

Aligning Safety with Justice:

The Case for a Disability-Inclusive Sentence Review Statute

The Sentencing Project proposes that jurisdictions enact “disability second look” statutes to give people with disabilities serving long sentences the opportunity for sentence review.¹ People with disabilities (physical, cognitive, and social) are significantly overrepresented in jails and prisons in the United States. Studies have reported that those in state and federal prisons are about two and a half times as likely to report one or more impairments than adults in the general population (38% of those incarcerated versus 15% of those in the general population).²

Disabilities can affect a person’s behavior and functioning in ways that can lead them to be unfairly targeted by law enforcement officials,³ denied due process during criminal legal proceedings,⁴ and excluded from rehabilitative programming and access to reentry services.⁵ People with disabilities do not commit crime at a higher rate than those without disabilities, but those with disabilities are more likely to be arrested and convicted than those without.⁶ And, like those without disabilities, the risk of persons with a disability offending greatly declines with age.⁷ Research shows that for people with criminal records, after about seven years without arrests, the risk of re-arrest is almost indistinguishable from that of people with no record.⁸

The Sentencing Project proposes that jurisdictions enact “disability second look” statutes to give those with disabilities the opportunity for sentence review and reduction. Sentence review is not yet explicitly provided for those with disabilities and often is unattainable to them under existing mechanisms. Many aspects of the criminal legal system, from arrest to incarceration, were not designed for and do not adequately account for the needs of people with disabilities. The system permits—and sometimes encourages—participants including law enforcement officers, prosecutors and defense counsel, judges, and prison personnel to view nontypical behavior as signals of unlawful activity, to ignore barriers to accessing one’s constitutional rights, and to exclude people with disabilities from rehabilitative programming. This inequality exists even though federal laws, including the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, prohibit police de-

partments, courts, jails, and prisons from discriminating against persons with disabilities and require these entities to provide accommodations and modifications to their facilities and services to those with disabilities. New sentence review laws are therefore necessary to fill the breach.

Model Statute

Our [proposed model statute](#) would make eligible for second look people whose disabilities contributed to (1) the nature of the offense, (2) their behavior and/or misperceptions of their behavior before, during, and after their arrests, (3) their inability to fully access their due process rights during representation by counsel and courtroom legal proceedings, (4) their struggle while incarcerated, including being disciplined for infractions, being excluded from prison programming, or acquiring additional disabilities, or (5) obstacles to their developing reentry plans. The proposed second look statute mirrors existing laws that provide sentence review opportunities to other vulnerable individuals.

Rationale

People with disabilities deserve sentencing relief for the same reasons as others who are currently eligible for sentence review under second look laws, such as young people, survivors of domestic violence, and veterans. Fifteen state legislatures, the District of Columbia, and the federal government have provided judicial sentence review hearings to such people, but none of them have offered these opportunities to those with disabilities.⁹

Courts and lawmakers understand that the criminal legal system must account for circumstances and personal characteristics that reduce an individual's culpability for an offense when subjecting them to the criminal process. Despite this recognition, second look opportunities have not been provided to people with disabilities. This is true even though a disability may reduce a person's culpability and preclude the person from accessing programming they require to demonstrate their reformation and rehabilitation while incarcerated *even when* they are able to learn, grow, mature, reform, rehabilitate, and successfully reintegrate into the broader community upon release.

Endnotes

¹ The proposed model legislation can be found [here](#). For the full journal article that this brief summarizes, see Cohbra, S. (forthcoming). [Securing second look opportunities for individuals with disabilities](#). *Federal Sentencing Reporter*.

² Maruschak, L., Bronson, J., & Alper, M. (2021). [Disabilities reported by prisoners: Survey of prison inmates](#) (2021). Bureau of Justice Statistics; see also Miller, K., Shen, K., Yang, Y., Williams, B., & Wolff, J. (2024). Prevalence of disability among older adults in prison. *JAMA Network Open*, 7(12). doi:10.1001/jamanetworkopen.2024.52334.

³ Vallas, R. (2016). [Disabled behind bars: The mass incarceration of people with disabilities in America's jails and prisons](#). Center for American Progress; Access Living of Metropolitan Chicago. (2019). *Access to justice: A cross-disability perspective on reducing jail incarceration*.

⁴ Access Living of Metropolitan Chicago. (2019). *Access to justice: A cross-disability perspective on reducing jail incarceration* 441-61.

⁵ Schlanger, M. (2025). Keynote: Promoting disability equality behind bars. *Nevada Law Journal*, 25(3), 537-556; Reingle, J. Gonzalez, J. & Connell, N. (2014). Mental health of prisoners: Identifying barriers to mental health treatment and medication continuity. *American Journal of Public Health*, 104(12), 2328-2333. doi: 10.2105/AJPH.2014.302043.

⁶ Vallas, R. (2016). [Disabled behind bars: The mass incarceration of people with disabilities in America's jails and prisons](#). Center for American Progress.

Training

In addition, we propose that a jurisdiction enacting a second look statute for those with disabilities also institute mandatory training for law enforcement officers, judges, prosecutors, and defense counsel on disability and the legal obligations under federal and state law to provide accommodations for those with disabilities who interact with the justice system.

⁷ Hirschi, T., & Gottfredson, M. R. (1983). Age and the explanation of crime. *American Journal of Sociology*, 89(3), 552-584. <https://doi.org/10.1086/227905>; Sampson, R. J., & Laub, J. H. (1997). A life-course theory of cumulative disadvantage and the stability of delinquency. In T. P. Thornberry (Ed.), *Advances in Criminological Theory*, 7 (pp. 133-161). Transaction Publishers.

⁸ Kurlychek, M. C., Brame, R., & Bushway, S. D. (2006). Scarlet letters and recidivism: Does an old criminal record predict future offending? *Criminology & Public Policy*, 5(3), 483-504. <https://doi.org/10.1111/j.1745-9133.2006.00397.x>; Blumstein, A., & Nakamura, K. (2009). Redemption in the presence of widespread criminal background checks. *Criminology: An Interdisciplinary Journal*, 47(2), 327-359. <https://doi.org/10.1111/j.1745-9125.2009.00155.x>.

⁹ The 15 states are: California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Maryland, Minnesota, New York, North Dakota, Oklahoma, Oregon, Utah, and Washington. Feldman, B., & Cohbra, S. (2025). *The second look movement: An assessment of the nation's sentence review laws*. The Sentencing Project.; see also Feldman, B. & Cohbra, S. (2025). *Sentencing laws by state*. The Sentencing Project. <https://docs.google.com/spreadsheets/d/1VrHK1R07ab4d03j2o-UGD1A-sGKsLwxbEb1xgyh0plo/edit?usp=sharing>.

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The Sentencing Project advocates for effective and humane responses to crime that minimize imprisonment and criminalization of youth and adults by promoting racial, ethnic, economic, and gender justice.