



You Can't Just "Tell"

Why Washington Jails Must Screen for Mental Illness and Cognitive Disabilities

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



Introduction

People with cognitive disabilities¹ and mental health disorders² face many challenges in jail. Someone with a brain injury, for instance, may have attention or memory deficits that make it difficult for them to follow facility rules or staff directions. Alternatively, the person's brain injury could cause difficulty with impulse control, leading to rule violations or actions that could cause harm to self or others.³ Someone with an intellectual disability may be vulnerable to victimization or exploitation by other inmates.⁴ The person's intellectual disability could also cause the person to have greater difficulty understanding and following rules and instructions, resulting in the person pretending to understand information about their rights and responsibilities they do not fully comprehend.⁵ An individual with a mental illness may need immediate access to psychotropic medications and continuing treatment, and without them is at serious risk for worsening mental health symptoms while in jail. A person with a mental illness may also act in ways that lead to discipline and segregation at a much higher rate than a person who does not have mental illness.⁶

Many studies have shown that people with mental illness and cognitive disabilities are over-represented in the U.S. jail population.⁷ Based on national statistics finding 30 percent of people in jail have a cognitive disability⁸ and 60 percent have symptoms of a mental disorder,⁹ it follows that a large number of the 12,000 Washingtonians in jail each

Disability Rights Washington found that screening for cognitive disabilities and mental illness is severely lacking throughout Washington State jails.



day¹⁰ likely have cognitive disabilities or mental illness. It is imperative that jails identify individuals with disabilities so these inmates can get the support they need to safely and successfully serve their time in jail.

Immediately identifying inmates with disabilities enables jails to provide legally-required services and reasonable accommodations and to maintain safety for all inmates and jail staff. Early identification may also help jail staff identify community support programs and resources in release planning. Unlike what many jail employees told Disability Rights Washington during its recent survey of all county jails in Washington State, jail staff cannot just “tell” if someone has a disability. Effective screening – a process of structured inquiry and observation designed to detect issues that may not be otherwise obvious – is essential for jails to identify inmates with cognitive disabilities and mental illness. Disability Rights Washington found that screening for cognitive disabilities and mental illness is severely lacking throughout Washington State jails.



An inmate sits in the booking area at Whatcom 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.



Disability Rights Washington Attorney Susan Kas and law student Meaghan Hess talk with inmates at Skagit County Jail



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/>.

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.¹¹ In contrast, prisons are designed for long-term stays of adults convicted of felonies with sentences longer than a year.¹² Nearly every county in Washington State operates a jail.¹³ Some cities also operate jails.¹⁴



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.¹⁵



Disability Rights Washington Attorney Kayley Bebbler talks with an inmate at SCORE Jail

Purpose and Scope

The purpose of this report is to highlight the lack of adequate screening to identify inmates with cognitive disabilities and mental illness in Washington's county 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. 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," 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 and in-person reviews revealed that most county jails in Washington do not adequately screen for cognitive disabilities and mental illness.

Most Washington Jails Fail to Adequately Screen for Cognitive Disabilities and Mental Illness

When Disability Rights Washington's AVID Project visited county jails across Washington, it repeatedly observed inadequate screening for inmates with mental illness or cognitive disabilities. Effective screening is crucial to identify inmates with these disabilities so that they may receive necessary services and reasonable accommodations to access jail services, programs, and activities. Simply put, jails cannot provide legally-required services and reasonable accommodations if they do not know which inmates are entitled to them. When jails fail to effectively screen for disabilities, they violate the rights of people with disabilities.



People with disabilities have a right to necessary services and reasonable accommodations

Under federal law, jails must provide services and accommodations to inmates with disabilities. This requirement comes from both the U.S. Constitution and from federal statutes. Under the Eighth and Fourteenth Amendments to the U.S. Constitution, jails must provide for inmates' basic human needs, including adequate mental health treatment.¹⁶ The Eighth Amendment protects inmates who have been sentenced from cruel and unusual punishment.¹⁷ It forbids jail officials from disregarding conditions of confinement that subject prisoners to an excessive risk of harm.¹⁸ Deficiencies in a jail's mental health treatment program, for example, may violate the Eighth Amendment.¹⁹ The Fourteenth Amendment's requirements are more protective than the Eighth Amendment.²⁰ The Fourteenth Amendment protects pre-trial inmates from punishment before their guilt has been determined, and requires government officials to do more than provide minimal necessities to inmates.²¹

Jails must also comply with the Americans with Disabilities Act (ADA). The ADA prohibits jails from discriminating against inmates with disabilities.²² Under the ADA, jails must provide inmates with disabilities the opportunity to participate in and benefit from services, programs, and activities offered in the facility in the most integrated setting appropriate to individual inmates with disabilities.²³ For example, as discussed above, an individual with a brain injury may have difficulty remembering rules and instructions. Such an individual may need reasonable accommodations, like more frequent reminders or clearly and simply worded written or illustrated instructions. Without screening and the resulting

When jails fail to effectively screen for disabilities, they violate the rights of people with disabilities.



accommodation of disability, the jail might wrongly discipline this inmate for failing to follow rules through no fault of the individual.



An inmate in a booking holding cell at Franklin County Jail

Jails must have effective screening practices to identify inmates with disabilities

In order to provide legally required services and reasonable accommodations, jails must first identify inmates with cognitive disabilities or mental illness. The first opportunity is at booking, the process by which inmates first enter the jail and are formally taken into the jail's custody. Booking presents an early and essential opportunity to identify an inmate's needs. For example, effective screening for mental health history at booking is key to preventing suicides in jail. Suicide rates among jail populations are higher than among the community at large.²⁴ Jail suicides often occur soon after booking and involve inmates with a history of depression or psychosis and prior treatment with psychotropic medication.²⁵ Booking is an opportunity for jails to immediately identify inmates at risk of suicide.



Individuals with cognitive disabilities or mental illness may not be readily identifiable without effective screening standards and tools. Because of the stigma and risk of victimization associated with these disabilities, many individuals may not be comfortable disclosing information about their disabilities, especially where other inmates may be present or able to hear.²⁶ People with intellectual or developmental disabilities are frequently skilled at hiding their disabilities.²⁷ In addition, studies have shown that words often used to elicit self-reporting of brain injury, such as “head injury,” “traumatic brain injury,” “concussion,” “knocked out,” and “loss of consciousness,” are interpreted differently by responders, leading to frequent under-reporting of such disabilities.²⁸ Research has shown that a screening tool that asks only one question to identify people with brain injuries at admission to prison identified only 19 percent of the people with brain injuries found by structured interview.²⁹

Screening for mental health history at booking is key to preventing suicides in jail.

Screening standards for jails are readily available. Standards created by organizations and experts in the field of health care and corrections generally describe when screening should occur, and for which disabilities jails should screen. For example, in order to be accredited by the Washington Association of Sheriffs and Police Chiefs, jails must have policies and procedures around screening for cognitive disabilities and mental illness.³⁰ As another example, the National Commission on Correctional Health Care publishes Standards for Health Services in Jails.³¹ It recommends several layers of screening for mental health and cognitive disabilities, beginning at booking, preferably performed by health staff, and with appropriate follow-up and additional subsequent screenings.³²



In addition, researchers have developed comprehensive, evidence-based screening tools for cognitive disabilities and mental illness that can be used in correctional settings. Screening tools are tests or sets of questions used to determine who may have a particular disability. Though Disability Rights Washington's AVID Project does not endorse any particular screening tool, it provides these examples to highlight that these tools are readily available.³³



A "rubber room" in the booking area of Snohomish County Jail used as an observation cell for inmates at risk of self-harm

In most of Washington's county jails, screening is inadequate

When Disability Rights Washington staff visited Washington's county jails, they found that the vast majority of jails screen at least minimally for mental illness, but not for cognitive disabilities. Further, very few of the jails that purport to screen for intellectual or developmental disabilities or brain injuries use screening tools designed and validated to actually identify these disabilities. On many occasions, Disability Rights Washington staff were told that custody staff could just "tell" if someone had a disability. Screenings are frequently conducted in open areas, within earshot of other inmates and staff. Often,



booking officers with no formal medical training are responsible for administering these screenings. Many times, there is no follow-up after booking unless the inmate is in current, acute crisis, or unless the inmate requests to see health staff.

Most jails provide only very basic mental health screening

All county jails in Washington ask questions intended to screen for mental illness at booking. Most county jails also provide some type of training to non-medical booking staff to help recognize symptoms of mental illness. All jails ask questions at booking regarding suicidality, and ask booking staff, who may have no formal medical training, to make observations regarding an inmate's apparent mental state. Most ask about prior psychiatric treatment, hospitalizations, and medications. Few, however, provide more in-depth mental health screenings and evaluations, either at booking or later during incarceration.



Painted footmarks on the floor in the booking area of Jefferson County Jail indicate where inmates undergo pat down searches



Certainly, it is crucial to identify inmates who are at risk of suicide or who are in acute mental health crisis. However, in most jails, there is no clear follow-up or in-depth screening to identify inmates who are not in immediate crisis at booking, but may be in need of mental health treatment or accommodations. Kitsap County Jail is an exception. Kitsap County Jail's policy states that a licensed mental health professional screens all inmates for mental health problems within 48 hours of booking into the jail. This screening is in addition to basic questions asked at booking. The policy states that those who are referred for treatment receive further evaluation by a licensed mental health professional within seven days.

Very few county jails use mental health professionals to screen inmates. At Kitsap County Jail, Disability Rights Washington staff observed that health staff conduct health screenings at booking. Island County Jail is another exception. At Island County Jail, nurses are available to conduct health screenings at booking.

The AVID Project is not aware of any jail that uses in-depth, scientifically-validated screening tools to identify inmates with cognitive disabilities.

Very few jails screen for cognitive disabilities

Unlike mental health screening, very few of Washington's county jails screen specifically for cognitive disabilities. Those that do limit screening to one or two questions during booking, which is often conducted in an open or semi-open area. The AVID Project is not aware of any jail that uses in-depth, scientifically-validated screening tools such as those noted above³⁴ to identify inmates with cognitive disabilities. While most jails ask about recent injury or head trauma, few ask about past brain injuries. Those jails that ask about brain injuries generally ask one question about whether the inmate has ever sustained a head injury. For example, on its receiving screening form, King County Jail only asks one question about history of "cerebral trauma." As



described above, such limited questioning likely fails to identify many inmates who have brain injuries.

Similarly, those few jails that ask about intellectual or developmental disabilities during booking usually ask one or two questions about whether the inmate received special education or has “special needs.” As previously noted, because of the stigma and risk of victimization associated with these disabilities, individuals with intellectual or developmental disabilities frequently do not want to self-identify, particularly where there is a chance other inmates could hear them.

Most of Washington’s county jails ask booking officers to note their observations of inmates and to assess whether they think an inmate could have a cognitive disability. In addition to the obvious unreliability of that method,³⁵ many individuals with these disabilities are adept at hiding them. In many jails, staff may not even understand why cognitive disabilities matter. When Disability Rights Washington’s AVID Project visited one small eastern Washington jail, for example, staff indicated that the jail did not screen for brain injuries, and did not seem to know why brain injuries may be significant. Further, in most jails, even when staff know that an inmate likely has a cognitive disability, no steps are taken to further screen and evaluate the extent of the inmate’s disabilities and needs. Again here, Island County Jail is an exception. Health staff conduct more in-depth evaluations when inmates screen positive for cognitive disabilities or mental illness.

Kitsap County Jail also has a policy on screening inmates for cognitive disabilities so that the jail can provide needed services and reasonable accommodations. During the mental health screening that all inmates receive, mental health professionals ask about brain injuries, and screen further for intellectual and developmental disabilities. Under its policy, those inmates



identified as possibly having these disabilities receive further evaluation. When Kitsap County Jail identifies inmates with these disabilities, the policy states that staff contact community services providers, including the Developmental Disabilities Administration and the Veteran’s Administration.

Adequate screening policies and tools do not necessarily mean a jail is meeting its legal duties. Jails must have staff with adequate training and expertise to perform screenings correctly and thoroughly, and must follow up appropriately once issues are identified. However, having adequate screening policies and tools is a necessary first step at which even Washington’s large county jails fail. Yakima County Jail, Spokane County Jail, and Snohomish County Jail all fail to screen specifically for cognitive disabilities at booking. None of these jails has policies addressing how to identify inmates with cognitive disabilities. Without adequate screening policies and tools, many inmates with cognitive disabilities in these large jails and numerous smaller facilities across the state are likely to remain unidentified, and therefore their treatment needs will remain unfulfilled.



An inmate in a segregated unit at Snohomish County Jail during their “hour out”



Conclusion

The widespread failure to screen adequately for inmates with mental illness and cognitive disabilities in county jails across Washington is unacceptable. Jail staff cannot just “tell” if an inmate has mental illness or a cognitive disability. The failure to identify thousands of people with these disabilities in jail every day means that these inmates likely do not receive the services and reasonable accommodations they need and to which they have a legal right. The first step to improving the way our county jails treat people with disabilities is to improve screening policies and procedures. To this end, Washington should consider statewide standards that promote best practices and consistency among all county jails.

Jails cannot just “tell” if an inmate has a mental illness or cognitive disability.



About The Author



Meghan Apshaga is a staff attorney at Disability Rights Washington, where she provides Technical Assistance services to people with disabilities across Washington State, and support to Disability Rights Washington’s systemic advocacy from the Spokane office. She graduated from the University of Washington School of Law in 2015.



End Notes

¹ See Jennifer Bronson, Ph.D., Laura M. Maruschak & Marcus Berzofsky, Dr.P.H., U.S.

² See Doris J. James & Lauren E. Glaze, U.S. Dep't of Justice, Bureau of Justice Statistics, *Special Report: Mental Health Problems of Prison and Jail Inmates 3* (2006), <http://www.bjs.gov/content/pub/pdf/mhppji.pdf> (finding over 60 percent of jail inmates have symptoms of a mental health disorder such as depression, anxiety, or schizophrenia).

³ See Ctrs. for Disease Control and Prevention, U.S. Dep't of Health and Human Servs., *Traumatic Brain Injury in Prisons and Jails: An Unrecognized Problem 2* (2007), https://www.cdc.gov/traumaticbraininjury/pdf/prisoner_tbi_prof-a.pdf [hereinafter *TBI in Prisons and Jails*]; see also Marlena M. Wald, M.P.H., M.L.S., Sharyl R. Helgeson, R.R, B.A.N, P.H.N. & Jean A. Langlois, ScD, M.P.H., *Traumatic Brain Injury Among Prisoners*, *Brain Injury Professional* 22, 23 (2008), <http://www.brainline.org/downloads/PDFs/Traumatic%20Brain%20Injury%20Among%20Prisoners.pdf>.

⁴ See Anna Scheyett, Jennie Vaughn, Melissa Taylor & Susan Parish, *Are We There Yet? Screening for Intellectual and Developmental Disabilities in Jails*, 47 *Intellectual and Developmental Disabilities* 13, 14 (2009); see also Leigh Ann Davis, M.S.S.W., M.P.A., *People with Intellectual Disabilities in the Criminal Justice Systems: Victims & Suspects*, *The Arc* (2009), <http://www.thearc.org/what-we-do/resources/fact-sheets/criminal-justice>.

⁵ Davis, *supra* note 4.

⁶ Fred Osher, M.D., David A. D'Amora, M.S., Martha Plotkin, J.D., Nicole Jarrett, Ph.D & Alexa Eggleston, J.D., Council of State Governments Justice Center, Criminal Justice/Mental Health Consensus Project, *Adults with Behavioral Health Needs Under Correctional Supervision: A Shared Framework for Reducing Recidivism and Promoting Recovery 7* (2012), https://www.bja.gov/Publications/CSG_Behavioral_Framework.pdf.

⁷ See, e.g., *TBI in Prisons and Jails*, *supra* note 3, at 1 (suggesting that between 25 and 87 percent of the U.S. jail population has a past head injury or traumatic brain injury).

⁸ Bronson et al., *supra* note 1, at 3.



⁹ James et al., *supra* note 2, at 3.

¹⁰ 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*].

¹¹ *See id.* at 13.

¹² *See id.*

¹³ 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.

¹⁴ *See OFM Analysis, supra* note 10, at 5.

¹⁵ *Id.* at 8.

¹⁶ *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (holding that the Eighth Amendment imposes a duty on officials to provide humane and safe conditions of confinement); *Bell v. Wolfish*, 441 U.S. 520, 534–35 (1979) (holding that the Due Process Clause forbids punishment of pre-trial inmates); *see also Doty v. Cnty. of Lassen*, 37 F.3d 540, 546 (9th Cir.1994) (“... we now hold that the requirements for mental health care are the same as those for physical health care needs”).

¹⁷ U.S. Const. amend. VIII. *See also Farmer*, 511 U.S. at 832 (while “[t]he Constitution ‘does not mandate comfortable prisons,’ ... neither does it permit inhumane ones...” (citation omitted)); *Helling v. McKinney*, 509 U.S. 25, 33-35 (1993).

¹⁸ *See Farmer*, 511 U.S. at 843.

¹⁹ *See Doty*, 37 F.3d at 546; *see also Coleman v. Wilson*, 912 F. Supp. 1282, 1298 (E.D. Cal. 1995) (citing *Balla v. Idaho State Bd. of Corr.*, 595 F. Supp. 1558, 1577 (D. Idaho 1984)).

²⁰ *Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir. 2004).

²¹ *See Bell*, 441 U.S. at 534–35.

²² *See* 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a).

²³ *See* 28 C.F.R. §§ 35.130(a), (d), 35.150, 35.152; *Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 210 (1998); *Chisolm v. McManimon*, 275 F.3d 315, 324-25 (3d Cir. 2001).



²⁴ U.S. Dep't of Justice, Nat'l Inst. of Corr., *National Study of Jail Suicide 20 Years Later* xi (2010), <http://static.nicic.gov/Library/024308.pdf>.

²⁵ Margaret Noonan, Harley Rohloff & Scott Ginder, U.S. Dep't of Justice, Bureau of Justice Statistics, *Mortality in Local Jails and State Prisons, 2000-2013 - Statistical Tables 17-18* (2015), <http://www.bjs.gov/content/pub/pdf/mljsp0013st.pdf>.

²⁶ See Scheyett, *supra* note 4, at 13-14; Davis, *supra* note 4.

²⁷ See Scheyett, *supra* note 4, at 13; Davis, *supra* note 4.

²⁸ Ohio Valley Ctr. for Brain Injury Prevention and Rehab., The Ohio State Univ., *Screening for TBI: A SynapShot from OVC*, <http://ohiovalley.org/informationeducation/screening/>.

²⁹ Ohio Valley Ctr. for Brain Injury Prevention and Rehab., The Ohio State Univ., *Why Self-Report*, <http://ohiovalley.org/informationeducation/screening/why/index.cfm>.

³⁰ Wash. Ass'n of Sheriffs and Police Chiefs, *Jail Accreditation Standards*, § 15.1 (2016), <http://www.waspc.org/assets/ProfessionalServices/2016%20jail%20accreditation%20standards%20final.pdf>.

³¹ Nat'l Comm'n on Corr. Health Care, *Standards for Health Services in Jails* (2014) [hereinafter *NCCHC Standards*].

³² NCCHC Standards include standards for Receiving Screening, Initial Health Assessment, and Mental Health Screening and Evaluation. NCCHC Standards, *supra* note 31, J-E-02, -04, -05. Receiving Screening is a process of structured interviewing and observation to identify inmates with emergency and urgent health needs so that they may be further assessed and treated. *Id.* at J-E-02. Receiving Screening should be performed by health staff when available. *Id.* After Receiving Screening, jails should perform an Initial Health Assessment, where health staff evaluate an inmate's health status, including questions about symptoms. *Id.* at J-E-04. Generally, jails may comply with this standard by either performing an initial health assessment on all inmates within 14 days of admission, or by performing assessments only on inmates with clinically significant findings in the Receiving Screening within two working days after admission. *Id.* Jails should also perform Mental Health Screenings and Evaluations. Under this standard, all inmates should receive a mental health screening, conducted by qualified mental health professionals or mental health staff, within 14 days of admission. *Id.* at J-E-05. Inmates who screen positive for mental health problems should be referred to qualified mental health professionals for further evaluation. *Id.* This standard also calls for screening for "intellectual functioning." *Id.* Inmates who screen positive for possible intellectual or developmental disabilities should be further evaluated "by a comprehensive, individually administered instrument." *Id.*



³³ See, e.g., Susan Hayes, *Hayes Ability Screening Index*, http://www.hasi.com.au/index_hasi.php (screening test for intellectual disabilities that “can be administered by non-psychologists in 5 – 10 minutes”) [hereinafter HASI]; see also Ohio Valley Ctr. for Brain Injury Prevention and Rehab., The Ohio State Univ., *OSU TBI-ID for Clinical Professionals*, <http://ohiovalley.org/tbi-id-method/clinical/index.cfm> (screening test for traumatic brain injury “via a 3-5 minute structured interview”) [hereinafter OSU TBI-ID]; see also Substance Abuse and Mental Health Svcs. Admin. (SAMHSA), Health Resources and Svcs. Admin. (HRSA) Ctr. for Integrated Health Solutions, *Screening Tools*, <http://www.integration.samhsa.gov/clinical-practice/screening-tools> (The Center for Integrated Health Solutions is jointly funded by SAMHSA and HRSA to provide training and technical assistance to behavioral health organizations, including resources and sample mental health screening tools).

³⁴ See HASI and OSU TBI-ID, *supra* note 33.

³⁵ See, e.g., Scheyett et al, *supra* note 4, at 20.

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