

# WHAT TO DO IF YOU'RE A PRISONER WITH DISABILITIES

## ACLU: KNOW YOUR RIGHTS

***Important Note:** The law is always evolving. If you have access to a prison law library, it is a good idea to confirm that the cases and statutes cited below are still good law. This information was updated in November 2012.*

### 1. Statutes protecting disabled prisoners

Two major statutes exist to protect the rights of disabled prisoners: Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a), and Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131, et seq.<sup>1</sup> In the prison and jail context, the Rehabilitation Act applies to facilities run by federal agencies (such as the Bureau of Prisons) and to any state or local agency that receives federal funding.<sup>2</sup> The ADA regulates facilities run by state and local agencies, regardless of whether they receive federal funding.

Courts analyze claims under both the ADA and Rehabilitation Act in basically the same way.<sup>3</sup> Also, the ADA, which is newer, should give disabled people at least as many rights as the earlier Rehabilitation Act.<sup>4</sup> Thus, disabled prisoners may use cases about the Rehabilitation Act to help them interpret the ADA.

In 2008, in response to court decisions that narrowly interpreted the original text of the ADA, Congress passed the ADA Amendments Act of 2008. The intent of the ADA Amendments Act of 2008 is to make courts focus on whether entities subject to the ADA have met their obligations to disabled people, rather than extensively analyzing whether a particular impairment is a disability.<sup>5</sup> Because of these amendments, many more disabled prisoners are entitled to protection than in prior years.

<sup>1</sup> See Penn. Dep't of Corrections v. Yeskey, 524 U.S. 206 (1998) (holding that the ADA "unmistakably includes State prisons and prisoners within its coverage"). See also 28 C.F.R. § 35.152 (ADA implementing regulations that apply specifically to adult and juvenile jails, detention, and correctional facilities).

<sup>2</sup> Different regulations may apply depending on the source of the federal funding. For example, state and local agencies that receive funding from the U.S. Department of Justice must comply with the Department of Justice's regulations, which are located at 28 C.F.R. § 42.501 et seq.

<sup>3</sup> See, e.g., Frame v. City of Arlington, 657 F.3d 215, 223-224 (5th Cir. 2011) ("Although we focus primarily on Title II, our analysis is informed by the Rehabilitation Act, and our holding applies to both statutes").

<sup>4</sup> Bragdon v. Abbott, 524 U.S. 624, 632 (1998), superseded by statute, ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553 (2008), as recognized in Miller v. McHugh, 814 F. Supp. 2d 299 (S.D.N.Y. 2011).

<sup>5</sup> ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553, § 2(b) (2008).

### 2. How do you define disability?

The ADA defines "disability" as:

- (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment.<sup>6</sup>

A "physical or mental impairment" could include hearing and vision problems, mental illness, physical disabilities, certain diseases, or many other conditions. "Major life activities" includes many private or public activities, such as seeing, hearing, sleeping, learning, reading, working, walking, various types of motion, or the operation of a major bodily function.<sup>7</sup>

When Congress amended the ADA in 2008, it instructed the courts to interpret the phrase “substantially limits” generously.<sup>8</sup> Thus, despite what earlier court cases may say, the ADA considers a wide range of impairments to be disabilities regardless of whether they can be helped or controlled by medication, prosthetics, mobility devices, therapy, or other mitigating measures.<sup>9</sup> Additionally, it does not matter if a particular impairment happens to be intermittent or in remission: if it "would substantially limit a major life activity when active," the impairment is still a disability under the ADA.<sup>10</sup>

Courts typically look at the facts of each lawsuit to decide if a person is disabled. Although most of the examples come from cases that were filed before the 2008 amendments to the ADA, these older cases still give guidance on how a court can do the analysis. In 1998, for example, the Supreme Court held that a person infected with HIV (human immunodeficiency virus, which is the virus that causes AIDS), may be disabled even if that person does not have any symptoms of the disease.<sup>11</sup> On the other hand, a person with multiple health conditions is disabled only if his ailments substantially limit participation in a major life activity.<sup>12</sup>

<sup>6</sup> 42 U.S.C. § 12102(1).

<sup>7</sup> 42 U.S.C. § 12102(2).

<sup>8</sup> See 42 U.S.C. § 12102(4).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Bragdon*, 524 U.S. at 641.

<sup>12</sup> *Hale v. King*, 642 F.3d 492 (5th Cir. 2011) (finding that, although the inmate suffered from multiple conditions such as PTSD and Hepatitis C, he was not disabled).

### 3. Enforcing your legal rights

Title II of the ADA states:

[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.<sup>13</sup>

To bring a lawsuit under the ADA and/or the Rehabilitation Act, disabled prisoners must show: (1) that they are disabled within the meaning of the statutes, (2) that they are "qualified" to participate in the program, and (3) that they are excluded from, are not allowed to benefit from, or have been subjected to discrimination in the program because of their disability.<sup>14</sup> Under the Rehabilitation Act, prisoners must additionally show that the prison officials or the governmental agency named as defendants receive federal funding.<sup>15</sup> Courts generally require factual evidence that shows a prisoner was qualified for a program and sought participation, but was denied entry based upon his or her actual or perceived disability.<sup>16</sup> Disabled prisoners are "qualified" to participate in a program under the ADA and the Rehabilitation Act if they meet the program requirements.<sup>17</sup>

Disabled prisoners may bring a lawsuit seeking either injunctive relief (i.e., seeking a change in policies or practices) or money damages (i.e., money in compensation for being wronged). If seeking money damages, however, sovereign immunity becomes an issue. Under the Eleventh Amendment, state governments have sovereign immunity (i.e., immunity from being sued by their own citizens) from many kinds of lawsuits.<sup>18</sup>

The sovereign immunity defense is not available for claims under the Rehabilitation Act, because the state's acceptance of federal funds waives their sovereign immunity.<sup>19</sup> Since almost all state and local

corrections departments and Sheriff's offices receive some form of federal funding, disabled prisoners may seek money damages against them under a Rehabilitation Act claim.

The situation is more complicated for claims brought under the ADA. Sovereign immunity is not a defense to an ADA case that seeks purely injunctive relief.<sup>20</sup> Additionally, the Supreme Court held in 2006 that sovereign immunity is not a defense to an ADA damages claim based on unconstitutional conduct.<sup>21</sup> In the prison context, this means that a disabled prisoner who is incarcerated in a state prison may sue the state for monetary damages under the ADA based on conduct that independently violates the Eighth Amendment's prohibition against cruel and unusual punishment. What remains an unsettled question is whether disabled prisoners can seek damages for conduct that violates the ADA, but does not violate the Constitution.<sup>22</sup>

<sup>13</sup> 42 U.S.C. § 12132.

<sup>14</sup> 42 U.S.C. § 12132; 29 U.S.C. § 794(a).

<sup>15</sup> 29 U.S.C. § 794(a).

<sup>16</sup> See, e.g., *Lue v. Moore*, 43 F.3d 1203, 1205-1206 (8th Cir. 1994) (blind inmate denied access to vocational training programs may bring claim for damages and affirmative relief under Rehabilitation Act, but denying relief because inmate failed to prove he had applied to programs or requested accommodations).

<sup>17</sup> Under the ADA, a "qualified individual with a disability" means a disabled individual "who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 42 U.S.C. § 12131(2). The definition under the Rehabilitation Act is slightly different. See *Southeastern Community College v. Davis*, 442 U.S. 397, 406 (1979) (holding that under the Rehabilitation Act, "An otherwise qualified person is one who is able to meet all of a program's requirements in spite of his handicap").

<sup>18</sup> *Nevada Dep't of Human Resources*, 538 U.S. 721, 726 (2003); *College Sav. Bank v. Florida Prepaid Postsecondary Expense Bd.*, 527 U.S. 666, 675 (1999).

<sup>19</sup> See, e.g., *Phiffer v. Columbia River Correctional Institute*, 384 F.3d 791 (9th Cir. 2004); *Garrett v. University of Ala. at Birmingham Bd. of Trustees*, 344 F.3d 1288, 1293 (11th Cir. 2003).

<sup>20</sup> *Bd. of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356, 374 n.9 (2001).

<sup>21</sup> *United States v. Georgia*, 546 U.S. 151, 155-160 (2006).

<sup>22</sup> See *id.* at 882. The Supreme Court has stated that, for conduct that violates the ADA but not the Constitution, lower courts must decide whether Title II nonetheless still validly abrogates sovereign immunity. The lower courts who have so far ruled on this issue have found Title II to validly abrogate sovereign immunity for claims by disabled students in public education. See, e.g., *Goonewardena v. New York*, 475 F. Supp. 2d 310, 326 (S.D.N.Y. 2007); *Toledo v. Sanchez*, 454 F.3d 24, 40 (1st Cir. 2006). However, all lower courts that have so far addressed the issue in the context of state prisons have held that a Title II damages claim does not validly abrogate sovereign immunity unless it is also based upon a constitutional violation. See *Hale v. Mississippi*, 2007 WL 3357562, at \*8 (S.D. Miss. 2007); *Chase v. Baskerville*, 508 F. Supp. 2d 492, 503-04 (E.D. Va. 2007).

#### 4. Which rights can be enforced?

Disabled prisoners have sued to get *equal access to facilities*, programs and services. For example, inmates and arrestees have sued to be able to use prison showers and toilets and to be protected from injury or the risk of injury.<sup>23</sup> Deaf and hearing-impaired prisoners have won cases to get sign language interpreters for disciplinary hearings, classification decisions, HIV-AIDS counseling, and educational and vocational programs.<sup>24</sup>

Disabled prisoners have challenged inadequate medical care and prison officials' failure to provide them with medical supplies or devices such as wheelchairs or canes.<sup>25</sup> These cases may combine ADA claims with arguments that prison officials have violated the Eighth Amendment of the U.S. Constitution by being deliberately indifferent to prisoners' serious medical needs.<sup>26</sup>

Disabled prisoners have challenged their confinement in isolation and segregation units under the ADA and the Rehabilitation Act.<sup>27</sup> In one case, for example, the Seventh Circuit ruled that prison officials discriminated against a quadriplegic prisoner in Indiana who was housed in an infirmary unit for over one

year and was thereby denied access to the dining hall, recreation area, visiting, church, work, transitional programs and the library.<sup>28</sup>

Additionally, the U.S. Department of Justice issued prison and jail-specific ADA regulations in 2010. 28 C.F.R. § 35.152. These regulations require prisons and jails to, as a general rule, place disabled prisoners in the most integrated setting appropriate to their needs. This means that it is usually inappropriate to put disabled prisoners in inappropriate security classifications due to a lack of accessible cells or beds, place disabled prisoners in infirmary units if they are not actually receiving medical care or treatment, place disabled prisoners in facilities that do not offer the same programs as other facilities where they would otherwise be housed, or deprive disabled prisoners of family visits by placing them in distant facilities where they would not otherwise be housed. 28 C.F.R. § 35.152(b)(2).

<sup>23</sup> See *Pierce v. County of Orange*, 526 F.3d 1190, 1218-1220 (9th Cir. 2008); *Gorman v. Easley*, 257 F.3d 738 (8th Cir. 2001) (injury during transportation by police in vehicle without wheelchair restraints), rev'd on other grounds, *Barnes v. Gorman*, 536 US 181 (2002); *Shariff v. Coombe*, 655 F. Supp. 2d 274, 298-99 (S.D.N.Y. 2009) (inability of wheelchair-bound prisoners to access restrooms amounted to Eighth Amendment violation); *Kaufman v. Carter*, 952 F.Supp. 520, 523-24 (W.D. Mich. 1996) (failure to provide access to bathrooms and showers).

<sup>24</sup> *Bonner v. Lewis*, 857 F.2d 559 (9th Cir. 1988); *Duffy v. Riveland*, 98 F.3d 447 (9th Cir. 1996); *Clarkson v. Coughlin*, 898 F.Supp. 1019, 1027-32 (S.D.N.Y. 1995).

<sup>25</sup> *Saunders v. Horn*, 960 F. Supp. 893 (E.D. Pa. 1997) (failure to provide orthopedic shoes and cane); *Herndon v. Johnson*, 970 F.Supp. 703 (E.D. Ark. 1997).

<sup>26</sup> See, e.g., *Kaufman*, 952 F.Supp. 520.

<sup>27</sup> *Carty v. Farrelly*, 957 F.Supp. 727, 741 (D.V.I. 1997) (prison officials violated ADA by housing inmate not suffering from mental illness with mentally ill prisoners because his cane was considered security threat).

<sup>28</sup> See *Love v. Westville Correctional Center*, 103 F.3d 558 (7th Cir. 1996).

## 5. Limitations on these rights

Prison officials are not required to provide accommodations that impose "undue financial and administrative burdens" or require "a fundamental alteration in the nature of [the] program."<sup>29</sup> Prison officials are also allowed to discriminate if the disabled prisoners' participation would pose "significant health and safety risks" or a "direct threat" to others.<sup>30</sup> Finally, some courts have said that prison officials can discriminate against disabled prisoners as long as the discriminatory policies serve "legitimate penological interests."<sup>31</sup>

<sup>29</sup> *Southeastern Community College*, 442 U.S. at 406.

<sup>30</sup> *School Bd. of Nassau County v. Arline*, 480 U.S. 273, 287 (1987) (holding that a person who poses a significant risk to others is not "otherwise qualified" for the activity, establishing a four-part test for determining whether contagious disease constitutes such a risk); 42 U.S.C. § 12182(b)(3).

<sup>31</sup> *Gates v. Rowland*, 39 F.3d 1439, 1446-47 (9th Cir.1994) (upholding discriminatory policy on security grounds based on unsubstantiated fears of other prisoners); cf. *Yeskey v. Penn. Dep't of Corrections*, 118 F.3d 168, 174-75 (3rd Cir. 1997) (holding that prison management decisions that may violate a state prisoner's rights are subject to a "reasonableness" test).

## 6. Alternatives to the ADA and Rehabilitation Act

Depending on the situation, disabled prisoners may file claims for relief based on the United States Constitution either in addition to, or instead of, ADA and Rehabilitation Act claims. The Eighth Amendment prohibits any form of cruel or unusual punishment. For example, federal or state prison officials violate the Eighth Amendment when staff members are deliberately indifferent to the serious medical needs of prisoners, including the special requirements of disabled inmates.<sup>32</sup>

The Fifth and Fourteenth Amendments prohibit government officials from depriving persons of life, liberty or property without "due process" of law, and the Fourteenth Amendment requires that all citizens

receive the "equal protection" of the law.<sup>33</sup> Thus, prison officials may violate the Constitution if they discriminate against disabled inmates on the basis of their disabilities.<sup>34</sup> However, to win an equal protection claim, disabled persons must prove that there is no legitimate government reason for the discriminatory policy.<sup>35</sup> This is a very difficult standard for prisoners to meet because courts generally give prison officials wide discretion in administering correctional facilities.<sup>36</sup>

Finally, the laws of some states may provide different or greater legal rights than the federal laws discussed in this information sheet. Disabled prisoners should investigate this possibility before bringing suit.

<sup>32</sup> *Estelle v. Gamble*, 429 U.S. 97 (1976) (deliberate indifference to prisoners' serious medical needs constitutes cruel and unusual punishment); see, e.g., *Hunt v. Uphoff*, 199 F.3d 1220 (10th Cir. 1999) (prison officials violated Eighth Amendment by providing such inadequate medical treatment for inmate's diabetes and hypertension that inmate consequently suffered heart attack); *LaFaut v. Smith*, 834 F.2d 389 (4th Cir. 1987) (prison officials violated Eighth Amendment by failing to provide disabled inmate with needed physical therapy and adequate access to facilities); *Madrid v. Gomez*, 889 F. Supp. 1146, 1265-66 (N.D. Ca. 1995) (continued confinement of mentally ill inmates in the facility's security housing unit violated the Eighth Amendment); *Felix-Torres v. Graham*, 521 F. Supp. 2d 157 (N.D.N.Y. 2007) (prison officials violated Eighth Amendment by failing to assign inmate suffering from diabetic seizures to bottom bunk).

<sup>33</sup> The Fourteenth Amendment governs actions by state governments and the Fifth Amendment governs actions by the federal government.

<sup>34</sup> See, e.g., *Williams v. Meese*, 926 F.2d 994, 998 (10th Cir. 1991) (federal inmate could not bring employment discrimination claim under Rehabilitation Act but could do so under Fifth Amendment, because "prison officials cannot discriminate against him on the basis of his age, race, or handicap...").

<sup>35</sup> *Whittington v. Moschetti*, 423 F. App'x 767, 770 (10th Cir. 2011); *Contractors Ass'n of E. Pa., Inc. v. City of Philadelphia*, 6 F.3d 990, 1001 (3rd Cir. 1993).

<sup>36</sup> *Overton v. Bazzetta*, 539 U.S. 126, 132 (2003) ("We must accord substantial deference to the professional judgment of prison administrators, who bear a significant responsibility for defining the legitimate goals of a corrections system and for determining the most appropriate means to accomplish them").

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