates, and volunteer lawyers and law students.



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. Each year AVID serves thousands of inmates by helping them understand their rights and improve their self-advocacy skills. AVID also provides inmates with short-term legal assistance, investigates individual instances of abuse or neglect, monitors facility conditions, and engages in systemic advocacy with state officials and local facility administrators. For more information about Disability Rights Washington and AVID, please visit our website at <http://www.disabilityrightswa.org>.



Disability Rights Washington volunteer attorney Catrina Melograna standing in a shared cell in Skamania County Jail

## 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 one year or less.<sup>3</sup> In contrast, prisons are designed for long-term stays of adults convicted of felonies with sentences longer than a year.<sup>4</sup> Nearly every county in Washington State operates a jail.<sup>5</sup> Some cities also operate jails.<sup>6</sup> 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. There are currently no mandatory Washington State jail conditions standards aside from general constitutional requirements.<sup>7</sup>

## Purpose and Scope

The purpose of this report is to highlight the routine delays, disruptions, or denials of necessary prescription medication for people with disabilities in Washington's county jails. This report is not meant as an endorsement by Disability Rights Washington that medication is the best or only form of treatment for health problems including mental health disorders. This report does not discuss a person's right to refuse medication, forced medication procedures, or methadone treatment in jails. 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. It builds upon the broader findings presented in Disability Rights Washington's earlier AVID report, "County Jails, Statewide Problems: A Look at How Our Friends, Family, and Neighbors with Disabilities are Treated in Washington's Jails," available at <http://www.disabilityrightswa.org/county-jails-statewide-problems>.

## Methodology

The information presented in this report was gathered through Disability Rights Washington's 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 review and in-person monitoring revealed that people with disabilities in jail have major problems accessing their prescription medication.



# People with Disabilities in Washington's Jails Frequently Cannot Obtain Necessary Prescription Medication

All county jails in Washington have people in their care who will need prescription medication at one point or another during incarceration. The person may be taking medications that cannot be delayed without serious health risks, like insulin, certain antipsychotics, or anticonvulsants. It is crucial for the jail to identify and address these needs right away. Other people may develop or demonstrate the need for medication later during their stay in jail. They have the right to timely assessment and treatment with medication when medically necessary. People provided prescription medication in jail will need a supply of medication at release to ensure they have time to get to a new prescriber. When Disability Rights Washington's AVID Project recently looked into access to prescription medication in our county jails, it found routine and pervasive failures to meet the medication needs of people in jail.

## **People with disabilities in Washington's county jails have a right to necessary medication**

Jails have an obligation under the Eighth and Fourteenth Amendments to the United States Constitution to provide for an inmate's basic human needs, including adequate medical and mental health care.<sup>8</sup> This includes providing medication in a timely fashion where medically necessary.<sup>9</sup> Whether it is



through honest mistake or explicit policy, a jail's delay, disruption, or denial of a person's prescription medication can create a risk of serious harm, including deterioration in physical and mental health, and even death.<sup>10</sup>

## **Jails often fail to adequately screen for a person's existing prescription medication at booking**

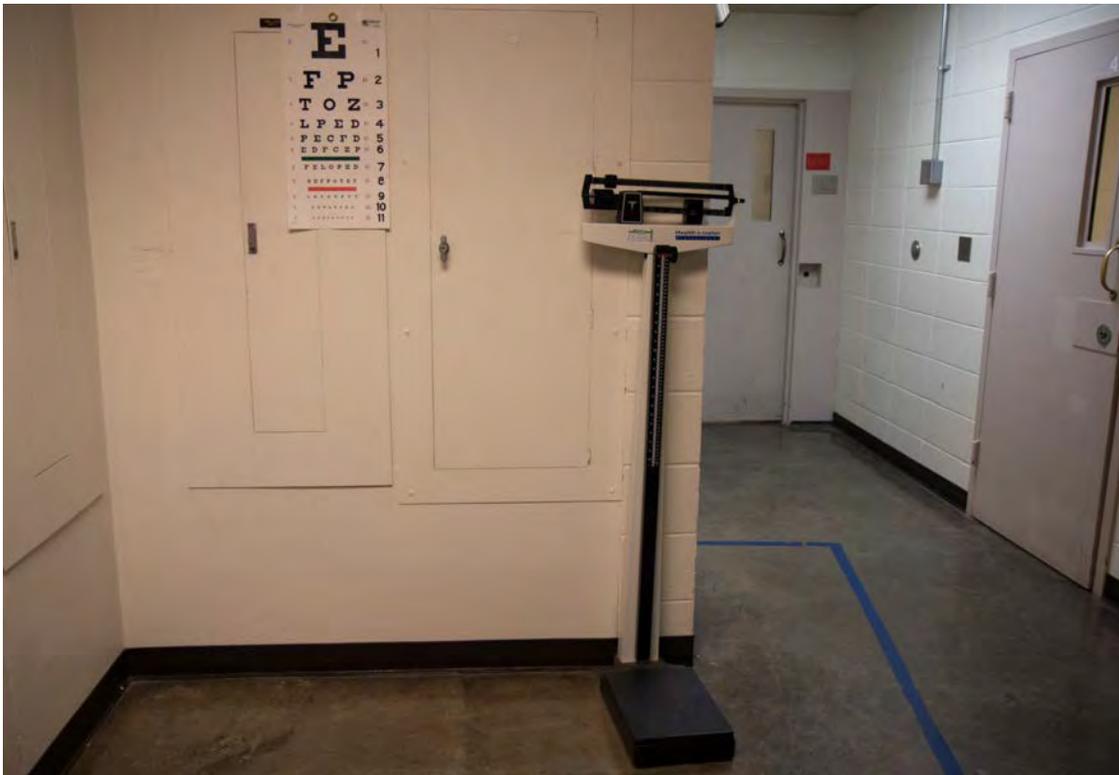
In order to provide appropriate and timely medical care, including medication, a jail must first identify the need. Washington's county jails currently have no automatic way to obtain someone's health records, even when the person receives consistent care from a local community health provider. Thus, the jail must rely on adequate screening to learn about existing medications.



Cubicles in the booking area of Pierce County Jail used for health screenings



The first screening is usually done at booking, the process by which people first enter the jail and are formally taken into the jail's custody.<sup>11</sup> Obtaining health and medication information at the time of booking is the earliest, and therefore best, way to continue a person's important prescription medication without unnecessary disruption. In the recent report on jail screening in Washington's county jails, *You Can't Just "Tell": Why Washington Jails Must Screen for Mental Illness and Cognitive Disabilities*, Disability Rights Washington found that these screenings are frequently conducted in open areas, within earshot of other inmates and staff, so people may not self-identify as needing medication. Further, it is often booking officers with no formal medical training who are responsible for administering these screenings. A person may also be an unreliable self-reporter at booking due to intoxication or other mental status. All these issues can prevent the jail from obtaining necessary information, causing disruption in medication with the potential for serious health consequences.



A scale and a Snellen eye chart in the medical area of King County Jail



## Jails often delay or disrupt prescription medication

When a jail does learn about a person's existing prescription medication, it will then usually try to verify that the prescription actually exists. In AVID staff's experience, a jail's process of verifying existing prescriptions can take mere hours to more than a week. Most jails have a policy that requires verification as soon as possible, but this can be greatly affected by jail staffing levels and the information gathered about a person's prescriptions.



A drawer of medication in the medical unit of Jefferson County Jail

This process of verification usually involves contacting the outside health care provider or pharmacy to confirm the existing prescription. While some jail policies outline a variety of other ways the jail can verify medication, including contacting family or consulting with other correctional and health facilities, these steps require resources and time that many jails do not or cannot spare. For example, King County Jail describes at least five different ways to verify a person's prescription medication.<sup>12</sup> After extensive investigation, however, the AVID Project found that King County Jail generally verifies medication only



through a faxed request to the reported pharmacy. If it cannot initially confirm medication in this way, there are often delays in any additional efforts, or no further efforts at all.

If a person brings their own prescription medication into jail, this does not guarantee more immediate access to the medication. Some jails—often smaller facilities—allow a person to use the medication brought into jail with them. Other jails—often larger facilities—will simply use the medication bottles to help in the verification process. The jail will then usually put the medication into the person’s jail property bag for storage and instead rely on its own clinical assessment and pharmacy services. The vast majority of jails do not have pharmacy services on site and instead contract with a local or mail-order pharmacy. Some jails admitted to AVID staff that there can be a delay of several days in obtaining medication from contracted pharmacies.



The entrance to the pharmacy at King County Jail, one of the few county jails in Washington that has a pharmacy on site



## **Jails often change or discontinue existing prescription medication without any communication with the person or their outside healthcare provider**

Once a jail verifies an existing prescription medication after booking, it may still change or refuse to provide it. For example, if the jail believes that the prescription is not recent enough, it may not provide the medication. King County Jail will not provide medication if the prescription is older than 45 days.<sup>13</sup> Benton County Jail is more generous at 60 days, as reported to AVID staff during our visit there. Many people cycling in and out of jail may be relying on leftover medications for which a new prescription was not filled recently. These policies could improperly discontinue their medication.

Most jails have a formulary, an official list of medicines that may be prescribed. If the verified medication is not on this formulary, the jail will often substitute a different medication. There is no standard formulary utilized by all county jails—or shared by community health providers or the state prison system, for that matter—so a person’s access to specific medication varies depending on the jail. Many jails also will not provide entire classes of medication, such as benzodiazepines, sleep aids, or certain pain medications.

Other jails have policies surrounding permitted dosages of verified medication. For example, King County Jail has very strict guidelines dictating dosage ranges for psychiatric medication.<sup>14</sup> If a person’s

**Abrupt medication changes are made in jails without communication with the person or outside healthcare provider.**



existing prescribed dosage falls even slightly outside of the jail’s sanctioned range, King County Jail will likely discontinue the verified medication. This is the case for dosages that are not dangerous or even outside the normal ranges prescribed in the community. The jail does this without consulting with the person or their outside prescriber.<sup>15</sup> AVID staff have observed people at King County Jail demonstrate significant distress and apparent mental decompensation after this abrupt discontinuation of their psychiatric medication under this policy.

Jails often make abrupt medication changes without an in-person, clinical assessment or any communication with the person or outside healthcare provider. The National Commission on Correctional Health Care (NCCHC), an organization that provides voluntary accreditation to jails and prisons, emphasizes the importance of continuity of care and communication when providing medication to people in jail.<sup>16</sup> The NCCHC recommends explaining to people “the clinical justification behind discontinuing or prescribing alternate medication so that they understand that health care decisions are made based on their health needs and not for any punitive reason.”<sup>17</sup>

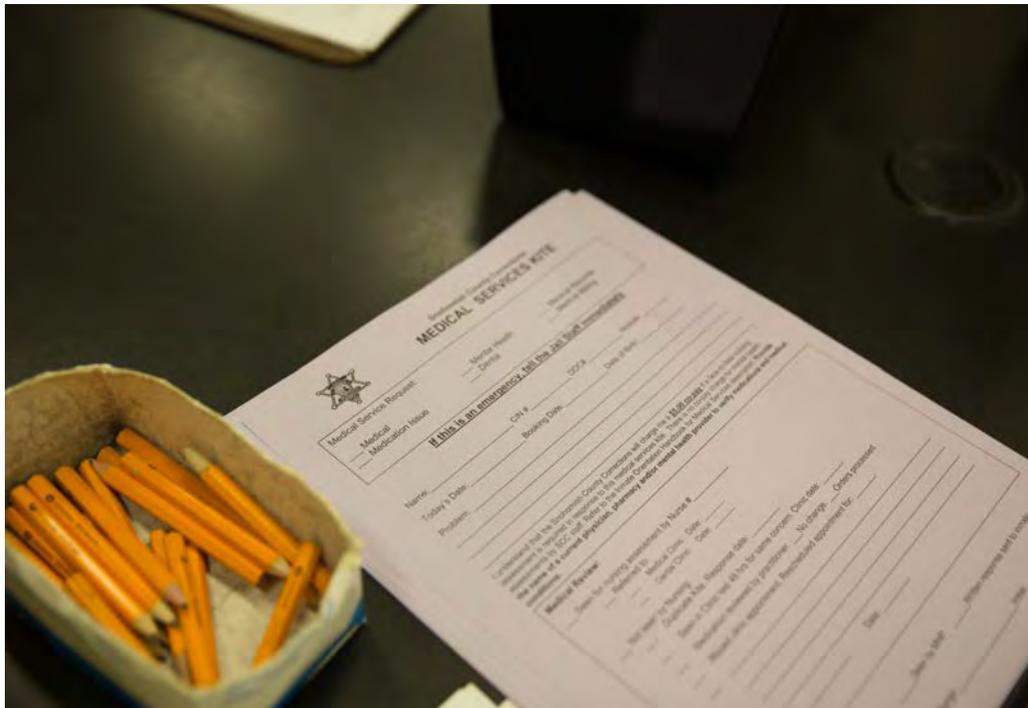


Ruben Rivera, whose verified antipsychotic medication was abruptly discontinued by King County Jail, speaks about his experience to a camera.



## Some Washington county jails fail or refuse to provide new prescription medication to people who need it

If someone enters jail without an existing or current prescription medication, but medication becomes medically necessary, the jail must provide this medical care.<sup>18</sup> Despite this requirement, AVID staff found that some jails in Washington State have an explicit policy or practice to not provide new prescription psychiatric medication to people with serious mental illness in their care. For example, Asotin County Jail, a relatively small jail in southeast Washington State, told AVID staff during their visit that it does not provide new psychiatric medication. Walla Walla County Jail, approximately twice the size of Asotin County Jail, expressed a similar policy during AVID’s visit to the jail.<sup>19</sup> Yakima County Jail, one of the larger jails in the state with an average daily population of 750 people, also routinely denied new prescriptions for psychiatric medication at the time of AVID’s visit.<sup>20</sup>



Medical kite form at Snohomish County Jail



Other jails effectively deny new prescription psychiatric medication through delaying clinical assessment. There are some county jails that are very small and do not have frequent access to health providers who can diagnose and prescribe psychiatric medication. Other larger jails may lack the staff or resources to meet the needs of their population in a timely fashion. If a person in jail shows symptoms of significant medical or mental health conditions, but is not scheduled to be seen by a provider for weeks or months, the person may be released before obtaining necessary medication. Their health may also seriously deteriorate while they wait for this assessment in jail, especially if they are held in solitary confinement.<sup>21</sup>



Door to a medical cell in Pacific County Jail

For example, King County Jail maintains a lengthy waitlist for most people in its jail seeking psychiatric care, including assessment for psychiatric medication. Despite the fact that the jail has relatively robust psychiatric staffing, the consistent wait time for those in general population or solitary confinement to see a psychiatric provider is on average 6 to 8 weeks. It can be as long as 12 weeks under jail policy. Since the average length of stay at King County Jail is about three weeks, many people needing psychiatric medication are effectively denied care.<sup>22</sup>



Disability Rights  
Washington Staff  
Attorney Kayley  
Bebber on a  
monitoring visit  
to King County  
Jail

## **Washington county jails have inconsistent practices around providing prescription medication at release**

AVID staff found that Washington’s county jails exercise many different practices in the provision of medications to people being released from jail. Jails vary from providing nothing to providing both a written prescription and a supply of medication, and everything in between. In *Wakefield v. Thompson*, the Ninth Circuit Court of Appeals held that the “state must provide an outgoing prisoner who is receiving and continues to require medication with a supply sufficient to ensure that he has that medication available during the period of time reasonably necessary to permit him to consult a doctor and obtain a new supply.”<sup>23</sup> An Urban Institute report from 2008 indicated that about half of the state prison Departments of Corrections in the United States provide a supply of medication to people releasing if the person received prescription medication in the months preceding release.<sup>24</sup> All of the



Departments of Corrections surveyed reported providing people with actual medication and/or a written prescription upon release.<sup>25</sup>

At release from a Washington county jail, a person often leaves with only the property that was with them at arrest. This means that they often walk out of jail with no money, no phone, and no seasonally-appropriate clothing. Someone releasing from jail may have very limited ability to travel to a community health provider or a pharmacy to get medication. Their Medicaid health insurance will likely have been terminated during incarceration.<sup>26</sup> All of this creates serious barriers to continuing prescription medication post-release.

Many Washington county jails, especially smaller ones, allow people to take whatever medication is remaining in a current prescription at release. This means that whether the person leaves jail with necessary medication is left to chance. Of the jails that provide medication beyond what happens to be leftover at release, the supply varies but is commonly between three and seven days' worth. Very few jails provide written prescriptions at release. An exception, Whatcom County Jail, advised AVID staff during our visit that it provides a seven-day supply, along with a 30-day written prescription for psychiatric and other medically-necessary medication. Depending on the specific circumstances, King County Jail may provide a three to seven-day supply and a written prescription for medically-necessary or psychiatric medication at release.

**Some jails explicitly provide no medication at the time of release.**

Some jails explicitly provide no medication at release. Asotin County Jail advised AVID staff that it provides prescription medication at release only if it is a course of antibiotics. Although AVID staff found that Klickitat County Jail pursues some creative and positive solutions to providing mental health care



generally, the jail advised AVID staff that it does not provide any medication or written prescription at release.

While there are a variety of ways that a jail can provide medication at release, the jail must follow the requirements of the Ninth Circuit's *Wakefield* decision. This means that a jail, keeping in mind its location and specific circumstances of inmate release, should provide sufficient medication at release to sustain someone until they can feasibly obtain outside health care. The jail cannot simply rely on whatever medication might be leftover in a current prescription. Providing both a supply and a written prescription is ideal, in addition to assisting people get community healthcare services after release.



A drawer of prescription medications at Pend Oreille County Jail



# Conclusion and Recommendations

Prescription medication is a common and vital part of medical and mental health care for many people, including people with disabilities. While people may generally exercise their fundamental right to refuse medication, that decision should never be made for them purely by virtue of arrest and booking into county jail. Washington's county jails routinely: 1) fail to adequately screen people for existing prescription medication at booking; 2) delay verifying and providing existing prescription medications; 3) abruptly change or discontinue existing prescription medication without appropriate communication; 4) fail or refuse to provide new medication to people when it becomes necessary during incarceration; and 5) do not adequately provide prescription medications for those releasing from jail. Our friends, family, and neighbors with disabilities in jail suffer the consequences.

Disability Rights Washington's AVID Project prescribes the following changes:

- To address the widespread inconsistencies and problems surrounding provision of prescription medication at our jails, Washington should consider statewide standards that promote best practices and consistency among all jails.
- To better ensure that jails can learn about a person's existing prescription medication as soon as possible after booking and to improve continuity of care, Washington should promote timely, automatic information sharing between county jails and community health providers, within the bounds of applicable privacy laws.<sup>27</sup>



- County jails should adopt policies that adequately screen people for existing prescription medication at booking and then verify and provide these medications as quickly as possible. The potential adverse effects of missing a dose of certain medications should dictate more specific timeframes.
- County jails should not make changes to existing prescription medications after booking until performing an in-person, clinical assessment. The jail should communicate with the person, and the outside healthcare provider where appropriate, before making any changes to existing prescription medications. The jail should only discontinue medication in a clinically-appropriate fashion—for example, by providing a tapering dosage.
- County jails must assess people in their care in a timely fashion for new medication needs and must provide medication that is medically necessary.
- County jails must follow the requirements of the Ninth Circuit’s decision in *Wakefield v. Thompson*, which held that the “state must provide an outgoing prisoner who is receiving and continues to require medication with a supply sufficient to ensure that he has that medication available during the period of time reasonably necessary to permit him to consult a doctor and obtain a new supply.” Ideally, this would include giving both a supply of the medication and a written prescription to a person releasing from jail, in addition to assistance with establishing post-release health care.



## About The Author



**Kimberly Mosolf** is an attorney with the AVID Jail Project of Disability Rights Washington, where she works on behalf of jail inmates with disabilities all over Washington State. Kim also works on issues related to policing and the parenting rights of people with disabilities. Kim came to Disability Rights Washington in January 2015 after practicing law in New York for the previous eight years. As a lawyer, she has worked to promote the rights of sex workers, people receiving government benefits, parents accused of abuse and neglect, those convicted of serious crimes, and people with mental illness. Kim graduated from Columbia Law School in 2006.



## End Notes

<sup>1</sup> 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, 2011–12* 1 (2015), <http://www.bjs.gov/content/pub/pdf/dpji1112.pdf>.

<sup>2</sup> *Id.* at 1, 4.

<sup>3</sup> See Wash. Office of Fin. Mgmt., *Analysis of Statewide Adult Correctional Needs and Costs* 13 (2014), [http://www.ofm.wa.gov/reports/Correctional Needs and Costs Study2014.pdf](http://www.ofm.wa.gov/reports/Correctional_Needs_and_Costs_Study2014.pdf) [hereinafter OFM Analysis].

<sup>4</sup> See *id.*

<sup>5</sup> 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.

<sup>6</sup> OFM Analysis, *supra* note 3, at 5.

<sup>7</sup> See *id.* at 8.

<sup>8</sup> See *Farmer v Brennan*, 511 U.S. 825, 832 (1994); see also *Doty v. Cty. of Lassen*, 37 F.3d 540, 546 (9th Cir. 1994) (“In accordance with the other courts of appeals that have examined this issue, we now hold that the requirements for mental health care are the same as those for physical health care needs.”).

<sup>9</sup> See *Hernandez v. Cty. of Monterey*, 110 F. Supp. 3d 929, 953 (N.D. Cal. 2015); *Steele v. Shah*, 87 F.3d 1266, 1269-70 (11th Cir. 1996); Nat’l Comm’n on Corr. Health Care, *Medication Services* (2009), <http://www.ncchc.org/spotlight-on-the-standards-23-2> [hereinafter NCCHC Med. Services].

<sup>10</sup> See NCCHC Med. Services, *supra* note 9.

<sup>11</sup> Depending on the jail, there may or may not be additional mandatory health screenings conducted in the weeks following booking that provide an opportunity for people to report or request medication. Most jails also allow people to make written health requests in jail. But, generally, booking is the first and best time for the jail to get information about a person’s existing prescription medication in order to timely respond.

<sup>12</sup> King Cty. Jail Health Servs., *Medication Administration Manual* § 1.1 (2015).

<sup>13</sup> *Id.*



<sup>14</sup> After independent consultation and research, Disability Rights Washington has found several of these King County Jail dosage ranges to be more restrictive than those employed by community providers and other jails.

<sup>15</sup> King Cty. Jail Health Servs., *Prescribing Guidelines for Psychiatric Medications Used by Jail Health Services* § 2.1.2 (2015).

<sup>16</sup> See NCCHC Med. Services, *supra* note 9. Disability Rights Washington is currently aware of only two jails in Washington State accredited by NCCHC: SCORE jail in south King County and Whatcom County Jail.

<sup>17</sup> *Id.*

<sup>18</sup> *See id.*

<sup>19</sup> Walla Walla County Jail advised us during our visit in March of 2016 that the jail expected new mental health staff to start working the week after our visit, so this policy may have changed.

<sup>20</sup> Although Disability Rights Washington confirmed this practice in June 2016, it is our understanding that the jail is in the process of revising this and other policies related to medication and health care. Disability Rights Washington very much appreciates Yakima County Jail's responsiveness to this issue.

<sup>21</sup> For a review of current studies into the effects of solitary confinement, see Vera Institute of Justice, *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives* 17-18 (2015), [http://www.vera.org/sites/default/files/resources/downloads/solitary-confinement-misconceptions-safe-alternatives-report\\_1.pdf](http://www.vera.org/sites/default/files/resources/downloads/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf).

<sup>22</sup> King Cty. Dep't of Adult and Juvenile Det., *Detention and Alternatives Report 2* (July 2016), [http://www.kingcounty.gov/~media/courts/detention/documents/KC\\_DAR\\_07\\_2016.ashx?la=en](http://www.kingcounty.gov/~media/courts/detention/documents/KC_DAR_07_2016.ashx?la=en).

<sup>23</sup> *Wakefield v. Thompson*, 177 F.3d 1160, 1164 (9th Cir. 1999).

<sup>24</sup> Urban Institute Justice Policy Ctr., *Release Planning for Successful Reentry: A Guide for Corrections, Service Providers, and Community Groups* 19 (2008), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/411767-Release-Planning-for-Successful-Reentry.PDF>.

<sup>25</sup> *Id.*

<sup>26</sup> Washington State Senate Bill 6430 was passed during the 2016 session and requires that Medicaid benefits for jail inmates be suspended rather than terminated, effective July 1, 2017. This law faces significant funding hurdles, however. The ultimate effect of the law was not known as of the publication of this report.

<sup>27</sup> In 2016, State Representatives introduced House Bill 2501, which, among other things, required local jails and community healthcare providers to share information about an inmate's current prescription medication within 24 hours of booking. The bill did not pass, but it does represent a significant step towards consistent jail standards and continuity of health care.