Center for American Progress

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Disabled Behind Bars

The Mass Incarceration of People With Disabilities in America's Jails and Prisons

By Rebecca Vallas July 2016

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Introduction and summary

America's four-decade-long experiment with mass incarceration and overcriminalization is widely recognized as a failure. We lock up a greater share of our citizens than any other developed nation, destroying lives and separating families at an annual cost of more than $80 billion. In addition, we do little to prepare individuals behind bars for their eventual release, yet are surprised when some two-thirds return to our jails and prisons.

The crushing impact of the criminal justice system's failure is felt acutely in communities across the United States. Significant and growing research shows how certain populations—including communities of color; residents of high-poverty neighborhoods; and lesbian, gay, bisexual, and transgender, or LGBT, individuals—have been particularly hard hit. But rarely discussed is the impact of the criminal justice system on Americans with disabilities.[1]

Incarcerated persons are at least three times as likely to report having a disability as the nonincarcerated population.

The past six decades have seen widespread closure of state mental hospitals and other institutional facilities that serve people with disabilities—a shift often referred to as deinstitutionalization.[2] The number of Americans residing in such institutions dropped sharply from nearly 560,000 in 1955 to only about 70,000 in 1994.[3] While widely regarded as a positive development, deinstitutionalization was not accompanied by the public investment necessary to ensure that community-based alternatives were made available.[4] As a result, while people with disabilities—and particularly those with mental health conditions—were no longer living in large numbers in institutions, many began to be swept up into the criminal justice system, often due to minor infractions such as sleeping on the sidewalk. Indeed, federal and state jails and prisons are now home to three times as many people with mental health conditions as state mental hospitals.[5]

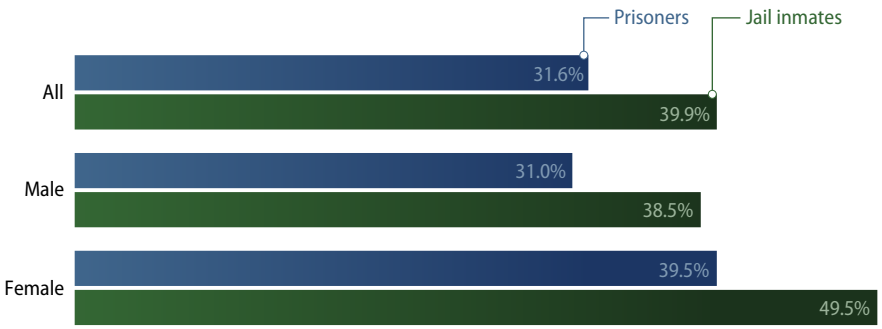
People with disabilities are thus dramatically overrepresented in the nation's prisons and jails today. According to the Bureau of Justice Statistics, people behind bars in state and federal prisons are nearly three times as likely to report having a disability as the nonincarcerated population, those in jails are more than

four times as likely.[6] Cognitive disabilities—such as Down syndrome, autism, dementia, intellectual disabilities, and learning disorders—are among the most commonly reported: Prison inmates are four times as likely and jail inmates more than six times as likely to report a cognitive disability than the general population.[7] People with mental health conditions comprise a large proportion of those behind bars, as well. The Bureau of Justice Statistics reports that fully 1 in 5 prison inmates have a serious mental illness.[8]

FIGURE 1

Mass incarceration of Americans with disabilities

Prevalence of disabilities among state and federal prisoners and jail inmates, 2011–2012



Note: Disability types include hearing, vision, cognitive, ambulatory, self-care, and independent living.

Source: Bureau of Justice Statistics, *Disabilities Among Prison and Jail Inmates, 2011-2012* (U.S. Department of Justice, 2015), tables 4 and 5, available at http://www.bjs.gov/content/pub/pdf/dpji1112.pdf.

Jails are locally-operated facilities that hold individuals awaiting trial or sentencing as well as those serving sentences of one year or less, generally for misdemeanor convictions.

Prisons are state- or federally-run facilities, generally for individuals with felony convictions or serving sentences of longer than one year.

Mass incarceration of people with disabilities is unjust, unethical, and cruel. But it is also penny-wise and pound-foolish, as community-based treatment and prevention services cost far less than housing an individual behind bars. According to a 2014 study of Los Angeles County, the average cost of jailing an individual with serious mental illness exceeds $48,500 per year. By comparison, the price tag for providing Assertive Community Treatment, or ACT, and supportive housing—one of the most intensive, comprehensive, and successful intervention models in use today—amounts to less than $20,500 annually, just two-fifths the cost of jail.[9]

In addition to facing disproportionate rates of incarceration, people with disabilities are also especially likely to be the victims of police violence. Freddie Gray, Eric Garner, Kristiana Coignard, and Robert Ethan Saylor were all individuals with disabilities whose tragic stories of being killed at the hands of police officers garnered significant recent national media attention. They are but four high-profile examples of a widespread, commonplace occurrence. While data on police-involved

killings are extremely limited, one study by the Ruderman Family Foundation estimates that people with disabilities comprise a staggering one-third to one-half of all individuals killed by law enforcement.[10] According to an investigation by *The Washington Post*, one-quarter of the individuals shot to death by police officers in 2015 were people with mental health conditions.[11] Countless more have suffered brutality and violent treatment at the hands of police, often stemming from misunderstandings related to mental health conditions and other disabilities.[12] Furthermore, the number of individuals who have acquired disabilities while in police custody is unknown.

While behind bars, people with disabilities are often deprived of necessary medical care, as well as needed supports, services, and accommodations. This is despite long-standing federal disability rights laws that mandate equal access to programs, services, and activities for all people with disabilities in custody. Poor conditions in jails and prisons and inadequate access to health care and mental health treatment can not only exacerbate existing conditions, but also lead to further physical and mental health problems that individuals did not have prior to incarceration.[13] Many inmates with disabilities are held in solitary confinement—reportedly, in many cases, for their own protection, due to a lack of appropriate alternative accommodations.[14] A growing array of research reveals that even short stays in solitary confinement can have severe and long-lasting consequences for people with disabilities, and particularly those with mental health conditions. Furthermore, many individuals who had not previously lived with mental health conditions experience significant psychological distress following solitary confinement.[15] The tragic but all-too-common case of Kalief Browder brought this to light last year.[16] Browder died by suicide after nearly two years in solitary confinement in Rikers Island on charges, later dismissed, that he had stolen a backpack.

Moreover, while many people with disabilities already face barriers to employment, stable housing, and other necessary elements of economic security, adding a criminal record into the mix can pose additional obstacles that make living with a disability an even greater challenge.[17] Meanwhile, reentry programs for formerly incarcerated individuals often lack necessary accommodations and connections to community services, making them incapable of meeting the needs of participants with disabilities.

This year marks the 17th anniversary of the landmark Supreme Court decision in *Olmstead v. L.C.*, which held that unjustified segregation of people with disabilities in institutional settings constituted unlawful discrimination in violation of the Americans with Disabilities Act, or ADA. Ending the mass incarceration of people

with disabilities will require meaningful investment in the nation's social service and mental health treatment infrastructure to ensure availability and funding for community-based alternatives, so that jails and prisons are no longer forced to serve as social service providers of last resort. But bringing about this change will also require including disability as a key part of the bipartisan conversation on criminal justice reform taking place in Congress, as well as in states and cities across the United States.

This report highlights steps policymakers can take to combat inappropriate and unjust incarceration and criminalization of people with disabilities, as well as steps to ensure appropriate and humane treatment of people with disabilities throughout the justice system, from police practices to courts, conditions in jails and prisons, and reentry.

Policing

Law enforcement officials often serve as the entry point to the justice system for people with disabilities. Due to the nationwide, decades-long disinvestment in community mental health resources, police in many cases serve as de facto first responders to mental health calls.[18] Between 7 percent and 10 percent of all police interactions involve individuals with mental health conditions—and in larger police departments, officers report an average of six encounters per month with people in psychiatric distress.[19]

In a practice referred to as mercy booking, police commonly arrest individuals who show signs of mental health conditions for whom they believe jail offers the best chance of securing food, shelter, and needed health care.[20] Similarly, due to a lack of appropriate training or access to alternative options, law enforcement officials frequently take people displaying symptoms of mental health conditions to emergency rooms when in fact outpatient care is what is needed.[21]

It is not only people with mental health conditions who get needlessly swept up into the criminal justice system through interactions with law enforcement. Police interactions involving people with communication disabilities—such as intellectual or developmental disabilities and sensory or cognitive disabilities—frequently escalate when law enforcement personnel do not know how to appropriately respond to or communicate with people experiencing distress. For example, Robert Ethan Saylor, a 26-year-old man with Down syndrome, died in 2015 from a crushed larynx when police deputies sought to forcibly remove him from a Maryland movie theater, ignoring his caretaker's pleas to let her handle the situation as he would "freak out" if touched by strangers.[22]

Failure to provide accommodations can result in jailing of innocent individuals

Abreham Zemedagegehu, a deaf Ethiopian immigrant who was raised using Ethiopian Sign Language, came to the United States in 2001.[23] He eventually secured a home and a job at FedEx in Washington, D.C.—both of which he lost in 2009 after he suffered a serious back injury on the job.[24] In December 2012, *The New York Times* Neediest Cases Fund bought Zemedagegehu an iPad to communicate with him for an article featuring his story.[25]

In February 2014, he was arrested at Reagan National Airport on suspicion that he had stolen the iPad.[26] He was denied a sign language interpreter and brought to an Arlington, Virginia, jail where he waited another two days for any sort of accommodations that could help him communicate with his jailers. The jail eventually provided a teletypewriter, or TTY, a device created in the mid-1990s to allow individuals who are deaf or hard of hearing to communicate via telephone. However, Zemedagegehu, like most deaf individuals who use sign language as a first or only language, was unable to use it because it only allows for communication in English text. The jail also refused to provide access to a videophone, which today is viewed as the functional equivalent of a telephone for deaf and hard-of-hearing detainees behind bars.[27]

Zemedagegehu was held in jail for six weeks before finally being released in March 2014. According to an account he gave to *The Washington Post*, "he missed two or three meals a week because he could not hear the announcement that it was time to eat."[28]

The interplay of disability with race, poverty, sexual orientation, and gender identity further complicates the link between disability and the criminal justice system. There is a disproportionate incidence of intellectual and developmental disabilities among low-income racial and ethnic minority populations, which have higher rates of police involvement in their neighborhoods than higher-income neighborhoods.[29] In 2015, black men between the ages 15 and 34 were nine times more likely than Americans of other races to be killed by police officers.[30] And a 2014 report found that 73 percent of LGBT people and people living with HIV had had in-person contact with the police in the past five years. Of those individuals, 40 percent reported verbal, physical, or sexual assault or hostility from officers.[31]

Strategies to prevent people with disabilities from entering the criminal justice system

A growing number of police departments have begun partnering with local health departments and social service providers in their communities to develop pre-arrest and pre-booking diversion programs.[32] In addition to saving taxpayer dollars in reduced incarceration, providing law enforcement with alternatives to making an arrest or booking a person into jail can prevent an array of negative consequences that stem from arrest, prosecution, and incarceration, including exacerbation of preexisting disabilities, unaffordable fines and fees, disruption of employment or education, and damage to family relationships.

Law enforcement training

Crisis Intervention Team, or CIT, training involves collaboration between police, mental health providers, and individuals and families affected by mental health conditions with the aim of preventing violence, avoiding unnecessary arrests, and improving access to mental health services.[33] Training typically addresses mental health conditions, how to respond to mental health crisis situations, community resources that provide alternatives to emergency rooms and jails, and the legal framework governing involuntary hospitalization. In an example of a best practice, some jurisdictions pair police officers with community mental health professionals to engage in joint responses to crisis situations. According to the National Alliance on Mental Illness, CIT programs have been established in more than 2,700 communities across the United States.[34] Research indicates that police who receive CIT training are more likely to direct individuals to community-based services and less likely to arrest them than officers who do not receive training.[35] Importantly, law enforcement training is not enough on its own and should serve as one component of a broader set of reforms.

Community drop-off centers

Community drop-off centers offer another approach to divert people with disabilities away from jail and give officers the opportunity to connect people to needed services and community resources other than emergency rooms.[36] Drop-off centers typically provide a range of services, including short-term crisis beds, case management, detox and substance abuse services, and referrals to ongoing treatment and social services such as housing.[37] Importantly, drop-off centers are only as effective as the resources with which they can connect people. San Antonio, Texas, is home to a national model for community drop-off centers.[38] Stakeholders from the city's jails, police offices, courts, and hospitals pooled their resources to build a centralized mental health services complex that offers primary care, inpatient psychiatric services, substance abuse treatment, and supported housing for people with serious mental illness.[39] The center serves about 18,000 people per year and saved the city and surrounding counties $50 million between 2009 and 2014 in reduced incarceration and emergency room visits.[40]

Assertive community treatment

Assertive community treatment is a multidisciplinary model of service delivery and case management designed to help keep people with serious mental illness from cycling in and out of jails and prisons. It is often combined with supportive housing. ACT teams typically include service providers and professionals from a range of fields, and services can include intensive case management, substance abuse treatment, assistance with employment and housing, medication management, crisis management, family support, and outreach. ACT teams are typically available and on call at all times, equipped to provide services in clients' homes and in public and private settings as needed, and trained to work with law enforcement, particularly to deescalate crisis situations to prevent unnecessary arrest.

Evaluations of the ACT model show that it is effective at reducing psychiatric hospitalizations and trips to the emergency room, as well as arrests and incarceration.[41] For example, the Pathways to Housing program—launched in New York City in the early 1990s, and replicated in an array of cities in the years since—has been shown to cut incarceration among participants in half, hospitalizations by 71 percent, crisis response episodes by 71 percent, and shelter use by 88 percent.[42] While not all individuals for whom diversion is appropriate require the intensive level of case management and services that ACT provides, it can be an effective intervention for individuals living with the most serious mental illness.

Courts

The Americans with Disabilities Act prohibits discrimination on the basis of disability and mandates that individuals with disabilities must be provided an equal opportunity to participate in American life.[43] Title II of the law applies to public entities such as state and local governments, as well as the programs and services they offer—including court services and court proceedings.[44]

Notably, the law creates an affirmative duty on the part of government entities to provide accommodations where needed, as long as they are "reasonable" and do not amount to a "fundamental alteration" of the program.[45] For example, courts must provide reasonable accommodations for individuals who are deaf or hard of hearing or who have other communication disabilities, including "furnish[ing] appropriate auxiliary aids and services where necessary … to ensure that communications with applicants, participants, and members of the public are as effective as communications with others."[46]

Nonetheless, a lack of accessibility and a failure to provide needed accommodations are widespread throughout the nation's courts. Each year, the National Center for Access to Justice creates the Justice Index, a 50-state compendium of litigants' access to the courts, analyzing where barriers exist, including for individuals with disabilities.[47] According to the 2016 Justice Index, less than 30 percent of court systems even list mental disability on their websites as a basis for providing needed accommodations. Just two states—Oregon and Washington—provide for appointment of legal counsel to litigants with disabilities as a form of reasonable accommodation.[48] Only seven states have a designated court employee with mental health training who serves as a contact person for requests for needed accommodations. Several states do not require that service animals be permitted in courthouses.[49] And courts in a handful of states are permitted to charge individuals who are deaf or hard of hearing for their own sign language interpreter, in violation of federal law.

As the advocacy organization Helping Educate to Advance the Rights of the Deaf, or HEARD, has documented, defendants who are deaf or hard of hearing routinely are deprived of interpreters for attorney consultations and even formal court proceedings, leaving them unable to understand or participate in their own cases and susceptible to wrongful arrests and convictions. For example, Christine Stein, a deaf resident of Jamestown, North Dakota, was arrested after calling 911 through a video relay system that uses sign language interpreters. She had called 911 seeking help with a suicidal man who was in her apartment. Unable to understand what she was telling them, law enforcement then arrested Stein on suspicion of having harmed the man. According to a lawsuit against the Jamestown police department and courts, Stein was denied a sign language interpreter not only during police questioning and booking, but also when she was brought before a judge for court proceedings. The charges were ultimately dropped after she was able to meet with an interpreter two days before she was scheduled to return to court.[50]

Lack of understanding of how to appropriately work with and ensure appropriate accommodations for people with disabilities can also result in inadequate access to legal representation. Severe underfunding for the nation's public defense system has resulted in crushing caseloads, hampering public defenders' ability to provide high-quality representation to each of their clients. John Oliver, host of *Last Week Tonight*, brought national attention to this issue when he highlighted how public defenders in New Orleans, Louisiana, were able to spend an average of just seven minutes on each case.[51]

While a strained public defense system diminishes access to justice for all low-income defendants who are unable to afford an attorney, it poses particular challenges for individuals with disabilities. Some disability advocates even report instances of public defenders refusing to accept cases involving defendants with disabilities, apparently due to lack of comfort or experience representing clients with disabilities.[52]

Jails and prisons

Safe, appropriate, and accessible facilities and programming are critical to ensure that while behind bars, the needs of prison and jail inmates with disabilities are met—and to facilitate successful reentry upon release.

Prison and jail inmates with disabilities are entitled to reasonable accommodations as well as equal access to programs, services, and activities under the ADA and Section 504 of the Rehabilitation Act.[53] Nonetheless, as documented in a recent report by the Amplifying Voices of Inmates with Disabilities Prison Project, or AVID, failure to ensure accessibility and/or provide needed accommodations is widespread in correctional facilities across the United States.[54] The report highlights one example after another of inmates being denied access to needed medications, prosthetic limbs, and hearing aids; individuals with cognitive impairments unable to access medical treatment because they were unable to fill out request forms; inmates who are deaf or hard of hearing missing medication delivery because of lack of accommodations; inmates who have sustained injuries due to lack of accessible toilets and showers; and more.[55]

Furthermore, poor conditions ranging from lack of access to health care to inadequate nutrition create an environment in which existing physical and mental health conditions can be exacerbated—and even developed where they did not previously exist. According to a 2009 study published in the *American Journal of Public Health*, of those behind bars with chronic medical issues, fully 68 percent of local jail inmates, 20 percent of state prison inmates, and 14 percent of federal prison inmates fail to receive a medical exam while behind bars.[56]

Inadequate nutrition is a widespread problem in prisons and jails across the Unites States. According to an investigation launched by human rights attorneys in 2014, inmates at the Gordon County Jail in Calhoun, Georgia, were literally starving, with some reduced to licking syrup packets and even eating toothpaste and toilet paper because the two meals served each day were severely inadequate. A lawsuit filed on behalf of inmates at New York's Montgomery County Jail reported

that insufficient portions spurred violence among inmates, and that one inmate could no longer fit into his prosthetic leg because he had lost so much weight.[57] Inadequate nutrition not only risks worsening existing health conditions, it can lead to poor health in previously healthy individuals. For inmates who require special diets due to health conditions, lack of access to appropriate nutrition can be especially harmful.

Prison and jail inmates with disabilities are also at special risk for mistreatment by guards and other correctional employees, and abuse at the hands of their fellow inmates. A 2015 report by Human Rights Watch documents an epidemic of "unnecessary, excessive, and even malicious force" in U.S. prisons and jails, targeting prisoners with mental health conditions. The report describes an array of horrific tactics including the use of chemical sprays and electric stun devices, the strapping of inmates to chairs and beds for days at a time, and physical violence resulting in broken jaws, noses, and ribs, as well as "lacerations, second degree burns, deep bruises, and damaged internal organs" and even death.[58] And a 2014 investigation of New York's Rikers Island jail by *The New York Times* uncovered a culture of brutality by correctional employees against inmates with mental health conditions.[59]

Inmates with mental health conditions are disproportionately likely to be the victims of violence at the hands of guards and correctional employees. For example, Human Rights Watch found that while 3 percent of Colorado's prison population has a diagnosed mental illness, those individuals make up more than one-third of the state's use of force incidents in the state's prisons. And in 4 out of 12 California prisons studied, use of force against inmates with mental illness comprised between 84 and 94 percent of all such incidents, despite the fact that individuals with mental illness comprise 30 to 55 percent of the prison population. And inmates with disabilities are also particularly susceptible to sexual violence while behind bars.[60]

Due to a lack of appropriate accommodations for inmates with disabilities, many are held inappropriately in solitary confinement, often reportedly for their own protection and safety.[61] According to the advocacy group HEARD, which maintains the only known national database of incarcerated individuals who are deaf, deaf individuals are among those most likely to be held in solitary, often as a "substitute for the provision of accommodations for and protection of deaf and disabled prisoners."[62]

Kalief Browder

In May 2010, 16-year-old Kalief Browder was arrested in Bronx, New York, for allegedly stealing a backpack two weeks earlier.[63] His family was unable to afford to post his $3,000 bail, so he was sent to the notoriously violent Rikers Island to be confined with other male adolescents.[64] Browder spent the next three years in jail awaiting trial.[65] While at Rikers, he suffered violence from both officers and inmates. He also experienced periods of time during which he was deprived of food, as well as access to showers, educational programs, and mental health support.[66] Making matters worse, Browder spent about two of his three years behind bars in solitary confinement, where he attempted to commit suicide several times.[67] Browder's case was ultimately dismissed, and he was released in May 2013. Six months later he attempted suicide again and spent time in a psychiatric ward at Harlem Hospital Center.[68] He died by suicide on June 5, 2015.

In recognition of the horrific consequences of solitary confinement—including exacerbating preexisting mental health conditions, psychological distress in individuals who did not previously live with a mental health condition, and even suicide[69]—Juan Mendez, the United Nations special rapporteur on torture, has called for an absolute ban on solitary confinement in excess of 15 days. He notes: "The practice of prolonged or indefinite solitary confinement inflicts pain and suffering of a psychological nature, which is strictly prohibited by the Convention Against Torture."[70] And in January 2016 the U.S. Department of Justice released guidance in order to minimize the use of solitary confinement in federal correctional facilities, including as a form of protective custody.[71]

Furthermore, inmates with disabilities can face legal barriers to challenging poor conditions and denials of accommodations behind bars. The Prison Litigation Reform Act, enacted in 1996, requires exhaustion of administrative remedies before an individual may file a lawsuit based on civil rights violations in jails and prisons.[72] Many people with disabilities—particularly those who are deaf or blind or who have intellectual disabilities or other communication disabilities—are unable to access, let alone exhaust, the grievance system, leaving the doors to the courtroom barred to their claims.[73]

Post-booking diversion to remove individuals with mental health conditions from jail

At 9 percent of the county's population, Miami-Dade County, Florida, has the highest percentage of residents with serious mental illness of all urban communities in the United States. Of those residents, just 1 in 10 are able to access care through the community mental health system. Many more end up behind bars in the county jail, which serves as the largest mental health facility in the entire state, housing 1,200 individuals with serious mental illness on any given day, at a cost of more than $50 million each year.[74]

The 11th Judicial Circuit Criminal Mental Health Project, or CMHP, was launched in 2000 to get individuals with serious mental health conditions out of Miami's jails and into community-based treatment.[75] In addition to pre-booking diversion, CMHP utilizes post-booking diversion for individuals in jail awaiting trial.[76] Individuals are each offered transition planning tailored to their unique needs, including links to community-based treatment and support services.[77] Participants would typically have spent months in the Pre-Trial Detention Center awaiting hearings—four to eight times longer on average than defendants without mental health conditions.[78] Instead they are typically diverted within 48 hours of being booked.[79] In 2014, the county was able to close one of its five jail facilities as a result of the program's success.[80]

Reentry

When individuals are released from prisons and jails, they frequently are sent back into the community with a few dollars in their pocket, a bus ticket, and two to three days' worth of needed medications.[81] Many have no housing to return to, and because they have a criminal record they face an uphill battle finding steady employment. Combine that record with disability, and returning citizens with disabilities can find themselves doubly at risk of discrimination when it comes to accessing the building blocks of economic stability necessary to achieve successful reentry.

Despite tremendous progress enshrined in the Americans with Disabilities Act and other landmark civil rights laws, many people with disabilities continue to face serious barriers to basics such as employment and housing. Workers with disabilities face unemployment rates nearly three times the national average, with 12.1 percent out of work in May 2016 compared with 4.8 percent of their counterparts without disabilities.[82] They also face a steep pay gap, with disabled workers earning just 63 cents on average for every dollar paid to workers without disabilities.[83]

Add a criminal record into the mix, and steady employment can be even further out of reach. Today, nearly 9 in 10 employers use criminal background checks in hiring, and a substantial body of research documents that having even a minor criminal record—including misdemeanors and arrests that did not lead to conviction—can serve as a powerful hiring disincentive.[84] As a result, fully 60 percent of formerly incarcerated people remain without a job one year after they are released.[85]

People with disabilities can also face great challenges in securing affordable, accessible housing. According to a 2008 report by the U.S. Department of Housing and Urban Development, or HUD, 43 percent of people living in homeless shelters in the United States report having a disability.[86] In addition, roughly 40 percent of households facing what HUD considers "worst-case housing needs"—very low-income renters who do not receive housing aid and who either are paying more than half their monthly incomes in rent or live in substandard housing, or both—are non-elderly, disabled households.[87]

Returning citizens with disabilities face even greater challenges in securing housing. As many as one-third expect to go to a homeless shelter upon release.[88] Those with mental illness are twice as likely to have been homeless in the months before being incarcerated.[89] "One strike and you're out" policies in public housing can put public and subsidized housing out of reach for many people with criminal records.[90] Individuals receiving treatment in residential facilities can face barriers to permanent supportive housing, due to HUD's definition of homelessness, which excludes people in residential facilities for 90 days or longer.[91] And with an estimated four in five private landlords utilizing background checks, private rental housing can be unattainable as well.[92]

Further complicating the reentry process, many individuals are released without needed health insurance and other vital benefits in place. Many who received Medicaid and/or Social Security disability benefits prior to incarceration face interruptions in these benefits and can end up waiting months or even years after release to get them reinstated.[93] Interruptions in health coverage can be a path straight back to jail, particularly for people with mental or behavioral health conditions unable to access needed medications and treatment.[94] Spells without income from disability benefits can leave people unable to afford housing, food, medications, and more during the critical period when recidivism is most likely. And lack of identification can serve as a barrier to accessing needed supports and services and stand in the way of nearly every component of reentry. Moreover, reentry programs often lack necessary accommodations and training for staff on how to appropriately serve returning citizens with disabilities.[95]

Supporting reentry for people with disabilities

Some states and localities have adopted promising approaches to smooth reentry for returning citizens with disabilities.

Pre-release applications for benefits

Pre-release applications for critical benefits such as Medicaid; nutrition assistance; Social Security Disability Insurance, or SSDI; and Supplemental Security Income, or SSI—through collaboration across corrections agencies, mental health and substance abuse agencies, the agencies that administer benefits, and state or local government—enable returning citizens to reenter their communities with the basics they need for successful reentry.[96]

SSDI/SSI Outreach, Access, and Recovery, or SOAR, is an innovative program supported by the Substance Abuse and Mental Health Services Administration that helps people who are homeless or at risk of homelessness to access Social Security disability benefits.[97] SOAR has collaborated with and provided technical assistance to several jails and prisons through pilot projects designed to connect individuals with disability benefits prior to release.[98]

One example of a SOAR pilot program that has yielded highly promising results is CMHP, mentioned above, in Miami-Dade County. Between July 2008 and November 2012, 91 percent of 181 individuals were approved for Social Security disability benefits, with an average processing time of just 45 days. Participants are also connected with treatment and medications upon release, and temporary housing is provided to individuals still awaiting approval of their disability benefits. The number of arrests among CMHP participants two years after release dropped by 70 percent.[99]

Suspending instead of terminating Medicaid coverage

As set forth in a 2004 letter from the U.S. Department of Health and Human Services' Centers for Medicare and Medicaid Services to state Medicaid directors, states are not required to terminate an individual's Medicaid coverage upon incarceration; instead, they have the option to suspend Medicaid while an individual is behind bars and reactivate coverage upon release, saving the individual the need to reapply and the many months of waiting for approval.[100] This approach not only prevents harmful gaps in coverage, but also enables states to save money through reduced churn of terminations and new applications. Suspension instead of termination of Medicaid holds great promise for preventing reincarceration by ensuring that returning citizens can access needed medical care and other supportive services critical to successful reentry. At least 12 states have policies in place to suspend instead of terminating Medicaid coverage for inmates.[101]

Continuity of care

Some courts have recently recognized the importance of ensuring access to needed medications upon release from incarceration. The Ninth Circuit Court of Appeals has ruled that the Eighth Amendment to the U.S. Constitution requires states to ensure that a person who has been receiving medication while behind bars is released with "a supply sufficient to ensure that he has medication available during the period of time reasonably necessary to consult a doctor and obtain a new supply." This requirement is now law in Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington.[102] A New York state court has gone further, ordering New York City to provide "adequate discharge planning" for inmates with mental health conditions so as to prevent "a return to the cycle of likely harm to themselves and/or others" and rearrest.[103]

Recommendations

As bipartisan momentum around overhauling the nation's criminal justice system continues to grow in Congress and in states and cities across the United States, the following are steps that policymakers can take to reduce the mass incarceration of people with disabilities; ensure humane and appropriate treatment of people with disabilities behind bars; bring about just and appropriate treatment in the courts system; and smooth reintegration for returning citizens with disabilities into their communities to break the cycle of incarceration, release, and rearrest.

Invest in community-based services

Following a long history of disinvestment in community-based care for mental health and disability, the United States has traded one form of mass institutionalization for another, with jails and prisons now serving as social service providers of last resort. Reversing this shameful trend will require meaningful investment in our social service and mental health treatment infrastructure to ensure the availability of and funding for community-based services. Outpatient treatment, peer support, case management, supportive housing, mobile crisis teams, and—for people with the most severe case management needs—Assertive Community Treatment offer proven and cost-effective tools to prevent entry into the justice system. As states and localities take steps to overhaul their criminal justice systems, cost savings from reduced incarceration should be reinvested in community-based services, including those that prevent people with disabilities from needless and unjust incarceration.

End criminalization of homelessness

States and cities should review and reform laws and other policies that disproportionately target or impact homeless individuals and those with mental health conditions. Laws that prohibit loitering, begging, sleeping and/or sitting on sidewalks, sleeping in vehicles, and other status offenses disproportionately target

homeless individuals, many of whom live with mental health conditions and/or other disabilities. Similarly, so-called quality-of-life police sweeps hit the same populations. These policies are not only unduly harsh, they also play a large role in funneling people with disabilities into jails and prisons.

Establish an Office of Disability within the U.S. Department of Justice and a Federal Interagency Council on Criminal Justice and Disability

A special funding stream and designated division within the U.S. Department of Justice—analogous to the Office on Violence Against Women and the Office of Community Oriented Policing Services—should be established to help states and localities take steps to comply with the ADA and to implement policies and practices that prevent people with disabilities from entering the justice system, ensure accessibility of court systems, improve conditions and accessibility behind bars, and smooth reentry.

Additionally, a cabinet-level Federal Interagency Council on Criminal Justice and Disability, convened by the Attorney General, should be created to coordinate and advance policies to reduce incarceration and improve treatment of people with disabilities in the criminal justice system. The Federal Interagency Reentry Council, established in 2011 by Attorney General Eric Holder and made permanent earlier this year, offers a model.[104] Housed at the Department of Justice, the Reentry Council brought 20 federal agencies together to coordinate and advance effective reentry policies, demonstrating the effectiveness of an interagency approach.

Improve police practices and expand training

Interactions with police often serve as the entry point into the criminal justice system for people with disabilities. The following are steps that states and localities can take to improve police practices and stem the flow of people with disabilities into the justice system:

- Require annual training for all law enforcement personnel—not just police officers—delivered where possible by people with disabilities and/or disability service providers. Training should be cross-disability—not just mental health-related—and informed by data on the incidence of certain types of disabilities within a city or precinct

- Establish Crisis Intervention Training programs, and encourage and facilitate pre-arrest and pre-booking diversion to community-based services

- Examine and reform use of force policies to minimize harm and loss of life among people with disabilities, who make up a disproportionate share of those killed by law enforcement

- Implement body-worn and dashboard cameras to monitor and enforce appropriate police practices

Divert people with disabilities to community-based services

Diversion should occur as early in the process as possible—ideally before an individual has been arrested or booked. Collaborative programs that bring police departments together with public health agencies, treatment providers, and community advocates to equip law enforcement personnel with the training to identify and divert individuals to behavioral health care, housing, and other social services as an alternative to arrest and detention are a best practice. Where diversion cannot or does not occur prior to arrest or booking, pretrial diversion programs are the next best option. Miami's 11th Judicial Circuit Criminal Mental Health Project offers a replicable model for pre- and post-booking diversion with proven results. Additionally, federal grants, such as the Byrne Memorial Justice Assistance Grant program, the leading source of federal dollars for state and local criminal justice activities, should be reviewed for opportunities to reorient state and local incentives away from mass incarceration of people with disabilities and toward diversion and prevention.

Ensure accessibility, needed accommodations, and appropriate treatment within the court system

Lack of accessibility within the court system, including failure to provide needed accommodations, such as a sign language interpreter, can serve as a recipe for unjust treatment and outcomes for individuals with disabilities. The Department of Justice should issue guidance clarifying states' obligations under the ADA. Additionally, states should enact laws, regulations, or other forms of written guidance mandating full accessibility of their court systems. Policies and practices to ensure access to justice for people with disabilities include:

- Provision of sign language interpreters free of charge
- Provision of counsel at no cost to the litigant where needed as a form of reasonable accommodation
- Admittance of service animals on court premises
- Clear information on court websites on how and from whom to request accommodations—as well as how and to whom disability access complaints should be made
- Annual training on the ADA and other relevant disability law for all stakeholders of the court, including prosecutors, judges, clerks and other court personnel, and public defenders, to ensure that they understand their obligations, such as providing reasonable accommodations
- Establishment of specialized units within public defender offices to handle representation of defendants with serious mental health conditions, analogous in structure to the specialized units that handle death penalty cases[105]
- Creation of statewide boards to set, monitor, and enforce minimum training requirements, performance standards, and performance evaluation of attorneys

Ensure safe, accessible, and appropriate conditions behind bars

Safe, accessible, and appropriate conditions in jails and prisons are critical to ensure that individuals with disabilities have their needs met while behind bars, and to facilitate successful reentry upon release from incarceration. The Department of Justice should issue guidance clarifying prisons' and jails' obligations under the ADA regarding accommodations and accessibility for inmates with disabilities, and setting forth best practices, including:

- Annual training for all jail and prison personnel on the ADA and Section 504 of the Rehabilitation Act, as well as disability sensitivity training to prevent needless and unjust punishment due to misunderstandings about instructions or other perceived noncompliance

- Designated ADA coordinators at each facility to handle requests for accommodations and to ensure accessibility of all physical spaces and programming

- Independent ombudspeople to hear grievances and address complaints

- Comprehensive health care—including mental health care—for all inmates, both for existing conditions and to prevent inmates from developing new health problems or disabilities while behind bars

- Improved access to communications accommodations for inmates who are deaf or hard of hearing or have communication disabilities—both for everyday activities within prisons and jails, and for communications with loved ones and visitors (including the installation of videophones, captioned telephones, and other auxiliary aids)

- Sound use of force policies enforced through training, supervision, reviews, investigations, and accountability

- Adoption of policies to prevent prison rape

In the meantime, states and localities should take steps to comply with the ADA and Section 504 and to implement the above best practices. Additionally, Congress should review and reform the Prison Litigation Reform Act as needed to ensure that inmates with disabilities are able to enforce their rights and challenge civil rights violations behind bars.[106]

Support successful reentry

Overcoming barriers to employment, housing, and more associated with having a criminal record can be challenging for any returning citizen. When combined with the barriers to economic security that many people with disabilities face, successful reentry can be an even steeper uphill battle. Policies and practices to smooth reentry for returning citizens with disabilities include:

- Provision of accessible education and training behind bars, with coordination between state departments of corrections and vocational rehabilitation agencies

- Provision of discharge planning well in advance of release, that takes disability and health needs into account

- Suspension, instead of termination, of inmates' Medicaid benefits in order to reduce interruptions in health coverage

- Leverage of the pre-release application model for health care and nutrition assistance, and the SOAR model for Social Security disability benefits, to ensure access to needed supports prior to release

- Implementation of continuity of care policies to ensure that individuals are released with enough medication to get by until they are able to see a doctor post-release

- Physical and programmatic accessibility at halfway houses, job training programs, and other community-based reentry services

- Revision of HUD's definition of homelessness to expand access to supportive housing for individuals leaving residential treatment facilities

- Reauthorization of and increased funding for the Second Chance Act, awarding additional points to providers that include a disability lens across their services and requiring that Second Chance grantees receive annual training on their obligations and best practices for working with people with disabilities

- Increased resources for civil legal services, which plays a vital role in removing barriers to employment, housing, and public assistance, supporting reentry

- Enactment of policies that give returning citizens a fair shot at employment, housing, education and training, and other basic building blocks of economic stability[107]

Improve data collection

Data collection is critical for prevention, monitoring, enforcement, and policy development. Increased data collection should target:

- Police encounters with people with disabilities, as well as the circumstances leading up to these encounters

- Police-involved shootings and deaths, including the presence of a disability
- Disabilities acquired by individuals while in custody
- Requests as well as provision, denial, or removal of reasonable accommodations at the time of individuals' arrest or at any point while in custody
- The Obama administration's recently established Data-Driven Justice Initiative—a bipartisan effort bringing together 67 state and local governments to divert individuals with mental health conditions away from the criminal justice system—offers an example of how data can be leveraged to drive reform.[108]

Conclusion

In the wake of the deinstitutionalization movement, prisons and jails have taken the place of institutional facilities as the modern-day warehouses for Americans with disabilities. Seventeen years after the Supreme Court declared unjustified segregation of people with disabilities in institutional settings to be unlawful discrimination in violation of the Americans with Disabilities Act, it is long past time that the mass incarceration of people with disabilities came to an end. What's more, diverting people with disabilities away from the criminal justice system and into community-based services is not just the right thing to do, it is the smart thing to do, as community-based treatment and prevention services cost far less than putting and keeping a person behind bars. Bipartisan momentum around criminal justice reform continues to grow in Congress and in states and cities across the United States. Now is the time for policymakers at all levels to put in place policies and practices that break the link between mass incarceration and disability and ensure the appropriate treatment of people with disabilities throughout the criminal justice system.

About the author

Rebecca Vallas is the Managing Director of the Poverty to Prosperity Program at the Center for American Progress. She began her anti-poverty career working directly with low-income individuals and communities, with a focus on people with disabilities and those with criminal records, as an attorney and policy advocate at Community Legal Services in Philadelphia. She was twice named one of *Forbes*' "30 Under 30" for law and policy.

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Endnotes

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91 National Coalition to End Homelessness, "Changes in the HUD Definition of 'Homeless'" (n.d.), available at http://www.endhomelessness.org/library/entry/changes-in-the-hud-definition-of-homeless.

92 For a detailed discussion of barriers to private housing for people with criminal records, see Vallas and Dietrich, "One Strike and You're Out." It should be noted that additional HUD guidance released in April 2016 further clarified how criminal records may be considered by private landlords and home sellers in renting and selling housing.

93 See Vallas and Dietrich, "One Strike and You're Out"; see also Dazara Ware and Deborah Dennis, "Best Practices for Increasing Access to SSI/SSDI Upon Exiting Criminal Justice Settings" (Washington: Substance Abuse and Mental Health Services Administration, 2013), available at https://soarworks.prainc.com/sites/soarworks.prainc.com/files/Best_Practices_CJ_Systems.pdf.

94 Alexandra Gates, Samantha Artiga, and Robin Rudowitz, "Health Coverage and Care for the Adult Criminal-Justice Involved Population" (Washington: The Henry J. Kaiser Family Foundation, 2014), available at http://kff.org/uninsured/issue-brief/health-coverage-and-care-for-the-adult-criminal-justice-involved-population.

95 For example, for individuals with intellectual or developmental disabilities, successful reentry can require access to community providers who can provide Medicaid-funded long-term services and supports, including somewhere to live, employment services, and any other services that the individual requires.

96 For a more detailed discussion of pre-release applications for benefits, see Vallas and Dietrich, "One Strike and You're Out"; see also Judge David L. Bazelon Center for Mental Health Law, "Making the Connection: Meeting Requirements to Enroll People With Mental Illnesses in Healthcare Coverage" (2014), available at http://www.bazelon.org/portals/0/Where%20We%20Stand/Access%20to%20Services/Health%20Care%20Reform/Making-the-Connection.pdf.

97 Ware and Dennis, "Best Practices for Increasing Access to SSI/SSDI Upon Exiting Criminal Justice Settings."

98 Ibid.; see also Judge David L. Bazelon Center for Mental Health Law, "Making the Connection."

99 Ware and Dennis, "Best Practices for Increasing Access to SSI/SSDI Upon Exiting Criminal Justice Settings."

100 For the letter to state Medicaid directors, see Letter from Glenn Stanton to State Medicaid Directors, "Ending Chronic Homelessness," May 25, 2004, available at https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Community-Living/Downloads/Ending-Chronic-Homelessness-SMD-Letter.pdf. For more information on how states can leverage suspension of Medicaid for inmates, see Council of State Governments Justice Center, "Medicaid and Financing Health Care for Individuals Involved With the Criminal Justice System" (2013), available at http://csgjusticecenter.org/wp-content/uploads/2013/12/ACA-Medicaid-Expansion-Policy-Brief.pdf.

101 Council of State Governments Justice Center, "Medicaid and Financing Health Care for Individuals Involved With the Criminal Justice System."

102 *Wakefield v. Thompson,* 177 F.3d 1160, 1164 (9th Cir. 1999); see also Judge David L. Bazelon Center for Mental Health Law, "For People With Serious Mental Illnesses: Finding the Key to Successful Transition From Jail or Prison to the Community."

103 *Brad H. v. City of New York*, 185 Misc.2d 420, 431 (N.Y. Sup. Ct. 2000), a'd, 276 A.D.2d 440 (N.Y. App. Div. 2000); see also Judge David L. Bazelon Center for Mental Health Law, "For People With Serious Mental Illnesses."

104 For more information on the Federal Interagency Reentry Council, see Council of State Governments Justice Center, "Federal Interagency Reentry Council," available at https://csgjusticecenter.org/nrrc/projects/firc (last accessed July 2016). The Reentry Council was made permanent via executive order in April 2016. See The White House, "Presidential Memorandum—Promoting Rehabilitation and Reintegration of Formerly Incarcerated Individuals," Press release, April 29, 2016, available at https://www.whitehouse.gov/the-press-office/2016/04/29/presidential-memorandum-promoting-rehabilitation-and-reintegration.

105 See, e.g., Michael L. Perlin, *A Prescription for Dignity: Rethinking Criminal Justice and Mental Disability* (New York: Ashgate, 2013). This would enable designated attorneys to build up the expertise required to represent people with disabilities effectively and could increase the amount of time they have available to spend on each case.

106 The U.S. Supreme Court's ruling in *Ross v. Blake* also offers an opportunity to reexamine inmates' access to legal recourse under the Prison Litigation Reform Act.

107 See Vallas and Dietrich, "One Strike and You're Out" for a comprehensive roadmap of these policies. See also Vallas and others, "Removing Barriers to Opportunity for Parents with Criminal Records and Their Children: A Two-Generation Approach" (Washington: Center for American Progress, 2015), available at www.americanprogress.org/issues/criminal-justice/report/2015/12/10/126902/removing-barriers-to-opportunity-for-parents-with-criminal-records-and-their-children.

108 The White House, "Fact Sheet: Launching the Data-Driven Justice Initiative: Disrupting the Cycle of Incarceration," Press release, June 30, 2016, available at https://www.whitehouse.gov/the-press-office/2016/06/30/fact-sheet-launching-data-driven-justice-initiative-disrupting-cycle.

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