

The Need for Accessible Voting in Jail

August 2016





Letter from Disability Rights Washington's Executive Director

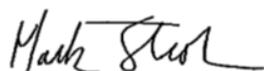


Voting season is finally upon us. The media has been filled with talk of the presidential election for over a year. A multitude of other federal, state, and local elections are also coming into focus. However, if no changes are made, thousands of legally-eligible voters across Washington State may not be able to register to vote or cast a ballot in the upcoming election.

The ability to vote is routinely stripped from people in our jails without justification. While some people in jail have had their legal right to vote revoked, the majority are eligible to register and vote. They are prevented from voting simply because they are held in jails that do not protect or facilitate this fundamental right.

People with disabilities are one of the largest voting blocks in this country, but they often face barriers to voting due to a lack of accessibility. So, while people with disabilities should have a very large voice in elections, their voices are often muted. People with disabilities are also held in jails at a disproportionately higher rate than those who do not have disabilities, further weakening the voice of the disability community. Much work is being done to get out the vote generally, and in the disability community specifically, but one area too often ignored is the voting rights of people in our jails.

This can change, and it can change quickly. In just a couple weeks this spring, Island County Jail went from doing nothing about voting – just like a vast majority of other county jail in Washington– to being a model of how to support registration and voting in jail. If other jails act now, thousands of people who would otherwise be disenfranchised will be able to cast their votes this November.

 | **Mark Stroh, Executive Director**



The Need for Accessible Voting In Jail

The AVID Jail Project, a Project of Disability Rights Washington

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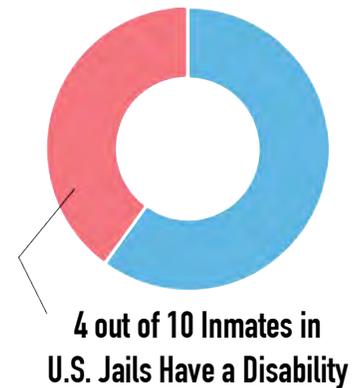


Summary

Each day in Washington, there are approximately 12,000 people in jail.¹ The majority of these individuals have the right to vote.² People with disabilities 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 are four times more likely than the general population to report having at least one disability.³ About four out of ten individuals in U.S. jails have a disability.⁴ Nearly half of women in jail have a disability.⁵ Of those with disabilities in jail, 16 percent have multiple disabilities.⁶



This extreme concentration of people with disabilities requires jails to focus their attention on designing systems within their facilities that meet the unique needs of each individual with a disability. Most jails in this state do absolutely nothing to provide the information, ballots, and voting accommodations necessary for the people in their custody to vote. This results in people held in these jails not being able to vote, and as described above, this disproportionately affects people with disabilities.



While each inmate’s disability, experience, 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. Barriers to voting must be addressed systemically by the jail administration and the local election agency. While there is time to fix these failures before this year’s big election, jails must take immediate steps to avoid stripping people with disabilities of their fundamental right to vote.



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, 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 <http://www.disabilityrightswa.org>



At left, DRW Attorneys Kimberly Mosolf and Kayley Bebbler monitor the conditions of a 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 a year or less.⁷ In contrast, prisons are designed for long-term stays of adults convicted of felonies with sentences longer than a year.⁸ Nearly every county in Washington State operates a jail.⁹ Some cities also operate jails.¹⁰

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.¹¹



Purpose and Scope

The purpose of this report is to illuminate the lack of voting access in county jails across Washington.¹² It is especially important that government actors avoid infringing on the constitutional rights of individuals in their custody. This report is intended to assist jails in avoiding unnecessary infringement of the fundamental right to vote of the people with disabilities in their custody.

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 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," <http://www.disabilityrightswa.org/node/1519>.

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, they are by and large not able to exercise their voting rights.

There are currently no mandatory Washington State jail conditions standards aside from general constitutional requirements.



Most Washington Jails Provide No Means for Registering to Vote or Casting a Ballot

Perhaps the most common problem Disability Rights Washington's AVID project found when it reviewed every county jail's treatment of people with disabilities is that a vast majority of jails fail to facilitate the right to vote. Unfortunately, most jails have no means for helping people register to vote or cast their ballots while in custody. Moreover, voting with a disability may require accommodations and alternative means of voting that are readily available in the community, but not available in a jail. This leads to people with disabilities disproportionately not voting due to actions and inactions of county governments across our state.

People with disabilities have a fundamental right to vote

The right to vote, and the ability to exercise that right, is a hallmark of equality and political power. It has been at the heart of the greatest socio-political struggles of our country's history.¹³ Both the United States and Washington State constitutions protect the right to vote and find government actions that have the effect of limiting the exercise of this right highly suspect.¹⁴ The right to a free and equal vote guaranteed by the Washington State Constitution provides even greater protection than the U.S. Constitution.¹⁵



The Right to Vote and Mental Competency



There is no basis for assuming that a person who has a mental illness, brain injury, or intellectual disability cannot vote.

Just because someone may have their mental competence questioned in a criminal proceeding or is under a previously established guardianship, does not mean he or she cannot vote. Only a court can make a person ineligible to vote due to lack of capacity. Guardians, family members, and others do not have the authority to vote on the behalf of that person. They also do not have the right to decide whether or not the person will vote.

In the past, it was common for voting rights to automatically terminate with the issuance of a guardianship order. However, current guardianship law states that courts cannot automatically take away the right to vote, and may only do so where it finds that the person lacks capacity to understand the nature and effect of voting such that she or he cannot make an individual choice.

For information on the right to vote, and assisting an individual with a disability to vote see Disability Rights Washington's Tools to Help You Vote, <http://www.disabilityrightswa.org/tools-help-you/voting-0>

In 1984, Congress passed the Voting Accessibility for the Elderly and Handicapped¹⁶ Act to make registering and voting in all federal elections accessible to people with disabilities.¹⁷ This was followed in 1990 by the Americans with Disabilities Act (ADA) that further protected the rights of people with disabilities to access state and local government services.¹⁸ The ADA requires that state and local governments modify their rules, physical plants, and even websites in order to make their programs and services, including voting, accessible to people with disabilities.¹⁹ The Help America Vote Act, passed over a decade ago, also contains numerous provisions to improve voting accessibility for individuals with disabilities.²⁰



Despite the passage of three major federal laws intended to provide people with disabilities access to full participation in our democracy, there are many who are still denied the right to vote due to government action or inaction. As described below, people with disabilities have limited access to register and vote when held in Washington's county jails.

Most Washington jails provide no way for an individual with a disability in their custody to exercise the right to vote

When Disability Rights Washington's AVID project monitored each of Washington's 38 county jails this past spring, it found only a handful had formal policies in place to facilitate inmate voting. Apart from the AVID project's review of county jails, it has also done extensive monitoring of policies and conditions at the South Correctional Entity (SCORE) Regional Jail, a jail operated on behalf of several cities in south King County.²¹ The voting policies that SCORE and some counties have all recognize that many of the people they serve have the right to vote.²² However, having a policy on paper that merely acknowledges someone is legally allowed to vote is not sufficient. Of the few jails with voting policies, when the AVID project visited the jail and asked staff and administrators about the policies, many did not know about the policies or did not actually use them. In contrast, Spokane, Kittitas, and SCORE are examples of facilities that have policies in place and report actually facilitating voter registration, receipt of ballots while in jail, and casting of ballots. While their policies are silent on specific accommodations to voters with disabilities, these jails have general policies on providing accommodations to people with disabilities.²³ During Disability Rights Washington's AVID Project visit, Kittitas Jail staff confirmed that they do in fact provide accommodations to inmates with disabilities looking to exercise their right to vote. In addition to its written policy, Spokane described a program they have in which a group of officers helps people both register to vote and get voting information.



Disability Rights Washington was pleased to see that a lack of established policy and practices is not necessarily a sign a jail opposes inmate voting, and can rather reflect a lack of awareness of common barriers to voting in jail. For example, when the AVID project visited Island County Jail, it had no policies about voting. In response to the questions about voting posed by Disability Rights Washington's AVID Project during its monitoring visit, Island County Jail immediately took affirmative steps to dramatically improve access to voting information and ballots without any specific request to do so. Island County Jail worked with their county election office to start a voter education program in the jail. The jail put up voter registration posters in each of its housing areas and now hands out voter registration pamphlets to people in the jail. Local election officials also came out to the jail to meet with groups of inmates to educate them on voter rights and the local process. The jail now provides inmates with mail-in ballots to use if they so choose.

The practices of these jails are highly commendable as they recognize the need to assist people in their custody to exercise their right to vote. Many jails, some of the few with policies and some without policies, said they would allow someone to vote, but no one has ever asked to register or vote. Given the lack of understanding by jail administrators and staff of their roles in supporting voting activities and the policies they should have in place to facilitate this activity, it is not surprising the average person who happens to be in jail during an election period may not know he or she can vote while in jail.

In addition to having written policies and affirmative practices that facilitate voting activities, jails should also coordinate with the local election agency to make sure an accessible voting machine is available to any incarcerated voter with a disability who could benefit from it. This includes voters who are blind or

It is not surprising the average person who happens to be in jail during an election period may not know he or she can vote while in jail.



cannot read, or voters who cannot otherwise mark or sign their ballots independently.

The vast majority of county jails have no policies or practices to facilitate voter registration or voting, either generally or for people with disabilities in their custody. Since jails control the movement and access to information of every person in their facilities, the lack of policies and practices that facilitate voting results in thousands of citizens unable to register to vote, receive their ballot, or cast a vote.

Accessible Voting Units

People who cannot read a printed ballot, or are unable to mark a ballot, can vote privately on an “accessible voting unit” (AVU). These machines can provide the ballot or a screen, and the voter can select by touching the screen using a select wheel or tool. The voter can use headphones to listen while the AVU reads the text of the ballot.

In Washington, the machines are available for use for the 18 days preceding an election at the county auditor’s office, and frequently in other locations. While these machines are operated by county governments through their election offices, no jails reported making these machines available for use in the jails operated by those same county governments, despite the fact that jails serve large numbers of people with disabilities.



Image courtesy of IDEO



Conclusion

The barriers to voting faced by people with disabilities in jail are unacceptable. Most of our county jails are failing to plan and allocate sufficient resources to facilitate and provide accommodations to voters with disabilities. There is still time to fix this problem before the upcoming election that will cover the President, every federal and state House seat, a U.S. Senate seat, the Governor, multiple state court seats, and numerous other local and statewide issues and offices. If jails take action now, all of the people in their custody who are eligible to vote will be able to vote in the primary election. However, if the vast majority of jails continue to do nothing and ignore this problem, thousands of Washingtonians with disabilities will have no means to cast a ballot.

If jails take action now, all of the people in their custody who are eligible to vote will be able to vote in the primary and general election.



Appendix A

Kittitas County Sheriff's Office, Custody Services Manual, Policy 622 Inmate Voting:

Policy
622

Kittitas County Sheriff's Office
Custody Services Manual

Inmate Voting

622.1 PURPOSE AND SCOPE

This policy establishes the requirement for providing eligible inmates the opportunity to vote during elections, pursuant to election statutes.

622.2 POLICY

Inmates who have not been convicted of a felony and are in custody during trial continue to have the right to vote. Except for individual inmates who have lost the right to vote, sentenced inmates also maintain this right. The inmate shall contact the county auditor who will verify the inmate's right to vote and provide access to qualified inmates to vote in local, state and federal elections, pursuant to election codes.

Inmates should be advised of voting methods during the inmate orientation.

622.3 PROCEDURES

This procedure outlines the steps that inmates must take in order to vote while in custody at the Kittitas County Corrections Center.

622.3.1 REGISTERING TO VOTE

An inmate who is eligible to vote should send a written request to the Auditor's Office for a voter application. The inmate must fill out the application and turn it in to an officer who will send it to the Auditor via inter-office mail.

622.3.2 REQUESTING AN ABSENTEE BALLOT

An inmate who will be in custody during an election and shall submit a request to the Auditor's Office for an absentee ballot.

622.3.3 VOTING

All ballots received shall be delivered to inmates in a timely manner to ensure compliance with the inmate's right to vote. Once the ballot has been delivered to the inmate, it shall be the responsibility of the inmate to mail his/her ballot in accordance with the state's voting requirements. If the inmate is indigent, the correctional center will mail the ballot; if not, the inmate is responsible for the postage. If the ballot is for Kittitas County a Corrections Officer will hand deliver the ballot to the Auditor's Office.



Appendix B

Kittitas County Sheriff's Office, Custody Services Manual, Policy 230 Accessibility – Facility and Equipment:

Policy
230

Kittitas County Sheriff's Office
Custody Services Manual

Accessibility - Facility and Equipment

230.1 PURPOSE AND SCOPE

This policy is intended to ensure that staff and the general public have access to the facility, in compliance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act, 29 USC § 794.

230.1.1 DISABILITY DEFINED

A disability is any physical or mental impairment that substantially limits one or more major life activities. These include, but are not limited to, any disability that would substantially limit the mobility of an individual or an impairment of vision and/or hearing, speaking or performing manual tasks that require some level of dexterity. Additionally, disability includes a physical or mental impairment that would inhibit a person's ability to meet the requirements established by the Office for conducting visitation or other business in the facility.

230.2 POLICY

The Kittitas County Sheriff's Office prohibits discrimination of persons with disabilities. The Kittitas County Sheriff's Office adheres to the ADA and all other applicable federal and state laws, regulations and guidelines in providing reasonable accommodations to ensure that the facility is reasonably accessible to the public and usable by staff and visitors with disabilities.

230.2.1 ACCOMMODATIONS

As part of the compliance with the ADA and the commitment to provide access to persons with disabilities, the Office will provide reasonable accommodations in areas that include, but are not limited to:

- Vehicle parking areas that accommodate cars and vans or other vehicles with wheelchair lifts.
- Public areas that are wheelchair accessible.
- Drinking fountains that can accommodate wheelchairs or other mobility devices.
- ADA-compliant elevators.
- Restroom areas that are wheelchair compliant and meet ADA standards for accessibility.
- Search areas and metal detection devices, including private areas where alternative search methods may be performed.
- Services and equipment for the deaf and hard of hearing.
- Visitor check-in areas.
- Visitation areas, including attorney interview rooms that can accommodate wheelchairs and other mobility devices.



Kittitas County Sheriff's Office

Custody Services Manual

Accessibility - Facility and Equipment

230.2.2 ADA COORDINATOR

The Jail Commander should appoint a staff member to serve as the ADA Coordinator, whose primary responsibilities include, but are not limited to, coordinating compliance with ADA requirements. The ADA Coordinator should be knowledgeable and experienced in a variety of areas, including:

- The agency structure, activities and employees, including special issues relating to the requirements of the correctional center.
- The ADA and other laws that address the rights of people with disabilities, such as Section 504 of the Rehabilitation Act, 29 USC § 794.
- People with a broad range of disabilities.
- Alternative formats and technologies that enable staff, inmates and the public with disabilities to communicate, participate and perform tasks related to jail activities.
- Construction and remodeling requirements with respect to ADA design standards.
- Working cooperatively with jail staff, inmates and the public with disabilities.
- Local disability advocacy groups or other disability groups.
- Negotiation and mediation.

The ADA Coordinator may access information relating ADA requirements on the ADA website.

230.2.3 TRAINING

The ADA Coordinator will be responsible for the development of staff training on issues specifically related, but not limited to:

- Development of lesson plans and informational documents.
- The requirements of Section 504 of the Rehabilitation Act, 29 USC § 794.
- Office policies and procedures relating to ADA requirements.

The ADA Coordinator should:

- Develop a training plan, learning objectives and training material.
- Schedule training and document staff attendance.
- Maintain and update records related to ADA training.

Nothing in this policy is meant to limit any particular training modality, (e.g., briefing training, online learning, classroom training).

230.2.4 DISSEMINATION OF INFORMATION

The ADA Coordinator will be responsible for the dissemination of information to inmates and visitors on issues specifically related, but not limited to:

- Services available to inmates and members of the public who are disabled.



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 Washington Office of Financial Management, 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 In Washington, a person loses the right to vote if convicted of a felony, and there is a process by which this right can be restored, but since jails are primarily used to house people awaiting trial or serving sentences for misdemeanors, the felony voting restriction does not apply to most of these individuals. See Washington Secretary of State, Elections & Voting, Voter Eligibility, <http://www.sos.wa.gov/elections/Voter-Eligibility.aspx> (explaining eligibility requirements for voters, including people who have been convicted of felonies or who have guardians).

³ Jennifer Bronson, Ph.D., Laura M. Maruschak & Marcus Berzofsky, Dr.P.H., U.S. Department 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>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 4.

⁷ See OFM Analysis, *supra* note 1, at 13.

⁸ *Id.*

⁹ 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.



¹⁰ See OFM Analysis; *supra* note 1, at 5.

¹¹ OFM Analysis, *supra* note 1, at 8.

¹² 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 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 wield significant power to control access to information and ballots.

¹³ See *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) (stating “history has seen a continuing expansion of the scope of the right of suffrage in this country”).

¹⁴ See *id.* at 554-55 (citing numerous cases from the late 1800s forward which found unconstitutional various actions limiting voting and the impact of each vote); *Brower v. State*, 137 Wn.2d 44, 68 (1998).

¹⁵ *Brower*, 137 Wn.2d at 68 (stating, “The right to vote is fundamental, and art. I, § 19 provides greater protection for a free and equal vote than does the federal constitution's one person-one vote equal protection right”).

¹⁶ The term “handicapped” is used in this report, only because it was the term used in the title of the law at the time it was passed. It should be noted, however, that in the decades since the statute was written, the term “handicap” has been recognized as disrespectful and has been replaced by more acceptable terms by people with disabilities, clinicians, advocates, and both state and federal legislatures. See, e.g., Washington State Respectful Language Act, RCW 44.04.280; or the usage of disability in the subsequent federal legislation title “Americans with Disabilities Act.”

¹⁷ See 52 U.S.C. § 20101.

¹⁸ See 42 U.S.C. § 12132.

¹⁹ See U.S. Dep’t of Justice, ADA Checklist for Polling Places (2004), <http://www.ada.gov/votingchecklist.htm>.

²⁰ See 52 U.S.C. §§ 20901-21145.



²¹ While SCORE Jail is not a county jail, its size and multijurisdictional service area makes it similar to county jails for purposes of the DRW statewide jail survey. The AVID Project has extensively monitored this jail and reviewed all of its disability-related policies.

²² See Kittitas County Sheriff's Office, Custody Services Manual, Policy 622 Inmate Voting. Attached as Appendix A.

²³ See Kittitas County Sheriff's Office, Custody Services Manual, Policy 230 Accessibility – Facility and Equipment Attached as Appendix B.

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