



Himachal Pradesh National Law University, Shimla (India)

Journal Articles

HPNLU Journal of Disability Studies

Volume: I (2024)

Disability and Criminal Justice System: An In-Depth Analysis of Challenges, Rights, and Reforms

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ISSN: XXXX-XXXX

Recommended Citation:

Khushbu Sharma & Mohit Dogra, Disability and Criminal Justice System: An In-Depth Analysis of Challenges, Rights, and Reforms, I HPNLU JDS. 101 (2024)

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DISABILITY AND CRIMINAL JUSTICE SYSTEM: An In-Depth Analysis of Challenges, Rights, And Reforms

Khushbu Sharma¹ & Mohit Dogra²

Abstract: *The disability and criminal justice system explores multifaceted characteristics emphasizing the crucial imperative to safeguard the rights and welfare of individuals with disabilities. The discourse involves the examination of capacity to stand trial, the availability of legal representation, the interplay between disability and police encounters, the practice of pretrial detention, the inclusivity of court processes, the involvement of disability rights organizations, and the interconnection between disability and other aspects of identity. It highlights the significance of adhering to legal norms, relying on expert assessments, and minimizing biases when evaluating an individual's competency. The paper examines the financial and communicative obstacles encountered by individuals with disabilities in their pursuit of legal representation, with a particular focus on the crucial role played by advocacy groups in mitigating these difficulties. Furthermore, it highlights the importance of police training in enhancing relationships with individuals who have impairments, the disproportionate representation of individuals with disabilities in pretrial detention, and the necessity for alternate approaches to detention. This study examines the issue of accessibility within court processes, encompassing both physical accommodations and communication support. Additionally, it explores the consequences of inadequate accessibility on the principles of fairness and due process. In the end, the research underscores the significance of litigation and advocacy endeavors in shaping legislative reforms and cultivating an all-encompassing, empathetic approach to the criminal justice system. The concept of intersectionality is a prominent focal point, emphasizing the ways in which the convergence of disability with factors such as race, gender, and sexual orientation can result in compounded obstacles and inequalities. This paper aims to provide insight into the complex issues related to disability within the criminal justice system and advocate for reforms that protect the rights and dignity of those with disabilities.*

I.

Introduction

The criminal justice system frequently presents distinct obstacles and inequities for those with disabilities, necessitating a complete and in-depth examination. The concept of competency to stand trial is a crucial legal principle that plays a significant role in ensuring that individuals who are facing criminal charges possess the necessary cognitive and emotional abilities to actively engage in their

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own defense. Ensuring defendants' understanding of the allegations brought against them and their ability to make informed decisions regarding their legal tactics is a fundamental aspect of due process. Competency examinations, which are typically administered by forensic psychologists and psychiatrists, serve as a crucial factor in ascertaining an individual's competency status. Nevertheless, it is important to acknowledge that these assessments may be susceptible to many biases, including those that are cultural, diagnostic, or based on preconceived ideas about individuals with disabilities. It is imperative to acknowledge and rectify these biases in order to safeguard the rights of individuals with disabilities and respect the fundamental principles of a just trial. The access of legal counsel is a crucial element within a fair and equitable judicial system. Nevertheless, individuals with disabilities frequently encounter distinct obstacles when it comes to obtaining legal representation and actively participating in judicial proceedings. The presence of financial constraints, communication obstacles, and the necessity for accommodations for lawyers and clients with disabilities provide intricate challenges that necessitate proactive resolutions. Disability rights organizations and legal advocacy groups have become significant proponents in enhancing the availability of legal representation for this marginalized population. These entities play a central role in increasing public consciousness, advocating for policy modifications, and offering vital assistance to individuals with disabilities as they navigate legal matters.

The intersection between disability and the criminal justice system encompasses a range of dimensions, including encounters with law enforcement, pretrial confinement, and the availability of accessible court procedures. The convergence of these crossings may increase difficulties and inequalities, particularly when disability intersects with additional dimensions of identity, such as race, gender, or sexual orientation. It is imperative to acknowledge the complex intersections in order to effectively handle the unique requirements of individuals with disabilities within the criminal justice system and to guarantee equitable rights and safeguards for everyone.

II.

Competency to Stand Trial

Legal Standards and Processes

The assessment of an individual's competency to stand trial is a crucial legal principle that ascertains whether an individual who is facing criminal charges possesses the cognitive ability to comprehend the nature of the accusations against

them and actively engage in their own legal defense.³ The criteria for assessing competency in legal contexts exhibit variability among jurisdictions, yet commonly encompass factors such as comprehension of court procedures, effective communication with legal representation, and capacity to make informed judgments pertaining to one's defense strategy.⁴ The aforementioned requirements are based on fundamental principles of due process and the entitlement to a just trial, which require that accused individuals are afforded a substantial chance to engage in their own legal representation. Competency tests are commonly performed in situations where there is a suspicion that the defendant may possess insufficient mental competence to participate in legal proceedings. These exams are typically conducted by defense attorneys, prosecutors, or judges.⁵

Role of Forensic Psychologists and Psychiatrists

The evaluation of an individual's ability to stand trial frequently necessitates the involvement of forensic psychologists and psychiatrists who possess specialized knowledge in assessing mental health and cognitive abilities within legal frameworks.⁶ These professionals are of utmost importance in carrying out thorough assessments to ascertain whether an individual satisfies the legal criteria for competency. The evaluations conducted by professionals may encompass various components, including interviews with the defendant, an examination of pertinent medical and psychiatric records, and the administration of psychological tests to evaluate cognitive and emotional capabilities. The primary objective of these assessments is to offer an impartial and empirically supported determination of the defendant's competency status.⁷

Potential for Bias in Competency Evaluations

Although competency tests are designed to be impartial, there exists a possibility for bias to exert influence on the evaluation process.⁸ Bias can be observed in different forms, such as cultural biases, diagnostic bias, or the impact of preexisting assumptions toward individuals with mental or intellectual disability.

³ Zapf Patricia & Ronald Roesch, EVALUATION OF COMPETENCE TO STAND TRIAL, (2008).

⁴ Appelbaum & Paul S., *Assessment of patients' competence to consent to treatment*, NEJM 357[18], 1834-1840 (2007).

⁵ Edelstein & Barry, *Challenges in the assessment of decision-making capacity*, JAS 14.4, 423-437 (2000).

⁶ Mossman Douglas et. al., *AAPL practice guideline for the forensic psychiatric evaluation of competence to stand trial*, JAAPLO 35.4, S3-S72 (2007).

⁷ Stephen L. Golding et. al., *Assessment and conceptualization of competency to stand trial: Preliminary data on the Interdisciplinary Fitness Interview*, LHB 8.3-4, 321 (1984).

⁸ Neal Tess & Stanley L. Brodsky, *Forensic psychologists' perceptions of bias and potential correction strategies in forensic mental health evaluations*, PPPL 22.1, 58 (2016).

Cultural biases have the potential to cause evaluators to misinterpret behavior or communication styles that deviate from their own cultural norms.⁹ Diagnostic bias refers to the potential occurrence of an excessive emphasis on a mental diagnostic, while neglecting to adequately assess the defendant's genuine ability to comprehend and engage in judicial procedures.¹⁰ Moreover, the presence of preconceptions and stigma pertaining to mental or intellectual disability has the potential to impact the assessments made by assessors.¹¹

It is imperative to acknowledge and mitigate any biases in competence examinations in order to safeguard against unjustly labeling individuals with disabilities as unable to stand trial or depriving them of their right to a fair trial. The training and professional guidelines for forensic psychologists and psychiatrists place significant emphasis on the significance of cultural competence, understanding of biases, and the utilization of evidence-based assessment techniques in order to mitigate the influence of bias on evaluations.¹² Legal safeguards, like the provision of legal representation and the ability to contest competency judgments through judicial proceedings, are crucial in safeguarding the rights of individuals with disabilities.¹³

III.

Access To Legal Representation

The right to obtain legal representation is a fundamental right that serves as the foundation for values such as fair trial and equitable access to justice. This right extends to all individuals, including those who have disabilities.¹⁴ Nevertheless, individuals with disabilities frequently encounter unique obstacles that hinder their capacity to get legal representation and actively participate in legal proceedings.¹⁵ This detailed investigation examines the complex challenges surrounding the availability of legal representation for individuals with

⁹ Nario-Redmond & Michelle R., *Cultural stereotypes of disabled and non-disabled men and women: Consensus for global category representations and diagnostic domains*, BJSP 49.3, 471-488 (2010).

¹⁰ Marcelin Jasmine R., *et. al.*, *The impact of unconscious bias in healthcare: how to recognize and mitigate it*, TJID 220.2, S62-S73 (2019).

¹¹Jorm AF, *et. al.*, *Attitudes towards people with a mental disorder: a survey of the Australian public and health professionals*, Aust N Z J Psychiatry (1999).

¹²American Psychological Association, *GUIDELINES FOR THE EVALUATION OF DEMENTIA AND AGE-RELATED COGNITIVE CHANGE* (2013).

¹³ *Sell v. United States*, 539 U.S. 166 (2003).

¹⁴ Eilionoir Flynn, *DISABLED JUSTICE? ACCESS TO JUSTICE AND THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES*, (2015).

¹⁵Andrew Power *et.al.*, *ACTIVE CITIZENSHIP AND DISABILITY: IMPLEMENTING THE PERSONALISATION OF SUPPORT* (2013).

disabilities.¹⁶ The issue of affordability in accessing legal services is a substantial barrier, since individuals with disabilities often face financial challenges due to factors such as unemployment, underemployment, or the expenses related to managing their infirmities.¹⁷ Consequently, the act of securing legal representation becomes a challenging endeavor, which may possibly impede individuals' capacity to obtain fair and equitable access to the legal system.¹⁸

The obstacles faced by individuals with speech or language impairments get worse by communication constraints. The presence of disabilities poses challenges to the successful transmission of legal requirements to lawyers and the understanding of legal counsel and procedures. These challenges are further compounded by the limited availability of communication tools and accommodations that are accessible to those with disabilities.¹⁹ In order to ensure the provision of effective legal representation, it is imperative to make reasonable accommodations for lawyers and clients who have disabilities. In order to properly serve their clients, lawyers may necessitate workplace modifications, including accessible facilities and assistive technology. In contrast, clients may require various accommodations, such as sign language interpreters, accessible papers, or communication aids, in order to effectively engage with their attorneys and comprehend intricate legal procedures.²⁰

The consequences stemming from a lack of sufficient access to legal representation are extensive, perhaps resulting in inequitable case resolutions, incorrect convictions, or insufficient legal safeguards for those with disabilities.²¹ Disability rights organizations and legal advocacy groups are crucial actors in the promotion of justice and equity, as they actively advocate for enhanced accessibility to legal representation. They promote awareness of these obstacles, advocate for policy reforms, and offer essential legal assistance and resources to those with disabilities who are managing legal matters.²²

Affordability of Legal Services

Individuals with disabilities encounter a notable obstacle in accessing legal services due to the issue of affordability.²³ The provision of legal counsel, although

¹⁶ Id.

¹⁷ Marta Russell, *CAPITALISM AND DISABILITY* (2019).

¹⁸ Id.

¹⁹ Stephanie Ortoleva, *Inaccessible justice: Human rights, persons with disabilities and the legal system*, *ILSA J. Int'l & Comp. L.* 17, 281 (2010).

²⁰ Id.

²¹ A. Kok, *The potential effectiveness of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000*, *JJS* 33, 142-68 (2008).

²² Id.

²³ Subhajit Basu & Joe Duffy, *Providing Legal Information and Advice to Older People: as much a question of accessibility as affordability*, *EJLT* 1.3, 1-32 (2010).

of utmost importance, frequently entails significant cost implications, rendering it unattainable for a considerable number of individuals, including those with impairments.²⁴ People with disabilities may have financial difficulties as a result of various reasons, including but not limited to, lack of employment opportunities, inadequate employment, or the increased expenses associated with managing their handicap. As a result, the exorbitant expenses associated with legal services can provide a significant obstacle for those with disabilities who are in need of legal representation, thereby impeding their ability to obtain fair treatment within the legal system.²⁵

The financial obstacles to accessing legal representation are more prominent for those with disabilities, who may already encounter elevated healthcare expenses, fees associated with assistive devices, or restricted prospects for profitable employment. The presence of financial pressures can provide significant challenges for individuals in terms of allocating resources for legal expenses, retaining legal representation, and obtaining the necessary legal aid.²⁶

Communication Barriers

Communication issues offer a notable impediment for those with disabilities who are in pursuit of legal representation.²⁷ The presence of these obstacles may impede the efficacy of communication between individuals with disabilities and their legal representatives, thereby affecting their capacity to avail themselves of legal services and comprehend legal proceedings.²⁸ Certain individuals who have disabilities, namely those who experience problems in speech or language, may encounter considerable obstacles when attempting to effectively communicate their legal requirements to attorneys.²⁹ Speech or language impairments can present themselves in diverse manners, encompassing speech problems, stuttering, or aphasia, so impacting the individual's capacity to articulate their thoughts coherently or with ease.³⁰ In legal settings, the capacity to effectively express one's legal issues is of utmost importance, since it directly influences the attorney's comprehension of the client's matter and their ability to offer suitable

²⁴ Id.

²⁵ Productivity Commission, *ACCESS TO JUSTICE ARRANGEMENTS*, (2013).

²⁶ Deborah L. Rhode, *Access to justice: Connecting principles to practice*, *Geo. J. Legal Ethics* 17, 369 (2003).

²⁷ Jeffrey O. Cooper, *Overcoming barriers to employment: The meaning of reasonable accommodation and undue hardship in the Americans with Disabilities Act*, *U. Pa. L. Rev.* 139, 1423 (1990).

²⁸ Id.

²⁹ Lindsay L. Miller, *Protecting the Miranda Rights of Vulnerable Suspects: The Hidden Disability of Language Impairment*, *Cap. UL Rev.* 50, 439 (2022).

³⁰ Bishop Dorothy *et. al.*, (eds.) *SPEECH AND LANGUAGE IMPAIRMENTS IN CHILDREN: CAUSES, CHARACTERISTICS, INTERVENTION AND OUTCOME*, Psychology press (2000).

legal advice. Moreover, individuals with specific disabilities may encounter significant difficulties in understanding legal counsel and navigating legal proceedings. Individuals with cognitive or intellectual disabilities may find themselves overwhelmed by the intricate legal vocabulary, extensive documentation, and unfamiliar procedural aspects commonly associated with the legal system.³¹

The mitigation of communication barriers is crucial in guaranteeing that individuals with disabilities are provided with substantial opportunities to obtain legal counsel and access justice. It is imperative for legal professionals and service providers to possess an understanding of the varied communication requirements of individuals with disabilities and to adopt proactive measures in order to furnish accessible communication aids, such as interpreters, accessible papers, and explanations in plain language.³²

Accommodations for Lawyers and Clients

In order to sustain equitable access to legal counsel, it is imperative to furnish appropriate accommodations for individuals with disabilities, encompassing both legal practitioners and their clients. The inclusion of these accommodations plays a crucial role in eliminating obstacles that could potentially impede the involvement of individuals with disabilities in the judicial proceedings.³³ Lawyers who possess disabilities may necessitate workplace adjustments in order to proficiently advocate for their clients and fulfill their professional responsibilities. Accommodations encompass various provisions, such as accessible office amenities like wheelchair ramps and accessible restrooms, alongside assistive equipment or software that augment their capacity to engage in legal research, compose documents, and communicate with customers and coworkers. It is imperative to guarantee that legal professionals are provided with these accommodations in order to facilitate their complete engagement in the legal profession.³⁴

Individuals with disabilities may require reasonable adjustments in order to facilitate efficient communication with their legal representatives and

³¹ Kirkendallet. *al.*, *Intellectual disabilities and decision making at end of life: A literature review*, JARID 30.6, 982-994 (2017).

³² JoNel Newman, *Identity and narrative: turning oppression into client empowerment in social security disability cases*, Alb. L. Rev. 79,373 (2015).

³³ Karlan Pamela & George Rutherglen, *Disabilities, discrimination, and reasonable accommodation*, DUkelJ 46 1 (1996).

³⁴ Paul B. Goldet. *al.*, *Negotiating reasonable workplace accommodations: Perspectives of employers, employees with disabilities, and rehabilitation service providers*, JVR 37.1, 25-37 (2012).

comprehend the intricacies of legal proceedings.³⁵ One instance where sign language interpreters may be necessary is when individuals who are deaf or hard of hearing are involved in attorney-client meetings or court hearings. The presence of these interpreters is crucial in order to ensure efficient communication between the parties involved. Individuals who experience visual impairments may require legal documents and contracts to be made available in accessible formats, such as Braille or large print, in order to facilitate their review process. Communication aids, such as communication boards or voice-generating devices, are essential tools for individuals with speech or communication challenges to effectively express their preferences and make legally binding decisions.³⁶

In addition, it is important to note that accommodations encompass more than just physical and communication-related requirements. The considerations may involve aspects pertaining to cognitive or sensory disorders, with the aim of providing customized support to individuals with intellectual or sensory processing disabilities, based on their unique needs. The primary objective of these accommodations is to establish a legal environment that is both inclusive and accessible, thereby enabling all clients, irrespective of their disabilities, to actively engage in the legal process and effectively exercise their legal rights.³⁷

Legal Advocacy and Disability Rights

Disability rights organizations and legal advocacy groups are essential and irreplaceable entities that fulfill a crucial function in campaigning for enhanced accessibility to legal counsel for individuals with disabilities. These organizations diligently strive to tackle the distinct obstacles encountered by individuals with disabilities in their engagements with the legal system.³⁸ One of the key roles played by disability rights organizations and legal advocacy groups is to enhance public consciousness regarding the difficulties faced by individuals with disabilities in obtaining legal counsel. Through the act of emphasizing these issues, their objective is to direct focus towards discrepancies and inequities present within the legal system, as well as to cultivate a more profound comprehension of the obstacles that necessitate resolution.³⁹

In addition to raising awareness, these groups also participate in advocacy initiatives aimed at advancing policy reforms that improve the availability of legal

³⁵ Robyn White *et. al.*, *Court accommodations for persons with severe communication disabilities: A legal scoping review*, PPPL 27.3, 399 (2021).

³⁶ *Id.*

³⁷ Bronwyn Hemsley, *Ethical issues in augmentative and alternative communication*, JCPSLP 17 (2015).

³⁸ Eve Hill & Peter Blanck, *Future of disability rights advocacy and the right to live in the world*, Tex. J. on CL & CR 15, 1 (2009).

³⁹ Marcy Karin & Lara Bollinger, *Disability Rights: Past, Present, and Future: A Roadmap for Disability Rights*, UDC/DCSL L. Rev. 23, 1 (2020).

counsel for individuals with disabilities. They may engage in lobbying efforts to promote legislative reforms, actively support the allocation of more funds towards legal aid programs, and actively participate in legal reform projects with the goal of ensuring that disability-related legal matters are adequately addressed within the existing legal system.⁴⁰ Legal advocacy and disability rights organizations frequently offer direct legal aid and support to individuals with disabilities who encounter legal challenges. The organization has the potential to provide pro bono legal services, facilitate connections between individuals and legal professionals specializing in disability-related matters, and offer assistance in navigating the complexities of the legal system. Through this action, these groups provide individuals with disabilities the ability to exercise their legal rights and engage in advocacy efforts to seek justice at an individual level.⁴¹

IV.

Disability And Police Interactions

Experiences of Individuals with Disabilities

The engagement between those with disabilities and law enforcement can pose distinctive problems and raise specific concerns. The presence of disabilities can give rise to challenges in communication, heightened sensitivities to sensory stimuli, and behavioral characteristics that may contribute to misunderstandings or exacerbated confrontations in police engagements.⁴² Individuals diagnosed with autism spectrum disorder (ASD) may encounter challenges related to social communication and sensory sensitivity. These difficulties can significantly impact their ability to effectively respond to police interrogation or navigate sensory cues within their surroundings.⁴³ Likewise, individuals who possess intellectual or developmental disabilities may experience difficulties comprehending and adhering to intricate verbal instructions in the context of interactions with law enforcement, which could potentially result in misunderstanding or a lack of cooperation.⁴⁴ These problems underscore the significance of taking into account

⁴⁰ Robin Banks, *More than law: Advocacy for disability rights* in DISABILITY, DIVERSABILITY AND LEGAL CHANGE, 343-362 (1999).

⁴¹ Maya Sabatello & Marianne Schulze, (ed.) *Human Rights and Disability Advocacy* in UNIVERSITY OF PENNSYLVANIA PRESS (2013).

⁴² S. K. Kapp *et al.*, TRANSITION TO ADULTHOOD FOR HIGH-FUNCTIONING INDIVIDUALS WITH AUTISM SPECTRUM DISORDERS, (2011).

⁴³ M. O. Mazurek & C. R. Engelhardt, *Video game use and problem behaviors in boys with autism spectrum disorders*, Research in ASD 7(2), 316-324 (2013).

⁴⁴ Gerhardt & Lainer I, *Addressing the needs of adolescents and adults with autism: A crisis on the horizon*, JCP 41(1), 37-45 (2011).

the unique needs and responses of individuals with disabilities during interactions with law enforcement.⁴⁵

Role of Police Training

The training of police officers is of utmost importance in enhancing the quality of interactions between law enforcement personnel and individuals with disabilities. Training programs ought to prioritize the development of skills in identifying disabilities, comprehending behaviors associated with disabilities, and implementing suitable de-escalation strategies. It is imperative to acknowledge that behaviors displayed by individuals with disabilities may be misinterpreted as noncompliance or defiance, and this recognition is vital in order to prevent unwarranted employment of force or arrests. It is imperative that police officers have appropriate training to effectively discern between deliberate noncompliance and behaviors that may stem from a handicap, such as sensory overload or challenges in digesting intricate spoken instructions.⁴⁶

It is imperative that training programs place equal emphasis on including de-escalation techniques that are expressly designed to address interactions involving individuals with disabilities. The strategies employed may encompass non-confrontational communication, the provision of clear and concise instructions, the allowance of extended response time, and the accommodation of sensory sensitivities.⁴⁷ The implementation of de-escalation training is of utmost importance in fostering secure and efficient relationships that mitigate the potential for harm to both individuals with disabilities and law enforcement personnel.⁴⁸

Furthermore, it is imperative that police training programs incorporate comprehensive instruction on the legal and ethical responsibilities that law enforcement personnel have when engaging with individuals who have impairments. This entails guaranteeing adherence to the Americans with Disabilities Act (ADA) and other pertinent legislations that safeguard the rights of individuals with disabilities in the context of police interactions.⁴⁹ It is vital to possess a comprehensive comprehension of the legal framework and ethical

⁴⁵ *Id.*

⁴⁶ EmmonsPolly & Liz Anderson, *Understanding sensory dysfunction: learning, development and sensory dysfunction in autism spectrum disorders, ADHD, learning disabilities and bipolar disorder*, (2005).

⁴⁷Janet R. Oliva et. al., *A practical overview of de-escalation skills in law enforcement: Helping individuals in crisis while reducing police liability and injury*, JPCN 10.1, 15-29 (2010).

⁴⁸ *Id.*

⁴⁹ Thomas D. Schneid, & Larry K. Gaines, *The Americans with Disabilities Act: implications for police administrators*, Am. J. Police 10, 47 (1991).

concerns pertaining to these interactions in order to guarantee that law enforcement upholds the rights and dignity of individuals with disabilities.

V.

Disability and Pretrial Detention

Overrepresentation of People with Disabilities in Pretrial Detention

The criminal justice system exhibits a notable disparity in the presence of individuals with disabilities in pretrial detention institutions, giving rise to concerns.⁵⁰ The presence of disabilities, encompassing intellectual, mental, sensory, or physical impairments, can exert a substantial influence on persons' encounters within the legal system. Individuals with disabilities frequently encounter financial disparities, heightened encounters with law enforcement, and challenges in navigating the intricacies of the legal system. These factors collectively contribute to their disproportionate presence in pretrial detention.⁵¹ The overrepresentation discussed in this context carries significant ramifications, which encompass the possible infringement upon individuals' right to a fair trial, heightened vulnerability to harm, and extended periods of detention that may result in severe and far-reaching effects.⁵²

Implications for Access to Justice and Excessive Detention

The disproportionate prevalence of individuals with disabilities in pretrial confinement gives rise to significant issues regarding access to justice. People with disabilities may have obstacles in communicating, struggle to comprehend legal proceedings, and encounter difficulties in obtaining legal representation.⁵³ This may impede their capacity to actively engage in their defense and assert their legal entitlements, potentially leading to inequitable case resolutions. Furthermore, an overabundance of imprisonment can result in adverse outcomes, such as unemployment, instability in housing, and difficulties in obtaining healthcare and essential support services. These effects can intensify the difficulties experienced by those with disabilities.⁵⁴

⁵⁰ Anne G. Crockeret. *al.*, *Rate and characteristics of men with an intellectual disability in pre-trial detention*, JIDD 32.2, 143-152 (2007).

⁵¹ Sepulveda Carmona & Magdalena, *Report of the Special Rapporteur on Extreme Poverty and Human Rights: Access to Justice*, (2012).

⁵² *Id.*

⁵³ Stephanie Ortoleva, *Inaccessible justice: Human rights, persons with disabilities and the legal system*, ILSA J. Int'l & Comp. L. 17 (2010): 281.

⁵⁴ James Patrick Jordan, *DISABILITY RIGHTS ARE HUMAN RIGHTS—AND THEY AFFECT ALL OF US*, (2022).

Alternatives to Pretrial Detention for Individuals with Disabilities

It is imperative to examine alternative approaches to pretrial detention in order to effectively cater to the distinct requirements of individuals with disabilities, all while upholding public safety. Supervised release programs and diversion initiatives present auspicious alternatives that promote rehabilitation and assistance as opposed to jail.⁵⁵ Supervised release programs, characterized by court oversight, the imposition of conditions, and the provision of support services, have the potential to afford individuals with disabilities the essential framework and aid required to sustain their involvement within their respective communities during the pretrial period.⁵⁶ In contrast, diversion programs serve to redirect individuals with disabilities away from the conventional criminal justice system and towards rehabilitation and treatment services that target the underlying factors contributing to their engagement with the criminal justice system.⁵⁷

Diversion programs have demonstrated notable efficacy in addressing the needs of individuals with disabilities who experience mental health or drug use challenges. These programs have the objective of offering treatment, counseling, and assistance as an alternative to jail. This approach acknowledges that treating the root causes that contribute to criminal conduct is frequently more successful in diminishing repeat offenses and improving public safety.⁵⁸

VI.

Accessibility in Court Proceedings

Accessibility of Courtrooms, Legal Documents, and Proceedings

The maintenance of accessibility in courtrooms, legal papers, and processes is of utmost importance in order to safeguard the fundamental values of justice and due process for all individuals, including those who have impairments.⁵⁹ The concept of accessibility involves various aspects, including the provision of physical accommodations, support for effective communication, and the availability of information in formats that are accessible to all individuals. Physical accommodations encompass various features such as ramps, elevators, and

⁵⁵ Open Society Justice Initiative, *THE SOCIOECONOMIC IMPACT OF PRETRIAL DETENTION*, NEW YORK: OPEN SOCIETY FOUNDATIONS, (2011).

⁵⁶De Zaldo&Gare Fabila, *The Social Integration of Individuals with Disabilities*,24 Bilingual Review1/2, 3-18(1999).

⁵⁷ *Id.*

⁵⁸ H.J. Steadman *et.al.*, *Effect of Mental Health Courts on Arrests and Jail Days: A Multisite Study*, AGP 68(2), 167-172 (2011).

⁵⁹ Zahra Hosaneeva, *A Case for Persons with Disabilities: Using Digital Courts to Promote the Right to Access to Justice and the Rule of Law*, Pretoria SLR 16, 47 (2022).

seating arrangements that are designed to facilitate the use of mobility aids.⁶⁰ On the other hand, communication support entails the provision of sign language interpreters, assistive listening devices, and real-time captioning to enhance effective communication. The provision of legal papers and court-related information in forms such as Braille, big print, or digital accessible formats that are compatible with screen readers or other assistive technology is essential for ensuring information accessibility.⁶¹

Impact on Fairness of Trials and Due Process Rights

The absence of adequate accessibility in court processes can significantly affect the equitable nature of trials and the protection of due process rights for individuals with disabilities. The lack of accessibility in courtrooms and related facilities can serve as a significant obstacle for those with mobility disabilities, impeding their ability to actively participate in court procedures. This can result in the potential denial of crucial opportunities, such as testifying, presenting evidence, or fully engaging with their legal counsel.⁶² The lack of sign language interpreters or assistive listening equipment can create obstacles in communication for those with hearing impairments, impeding their comprehension of judicial processes and their ability to effectively engage with legal professionals. This situation can be seen as a violation of their right to a fair trial.⁶³ In addition, the lack of availability of legal documents and information in formats that are easily accessible may hinder individuals with visual impairments from obtaining crucial legal information, thereby impacting their capacity to adequately prepare a defense or comprehend their rights.⁶⁴

The guarantee of accessibility in judicial proceedings is not alone a legal duty, but also an essential principle of justice and equity.⁶⁵ The Americans with Disabilities Act (ADA) and other legislation pertaining to disability rights provide the obligation for public organizations, such as courts, to furnish reasonable accommodations in order to guarantee equitable access to programs and services

⁶⁰ David Allen Larson, *Access to justice for persons with disabilities: An emerging strategy*, *Laws* 3.2, 220-238 (2014).

⁶¹ Corra Mamadi, *Disability and Access: Perspectives from Judiciary Personnel on Issues of Accessibility*, *Judges J.* 59, 30 (2020).

⁶² National Council on Disability (2005), *The Impact of the Americans with Disabilities Act: Assessing the Progress Toward Achieving the Goals of the ADA*. Available at: <https://www.ncd.gov/publications/2005/Sept302005> (last visited 10 Sep., 2023).

⁶³ Douglas M Pravda, *Understanding the rights of deaf and hard of hearing individuals to meaningful participation in court proceedings*, *Val. UL Rev.* 45, 927 (2010).

⁶⁴ Jonathan Lazar *et. al.*, *ENSURING DIGITAL ACCESSIBILITY THROUGH PROCESS AND POLICY*, (2015).

⁶⁵ Hanna Potapchuk, *et al.*, *Analysis of The Issues of Justice Accessibility, Equality, And Countering Discrimination in The Legal System*, *Lex Humana* 15.4, 548-565 (2023).

for those with disabilities.⁶⁶ The provision of these accommodations is not solely a matter of adhering to legal requirements; rather, it is crucial for maintaining the integrity of the legal system and protecting the rights of those with disabilities.

VII.

Legal Advocacy and Disability Rights Organizations

Role of Disability Rights Organizations and Legal Advocacy Groups

Disability rights organizations and legal advocacy groups assume a major role in advocating for the rights of individuals with disabilities within the criminal justice system. These organizations demonstrate unwavering dedication in their efforts to increase awareness regarding the distinct obstacles encountered by individuals with disabilities, encompassing intellectual, mental, sensory, or physical impairments, as they navigate the legal framework.⁶⁷ They fulfill the role of advocates, allies, and representatives for those who may experience marginalization or neglect inside the criminal justice system. These organizations provide essential assistance and resources to individuals with disabilities, enabling them to express their rights and navigate the intricacies of the legal system.⁶⁸

Impact of Litigation on Legal Reforms

The initiation of legal proceedings by disability rights organizations has exerted a substantial influence on the implementation of law reforms and the formulation of policies within the criminal justice system.⁶⁹ Court cases can serve as a platform for shedding light on systemic concerns pertaining to the treatment of individuals with disabilities. These legal proceedings often result in the establishment of legal precedents and judgments that catalyze modifications in legislation and operational procedures. For instance, legal issues of significant importance pertaining to the care of individuals with mental illnesses within correctional institutions have led to mandated changes, such as enhanced availability of mental health services and decreased dependence on solitary confinement. Litigation functions as a potent mechanism for ensuring the accountability of authorities and

⁶⁶ Jonathan Bick, *Americans with Disabilities Act and the Internet*, Alb. LJ Sci. & Tech. 10, 205 (1999).

⁶⁷ Jones M. & LA Basser Marks, *More Than Law: Advocacy for Disability Rights* in DISABILITY, DIVERS-ABILITY AND LEGAL CHANGE 56, 343 (2021).

⁶⁸ *Id.*

⁶⁹ Leottiet.al., *Criminal Legal Systems and the Disability Community: An Overview*, SS 11.6, 255 (2022).

facilitating systemic enhancements that yield favorable outcomes for individuals with disabilities.⁷⁰

Advocacy Efforts and Policy Changes

In conjunction with legal proceedings, disability rights organizations actively participate in advocacy endeavors with the objective of exerting influence on policy modifications that advance the rights and welfare of those with disabilities within the criminal justice system.⁷¹ The individuals in question engage in collaborative efforts with legislators, governmental entities, and various other relevant parties in order to formulate and execute policies that effectively target the distinctive requirements of this particular demographic. The emergence of specialty courts, like as mental health courts and veterans' treatment courts, has been influenced by advocacy activities. These courts aim to divert individuals with disabilities away from conventional criminal justice processes and instead provide them with rehabilitation and support services.⁷² These diversion programs place a greater emphasis on treatment and support rather than punitive measures, indicating a change towards a more compassionate and efficacious approach.⁷³

VIII.

Intersectionality And Disability In Criminal Justice

Complex Interactions of Identity

Intersectionality is a theoretical framework that examines the intricate interplay among many dimensions of an individual's identity, encompassing factors such as race, gender, sexual orientation, and disability. Within the framework of the criminal justice system, individuals who possess disabilities may encounter distinct obstacles when their disability coincides with other facets of their identity. An individual who possesses a disability and belongs to a racial or ethnic minority group may meet compounded biases and discriminatory treatment, both in interactions with law enforcement personnel and throughout the legal

⁷⁰ Degeneret.*al.*, *International Disability Law-A New Legal Subject on the Rise, The Interregional Experts' Meeting in Hong Kong, December 13-17 (1999)*, Berkeley J. Int'l L. 18, 180 (2000).

⁷¹ Fisher *et.al.*, *Policies to change attitudes to people with disabilities*, SJDR 19.2, 161-174 (2017).

⁷² US Department of Health and Human Services, *Substance abuse and mental health services administration*, Center for Mental Health Services, NIH & NIMH, 117-220 (1999).

⁷³ *Id.*

proceedings.⁷⁴ The presence of several intersecting identities can exert a substantial impact on the manner in which individuals with disabilities are subjected to treatment within the criminal justice system.⁷⁵

Racial Disparities in Disability and Policing

Numerous studies have demonstrated the existence of racial inequities in the identification and management of disabilities, a phenomenon that carries substantial ramifications for encounters with law enforcement. An illustration of this phenomenon is the higher likelihood of African American children being misdiagnosed with conduct issues, rather than undergoing proper evaluations for disability such as attention deficit hyperactivity disorder (ADHD).⁷⁶ The occurrence of misdiagnoses can lead to heightened involvement with the criminal justice system, since individuals who have disabilities that remain undiagnosed or are inaccurately diagnosed may display behaviors that are mistakenly seen as noncompliance or criminal behavior.⁷⁷

Gender and Disability

The role of gender is also of utmost importance in shaping the experiences of those with disabilities inside the criminal justice system. Women who have disabilities may have distinct obstacles, such as a heightened susceptibility to instances of sexual harassment, abuse, or violence during their time of confinement.⁷⁸ Furthermore, it is important to acknowledge that gender biases have the potential to impact the way disabilities are seen, which can result in the development of dismissive or discriminatory attitudes towards women with disabilities who are engaged in legal proceedings. The convergence of gender and disability emphasizes the significance of taking into account many facets of identity when addressing the needs and rights of individuals within the criminal justice system.⁷⁹

Sexual Orientation and Disability

The convergence of sexual orientation and disability can lead to heightened vulnerabilities. LGBTQ+ individuals who possess impairments may face instances

⁷⁴ Crenshaw K., *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Anti-discrimination Doctrine, Feminist Theory and Antiracist Politics*, U.CHI. LEGAL F., 139-167 (1989).

⁷⁵ Id.

⁷⁶ Spencer & M. B. (eds.), *Phenomenology and Ecological Systems Theory: Development of Diverse Groups* in HANDBOOK OF RESEARCH METHODS AND APPLICATIONS IN SOCIAL CAPITAL 352-381 (2009).

⁷⁷ Nelson & Camille A., *Racializing disability, disabling race: Policing race and mental status*, BJCL 15, 1 (2010).

⁷⁸ Morris & Jenny, GENDER AND DISABILITY, (1993).

⁷⁹ Mohamedet al., *Gendering disability and disabling gender: Critical reflections on intersections of gender and disability*, Agenda 29.2, 2-13 (2015).

of discrimination, harassment, or violence within correctional facilities that specifically target their sexual orientation and disability status.⁸⁰ Moreover, the criminal justice system may be influenced by social biases or stereotypes pertaining to sexual orientation, which can intersect with perceptions of disability. This intersectionality has the potential to result in misunderstandings or mistreatment within the criminal justice system. The recognition of these intersections has significant importance in effectively addressing the distinct issues encountered by those within the LGBTQ+ community who also have disabilities.⁸¹

IX.

Conclusion

Disability within the criminal justice system is a complex matter that necessitates in-depth examination and extensive restructuring. It is imperative to uphold the values of competency to stand trial, access to legal representation, fair police interactions, equitable pretrial detention policies, and accessible court hearings for those with disabilities. It is essential to acknowledge and confront the prejudices inherent in competency tests, as well as the financial and communication obstacles that may impede individuals with disabilities. Additionally, it is crucial to address the disproportionate representation of persons with disabilities in pretrial detention, while recognizing the intricate interplay between disability and other aspects of identity. In the pursuit of a more equitable and inclusive criminal justice system, it is important to place emphasis on the provision of training opportunities for legal professionals, the active engagement of disability rights organizations, and a steadfast dedication to implementing policy reforms that foster rehabilitation, support, and equal availability of justice. Through acknowledging the distinct requirements and obstacles encountered by individuals with disabilities and comprehending the ways in which their identities intersect with disability, it is possible to strive for a criminal justice system that is characterized by compassion, equity, and accessibility, thereby upholding the rights and inherent worth of all individuals, irrespective of their disabilities.

⁸⁰ Nakkeeran N. & Barathi Nakkeeran, *Disability, mental health, sexual orientation and gender identity: understanding health inequity through experience and difference*, HRPS 16,9-19 (2018).

⁸¹ Miller Ryan A *et al.*, *Mental Health and Resilience Among LGBTQ+ College Students with Disabilities*, CJDSSC 2.1 (2022).