

# **KNOW YOUR RIGHTS LEGAL RIGHTS OF DISABLED PRISONERS**

## **ACLU National Prison Project**

**Important Note:** The law is always evolving. If you have access to a prison law library, it is a good idea to confirm that the cases and statutes cited below are still good law. The date at the bottom of this page indicates when this information sheet was last updated.

### **Statutes protecting disabled prisoners**

Prisoners are protected by § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a), and by Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131, *et seq.*<sup>1</sup> The Rehabilitation Act was created to apply to federal executive agencies, including the Bureau of Prisons, and to any program that receives federal funding. The ADA was created to regulate state and local government programs, even those that do not receive federal funding.

The Supreme Court recently held in Goodman v. Georgia that Title II of the ADA validly abrogates state sovereign immunity – as least insofar as it creates a private cause of action for damages for conduct that actually violates the Fourteenth Amendment.<sup>2</sup> In the prison context, this means that a disabled prisoner who is incarcerated in state prison may sue the state for monetary damages under the ADA based on conduct that independently violates the Due Process Clause of the Fourteenth Amendment (incorporating the Eighth Amendment’s prohibition on cruel and unusual punishment). Thus, although the ADA arguably prohibits a broader swath of state conduct than what is barred by the Eighth Amendment, it remains an unsettled question whether disabled prisoners can seek damages for conduct that violates the ADA but not the Constitution.<sup>3</sup>

### **Applying these statutes in the prison context**

Courts analyze the ADA and Rehabilitation Act in basically the same way. If the ADA applies, it should be interpreted to give disabled people at least as many rights as the earlier Rehabilitation Act.<sup>4</sup> Thus, disabled prisoners may use cases about the Rehabilitation Act to help them interpret the ADA.

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<sup>1</sup> See Pennsylvania Dep’t of Corrections v. Yeskey, 524 U.S. 206 (1998) (ADA); Onishea v. Hopper, 171 F.3d 1289 (11<sup>th</sup> Cir. 1999) (Rehabilitation Act); Bonner v. Lewis, 857 F.2d 559 (9<sup>th</sup> Cir. 1988) (Rehabilitation Act).

<sup>2</sup> 126 S.Ct. 877 (2006).

<sup>3</sup> See *id.* at 882.

<sup>4</sup> Bragdon v. Abbott, 524 U.S. 624, 632 (1998).

### ***How do you define disability?***

The ADA defines “disability” as:

- (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment.<sup>5</sup>

A “physical or mental impairment” could include hearing and vision problems, mental illness, physical disabilities, certain diseases, or many other conditions. “Major life activities” may include many private or public activities, such as seeing, hearing, reproduction, working, walking or movement.<sup>6</sup> For ADA purposes, a physical impairment substantially limits major life activities only if it prevents or severely restricts the individual from performing tasks of central importance to daily life.<sup>7</sup>

“Substantially limited” means that the person’s participation in the activity is significantly restricted.<sup>8</sup> The restriction does not need to completely prevent the disabled person from participating in the activity, but it must do more than merely cause him or her to participate in a different manner.<sup>9</sup> If a disability is corrected to the point that it does not substantially limit a major life activity, it no longer counts as a disability under the ADA.<sup>10</sup>

Courts usually look at the facts of each lawsuit to decide if a person is disabled according to the ADA and Rehabilitation Act. For example, the Supreme Court has said that a person infected with HIV (human immunodeficiency virus), the virus that causes AIDS, may be disabled even if that person does not have any symptoms of the disease.<sup>11</sup> On the other hand, a person with impaired vision in

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<sup>5</sup> 42 U.S.C. § 12102(2).

<sup>6</sup> See, e.g., Bragdon at 639 (finding no basis for “confining major life activities to those with a public, economic, or daily aspect”).

<sup>7</sup> Toyota Motor Mfg. Ky. Inc. v. Williams, 534 U.S. 184 (2002) (finding that a woman with carpal tunnel syndrome was not necessarily disabled just because she could not perform certain manual tasks on her assembly line job).

<sup>8</sup> Albertson’s, Inc. v. Kirkingburg, 527 U.S. 555, 563 (1999).

<sup>9</sup> Bragdon at 641.

<sup>10</sup> Sutton v. United Air Lines, Inc., 527 U.S. 471, 482 (1999); see also Murphy v. United Parcel Serv., 527 U.S. 516 (1999).

<sup>11</sup> Bragdon at 641.

one eye is disabled only if his vision substantially limits participation in a major life activity.<sup>12</sup>

### **Enforcing your legal rights**

Title II of the ADA states:

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

To bring a lawsuit under the ADA and/or the Rehabilitation Act, disabled prisoners must show: (1) that they are disabled within the meaning of the statutes, (2) that they are “qualified” to participate in the program, and (3) that they are excluded from, are not allowed to benefit from, or have been subjected to discrimination in the program because of their disability.<sup>14</sup> Under the Rehabilitation Act, prisoners must also show that the prison officials or the governmental agency named as defendants receive federal funding.<sup>15</sup>

Courts generally require factual evidence that shows the prisoners are qualified for the programs, sought participation, and were denied entry based upon their disabilities.<sup>16</sup> Disabled prisoners are “qualified” to participate in a program under the ADA and the Rehabilitation Act if they meet the program requirements.<sup>17</sup>

### **Which rights can be enforced?**

Disabled prisoners have sued to get *equal access to facilities, programs and services*. For example, inmates and arrestees have sued to be able to use prison showers and toilets and to be protected from injury or the risk of injury.<sup>18</sup>

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<sup>12</sup> Kirkingburg at 566.

<sup>13</sup> 42 U.S.C. § 12132.

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

<sup>15</sup> 29 U.S.C. § 794(a).

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

<sup>17</sup> Southeastern Community College v. Davis, 442 U.S. 397, 406(1979) (“An otherwise qualified person is one who is able to meet all of a program’s requirements in spite of his handicap.”).

<sup>18</sup> Gorman v. Easley, 257 F.3d 738 (8<sup>th</sup> Cir. 2001) (injury during transportation by police in vehicle without wheelchair restraints); rev’d on other grounds, Barnes v. Gorman, 536 US 181 (2002); Kaufman v. Carter, 952 F.Supp. 520, 523-24 (W.D. Mich. 1996) (failure to provide access to bathrooms and showers).

Deaf and hearing-impaired prisoners have won cases to get sign language interpreters for disciplinary hearings, classification decisions, HIV-AIDS counseling, and educational and vocational programs.<sup>19</sup>

Disabled prisoners have challenged *inadequate medical care* and prison officials' failure to provide them with medical supplies or devices such as wheelchairs or canes.<sup>20</sup> These cases may combine ADA claims with arguments that prison officials have violated the Eighth Amendment of the U.S. Constitution by being deliberately indifferent to prisoners' serious medical needs.<sup>21</sup>

Disabled prisoners have challenged their *confinement in isolation and segregation units* under the ADA and the Rehabilitation Act.<sup>22</sup> In one case, for example, the Seventh Circuit ruled that prison officials discriminated against a quadriplegic prisoner in Indiana who was housed in an infirmary unit for over one year and was thereby denied access to the dining hall, recreation area, visiting, church, work, transitional programs and the library.<sup>23</sup> However, some courts have upheld policies segregating HIV-positive prisoners because of the risk or perceived risk of transmission.<sup>24</sup>

### **Limitations on these rights**

Prison officials are not required to provide accommodations that impose "undue financial and administrative burdens" or require "a fundamental alteration in the nature of [the] program."<sup>25</sup> Prison officials are also allowed to discriminate if the disabled inmates' participation would pose "significant health and safety risks" or a "direct threat" to others.<sup>26</sup> Finally, some courts have said that prison officials

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<sup>19</sup> Bonner v. Lewis, 857 F.2d 559 (9<sup>th</sup> Cir. 1988); Duffy v. Riveland, 98 F.3d 447 (9<sup>th</sup> Cir. 1996); Clarkson v. Coughlin, 898 F.Supp. 1019, 1027-32 (S.D.N.Y. 1995).

<sup>20</sup> Saunders v. Horn, 960 F. Supp. 893 (E.D. Pa. 1997) (failure to provide orthopedic shoes and cane); Herndon v. Johnson, 970 F.Supp. 703 (E.D. Ark. 1997).

<sup>21</sup> See, e.g., Kaufman, 952 F.Supp. 520.

<sup>22</sup> Carty v. Farrelly, 957 F.Supp. 727, 741 (D.V.I. 1997) (prison officials violated ADA by housing inmate not suffering from mental illness with mentally ill prisoners because his cane was considered security threat).

<sup>23</sup> Love v. Westville Correctional Center, 103 F.3d 558 (7<sup>th</sup> Cir. 1996).

<sup>24</sup> See, e.g., Harris v. Thigpen, 941 F.2d 1495 (11<sup>th</sup> Cir. 1991), appeal after remand, Onishea v. Hopper, 126 F.3d 1323 (11<sup>th</sup> Cir. 1997), rev'd, 171 F.3d 1289 (11<sup>th</sup> Cir. 1999) (upholding policy of segregation and exclusion from programs of HIV-positive prisoners in Alabama under Rehabilitation Act).

<sup>25</sup> Southeastern Community College, 442 U.S. at 406.

<sup>26</sup> School Bd. of Nassau County v. Arline, 480 U.S. 273, 287 (1987) (holding that a person who poses a significant risk to others is not "otherwise qualified" for the activity, establishing a four-part test for determining whether contagious disease constitutes such a risk); 42 U.S.C. § 12182(b)(3).

can discriminate against disabled prisoners as long as the discriminatory policies serve “legitimate penological interests.”<sup>27</sup>

### **Alternatives to the ADA and Rehabilitation Act**

Disabled prisoners may make claims for relief based on the United States Constitution either in addition to, or instead of, ADA and Rehabilitation Act claims. The Eighth Amendment prohibits any form of cruel or unusual punishment. For example, federal or state prison officials violate the Eighth Amendment when staff members are deliberately indifferent to the serious medical needs of prisoners, including the special requirements of disabled inmates.<sup>28</sup>

The Fifth and Fourteenth Amendments prohibit government officials from depriving persons of life, liberty or property without “due process” of law, and the Fourteenth Amendment requires that all citizens receive the “equal protection” of the law.<sup>29</sup> Thus, prison officials may violate the Constitution if they discriminate against disabled inmates on the basis of their disabilities.<sup>30</sup> However, to win an equal protection claim, disabled persons must prove that there is no legitimate government reason for the discriminatory policy.<sup>31</sup> This is a very difficult standard for prisoners to meet because courts generally give prison officials wide discretion in administering correctional facilities.

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

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<sup>27</sup> Gates v. Rowland, 39 F.3d 1439, 1446-47 (9<sup>th</sup> Cir.1994) (upholding discriminatory policy on security grounds based on unsubstantiated fears of other prisoners); compare Yeskey v. Penn. Dep’t of Corrections, 118 F.3d 168, 174-75 (3<sup>rd</sup> Cir. 1997).

<sup>28</sup> Estelle v. Gamble, 429 U.S. 97 (1976) (deliberate indifference to prisoners’ serious medical needs constitutes cruel and unusual punishment); LaFaut v. Smith, 834 F.2d 389 (4<sup>th</sup> Cir. 1987) (prison officials violated Eighth Amendment by failing to provide disabled inmate with needed physical therapy and adequate access to facilities).

<sup>29</sup> The Fourteenth Amendment governs actions by state governments and the Fifth Amendment governs actions by the federal government.

<sup>30</sup> See, e.g., Williams v. Meese, 926 F.2d 994, 998 (10<sup>th</sup> Cir. 1991) (federal inmate could not bring employment discrimination claim under Rehabilitation Act but could do so under Fifth Amendment).

<sup>31</sup> Contractors Ass’n of E. Pa., Inc. v. City of Philadelphia, 6 F.3d 990, 1001 (3<sup>rd</sup> Cir.1993).