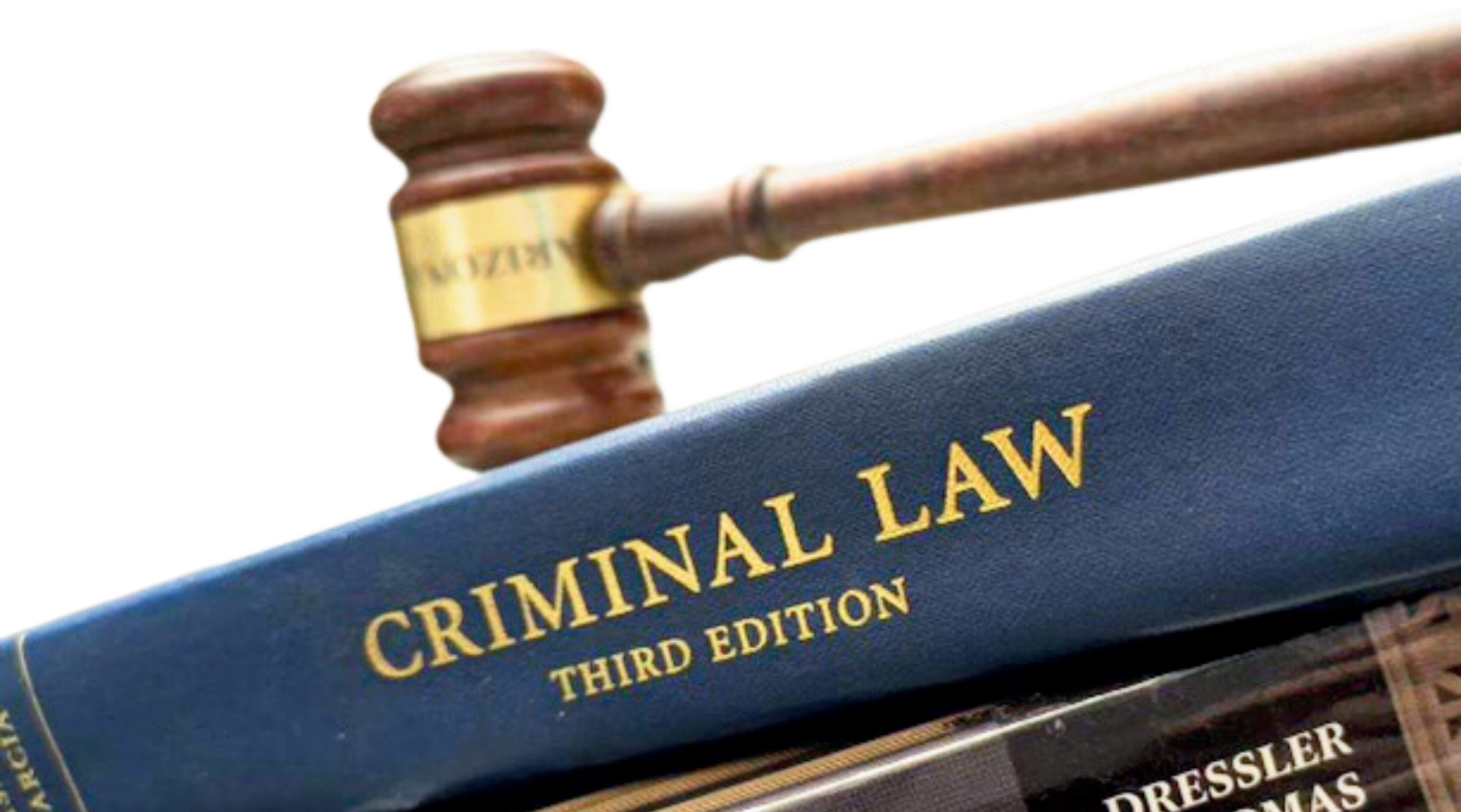


STUCK IN THE SYSTEM

SEARCHING FOR BETTER CRIMINAL
JUSTICE INTERACTIONS FOR
PEOPLE WITH DISABILITIES



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EXECUTIVE SUMMARY

According to [The Arc of the United States's national position statement on criminal justice](#), "When individuals with intellectual and/or developmental disabilities (I/DD) become involved in the criminal justice system as victims, witnesses, suspects, defendants, or incarcerated individuals, they face fear, prejudice, and lack of understanding."ⁱ

This report addresses the obstacles and fears that individuals with disabilities face when they encounter the Arizona criminal justice system. The report starts with the story of Artie, an individual who is dual diagnosed with I/DD and a physical disability. His experience is all too familiar within Arizona, as well as across the country. The report starts by explaining the issue of individuals with disabilities in the criminal justice system from a broad perspective, then narrows its focus to an in-depth understanding of the specific issues surrounding individuals with disabilities in Arizona. Finally, it looks at some promising programs that are being tried around the country to address the gaps and barriers that individuals with disabilities face when interacting with the justice system.

Three key points must be kept in mind:

- Law enforcement officers can have limited effectiveness if there is no coordination between organizations that serve individuals with disabilities who are involved with the criminal justice system. Officers are often the first contact with individuals with I/DD in emergencies and need to be able to refer these individuals to the appropriate care and treatment organizations within the community once the crisis is resolved.
- Jurisdiction matters. Each county within Arizona has its own requirements and policies in its jail facilities and courts. As a result, some of the recommendations in this report refer to actions that should be taken at the state level, and some focus on actions to be taken at the county level. Keep in mind counties set up their own court systems, so starting to create change at the county level may be most appropriate.
- Failing to comply with the Americans with Disabilities Act (ADA) can leave agencies open to liability.

This report includes recommendations (listed below and throughout the document). Some of the recommendations might seem obvious; however, they aim to serve as a guide for individuals, agencies, nongovernmental organizations, and communities to achieve meaningful improvements.

Recommendations:

- State and law enforcement agencies should require more disability awareness training for law enforcement officers, collaborating with community organizations to take a more proactive approach.

- Disability advocates need to prioritize engagement with the criminal justice system and use their advocacy networks to increase budgets and services for better care coordination, as well as educate families.
- Police departments need to engage more with the community-at-large around the state to develop promising practices involving the disability community.
- Entities such as the Arizona Health Care Cost Containment System (AHCCCS) must develop more resources like transition planning for formerly incarcerated individuals with a disability upon reentry into the community.
- Local organizations and government agencies need to create more residential options for specific disabilities besides sober living homes or mental health facilities.
- Independent living centers and other disability organizations, including mental health-focused groups, can develop a peer mentor program with individuals with disabilities in the community.
- Re-entry officials should utilize the Arizona Department of Economic Security - Division of Developmental Disabilities (DDD) and health plan justice liaisons as a true single point of contact or designate a person to help coordinate services between agencies.
- The Arizona Department of Corrections, Rehabilitation & Reentry should create a statewide law enforcement intake process with a universal screening template to identify individuals with I/DD with input from disability experts and advisory boards. The Arizona Attorney General's Office should play a role in reviewing and enforcing this process at each county jail.
- Each Arizona county should establish an administrative code that allows attorneys with disability law experience to be available in the county's initial appearance court.
- Local judges should create a pilot diversion program or specialty court solely for individuals with disabilities in each Arizona county.

METHODOLOGY OF THE REPORT

This report was prepared by the Arizona Developmental Disabilities Planning Council and Diana Orem, Ph.D, Assistant Professor of Forensic Psychology at Embry-Riddle Aeronautical University in Prescott, Arizona. The report encompasses a year of research, along with interviews from across the state with a wide-ranging group, including a forensic psychologist, public defenders, ADA coordinators, and the DDD justice liaisons. Special thanks to all individuals who participated.

INTRODUCTION

The purpose of Artie's story is to establish a picture of what an individual with a disability experiences when he or she interacts with the criminal justice system. Arizona needs a more proactive approach to addressing obstacles and barriers these individuals face, with more emphasis on community services and supports, and collaborations between different systems. Multiple systems and agencies are involved, which means change is likely to happen slowly. The accommodations and possible solutions were created with that understanding in mind.

"Artie" is a young man raised in Arizona. Due to issues related to Fetal Alcohol Spectrum Disorder (FASD) and behavioral health diagnoses, when Artie was a young teenager, he was sent to live in a facility for developmentally disabled youth in Texas. The facility was completely self-contained, with all the services he needed, from school and work – he was given assistance to earn a high school diploma – to health and mental health care, to residential support, all within the confines of its walls. He showed great progress. However, when he approached 18, Medicaid no longer approved his treatment at the facility once he became an adult; he then left the facility and was sent home.

Within a matter of months, after his arrival at the youth facility, Artie was jailed for an incident during which he jumped over a desk and assaulted a care provider. The court found him incompetent to stand trial and he was sent to a residential facility for treatment, or "restoration to competency." He had several short stays in residential facilities for treatment in following years, but they were never intended to be permanent. In another instance, Artie was persuaded by a random acquaintance in a park to steal a candy bar from a convenience store across the street. When the police arrived in the park and found him, he had a Nerf gun. Officers initially mistook the toy gun for a real weapon and he was almost shot. He was deemed by the court as incompetent once again, and the cycle continued.

Artie, now 24, spent most of 2023 in jail, the most recent time in isolation (formerly known as solitary confinement) for more than six months. In July, he refused to shower and had not showered from July until his release to a maximum-security psychiatric facility in October. He was transported from the jail to this facility without his family's knowledge. Artie has often been admitted to hospitals or

KEY TAKEAWAYS

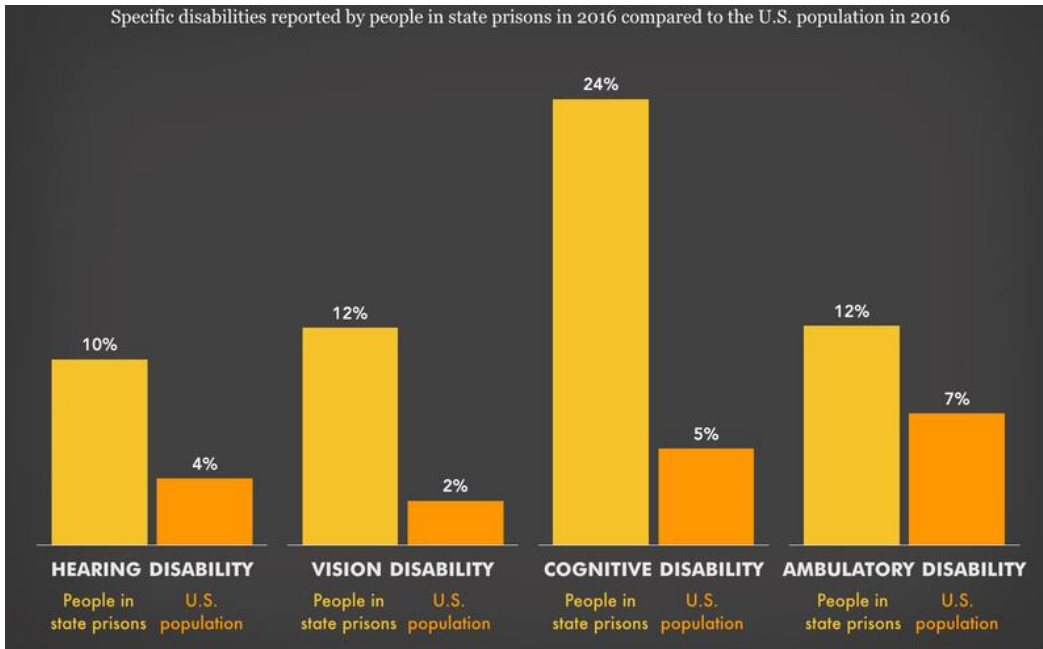
Facility staff need to be trained to ensure safety, medication compliance, and overall well-being. A significant disconnect exists between Artie and his family being involved with, and heard by, the justice system (i.e., judges, defense, guardian ad-litem appointees, and the prosecution), the social services that oversee his placement, and his treatment teams (i.e., doctors and psychologists). Additional legal ramifications must be considered when a disabled person may be under legal guardianship or another legal designation that restricts their ability to make decisions for themselves. One example is whether a person under guardianship can accept a plea agreement offered by prosecutors. In this case, the grandparents of Artie served as his legal guardians due to Artie's disabilities, which include fetal alcohol spectrum disorder (FASD), among other conditions.

transferred from one hospital to another without his parents' knowledge, despite the fact they are his legal guardians. In this instance, it took weeks for them to locate him, and they finally found him by searching inmate records. Once in the facility, Artie deteriorated to the extent that he stopped talking and the staff believed he was mute and unable to speak. Before transferring him for psychiatric care, the jail had not been giving him any of his prescribed medications. Over the course of this ordeal, he lost more than 70 pounds and became a shell of who he was when he was first jailed in the Spring of 2023.

At a Glance: Encounters with the Criminal Justice System

- People with disabilities are [more likely](#) to have encounters with law enforcement compared to those who are not disabled.ⁱⁱ
- Those with disabilities have a higher cumulative [probability of arrest](#).ⁱⁱⁱ
- Once convicted, individuals with disabilities serve longer prison sentences compared to non-disabled people.ⁱ
- According to a [report](#) from the United States Department of Justice (DOJ), nearly 40% of state prisoners and 30% in federal prisons reported having a disability. The analysis of that data from the 2016 Survey of Prison Inmates listed 66% of inmates surveyed self-reported a disability.^{iv}
- People with intellectual and developmental disabilities (I/DD) have disproportionately negative experiences in the criminal justice system as [both victims and the accused](#).^v

Once a disabled individual is processed as an inmate, he or she still maintains rights under the ADA. This includes the right to reasonable accommodations. This is not only a “civil rights” issue, but also a safety issue. Take, for example, someone with a serious mental illness (SMI) who is placed in isolation. They are more vulnerable to the well-known negative effects of isolation than an individual without a disability. This could, in turn, lead to a worsening of symptoms and/or additional symptoms, such as suicidality.



Source: Graphic designed by Prison Policy Initiative; Statistics are Bureau of Justice Statistics; Disabilities Reported by Prisoners Table 2 and the Census Bureau’s 2016 American Community Survey, 1-Year Estimates

According to the DOJ’s National Institute of Justice (NIJ) [Research in Action Series](#), “It should be noted that mental illness is not a crime. Prosecution and incarceration are inappropriate responses to symptoms of mental illness.”^{vi} Mental illness is not always immediately obvious and is often referred to as an “invisible” disability. Nevertheless, the NIJ states that law enforcement agencies have a responsibility to distinguish criminal behavior from conduct that is the product of mental illness but has no criminal intent. Thus, failure to work with mental health authorities to ensure the appropriate response to ‘nuisance’ offenders by determining whether the ‘offense’ is simply a manifestation of a disability may violate the ADA, in addition to burdening correctional institutions with individuals who have needs that the institution is not equipped to meet.

Physical disabilities that require accommodations are no different, and a recent example in Arizona illustrates this point. The DOJ, in response to a complaint filed by incarcerated individuals with vision impairment, [completed its investigation](#) of conditions in Arizona prisons in November 2023. They found that the Arizona Department of Corrections, Rehabilitation & Reentry (ADCRR) violated Title II of the ADA by discriminating against incarcerated individuals with vision disabilities, including those who are blind or have low vision.^{vii}

The investigation found that ADCRR:

- Failed to ensure its communications with individuals with disabilities are as effective as its communications with others, including failing to provide appropriate auxiliary aids and services where necessary to afford individuals with disabilities an equal opportunity to participate in and benefit from ADCRR’s programs;

- Failed to reasonably modify its policies, practices, or procedures where necessary to avoid discrimination against individuals with vision disabilities;
- Denied qualified individuals with disabilities an equal opportunity to participate in or benefit from its services, programs, or activities.

THE ADA RULES AND CRIMINAL JUSTICE ENTITIES

Under Title II of the ADA, a person can't be denied benefits or services based on disability when accessing any public programs. Criminal justice actors, including prosecutors, cannot discriminate in the provision of services or access to programs based on disability. This general obligation not to discriminate translates into two affirmative obligations for prosecutor offices: (1) providing access and (2) ensuring effective communication. These rights do not create a special advantage for people with disabilities; instead, they help level the playing field to allow a person with disabilities to access a complex and difficult and, at times, inaccessible system for many people. One additional requirement states any public entity with 50 or more employees must have a designated "ADA Coordinator."

Artie's story and this growing area of research have made it abundantly clear that the following recommendations need to be considered to improve the criminal justice system in Arizona for individuals with disabilities.

"People with vision disabilities held in jails and prisons should not be subjected to a higher risk of harm or exposed to greater restrictions than their sighted peers. They should not be denied trained aides, or accessible technology and materials that allow them to participate in work, education, and recreation programs. This agreement embodies the Justice Department's commitment to ensuring that prisons and jails throughout the country, respect and protect the rights of all people detained inside these facilities, including those with vision disabilities."

**- Kristen Clarke
Assistant U.S. Attorney General**

1. There is a critical need to identify disability and make accommodations as soon as possible.

It is vital that disabled persons who encounter law enforcement (the typical entry point to the criminal justice system) be identified as disabled as soon as possible in the process. Once an individual is detained, taken into custody, or placed under arrest, the chances they will avoid a stressful, harmful, and in some cases, life-threatening, experience diminish rapidly if the disability is not recognized promptly. Early identification may, in some cases, influence decisions about their

disposition, especially the consideration of alternatives to incarceration.

Moreover, individuals with disabilities often have co-occurring medical conditions; it is more likely for persons in this group to suffer from multiple health conditions than a singular “disability.” Early identification is crucial so that medication can be administered as appropriate, medical devices can be made available to the person, or paramedics can be called to the scene. Disabled individuals may need medical accommodations to remain safe and function optimally. This benefits both the individual and law enforcement. If a disability is not recognized, acknowledged, or believed once disclosed, the disabled person is now disadvantaged in several ways, e.g., they may be unable to communicate, move safely, or see. This creates a domino effect, which can lead to life-threatening consequences, as well as setting the stage for the person’s experience with the criminal justice system moving forward.

A 2022 analysis [found](#) law enforcement officers not only lack the ability to identify if an individual has a disability but also the ability to distinguish types of disabilities, resulting in unnecessary levels of force and arrests.^v Individuals with I/DD have reported more negative experiences with law enforcement officers than other populations as officers lack awareness and education on intellectual and developmental disabilities.

Police officers are required to have the training, knowledge, and background to properly protect and serve individuals from a wide variety of populations and backgrounds within the community. Yet they overwhelmingly lack training specifically designed to assist them in serving people with I/DD. The prevalence of individuals with intellectual or developmental disabilities is increasing, which subsequently increases the frequency of interactions between police officers and these individuals. Without the proper education, resources, and training, officers are left unprepared to effectively respond to emergencies involving individuals with I/DD, resulting in harmful outcomes, distrust in law enforcement, and ineffective communication and crisis resolution.

When responding to emergencies, officers rely solely on the training, experience, and education they have received to de-escalate and resolve crises safely properly. Although police officers are required to go through extensive training, [many have reported](#) that disability education and awareness training are few and far between, resulting in improper communication and de-escalation strategies. Individuals with I/DD may have difficulties in social situations, finding them challenging, and have deficiencies in their communication abilities, such as being non-verbal.^{viii}

Encounters with police who are not educated about the social and communication difficulties individuals with I/DD may face can result in a greater likelihood of miscommunication as well as misinterpretation of behaviors. However, if provided with a specific training course that educates officers on how to effectively communicate, identify, and respond to individuals with I/DD, officers would feel more competent during these interactions.

An additional issue that police face is a lack of awareness and access to care coordination to refer individuals to appropriate treatment. A common example of this dilemma is identifying whether an individual has I/DD versus a substance abuse issue or is experiencing a mental illness crisis. Moreover, another study from Australia found [police officers would be more likely](#) to accurately recognize individuals with disabilities and connect them to care if they received the proper training.^{ix}

One example of training used in Arizona is the [Be Safe program](#), offered locally by the Autism Society of Greater Phoenix. It features police officers and individuals with I/DD working with each other in a one-day seminar educating each other, using videos, role-playing scenarios, and in-person presentations (see list of Additional Resources at the end of this report).

Even with useful techniques for communication, de-escalation, and resolution, officers can only do so much if there is no coordination between organizations. Law enforcement officers are often the first contact with individuals with I/DD in emergencies and need to be able to refer these individuals to the appropriate care and treatment organizations within the community once the crisis is de-escalated.

Inter-organization collaboration allows officers to be knowledgeable about different types of care available, thereby increasing support to individuals with I/DD. For example, if an officer responds to a call for someone who shows difficulty feeding themselves, the officer's priority is to ensure the safety of the individual and then connect the person to care. However, if there is no inter-organization coordination and the officer is unaware of helpful resources, the officer would run into many difficulties providing this individual with resources to ensure they are getting the correct care moving forward. A research team in Pennsylvania [found](#) that communities as a whole need to increase inter-organization communication, as well as implement resources for behavior and mental health support to arm officers with the appropriate resources and connections to effectively resolve and prevent emergencies involving individuals with I/DD.^x

Officers recognize there is a lot of growth and learning needed on their part to communicate with individuals with I/DD effectively. Ultimately, awareness within the emergency response system, community organizations, and all helping professions would increase effective care for individuals with intellectual and developmental disabilities, and decrease negative experiences. The need for police officer training and awareness regarding individuals with I/DD is more important now than ever before as the prevalence of individuals with I/DD continues to grow.

Recommendations:

- State and law enforcement agencies should require more disability awareness training for law enforcement officers, collaborating with community organizations to take a more proactive approach.
- Disability advocates need to prioritize engagement with the criminal justice system and use their advocacy networks to increase budgets and services for better care coordination, as well as educate families.
- Police departments need to engage more with the community-at-large around the state to develop promising practices involving the disability community.

2. There is a critical need for care coordination at the point of release or discharge.

For rehabilitation efforts to have a chance of being effective, care coordination beginning at the entry point of justice system contact (processing), and continuing through discharge planning and post-discharge, is critical. Many disabled inmates were already struggling to meet their basic needs (e.g., housing, medication access, transportation, self-care) before incarceration, and compliance with post-release conditions is more difficult in an environment where the individual is unable to function adequately day-to-day.^{xi}

“(I’ve) personally seen cases where an individual with a disability has progressed all the way through the justice process before the individual’s disability was identified...(this) unquestionably caused harm to the individual.”

**- Interview with Dr. Joseph Stewart
Forensic Psychologist
Director of Yavapai County Restoration to Competency program**

This is one contributing factor to the so-called “revolving door.” According to these [guidelines](#) developed by the U.S. Department of Health and Human Services (HHS), “upon release from jail or prison, many people with mental or substance use disorders continue to lack access to services and, too often, become enmeshed in a cycle of costly justice system involvement. The least developed jail-based service is transition planning.”

Examples of short-sighted discharge plans are plentiful. One common problem: Disabled inmates are released with inadequate supplies of medication. When they run out, they are at greater risk for recidivism and re-arrest due to the risk of erratic behavior due to lack of proper treatment. The HHS guidelines continue to state, “the days and weeks following community reentry are a time of heightened vulnerability. Justice system personnel, behavioral health treatment, and service practitioners, researchers, and policymakers agree that the maintenance of better individual-level outcomes and a reduction in recidivism necessitate a formalized continuity of services from institution to community settings.”

Recommendations:

- Entities such as the Arizona Health Care Cost Containment System (AHCCCS) must develop more resources like transition planning for formerly incarcerated individuals with a disability upon reentry into the community.
- Local organizations and government agencies need to create more residential options for specific disabilities besides sober living homes or mental health facilities.

- Independent living centers and other disability organizations, including mental health-focused groups, can develop a peer mentor program with individuals with disabilities in the community.

3. There is a need to alert appropriate agencies about mandated administrative actions and coordination of benefits.

For some disabled individuals entering the criminal justice system, this will not be their first contact with a state agency. If the person has previously been evaluated and deemed eligible for disability services through the Arizona Department of Economic Security (DES), this indicates they may also be enrolled in its Division of Developmental Disabilities (DDD). While eligibility criteria vary by age, the process laid out for anyone aged six years to adulthood provides a good idea of the general criteria, which are as follows: 1) voluntarily apply; 2) be an Arizona resident; 3) be diagnosed with a developmental disability that manifested before the age of 18 and is likely to continue indefinitely; and 4) experience significant limitations in daily life skills related to the disability. [A helpful rubric provided by DDD](#) provides coordinators with detailed eligibility guidance.^{xii}

It is vital that criminal justice system personnel find out whether an incarcerated person is a DDD member because DDD has a process it must initiate when a member is incarcerated, and that process is required to begin at the point of contact. Every DDD member is assigned a support coordinator, who is supposed to contact the agency's internal Justice System Liaison to get that person involved in the case once made aware of a member's incarcerated status.

Contracts with AHCCCS, the state's Medicaid agency, require justice system liaisons to be employed at each AHCCCS-contracted health plan and at DDD. According to AHCCCS, the Justice System Liaison is the single point of contact for justice system stakeholders, including jails, prisons, detention facilities, courts, law enforcement, and community supervision agencies. This position is responsible for ensuring the care coordination of justice-involved members and for oversight and reporting of Justice System Reach-in Care Coordination activities.

The liaison further serves as the point of contact for justice system stakeholders engaged in arrest diversion or incarceration alternative initiatives, crisis system utilization, and specialty court programs. In essence, the justice liaison position exists to ensure DDD members are connected to needed services throughout their engagement with law enforcement and the judicial system. Another role of the DDD liaison is to collaborate with the health plans to discuss shared members who are justice-involved.

In reality, there are flaws and gaps which result in a failure of the justice liaison being notified of a member's status throughout their involvement in the system. According to interviews with DDD staff conducted for this report, some of these gaps include confusion about the notification process, inconsistent access to and use of databases, staff turnover, lack of training, and lack of funding.^{xiii} While the system described here is far from perfect, some DDD staff believe disabled individuals would be better served by their DDD support coordinator being notified by the detention agency as soon as possible that a member has been processed and is being held there.

First and foremost, important information about the individual's health status, needs, and safety concerns should be shared between agencies. Then there are more bureaucratic reasons for notification, namely, that the disabled individual's DDD-contracted health plan must take steps to ensure the individual has continuity in their healthcare – that is, upon the individual's release, the plan is reinstated immediately (it must be administratively “paused” while they are incarcerated).

Other agencies that might be important in terms of existing involvement of any disabled inmate, not just DDD members, include Nutrition Assistance through DES, the Social Security Administration (SSA), the Veteran's Administration (VA), and non-governmental agencies like faith-based organizations affiliated with the prison system. There may also be members of the individual's treatment team, such as behavioral health professionals, as well as family members and caregivers.

Take, for example, agencies with punitive policies regarding missed appointments, or those with mandated contact with the individual. If the individual is unable to participate in a service or program due to incarceration, proper and timely notification may prevent them from losing services, experiencing delays in service, or having to reapply for services altogether. This may mean the difference between the individual being able to function at their full capacity post-discharge, which may reduce the likelihood of the revolving door syndrome, or being placed at a further disadvantage.

Recommendation:

- Re-entry officials should utilize the DDD and health plan justice liaisons as a true single point of contact or designate a person to help coordinate services between agencies.

FINDING A STANDARD: ARREST AND INTAKE

According to The Arc's national position statement on criminal justice, individuals with disabilities are victimized at higher rates than the general population, as well as arrested at higher rates, denied redress, denied due process, and discriminated against in sentencing, confinement, and release.¹ They also may face unique issues or be more likely to fall victim to being misunderstood, giving incriminating statements, being manipulated into false or coerced confessions, waiving rights without understanding the implications, or being improperly assessed for competency to stand trial.

What is the Official Process for Identifying Disabled Individuals After Arrest?

There is no universally applied process for identifying disabled individuals who enter correctional facilities in Arizona. The ADA infrastructure outlined in Chapter 100 of the [ADCRR Department Order Manual](#) is meant to ensure “all job applicants, employees, contractors, visitors and inmates are provided barrier-free access to facilities, services, programs and activities, including extra-curricular activities that are not mandatory but related to the job function, consistent with reasonable accommodation and security requirements.”^{xiv} However, this process is somewhat vague and appears to stress the inmate's transfer status. A universal statewide intake process would help alleviate this issue.

There is a process laid out for interactions between DDD members and the justice system, but this does not include identification; it assumes identification, and it has additional gaps. If this process has gaps and flaws, where does that leave individuals who are not already in the DDD system? They must either self-identify, be correctly identified through the initial screening process, or be fortunate enough that someone else in a position of some authority determines what is going on.^{xv}

Some Arizona counties do have informal methods of identifying these individuals and these methods are better than nothing, but a haphazard approach is not ideal, especially given the potential consequences of failing to provide appropriate accommodations. We recommend that a thorough review be conducted of current processes to identify best practices and then use what is working as a foundation for developing a comprehensive process that can be scaled to the agency yet remains relatively uniform across the state. This will also reveal what resources exist that can be leveraged and what resources are lacking and need to be made available for such a process to be implemented successfully.

How Do We Identify Disabled People in Arizona Correctional Facilities?

County jails and state prisons in Arizona are both considered types of correctional facilities. In both systems, variations of the following process exist for identifying individuals with disabilities:

✓ Self-disclosure: the person reports their own disability status.

⊘ Problems with this approach: The disabled individual...

- Is unaware of their status
- Is unable to communicate their status
- Is not understood
- Does not realize they should disclose
- Discloses to someone who fails to pass information along

✓ Screening: The provider conducting the intake health screening either:

- Recognizes the disability themselves
- Asks about a disability
- Is told by the person with a disability
- Is notified by someone who had contact with the person gains access to and reviews records

⊘ Problems with this approach: The professional...

- May not be trained to recognize disabilities.
- May not know how to document evaluation process properly.
- Could be unfamiliar with accommodation requests.
- May be uneducated about specific diagnoses or conditions.

⚠ Having to self-disclose also puts the person in a difficult position, especially if they have had a negative experience with self-disclosure in the past.

“Individuals do not want to identify as having a disability because it makes them appear vulnerable.”

**- Interview with Jennifer Gebhart, Mitigation Specialist Supervisor
Maricopa County Public Defender’s Office**

When it comes to the official ADCRR prison system, a similar process is detailed in the agency’s manual addressing the ADA.^{xiv}

- ✓ Inside the Reception Center Processing, a medical care provider shall:
 - Perform an assessment
 - Identify inmates who meet the designated criteria for transfer/placement of disabled inmates (Attachment C, Criteria for Transfer/Placement of Disabled Inmates)
 - Determine if the inmate wishes to voluntarily sign a Waiver of Liability by an Inmate with a Disability, currently known as Form 108-2
 - Assign a medical care provider assigns an “M” score
 - Ensure the “M” score
 - Decide related disability accommodation information (including the waiver, if signed by the inmate) are relayed to the Offender Services and to the Medical Records Clerk
 - Enter the disability accommodation information on the problem list of the inmate’s Medical Record

⚠ Additional subsections address waivers, transfers, overrides, reassessment in the new facility, documentation, notification, and appropriate aids for those who are vision impaired, hearing impaired, and wheelchair users.

Questions remain, such as:

- What qualifications must be met for the “medical care provider?”
- What screening tools and assessments are used?
- Are the assessments high-quality?
- Is the individual afforded appropriate accommodations and/or assistance during the assessment?
- Is the individual subject to a third-party arrangement, such as legal guardianship, that precludes them from signing waivers and other legal documents?

For the public, ADCRR invites anyone with questions about ADA compliance to contact one of its facility-specific ADA coordinators (for a full list, see Additional Resources). For this report, each coordinator and each ADCRR ADA Administrator were contacted via email. Each was asked to provide additional information regarding their facility, specifically their process for identifying disabled inmates.

Many of the emails were not answered. Several simply referred this report’s researchers to the main ADCRR ADA Administrator for the entire agency. A few stated that they were not permitted to respond, providing some version of, “I am unable to address your request and refer you to the Constituent Service Office.”

The following message was the most comprehensive response:

“Phoenix Complex is a reception unit, and inmates are typically here for 5 to 7 days and then are transferred to their permanent housing locations. Every male inmate sentenced to prison is sent through this complex. Our Contract Medical Partners (Naphcare) are the entity that designates the inmates as ADA and what their needs are. As an agency, we ensure their needs are met by providing them with the necessary items to meet their requirements. There are times when inmates have aged or their conditions have worsened to the point they qualify for ADA. Those designations are made by Naphcare at their respective housing locations.”^{xvi}

Competency

In some instances, a defendant’s I/DD or mental illness renders the defendant unfit to participate in criminal proceedings. The defendant has a constitutional right to assist in their own defense and to understand the nature of the charges against them. If the defendant is incompetent to participate in this way, the case cannot proceed against them.

This report does not provide a detailed discussion of the issues involved in defendant competency; however, some standard questions to determine competency include:

- Is the defendant oriented as to time and place?
- Is the defendant able to perceive, recall, and relate?
- Does the defendant understand the process of the trial and the roles of judge, jury, prosecutor, and defense attorney?
- Can the defendant establish a working relationship with the defendant’s attorney?
- Does the defendant have the ability to listen to the advice of counsel and, based on that advice, appreciate (without necessarily adopting) the fact that one course of conduct may be more beneficial than another?
- Can the defendant withstand the trauma and stresses of the trial without lasting effects?

The information above highlights the gaps that exist for individuals with disabilities who are already in the criminal justice system in some way. There are also barriers individuals with disabilities will encounter when they first interact with the justice system.

If an individual gets arrested in Arizona, they have the right to appear before a judge within 24 hours or be released from custody (see Additional Resources).^{xvii} In Maricopa County, anyone seeking accommodations must complete the appropriate request forms at least 10 days before showing up in court. These time limitations can make it challenging to meet the needs of individuals who require accommodations and demonstrate an obvious gap in the system. Multiple agencies are involved when this happens, and certain needs and accommodations can fall through the cracks. One possible solution is to create an administrative code allowing attorneys with some disability law training to be available in initial appearance (IA) court to ensure that individuals with disabilities get appropriate accommodations.

“The standard is 10 days; however, the Maricopa ADA coordinator tries to address an accommodation as soon as possible. There is some difficulty with coordination between different entities, as this would involve the Sheriff’s Department interpretation department for accommodations such as ASL, and Maricopa County. Some difficulties exist because initial appearance court runs 24/7, seven days a week.”

- Interview with ADA coordinator, Maricopa County Judicial Branch^{xviii}

Since there is a higher likelihood that individuals with disabilities, especially those with I/DD, will be misunderstood by law enforcement personnel or even arrested at a higher than average rate because of those misunderstandings, the following recommendations should be enacted to help mitigate these identified gaps.

Recommendations:

- The Arizona Department of Corrections, Rehabilitation & Reentry should create a statewide law enforcement intake process with a universal screening template to identify individuals with I/DD with input from disability experts and advisory boards. The Arizona Attorney General’s Office should play a role in reviewing and enforcing this process at each county jail.
- Each Arizona county should establish an administrative code that allows attorneys with disability law experience to be available in the county’s initial appearance court.

Diversion

The Intellectual and Developmental Disabilities Alternative to Incarceration (IDDATI) Program is a new problem-solving initiative developed and led by the Rockland County District Attorney’s Office (RCDAO) in New York.ⁱⁱ

The need for an alternative to incarceration for defendants with I/DD is evident throughout the country. Unlike Drug Courts, Mental Health Courts, and Veterans Courts, IDDATI is not a treatment court. Since a person with I/DD or traumatic brain injury (TBI) generally does not “recover,” the format of this court program is different from traditional treatment courts in that its focus is on helping people with I/DD or TBI to reach their potential rather than providing treatment. The strength of the IDDATI paradigm is that it includes stakeholder collaboration, individualized programming, flexibility, and family involvement. This provides a circle of support the individual with I/DD needs to be integrated into the community successfully eventually. Creating this type of process requires buy-in from multiple parties, such as case managers, support coordinators, and legal professionals.

The following from the DOJ guide for prosecutors explains how the RCDAO program is implemented:

If accepted into the program, the defendant is evaluated for clinical eligibility by the RCDAO's contract psychologist and/or the IDDATI Case Manager. If there is no available documentation to identify I/DD, the psychologist completes various standard tests to determine approximate IQ and to identify adaptive behavior challenges. If the defendant is found to be appropriate for the program by the psychologist, the defendant and defense council will consider the merits of joining the program.

If found eligible, and the defendant is willing to join the program, the defendant will plead guilty to the criminal charges. The date of the guilty plea is considered the entry date for the IDDATI program. If the defendant completes the program, the charges will either be dismissed or reduced.

The IDDATI program is a minimum of 12 months for those charged with a misdemeanor and 18 months for those charged with a felony. These timeframes are like the timeframes for the Drug Courts and other alternative to incarceration programs. There is no maximum length for the program, but most participants can complete the program within the minimum timeframe. For those who need more time, there is no limit on the time given to participants to be successful.

Individualization within the IDDATI program is best exemplified by the process of incentives and sanctions, which are customized for each participant. In traditional problem-solving court programs, standard non-customizable forms of incentives and sanctions are commonplace. In contrast, the incentives and sanctions of the IDDATI model are based on the individual participant.

Arizona should consider establishing a similar program to the one used in Rockland County. A comparable program is also used in Los Angeles County.

Recommendation:

- Local judges should create a pilot diversion program or specialty court solely for individuals with disabilities in each Arizona county.

CONCLUSION

Artie's story is not an anomaly: There are hundreds, if not thousands, of stories just like it in Arizona. Failure points in the system include, "attorneys, judges, law enforcement personnel (including school-based security officers), first responders, forensic evaluators, victim advocates, court personnel, correctional personnel, criminal justice policymakers, and jurors [who] may lack accurate and appropriate knowledge to apply standards of due process in a manner that provides justice for individuals with I/DD."ⁱ

We do not take the position that there is malicious intent behind most instances of mistreatment toward disabled persons in Arizona's justice system. Nonetheless, disabled people are being denied their rights in Arizona, and the responsibility to remedy this encompasses so many people across so many systems, that solutions may appear elusive. However, some remedies have been implemented elsewhere and work better than the current Arizona system, and we have made practical recommendations in this report with respect to how Arizona can learn from the successes of other states and/or pioneer homegrown methods for bettering the system.

Regardless of how challenging this may seem, per The Arc, "people with intellectual and/or developmental disabilities have the right to justice and fair treatment in all areas of the criminal justice system and must be afforded the supports and accommodations required to make justice and fair treatment a reality."ⁱⁱ

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^{xv} (2023) Video Interview with Jennifer Gebhart, Mitigation Specialist Supervisor, Maricopa County Public Defender’s Office

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ADDITIONAL RESOURCES

List of ADA Coordinators within the Arizona Department of Corrections, Rehabilitation & Reentry:
<https://corrections.az.gov/notice-rights-under-americans-disabilities-act-ada>

SIMPLE Scorecard Tool for behavioral health and criminal justice legal systems available at Wayne State University's School of Social Work Center for Behavioral Health and Justice:
<https://behaviorhealthjustice.wayne.edu/simple-scorecard>

Webinar from Pew Charitable Trust and RAND entitled "How Research Can Improve Disability Access in the Legal System." It provides information for working with the criminal justice system, including law enforcement and public defenders:
<https://www.youtube.com/watch?v=YCJzrRzslb4>

Law enforcement training for adults with I/DD is currently offered in Arizona by the Autism Society of Greater Phoenix:
<https://phxautism.org/events/be-safe-program/>

More information at the United States Courts website about the Rules Enabling Act in federal law, which recognizes the limited competence of the Arizona legislature to regulate court procedure and acknowledges the power of lower courts to regulate the conduct of their business. This allows Arizona to have some flexibility when it comes to ADA compliance within the court system, which could help the state choose adjustments to help address the gaps, as well setting specific guidelines regarding initial appearance court:
<https://bit.ly/3MVMmf3>

