

**People with Intellectual and
Developmental Disabilities
in the Criminal Justice
System**

**A Report for the
Washington
Developmental
Disabilities Council**

2025

W INSTITUTE ON HUMAN
DEVELOPMENT & DISABILITY
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Disclosures

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The authors declare that they have no conflicts of interest.

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We acknowledge the use of AI in the development of this report. Three AI tools were used: [Copilot Pro](#), [Grammarly](#), and a new AI tool in development that supports [on-demand text simplification](#). Grammarly and the text simplification tool were used to clarify and simplify the report's writing. The uses of Copilot Pro and the strategies to address risks in AI use are discussed in the relevant sections.

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Content Warning

This report examines the institutionalization and incarceration of people with intellectual and developmental disabilities (IDD). It discusses police interactions with people with IDD and criminal actions committed by people with IDD. It also discusses the use of capital punishment (i.e., the death penalty). These issues are described in general terms; however, some people may find this content upsetting.

In some sections of the report where we *quote* past legal cases, we use the historical language used at that time. When *describing* historical content, we use contemporary terms to convey the information. The historical language is now considered derogatory and offensive, and some may find its use upsetting.

Some research and legal documents use the intelligence quotient (IQ) to define IDD. Newer definitions of IDD shift the emphasis from IQ to adaptive behavior. When describing the findings of these documents, we use their language. The use of IQ to identify people with IDD may be upsetting to some people.

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Glossary

Adjudication: The process of making an official decision about who is right in a dispute.¹

Bail: The temporary release of a prisoner in exchange for security (like a deposit of money).²

Capital punishment: Punishment by death: the practice of killing people as punishment for serious crimes³

Case Law: Law established by judicial decisions in cases.⁴

Competency: In the context of the law, competency refers to the defendant's ability to participate in their defense.⁵

Criminal justice system: The system that enforces laws. It includes law enforcement, courts, and corrections.

Criminology: The study of all aspects of crime and law enforcement.⁶

Culpable: Deserving to be blamed or considered responsible.⁷

De facto: Existing in fact, although perhaps not intended, legal, or accepted.⁸

Death penalty: Death as a punishment given by a court of law for very serious crimes.⁹

Deterrence: Reducing criminal behavior through fear of punishment.¹⁰

Developmental Disabilities Act: The Developmental Disabilities Assistance and Bill of Rights Act of 2000's purpose is to "assure that individuals with developmental disabilities and their families participate in the design of and have access to needed community services, individualized supports, and other forms of assistance that promote self-determination, independence, productivity, and integration and inclusion in all facets of community life..."¹¹

Diversion: In the context of criminal justice, diversion refers to "a variety of programs that implement strategies seeking to avoid the formal processing of an offender by the criminal justice system."¹²

Due process: Due process is a continuum of protections designed to ensure that depending on the level of state action, an individual has options to defend themselves, present evidence, appeal the decision, and so on.

Executive functioning: A group of mental processes and cognitive abilities like working memory, impulse control, and reasoning that support skills like organization, managing time, and solving problems.¹³

Habeas corpus: A writ of habeas corpus...is a common law order issued by a judge or court requiring the appearance of a prisoner or detainee before the court for a specified purpose. The most common and important purpose of such a writ is to determine the validity of a person's arrest, imprisonment, or detention under relevant laws or constitutional provisions.¹⁴

Incarceration: Confinement in a jail or prison: the act of imprisoning someone or the state of being imprisoned.¹⁵

Injunction: A court order to do something or to refrain from doing something.¹⁶

Institutionalization: To place in or commit to the care of a specialized institution (such as a psychiatric hospital).¹⁷

Intercepts: In the context of criminal justice, intercepts are opportunities to intervene, link people to services and programs, and prevent further involvement in the system.¹⁸

Jurisprudence: The science or philosophy of law.¹⁹

Meta-analysis: A quantitative statistical analysis of several separate but similar experiments or studies in order to test the pooled data for statistical significance.²⁰

Olmstead v. L.C.: Olmstead was a Supreme Court case where the court held that unnecessary institutional segregation constitutes discrimination, which cannot be justified by a lack of funding.²¹

Parole: A conditional release of a prisoner serving an indeterminate or unexpired sentence.²²

Penology: A branch of criminology dealing with prison management and the treatment of incarcerated individuals.

Probation: The action of suspending the sentence of a convicted offender and giving the offender freedom during good behavior under the supervision of a probation officer.²³

Recidivism: Recidivism refers to a tendency for someone who has committed a crime and served time to engage in repeated criminal behavior. It is often measured by acts that result in rearrest, reconviction, and return to incarceration.²⁴

Rehabilitation: Rehabilitation in criminal justice is a concept that denotes a variety of methods aimed at reintegrating offenders into society by encouraging personal transformation and growth. At its core, it seeks to address the root causes of criminal behavior, offering those who've made mistakes a second chance to live productive, lawful lives.²⁵

Retribution: The term “retribution” means, in the simplest sense, revenge. Retribution in the legal world refers to the act of setting a punishment for someone that “fits the crime.”²⁶

Suspect class: Suspect classes include those who have been systemically denied equal access to rights as other Americans. The legislature and courts have identified individuals treated differently based on race, ethnicity, and religion as members of suspect classes.

Therapeutic jurisprudence: Therapeutic jurisprudence is a collaborative approach that emphasizes how legal systems affect the well-being of those involved, focusing on ensuring that the process is beneficial and therapeutic rather than merely adversarial.

Transinstitutionalization: The process of moving a person from one type of institutional facility, such as a psychiatric facility or developmental center, to another facility/institution that is not their home, such as a prison. Other examples of the places such individuals are moved to include hospitals, shelters, nursing homes, adult care facilities, or jails.²⁷

Writ of certiorari: A writ of certiorari orders a lower court to deliver its record in a case so that the higher court may review it.²⁸

Acronyms

AIDD: Administration on Intellectual and Developmental Disabilities

DD: Developmental disabilities

DD Act: Developmental Disabilities Act formally known as the Developmental Disabilities Assistance and Bill of Rights Act of 2000

DDC: Developmental Disabilities Council

DOC: Department of Corrections

DOJ: Department of Justice

DRW: Disability Rights Washington, the Washington State P&A

ID: Intellectual disability

IDD: Intellectual and developmental disability

JRA: Juvenile Rehabilitation Administration

INSAR: International Society for Autism Research

NACDD: National Association of Councils on Developmental Disability

NIDILRR: National Institute for Independent Living and Rehabilitation Research

P&A: Protection and Advocacy agency. DRW is the P&A for Washington State

PRISMA: Preferred Reporting Items for Systematic reviews and Meta-Analyses

SBU: Skill Building Unit. A type of mission housing for people with IDD and TBI in the Washington Department of Corrections

SIM: Sequential Intercept Model

TBI: Traumatic brain injury

TJ: Therapeutic jurisprudence

UCEDD: University Center for Excellence in Developmental Disabilities

UW: University of Washington

WA DDC: Washington State Developmental Disabilities Council

Plain Language Overview

The Developmental Disabilities Council (DDC) asked researchers from the University of Washington (UW) to study how people with intellectual and developmental disabilities (IDD) are involved in the criminal justice system. This report is a starting point to help the DDC identify potential opportunities for policy advocacy. The suggestions are based on research, legal reviews, and interviews with professionals, but they are just a starting point. More research and consensus-building will be needed to decide what specific policies or programs should be the focus of advocacy. The ideas below are discussed in more detail later in the report.

1. Recommendations for the DDC

- *Learn More About the System:* Host learning sessions with experts to understand the criminal justice system, including policing, courts, jails, prisons, and reentry to community.
- *Support a SIM Mapping Workshop:* Use the Sequential Intercept Model to identify where people with IDD interact with the justice system and where improvements can be made.
- *Include People with Lived Experience:* Involve people with IDD who have been through the justice system in planning and decision-making.

2. Insights from the Legal Review

- *Explore Therapeutic Approaches:* Work with professionals in education, psychology, and medicine to improve the outcomes of people with IDD who are involved in the criminal justice system.
- *Expand Specialized Courts:* Consider creating and supporting special courts for people with cognitive disabilities.
- *Improve ADA Training:* Train law enforcement, judges, lawyers, and prison staff on ADA compliance and interactions with people with IDD.
- *Protect Education Rights:* Enforce special education laws to prevent students with IDD from entering the justice system.
- *Fair Sentencing:* Ensure sentencing guidelines consider the needs of people with IDD.
- *Better Police Training:* Train officers to recognize and safely interact with people with IDD.

- *More Diversion Programs*: Offer alternatives to jail for people with IDD, especially youth.

3. Insights from the Evidence Review

- *Specialized/Adapted Criminal Justice Programming for People with IDD*: Evaluate the research on special programs and advocate for their use.
- *Training for Professionals*: Evaluate the research on training police and court personnel to work with people with IDD.
- *Criminal Justice System Improvements*: Evaluate the research about systems improvements like screening or inter-agency collaborations.
- *Community Support Programs*: Evaluate the research on programs that help people build life skills and reintegrate into the community.
- *Legal Accommodations*: Review the research on methods to teach police and courts to use simple language, visual aids, and communication support to help people with IDD understand legal processes.
- *Mental Health Services*: Investigate the research about offering therapies and crisis support to help people with IDD manage behavior and emotions.

4. Insights from Interviews

- *Lack of Services*: People with IDD often don't get the housing, healthcare, or support they need.
- *Not Enough Funding*: Schools and community programs need more money to support people with IDD.
- *Early Help is Key*: Identifying and supporting people with IDD early can prevent justice system involvement.
- *Reentry is Hard*: People leaving jail need help finding housing, jobs, and support.
- *Stigma is a Barrier*: Misunderstanding and bias against people with IDD make things worse.
- *System Problems*: Poor coordination and inconsistent services hurt people with IDD.
- *Housing is a Challenge*: It's hard to find safe housing for people with IDD, especially with a criminal record.
- *Training is Needed*: More education is needed for lawyers, police, and service providers on how to support people with IDD.

5. Additional Recommendations from the Authors

- *Before Arrest:* Fund social work teams to respond to crises. Offer legal education and support for families and children with IDD.
- *Police Interaction:* Train officers on how to accommodate people with IDD.
- *Court Process:* Modify court procedures to reduce stress and confusion. Provide advocates to support individuals with IDD.
- *Court Hearings:* Create specialized courts for people with IDD and connect with supportive judges and lawmakers.
- *In Jail or Prison:* Ensure people with IDD are protected and receive services to help them succeed after release.
- *Reentry:* Build teams to support people as they leave jail. Help them access housing, jobs, and services.
- *Community Supervision:* Help people with IDD build healthy relationships and avoid returning to jail. Use proven support models like case management and supported housing.

Section 1: Introduction

In April 2024, the [Washington State Developmental Disabilities Council](#) (WA DDC) released a request for proposals for “A paper focused on what is currently happening nationally and in Washington State around...[incarceration]...that provides suggestions on how to reduce the number of people with I/DD living in most restrictive settings such as jails, prisons and hospitals.” Faculty and staff at the University of Washington (UW) [University Center for Excellence in Developmental Disabilities](#) (UCEDD) applied and were awarded the project. The goal of this project was to provide information to WA DDC to support future planning, initiatives, and projects addressing the incarceration of people with intellectual and developmental disabilities (IDD). This report is the completion of that project.

In this section, we introduce the report and include:

- A history of criminal justice advocacy for people with IDD in the state of Washington leading up to this report.
- An overview of the work we did to complete the report.

History of Criminal Justice Advocacy for People with IDD in the State of Washington

Advocacy in the State of Washington has focused on the involvement of individuals with IDD in the criminal justice system for many years. Early efforts included the development of a training curriculum for police, correctional officers, and the court system with support from The Arc of Washington State in the 1980s.²⁹ Additional Arc efforts at educating the justice system on appropriate interactions with individuals with IDD included the development of a DVD made available to the Washington State Criminal Justice Training Center in the 1990s and a 2017 report on the connection between special education, disability, and juvenile rehabilitation.³⁰

The Administration on Intellectual and Developmental Disabilities (AIDD) network partners have been involved in numerous projects addressing IDD and criminal justice. AIDD network partners include the DDC, UCEDD, Allies in Advocacy, and Disability Rights Washington (DRW, the Protection and Advocacy [P&A] agency for Washington State). For example, in April 2005, the UCEDD staff and faculty contacted the Washington State Juvenile Justice and Family Law Committee, chaired by Representative Mary Lou Dickerson. They requested that the committee review the service delivery system and address various issues related to a lack of appropriate services to youth with IDD incarcerated in the state. The request was broad and included both school discipline and

supports for youth who become involved with the CJS. There was no follow-up to the request.

In September 2008, the UCEDD advocated for attention to this issue with Representative Dickerson. Additional information gathered from UCEDD experiences within a children's mental health facility was added, specifically from the Pediatric Assessment Center (PAC) at Seattle Children's Home. The UCEDD asked that the state investigate how the juvenile justice system responds to children with IDD so that the gaps clinicians have identified could be addressed. Although we had several private phone calls with the Representative, there was no legislative hearing.

However, the Washington State legislature in 2011 passed SSB 5097 concerning juveniles with developmental disabilities who are involved with criminal detention centers, correctional institutions and jails. Specifically, the bill created a workgroup to "address issues relating to juveniles with DD who are confined in juvenile detention or correctional facilities." The workgroup was chaired by the DDC, the Association of Juvenile Court Administrators, and the Juvenile Rehabilitation Administration (JRA). Disability Rights Washington was among the other agencies included as members under the bill. The legislation also authorized the chairs of the workgroup to identify others to join. The UCEDD was asked to join that workgroup. Ultimately, the workgroup was not funded by the legislature, but DDC supported the meetings and administration of the group. The workgroup wrapped up at the end of December 2012.

In 2009, at the request of the Washington state legislature, the DDC, with the Washington Association of Sheriffs and Police Chiefs, chaired a task force that addressed issues facing adults with IDD when they encounter police or corrections staff in jails. The task force drafted a screening tool and model policy for its use and trained over 180 correctional officers to identify and accommodate this population. It also supported the state-wide Juvenile Justice Work Group to address issues faced by youth with IDD when they encounter the Juvenile Rehabilitation Administration. Finally, when the Department of Corrections (DOC) first established a specialized unit for individuals with severe intellectual disabilities, the Skill Building Unit (SBU), the Council was invited to visit the unit, provide feedback on the services being offered, and to serve on the Advisory Board.

The participation of the UCEDD in the SSB 5077 Workgroup in 2011-12 was one of the first identified UCEDD network partners (DRW, DDC, and UCEDD) collaborative projects. DDC took the lead in continuing this focus by reaching out to police and sheriffs around the state as well as connecting with the Department of Corrections when the Skilled Building Unit (SBU), targeted housing for men with IDD and traumatic brain injury (TBI), was opened. The UCEDD was asked to participate in the advisory board as the unit began. Two clearly

needed areas of development in the SBU were employment and independent living skills. These issues were brought to the attention of the Department of Rehabilitation Medicine and the Employment Training Program at the UW.

Other Washington State projects include the [Amplifying Voices of Incarcerated Individuals with Disabilities](#) project implemented by Disability Rights Washington that has made significant changes in both the jails and prisons for individuals with disabilities. The Northwest ADA Regional Center, a project based at the University of Washington, has worked extensively on removing barriers and enhancing physical accessibility within the Washington State Department of Corrections (DOC). Finally, the UCEDD and the University of Washington Department of Rehabilitation Medicine partnered with DOC to implement a federally funded project that explored how to improve outcomes for incarcerated individuals with TBI, which has implications for people with IDD.

Activities Completed in this Project

This project was funded for four months and then received a no-cost extension to allow time for completion. Given the short timeframe, this project was conceptualized as a rapid review of the evidence, designed to provide guidance to DDC on future planning and new initiatives. By their nature, rapid reviews are done quickly and require streamlining and omitting methods used in traditional systematic reviews. As a result, they may be less accurate and comprehensive. Therefore, this review should serve as a starting point for the DDC and the broader community interested in the topic. Depending upon which topics are of interest to DDC, a more systematic and comprehensive review can be conducted in those specific areas.

For this rapid review, we completed the following tasks:

1. We studied laws and legal research in the United States to understand how people with IDD are treated under the law.
2. We reviewed research on programs and practices for people with IDD in the criminal justice system to find out which ones are effective.
3. We interviewed people in Washington State to learn about current programs and how they could be improved to support people with IDD involved with the criminal justice system.
4. We developed recommendations based on our findings and on our own professional expertise.

Section 2: Background

In this section, we provide background information to help readers understand the involvement of people with intellectual and developmental disabilities (IDD) in the criminal justice system.

- We provide an overview of the goals underlying the United States (US) criminal justice system.
- We discuss approaches to the identification of people with IDD, current estimates of the number of people with IDD incarcerated in the US, and how incarceration is a form of institutionalization, which keeps people with IDD out of their communities.
- We discuss the Sequential Intercept Model (SIM), which serves as an organizing structure for other sections of this report.

Goals Underlying the United States Criminal Justice System

Although the priorities can and do change, the main goals behind the criminal justice system in the United States have remained consistent throughout our history. The overarching goal is public safety, which requires compliance with local, state, and federal laws to achieve this outcome. The specific methods or goals employed to ensure public safety are *deterrence*, *retribution*, and *rehabilitation* of incarcerated individuals.

Deterrence is achieved by holding individuals who violate society's laws accountable in a manner dependent, in part, on the seriousness of the violation. Doing so is intended to prevent subsequent violations by an incarcerated individual and/or similar behavior of others in the future.

To further deter violations of the law by others, the system has recognized retribution as another legitimate method to ensure public safety by punishing incarcerated individuals and by responding to the trauma of victims or their families. Although increasingly disfavored globally and in the United States, retribution has been the rationale behind the use of capital punishment for the most egregious crimes. The US Supreme Court has recognized both deterrence and retribution as "legitimate penological goals" that are furthered by the death penalty for the worst crimes, with exceptions for certain categories of individuals who have been shown to be less culpable and less amenable to deterrence.³¹

The final goal of the criminal system is the rehabilitation of incarcerated individuals to prevent recidivism. Most incarcerated individuals are released from prison and will return to the community. Therefore, society has committed to providing support and services to

incarcerated individuals during incarceration to prevent future involvement with the criminal justice system. Unfortunately, data suggests that incarceration for many individuals is highly related to subsequent criminal involvement. A recent report from the United States Department of Justice Bureau of Justice Statistics found that over a nine-year period (2005-2014), five of every six incarcerated individuals released to the community (83%) were arrested at least once.³² Because of the high recidivism rate for all incarcerated individuals, the rehabilitation supports and services provided during incarceration are arguably not successfully addressing or mitigating the factors that contributed to or caused the individual to commit a criminal act. Services and supports during the transition from prison to the community may also be insufficient or nonexistent. There are no reliable statistics on the recidivism rate for incarcerated individuals with IDD. However, there is nothing to suggest that recidivism rates for those with IDD would be “better” than for those without IDD.

The National Academy of Sciences, in *The Growth of Incarceration in the United States*, discusses four principles behind incarceration that can be considered in combination with the goals of the criminal justice system. These principles are as follows:

- *Proportionality* of the sentence to the seriousness of the crime committed.
- *Parsimony*, or the idea that the punishment should not exceed the minimum needed to achieve its purpose.
- *Citizenship*, which recognizes that an individual has a fundamental role as a member of society.
- *Social justice*, which supports the idea that as public institutions in a democracy, prisons should promote the general well-being of all members of society. Incarceration should increase the likelihood that an incarcerated individual can be successful upon returning to the community, prevent long-term hardship, and ensure fairness and “shared social membership.”³³

Whether incarceration, as currently structured in the United States, can ever successfully achieve the stated goals of the criminal justice system and adhere to the principles outlined by the National Academy of Sciences is a legitimate question that warrants further exploration.

Incarcerated People with IDD

It is difficult to know how many individuals with IDD are living in the United States, and it is even more challenging to identify those with IDD who are serving time in the prisons of this country.

According to the National Association of Councils on Developmental Disability (NACDD), it is estimated that over five million Americans have an IDD.^{34,35} The population of people with IDD includes both those who have developmental disabilities (DD) only, but not intellectual disabilities (ID). It also includes those with both types of impairment. Diagnosed conditions under the DD Act definition may include autism, Down syndrome, cerebral palsy, spina bifida, and/or intellectual disabilities.

Although the definition of IDD is largely consistent across numerous sources,^{35,36} it is still difficult to get an accurate number of how many adults with IDD live in the United States. This may be because many individuals with IDD are never identified by any social service or medical entity, a failure that may be particularly true for people who are incarcerated. In addition, individuals themselves may be hesitant to identify as having intellectual disability due to social stigma. Based on the NACDD estimate, 1-2% of the American population has ID, and based on reports from AIDD, the vast majority (85%) of those are individuals with mild intellectual disability.

Disability in Prisons

In 2022, the rate of prisoners sentenced to more than one year in either state or federal prisons was 355 per 100,000 U.S. residents, or approximately 1,230,100 incarcerated individuals.³⁷ While this represents a significant decrease from the peak in 2008 (506 prisoners per 100,000), it still accounts for a substantial portion of U.S. citizens serving sentences in correctional facilities. Approximately 96% of incarcerated individuals in US prisons are sentenced to more than one year. Males comprise 93% of incarcerated Americans, and there are significant racial and ethnic disparities in incarceration rates—i.e., 32% black, 31% white, 23% Hispanic, 2% American Indian or Alaska Native, and 1% Asian, Native Hawaiian, or Other Pacific Islander. The imprisonment rate for black individuals is 5 times the rate for white individuals and 2 times the rate for Hispanic individuals.

Thirty-eight percent of state and federal prisoners self-report at least one disability in a sample aged 18 and older, about 2.5 times the self-report rate of the U.S. general population. Rates of people with disabilities are higher in state prisons (40%) than in federal prisons (29%)—perhaps due to the types of crimes sentenced and the populations incarcerated.³⁸

Among incarcerated individuals, cognitive, developmental, or intellectual disability is the most reported disability condition. Using a broad definition of cognitive disability based on the American Community Survey, as many as 1 in 4 inmates report difficulty concentrating, remembering, or making decisions.³⁸ Almost a quarter of incarcerated

individuals (24%) report participating in special education classes or being told by a teacher or psychologist that they have a learning disability.³⁸

The causes of cognitive disability in incarcerated people are complex and multifactorial and many conditions cause cognitive disability in addition to IDD, for example, traumatic brain injury (TBI), stroke, dementia, etc. However, in prison systems worldwide, it is estimated that 7-10% have lifelong intellectual or developmental disability (IDD).³⁹⁻⁴⁴ In a Washington State study of 690 incarcerated individuals within the Department of Corrections (WA DOC), 9% had an IQ below 80 on formal testing.⁴⁵ Although IQ is only one factor in the identification of cognitive or intellectual disability, this study suggests there are many incarcerated individuals whose intellectual status may affect their ability to participate in programming designed to increase skills, address addiction and decision-making, and reduce recidivism. Incarcerated individuals with IDD have been described as an unrecognized and invisible minority population.⁴⁶

Not surprisingly, there are no records to track whether the number of individuals with IDD who are incarcerated has increased over time. However, there has been speculation that as the civil state residential institutions for individuals with IDD have closed, individuals with IDD now living in the community have increased opportunities outside the institutional setting that can lead to police involvement and subsequent involvement with the justice system. When these individuals cannot safely remain in the community, prisons or civil commitment hospitalization have become alternative residential settings where their behavior can be controlled.⁴⁷ One could argue that prisons have become the largest institutional setting for segregating people with disabilities in the United States.

Incarceration and Institutionalization

The Developmental Disabilities Assistance and Bill of Rights Act of 2000⁴⁸ describes disability as “a natural part of the human experience that does not diminish the right of individuals with developmental disabilities to live independently, to exert control and choice over their own lives, and to fully participate in and contribute to their communities through full integration and inclusion in the economic, political, social, cultural, and educational mainstream of United States society.” Equal access to community living and participation lies at the core of disability rights and independent living movements,⁴⁹ and has its strongest legal support in the integration mandate of the *Olmstead* decision (1999).⁵⁰ This landmark case established that unjustified segregation constitutes unlawful discrimination under the Americans with Disabilities Act (ADA) and has resulted in more than 20 years of state-level efforts to expand community integration and reduce reliance on institutional care for people with disabilities.

Despite *Olmstead*'s initial promise, various disability advocacy and legal organizations have observed that efforts at deinstitutionalization do not adequately address the core barriers to providing community supports.⁵¹ De facto segregation of people with disabilities continues to occur via large and poorly monitored group homes, budget cuts that reduce available community resources,⁵² and transinstitutionalization (especially in the prison system).^{53,54}

A key element of the successful implementation of *Olmstead* is the supported transition of individuals with disabilities to community settings,⁵⁵ and avoiding the “revolving door” process in which individuals with disabilities are hospitalized or institutionalized, discharged to a community setting with inadequate or no support services, and then re-institutionalized.⁵⁶ This was the lived experience of Elaine Wilson (one of the two original Plaintiffs in *Olmstead*), who experienced the transition from institutionalized care to community care homes at least 36 times during her life.

Central to addressing this problem is an awareness that for people with disabilities, the transition from an institutional facility to the community is a period of great vulnerability.⁵⁷ The days and weeks following release from institutional settings are often associated with discoordination, miscommunication, and unclear responsibilities for care and case management.^{58 58-60 61} Across multiple disability conditions and groups, the transition to home from an institution represents a period of elevated risk for new physical injury and for negative social outcomes, including social isolation.^{57,62} While this problem is most commonly discussed in terms of psychiatric disabilities,⁶³ the revolving door cycle of multiple readmissions extends to other disability contexts, including physical and cognitive disability (e.g., in spinal cord injury,⁶⁴ traumatic brain injury⁶⁵, and IDD.)

One transition in which the absence of support can be especially catastrophic is release from incarceration. On release, individuals with cognitive disabilities face significant discoordination of services and risks for institutional re-entry.⁶⁶ Qualitative work has highlighted a near absence of support or preparation for community release,⁶⁷ resulting in difficulties securing stable housing or employment, social isolation, and a sense of lack of control.⁶⁸ Cognitive impairment is a risk factor for rapid re-incarceration and a risk factor for physical injury requiring medical hospitalization after release.⁶⁹ Intellectual disability is also associated with higher recidivism rates and re-incarceration, with rates as high as 41.6%,⁷⁰ nearly twice that of the general prison population.

After returning to the community, individuals with cognitive disabilities are also at greater risk for unnecessary segregation in institutions such as homeless shelters or hospitals,⁷¹ creating a cycle of “transinstitutionalization”⁵⁴ at odds with the philosophy of *Olmstead*. Several recent legal cases highlight the importance of the *Olmstead* decision to

challenge the lack of appropriate disability-related supports and services required for community reentry of incarcerated people with disabilities. For example, in 2019 in *M.G. v. Cuomo*, six incarcerated people with psychiatric and cognitive disabilities who had been held in secure prisons up to a year past their release dates filed a class action lawsuit, alleging that the defendants' failure to make available community-based housing and provide supportive services that the plaintiffs required upon release violated the ADA's integration mandate.⁷² This case is ongoing.

To date, several federal and state agencies, including the US Department of Education and the Administration on Community Living, have supported efforts to improve post-discharge support among incarcerated individuals with cognitive disabilities, resulting in the publication of guides and resource lists that raise awareness of the problem and provide education to post-release staff.⁷³ A handful of states have also partnered with disability service organizations to develop more effective models for community reentry for individuals with cognitive disabilities (see, for example, the North Carolina Council on Developmental Disabilities' Justice Initiative, 2020).⁷⁴ In the academic literature, one recent meta-analysis reviewed nine individual re-entry programs for formerly incarcerated individuals.⁷⁵ Although this review noted beneficial effects in terms of recidivism overall, the quality of these interventions was low, and only a handful involved a process evaluation to determine if the intervention was ever actually implemented. No studies focused specifically on individuals with cognitive disabilities or their unique needs related to community reentry.

Clearly, work is needed to develop and test programs and interventions designed to maximize community living outcomes for people with cognitive disabilities who are re-entering the community from a correctional setting, and to reduce risk factors for recidivism and re-institutionalization.

The Sequential Intercept Model: Understanding the Components of the United States Criminal Justice System

The Sequential Intercept Model (SIM) maps key points of contact that people have as they move through the criminal justice system and identifies potential opportunities where an individual can be intercepted and diverted back into the community and away from further justice system involvement.

History of the Sequential Intercept Model (SIM)

The SIM was developed in the early 2000s by Mark Munetz, MD, and Patricia A. Griffin, PhD, in collaboration with Henry J. Steadman, PhD, of Policy Research Associates, Inc. (PRA). It was developed as a conceptual model that explained the involvement of people

with mental health and substance use disorders in the criminal justice system. It underwent several revisions as community-based experts assisted researchers in understanding how people with mental health and substance use disorders move through the criminal justice system and eventually return to the community. The SIM has been used as a strategic planning tool to help assess available resources, identify service gaps, and plan for community change.

In 2019, the International Society for Autism Research (INSAR) published a policy brief on interactions between people with autism and the criminal justice system.¹⁸ INSAR formed a workgroup consisting of stakeholders from four main categories: autistic individuals and their families, criminal justice system professionals, policymakers, and researchers. The group developed a revised SIM model that placed the community at its center and introduced “exit ramps” to guide autistic people away from the criminal justice system toward community services or community corrections. This model was also conceptualized as an interconnected cycle that begins and ends in the community. The revised SIM considers the perspectives of both the incarcerated individual and the victim.

Description of the SIM Used in This Project

We used the INSAR version of the SIM in this project, but because this report focuses on people with IDD who committed or were accused or suspected of committing a crime, we only use the part of the INSAR SIM that addresses the incarcerated individual’s perspective, and not the victim’s. This model describes the typical process a person with IDD may experience if they interact with the criminal justice system, and the opportunities to intercept and divert them from the justice system. Figure 1 shows the adapted SIM used in this project.

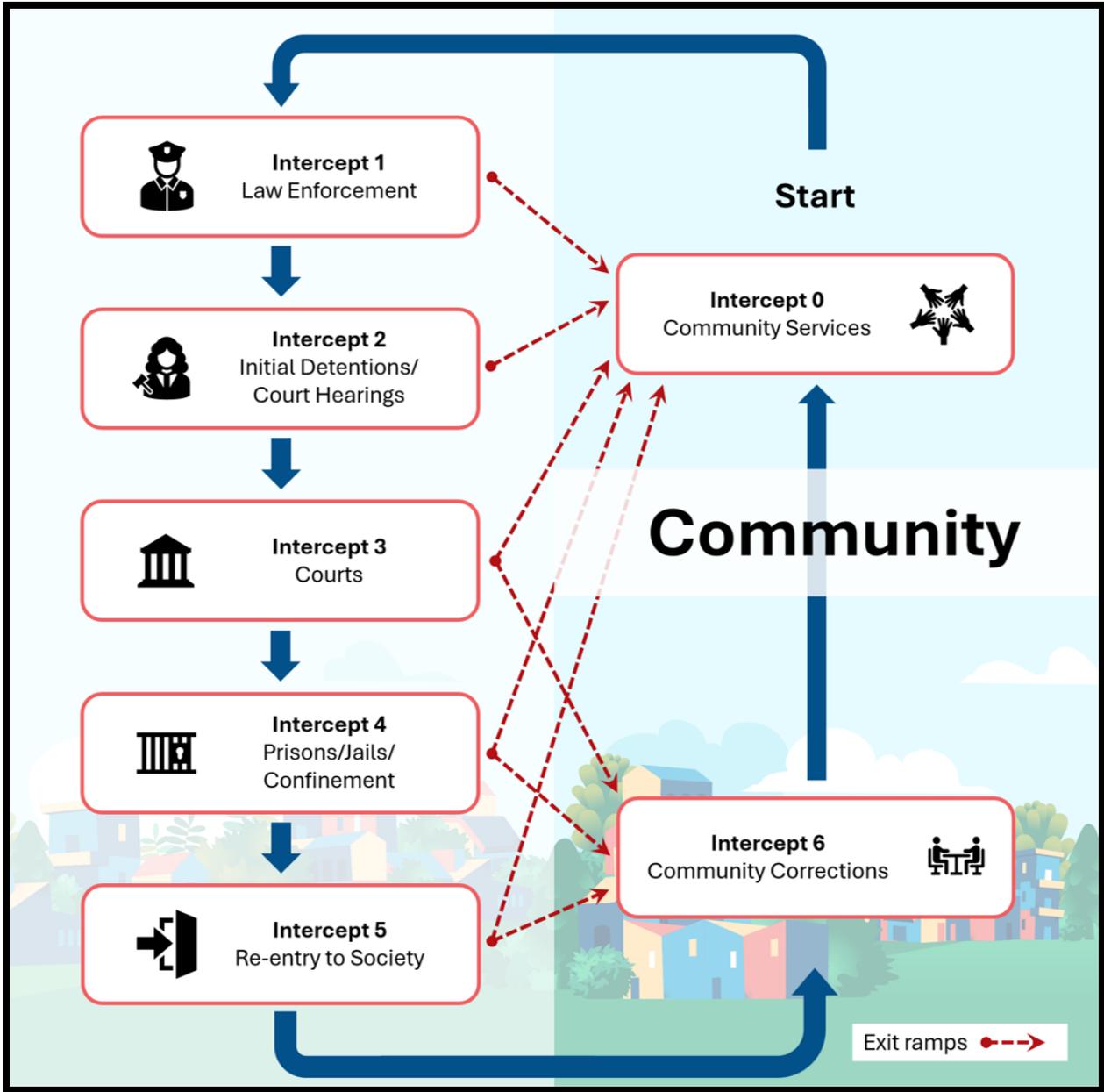


Figure 1: Adapted SIM

The adapted SIM begins with **Intercept 0: Community Services**. Community services are designed to support individuals so that they do not engage in activities that may lead to a connection with the criminal justice system. They might include programs related to drug and alcohol use, stable housing, employment support, and food security, among others. These programs are preventive for individuals who have not yet been in contact with the justice system, and they are rehabilitative for those returning to the community.

Intercept 1 is the first opportunity to divert people out of the criminal justice system and back to the community. Intercept 1 is law enforcement, often police officers. After contact with police, a person may return to the community (go back to Intercept 0) or they may be arrested, detained, and participate in a court hearing (proceed to Intercept 2). Opportunities for diversion begin with police training in how to approach and interact with people with IDD as well as how to communicate about important things like the rights people have when being taken into custody (i.e., Miranda rights).

Intercept 2 refers to the initial detention in jail that may follow an arrest and before a trial. During this initial detention period, individuals will typically have a court hearing. In this hearing, a judge will decide whether to continue detaining the individual or release them on bail pending trial. Following an initial detention or court hearing, they may be released to the community (Intercept 0) or proceed to the next step in the criminal justice system, a court trial (Intercept 3). The decision not to prosecute and to drop charges relies on several factors, including the type of crime, the individual's status (e.g., first-time or repeat offender), and other relevant considerations. At this stage, an individual may be encouraged to use community services, but not ordered to do so. Charges may be put on hold and then dismissed if a person completes a program.

Intercept 3 refers to the period when an individual is engaged with the court system (e.g., plea bargaining, court trial). Court decisions may result in various outcomes, including being released back to the community (Intercept 0), being directed to a community correction setting (such as being sentenced to community service or required to participate in treatment) (Intercept 6), or a person may be sentenced to serve time in jail or prison.

Intercept 4 refers to the various forms of confinement that may be used in the justice system. Jails are typically used for sentences of one year or less, and prisons are typically used for sentences of more than one year. Sometimes people with IDD or mental health disabilities are found to be not “competent” to stand trial, meaning that they are perceived to not be able to participate in their defense. In this situation, they will not be sentenced to jail or prison; instead, they are sometimes placed in another confinement setting, such as a forensic hospital. This is known as involuntary confinement. These settings are opportunities for rehabilitative services and programs intended to prepare the individual for eventual return to the community.

Intercept 5 refers to the support incarcerated people receive in preparation for and during release from prison to the community. This could include transition planning, ensuring that the individual has access to medications upon release, connecting them to

benefits (e.g., SSI, SSDI) and health insurance (e.g., Medicaid, Medicare), and providing peer support.

Intercept 6 refers to community corrections. This form of supervision is typically used for individuals on probation or parole. During this time, they are required to maintain regular contact with a community corrections officer and fulfill certain obligations, such as participating in treatment or refraining from specific activities or locations. Opportunities for support include developing the competencies of community corrections officers to work with people with IDD, perhaps by developing specialized caseloads. Developing community partnerships that can provide support, for example, with behavioral health or substance use. And by linking them to resources for employment and housing.

Section 3: Legal Review

In this section, we report the findings from a set of legal reviews that explored the intersection of people with IDD and the criminal justice system.

- We provide an overview of applicable federal law.
- We provide an overview of systems change considerations to ensure justice for people with IDD.
- We report the findings from an academic law journal review.
- We report the findings from a case law review.
- We describe a statutory review and recommend the next steps for DDC if they want to learn more about the wide range of state laws.

Applicable Federal Law

Most criminal law in the United States falls under the authority of state legislatures and courts. Therefore, except for individuals who have committed federal crimes, been adjudicated by federal courts, and potentially sentenced to federal prisons, most incarcerated individuals in this country are sentenced under state laws by state courts and serve time in jails or state prisons. Although there is an overlap among the state systems, each state process is unique. Nonetheless, the federal Constitution mandates certain protections that apply throughout the criminal system, both state and federal. Additionally, federal nondiscrimination laws are applicable in every state.

This legal review is focused primarily on the involvement of adults with IDD in the criminal justice system. However, juveniles with IDD also become involved with the criminal system, and some will continue to be involved with the system as adults. Although the US Constitution and federal disability laws apply to both adults and juveniles, the court systems, detention facilities, and incarceration practices differ widely across the country. Some findings specific to the juvenile system are summarized under the applicable intercepts that follow the federal law discussion below; however, additional research is needed to fully describe the juvenile system.

United States Constitutional Law

Eighth Amendment

Two United States Constitutional Amendments are particularly relevant to individuals who are incarcerated. The first is the Eighth Amendment. The Eighth Amendment guarantees that “excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” There has been a great deal of judicial debate

about what governmental action constitutes “cruel and unusual punishment.” Some of the debate reflects a historical aversion to the grotesque and obscene punishments inflicted on citizens by the government. However, the definition of “cruel and unusual” is guided by societal values that can and do change over time. The United States Supreme Court has illustrated this in its rulings barring capital punishment of certain groups of individuals – i.e., individuals with a low IQ and juveniles.¹ Although capital punishment was imposed on both these groups earlier in our history, in separate decisions over the last two decades, the Court ended the practice. Specifically, the Justices declared that capital punishment of individuals in those categories is no longer allowed because it is cruel and unusual punishment and therefore a violation of the Eighth Amendment. The seminal cases are discussed below.

In *Atkins v. Virginia*,⁷⁶ the issue before the Court in 2002 was whether the execution of a convicted felon with mental retardation² violated the Eighth Amendment bar on cruel and unusual punishment under “the evolving standards of decency” standard. After reviewing the “dramatic shift in the state legislative landscape” and strong judicial opinions in some states criticizing the death sentence for individuals with IDD, the Court reconsidered its earlier 1989 decision on this issue in *Penry v. Lynaugh*.⁷⁷ In *Atkins*, the Justices acknowledged significant change among legislatures regarding the use of capital punishment against those with IDD since *Penry*. They found that the practice of executing individuals with IDD had become highly unusual, and “it is fair to say that a national consensus has developed against it”⁷⁸ since the earlier decision. The *Atkins* majority concluded that capital punishment of individuals with IDD under the “evolving standards of decency” was cruel and unusual punishment and therefore violated the Eighth Amendment.

The Supreme Court acknowledged that although it was difficult to determine who was “in fact retarded,” among those states that did continue to execute individuals with IDD, there were only five states who had executed individuals with an IQ below 70.⁷⁹ Although the Court seemed to suggest that there was a national consensus about execution for anyone with an IQ under 70, the decision also quoted an earlier decision stating, “we leave

¹ NOTE: the criminal justice system has historically responded differently to individuals with mental illness in terms of criminal responsibility and sentencing—i.e., insanity defense and civil commitment. Offenders with mental illness is not the focus of this paper.

² NOTE: Mental retardation was the common and acceptable term used to refer to individuals who are now referred to as “intellectually disabled” through approximately 2007. The term is used when quoting from caselaw using the terminology.

to the State[s] the task of developing appropriate ways to enforce the constitutional restriction upon its execution of sentences.”⁸⁰

A capital punishment case from Kansas discussed how a court might determine a national consensus for purposes of an Eighth Amendment violation. The Third Circuit Court of Appeals used “objective indicia of society's standards, as expressed in legislative enactments and state practice to determine whether there is a national consensus against the sentencing practice at issue...community consensus is entitled to great weight but it is not determinative.”⁸¹

In addition to the cruel and unusual standard discussion, the *Atkins* Court considered the issue of culpability for individuals with IDD. Justice Stevens wrote for the majority that, although individuals with IDD should be held responsible for their crimes,

[B]ecause of their disabilities in areas of reasoning, judgment, and control of their impulses, however, they do not act with the level of moral culpability that characterizes the most serious adult criminal conduct. Moreover, their impairments can jeopardize the reliability and fairness of capital proceedings against [them].⁷⁶

The Court's discussion of culpability centered on the sentence of capital punishment. However, the acknowledgment that the disability itself can result in deficits in reasoning, judgment and control of impulses, and that the impairments in these areas for individuals with IDD raise issues of reliability and fairness in the proceedings against them, also has relevance to the whole criminal justice process.

The *Atkins* decision addressed the deterrent and retributive purposes of the death penalty and held that neither goal was measurably advanced by executing individuals with IDD. The majority reasoned that if the individual does not understand the connection between his/her behavior and the criminal act, or the reasons the government seeks to execute him/her, the punishment serves no retributive or deterrent purpose – i.e., society's two justifications for capital punishment.⁷⁶

Another way to understand the “evolving standards of decency” principle is that it prohibits governments from executing an individual whose verifiable cognitive impairment renders him/her incompetent to rationally understand the circumstances surrounding a scheduled execution. As the court stated in *Ford v. Wainwright*,

Whether its aim be to protect the condemned from fear and pain without comfort of understanding, or to protect the dignity of society itself from the barbarity of exacting mindless vengeance, the Eighth Amendment bars executing someone lacking “capacity” and “understanding.”⁸⁰

In *Panetti v. Quarterman*, the Court reaffirmed the basic premise of *Ford*, noting that "today, no less than before, we may seriously question the retributive value of executing a person who has no comprehension of why he has been singled out and stripped of his fundamental right to life."⁸²

A case from Alabama reviewed by the United States Supreme Court discussed the issue of capacity, rational understanding, and capital punishment.⁸³ The issue presented to the Court was whether, under the Eighth Amendment, a state may execute a prisoner when the prisoner does not remember the capital offense for which he is to be executed due to cognitive impairments. The facts are as follows. The state of Alabama sought to execute Mr. Madison, who has been on death row for over 30 years. The first time he was sentenced to death, Mr. Madison challenged his competency to be executed. He had experienced a series of strokes, resulting in physical and cognitive decline and did not remember the offense for which he was sentenced. The circuit court denied Mr. Madsen's claim and Alabama law prohibited any further appeal in state court. He then challenged his claim in federal court where the Eleventh Circuit Court of Appeals eventually found him to be incompetent to be executed and granted habeas corpus relief.

The United States Supreme Court reversed that decision and Alabama requested expedited execution. At this point, Mr. Madison again sought relief at the circuit court with new evidence that the court appointed expert, whose report both the Circuit Court and Supreme Court had relied on to deny his claim, had been suspended from the practice of psychology due to a narcotics addiction. Mr. Madison eventually requested that the US Supreme Court stay his execution and grant him certiorari to determine whether Alabama may execute him considering his mental condition. His attorneys argued that both *Ford v. Wainwright*⁸⁰ and *Panetti v. Quarterman*⁸² held that the Eighth Amendment prohibits states from executing those who are incompetent. Further, he argued that he is to be punished—i.e., executed—due to his neurocognitive impairments.

Mr. Madison does not have IDD as has been defined in this paper in part because his impairment did not manifest during his childhood. His cognitive impairment is a major vascular neurocognitive disorder resulting in significant memory loss, and an IQ of 72 that place him "within the borderline intellectually disabled range."⁸⁴ This is probably the result of numerous strokes as an adult resulting in vascular dementia, cognitive deficits, severe memory loss and brain damage. The psychologist evaluating Mr. Madison's legal competency to be executed used a checklist published in the journal *Behavioral Sciences and the Law*.⁸⁵ The expert witness testified that, "although Mr. Madison may understand that the State is seeking retribution, he does not understand the act that he's being – that he's being punished for."⁸³

Mr. Madison’s attorneys made the following arguments in their *writ of certiorari* to the United States Supreme Court:

- The Eighth Amendment bars the execution of an individual who lacks the ability to understand why he is being executed;
- The penological objectives of the Eighth Amendment (deterrence and retribution) cannot be squared with the execution of a prisoner whose vascular dementia and associated cognitive decline leave him without a memory of the commission of the crime or a rational understanding of why he is being executed; and,
- Medical and scientific advancements have allowed for increased confidence in the diagnosis of mental disorders that merit protection under the Eighth Amendment.

The writ summarizes the seminal case law on the application of the Eighth Amendment to individuals with cognitive impairment who have been sentenced to death and as discussed earlier in this paper.⁸⁶

Although the lower court had rejected the argument that Mr. Madison’s dementia and neurological disease were within the parameter of impairments that were relevant to competency under these earlier decisions, the attorneys for Mr. Madison disagreed. They made the argument that his cognitive impairments are clearly enough to fall within judicial precedence and that “no penological justification or retributive value can be found in executing a severely impaired and incompetent prisoner, especially where advances in neurological science now make clear the nature of this incompetency.” They argued that *Ford* and *Panetti* explicitly reject any specific diagnosis or type of impairment to determine incompetency for purposes of state power to execute. Instead, perhaps in recognition of the multitude of medical conditions that can result in cognitive impairment, these earlier cases set the bar high to ensure that at a minimum the essential commitment to human dignity is met.³ They argued that an execution of Mr. Madison is prohibited by the Eighth Amendment’s essential commitment to human dignity.⁸⁷

On February 28, 2019, in a 5/3 decision written by Justice Elena Kagan, the US Supreme Court sent Mr. Madison’s case back to the lower courts without definitively answering the question posed by the defendant, i.e., whether the Eighth Amendment prohibits the execution of an individual who has no memory of the crime for which he is being executed. Instead, the majority of Justices held that the Constitutional bar to execution of an individual who has no “rational understanding” of the reason they face death *may* include individuals with dementia. However, in this case, the majority held that the lower court

³ Any execution must still “comport with the basic concept of human dignity at the core of the Eighth Amendment.” *Gregg v. Georgia*, 428 U.S. 153 at 183 (1976).

needed to develop the case further to determine if there was sufficient evidence as to the “rational understanding” standard. Justice Kagan wrote, “The state seeks capital punishment for a crime, not his memory of the crime itself. And the one may exist without the other.”⁸³ The failure of memory of the crime is not sufficient to prevent imposition of capital punishment under the Court’s analysis. The Justices recognized that the “rational understanding” standard traditionally used in evaluation of capital punishment may include individuals with impairments other than moderate ID, as in this case, stroke related dementia. Although the Supreme Court sent the case back to the lower court to determine whether Mr. Madison met this standard, he died in 2020 at the age of sixty-nine before the case was argued.

In addition to the seminal capital punishment cases relied on as precedent by the *Madison* attorneys, the US Supreme Court decision in *Roper v. Simmons*⁸⁸ is also relevant to the population of incarcerated individuals with IDD. In *Roper*, the Justices held that states can no longer execute juveniles or sentence them to life in prison without the possibility of parole. To do so violated the Eighth Amendment prohibition against cruel and unusual punishment.

Probably the most persuasive argument in *Roper* was the testimony of professional medical and psychological organizations regarding new scientific evidence that brain maturation, specifically in executive functioning, does not occur until early adulthood. Because of this new evidence, they argued that adolescent brains lack the comparable ability to reason and control their impulses that adults possess. This seemed to convince the Supreme Court that less culpability was appropriate.⁸⁹ The opinion referenced some of the same rationale used in the *Atkins* decision, specifically that this group of individuals (juveniles) is less culpable than others (adults) who commit the same crimes because their brains are not fully developed.

The legal response to juveniles has undergone a dramatic shift over the last twenty years, with the introduction of neuroscience into the American legal system. The scientific evidence of variations in adolescent brains and the resulting differences in the ability of adolescents and young adults to reason and act, when compared to mature adults, has altered the legal system’s understanding of culpability and the rationale behind traditional punishments.^{90,91}

To summarize, the Supreme Court has interpreted the Eighth Amendment prohibition of cruel and unusual punishment to preclude the execution of a convicted individual in the following situations:

- The individual has IDD (as defined by the state or an IQ below 70):

- The individual does not have the mental capacity to understand the connection between the crime and the reason for his punishment including execution.
- The individual is under the age of 18 at the time of the crime because of the immature brain at this age.
- The individual lacks a “rational understanding” of the reason he is facing execution may sometimes apply to those with dementia.

There is nothing in the case law that suggests definitively that these are the only circumstances that will prove “incompetency” for purposes of punishment. The rationale given by the Court in the case of juveniles and those with an IQ below 70 may also be applicable to those with ID and TBI, among other impairments, such as those caused by dementia. Legally, there is no justification for basing the decision on whether capacity is lacking due to the “cause” of the impairment or the medical term used to describe the impairment.⁴ The U.S. Supreme Court decision in *Madison* has clarified that the relevant question to ask regarding the use of capital punishment is whether the individual could understand what they are accused of and how the state plans to proceed. There was insufficient evidence in the records for the Court to answer the question and therefore, the case was remanded back to the lower courts. Because Mr. Madison died prior to any additional litigation, we do not have guidance from the Supreme Court on whether dementia may be sufficient to prove incompetency for purposes of capital punishment.

The case law on the Eighth Amendment and disability has focused on individuals with at least moderate intellectual disability and/or severe cognitive decline from health-related brain decline, such as Mr. Madison’s condition. One final case to mention concerns an individual with TBI charged with killing a police officer in Missouri.⁵ Mr. Clayton had received a serious head injury in a sawmill accident 20 years prior to his arrest and demonstrated many subsequent behavioral changes reported by his friends and family that his defense argued caused his criminal act. Mr. Clayton was sentenced to death and executed in 2015. One of the justices said his execution should be “criticized as a violation of a human right protected by the Eighth Amendment.”⁶

It should be noted that the judicial evolution regarding the death penalty – or life without parole for incarcerated juveniles– concerns only the most extreme penalties under

⁴ See also ABA, American Psychiatric Assoc, America Psychological Association and the NAMI support for a bar on executing those with dementia. Age of onset is the only difference between an individual with ID who is ineligible for the death penalty and an individual who suffers from dementia.

⁵ In *Missouri ex rel. Clayton v. Griffith*, 457 S.W. 3rd 735 (Mo. 2015) en banc),

criminal law. Nonetheless, the legal recognition that scientific evidence, as well as society's values regarding appropriate punishment, is relevant in the analysis of capital punishment is also the first step in rethinking the role of capacity and culpability throughout the criminal justice system.

Fourteenth Amendment

The Fourteenth Amendment is the second Constitutional amendment of particular importance to individuals with IDD involved with the criminal justice system. The Fourteenth Amendment states:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This Amendment was adopted after the American Civil War to ensure that states protected the due process and equal protection rights of all their citizens similarly to the protections from federal government actions as guaranteed in the Fifth Amendment. In addition, it guarantees to all individuals sufficient due process protections to ensure fairness in all state actions. Because the Eighth Amendment applies only to the federal government, it is the Fourteenth Amendment that allows the protections of the Eighth Amendment to be applied to the actions of state governments.

Equal protection and due process rights as guaranteed by the Fourteenth Amendment are inherent to the justice system in this country. Equal protection mandates that the states treat all individuals equally under the law, assuming they are similarly situated. The state, in most situations, only needs to demonstrate a rational basis for its action and that it is a legitimate government action to be considered legally acceptable. However, over time, the Supreme Court has raised the standard of judicial review of 14th Amendment equal protection violations to strict scrutiny in certain instances – i.e., when fundamental rights are being infringed as articulated in the US Constitution or if the individual is a member of a suspect class. Suspect classes include those who have been systemically denied equal access to rights as other Americans. The legislature and courts have identified individuals treated differently on the basis of race, ethnicity, and religion as members of suspect classes. When the government treats an individual differently on the basis of one of those characteristics, the court will demand evidence that there is no other way the state can achieve its legitimate state goal. It is extremely difficult for the state to pass the strict scrutiny test.

Despite a long history of systemic discrimination and denial of rights in this country, the Supreme Court ruled in *City of Clebourne v. Cleburne Living Center*⁹² that individuals with

disabilities (in the case ID) are not members of a suspect class. The majority held that because they are in fact “different,” the state may have a rational reason to treat them differently. Therefore, status as a person with disability will only require a rational basis standard and state actions against individuals with disabilities will not require strict scrutiny review.

Under the Fourteenth Amendment, the Constitution clearly states that before a state can take an individual’s life, liberty, or property, due process is owed to that individual. Due process is a continuum of protections designed to ensure that, depending on the level of state action, an individual has options to defend themselves, present evidence, appeal the decision, and so on. Although due process rights exist in all interactions between the state and the individual, they are most extensive in the criminal justice system. The due process rights owed to all citizens involved in the criminal justice system under the Fourteenth Amendment are also owed to individuals with disabilities. These include the right of an accused person to be represented by an attorney, to be competent before participating in a trial, to receive supports and services during trial and sentencing, as well as any incarceration, and protection from harm while in custody. The issue for individuals with IDD is whether, due to their impairments, they are owed modifications to these due process protections to ensure justice.

Section 504 of the Rehabilitation Act of 1973

As the judge wrote in *Pierce v. District of Columbia*,⁹³ “incarceration inherently involves the relinquishment of many privileges; however, prisoners still retain certain civil rights, including protections against disability discrimination.” The two relevant federal laws that address disability discrimination are Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act (ADA).

Section 504 of the Rehabilitation Act of 1973 was the first federal statute that addressed discrimination on the basis of disability and applies to all entities receiving federal financial assistance—e.g., state courts, jails, and prisons. Included in Section 504 is the obligation of covered entities to provide reasonable modification to individuals with disabilities to ensure that they have an equal opportunity to access all services and programs.

Title II of the Americans with Disabilities Act (ADA)

In 1990, Congress passed the Americans with Disabilities Act (ADA) to extend the Section 504 nondiscrimination protection to most employers in the country, all state and local governments, and private businesses providing services to the public. The ADA includes five major sections or titles. Title II is the relevant title for most of the criminal

justice system as it covers state and local government services and describes their duties in the delivery of services or benefits to individuals with disabilities. ADA Title II states:

No 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.⁹⁴

Title II of the ADA applies to all state prisons and any private state prisons that are under contract with the state to provide correctional services.⁹⁵ In addition, all contractors working within a correctional facility must comply with ADA.⁷ The United States Department of Justice (DOJ), Civil Rights Division, is responsible for enforcement of Title II and considers Section 504 protections to be the same as those of ADA and will enforce these two statutes together.⁹⁶

Over twenty-five years of legal advocacy through the courts and enforcement by the DOJ and disability rights organizations, has improved physical access to parts of the justice system, although access to jails and prisons for individuals with mobility impairments continues to be a challenge.⁸ However, for individuals with IDD or other cognitive impairments who are involved with the criminal justice system, physical access is not the primary barrier. The major issue for individuals with IDD is ensuring that modifications to the legal processes are provided from arrest through release to the community. The federal courts, the DOJ and advocacy organizations have specifically addressed the experience of individuals with IDD within the legal system and some improvements in the treatment of individuals have occurred. Nonetheless, the challenges for this population are arguably more complicated than physical modifications to facilities for individuals with physical impairments, involve multiple government systems, and potentially require major revisions to existing American criminal justice processes. In addition, the DOJ has acknowledged that more information is needed to understand the experience of individuals with disabilities within the justice system.⁹⁷

DOJ has developed extensive technical assistance materials on ADA implementation in the criminal justice system.⁹ The overarching principle of the ADA as it relates to the

⁷ Throughout its experience in investigations and compliance reviews, DOJ has noted that public entities contract for a number of services to be run by private or other public entities, for example medical and mental health services, food services, laundry, prison industries, vocational programs, and drug treatment programs, all of which must be operate in accordance with the ADA Title II requirements. Section-by-Section Guidance and Analysis of the ADA Regulations.

⁸ See Tennessee v. Lane and DRW reports

⁹ ADA DOJ [Criminal Justice](#). In addition, [letters of findings](#) concerning investigations related to a variety of complaints related to police, jails and prisons are available.

criminal justice system is that individuals with disabilities must be protected from discrimination in all aspects of the system. Individuals shall not be denied equal treatment and must be afforded equal opportunity to benefit from the services, programs, and activities provided, including safe and inclusive communities. The DOJ *Technical Assistance Publication for Law Enforcement* summarizes this nondiscrimination mandate as follows:

Title II of the Americans with Disabilities Act (ADA) protects individuals with mental health disabilities and intellectual and developmental disabilities (I/DD) from discrimination within the criminal justice system. Pursuant to the ADA, state and local government criminal justice entities—including police, courts, prosecutors, public defense attorneys, jails, juvenile justice, and corrections agencies—must ensure that people with mental health disabilities or I/DD are treated equally in the criminal justice system and afford them equal opportunity to benefit from safe, inclusive communities.¹⁰

Nondiscrimination includes the following under ADA and Section 504:

- Reasonable modification to policing, prison and parole;
- Ensuring that individuals with disabilities are not excluded from programs offered by corrections;¹¹
- Effective communication with people with disabilities;
- Ensuring public safety and promoting public welfare;
- Avoiding unnecessary criminal justice involvement; and
- Services in the most integrated (least restrictive) setting appropriate to the needs of the individual.¹²

¹⁰ [Examples and Resources to Support Criminal Justice Entities in Compliance with Title II of the ADA](#) (DOJ Publication).

¹¹ “Correctional and detention facilities commonly provide a variety of different programs for education, training, counseling, or other purposes related to rehabilitation. Some examples of programs generally available to inmates include programs to obtain GEDs, computer training, job skill training and on-the-job training, religious instruction and guidance, alcohol and substance abuse groups, anger management, work assignments, work release, halfway houses and other programs... [I]t is critical that public entities provide these opportunities to inmates with disabilities.” Section-by-Section Guidance and Analysis of the ADA regulations

¹² States must provide services and programs in the least restrictive environment which means services in the community if possible. When community services are not possible, DOJ has provided guidance on restrictive housing within departments of corrections. See DOJ technical assistance guidelines for Reasonable Modification, effective communication and most integrated setting possible examples.

Providing reasonable modifications to all aspects of the criminal justice system to ensure that individuals with disabilities are not discriminated against on the basis of disability can be a complicated task. The modifications mandate is not unlimited – only reasonable modifications are required under ADA. However, there is no finite list of what “reasonable” means, and the determination must be made after an individual assessment. Some modifications, such as removal of physical or communication barriers, may be costly but are relatively straightforward. Although cost can be a factor in the reasonableness determination, the obligation to ensure that incarcerated individuals can effectively communicate and move around a correctional facility on an equal basis with others will generally outweigh the cost for a correctional agency.

However, modifying programs and services within the system to ensure incarcerated individuals participate on an equal basis with others may be both costly and complex. For example, the application of institutional rules and expectations may not be ones that individuals with IDD can follow without modifications due to their impairments. The result of failure to comply with behavioral expectations can be punitive segregation, withholding of privileges, extended sentences, or denial of parole opportunities. Safety of some individuals with IDD may be an issue while they are incarcerated due to their vulnerabilities and/or behavioral differences. As a result, correctional facilities may introduce segregated housing to keep incarcerated individuals safe or to provide specialized services; however, based on the least restrictive environment requirement in the delivery of state services, both extending sentences or segregated housing may raise concerns.⁵⁰

An additional federal judicial interpretation of the responsibilities of correctional facilities under the ADA is that they have an affirmative duty to take appropriate steps regarding inmates with disabilities. Specifically,

[B]ased on its reading of federal law, this Court holds that prison officials have an affirmative duty to assess the potential accommodation needs of inmates with known disabilities who are taken into custody and to provide the accommodations that are necessary for those inmates to access the prison’s programs and services, without regard to whether or not the disabled individual has made a specific request for accommodation and without relying solely on the assumptions of prison officials regarding that individual’s needs.⁹³

Because the criminal justice system does not have an accurate record of all individuals in the system who do have a disability, it is almost impossible to fulfill this affirmative duty to identify and assess the needs of incarcerated individuals with IDD. A detailed review of the ADA obligations to incarcerated individuals with IDD is beyond the scope of this paper; however, extensive resources are available from the DOJ.⁹⁸

Systems Change Considerations to Ensure Justice

This section highlights specific issues within the stages of the criminal justice system that are relevant to individuals with IDD. To the extent relevant, the modified SIM intercepts described earlier in this paper are indicated. Considering the criminal justice system's goals, specifically rehabilitation, deterrence, and the safety of society, as well as the mandates under the Constitution and the ADA, numerous opportunities exist to improve access to justice for individuals with IDD.

Intercept 1: Law Enforcement

Policing in the US involves a great deal of interaction with individuals with disabilities. Estimates are that 50-80% of all police encounters are with people with disabilities and that 10% of calls to police specifically involve individuals with mental illness.⁹⁹ Some behaviors of individuals with IDD may result in contact with the police. For example, unusual behavior or speech may cause concern among the public, who then respond by calling the police and/or attempting to intervene thereby escalating the situation. Behaviors such as an inability to understand or respond quickly to police requests, as well as inappropriate responses to police instructions, including physical outbursts, can quickly lead to incorrect conclusions by police regarding the cause and increase the danger to everyone involved.

In some encounters, when reasonable modifications are not introduced and/or de-escalation tactics are not used, police conduct can exacerbate the situation and lead to the excessive use of force. Although there is a statutory defense under the ADA Title I and Title III to providing modifications to a disabled individual who presents a direct threat, there is no such exception in Title II statutory language. Therefore, police who have argued a direct threat defense when responding to an individual with disability are not always successful.¹³ Ultimately, whether the defense will be successful will depend on the reasonableness of the circumstances determination that has both 14th Amendment and ADA considerations. The jury will consider the totality of the circumstances and weigh any urgent circumstances against proposed accommodations.¹⁰⁰

When questioning individuals with IDD there are similar considerations to interviewing adolescents. Not all individuals with IDD will demonstrate traits comparable to youth whose executive functioning skills have not fully developed.¹⁰¹ However, research has

¹³ This argument is complicated by the regulation under Title II that does allow a defense for direct threat. 28 CRC CFR pt 35 App B. <https://www.govinfo.gov/app/details/CFR-2024-title28-vol1/CFR-2024-title28-vol1-part35-appB/context>

shown that some individuals with IDD, like adolescents, are more likely to misunderstand their rights when arrested because they do not comprehend the Miranda warning, including the right to an attorney. Some individuals with IDD have been characterized as gullible or easily taken advantage of and manipulated by others.¹⁰² Some can be easily tricked by police into confessing, in part, because they become confused by the questions.

A study published in 2003 found that suggestibility, or the tendency to yield to misleading questions, is related to cognitive factors and correlated significantly with IQs under 100.¹⁰³ O'Donnell, et al. conducted a study of 60 adults with IDD to measure their understanding of Miranda, any tendency to respond positively to leading questions during interrogation, and suggestibility. The suggestibility factor was assessed by whether individuals revised their answers to questions in response to unfriendly, friendly, or neutral feedback compared to the original responses.¹⁰³ The results were overwhelmingly clear that participants did not understand the Miranda warnings in a meaningful way and were very likely to change their answers to original responses when the feedback was friendly.¹⁰³

Erroneous confessions can occur even when individuals with ID understand their rights, because for some, pleasing authority figures is important.¹⁰⁴ The courts have long recognized that ID is a factor that diminishes the ability of an individual to resist police pressure,¹⁰⁵ and a study that investigated the 245 cases (as of July 2017) of individuals who were exonerated from convictions due to false confessions seems to confirm this.¹⁰⁶ After analysis of the records, the researcher found that over one-quarter of the individuals had signs of intellectual disability and noted that this is much higher than the rate of individuals with ID in the country and higher than most estimates of the number currently incarcerated. He argued that this disproportionate number of false confessions among individuals with ID is because the primary judicial safeguards against false confessions are insufficient to protect many individuals with ID.¹⁰⁶ These primary safeguards included (1) a judicial assessment of whether the Miranda warning was properly given and (2) a determination of whether the confession met the requirements of the 14th Amendment.¹⁰⁶ If a judge finds that a confession was obtained through police coercion, it is considered a violation of the 14th Amendment's due process right. For some individuals with ID, it may be particularly difficult to decide if the consent to be questioned without an attorney is freely given and if the individual understands the consequences of a confession.

Specific suggestions in the literature to better protect the rights of individuals with IDD in the interrogation process include identification of the cognitive status of the suspect at the first involvement with the criminal justice system. Because most cognitive impairment is mild to moderate, it may not be a surprise that it is reported that three-quarters of individuals later identified as having ID were not identified at the time of arrest.¹⁰⁷ One way

to address this is to train specifically on the vulnerabilities of individuals with ID.¹⁴ If police are aware of the suspect's cognitive status, they may adjust their techniques, as recommended by interrogation manuals.¹⁵ Second, videotaping all interviews is the recommended best practice for all police interrogations, as a means to document potential future considerations of fairness, as well as a possible restraint on coercive behavior on the part of the police.

The findings of these studies highlight the importance of educating police, defense counsel, and judges as to the vulnerability of individuals with ID at all stages of the criminal justice system.¹⁰⁸ These studies focused on individuals with low IQ, and not all individuals with ID, as defined in this paper, will meet that criterion.

Numerous statutes around the country address police interactions with people with disabilities. Many states recognize that people with IDD are significantly more likely to experience greater levels of physical force from the police compared to people without IDD. Thus, in hopes of decreasing the use of physical force towards people with IDD during police interactions, state legislators passed statutes requiring police officers to complete a training program on how to interact with people with IDD. Police academies have discretion on how they would structure and implement their training program. However, the statutes also impose standards and requirements that police academies must have in their training program. These requirements and standards include, but are not limited to, how to identify signs of intellectual or developmental disability in a person, de-escalation and conflict resolution techniques, appropriate language officers must use when interacting with a person with IDD, and alternatives to lethal force.

Additionally, some statutes encourage other government agencies to collaborate with law enforcement agencies in developing a curriculum for interacting with individuals with IDD. For example, New Jersey legislators passed a law that compels New Jersey's Commission of Health and Human Services to inform police officers of the risks when interacting with people with IDD.

Intercept 2: Initial Detentions/Court Hearings

When an individual with IDD is arrested and taken into custody, the federal and relevant state Constitutional rights are applicable. In addition, the federal and state disability rights laws will also apply. In that initial detention, it is important that the system

¹⁴ See model policy on [Interactions with People with Intellectual and Developmental Disabilities](#) from the International Association of Chiefs of Police.

¹⁵ See e.g., [Criminal Interrogation and Confessions](#) manual

acknowledges the vulnerabilities of individuals with IDD. This includes the initial interaction between the individual with IDD and the police through the arrest, transportation to the police station or, in some cases, a hospital setting, and processing into jail or an involuntary psychiatric setting.

The academic literature reviewed in this report highlights modifications to system procedures that are necessary to ensure the protection of the rights of individuals with IDD. The sections below highlight the importance of applying all disability rights laws, as well as Constitutional rights as described earlier, to individuals with IDD during their criminal justice involvement.

Prosecution

Once an individual with IDD is charged with a crime, the disability status of the individual continues to be critically important for all involved in the criminal justice system. However, as with the earlier stages of the process, the impairment may not be recognized. Everyone charged with a crime has the due process right to a defense counsel. Attorneys are necessary to ensure due process and to protect their clients' interests. However, to do so, the attorney needs to understand the impact of IDD on their client. If the assigned attorney(s) does not realize his/her client has a cognitive impairment, they may be unable to provide adequate representation in the pre-trial bail or during considerations of incarceration options, as well as understand the vulnerabilities that may have influenced the police interrogation.¹⁰⁷

Although there are increasing training opportunities for judges, attorneys, and law students to become familiar with disability law, it cannot be assumed that all defense counsel or the prosecutor will be able to recognize IDD in their clients or know how best to advocate for them in the process. There are resources available through the American Bar Association for attorneys who specialize in this area, as well as assistance from the national Protection and Advocacy (P&A) organizations that are federally funded to represent the legal interests of individuals with disabilities.

The issue of competency is central to many aspects of the criminal justice system, from the ability of an accused person to participate in their trial to the competency to be executed. The concept has a long legal history dating from the mid-seventeenth century in England,¹⁰⁹ and relies on the due process concept that has been incorporated into the 14th Amendment of the US Constitution. The essence of the concept is that if people with IDD are unable to rationally understand the process and to aid their attorney in their defense, then questions arise regarding the accuracy of the adjudication and thus its fairness. The

courts in this country have also recognized the importance of the ability to participate in one's defense.¹⁶

It is important to note that the definition of competency is different from a determination of criminal responsibility. Incompetence is a status determination and is subject, in some cases, to change which then allows an individual to proceed with a trial. In addition, incompetency is not a defense to a criminal charge as may be the case with a successful insanity defense.

The determination of whether an individual understands the nature of the proceedings against them and can make a defense with the assistance of counsel is not always easy. And, assessing "competency is even more difficult with an individual with executive dysfunction,"¹⁰⁹ such as some individuals with IDD, because executive functioning may be directly related to the ability to assist in one's defense. Although neuroimaging has been introduced in numerous stages of the criminal justice system—i.e., insanity defense, death penalty mitigation, death row defendants' competency to be executed, and access to experts, it has not often been part of the competency to stand trial determination.¹⁰⁹ Michael Perlin has argued that it is "numerically, the most important disability law question relevant to criminal law" and has advocated for its consideration at this stage. There are limitations to the use of neuroimaging to understand the connection between brain structures and behavior; however, the connection does appear stronger with some impairments, such as TBI. Using all evidence-based scientific knowledge to inform decisions related to competency is appropriate for implementing therapeutic jurisprudence principles, while also ensuring due process.

Intercept 3: Courts

When individuals with disabilities are convicted of a crime, it has been reported that they risk receiving longer sentences than nondisabled individuals. For individuals with ID, the reasons given are many, including "because many may have previously violated bail conditions or the communities in which they reside may lack the appropriate kinds of community options that can ensure success."¹¹⁰ In addition, the attorney's knowledge of their client's characteristics with ID continues to be an issue during the sentencing stage. The impact of competency on sentencing with capital offenses and death penalty sentences was discussed earlier in the paper. However, evidence, including neuroimaging when appropriate, of the cognitive impairment and its connection to the individual's

¹⁶ See e.g., *Youtsey v. United States*, 97 F. 937, 941 (6th Cir. 1899); *Jordan v. State*, 135 S.W. 327, 328 (Tenn. 1911).

behavior can also be introduced to argue for mitigation of lesser sentences and/or an alternative placement through diversion.¹⁰⁹

One study that supports the value of scientific knowledge in the sentencing phase focuses on individuals with TBI specifically. The authors referenced research findings that a frontal lobe injury can result in an individual having difficulty “changing future behavior based on previous consequences” and therefore, punitive sentences will be less successful “than sentencing that involves teaching alternative coping strategies (e.g., rehabilitation facilities).¹¹¹ The study investigated whether educating mock jurors about the post-injury consequences of TBI affected their decisions related to the guilt and sentencing of accused individuals with TBI when compared to mock jurors who received no education on TBI.¹¹¹ The findings were that the education on TBI resulted in findings of less guilt for the individual and that they were more deserving of a rehabilitation alternative to prison when compared to the jury group that received no education on the impact of TBI.

A diversion option may be difficult to locate given the lack of community-based options designed for individuals with ID who have committed a crime. Nonetheless, there are numerous initiatives in specialized courts—or problem-solving courts—that have introduced options other than incarceration for some individuals.¹⁷ Whether mental health, drug or veterans courts, the focus is on reducing the use of the criminal justice system by providing the necessary supports in the community to address the unique needs including health issues of the accused individual. Given the apparent failure of the existing criminal justice system to provide rehabilitation supports necessary for most individuals with IDD to rejoin society successfully once they enter the criminal justice system, these problem-solving (or as one author has described them, solution finding courts) is an option that should be explored for individuals with IDD. Although not without critics, these courts offer an opportunity to explore an alternative approach to achieving the overarching goal of public safety. Therapeutic jurisprudence principles have been introduced into these specialized courts, providing both therapeutic benefits and infusing scientific knowledge regarding the reasons behind behavior, thereby reducing barriers to successful citizenship.¹⁰⁹

Intercept 4: Prisons/Jails/Confinement

A former correctional officer posed the following question that is worthy of consideration. He asked, “Is prison the right option? People do not get the help they need.” There are many ways to think about changes to the criminal justice system that would address the

¹⁷ See e.g., mental health courts, drug courts, veterans courts.

multiple reasons an individual with IDD engages with the police initially, and throughout any subsequent involvement, to prevent continued involvement. Suggestions were made for Intercepts 1-3. However, an additional approach is to ensure that scientific knowledge related to IDD is integrated throughout the Department of Corrections' practices during incarceration, providing individuals with these impairments the support and services needed to become successful members of society in the future. The responsibility to ensure this occurs requires a coordinated and collaborative effort between the department and community-based agencies and professional experts with the expertise necessary to inform prison practice.¹⁸ This collaborative approach will bring needed input from the community professionals, but also help facilitate transition planning and successful reentry when individuals are released. This is equally true for both juveniles and adults who are incarcerated.

Safety is a priority for all individuals involved in the prison setting, including staff and incarcerated individuals. Most corrections staff are well trained in de-escalation procedures, but whether those are relevant to incarcerated individuals with IDD should be explored in all departments of corrections. Educating correctional staff on the common behaviors people with IDD may engage in and appropriate responses to those in the prison setting is an important first step in preparing the environment to address individualized needs. This increased staff awareness will also aid in identifying individuals with IDD and facilitate referrals to appropriate healthcare staff to address any unique medical needs. Additionally, it will enable individualized assessments of the necessary modifications to programs and services offered to all individuals with disabilities, as required by the ADA. Individuals with IDD must have access to all programs that may require adaptation of material, instruction, and/or expectations. Evaluating the appropriate instructional approach and adapting materials or creating new curriculum for individuals with IDD is necessary. Establishing self-help groups and/or peer support groups that allow individuals to learn about their impairments and work with others to address concerns has been shown to benefit participants.¹⁹

Community medical, rehabilitation, and educational professionals have developed a variety of tools to assist individuals with both IDD to be successful students, employees, and live independently in the community. The interest in translating this collective scientific knowledge from academic research to practitioners in the field has been a

¹⁸ See pilot projects TBI/DOC etc.

¹⁹ See Vet Peer support groups

priority for government funding, but it has only recently been introduced in the correctional setting.

An issue for most incarcerated individuals, including some sentenced to life with the possibility of parole, is the opportunity for an early release from a sentence under the Department of Corrections supervision. The parole process, like most of the criminal justice system, varies from state to state. However, the decision to grant parole is based on broad guidelines that depend heavily on the incarcerated individual's ability to advocate for themselves before a board determining the "suitability" of granting early release. Typical considerations in parole determinations include the incarcerated individuals record while in prison, their ability to demonstrate remorse or insight into their behavior, their ability to plan for the future, a stable social history, previous criminal record, and educational background.¹¹² For individuals with IDD, all these factors can present barriers to a positive outcome or may require a level of verbal persuasion that is impossible in front of a panel of corrections staff. It will be particularly difficult for many if there is no modification to the process that allows them to receive assistance in making their case.²⁰

If a state has allowed parole consideration for most, if not all, incarcerated individuals, to deny individuals with IDD the modifications to the process that allow them to have an equal opportunity to benefit from release raises a 14th Amendment violation. Ensuring that incarcerated individuals with IDD are provided reasonable modifications to the standard practice in parole determinations and that the standards imposed do not "automatically" exclude all individuals with IDD, including prison behavior, may allow an increased number of individuals with IDD an early release. An early release without appropriate transition planning and community supports in place may not be successful; however, if these components are in place, shorter prison stays should be beneficial in the long term.

Intercept 5: Re-Entry to Community

Due to the high recidivism rate of all incarcerated individuals in state prisons, including those with IDD, an assumption can be made that the criminal justice system is failing to provide the necessary supports to achieve the goals of therapeutic jurisprudence. If the system is committed to developing the strengths of incarcerated individuals so that they can safely reenter society upon release, then community services must be available. Without the support and skills to navigate the community successfully, individuals with IDD will likely reenter the criminal justice system.

²⁰ Some states have specific parole rules for offender with ID.

Transition planning for all incarcerated individuals is an aspect of corrections that has not received sufficient attention. The Department of Justice has called for “increased collaboration and improved resource allocation between criminal justice agencies and disability services systems [which would] also help reduce the social, vocational, economic, and educational disparities people with disabilities experience.”²¹ Although this technical assistance suggestion was included in the section discussing services to incarcerated individuals, the message is also relevant for transition supports upon release to the community.

Individuals released from prison may have requirements to meet with community corrections staff and/or participate in specific programs upon release. For some individuals, including those with IDD, this structure may be sufficient to help establish an ongoing community support network. For individuals with IDD, this support may include assistance from state disability agencies, such as housing, medical insurance, and employment services. However, for individuals with IDD, these supports require that the individual request an evaluation for eligibility, and there is often a long wait period before services begin. Because in many states there is no linkage between the state department of corrections and the disability services administration, individuals may fall through the gaps in communication between agencies.

There have been efforts across the country to develop transition support programs for individuals, especially those with IDD, who have been released, and there may be others still in development. One such program is Options for Justice in St. Louis, Missouri.¹¹³ It provides services and supports to individuals with IDD involved in the criminal system or at risk of involvement. The nonprofit offers case management services to individuals and their families at any stage of the process to develop alternatives. The goal is to “ensure that participants have information and access to all of the services, resources, and community supports available to them to increase their likelihood of success and greater independence.” In addition, staff educate those involved in the criminal justice system about the unique needs of individuals with IDD and work to ensure successful community reintegration upon release. This organization is new, and there are no reports yet on the outcomes of their efforts. Nonetheless, it provides a comprehensive, multidisciplinary approach to community supports and tailors assistance to each person’s needs. Research has documented positive long-term outcomes for the case management model supporting successful transitions from incarceration to the community, including lower recidivism rates.

²¹ DOJ Tech Assistance p. 1

When President Kennedy called for a new plan to address the country's response to IDD,¹¹⁴ most individuals with IDD were living in large state institutions for disabled citizens. The deinstitutionalization movement began shortly after Kennedy's 1963 challenge and was partly kick-started by the advocacy of parents, attorneys, and professionals. They argued that not only was the state response to individuals with IDD a violation of the Constitutional rights of those individuals, but that it was also based on erroneous information about the independent capability of individuals with IDD if provided the appropriate education and supports. Although some state residential institutions continue to exist, many states have closed all of them, and those that remain have downsized significantly.

Most individuals with IDD currently live in the community, and many receive supports from Medicaid and/or state disability services agencies. Included in that support can be housing through waivers funded by a combination of federal and state dollars. Waiver programs differ among the states. Generally, however, individuals requiring intensive support to live safely in the community will receive the waiver that is authorized to provide such support. An example of this type of waiver from Washington State is the Community Protection Waiver. It provides constant one-on-one supervision of individuals with IDD. Community Protection Waivers are used in Washington to provide supplemental services for some individuals when returning to the community from incarceration. The Community Protection Waiver is not, however, any part of a court-ordered sentence. It is worth noting that the Community Protection program in Washington State has been subject to significant criticism.²² Efforts are ongoing to reform this highly restrictive waiver and expand the extremely limited alternative housing supports for individuals with IDD who require a multidisciplinary team to live successfully in the community.

Although the two systems in Washington State, the Department of Corrections (DOC) and the Developmental Disabilities Administration (DDA), are two distinct agencies with very different missions, they both have a similar responsibility to keep society and vulnerable adults safe. DDA staff have the training and experience in appropriate interactions and interventions with individuals with IDD to de-escalate situations, redirect inappropriate behavior, and support skill development, allowing for greater independence. DDA waiver services currently have limitations inherent in their structure and funding that make it challenging to consider expanding the availability of new or amended community-based waivers that address the level of support some individuals with IDD need to live

²² See <https://ddombuds.org/wp-content/uploads/2021/06/6.3.21-Community-Protection-Program-Report-PDF.pdf>

successfully in the community. Finally, the program is voluntary; that is, the individual must ask for the waiver service. Since the waiver is voluntarily accepted, the individual can opt out at any time, and the DDA cannot restrain them if they wish to leave.

These system barriers to expanding community supports for individuals with IDD can be lowered, but would require the establishment of new relationships between relevant state agencies, changes to the current DDA waivers eligibility regulations, and increased funding. Given that there has been some experience with the criminal justice system contacting DDA regarding possible placement for diversion with these waivers suggests that the justice system has recognized that incarceration in the state prisons may not be an appropriate response for some individuals. The development of future collaboration between these two agencies – and expansion to include formal diversion options-- supports the recommendations made by the Department of Justice in the ADA Technical Assistance document referenced earlier. These include (1) a revision of policies and practices; (2) development of collaboration with social services and provide community-based centers to keep people out of criminal system; (3) support criminal justice entities to coordinate with and direct to community-based services; and finally, (4) mitigation of sanctions – so that individual can be diverted from prison.

Community Corrections (Intercept 6)

We did not find any specific information in the legal or academic literature about community corrections and people with IDD.

Conclusion

Although there is no national census of individuals with IDD incarcerated in the United States, all evidence suggests that they are disproportionately housed in jails and prisons. Based on recidivism rates, they are very likely to return to prison when released to the community. This population of Americans has a long history of segregation from society, living in state-run civil institutions for the cognitively disabled or mentally ill. With the closure of most of those institutions over the last twenty years, for those individuals unable to live safely in the community, jails and prisons have become the default residential setting. The reality is that society continues to segregate and remove the fundamental rights of people with cognitive or psychological impairments, albeit in a different institutional setting.

There is an opportunity throughout the criminal justice system – from police encounters to the transition from prison to the community – to reconsider the process with the goals of both public safety and the principles of therapeutic jurisprudence as the focus. First, it is important to identify individuals with IDD who are involved with the

criminal justice system immediately so that any impairments are recognized and supported through the process. Police, attorneys, judges, and corrections staff must be trained not only on how to recognize IDD but also on how to appropriately interact with and recognize their documented vulnerabilities once they enter police custody and respond to differences at all stages of the process. Rehabilitation services within the criminal justice system must be prioritized. This includes the appropriate services and supports necessary to meet individualized needs, as well as the wraparound transitional planning required to ensure successful reentry from incarceration. Successful transition planning must be multidisciplinary and involve not just the criminal justice system but also health and human services. If there is not adequate support in the community, individuals with IDD will return to the criminal justice system and incarceration in many cases.

The systems change efforts required to ensure equal protection under the United States Constitution and address the disproportionate incarceration of individuals with IDD will involve not only the criminal justice system at all levels, both juvenile and adult, but also state departments of health and human services. There is no question that new programs, supports, and services, including linkages between corrections and other agencies will be required. However, as one author has noted, “the integrity of the criminal justice system is called into question when we fail to protect the most vulnerable citizens” from its government.¹⁰⁶

Academic Law Journals Review

In this section, we report on a literature review conducted using academic law journals. Legal reviews published in law journals enable legal scholars to disseminate innovative legal ideas, identifying future directions in law and highlighting challenges that require attention.

Methods

A rapid review of literature published in law review journals was conducted using the LexisNexis, WestLaw, and HeinOnline search tools and databases. Intellectual and/or developmental disability was the primary search term, with “special education,” “juvenile,” “institution,” “prison,” “diversion,” “specialized courts” and other phrases as secondary search terms. The search excluded articles published prior to 1999 and preferred recent publications. Lastly, articles that focused primarily on mental illness or traumatic brain injury were excluded. For ease of reference, some cases discussed in earlier sections of this report are repeated here.

Findings

Therapeutic Jurisprudence

There is an overwhelming trend among legal scholars in this field toward “therapeutic jurisprudence” (TJ). Therapeutic jurisprudence is a collaborative approach that emphasizes how legal systems affect the well-being of those involved, focusing on ensuring that the process is beneficial and therapeutic rather than merely adversarial. TJ also emphasizes the collaboration of different fields—such as education, psychology, medicine, and others—in both examining and engaging with the legal system to produce better outcomes. The application of TJ principles to IDD can be traced back to President Kennedy’s 1962 task force on the treatment of IDD in the law, which released a report highlighting the need for the law to continuously respond to the advances of the intellectual disciplines.¹¹⁴ Other hallmarks of TJ include an emphasis on the dignity of individual defendants, incorporating the voices of those involved in the system, and the use of problem-solving courts such as mental health courts.

Specialized or Problem-Solving Courts

“Problem-solving” courts or “specialized” courts such as juvenile, mental health, and veteran’s courts have received significant attention from legal scholars writing on IDD, especially those who have adopted the TJ framework. “These problem-solving courts function as a team with judges, court personnel, probation officers, social workers, and treatment providers working together to help treat participants”.¹¹⁵ Like other areas of this field, these articles proceed with the recognition that those involved in the criminal justice system—and especially juveniles—are disproportionately likely to have IDD. One article examines the ways in which the current juvenile justice system and specialized courts fail individuals with IDD, calling for the application of TJ principles throughout the entire system.¹¹⁶ One scholar calls for the expansion of mental health courts in Mississippi because they address the unique challenges faced by those with IDD and reduce recidivism.¹¹⁵ Scholars have examined how these specialized courts significantly reduce incarceration costs to taxpayers, improve public safety, and reduce recidivism.¹¹⁷ One group of scholars has argued that mental health courts are aligned with Congress’s intent in enacting Title II of the ADA and that the law may be construed to require states to provide access to such courts.¹¹⁸ Others have called for the introduction of specialized courts for juveniles with autism spectrum disorder and fetal alcohol spectrum disorder using TJ principles.¹¹⁹

IDD in Prisons and Jails

The experience of people with IDD in America’s prisons and jails has received considerable attention due to their overrepresentation in the U.S. incarcerated population.

An oft-cited report by the Center for American Progress states that “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”.¹²⁰ Scholars have reviewed the varied ways in which prisons inadequately serve those with IDD, including a lack of trained personnel, access to rehabilitative programs, and proper identification, contributing to those with IDD experiencing reduced safety and rehabilitative outcomes in prison.¹²¹ A report on Washington’s prison system and individuals with IDD, identified similar issues such as inadequate identification and access to treatment, reduced safety, and use of solitary confinement.¹²² Another scholar has examined the lack of access to rehabilitative programs in prisons and argued that international human rights frameworks may reduce discrimination.¹²³ One article analyzed how judicial decisions have limited the reach of the ADA into federal prisons by continuing to reinforce doctrines that effectively punish disability-related behavior.¹²⁴ Another has examined how the exceptions to the Individuals with Disabilities Education Act (IDEA) deprive incarcerated individuals of proper special education and increase recidivism.¹²⁵ Similarly, the barriers to special education access in prisons have been examined by a scholar who argues for the use of IDEA litigation to enforce existing rights.¹²⁶ The IDEA’s exhaustion requirement has also been criticized for enabling the denial of special education access and IDEA rights to incarcerated juveniles.¹²⁷

These issues have spawned a variety of suggestions for reform and other action. One scholar calls for better ADA training, robust ADA coordinators, informing inmates of their ADA rights, and system-wide ADA evaluation for prisons.¹²¹ Regarding Washington State, one author has recommended the implementation of community and treatment diversion programs instead of incarceration, better IDD screening for inmates, the reduction of solitary confinement, and correctional oversight by an independent body.¹²² Another has argued for new guidelines for the increased use of prosecutorial discretion by juvenile prosecutors to reduce the number of juveniles with IDD in the criminal justice system.¹²⁸ Others have examined the use of *Olmstead* litigation as a tool for demarcation.^{129,130}

Police Interaction, Arrest, and Interrogation

Police interactions with people with IDD, such as arrest, interrogation, and the use of force, have also received attention. One scholar has examined how individuals with IDD are sixteen times more likely to be killed by police, calling for a modified reasonable force test that involves modifications where an arrestee has a disability.¹³¹ One article has argued that the ADA should apply to arrests to protect the nearly half of all people killed by police who are mentally ill and because excessive force claims are deficient for protecting this population.¹³² While another has argued that the court should embrace a socio-political, instead of medical, model of disability to reform the excessive force test to

protect those with disabilities who are frequently killed by police.¹³³ One scholar has examined how the lack of police training regarding people with IDD leads to the use of excessive force and hampers diversion initiatives, calling attention to how the intersection of race and disability also affects police behavior.¹³⁴

Scholars have examined how those with IDD are particularly susceptible to falsely confessing to crimes, with a study revealing that jurors are more likely to be pro-defense when a juvenile defendant has IDD or is perceived to have confessed under coercion.¹³⁵ Other scholars have called for the application of TJ principles to reform efforts and police training to reduce the over-arrests of people with disabilities.¹³⁶

Special Education and the School-to-Prison Pipeline

The “school-to-prison pipeline” and the relationship between the criminal justice system and the experience of juveniles with IDD in the educational system has also been examined. One scholar has written on how race affects the construction of disability in schools, arguing that disabilities for white students are often viewed as medical conditions that attract more resources, while the children of color with disabilities may be criminalized, especially in under-serviced and hyper-criminalized school settings.¹³⁷ Some scholars have examined how a District of Columbia (D.C.) project to train and mobilize law students and court-appointed lawyers to enforce IDEA rights has contributed to a decline in incarceration for D.C. youth.¹³⁸ One scholar has written on how systems that encourage the surveillance of students with disabilities harm their quality of education and integration efforts.¹³⁹

Community Integration, Deinstitutionalization, and Reentry

Individuals with IDD face challenges related to release from jail or prison and re-entry into the community, and many face barriers to accessing services outside of institutionalization. Some scholars have examined how a lack of continuity of care contributes to a cycle in which people with IDD are shuttled between jails and hospitals, especially where discharge into the community is not accompanied by proper planning or supervision.¹⁴⁰ Another has written on how over-protective rules and systems of surveillance in group homes for those with IDD harm integration efforts.¹³⁹ And one article has examined and promoted the popularity of the “least restrictive environment” approach among advocates, which calls for integrated and community-based services and treatment for those with IDD.¹⁴¹ Another has argued that home and community-based services should be expanded in the post-COVID era.¹⁴² One article examines how the large number of eligible individuals on waiting lists for home and community-based services are denied their rights due to fiscal barriers to integration,¹⁴³ while another argues that waiting lists should be outlawed as a means of implementing the integration mandate,¹⁴⁴ and one

more article proposes that Medicaid waivers should become an entitlement with alternate sources of funding to remedy the issue.¹⁴⁵ One scholar has argued that involuntary institutionalization is unconstitutional on due process and equal protection grounds.¹⁴⁶

Parole, Probation and Sentencing

One scholar has examined how the execution of defendants with IDD continues because of states' superficial and oversimplified definitions of disability.¹⁴⁷ Educational requirements imposed on incarcerated individuals with IDD for parole have been criticized as posing a significant barrier to release for many.^{148,149}

Washington

Scholars have examined Washington State's approaches and programs for people with IDD and the criminal justice system. One scholar's report on Washington's prison system in regard to IDD has identified issues such as inadequate identification and access to treatment, reduced safety, use of solitary confinement, and lack of information for family members.¹²² Another article has explored the deficiencies of the Washington state Community Protection Program, arguing for its abolition by integrating individuals with IDD into other state programs, rectifying violations of their rights caused by the program, and empowering them to become better self-advocates.¹⁵⁰

Case Law Review

In this section, we report on a case law review of cases relevant to people with IDD and the criminal justice system. Case law relies on decisions made by judges in earlier cases that addressed similar situations, guiding the consistent application of legal principles. It contrasts with statutory law, which is based on the laws created by state or federal legislatures. We organize case law by topic and report a brief summary of each case. This review should not be considered comprehensive as explained below.

Methods

This rapid review of case law was conducted using the LexisNexis and Reuters WestLaw search tools and databases. Intellectual and/or developmental disability was the primary search term, with "juvenile," "institution," "prison," "diversion," "specialized courts," "parole," and other phrases as secondary search terms. The search excluded opinions published before 1999. This review compiled a wide but not exhaustive range of cases across the federal system and all 50 states. Due to its short timescale, its objective was not to provide a definitive summary of case law throughout the United States, but rather to collect a variety of illustrative cases.

Findings

Intercept 0: Community Services

Olmstead

Olmstead v. L.C. was a transformative decision of the Supreme Court decided on June 22, 1999. The Court held that the ADA required “placement of persons with mental disabilities in community settings rather than in institutions” where appropriate and that “the unjustified institutional isolation of persons with mental disabilities is properly regarded as discrimination based on disability.” *Olmstead v. L. C. by Zimring*, 527 U.S. 581, 587, 119 S. Ct. 2176, 2181 (1999). This decision enabled class action litigation against states to enforce the ADA’s integration mandate.

The Supreme Court has also held that prison-based services and activities fall within the purview of the ADA’s reasonable modifications requirement. *Pa. Dep’t of Corr. v. Yeskey*, 524 U.S. 206, 211, 118 S. Ct. 1952, 1955 (1998). The Ninth Circuit has extended this holding to other mandatory activities such as parole hearings and pre-trial detentions. See *McGary v. City of Portland*, 386 F.3d 1259, 1268 (9th Cir. 2004).

One barrier to *Olmstead* litigation has been the standard that a state must only produce an “effectively working plan” and a waitlist that moves at a reasonable pace for placing qualified people in less restrictive environments to satisfy the ADA. For example, in a lawsuit against Washington State alleging *Olmstead* violations for limiting the number of people that could participate in a Medicaid waiver program to access alternatives to institutionalization, the Ninth Circuit affirmed dismissal and adopted a lenient standard that did not require states to produce *Olmstead* plans with measurable outcomes or target deadlines. *Arc of Wash. State Inc. v. Braddock*, 427 F.3d 615 (9th Cir. 2005).

A similar barrier has been the “fundamental alteration” defense. For example, the Ninth Circuit ruled against plaintiffs who alleged that California discriminated by paying community-based service providers lower wages and benefits than employees in institutions because California already had an acceptable deinstitutionalization plan and disrupting it would be a fundamental alteration of the State’s policies. *Sanchez v. Johnson*, 416 F.3d 1051, 1063 (9th Cir. 2005).

American Law Reports prepared a 2014 annotation of all post-*Olmstead* litigation concerning unjustified institutionalization as a violation of the ADA. The report addresses successful *Olmstead* claims on many bases, including States’ failures to: place qualified individuals in community-based programs, create new community-based programs, remove caps on participation in programs, include certain categories of disability in programs, and place disabled inmates in the most integrated setting within prisons. Claims have also been found for reduction of existing community-based services and

disparity in wages or payments for medical providers. Additionally, adult homes that resembled psychiatric hospitals and restrictive state-run nursing homes have been considered to be “institutions” by courts. See 90 A.L.R. Fed. 2d 1.

Other examples of Olmstead rulings include:

The Ninth Circuit found that disabled Medicaid recipients were entitled to an injunction to prevent the State from reducing their home-care services because the cuts would contribute to an increased likelihood that the recipients would be institutionalized in the future. *M.R. v. Dreyfus*, 663 F.3d 1100 (9th Cir. 2011).

The Northern District of California found that disabled Medicaid recipients stated a valid *Olmstead* claim in alleging that California violated the ADA by reducing the wages and benefits paid to employees of the In-Home Supportive Services and creating a shortage of providers, impairing the recipients’ ability to remain in their homes. *Martinez v. Schwarzenegger*, No. C 09-02306 CW, 2009 U.S. Dist. LEXIS 95956, at *1 (N.D. Cal. Oct. 15, 2009)

The Arizona District Court ruled in favor of plaintiffs in an *Olmstead* claim alleging that the State violated the ADA by failing to employ a sufficient number of personal care attendants for qualified individuals with disabilities. *Ball v. Rodgers*, No. CV 00-67-TUC-EHC, 2009 U.S. Dist. LEXIS 45331 (D. Ariz. Apr. 24, 2009).

Recipients on waiting lists for over 10 years for community-based services stated a valid *Olmstead* claim. *M.A.C. v. Betit*, 284 F. Supp. 2d 1298 (D. Utah 2003).

The Fifth Circuit ruled that deficiencies in Mississippi’s mental health system, placing every person with mental disabilities at risk of unjustified institutionalization, did not violate the integration mandate because there was no evidence of discrimination and that the ADA does not define in terms of risk. *United States v. Mississippi*, 82 F.4th 387 (5th Cir. 2023).

The Pennsylvania Middle District Court held that a department with a history of unnecessary institutionalization could not invoke the fundamental alteration defense where its integration plan lacked concrete benchmarks and no steps toward implementation were taken. *Benjamin v. Dep’t of Pub. Welfare*, 768 F. Supp. 2d 747 (M.D. Pa. 2011).

Community Services (non-Olmstead cases)

The New Mexico District Court found that developmentally disabled plaintiffs sufficiently alleged that the state’s Department of Health subjected them to involuntary servitude when they were transferred to a privately-operated nursing home where they

were forced to perform household duties. *A.M. v. N.M. Dep't of Health*, 108 F. Supp. 3d 963 (D.N.M. 2015).

Following *Olmstead* litigation by the federal government in which Virginia agreed to close the majority of its residential training centers, for people with IDD, a group of petitioners who were residents of the centers filed a motion to intervene because they wished to remain in centers. *United States v. Virginia*, 282 F.R.D. 403 (E.D. Va. 2012).

A court in New York found that appointing a guardian was not in the best interest of a 29-year-old adult with Down Syndrome because it was not the least restrictive environment to address his needs. *Matter of D.D.*, 2015 NY Slip Op 25364, 19 N.Y.S.3d 867 (Sur. Ct.).

Education

A university student with Down syndrome sufficiently alleged her disability was known and obviously apparent to the university, in connection with a failure to accommodate claim, because Down syndrome is a genetic disorder associated with physical traits, and it was obvious that she required accommodation such as more supervision. *Doe v. Texas A&M University*, 634 F. Supp. 3d 365 (S.D. Tex. 2022).

A minor student with non-verbal autism plausibly alleged that he was entitled to modifications to the county sheriff's office' handcuffing policies and practices, including crisis intervention, de-escalation, patience, and waiting, and that failure to provide those modifications subjected him to discrimination in violation of the ADA, because students with disabilities involving behavioral challenges were particularly vulnerable to injury resulting from use of handcuffs, and that school personnel were aware that student needed behavior intervention plan to help him manage his disability-related behaviors, and that because of his disabilities he should not have been handcuffed or should have been handcuffed less forcefully. *D.L. by and through S.L. v. Hernando County Sheriff's Office*, 620 F. Supp. 3d 1182 (M.D. Fla. 2022).

Disabled students who were more vulnerable to COVID-19 brought claims in different states targeting orders not to impose mask mandates or other restrictions, alleging that they were denied the benefits of public education by either being forced out of school or placed at higher risk of contracting COVID. The Fifth Circuit ruled against such plaintiffs while other courts issued injunctions. Compare *E.T. v. Paxton*, 41 F.4th 709 (5th Cir. 2022) with *R.K. v. Lee*, 568 F. Supp. 3d 895 (M.D. Tenn. 2021).

Eligibility Criteria

States have used a variety of different definitions for developmental disability and eligibility criteria for benefits and programs.

The Appellate Court of Illinois reversed an applicant’s denial of admission into a community living arrangement because his cerebral palsy qualified as a developmental disability as long as it manifested prior to age 22 and caused substantial limitations in at least three “life activities.” *Tinder v. Ill. Dep’t of Pub. Aid*, 346 Ill. App. 3d 510, 513, 282 Ill. Dec. 58, 61, 805 N.E.2d 677, 680 (2004)

The Washington Court of Appeals affirmed a denial of developmental disability benefits for a claimant who suffered from “alcohol related neurodevelopmental disorder” and “mild mental retardation” because the former is not a medically recognized diagnosis and the claimant failed to prove the latter manifested prior to the age of 18. *Slayton v. Dep’t of Soc. & Health Servs.*, 159 Wash. App. 121, 126, 244 P.3d 997, 999 (2010).

A court in New York ruled that a person who was 20 at the time of a brain injury was still in his developmental period and thus satisfied the definition of “mentally retarded,” which the court equated to developmental disability. *In re Winne*, 184 Misc. 2d 1, 705 N.Y.S.2d 536 (Sup. Ct. 2000).

The Appellate Court of Illinois found that a claimant with cerebral palsy who did not suffer cognitive defects still required “active treatment” as required for community living arrangement because he needed therapy and life skills training for daily living and use of limbs. *Biekert v. Maram*, 388 Ill. App. 3d 1114, 328 Ill. Dec. 823, 905 N.E.2d 357 (2009).

A court in South Carolina held that a defendant suffering dementia from an anoxic brain injury did not fit the statutory definition of intellectual disability because it required manifestation prior to the age of 22. *Ex parte S.C. Dep’t of Disabilities & Special Needs*, 420 S.C. 1, 800 S.E.2d 777 (2017).

The Oregon Court of Appeals found that the legislature did not intend to include developmental disorders such as autism as mental disorders for purposes of civil commitment statute. *A.B.K. v. A.B.K.*, 323 Or. App. 246, 522 P.3d 894 (2022).

A Florida District Court found that an individual was improperly denied services because the administrative rule governing diagnoses of autism did not actually require that documents in support had to be validated by a qualifying professional. *Fatigato v. Agency for Persons with Disabilities*, 344 So. 3d 627 (Fla. Dist. Ct. App. 2022).

Intercept 1: Law Enforcement

The DuPage County Bar Association has produced a brief that reviews several cases concerning encounters between police and people with disabilities—which frequently end in death or injury due to excessive force. The article documents how courts have generally held that the ADA does not apply to police interactions, while others have confirmed that police have a relatively low threshold of duty to provide accommodations during an arrest.

There has also been a trend toward settlements as courts and municipalities increasingly recognize claims for excessive force against people with mental illness or disability. James Naughton, *Police Encountering People with Disabilities: A Deadly Encounter*, 32 DCBA Brief 8 (2020).

There is no broad rule categorically excluding arrests from the scope of Title II of the Americans with Disabilities Act. *Gohier v. Enright*, 186 F.3d 1216, 9 A.D. Cas. (BNA) 1131 (10th Cir. 1999).

To state a reasonable accommodation claim under Title II of the ADA in relation to an arrest, a disabled individual must show that the public entity had knowledge of the disability, either because that disability is obvious or because the entity was informed of the disability. *Taylor v. City and County of Honolulu*, 666 F. Supp. 3d 1098 (D. Haw. 2023).

Interrogations

The Ninth Circuit ruled that a defendant's confession was involuntary where the defendant was 18, with an IQ of 75, had a very impaired ability to understand everyday interpersonal exchanges, and was very vulnerable to coercion, and officers realized but ignored guidelines for questioning people of low intelligence and misled the defendant. *United States v. Preston*, 751 F.3d 1008 (9th Cir. 2014).

The Sixth Circuit has held that when a suspect suffers from intellectual disability, which is known to officers, a lesser quantum of coercion is required to call the confession into question, citing Supreme Court warnings that defendants with intellectual disability are particularly prone to giving false confessions. *Bies v. Sheldon*, 775 F.3d 386 (6th Cir. 2014).

"The general rule in the Fifth Circuit is that the fact that a confession is made by one whose mentality is subnormal is to be taken into consideration and viewed as a fact indicating, although not establishing, that the confession was lacking in voluntariness." *United States v. Robles-Ramirez*, 93 F. Supp. 2d 762 (W.D. Tex. 2000).

The Washington Court of Appeals has similarly stated that mental disability is a factor to be considered in the voluntariness of a confession, but does not automatically establish involuntariness. *State v. Young*, 158 Wash. App. 707, 243 P.3d 172 (2010).

Courts in states such as New York, Alabama, Florida, Mississippi, and Illinois have similarly stated that intellectual disability is only one factor to be considered in evaluating the voluntariness of a confession. See *United States v. Jennings*, 491 F. Supp. 2d 1072 (M.D. Ala. 2007); *People v. Mills*, 2020 NY Slip Op 06630, 188 A.D.3d 1655, 135 N.Y.S.3d 548 (App. Div. 4th Dept.); *Waterman v. State*, 255 So. 3d 980 (Fla. Dist. Ct. App. 2018); *People v. Kadow*, 2021 IL App (4th) 190103, 450 Ill. Dec. 1002, 182 N.E.3d 814; *Williams v. State*, 115 So. 3d 774 (Miss. 2013).

The Colorado District Court found that a plaintiff sufficiently stated a claim against a local board of county commissioners by alleging rights violations in the failure to train the police department in proper interrogation techniques for individuals with IDD. *Sanchez v. Hartley*, 65 F. Supp. 3d 1111 (D. Colo. 2014).

Arrests

The D.C. District Court ruled against a plaintiff who alleged state endangerment and wrongful arrest of person with IDD who was arrested for drug possession and used by police in a drug bust operation because he did not suffer any injuries, officers did not act with deliberate indifference, and that arrestee did not lack the requisite *mens rea* in a way that was so obvious to the arresting officers. *Pollard v. District of Columbia*, 191 F. Supp. 3d 58 (D.D.C. 2016).

The Maryland District Court found that plaintiffs had a viable “failure to train” claim under the ADA where an individual with Down Syndrome died of asphyxiation while being detained by deputies. *Estate of Saylor v. Regal Cinemas, Inc.*, 54 F. Supp. 3d 409 (D. Md. 2014).

A court in New York found that individuals who were involuntarily hospitalized sufficiently alleged that city failed to provide reasonable accommodations for disabilities during mental health arrests, but denied a discrimination claim based on city using police officers instead of mental health practitioners to respond to mental health crises. *Greene v. City of N.Y.*, No. 21-CV-05762 (PAC), 2024 U.S. Dist. LEXIS 58921 (S.D.N.Y. Mar. 26, 2024).

Police officer made reasonable accommodations for suspect's intellectual disability under Rehabilitation Act and Title II of the ADA during investigation of report of sexual abuse of minor, where, in light of suspect's disability, officer altered his questioning style, more fully explained the Miranda rights, interviewed suspect in less intimidating room, called suspect's mother and told her that her son was at police station and nervous, drove suspect to his parents' home and explained situation to them, and arranged alternative and friendlier booking procedures. *Folkerts v. City of Waverly*, 707 F.3d 975 (8th Cir. 2013).

Intercepts 2 and 3: Courts, Hearings, and Diversion

Courts under the ADA

The ADA does not require states to employ “any and all” means to make judicial services accessible to people with IDD, rather only requiring reasonable modifications to rules, policies, practices, or the removal of architectural, communication, or transportation barriers, or provision of auxiliary aids and services. *Arce v. Louisiana*, No. CV 16-14003, 2017 WL 5619376, at *23 (E.D. La. Nov. 21, 2017).

A county violated the ADA when it failed to make a courtroom accessible to a paraplegic individual and offered no explanation for its decision to find individuals to carry the individual up the stairs rather than relocating the hearings. *Matthews v. Jefferson*, 29 F. Supp. 2d 525 (W.D. Ark. 1998).

Defenses and Sentencing

The Ninth Circuit ruled against a developmentally disabled defendant who unsuccessfully argued that his disability could serve as a form of diminished capacity for a general intent crime, and that disallowing developmentally disabled defendants to be tried as juveniles was discriminatory. *United States v. Larson*, 346 F. App'x 166, 168 (9th Cir. 2009)

The Seventh Circuit held that a court properly considered intellectual disability as a basis for cutting two and a half years off guideline sentence for defendant, rejecting his argument that leniency was warranted because defendant's lost over 20 IQ points due to mental condition since committing the crime. *United States v. Blair*, 565 F. App'x 548 (7th Cir. 2013).

The Supreme Court of Oregon held that, "if, as result of intellectual disability, offender's age-specific intellectual capacity falls below minimum level of criminal responsibility for child, then it may be arguably unconstitutional to sentence offender as adult." *State v. Gonzalez*, 326 Or. App. 587, 534 P.3d 289 (2023).

The Oregon Court of Appeals held that a lower court erred when it imposed a mandatory sentence without considering the effect that defendant's intellectual disability had on his culpability. *State v. Ryan*, 305 Or. App. 750, 473 P.3d 90 (2020).

The Appellate Court of Illinois held that prohibition on mandatory life sentences for young adults did not apply to intellectually disabled defendant who argued that his disabilities rendered him akin to a juvenile for sentences purposes. *People v. Buford*, 2023 IL App (1st) 201176, 468 Ill. Dec. 950, 221 N.E.3d 1172.

A court in New York found that defendant's intellectual disabilities constituted an exceptional circumstance that warranted a reduction in prison sentence, citing research that similarly situated individuals were more likely to be victimized and housed in segregation while incarcerated. *People v. Watt*, 2020 NY Slip Op 07721, 189 A.D.3d 637, 137 N.Y.S.3d 37 (App. Div. 1st Dept.).

The Texas Court of Appeals reversed a juvenile court's order transferring a juvenile to criminal court because it did not properly consider his intellectual disability. *In re A.K.*, No. 02-19-00385-CV, 2020 Tex. App. LEXIS 2801 (Tex. App. Apr. 2, 2020).

Statute requiring life imprisonment without parole for capital murder conviction did not constitute cruel and unusual punishment, in violation of Eighth Amendment, as applied to persons with intellectual disabilities. *Avalos v. State*, 635 S.W.3d 660 (Tex. Crim. App. 2021).

Capital Punishment

The Supreme Court ruled that “mentally retarded” persons cannot be executed under the Eighth Amendment’s prohibition on cruel and unusual punishment. *Atkins v. Virginia*, 536 U.S. 304, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002). The Court allowed states to make their own determinations as to which defendants qualify as disabled as to foreclose capital punishment.

The Supreme Court struck down Florida’s 70 IQ cut-off for determining whether a defendant was intellectually disabled because it created an unacceptable risk that persons with IDD could be executed because IQ score is imprecise on its own and the vast majority of states had rejected the 70 IQ cut-off. *Hall v. Fla.*, 572 U.S. 701, 134 S. Ct. 1986, 188 L. Ed. 2d 1007 (2014).

A 2022 national survey of state legislation defining intellectual disability as it relates to the death penalty found that only one state (LA) used the current DSM-5 definition of intellectual disability. Twenty states use outdated medical definitions ranging from outdated age of onset or adaptive functioning criteria to even older definitions such as “mental retardation.” Four states do not define a specific age range and sixteen states do not define behaviors to be considered for adaptive functioning. Five states, including WA, offer incomplete definitions. (Flack et al 2022).

Intercept 4: Prisons, Jails, and Confinement

Prisons

The Supreme Court has held that Title II of the ADA applies to prisoners in state correctional facilities and prohibits discrimination against qualified individuals based on disability in prisons. *Pennsylvania Dept. of Corrections v. Yeskey*, 524 U.S. 206, 118 S. Ct. 1952, 141 L. Ed. 2d 215, 8 A.D. Cas. (BNA) 201, 163 A.L.R. Fed. 671 (1998).

Subsequent jurisprudence has illuminated which services this ruling applies to, including: use of dining hall, educational and vocational programs, prison libraries, medical services, counseling sessions, and recreational activities. See 163 A.L.R. Fed. 285 § 11.

While mere failure to attend to medical needs does not fall under the ADA, failure to provide access to a medical program such as a prescription service does. Compare *McNally v. Prison Health Services*, 46 F. Supp. 2d 49 (D. Me. 1999) with *Vick v. Core Civic*,

329 F. Supp. 3d 426 (M.D. Tenn. 2018). Failure to provide crutches is an ADA violation. *Owens v. Chester County*, 2000 WL 116069 (E.D. Pa. 2000).

The ADA does not create a right for an inmate to be housed in a specific prison. *Garrett v. Angelone*, 107 F.3d 865 (4th Cir. 1997).

A court-ordered neutral review of California's prisons found that developmentally disabled prisoners were verbally, physically, and sexually assaulted, in a case in which the court ruled that further remedial steps, following a previous remedial plan, were required. *Clark v. California*, 739 F. Supp. 2d 1168, 1174 (N.D. Cal. 2010).

A settlement agreement was reached in a class action against the Alabama department of corrections for its highly inadequate mental health care system for people with IDD, including lack of care and security, unnecessary segregation and isolation, and mistreatment. *Braggs v. Dunn*, 321 F.R.D. 653 (M.D. Ala. 2017).

The Virginia Western District Court found that an inmate with autism spectrum disorder plausibly stated a claim that he was placed in segregation and denied benefits and services because of behavior inextricably linked to his disability, and that officers essentially punished him for his disabilities. *Latson v. Clarke*, 249 F. Supp. 3d 838 (W.D. Va. 2017).

Commitment

A California Superior Court ruled that a person should not have been committed where, although a report indicated that a diagnosis of mild intellectual disability contributed to the target behaviors, there was not enough evidence to establish the disability was a substantial factor in causing his difficulty in controlling his behavior. *People v. Cuevas*, 213 Cal. App. 4th 94, 151 Cal. Rptr. 3d 880 (2013).

The Alaska Supreme Court found that commitment was properly ordered where developmentally disabled defendant had separate impulse control disorder, even though commitment statute stated that developmental disability was not *per se* mental illness. *In re Hospitalization of Dominic N.*, 548 P.3d 630 (Alaska 2024).

A Minnesota trial court exceeded its authority when it ordered a defendant eligible for developmental disability services when finding defendant incompetent to stand trial, although ordering provision of commitment-based services based on developmental disability was authorized by statute. *State v. Sanders*, 238 Md. App. 599, 193 A.3d 216 (2018).

The Oregon Court of Appeals found that an appellant with autism should not have been committed because the legislature did not intend to include developmental disorders such

as autism as mental disorders for purposes of the civil commitment statute. *A.B.K. v. A.B.K.*, 323 Or. App. 246, 522 P.3d 894 (2022).

The California Court of Appeals found that within a statute defining qualifying conditions as those that required treatment similar to that of developmental disability, the term “treatment” did not include services such as assistance with cooking, public transportation, money management, rehabilitative and vocational training, independent living skills training, specialized teaching, skill development approaches, and supported employment services. *Ronald F. v. State Dep't of Developmental Servs.*, 8 Cal. App. 5th 84, 213 Cal. Rptr. 3d 427 (2017).

An intellectually disabled defendant found incompetent to stand trial could be committed, despite Kansas statute’s general exclusion of intellectually disabled persons from commitment, because of an exception created for certain serious crimes such as off-grid felonies. *Matter of Snyder*, 308 Kan. 626, 422 P.3d 85 (2018).

The Eleventh Circuit found that Florida’s scheme for involuntary commitment of intellectually disabled persons violated the Due Process Clause because it did not have periodic review by a decision-maker that could order release. *J.R. v. Hansen*, 803 F.3d 1315 (11th Cir. 2015).

A delay in transferring a pretrial detainee who was found incompetent due to severe autism, for 33 days, did not implicate the ADA’s integration mandate because the detainee was not denied care and treatment due to his autism. *Matthew P. by Fedora P. v. Neifeld*, 80 Misc. 3d 950, 196 N.Y.S.3d 647 (N.Y. Sup. Ct. 2023).

Intercepts 5 and 6: Reentry and Community Corrections

A court in Alaska held that modification, rather than revocation, of the defendant’s probation conditions to include specialized treatment was warranted due to his IDD and the court’s goal of deinstitutionalization. *United States v. Johnson*, 122 F. Supp. 3d 1313 (M.D. Ala. 2015).

A court in Massachusetts affirmed the denial of parole to a developmentally disabled prisoner, where a psychologist testified that his inability to complete the sex offender training program was substantially influenced by his disability, because of a high propensity to commit crime while released. *Dingle v. Massachusetts Parole Bd.*, 102 Mass. App. Ct. 1122, 211 N.E.3d 1069, review denied, 492 Mass. 1106, 220 N.E.3d 85 (2023).

Roundup of Washington Cases

The following section includes cases from Washington State, including a review of recent litigation conducted by Disability Rights Washington (DRW). Some of these have been referenced earlier in this review.

DRW filed a lawsuit against state officials alleging harm to people with IDD at Rainier School, a large state-run residential institution in Pierce County. Plaintiffs allege that Rainier School is a dangerous facility that fails to provide a healthy and safe environment for residents, who have been maimed, hospitalized, and killed. *G.G. et al v. Meneses*, 2022.

A settlement agreement was approved in 2022 requiring the Department of Children, Youth and Families to implement new statewide models for supporting foster youth after a lawsuit alleging a failure to properly serve individuals with developmental disabilities, effectively rendering them homeless for periods of time and forcing them to be institutionalized *D.S. v. Wash. State Dep't of Children, Youth, & Fams.*, No. 2:21-cv-00113-BJR, (W.D. Wash. Sep. 21, 2022).

A settlement agreement was approved in 2019 in which the Department of Corrections agreed that civil rights extend to inmates and to create appropriate housing after a lawsuit in which DRW alleged that more than 70 inmates were behind held in highly restrictive settings due to their need for disability services *Disability Rights Washington V. Inslee Et Al*, E.D. Wash. April 23, 2018.

Class action certification was denied in 2017 for an *Olmstead* lawsuit against the Department of Social and Health Services and the Health Care Authority for alleged systemic mismanagement of Medicaid-funded supported living services for people with IDD, in which over a hundred individuals were allegedly deprived of due process protections and speedy access to those services. *C.F. v. Lashway*, No. C16-1205RSM, 2017 U.S. Dist. LEXIS 91607 (W.D. Wash. June 14, 2017).

Class certification and partial summary judgment were granted in favor of a developmentally disabled plaintiff in a case alleging Washington's failure to provide him with services, including notice of eventual community placement, where the Court found that officials violated the Nursing Home Reform Act by using state, rather than federal, definitions of disability. *Dunakin v. Quigley*, 99 F. Supp. 3d 1297 (W.D. Wash. 2015).

An applicant with autism and bipolar disorder's denial for developmental disability services was affirmed, where he did not prove that his impairments were attributable to autism. *Lynn v. Dep't of Soc. & Health Servs.*, 170 Wash. App. 535, 285 P.3d 178 (2012).

The Supreme Court of Washington ruled that inmates over the age of 18 do not have a statutory or constitutional right to public education, and that the constitutional right to education for inmates under 18 is satisfied in state prisons. *Tunstall v. Bergeson*, 141 Wash. 2d 201, 5 P.3d 691 (2000).

The Supreme Court of Washington ruled against disabled claimants who were denied eligibility for services because the definition of developmental disability under RCW 71A.10.020 was limited to conditions that involve cognitive or intellectual impairment. *Campbell v. Dep't of Soc. & Health Servs.*, 150 Wash. 2d 881, 895, 83 P.3d 999, 1008 (2004).

The Washington Court of Appeals affirmed a denial of developmental disability benefits for a claimant who suffered from “alcohol related neurodevelopmental disorder” and “mild mental retardation” because the former is not a medically recognized diagnosis and the claimant failed to prove the latter manifested prior to the age of 18. *Slayton v. Dep't of Soc. & Health Servs.*, 159 Wash. App. 121, 126, 244 P.3d 997, 999 (2010).

The Washington Court of Appeals has stated that mental disability is a factor to be considered in the voluntariness of a confession, but does not automatically establish involuntariness. *State v. Young*, 158 Wash. App. 707, 243 P.3d 172 (2010).

The Ninth Circuit held that a plaintiff could show that the Secretary of Washington’s DSHS violated the ADA by not allowing the individual to receive services in a community-based, rather than nursing home, setting. *Townsend v. Quasim*, 328 F.3d 511 (9th Cir. 2003).

A Spokane police officer was sentenced, and a settlement was reached that included budgeting for training on police interaction with mentally ill detainees after a man with IDD died due to excessive force during an arrest. *United States v. Thompson*, No. CR-09-88-FVS, 2013 U.S. Dist. LEXIS 205010 (E.D. Wash. Mar. 11, 2013).

Statutory Review

In addition to reviewing the academic law journals and the court opinions relevant to Individuals with IDD and the Criminal Justice System, we reviewed statutory law as described below.

Methods

This rapid review of statutory law was conducted using the LexisNexis and Reuters WestLaw search tools and databases. Intellectual and/or developmental disability was the primary search term, with “juvenile,” “institution,” “prison,” “diversion,” “specialized courts,” “parole,” and other phrases as secondary search terms. This review collected a wide but not definitive range of statutes throughout the federal system and all 50 states. Due to its short time scale, its objective was not to provide a definitive summary of statutory law throughout the United States but rather to collect a variety of illustrative

cases. It is important to note that statutes change regularly because of extensive state legislation, and thus this search cannot be considered comprehensive.

Findings

Some states have adopted specific statutes related to both individuals with ID and those with mental illness who become involved in the criminal justice system. Issues related to the definition of ID, as it pertains to capital punishment in states that continue to permit it, as well as other sentencing guidelines, capacity to stand trial, and support during trial, are also commonly addressed.¹⁵¹ However, other guidelines or rules are outlined in court opinions from either state or federal courts and have not yet been codified in state statutes. Because definitions of impairments, ages of accountability, and specific court practices can vary even within a state and are subject to change, it is challenging to provide an accurate and comprehensive summary of all state statutes, case opinions, and practices.

Each state has unique definitions of relevant criminal justice terminology, application of state law and state court decisions, and statutory language that often changes during legislative sessions. Therefore, specific state statutes that apply to individuals with IDD who are involved in the criminal justice system are not discussed in this paper. However, our team has developed a searchable database of relevant statutes, which is available upon request to the authors. When DDC identifies a focus of advocacy efforts, the database may be a valuable resource for specific examples of state-level efforts that could inform systems change efforts in Washington State.

Section 4: Evidence Review

In this rapid evidence review, we aimed to identify effective practices, strategies, and programs that reduce the number of people with IDD living in restrictive (carceral) settings, within Washington and nationally. We investigated practices, strategies, and programs across the six intercepts identified in the adapted Sequential Intercept Model (SIM) discussed earlier.

In this rapid review, we completed two tasks:

1. A summarization of reviews written before the year 2020.
2. A scoping review of research literature written since the year 2020.

Summarizing Previous Reviews

As we prepared to conduct our evidence review, we noted that several high-quality reviews had been published that reviewed publications before the year 2020. These review articles were published between 2022 and 2024 and included articles from 2007 to 2023. See the list of review articles in Appendix A. Rather than reproducing their work, we chose to summarize the findings of those reviews and begin our scoping review from 2020 onward.

Methods

For each review article before 2020, we assessed the primary studies included within each review. For each review article, we determined whether the articles cited in the reviews met our predefined criteria. Specifically, we evaluated whether the original studies included in the reviews: (1) Addressed the key research questions of this scoping review regarding programs, strategies, or policies to reduce incarceration among individuals with IDD, (2) included individuals at one or more intercepts identified in Shea (2022),¹⁸ (3) were published in peer-reviewed journals, and (4) were academic in nature, rather than legal/law or trade publications. Articles meeting these criteria were recorded in a table organized by intercept. Articles were excluded if avoidance of capital punishment for people with IDD was the primary topic. We developed a table that noted the original article's author(s), the review article from which the original article was identified, and a short summary of the intervention(s) described in the original article.

The studies identified from previous reviews were analyzed using Excel. Counts and percentages were calculated to quantify the number of studies that identified policies, practices, and strategies within each of the intercepts. Studies' policies, practices, and strategies could relate to multiple intercepts, although the vast majority only related to a single intercept. The brief summaries were reviewed and assigned themes using a rapid

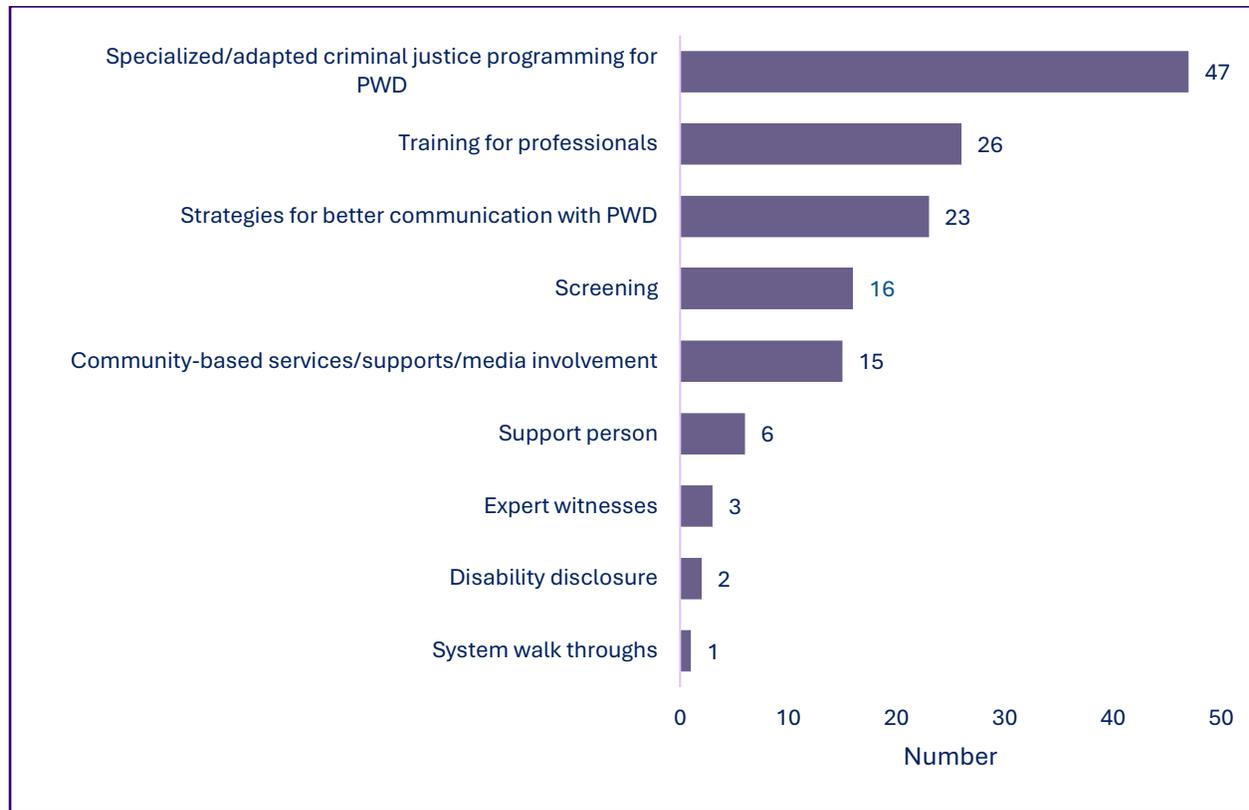
inductive process, and then aggregated to identify the most common types of policies, practices, and strategies across the intercepts.

Results

Theme: Programs, practices, or strategies identified from previous reviews

Nine broad themes were identified from 115 studies included in the previous reviews. Most studies focused on a single theme, while others explored two or more themes. The theme with the greatest number of studies associated with it was “specialized/adapted criminal justice programming for PWD,” with 47 studies relating to the theme. This was followed by “training for professionals” (n=26) and “strategies for better communication with people with disabilities” (n=23).

Figure 2. Themes of programs, practices, or strategies identified from previous reviews



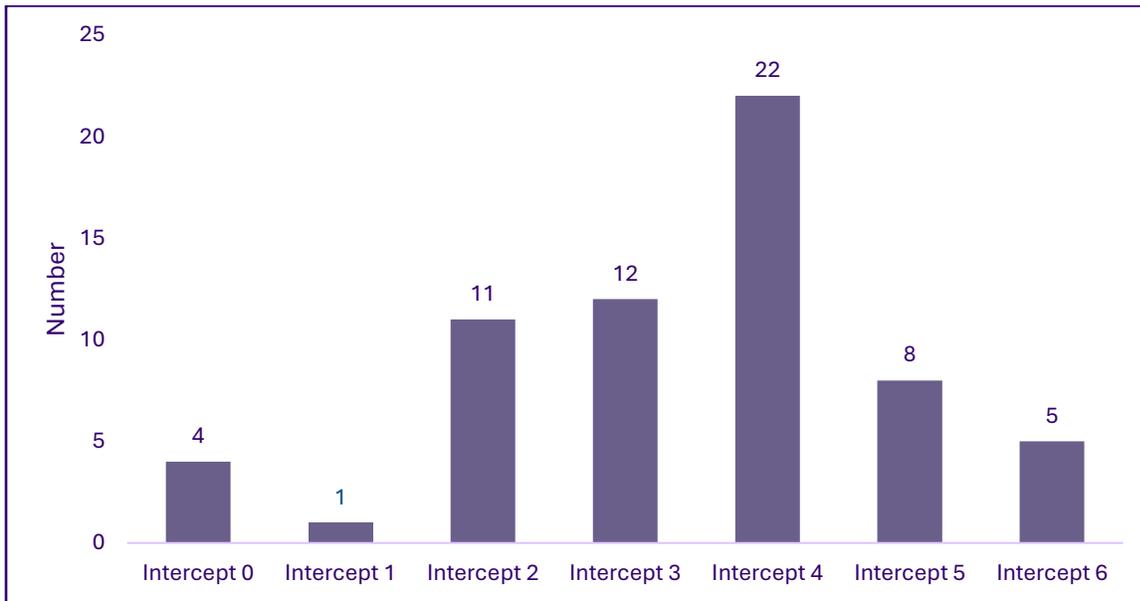
N=115

Studies may have also related to another theme or to more than one intercept.

Theme: Specialized/adapted criminal justice programming for people with disabilities

Sixty-three studies focused on programs, practices, or strategies related to specialized or adapted criminal justice programming for people with disabilities. This was the theme with the largest number of studies. Overall, ‘specialized or adapted criminal justice programming for people with disabilities’ represented about 47% of all the studies. Four studies were part of intercept 0, one study was part of intercept 1, 11 studies were part of intercept 2, 12 studies were part of intercept 3, 22 were part of intercept 4, eight were part of intercept 5, and five were part of intercept 6. There was significant diversity in the types of programming developed or adapted for people with IDD.

Figure 3. Number of studies identified from previous reviews that related to the ‘specialized/adapted criminal justice programming for people with disabilities’ theme, by intercept



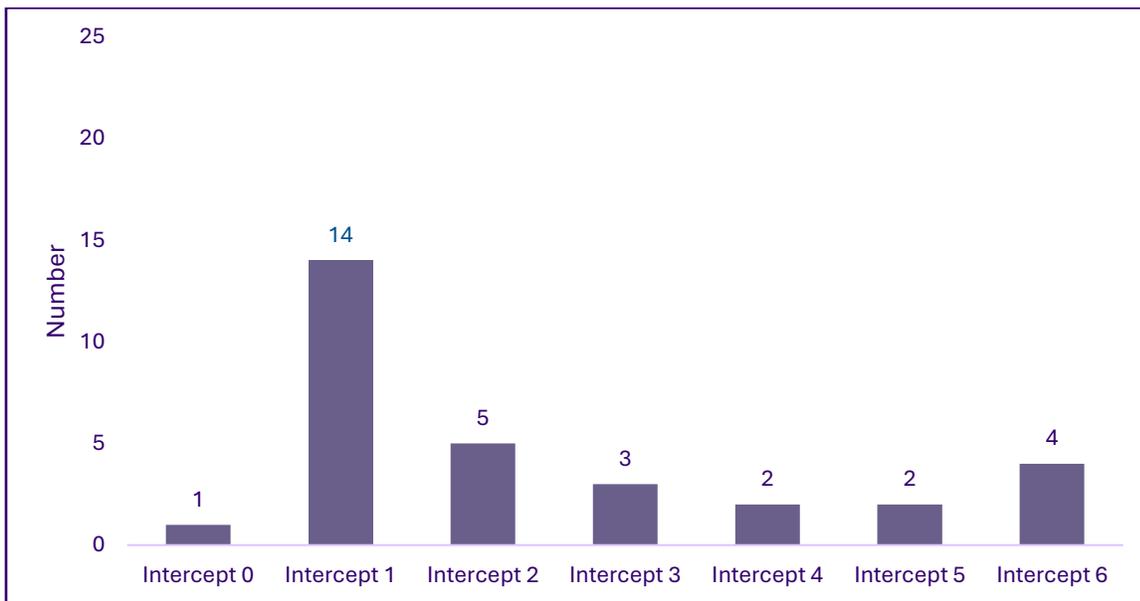
N=63

Studies may also be related to another theme or to more than one intercept.

Theme: Training for professionals

Thirty-one studies focus on programs, practices, or strategies related to training professionals. Overall, ‘training for professionals’ accounts for about 23% of all the studies. One study is part of intercept 0, 14 are part of intercept 1, five are part of intercept 2, three are part of intercept 3, two are part of intercept 4, two are part of intercept 5, and four are part of intercept 6. The studies evaluating various types of training and the results from needs assessments highlight the demand and interest for more training among professionals working in criminal justice.

Figure 4. Number of studies identified from previous reviews that related to the ‘training for professionals’ theme, by intercept



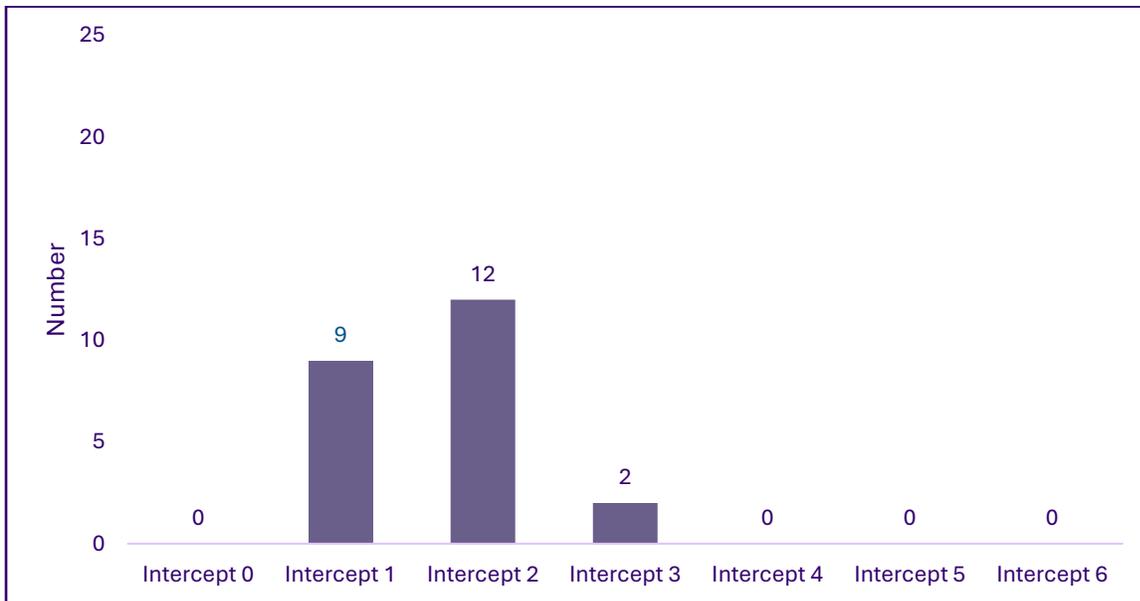
N=31

Studies may have also related to another theme or to more than one intercept.

Theme: Strategies for better communication with people with disabilities

Twenty-three studies focused on programs, practices, or strategies aimed at improving communication with people with disabilities. Overall, ‘strategies for better communication with people with disabilities’ made up about 17% of all the studies. Of these, nine were part of intercept 1, 12 were part of intercept 2, and two were part of intercept 3. These strategies included the use of “widget symbols,” easy-read texts, and sketches; interview techniques; strategies for communicating with people with IDD; and courtroom practices.

Figure 5. Number of studies identified from previous reviews that related to the ‘strategies for better communication with people with disabilities’ theme, by intercept



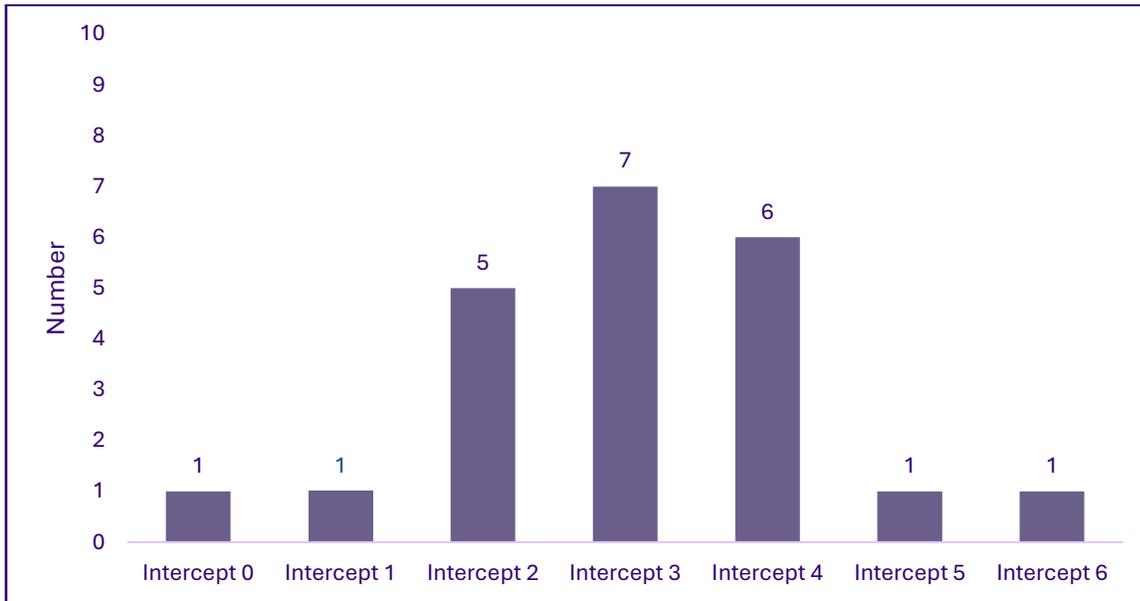
N=23

Studies may have also related to another theme or to more than one intercept.

Theme: Screening

Twenty-two studies focused on programs, practices, or strategies related to screening. Overall, ‘screening’ accounted for about 16% of all the studies. Most were related to intercept 2 (n=5), intercept 3 (n=7), and intercept 4 (n=6). Each of these accounted for 4% or 5% of all the studies. Screening for IDD is a challenge in criminal justice settings, and there is still work to do to figure out effective approaches.

Figure 6. Number of studies identified from previous reviews that related to the ‘screening’ theme, by intercept



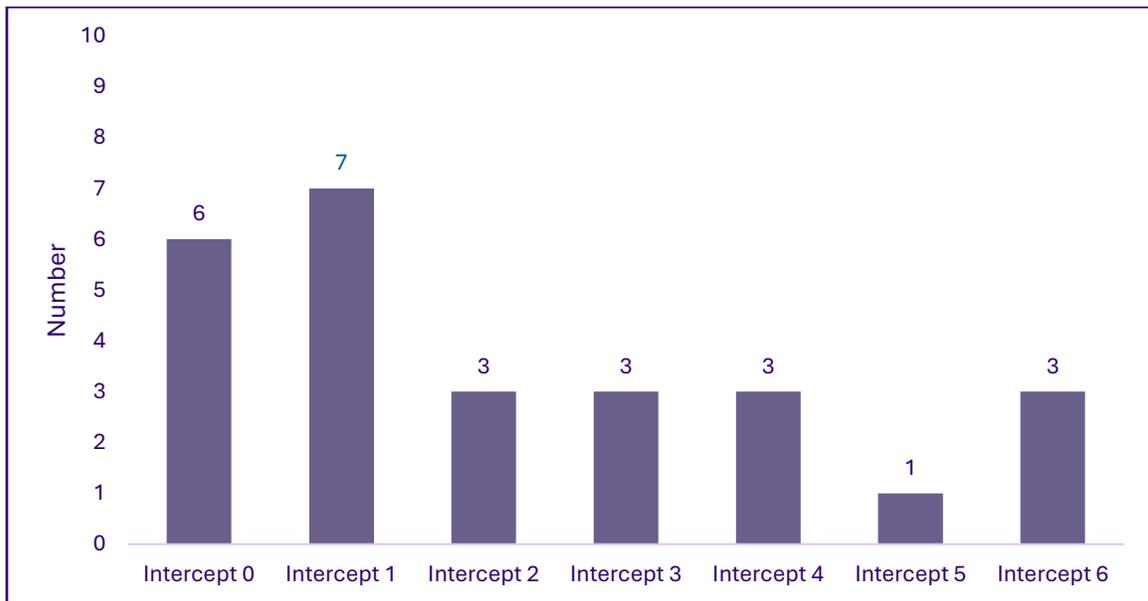
N=22

Studies may have also related to another theme or to more than one intercept.

Theme: Community-based services/supports/media involvement

Twenty-six studies focused on programs, practices, or strategies related to community-based services/supports/media involvement. Overall, ‘community-based services/supports/media involvement’ accounted for about 19% of all the studies. Of these, six were part of intercept 0, seven were part of intercept 1, three were part of intercept 2, three were part of intercept 3, four were part of intercept 4, one was part of intercept 5, and three were part of intercept 6. The strategies include educational or vocational programming, communications with the media, interactions with emergency services, and support services such as “wraparound” services.

Figure 7. Number of studies identified from previous reviews that related to the ‘community-based services/supports/media involvement’ theme, by intercept



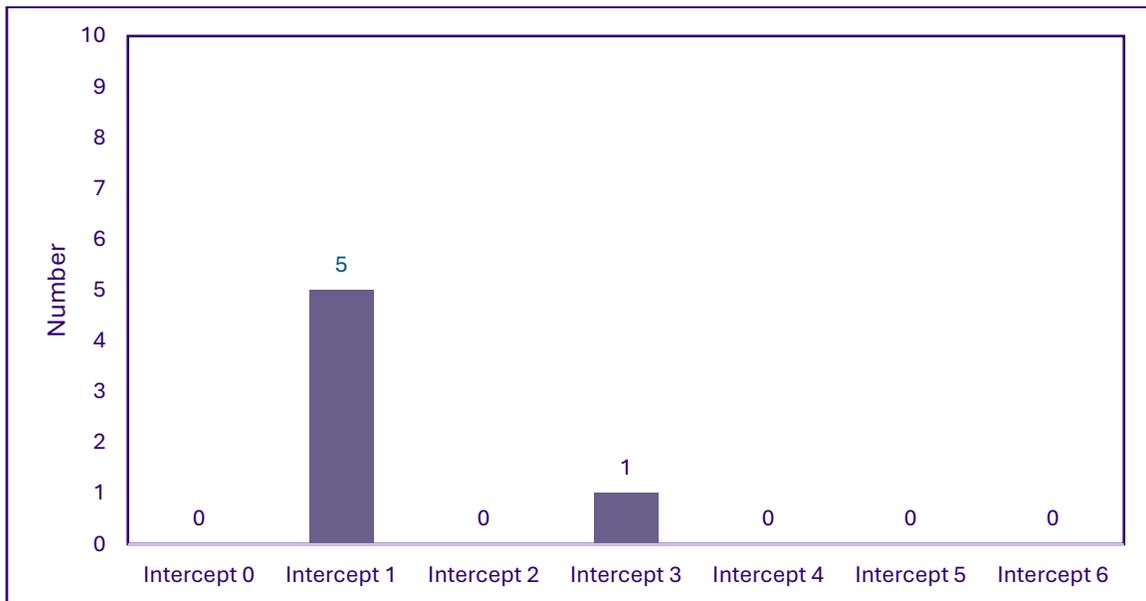
N=26

Studies may also be related to another theme or to more than one intercept.

Theme: Support person

Six studies focused on programs, practices, or strategies related to support persons. Overall, the ‘support person’ category accounted for approximately 4% of all the studies. Of these, five were part of intercept one, and one was part of intercept three. Several of these studies related specifically to the use of a support person during post-arrest police interviews.

Figure 8. Number of studies identified from previous reviews that related to the ‘support person’ theme, by intercept



N=6

Studies may also be related to another theme or to more than one intercept.

Theme: Expert witnesses

Three studies’ program, practice, or strategy was related to expert witnesses. Overall, the ‘expert witnesses’ category accounted for about 2% of all the studies. One study was part of intercept 2, and two studies were part of intercept 3.

Theme: Disability disclosure

Two studies focused on a program, practice, or strategy related to the disclosure of disability. Both were part of intercept 3, and both related to informing juries about witnesses’ disability. Overall, ‘disability disclosure accounted for about 1% of all the studies.

Theme: System Walkthroughs

One study's program, practice, or strategy related to system walkthroughs. Overall, system walkthroughs accounted for about 1% of all the studies. The study was part of intercept 2 and related to the custody process.

Scoping Review

Building up on the existing literature reviews, we conducted a rapid scoping review to describe the research available after the year 2020. The purpose of this rapid scoping review was to describe the research available on interventions relating to people with IDD and the criminal justice system, as defined by the modified revised SIM. This rapid-scoping review employed a pragmatic approach, keeping the Washington State DD Council's needs in mind to ensure the results were applicable and usable.

Methods

We collaborated with two subject librarians (authors Jewel and Keller) to develop the search strategy for this review. With their assistance, we developed a comprehensive search strategy seeking to identify all relevant research conducted on our topic.

Sources of Evidence

We conducted a systematic search of nine research databases.

- PubMed
- CINAHL Complete (EBSCOhost)
- PsycINFO (EBSCOhost)
- Web of Science Core Collection – SCI-EXPANDED, SSCI, AHCI, ESCI
- Sociological Abstracts (ProQuest)
- Social Services Abstracts (ProQuest)
- PAIS Index (ProQuest)
- Criminal Justice Abstracts (EBSCOhost)
- Policy Commons

Searches were conducted on August 9th, 2024. For each database, we searched across two broad concepts: (1) People with ID, and (2) Criminal Justice System. We included both subject headings and free-text terms. The complete list of search strings and terms is available in Appendix A. We located 2,621 articles before de-duplication. Abstracts were uploaded to Covidence, which removed 1,266 duplicates.¹⁵² Another 6 duplicates were removed manually for a screening sample of 355.

Eligibility Criteria for Abstract Screening

Abstracts were screened for inclusion in a full-text review. Eligibility criteria are described in Table 1. Based on these criteria, an additional 1,002 articles were excluded.

Table 1. Inclusion and exclusion criteria

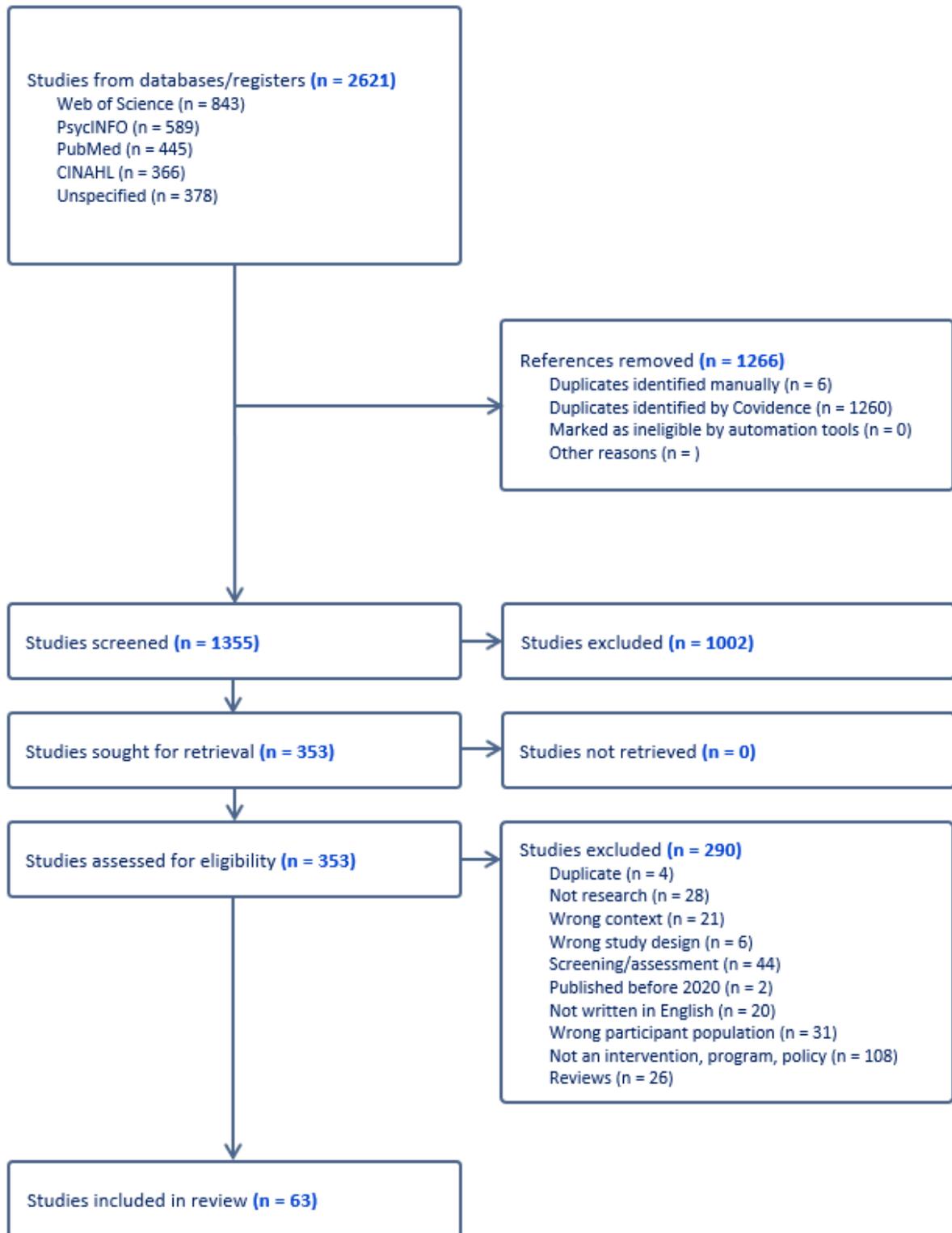
Criteria	Inclusion	Exclusion
Population	<ul style="list-style-type: none"> • Participants with IDD (adult or juvenile) suspected, accused or convicted of crime. • Entities and their agents that interact with people with IDD (e.g., a training program for police that provides strategies for interacting with people with IDD). • Involved in any criminal justice system (i.e., police, courts, adult corrections or juvenile justice, probation, community corrections). 	<ul style="list-style-type: none"> • Participants with other disabilities, including cognitive disabilities (TBI, ADHD, learning disabilities, etc.), but not IDD. • Victims of crime or criminal activity. • Non-criminal justice system settings. • Programs, practices, or initiatives that include people with IDD but do not report results for them separately from those without IDD.
Intervention / Exposure	<ul style="list-style-type: none"> • Any intervention, program, practice, strategy, procedure, or policy. 	<ul style="list-style-type: none"> • Non-interventional. • Prevalence. • Demographic.
Comparator / Context	<ul style="list-style-type: none"> • Transinstitutionalization. • Intercept 0: Community services. • Intercept 1: Law enforcement. • Intercept 2: Initial detentions/court hearings. • Intercept 3: Courts. • Intercept 4: Prisons/jails/confinement. • Intercept 5: Re-entry to society. • Intercept 6: Community corrections. 	<ul style="list-style-type: none"> • Programs that do not relate directly to the justice system.
Outcome	<ul style="list-style-type: none"> • Any outcome. 	
Study Characteristics	<ul style="list-style-type: none"> • Qualitative, quantitative, single subject, mixed methods, experimental and observational, and review/synthesis methodologies 	<ul style="list-style-type: none"> • Opinion piece. • News reports. • Policy briefs or recommendations.

Criteria	Inclusion	Exclusion
Other	<ul style="list-style-type: none"> English language publications. Articles published between January, 2020-present. 	<ul style="list-style-type: none"> Non-English language publications. Articles published before January, 2020.

Full-Text Eligibility Review

All 353 articles were downloaded and screened for eligibility to be included in the scoping review. An additional 290 articles were excluded for the following reasons: duplicate (n=4), not research (n=28), wrong context (n=21), wrong study design (n=6), screening/assessment (n=44), published before 2020 (n=2), not written in English (n=20), wrong participant population (n=31), not an intervention, program, or policy (n=108), review paper (n=26). This resulted in 63 articles eligible for inclusion in the scoping review. The PRISMA (Preferred Reporting Items for Systematic reviews and Meta-Analyses) flow chart in Figure 9 shows the details of this process.

Figure 9. PRISMA Flow Chart



Data Extraction

We used the Covidence settings detailed in Table 2. Because this was a rapid review, a single coder completed all data extraction.

Table 2. Covidence settings

Setting	Selection
Review type	Scoping review
Question type	Therapy (intervention/treatment)
Area of research	Medical and health science
Reviewers required for screen	1
Reviewers required for full text review	1
Reviewers required for data extraction	1

A custom data extraction table was created in Covidence to meet the study's specific needs. The extraction fields are listed in Table 3. Notable aspects of the data extraction table include geography, the population receiving the intervention, the type of IDD that was the focus of the study, the type of crime, intercepts of the adapted SIM, effectiveness/efficacy, and potential utility for the DDC.

Table 3. Extraction table

Category	Choices
Title	<ul style="list-style-type: none">• Open-ended
Authors	<ul style="list-style-type: none">• Open-ended
Country in which the study was conducted	<ul style="list-style-type: none">• United States• UK• Canada• Australia• Other• Specify_____
If United States: Specify 'national' or list state abbreviation(s) for where study was conducted.	<ul style="list-style-type: none">• Open-ended
Type of study (pick all that apply).	<ul style="list-style-type: none">• Observational/descriptive• Experimental• Quantitative• Qualitative• Mixed methods• Review/synthesis• Other• Specify_____

Category	Choices
Population(s) receiving the intervention (check all that apply).	<ul style="list-style-type: none"> • People with IDD • Justice system entity or agents of a justice system • General population/community-based entity
Type of IDD the study focused on.	<ul style="list-style-type: none"> • Study did not focus on specific type(s) of IDD. • At least one type of IDD was the focus of the study.
If at least one type of IDD was the focus of the study, select the type(s) the study focused on	<ul style="list-style-type: none"> • Autism • FASD • Other • Specify _____
Racial/ethnic minority	<ul style="list-style-type: none"> • Specify: _____
Rural	<ul style="list-style-type: none"> • Specify: _____
Other historically marginalized community	<ul style="list-style-type: none"> • Specify: _____
Type of crime that was a focus of the study.	<ul style="list-style-type: none"> • Type of crime not specified • Arson • Sexual violence • Other type of violence • Terrorism • Other • Specify _____

Category	Choices
Relevant intercept(s) from the adapted SIM (check all that apply)	<ul style="list-style-type: none"> • Intercept 0: Community services. • Specify:_____ • Intercept 1: Law enforcement. • Specify:_____ • Intercept 2a: Initial detentions. • Specify:_____ • Intercept 2b: Court hearings. • Specify:_____ • Intercept 3: Courts. • Specify:_____ • Intercept 4a: Prisons. • Specify:_____ • Intercept 4b: Jails. • Specify:_____ • Intercept 4c: Confinement (including transinstitutionalization and forensic hospitals) • Specify:_____ • Intercept 5: Re-entry to society. • Specify:_____ • Intercept 6: Community corrections. • Specify:_____
Type of intervention	<ul style="list-style-type: none"> • Policy/procedure. • Specify:_____ • Practice/strategy. • Specify:_____ • Program. • Specify:_____ • Other type of initiative/intervention. • Specify:_____
Authors' report on effectiveness/efficacy.	<ul style="list-style-type: none"> • Authors did not report effectiveness/efficacy. • Not effective/not efficacious. • Effective/efficacious.
If authors report the intervention was effective/efficacious, specify.	<ul style="list-style-type: none"> • Open-ended
Relevant authors' recommendations:	<ul style="list-style-type: none"> • Open-ended
Promising policy/practice/initiative DDC may want to examine.	<ul style="list-style-type: none"> • Yes

Category	Choices
Specify why DDC may want to examine the policy/practice/initiative.	<ul style="list-style-type: none"> <li data-bbox="824 241 1047 268">• Open-ended

Because this study did not limit itself to U.S. studies, both country and state (for U.S.-based studies) were noted.

Several aspects of the population receiving the intervention were recorded, including whether the intervention was delivered to people with IDD, a justice system entity, or agents of a justice system, or the general population. If a specific type of IDD was the focus of the study, the type was recorded.

Likewise, the type of crime was recorded. Information about which intercepts from the adapted SIM were recorded. The extraction table was set up in a way to facilitate the recording of components within several of the intercepts. For example, in the extraction table, intercept 2 (initial detention and court hearings) was separated into two fields: Intercept 2a: Initial detentions and Intercept 2b: Court hearings.

Effectiveness/efficacy was judged informally, based on statistical significance and/or the general tone of the findings (not all studies included significance tests). Some studies had multiple components, some of which may have been effective, while others were not. When some parts were effective, the study was deemed effective.

A checkbox was provided to allow the reviewer to indicate whether they felt the study might be a promising practice that DDC should examine, and if so, why.

Data from the completed Covidence extraction table were exported as .csv files and analyzed with MS Excel. Counts and percentages were calculated.

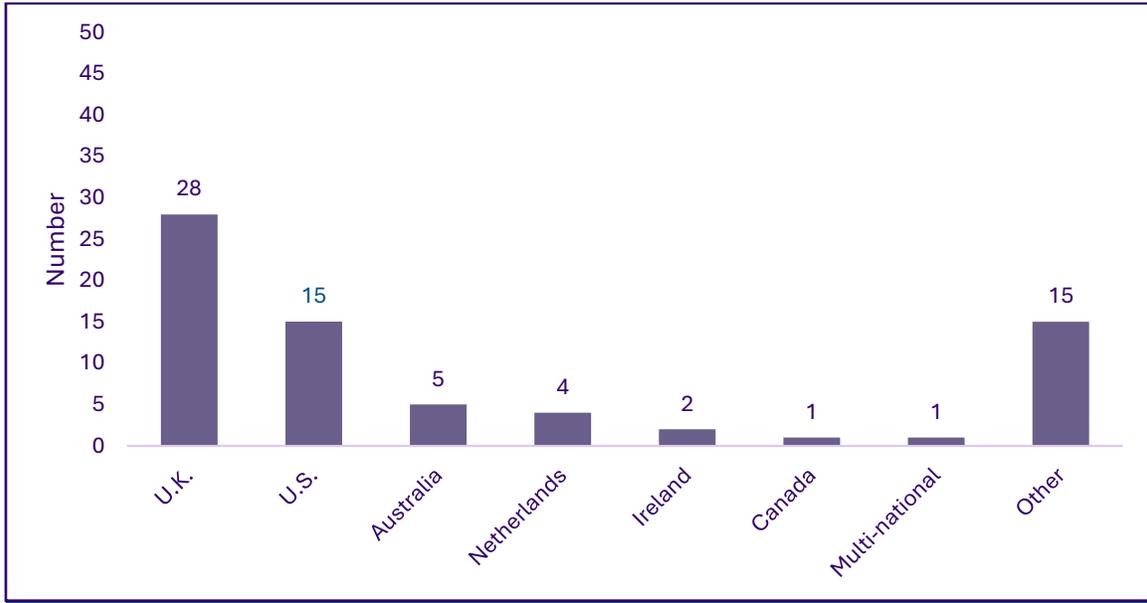
Results

Description of data extracted from studies via Covidence

Data were extracted from 63 papers using Covidence. In the following section, we summarize the findings. Additional detail can be found in Appendix D: Basic Information About Scoping Review Articles.

Over half of the studies were conducted in the UK (n=28). Fifteen studies were conducted in the United States. Of United States-based studies, the greatest number (n=4) took place in Florida.

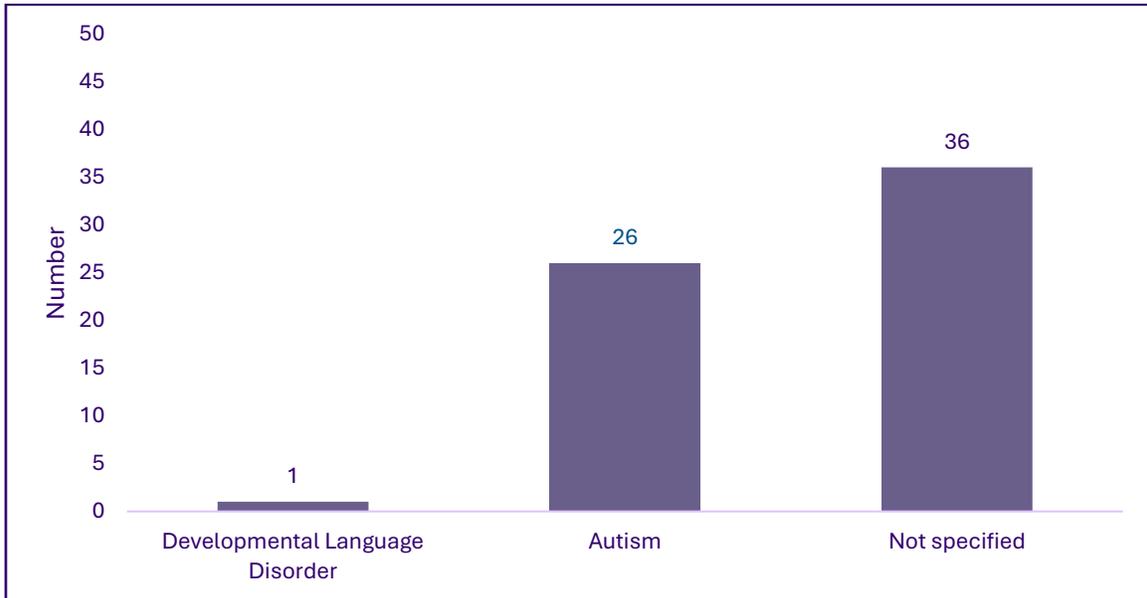
Figure 10. Number of studies in Covidence review, by country



n=63

Most studies did not relate to a specific type of IDD (n=36), although 26 studies focused on autism.

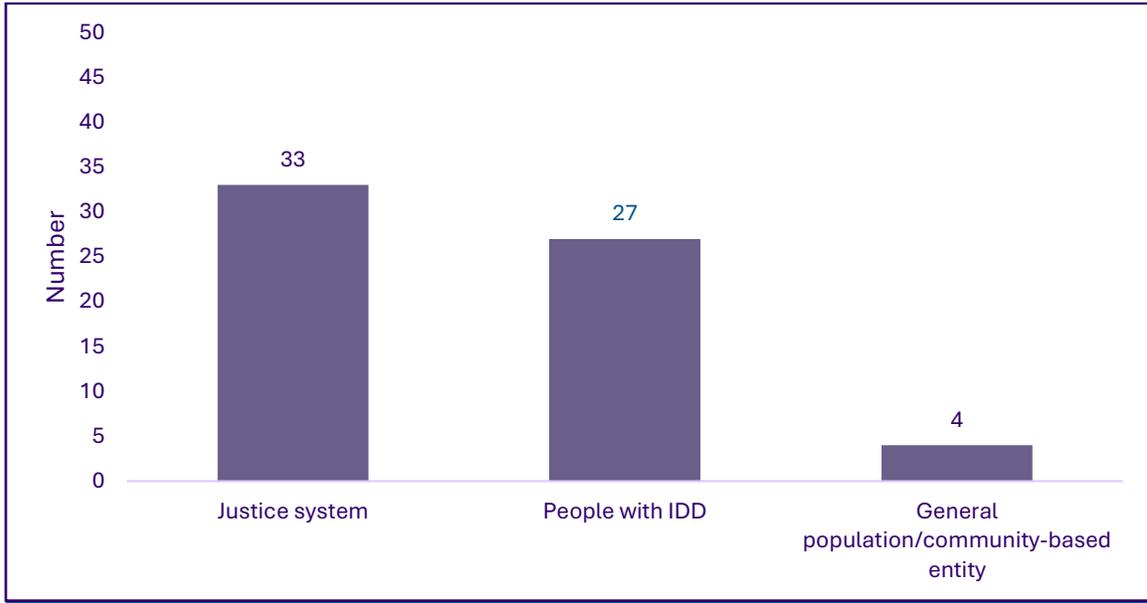
Figure 11. Number of studies in Covidence review, by type of IDD



n=63

Thirty-three of the studies' interventions related to the criminal justice system, while 27 related to people with IDD.

Figure 12. Number of studies in Covidence review, by population receiving the intervention

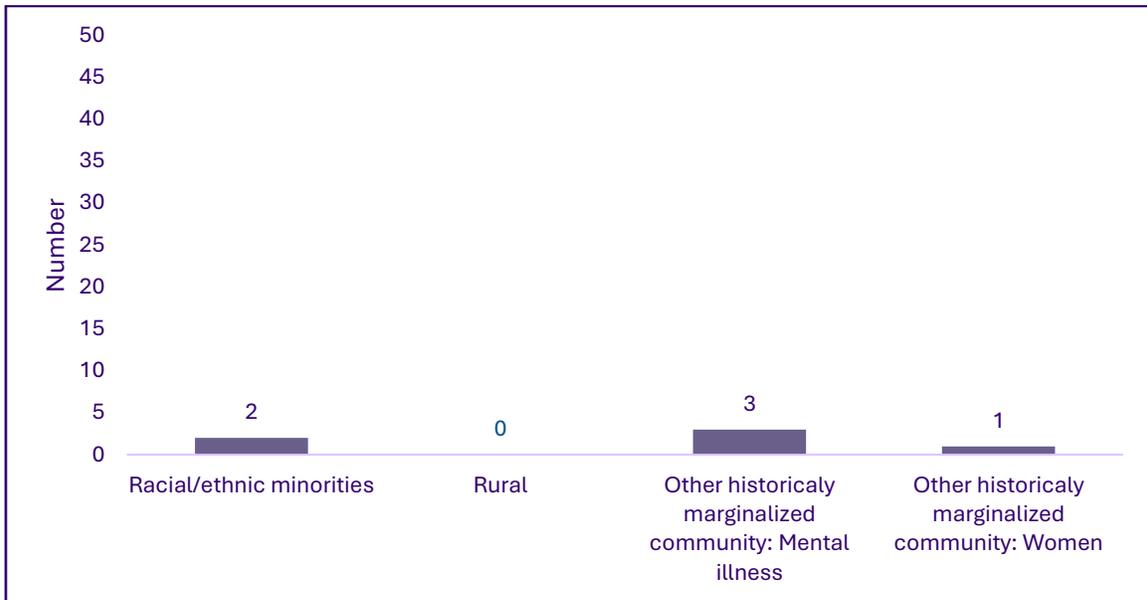


n=63

Studies may have included more than one population.

Few of the studies overall were focused on marginalized communities: two studies were specifically about racial/ethnic minorities, none were about rural populations, three involved people with co-occurring mental illness, and one was about women.

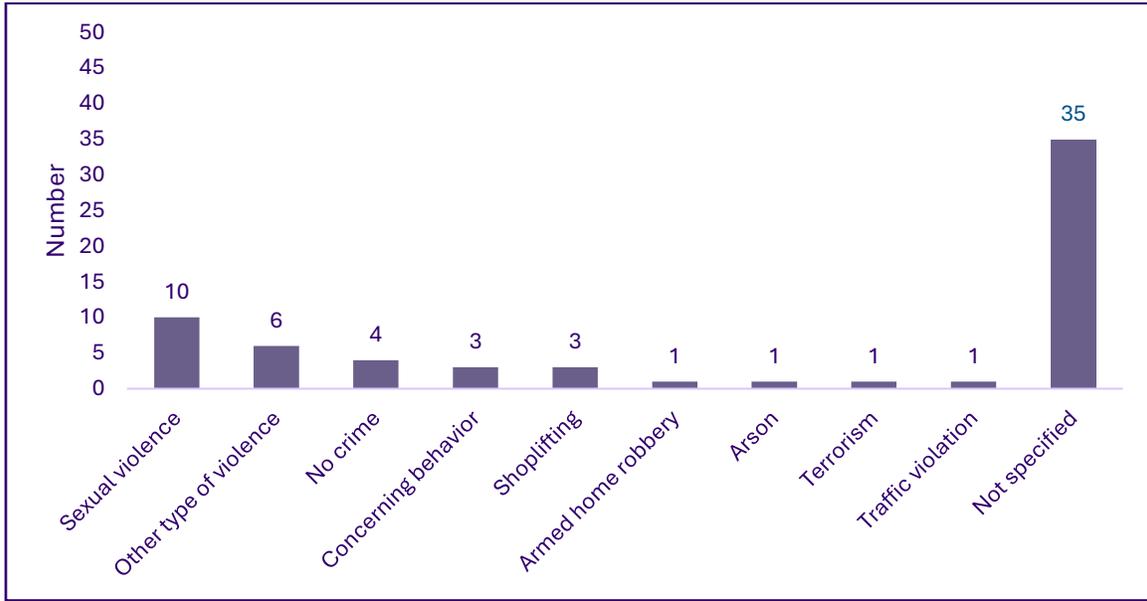
Figure 13. Number of studies in Covidence review that related to racial/ethnic minorities, rural populations, and other historically marginalized communities



n=6

In over half of the studies, specific types of crime were not mentioned. Of studies that did focus on a particular type of crime, most related to sexual violence (n=10) or other types of violence (n=6).

Figure 14. Number of studies in Covidence review, by type of crime

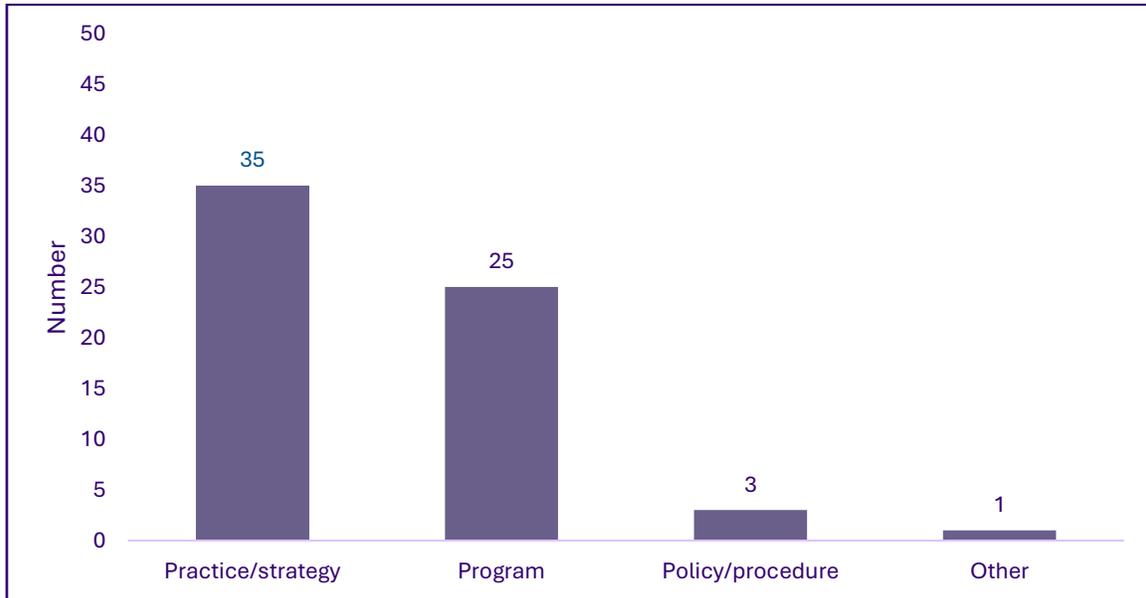


n=63

Studies may have related to more than one type of crime. “Concerning behavior” encompasses a person appearing distressed, seeming threatening, and/or behaving in an unusual manner.

Most interventions described in the studies were a type of practice/strategy (n=35), with 25 studies describing programs and three describing policies.

Figure 15. Number of studies in Covidence review, by type of intervention

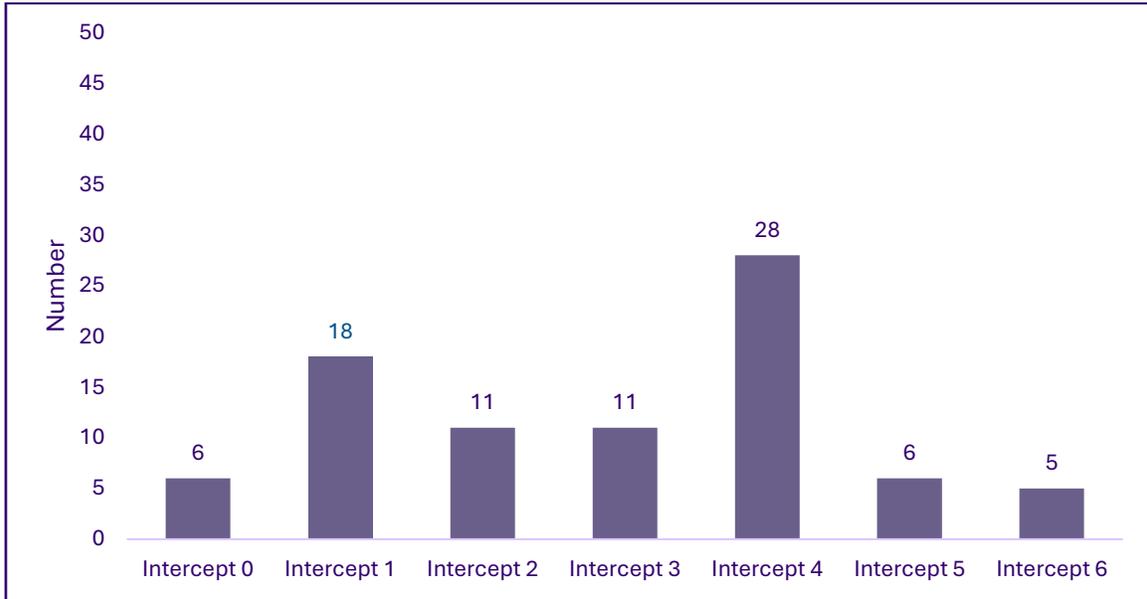


n=63

Studies may have included more than one type of intervention.

The greatest number of studies related to Intercept 4 (n=28) and Intercept 1 (police) (n=18). Within Intercept 4, most studies related to confinement (Intercept 4c, n=20), followed by prisons (Intercept 4a, n=7) and jails (Intercept 4b, n=1).

Figure 16. Number of studies in Covidence review, by intercept

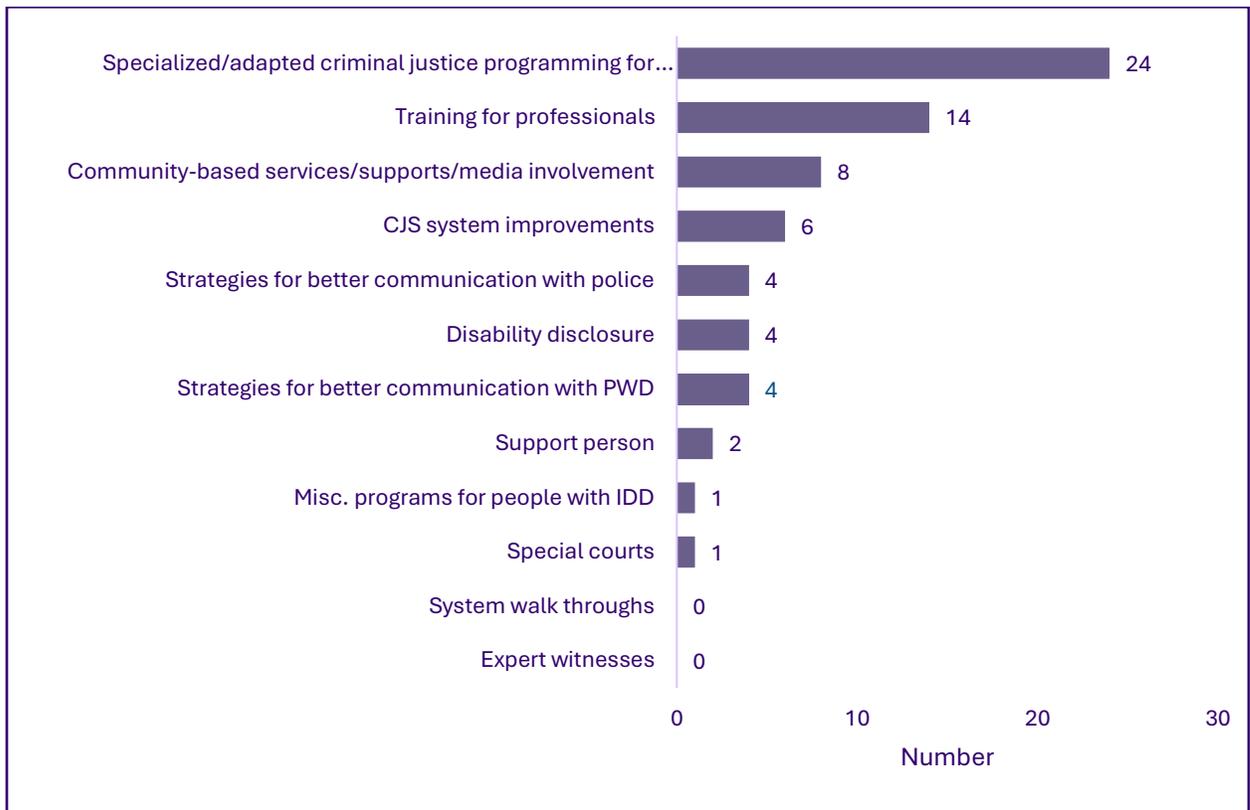


n=63

Studies may have related to more than one intercept. Subcomponents of intercepts have been aggregated (e.g., jails (Intercept 2a) and prisons (Intercept 2b) are combined into Intercept 2).

Ten broad themes were identified from 63 studies included in the Covidence review (published between 2020 and August 9th, 2024). Most studies focused on a single theme, while others explored two or more themes. The theme with the greatest number of studies associated with it was “specialized/adapted criminal justice programming for PWD,” with 24 studies relating to the theme. This was followed by “training for professionals” (n=14) and “community-based services/supports/media involvement” (n=8). Two themes (system walkthroughs and expert witnesses) identified in the summary of review articles before 2020 did not appear in the Covidence review. Forty-five studies may be especially useful for DDC to review as part of future initiatives.

Figure 17. Themes of programs, practices, or strategies identified from Covidence review



N=63

Studies may have related to more than one theme or to more than one intercept.

Section 5: Interviews

Introduction

We interviewed professionals in state agencies and community organizations to understand their work and their organization's work, as it relates to people with intellectual and developmental disabilities (IDD) who connect with the criminal justice system. We asked them to consider both the adult and juvenile justice systems in their responses.

Methods

Interviewees were informed that these interviews were not part of a research study, but that the information they told us would be reported in a whitepaper written for the Washington State Developmental Disabilities Council (DDC), and that DDC would use this information, along with a legal and research review, to develop its 5-year state plan. All interviews were conducted by Zoom teleconference. Interviewees were asked if they would allow us to record and use automatic transcription. We informed them that we would summarize their comments but keep their names and roles anonymous in the report. Interviews were scheduled for one hour and generally took the entire time.

Interviewees

We conducted interviews with people from the following organizations.

- Department of Corrections (DOC) (N=10)
- Developmental Disabilities Agency (DDA) (N=3)
- Aging and Long-Term Support Agency (AL TSA) (N=2)
- Disability Rights Washington (DRW)
- Housing Navigators
- Sound Health
- Carney Gillespie Law Firm
- Department of Children, Youth, and Families (DCYF), Echo Glen School

In the case of DOC, we met with several people from the agency on Zoom, and then they responded to the questions in writing. In some cases, interviewees needed to gain authorization from their supervisors to participate in the interviews.

Interview Questions

We asked each interviewee the following questions. Based on their response, we asked follow-up questions that were not on this list.

1. Could you describe your role at your agency/organization?
2. How does your agency/organization address the needs of people with IDD who interact with the criminal justice system in Washington?
3. What are the gaps in services and supports that you see in the State?
4. What are possible interagency or inter-organizational collaborations that may improve service delivery?
5. If you had your way, what program(s), policies, or laws would you prioritize for development or implementation in the next few years to address the needs of people with IDD within the criminal justice system?
6. What funding would be needed to make these changes happen?

Analysis

Given the rapid nature of this review, we leveraged the use of AI for analyzing the interviews. Although a relatively new approach to qualitative analysis, this use of AI has demonstrated comparability in some studies and may be especially appropriate for rapid reviews.^{153,154} An interviewer who participated in all interviews asked Microsoft Copilot Pro to summarize each interview and then to summarize all interviews together. Based on these summarizations, additional questions were asked of Copilot to clarify or to elicit information that the interviewer noted was missing. Responses provided by Copilot were then summarized and condensed to produce the following findings

Findings

Current Programs in Washington State Relevant to People with IDD

Interviewees identified two programs relevant to people with IDD that may be of interest to DDC:

1. [Civil Transitions Program](#): This program supports individuals found not competent to stand trial and not restorable, providing wraparound services and supportive housing. It aims to connect individuals with assessments for DDA or ALTA services, allowing them to live independently in the community. The program prioritizes immediate housing needs and works on pre-release connections and discharge planning to ensure successful transitions.
2. [Medicaid Reentry Initiative](#): Also known as the Reentry Demonstration Initiative, is a new program under the Medicaid Transformation Project (MTP) in Washington

State. This initiative aims to provide essential pre-release services for individuals leaving incarceration to ensure their health and successful reentry into the community. It provides case management, medications for alcohol and opioid use disorder, 30-day supply of medications at release, lab and radiology services during pre-release period, and support from community health workers.

3. [The Inclusionary Practices Technical Assistance Network](#): IPTN provides professional development and technical assistance to improve inclusion rates in Washington schools. It has an additional focus on black students with disabilities and students with IDD.

Recommendations for Improvements in Programs, Policy, and Practice in Washington State

The interviewees identified the following recommendations for improvements in programs, policy, and practice in Washington State:

- *Lack of Comprehensive Services and Support*: There is a significant gap in comprehensive services and support for individuals with IDD, including housing, healthcare, mental health services, and daily living support. The need for wraparound services that address all aspects of an individual's life is emphasized.
- *Inadequate Funding*: Insufficient funding for schools, community-based services, and support programs is a major barrier. Increased funding is needed to provide adequate support for high-needs students and individuals with IDD in the community and correctional systems.
- *Early Identification and Intervention*: Early identification and connection to resources are crucial to prevent individuals from falling through the cracks and ending up in the criminal justice system. Schools and community providers need to be equipped to identify and support individuals with IDD from an early age.
- *Transition and Reentry Support*: Transitioning back to the community from correctional facilities is challenging. There is a need for better transition planning, secured landing places in schools and communities, and ongoing support to prevent recidivism.
- *Stigma and Lack of Awareness*: Stigmatization of disability and lack of awareness about the needs and rights of individuals with IDD are significant barriers. Promoting disability pride and justice, and educating the community about disability, are essential.
- *Systemic Issues and Inconsistencies*: Systemic issues, such as poor record-keeping, lack of coordination between agencies, and inconsistencies in sentencing and service provision, need to be addressed. Better collaboration and streamlined processes are necessary to provide effective support.

- *Housing Barriers:* Finding suitable housing for individuals with IDD, especially those with criminal backgrounds, is a major challenge. Innovative housing solutions and better coordination with landlords are needed to address this barrier.
- *Training and Education for Providers:* There is a need for more training and education for public defenders, mental health providers, law enforcement, and other stakeholders on working with individuals with IDD. Continuing legal education (CLE) and other training programs can improve knowledge and practices.

They also identified several specific systemic issues and inconsistencies in services for individuals with intellectual and developmental disabilities (IDD) that are significant barriers that affect their access to care, quality of life, and interactions with the criminal justice system.

1. *Poor Record-Keeping and Data Management:* Inadequate record-keeping, especially in institutions like Western State Hospital, leads to repeated and unnecessary evaluations and restorations. This inefficiency causes harm without benefit and highlights the need for digitized records to improve the efficiency and effectiveness of competency evaluations
2. *Lack of Coordination Between Agencies:* There is often poor communication and collaboration between different agencies, such as the Department of Corrections (DOC), Developmental Disabilities Administration (DDA), and Behavioral Health Administration (BHA). This lack of coordination results in fragmented services and support for individuals with IDD
3. *Inconsistent Sentencing and Service Provision:* Inconsistencies in sentencing across different counties lead to disparities in the length and type of sentences for similar offenses. This inconsistency affects the continuity of educational and support services for youth in juvenile facilities
4. *Barriers to Accessing Services:* Individuals with IDD often face barriers to accessing services due to systemic issues such as diagnostic overshadowing, where their behavioral health needs are discounted. Additionally, there are challenges in securing housing and community-based services due to criminal backgrounds and credit issues.

Housing barriers were also commonly discussed and underscored the complexity of housing barriers for individuals with IDD and the need for comprehensive, innovative solutions to address affordability, accessibility, systemic issues, and coordination of support services. Interviewees noted the following challenges:

1. *Affordability and Accessibility:* Interviewees highlighted the importance of reasonable accommodations and the need for case management to help individuals understand their rights and responsibilities. He also discussed the financial barriers and the need for innovative approaches to housing.

2. *Shortage of Suitable Housing:* Interviewees discussed the challenges in finding suitable housing for individuals with IDD, especially those with criminal backgrounds and credit issues. They emphasized the need for immediate housing solutions, such as motel stays, and long-term supportive housing.
3. *Systemic Barriers:* Interviewees mentioned the risk-averse system that limits innovative housing solutions and the challenges in securing housing for individuals with criminal histories.
4. *Coordination and Support Services:* Interviewees emphasized the need for better coordination between agencies and robust support services to ensure individuals with IDD can maintain stable housing.
5. *Financial Incentives:* Interviewees suggested financial incentives to expedite housing placements and the importance of having a good case manager and landlord liaison.
6. *Innovative Housing Models:* Interviewees advocated for permanent housing where individuals have leases in their names, giving them responsibility and ownership. He discussed the housing-first model versus models that require commitments to treatment or adherence to certain rules.
7. *Training and Education:* Interviewees highlighted the need for more training and education for housing providers and case managers to better support individuals with IDD.

Section 6: Conclusion

Based on our findings in this report and our experience working as researchers, collaborators, and advocates on topics related to criminal justice and people with IDD, we developed recommendations for both DDC-focused work and for broader systems change. These recommendations are meant as starting points for discussion by the DDC. The criminal justice system is complex, and there are many opportunities for improvement. In this report, we reviewed research and legal information and interviewed a small sample of stakeholders; however, we did not conduct a comprehensive needs analysis to identify the most significant opportunities for change. Hopefully, this report serves as a starting point for that work.

DDC-Focused Recommendations

- Advocating for change in the criminal justice system requires a thorough, sophisticated understanding of how it works. We recommend that the DDC supports learning sessions for DDC members on topics they are interested in knowing more about (e.g., policing, courts, reentry). These learning sessions could be led by national criminal justice experts and individuals from Washington State whose work is connected to the criminal justice system, bringing practical experience to the discussion with DDC members.
- If the DDC decides to support work addressing the criminal justice system and IDD in its 5-year plan, we recommend they consider funding a statewide sequential intercept model (SIM) mapping workshop. The SIM is described in more detail earlier in this report. These workshops bring together stakeholders from across the State to identify current practices, existing resources, opportunities for collaboration, and gaps in services. The results of the mapping process can guide the prioritization of future initiatives.
- The DDC elevates the voices of people with lived experience and ensures that they have a say in decision-making. Currently, the DDC and many other initiatives are missing the voices of people who have lived experience of criminal justice involvement and IDD. If the DDC includes criminal justice in its 5-year plan, we recommend that it consider how to recruit, support, and include people with IDD who have lived experience in the criminal justice system, either as members of the DDC or as part of a committee focused on improving criminal justice services for people with IDD.

Possible Opportunities for Systems Change Advocacy

As noted above, we did not conduct a formal needs analysis, so the following points should be considered as starting points for discussion and engagement by DDC. The DDC could consider these ideas and add their own as they learn more through a potential SIM mapping exercise or needs analysis.

Insights Based on the Legal Review

The legal review reported on the opinions of legal scholars and described current federal law that addresses individuals with IDD within the legal system. Based on these reviews, the following areas are areas to explore for advocacy in the legal system:

1. Therapeutic Jurisprudence (TJ) Principles:

- Integrate TJ principles across all legal systems to emphasize the well-being of individuals with IDD.
- Promote collaboration among fields like education, psychology, and medicine on topics related to criminal justice.

2. Increase Support for Specialized Courts:

- Expand and standardize specialized courts (juvenile, mental health, veteran's courts) to better serve individuals with IDD.
- Consider the development of specialized courts focused on cognitive disabilities broadly and IDD specifically.
- Ensure these courts are adequately funded and staffed with individuals who can support individuals with IDD who are unfamiliar with the legal process.

3. Improve ADA Training and Compliance:

- Implement comprehensive ADA training for prison and jail staff.
- Develop training programs for law enforcement on ADA compliance and interactions with individuals with IDD.

4. Strengthen Enforcement of IDEA Rights:

- Ensure robust enforcement of IDEA rights to reduce the school-to-prison pipeline.
- Advocate for better access to special education in juvenile justice settings.

5. *Reform Sentencing Guidelines:*

- Develop sentencing guidelines that consider the needs and circumstances of individuals with IDD.
- Ensure fair treatment and appropriate accommodations in sentencing.

6. *Enhance Police Training and Interaction Protocols:*

- Standardize police training programs to include identification, de-escalation, and alternatives to lethal force.
- Promote better interaction protocols to reduce excessive force and wrongful arrests.

7. *Expand Diversion Programs:*

- Improve and expand diversion programs to offer alternatives to formal adjudication for adults and juveniles with IDD.
- Ensure these programs are accessible and effective in reducing recidivism.

Insights Based on the Evidence Review

The evidence review identified areas where research has been conducted that might guide action by DDC. We did not analyze the quality of the research, and we did not identify the specific practices that may be most effective, so these opportunities should be considered as a starting point. It is also important to recognize that numerous areas remain unexplored, as research has not been conducted on many important topics. The lack of research on a topic does not mean that it is not an important issue for the DDC to consider. Based on our review, research has been conducted in the following areas. The DDC could choose to investigate these areas as opportunities for systems change advocacy:

- *Specialized/adapted criminal justice programming for people with IDD*, such as adapted cognitive behavioral therapy (CBT), adapted social skills training, or adapted sex offender treatment.
- *Training for professionals*, including teaching police how to identify people with IDD and improve interactions with them, knowledge about mental health issues and resources, and effective approaches to de-escalation.
- *Criminal justice system improvements*, like implementing screening tools for identifying people with IDD, or improved cross-system collaboration between justice, health, and social services

- *Community-based support systems* that emphasize skill development and integration, such as multisystemic therapy, community reintegration programs, and behavioral interventions.
- *Legal system accommodations*, including simplified language, visual aids (such as Easy-to-Read Notices and modified police cautions), and enhanced communication support (including advocate services).
- *Integrated mental health services*, including cognitive-behavioral therapies for anger and harmful behavior, crisis intervention team training, neurofeedback, and liaison and diversion approaches.

Insights Based on the Interviews

We conducted interviews with a small group of individuals who work in state or local agencies. This sample is not comprehensive, and additional interviews should be conducted. Based on these interviews, we identified the following challenges that could be addressed by DDC:

1. *Lack of Comprehensive Services and Support*: There is a significant gap in comprehensive services and support for individuals with IDD, including housing, healthcare, mental health services, and daily living support. The need for wraparound services that address all aspects of an individual's life is emphasized.
2. *Inadequate Funding*: Insufficient funding for schools, community-based services, and support programs is a major barrier. Increased funding is needed to provide adequate support for high-needs students and individuals with IDD in the community and correctional systems.
3. *Early Identification and Intervention*: Early identification and connection to resources are crucial to prevent individuals from falling through the cracks and ending up in the criminal justice system. Schools and community providers need to be equipped to identify and support individuals with IDD from an early age.
4. *Transition and Reentry Support*: Transitioning back to the community from correctional facilities is challenging. There is a need for better transition planning, secured landing places in jobs, schools, and communities, and ongoing support to prevent recidivism.
5. *Stigma and Lack of Awareness*: Stigmatization of disability and lack of awareness about the needs and rights of individuals with IDD are significant barriers. Promoting disability pride and justice and educating the community about disability are essential.
6. *Systemic Issues and Inconsistencies*: Systemic issues, including poor record-keeping, inadequate coordination between agencies, and inconsistencies in

sentencing and service provision, require attention. Effective collaboration and streamlined processes are essential for providing high-quality support.

7. *Housing Barriers*: Finding suitable housing for individuals with IDD, especially those with criminal backgrounds, is a major challenge. Innovative housing solutions and better coordination with landlords are needed to address this barrier.
8. *Training and Education for Providers*: There is a need for more training and education for public defenders, mental health providers, law enforcement, and other stakeholders on working with individuals with IDD. Continuing legal education (CLE) and other training programs can improve knowledge and practices.

Targeted Opportunities for DDC Advocacy Consideration Based on the Authors' Experience

Reflecting on what we have learned and what we know about the challenges faced by people with IDD in Washington State, we also offer the following opportunities. These opportunities are based on our knowledge and experience and extend the findings from the legal review, scoping review, and interviews conducted for this report.

Intercept 0: Community Services

- Establish and fund alternative specialized response teams (similar to the social work and behavioral health professionals responding to events in the community) rather than, or in addition to, police.
- Advocate for funding in all three law schools for both academic courses regarding individuals with IDD and the criminal justice system, and Law Clinics for students interested in developing knowledge and skills for individuals with IDD.
- Law Clinics typically provide free legal assistance (law students supervised by law faculty or outside professionals) to individuals eligible for the clinics.
- Develop and offer continuing legal education (CLE) for attorneys regarding the impact of IDD on individuals involved with the criminal justice system.
- Address needs of children identified as eligible for special education services – i.e., ensure that their educational programs (early childhood and K-12) provide and they receive appropriate supports.
- Monitor that children who have behavioral challenges receive appropriate educational supports and services, and track disciplinary actions.

- Track and monitor the use of seclusion/restraint and/or involvement with police to identify how/if special education and discipline are “a pipeline” to involvement with the CJS.
- Advocate for increased parental supports through federal waivers (such as Children’s Intensive In-home Behavioral Support [CIIBS] Waiver) for infants/children who require intensive supports to ensure that they remain with their families and within the local school systems.
- Enhance the capacity of relevant additional state agencies (Behavioral Health, Division of Vocational Rehabilitation, Developmental Disabilities Administration, Department of Social and Health Services, Department of Children, Youth, and Families) to meet the needs of individuals with IDD across the lifespan.
- Address the needs of the long list of individuals identified as eligible for DDA services in Washington but who are not receiving services.
- Make educational materials available in an accessible format for juveniles and adults with IDD to understand societal expectations as well as their rights.
- Develop robust, supported decision-making skills education for juveniles and adults, and monitor the use of full guardianship and the role of professional guardians.

Intercept 1: Law Enforcement

- Training for state police on individuals with IDD and the application of appropriate accommodations (including both training and continuing education).

Intercept 2: Initial Detentions/Court Hearings

- Modify the court process from detention through initial hearings to address specific risks relevant to individuals with IDD (to ease stress, increase cooperation).
- Introduce a “third-party advocate” to support the individual with IDD – someone with experience working with IDD and the criminal justice system—who can educate the court, prosecutors, and defense attorneys.
- Allow the individual to visit the courtroom before the initial hearing with an appropriate adult, i.e., family and/or third-party advocate.

Intercept 3: Courts.

- Advocate for establishing a specialized court (along the lines of Veterans Court) that will hear cases involving individuals with IDD. Washington has numerous therapeutic courts throughout the state.

- Connect with individuals who may be valuable resources for DDC to collaborate on policy efforts related to judicial processes. The various “types” of courts and the locations are available at <https://www.courts.wa.gov/tc/intro.cfm>.

Intercept 4: Prisons/Jails/Confinement

- Ensure adequate protection to individuals with IDD in juvenile and adult criminal justice facilities.
- Provide appropriate services and supports that maximize the chance that individuals will not reenter the criminal justice system after release.
- Address the wide systemic issues for incarcerated individuals with IDD once they return to community—housing, employment, community, medical, etc.

Intercept 5: Re-entry to Society

- Support the development of a multidisciplinary team that works with individuals throughout their incarceration and intensifies as they approach release. This team may include, as appropriate, DDA, social workers, board-certified behavior analysts, occupational therapists, speech therapists, physical therapists, psychologists/psychiatrists, and medical home providers (MDs).
- Ensure that individuals who are DDA eligible connect with the appropriate resources of the agency. For those not currently on the paid services waitlist, assist in applying for services.
- Expand available supported housing across the state with appropriate supportive staff as required.
- Ensure that DDA-eligible individuals with intensive needs have options other than the Community Protection program.
- Provide supported decision-making for appropriate individuals as an independent and educational skill development.

Intercept 6: Community Corrections

- Focus on community integration to prevent further CJS involvement— participation in social activities that build natural, healthy relationships.
- Consider possible community supports for individuals with IDD exiting/alternatives to incarceration.
- Consider the [DOJ findings](#) regarding Missouri
 - Assertive Community Treatment
 - Case management
 - Supported employment
 - Mobile crisis response

- Crisis stabilization services
- Permanent Supportive Housing
- Peer support
- Supported Decision-Making

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List of Appendices

Appendices will be posted separately from the main report due to their large size.

- **Appendix A:** Academic Law Reviews
- **Appendix B:** Scoping Review Search Strings and Search Terms
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- **Appendix D:** Articles included in the scoping review