



Securing Second Look Opportunities for Individuals with Disabilities

Sara Cohbra
Second Look Network Director
The Sentencing Project

(forthcoming in Federal Sentencing Reporter, Spring 2027)

The author would like to acknowledge Nazgol Ghandnoosh, Kara Gotsch, Liz Komar and Claude Heffron for their valuable insights and feedback on this article. She also extends gratitude to Tina Brown, Kaitlin Kall, Eddie Ellis, Jordan Landry, Jabari Nicks, Quinea Oard, Jennifer Toon, and Tremmel Watson at Activating Change for their review and our lively discussions that greatly improved the language and ideas in this article. The author also appreciates the insights of the editors of the Federal Sentencing Reporter and the participants in the symposium for their contributions to the field.

Abstract

Courts and legislatures have recognized that youth, young adults, and individuals with particular disabilities (such as those with intellectual disability and those with mental illness) are less culpable and face greater challenges than other people to access their constitutional rights upon arrest, during trial, and upon sentencing. In some contexts, legislators and judges have determined that these factors must be accounted for at sentencing. For example, in 2002, the United States Supreme Court determined in *Atkins v. Virginia* that the Eighth Amendment precludes sentencing those with intellectual disability (ID) to death. Some jurisdictions also have extended some degree of sentencing moderation to people with mental illness. Nevertheless, neither courts nor legislatures have extended sentence review opportunities beyond the death penalty context to those with ID and mental illness, nor to those with other disabilities.

This article argues that proportionality principles indicate that jurisdictions should enact “disability second look” statutes to give those with disabilities the opportunity for sentence review and reduction, and it proposes model statutory language for this purpose. Those eligible under the proposed statutory language are those 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 in carceral settings, including being disciplined for infractions, being excluded from prison programming, or acquiring additional disabilities, *or* (5) obstacles to their developing reentry plans.¹ The proposed second look statutes would mirror existing laws that provide sentence review opportunities to other individuals.

¹ This statute would also apply to those who acquired disabilities during incarceration due to conditions of confinement, including inadequate medical care, isolation and solitary confinement, violence, and other factors.

I. Introduction

Considerable scholarship describes the overrepresentation of people with disabilities in carceral facilities and the ways in which the United States' criminal legal system, rooted in racism and ableism, perpetuates their unnecessary and harmful policing and criminalization.² The purpose of this article is to contribute to this field by (1) explaining that disabilities can significantly affect a person's behavior and functioning in ways that can lead them to be unfairly targeted by law enforcement officials, denied due process during criminal legal proceedings, and excluded from rehabilitative carceral programming and access to reentry services, and (2) focusing on a particular strategy to expand sentencing relief for those with disabilities.

This article draws upon the recommendations of other authors with experience representing individuals with disabilities in criminal legal proceedings.³ It endorses the enactment of Second Look legislation to provide sentence review and resentencing opportunities

Although some of these persons are currently eligible for sentence review under compassionate release statutes, many of them are not, yet they face the same challenges to avoiding unfair discipline and accessing carceral programming and appropriate reentry supports.

² See, e.g., Alexis Karteron, *Disability Rights on Probation and Parole*, 124 Mich. L. Rev. 519 (2025); West Resendes, Allison Frankel & Brian Dimmick, *An Equal Chance to Succeed: Challenging Barriers for Disabled People on Probation and Parole*, 62 Am. Crim. L. Rev. 1229 (Fall 2025); Katie Kronick, *Left Behind, Again: Intellectual Disability and the Resentencing Movement*, 101 N.C. Law Rev. 959, 983-88 (2023); Jamelia Morgan, *Contesting the Carceral State with Disability Frames: Challenges and Possibilities*, 10 U. PA. L. REV. 1905, 1906-07 (2022); Eric Balaban, *Freeing the Most Vulnerable: Litigation Tools to Reduce the Disabled Prisoner Population*, 1 UCLA CRIM. JUST. L. REV. 1, 31 (2017) ("Prisoners with disabilities face longer prison terms . . . [because] they are more likely to be subjected to discipline, which hurts their chances for early release or parole."); Bonnie J. Sultan, *The Insanity of Incarceration and the Maddening Reentry Process: A Call for Change and Justice for Males with Mental Illness in United States Prisons*, 13 GEO. J. ON POVERTY L. & POL'Y 357, 371-72 (2006); Syrus Ware et al., *It Can't Be Fixed Because It's Not Broke: Racism and Disability in the Prison Industrial Complex*, in *DISABILITY INCARCERATED: IMPRISONMENT AND DISABILITY IN THE UNITED STATES AND CANADA* at 174, (Liat Ben-Moshe et al. eds., 2014) ("[P]risoners whose physical bodies, mental states, and health status are labeled as different are often seen as troublemakers and end up being further punished through institutional charges and administrative segregation.").

³ See, e.g., Karteron, *supra* note 2; Resendes et al., *supra* note 2; Kronick, *supra* note 2; Morgan, *supra* note 2; Balaban, *supra* note 2.

to incarcerated people whose disabilities have brought them into contact with the criminal legal system and/or adversely affected the ways in which they navigated that system. This cohort deserves sentencing relief for the same reasons as others who are currently eligible under prevailing laws, including that they have been disproportionately incarcerated, that their culpability has been exaggerated, that factors beyond their control have contributed to their navigation of the criminal legal system, and that they are capable of reform, growth, and rehabilitation.

Sentence review is not yet explicitly provided for those with disabilities and often is unattainable to them under existing mechanisms.⁴ 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 departments, courts,

⁴ The proposals in this article draw from the social construction model of disability. This model conceives of a disability as one of many traits that make up the identity and essence of a person, on par with other characteristics such as sex, gender, and ethnicity. In contrast to the medical model of disability, which considers disability a pathological difference that prevents a person from performing on a level equal to those without the disability, the social model considers disability to be “a process of disablement,” “a form of social oppression,” and advocates for the environment to change, not the person. *See, e.g.,* Rhoda Olkin, American Psychological Association, *Conceptualizing disability: Three models of disability* (2022), available at <https://www.apa.org/ed/precollege/psychology-teacher-network/introductory-psychology/disability-models> (last visited Dec. 2, 2025); Stanford Encyclopedia of Philosophy, *Disability: Definitions and Models* (originally published Dec. 16, 2011, revised Apr. 14, 2022), available at <https://plato.stanford.edu/entries/disability/> (last visited Dec. 2, 2025); Doron Dorfman, *Re-Claiming Disability: Identity, Procedural Justice, and the Disability Determination Process*, 42 Law & Soc. Inquiry 195, 197-98 (2017); Anna Lawson & Angharad E. Beckett, *The Social and Human Rights Models of Disability: Towards a Complementarity Thesis*, 25 Int. J. Hum. Rights 348, 363-64 (2021).

and 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.

II. Relief from Extreme Sentences

A. The Purposes of Sentence Review Laws

Sentence review laws are designed to accomplish multiple purposes: (1) address overcrowding in carceral facilities; (2) reduce costly expenditures associated with mass incarceration, including the medical costs associated with housing elderly people; (3) reflect scientific data demonstrating that lengthy terms of incarceration are unnecessary to ensure, and in fact are detrimental to, community safety; (4) mitigate the harm of outdated sentencing policies that mandate extremely harsh sentences that disregard the humanity and capacity for change intrinsic to all people; (5) address the effects of insidious racial bias that result in the gross overrepresentation of Black and brown people criminalized and imprisoned; (6) acknowledge the role that life experiences prior to and during the commission of a crime may have on a person's ability to understand and control their behavior; (7) account for scientific evidence regarding the ongoing development of the brains of youth and emerging adults and explaining its effect on their impulsive and immature decision-making; and (8) provide meaningful motivations for, and recognition of, rehabilitation efforts and personal and moral growth.⁵

⁵ See generally Katherine E. M. Miller, Karen Shen, Yang Yang, et al., *Prevalence of Disability Among Older Adults in Prison*, JAMA Network Open, Vol. 7, No. 12 (Dec. 27, 2024), available at <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2828503> (last visited November 3, 2025) (reporting that it “is twice as expensive to imprison older (vs younger) individuals”); Ashley Nellis & Celeste Barry, *A Matter of Life: The Scope and Impact of Life and Long Term Imprisonment in the United States*, The Sentencing Project. (January 8, 2025), available at <https://www.sentencingproject.org/reports/a-matter-of-life-the-scope-and-impact-of->

To address these goals, legislatures, courts, and administrative bodies have designed procedures that permit courts to review—and possibly reduce—lengthy sentences. Mechanisms for providing opportunities for review of long sentences vary widely across the nation.⁶ They include Second Look statutes that provide incarcerated individuals meeting particular enumerated criteria the opportunity to petition courts to review and revise their sentences; statutes and administrative rules that permit prosecutors and/or prison officials the authority to refer particular cases to the courts for review and resentencing; statutes that articulate conditions under which a court may grant compassionate release to incarcerated individuals who are elderly or infirm; court rulings that have found certain lengthy sentences to violate federal or state constitutional provisions against cruel and/or unusual punishment; post-conviction and habeas corpus proceedings; elder and medical parole processes; and clemency/commutation practices. This article will use the term “sentence review movement” to describe the momentum of the work and “sentence review procedures” to describe the mechanisms.

B. To Whom Do Existing Sentence Review Laws Apply?

[life-and-long-term-imprisonment-in-the-united-states/](#) (reporting that one in six people in prison nationwide is serving a life sentence and that persons of color are disproportionately sentenced to life or effective life sentences); Janeanne Murray, Sean Hecker, Michael Skocpol, Marissa Elkins, *Second Look = Second Chance: Turning the Tide Through NACDL's Model Second Look Legislation*, 33 Fed. Sent. Rep. 341 (2021); see also E. Ann Carson, Bureau of Just. Stat., U.S. Dep't of Just., *Prisoners in 2019* (2020), available at <https://www.bjs.gov/content/pub/pdf/p19.pdf> [<https://perma.cc/Q6NN-7MZF>]; Ashley Nellis, The Sent'g Project, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (2016), <http://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>.

⁶ See, e.g., Becky Feldman & Sara Cohbra, *The Second Look Movement: An Assessment of the Nation's Sentence Review Laws*. The Sentencing Project. (Originally published May 2024; updated August 2025); available at <https://www.sentencingproject.org/reports/the-second-look-movement-a-review-of-the-nations-sentence-review-laws/?emci=e4828cd4-9182-f011-b484-6045bdeb7413&emdi=0f8017c7-5483-f011-b484-6045bdeb7413&ceid=15741620>.

To date, twenty-five states have implemented avenues for sentence review that can lead to modification of extreme sentences to more proportional sentences.⁷ Each jurisdiction's resentencing laws are different, making for a patchwork of reforms throughout the country. The cohorts of incarcerated individuals currently eligible for sentence review in one or more states include:

- Those who were under a certain age at the time of the offense (youth or emerging adults);⁸
- Those with particular traumatic life experiences, such as military veterans and survivors of domestic violence;⁹
- Those who are elderly and/or have served a particular amount of time;¹⁰
- Those suffering from severe and/or terminal illness (often called “compassionate release mechanisms”);¹¹
- Those who were sentenced under sentencing laws that have been withdrawn or modified (such as habitual offender statutes, three strikes laws, and felony-murder laws);¹² and

⁷ Feldman et al., *supra* note 6.

⁸ See, e.g., DC St. § 24-403.03 (District of Columbia); F.S.A. § 921.1402 (Florida); Md. Crim. Proc. § 8-110 (Maryland); NDCC 12.1-32.13.1 (North Dakota); OR ST § 420A.203 (Oregon); *Commonwealth v. Mattis*, 224 N.E.3d 410 (Mass. 2024); *People v. Parks*, 987 N.W.2d 161 (Mich. 2022); *People v. Taylor & People v. Czarnecki*, 2025 WL 1085247, __ N.W. __ (Mich. April 10, 2025); *Comer v. State*, 249 N.J. 259 (2022) (New Jersey); *Matter of Monschke*, 482 P.3d 276 (Wash. 2021).

⁹ See, e.g., Cal. Penal Code § 1170.91 (members of the military and veterans); Ga. Code Ann. §§ 17-10-22, 17-10-1(f) (survivors of domestic violence); IL ST CH 735 § 5/2-1401 (domestic violence and post-partum survivors); NY Crim. Proc. § 440.47 (domestic violence survivors); 22 Okla. St. Ann. § 1090.4 (survivors of domestic violence).

¹⁰ See, e.g., 11 Del. C. § 4217 (60 and over, served at least 15 years; or any age, served 25 years and entirety of statutorily mandated portion of sentence).

¹¹ See, e.g., DC ST § 24-402.04; 11 Del. C. § 4217.

¹² See, e.g., Cal. Penal Code §§ 1170.126, 1172.75, 1172.6, 1170.18, 1172.7; Cal. H&S Code 11361.8; Colo. Rev. Stat. Ann. § 18.1.2-801; Minn. Stat. Ann. § 609.05.

- Those Departments of Corrections and/or prosecutors deem worthy of sentence review, due to a variety of reasons including demonstration of rehabilitation.¹³

These categories reflect a growing body of knowledge about brain development and the impact of traumatic exposure upon a person's cognitive, emotional, and behavioral functioning. They also reflect a recognition not only that people change and mature, but that the hope of resentencing and release from prison provides a strong motivation to engage in meaningful rehabilitation and personal growth during incarceration. The categories also demonstrate the understanding that some sentences were unfairly overlong when originally imposed and should be corrected.

C. People with Disabilities—Deserving but Not Yet Eligible for Sentence Review

Many incarcerated people who do not fall within the groups described above deserve but are not yet afforded opportunities for resentencing. This article proposes that individuals with disabilities—not yet specifically eligible under prevailing laws—deserve a second look for reasons analogous to those underlying existing sentence review laws. Persons with disabilities are significantly overrepresented in carceral facilities as compared to their representation in the general population. 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).¹⁴ Many of these are

¹³ See, e.g., Cal. Penal Code § 1172.1; 725 Ill. Comp. Stat./122-9; Minn. Stat. Ann. § 609.133; Or. Rev. Stat. § 137.218; Wash. Rev. Code § 36.27.130; Utah Admin. Code Ref. R671-311.

¹⁴ Laura M. Maruschak et al., *Disabilities Reported by Prisoners: Survey of Prison Inmates 1* (2021), available at <https://bjs.ojp.gov/library/publications/disabilities-reported-prisoners-survey-prison-inmates-2016> (last visited October 5, 2025) (reporting that 38% of state and federal prisoners had at least one disability in 2016); see also Katherine E. M. Miller, PhD, et al., *Prevalence of Disability Among Older Adults in Prison*, JAMA Network Open, Vol. 7, No. 12 (Dec. 27, 2024), available at <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2828503>

people of color: research has indicated that 55% of Black men with disabilities will be arrested before their twenty-eighth birthdays.¹⁵

III. Disabilities and Culpability

Courts and lawmakers have long understood 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 criminal process. These modifications include bringing more moderate charges, providing defenses to charges, and restricting the penalties that a convicted person must face. For example:

Mental illness: In many states a person who experienced hallucinations at the time of his offense that led to an act of violence may not be convicted of a crime or may sustain a conviction

(last visited November 3, 2025) (reporting that adults 55 years or older in prison are two to three times as likely to report cognitive difficulty than their community-dwelling peers).

Our carceral system is notoriously poor at collecting and reporting reliable data on the prevalence of disability in jails and prisons, because different jurisdictions and even different facilities use varying methods of defining disability and many collections rely solely on individuals' self-reporting of disability. *See, e.g.,* Katarzyna Uzieblo et al., *Intelligent Diagnosing of Intellectual Disabilities in Offenders: Food for Thought*, 30 BEHAV. SCI. & L. 28, 31; John L. Taylor & William R. Lindsay, *Offenders with Intellectual and Developmental Disabilities: Future Directions for Research and Practice*, in *The Wiley Handbook* 453, 454–55; Paul Marcus, *Does Atkins Make a Difference in Non-Capital Cases? Should It?*, 23 WM. & MARY BILL RTS. J. 431, 435–37 (2014) (observing that “there are no reliable numbers out there,” and citing multiple sources). Nevertheless, all available research demonstrates that people with disabilities are disproportionately overrepresented in the criminal legal system. *See, e.g.,* Access Living of Metropolitan Chicago, *Access to Justice: A Cross-Disability Perspective on Reducing Jail Incarceration*, 14, 22 (2019) (noting that “an estimated 40 percent of individuals in jail self-reported having at least one disability”); Jamelia N. Morgan, *Reflections on Representing Incarcerated People with Disabilities: Ableism in Prison Reform Litigation*, 96 DENV. L. REV. 973, 979 (2018); Laura M. Maruschak et al., *Disabilities Reported by Prisoners: Survey of Prison Inmates 1* (2021), available at <https://bjs.ojp.gov/library/publications/disabilities-reported-prisoners-survey-prison-inmates-2016> (last visited October 5, 2025) (reporting that 38% of state and federal prisoners had at least one disability in 2016, that the most commonly reported type of disability among both state and federal prisoners was a cognitive disability (23%), and that nearly a quarter of prisoners reported participating in special education classes); Morgan, *Contesting*, *supra* note 2, at 1906–07.

¹⁵ *See* Jasmine E. Harris, *Reckoning with Race and Disability*, 130 YALE L.J.F. 916, 937–38 (2021); E.J. McCauley, *The Cumulative Probability of Arrest by Age 28 Years in the United States by Disability Status, Race/Ethnicity, and Gender*, 107 AM. J. PUBLIC HEALTH 1977 (2017).

of guilty but mentally ill, leading to a reduced sentence or a sentence of treatment rather than incarceration.¹⁶ Similarly, a person who was unable to or did not harbor a specific mental state that is an element of an offense due to a mental disability cannot be adjudicated guilty of that offense.¹⁷

Youth: Many aspects of law also recognize that children who engage in criminal behavior are less culpable than adults. In many contexts, the juvenile legal system is separate from the adult criminal legal system both for prosecution and for discipline and rehabilitation.¹⁸ Notably, the Supreme Court has recognized in a series of cases beginning in 2005 that, due to the fact that brains are still not fully developed during one's teenage years and the combination of changing hormones, the increase of risk-taking behavior, and the continued limitations in the brain's ability to consider consequences of actions, people under the age of 18 who commit crimes may not be subjected to the death penalty¹⁹ nor to a mandatory prison term of life without the possibility of parole (LWOP).²⁰ Many jurisdictions, relying on the same science, have gone

¹⁶ See, e.g., Cal. Penal Code § 1026 (establishing defense of not guilty by reason of insanity); 11 Del. C. § 401 (same); KY Penal Code § 504.130 (not guilty by reason of mental illness as a defense to charges); MN. St. Ann. Rule W.V. Code § 27-6A-6 (same); Tex. C.C.P. Art. 46C.155 (same).

¹⁷ Kan. St. Ann. § 21-5209; 18 U.S.C. § 17 (insanity defense to a charge is defined as the defendant, as a result of a severe mental disease or defect, being unable to appreciate the nature and quality or the wrongfulness of his acts).

¹⁸ See Robert W. Taylor & Eric J. Fritsch, *Juvenile Justice: Policies, Programs, and Practices* (6th ed.) (McGraw-Hill Education - 2022); Mona Sobhani, *Extending the Logic of the Juvenile Justice System to a Separate Justice System for Mentally Ill Offenders*, 8 Albany Gov. L. Rev. 439, 441-46 (2015) (describing the history and evolution of the juvenile justice system beginning in the early 19th century, and by the late 19th century establishing a special juvenile court and separate rehabilitative facilities to account for the behavioral and developmental differences between children and adults).

¹⁹ *Roper v. Simmons*, 543 U.S. 551 (2005).

²⁰ *Miller v. Alabama*, 567 U.S. 460 (2012) (barring mandatory LWOP for individuals under 18 convicted of homicide); *Montgomery v. Louisiana*, 577 U.S. 190 (2016) (determining that *Miller* is retroactive); see also *Graham v. Florida*, 560 U.S. 48 (2010) (barring imposition of LWOP for nonhomicide offenses for defendants under the age of 18 at the time of the offense).

further and precluded the imposition of mandatory LWOP, or of LWOP at all, on emerging adults under the age of 21.²¹

Intellectual disability: In 2002, in *Atkins v. Virginia*, the United States Supreme Court recognized that individuals with intellectual disability (ID) are “less morally culpable” than those without ID due to “cognitive and behavioral impairments” that result in “diminished ability to understand and process information, to learn from experience, to engage in logical reasoning, or to control impulses.”²² The Court further acknowledged that those with ID are at risk of not being able to reap the full benefits of the criminal trial process because they are “more likely to give false confessions, are often poor witnesses, and are less able to give meaningful assistance to their counsel.”²³ These considerations led the Supreme Court to conclude that although individuals with ID may be criminally tried and punished, they are categorically exempt from the death penalty under the Eighth Amendment’s ban on cruel and unusual punishment.²⁴

Since issuing its opinion in *Atkins* in 2002, the Supreme Court has repeated that the characteristics it described in that case reduce culpability and require more moderate punishment than that which may be imposed upon non-intellectually disabled individuals.²⁵ Nevertheless,

²¹ *Matter of Monschke*, 482 P.3d 276 (Wash. 2021); *People v. Parks*, 987 N.W.2d 161 (Mich. 2022) (extending relief to individuals aged 18); *Commonwealth v. Mattis*, 224 N.E.3d 410 (Mass. 2024); *People v. Taylor & People v. Czarnecki*, 2025 WL 1085247, __ N.W.3d __ (Mich. April 10, 2025) (further extending relief to those under 21).

²² *Atkins v. Virginia*, 536 U.S. 304, 320 (2002). The *Atkins* Court referred to this group of people as those with “mental retardation”; that term has since been replaced both by the medical community and the Supreme Court with the term “intellectual disability.” AMERICAN ASSOCIATION ON INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, *Intellectual Disability: Definition, Diagnosis, Classification, and System of Supports*, xii (12th ed. 2021) (AAIDD Manual); *Hall v. Florida*, 572 U.S. 701, 704 (2014).

²³ *Atkins*, 536 U.S. at 321.

²⁴ *Atkins*, 536 U.S. at 320.

²⁵ See, e.g., *Hall v. Florida*, 572 U.S. 701 (2014); *Moore v. Texas*, 586 U.S. 1 (2017); *Moore v. Texas II*, 586 U.S. 133 (2019); see also Kronick, *supra* note 2, at 983-88.

neither the Supreme Court nor other lower courts nor federal nor state legislatures have extended the rationale to people with ID subject to sentences other than capital punishment.²⁶

IV. The Americans with Disabilities Act: Its Benefits and Limitations for Incarcerated Persons

Federal statutes seek to minimize discrimination against, and increase participation in society by, people with disabilities. These include the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973,²⁷ and the Social Security Administration Act.²⁸ For the reasons that follow, this article uses the ADA's definition of disability to undergird its proposals, and also explains how the ADA's mandates fall short, requiring new Second Look legislation to realize the goals of nondiscrimination and fully equal treatment in the criminal legal system.

The ADA is the most well-known and broadly applicable statute in the United States governing the establishment of rights of individuals with disabilities and the responsibilities of organizations and programs to include and provide services for disabled people. Originally

²⁶ See Marcus, *supra* note 14 (explaining that the *Atkins* decision has had nearly no impact on the consideration of the impact of intellectual disability in non-capital cases); Timothy Cone, *Developing the Eighth Amendment for Those "Least Deserving" of Punishment: Statutory Mandatory Minimums for Non-Capital Offenses Can be "Cruel and Unusual" When Imposed on Mentally Retarded Offenders*, 34 N.M. L. REV. 35, 41 (2004) (same).

²⁷ 29 U.S.C. § 701 (amended effective July 22, 2014). Section 504 of the Rehabilitation Act was passed to "to empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society," and defines disability as either "a physical or mental impairment that constitutes or results in a substantial impediment to employment" or an impairment as later defined under the ADA. 29 U.S.C. § 705 (9) (amended effective July 22, 2014).

²⁸ The Social Security Act (SSA) entitles persons with disabilities to government benefits, and defines disability as "(a) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months, or (B) blindness." 42 U.S.C. § 416 (i).

enacted in 1990 “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities,”²⁹ the ADA defines disability as: “(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.”³⁰ The ADA further establishes that “[t]he definition of disability . . . shall be construed in favor of broad coverage of individuals . . . to the maximum extent permitted.”³¹

Title II of the ADA prohibits discrimination in the provision of public services. It provides that “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.”³² It defines a “qualified person with a disability” as “an individual with a disability who, with or without reasonable accommodations to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.”³³

²⁹ 42 U.S.C. § 12101.

³⁰ 42 U.S.C. § 12102 (1).

³¹ 42 U.S.C. § 12102 (4).

³² 42 U.S.C. § 12132.

³³ 42 U.S.C. § 12131(2). While the ADA’s definition of “public entity” expressly includes only state and local governments and their subsidiaries, not the federal government, federal courts and federal carceral institutions are instead subject to Section 504 of the Rehabilitation Act, which provides similar protections as Title II of the ADA.

In *Pennsylvania Department of Corrections. v. Yeskey*, 524 U.S. 206 (1998), the United States Supreme Court unanimously held, in an opinion authored by Justice Antonin Scalia, that carceral facilities are “public entities” that are prohibited by the ADA from discriminating against individuals with disabilities, including incarcerated persons. The ADA prohibits prisons from “exclud[ing] from participation in or den[ying] of the services, programs, or activities” to incarcerated people with disabilities. The Supreme Court has also held that Title II of the ADA, in conjunction with the Due Process clause of the Fourteenth Amendment, applies to state and local courts and precludes discrimination against people with disabilities in court proceedings.³⁴

Proper application of the ADA *should* provide many individuals with disabilities the opportunity to obtain modifications and services to ensure their access to meaningful due process prior to and during arrest and in court proceedings, and to vital rehabilitative programming during incarceration and meaningful reentry services upon release. Such accommodations might include adequately trained legal counsel who ask their clients about any impairments and the supports necessary to make the criminal legal process accessible to them, and/or recognize that they require expert assistance to interact with and effectively represent their clients. Experts could include mental health professionals to advise them about a client’s mental illness, the symptoms of which may have affected the individual not only at the time of the offense but also throughout the legal process, or an American Sign Language (ASL) interpreter or assistance with closed captioning to communicate with a deaf client. Others might include the limitation of unnecessary distractions in the courtroom or taking more frequent breaks during proceedings for consultation with counsel, or providing second counsel or permission for another member of the

³⁴ *Tennessee v. Lane*, 541 U.S. 509, 531 (2004) (holding that “Title II unquestionably is valid . . . legislation as it applies to the class of cases implicating the accessibility of judicial services”).

defense team to sit at counsel table and communicate with the client during proceedings, such as for those with ID. The failure to provide these critical supports can result in a denial of due process that may include inappropriate overcharging, unjust convictions, and unduly extreme sentencing.

But the ADA is not a panacea. Although some federal courts, relying on the Supreme Court's decision in *Yeskey*, have held that the ADA applies to police and other law enforcement agencies,³⁵ the Supreme Court itself has not.³⁶

In addition, the restrictions inherent in the use of “qualified” in the definition of a person with a disability under the ADA restrict many individuals with disabilities from obtaining access to public services. The Supreme Court's landmark opinion in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 601-05 (1999), made clear that Title II of the ADA does not preclude the

³⁵ See, e.g., *Gorman v. Bartch*, 152 F.3d 907, 912 (8th Cir. 2012) (holding that “a local police department falls squarely within the statutory definition of public entity” and that “[c]overed programs or services do not need to be voluntary” under the ADA); *Seremeth v. Board of County Com'rs*, 673 F.3d 333, 336-37 (4th Cir. 2012) (holding that “police investigations are subject to the ADA's framework”); see also *Barden v. City of Sacramento*, 292 F.3d 1073, 1076 (9th Cir.2002) (“Rather than determining whether each function of a city can be characterized as a service, program, or activity for purposes of Title II, ... we have construed the ADA's broad language [as] bring[ing] within its scope anything a public entity does.”) (internal quotation marks and citations omitted), *cert. denied*, 539 U.S. 958 (2003); *Reg'l Economic Cmty. Action Program v. City of Middletown*, 294 F.3d 35, 45 (2d Cir. 2002) (“The ADA and the Rehabilitation Act ... prohibit all discrimination based on disability by public entities.”), *cert. denied*, 537 U.S. 813 (2002). Federal appellate courts also have held that Title II of the ADA applies to private third parties (such as privately owned prisons) when they serve a public function. *Montanez v. Price*, 154 F.4th 127, 145 (3d Cir. 2025).

³⁶ In 2014, the Ninth Circuit Court of Appeals, holding that law enforcement officers must comply with the ADA during arrests, noted that the Fourth and Tenth Circuit Courts of Appeals had recognized two types of Title II ADA claims applicable to arrests: “(1) wrongful arrest, where police wrongly arrest someone with a disability because they misperceive the effects of that disability as criminal activity; and (2) reasonable accommodation, where, although police properly investigate and arrest a person with a disability for a crime unrelated to that disability, they fail to reasonably accommodate the person's disability in the course of investigation or arrest, causing the person to suffer greater injury or indignity in that process than other arrestees.” *Sheehan v. City and County of San Francisco*, 743 F.3d 1211, 1215-16 (9th Cir. 2014), *rev'd in part, cert. dismissed in part, City and County of San Francisco, Calif. v. Sheehan*, 575 U.S. 600 (2015). The Supreme Court, after granting a writ of certiorari to determine whether Title II applies to arrests, did not decide the question, despite noting it was “an important question that would benefit from briefing and an adversary presentation,” because the parties agreed in their briefing that Title II applies to arrests. *Id.*

exclusion of individuals with disabilities from the benefits of public services and programs if the disabilities cannot be reasonably accommodated or if, even with reasonable accommodations, disabled people do not meet the essential eligibility requirements to participate in these services or programs. The *Olmstead* Court further held that public entities may “resist modifications that entail a ‘fundamental alteration’” of the services offered.³⁷ The Court placed the authority in the public entity itself to make these determinations, holding that it is within the purview of the “reasonable assessments of [a public entity’s] own professionals [to] determin[e] whether an individual meets the essential eligibility requirements.”³⁸ Furthermore, courts have held that negligent or inadequate care of incarcerated people does not constitute a violation of the ADA.³⁹

Furthermore, professional participants in the criminal legal system frequently fail to provide appropriate accommodations as required by the ADA, whether because they have failed to identify that a person has a disability,⁴⁰ or because they determine that the person is not a

³⁷ *Olmstead*, 527 U.S. at 603.

³⁸ *Olmstead*, 527 U.S. at 603.

³⁹ See, e.g., *Iseley v. Beard*, 200 Fed. Appx. 137, 142 (3d Cir. 2006); *Burger v. Bloomberg*, 418 F.3d 882, 883 (8th Cir. 2005); *Marlor v. Madison County*, 50 Fed. Appx. 872, 873 (9th Cir. 2002); *Bryant v. Madigan*, 84 F.3d 246, 249 (7th Cir. 1996); *Owens v. O’Dea*, 1998 U.S. App. Lexis 10761 (6th Cir. 1998); *Nottingham v. Richardson*, 499 Fed.App’x 368 (5th Cir. 1996).

⁴⁰ Many disabilities are not obvious at first blush. Individuals with disabilities may be undiagnosed, because laypersons unfamiliar with disability do not recognize symptoms and base their understanding of disability on inaccurate stereotypes, misinterpret symptoms they do recognize as willful acts such as defiance and laziness, or fail to secure adequate evaluation by competent experts. Many individuals with disabilities do not outwardly appear disabled and thus do not meet stereotypical perceptions of disability. Furthermore, disabilities may manifest in certain domains but not in others, or their symptoms may wax and wane, appear at times and remit at others. See, e.g., Sheri Johnson, John H. Blume & Amelia Courtney Hritz, *Convictions of Innocent People with Intellectual Disability*, 82 Albany L. Rev. 1031, 1040-41 (2018). Disabilities may also be undiagnosed because people seek to avoid identification in order to avoid stigma. See, e.g., American Association on Intellectual and Developmental Disabilities and The Arc of the United States, *Position Statement on the Criminal Justice System* (2014), available at <https://www.aaid.org/news-policy/policy/position-statements/criminal-justice> (last visited October 2, 2025); *Human Rights Watch, Beyond Reason: The Death Penalty and Offenders with Mental Retardation*, 5, 12 (2001); see also Kronick, *supra* note 2, at 977-81; Sheri Johnson, John H. Blume & Amelia Courtney Hritz, *Convictions of Innocent People with Intellectual Disability*, 82 Albany L. Rev. 1031, 1038-39 (2018); Paul Marcus, *Does Atkins Make a Difference in Non-Capital Cases? Should It?*, 23 Wm. & Mary Bill Rts. J. 431, 438 (2014). The invisibility

“qualified individual” under the ADA because they judge modifications or accommodations for that disability to be “unreasonable” as described above.⁴¹

In fact, recognition of a person’s disability often creates a cycle that results in further pathologizing the individual, leading to mistreatment and exclusion from carceral programming, education, and employment. Incarcerated individuals who are identified as disabled may be segregated from the general population, confined to specialty units, or otherwise excepted from opportunities to work, take classes, and participate in or lead programs that promote growth in the prison community—even when these individuals are fully capable of demonstrating rehabilitation and reformation.⁴²

These problems may cause incarcerated individuals with disabilities to have difficulty navigating the criminal legal system and preclude them from accessing carceral 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.⁴³ New and/or expanded second look laws are necessary to

of disability can lead to the failure to provide necessary supports to ensure full understanding of and meaningful participation in the criminal legal process, all of which should be available under the ADA to people with disabilities facing criminal charges.

⁴¹ See, e.g., Margo Schlanger, *Keynote: Promoting Disability Equality Behind Bars*, 25 Nev. L.J. 537, 539 (2025) (noting that prisons often fail to provide accommodations unless disabled incarcerated people are able to request and vigorously advocate for them: “prison officials are accustomed to the idea that prisoners *make* accommodations to the inconveniences and pressures of life behind bars – prisoners do not *get* accommodations”); Jennifer M. Reingle Gonzalez & Nadine M. Connell, *Mental Health of Prisoners: Identifying Barriers to Mental Health Treatment and Medication Continuity*, 104 Am. J. Pub. Health 2328 (2014) (reporting survey results finding that more than half of incarcerated people who received medication for mental health conditions when admitted to prison did not receive such medication in prison).

⁴² Morgan, *Reflections*, *supra* note 14 at 986-87; see also Sultan, *supra* note 2.

⁴³ Prianka Nair, *The ADA Constrained: How Federal Courts Dilute the Reach of the ADA in Prison Cases*, 71 Syracuse L. Rev. 791, 815-21 (2021).

prevent individuals who need services that are “fundamentally” different from those already provided from falling through the cracks.

V. Impairments Result in Increased Law Enforcement Contacts, Decreased Carceral Programming, and Limited Reentry Resources

Stereotypes persist that individuals with disabilities—particularly, but not exclusively, cognitive and mental health disabilities—are dangerous and therefore more likely than others to commit crimes, despite decades of statistical evidence proving otherwise.⁴⁴ For example, even into the 1990s, the United States Supreme Court held that because intellectual disability is a “permanent, relatively static condition,” a person with intellectual disability who engaged in unlawful behavior on one occasion could be presumed to be inclined to behave dangerously in the future.⁴⁵

A. Increased Law Enforcement Contacts

Despite the fact that individuals with disabilities do not commit crime at a higher rate than those without disabilities, those with disabilities are more likely to be arrested and convicted than those without.⁴⁶ That symptoms of disability often are not recognized for what they are, and

⁴⁴ See Michel Foucault, *Abnormal: Lectures at the College de France, 1974-75*, 39 (2003); MacArthur Violence Risk Assessment Study, MacArthur Research Network on Mental Health and the Law (modified Dec. 4, 2020), available at <https://www.law.virginia.edu/macarthur-violence-risk-assessment-study> (last visited Dec. 23, 2025) (demonstrating that the only two clinical symptoms of mental illness associated with violent acts are command hallucinations and psychopathy); Suzanne Fitzgerald, Nicola S. Gray, John Taylor & Robert J. Snowden, *Risk Factors for Recidivism in Offenders with Intellectual Disabilities*, 17 PSYCH. CRIME & L. 43, 45-56 (2011).

⁴⁵ *Heller v. Doe*, 509 U.S. 312, 323 (1993).

⁴⁶ See, e.g., Rebecca Vallas, *Disabled Behind Bars: The Mass Incarceration of People with Disabilities in America's Jails and Prisons*, Center for American Progress (2016), available at <https://cdn.americanprogress.org/wp-content/uploads/2016/07/18000151/2CriminalJusticeDisability-report.pdf> (last visited Jan. 14, 2026) (reporting that “Police interactions involving people with communication disabilities—such as intellectual or developmental disabilities and sensory or cognitive disabilities—frequently escalate when law enforcement personnel do not know how to appropriately respond to or communicate with people experiencing distress”); Michael J. O'Connell et al., *Miranda Comprehension in Adults with Mental Retardation and the Effects of Feedback Style on Suggestibility*,

instead are misinterpreted as willfully aberrant behavior, increases the likelihood that individuals with disabilities will attract law enforcement attention, often leading to arrest.⁴⁷

As explained in a 2019 report authored by Access Living, a leading organization providing direct services to individuals with disabilities, “disability by its nature is a state of non-compliance. . . . At first point of contact with 911, a person with a disability may be misunderstood and diagnosed or categorized as a person requiring an elevated police response. The person may be perceived as someone who isn’t ‘normal’ and may be ‘unpredictable’ and sometimes even categorized as an ‘unknown threat.’”⁴⁸ Such behaviors may include attention-attracting behavior stemming from a specific feature of the disability (such as speaking loudly to oneself, entering private property without understanding such is trespassing, or resisting arrest after being restrained by police officers who do not so identify themselves),⁴⁹ failure to understand or respond appropriately to law enforcement commands, misunderstanding of

29 Law & Hum. Behav. 359, 359 (2005) (“Research has not established a link between MR [mental retardation] and criminal behavior, and this overrepresentation could be due to the increased likelihood of arrest and conviction of those with MR [as they] are more easily caught by police and are more likely to be tricked by police interrogators into confessing”).

⁴⁷ Sandra M. Leotti & Elspeth Slayter, *Criminal Legal Systems and the Disability Community: An Overview*, 11 Soc. Sci. 255 (2022), available at <http://doi.org/10.3390/socsci11060255> (“Symptoms of psychiatric, intellectual, physical, or sensory disabilities by law enforcement professionals who are not trained in recognizing the signs of disability or intervening in disability-related crisis situations.”).

⁴⁸ Access Living, *Access to Justice*, supra note 14, at 22; see also *id.* at 17 (noting that “the stigma of mental health has falsely portrayed people with mental health issues as scary and vile.”).

⁴⁹ See, e.g., Jamelia N. Morgan, *Why Disability Studies in Criminal Law and Procedure?*, 71 J. LEGAL EDUC. 124, 124-29 (2021) (describing one legal case involving the arrest of a man suffering from diabetic hypoglycemia who took a bottle of orange juice from a convenience store to treat his plunging blood sugar and was arrested by police officers while unconscious from his condition, and another in which a man with Down syndrome was arrested after failing to understand he could not reenter a movie theater without paying to see a film again and who died after police pinned him to the ground when he resisted arrest); Jennifer C. Sarrett & Alexa Ucar, *Beliefs About and Perspectives of the Criminal Justice System of People with Intellectual and Developmental Disabilities: A Qualitative Study*, SOC. SCI. & HUM. OPEN 3 (2021) (noting that rates of poverty, unemployment, substance use, and lack of education are increased in those with disabilities and that disability-related behaviors in public, including “talking to oneself, flapping hands”) draw police attention).

nonverbal cues and apparent disregard of suitable responses, or confusion that officers may interpret as intoxication.

Moreover, officers who are not trained to interact with those with disabilities often respond to agitated individuals in ways that escalate, rather than defuse, violence. These interactions may lead to unnecessary detention and arrest, injury, or excessive charging. And because federal Circuit Courts of Appeals have held that officers presented with exigent circumstances are not required “to factor in whether their actions are going to comply with the ADA,”⁵⁰ law enforcement may not be held liable for failing to accommodate the needs of those with disabilities.

A couple of examples illustrate these problems:

- Law enforcement officers entered Klee Mathews’ residence in Santa Maria, California, to execute a warrant for the search and seizure of controlled substances. The target of the investigation was Mathews’ son. The police knew that Mathews was elderly and blind, although they did not know he had hearing impairment. Officers failed to comply with the knock-notice requirement and instead used a battering ram to break down the door. They announced their presence as police officers, but Mathews, due to his blindness, could not see them, and due to his hearing impairment did not hear them make this announcement. He armed himself with a shotgun intending to frighten the officers, whom he believed were intruders. When an officer approached him, he poked the officer with the barrel of the shotgun, and the officer then fired at him five times, injuring him. Mathews later was tried and convicted of exhibiting a firearm in the presence of a peace officer. The conviction was overturned on appeal after Mathews had served several years’ incarceration because the trial court failed to instruct the jury that its determination whether Mathews reasonably should have known the entrant was a peace officer had to take into consideration Mathews’ sensory impairments (blindness and deafness).⁵¹

⁵⁰ *Hainze v. Richards*, 207 F.3d 795, 801 (5th Cir. 2000); see also *Bahl v. County of Ramsey*, 695 F.3d 778, 785-86 (8th Cir. 2012); *Tucker v. Tennessee*, 539 F.3d 526, 536 (6th Cir. 2009).

⁵¹ *People v. Mathews*, 25 Cal. App. 4th 89 (Cal. Ct. App. 1994).

- Teresa Sheehan, a 56-year-old woman with schizoaffective disorder, was shot several times and nearly killed by police officers responding to a call from a social worker reporting an increase in Sheehan's symptoms, including failing to eat and to attend to her hygiene. The police entered Sheehan's room in a group home for disabled individuals in San Francisco, and Sheehan reacted aggressively to their presence, arming herself with a knife and threatening to kill the officers. The officers left Sheehan's room and called for backup but then reentered her room without the backup, drew their weapons, and shot Sheehan several times. Sheehan survived and was arrested and prosecuted for assault with a deadly weapon, assault on a peace officer with a deadly weapon, and making criminal threats. The jury acquitted her of the threats charge and was unable to reach a verdict on the other charges.⁵²

B. Due Process Problems

A person with one or more disabilities not only is at more risk than others of having contact with police that leads to arrest but also of being unable to realize the benefits of constitutional and statutory due process rights that are supposed to accrue to individuals facing criminal charges. As numerous scholars have observed, those with cognitive disabilities including ID and other developmental disabilities and mental illness are frequently unaware of—or unable to take advantage of—their rights to remain silent under law enforcement interrogation, and frequently face barriers to demanding legal representation, understanding the charges against them, communicating effectively with their defense teams, and participating effectively in the criminal legal process.⁵³ Even those people with disabilities who do understand their rights may have difficulty invoking them, for example when law enforcement officers fail

⁵² *Sheehan v. City and County of San Francisco*, 743 F.3d 1211, 1215-16 (9th Cir. 2014), rev'd in part, cert. dismissed in part, *City and County of San Francisco, Calif. v. Sheehan*, 575 U.S. 600 (2015); see also Sandra Allen, *The Trials of Teresa Sheehan*, Center for Law, Brain & Behavior, Mass. General and Harvard Med. School (July 9, 2015), available at <https://clbb.mgh.harvard.edu/the-trials-of-teresa-sheehan/>.

⁵³ See, e.g., Access Living, *supra* note 14, at 441-61 (discussing the increased percentage of intellectually disabled individuals who confess, sometimes falsely, under conditions that involve involuntary waivers of rights; cannot meaningfully assist their legal counsel; plead guilty without understanding the terms and consequences of the plea; stand trial while incompetent to do so; and are sentenced to terms disproportionate to their actual culpability); Sarrett et al., *supra* note 49; Sheri Johnson, John H. Blume, Amelia Courtney Hritz, *Convictions of Innocent People with Intellectual Disability*, 82 ALBANY L. REV. 1031 (2018).

to provide written documentation in Braille to blind arrestees or an American Sign Language interpreter or closed captioning to a deaf person who has been detained.

Because defense lawyers, like other professionals in the criminal legal system, generally are not trained to detect signs of disability, many individuals with disabilities do not receive the advocacy they require to obtain accommodations in the courtroom or challenge denials of due process that arise early in their contact with law enforcement.⁵⁴ And because trial attorneys and courts are accustomed to a legal standard that permits the prosecution of an individual who does not meet the high bar to prove incompetency, they may fail to demand accommodations for their clients who are legally competent (that is, generally able to understand the proceedings and assist with their defense)⁵⁵ but not equally equipped as their non-disabled peers to participate in the proceedings against them.⁵⁶

Even when some accommodations are provided during court sessions, defense counsel and court personnel may not realize when a deaf client does not follow the entirety of the proceedings because a single ASL interpreter conveys only questions and answers of witnesses and not the full scope of information including lawyer objections and court rulings, or when a blind client cannot point out problems with physical evidence or visual aids shown to a jury.

⁵⁴ Kronick, *supra* note 2, at 978-81 (2023).

⁵⁵ *Dusky v. United States*, 362 U.S. 402.

⁵⁶ The importance of defense counsel's recognition of a client's disability that requires accommodations in and out of the courtroom and alerting the court of these issues cannot be overstated. Because it is not uncommon for people facing criminal charges to speak very little in the courtroom, their disabilities may remain undetected by court personnel unless counsel alerts the court and advocates for accommodations. *See, e.g., People v. Sanchez*, 987 N.Y.S.2d 835, 841 (N.Y. 2014) (court ordering an examination of the individual to determine competency to stand trial because his "counsel has made very clear her inability to communicate with her [hearing- and cognitively impaired] client [who had never learned sign language] and his inability to understand the proceedings").

Legal representatives and court personnel may also fail to recognize that a person with a physical disability needs frequent breaks to change position, or that an individual with a mild seizure disorder has experienced an episode that interrupted her comprehension of important testimony.⁵⁷ Attorneys and court personnel may fail to understand that the demeanor of a disabled person in the courtroom reflects symptoms of disability that might be misunderstood by jurors as a lack of remorse. And while these problems may not render a disabled person facing charges incompetent to be tried, they reduce the person’s “participation in [and] den[y them] the benefits of the services” of the court proceedings in contravention of the ADA.⁵⁸

C. Carceral Discipline and Exclusion from Positive Carceral Programming

Like law enforcement officers and defense attorneys, many correctional staff are not trained to identify disability and are often unable to recognize when behaviors are manifestations of disability rather than willful violations of carceral rules and expectations. Correctional officers may misperceive an inability to hear, understand, learn, or follow orders; difficulty adapting to schedules and regimens; or incapacity to read social cues as purposive actions that require disciplinary action rather than functional limitations that require accommodation and supports.⁵⁹

⁵⁷ See Leotti et al., *supra* note 47 (noting that approximately half of the states do not provide information regarding requesting accommodations on their judiciary websites, about 30% of states provide funding or conduct training for judges and court staff on assisting disabled people, and only a handful of states require ongoing for judges and court staff on the legal requirements for providing access to disabled people).

⁵⁸ 42 U.S.C. § 12132.

⁵⁹ Balaban, *supra* note 2, at 31 (“Prisoners with disabilities face longer prison terms . . . [because] they are more likely to be subjected to discipline, which hurts their changes for early release or parole.”); Sultan, *supra* note 2, at 371-72; Syrus Ware et al., *It Can’t Be Fixed Because It’s Not Broke: Racism and Disability in the Prison Industrial Complex*, in *DISABILITY INCARCERATED: IMPRISONMENT AND DISABILITY IN THE UNITED STATES AND CANADA* at 174, (Liat Ben-Moshe et al. eds., 2014) (“[P]risoners whose physical bodies, mental states, and health status are labeled as different are often seen as troublemakers and end up being further punished through institutional charges and administrative segregation.”); see also Kronick, *supra* note 2, at 1010.

Moreover, prisons may fail to provide necessary accommodations for people with disabilities during disciplinary hearings and proceedings.⁶⁰

Even when correctional staff recognize symptoms for what they are, this recognition often does not lead to effective or fulsome evaluative processes nor to the delivery of appropriate accommodation and supports.⁶¹ Many incarcerated persons who are identified with disabilities are housed in specialized, separate units or in protective custody with the stated goals of providing treatment or protecting them from abuse or violence at the hands of other incarcerated persons, but this segregation does not provide them services to function to their potential and instead simply excludes them from many prison programs.⁶² Individuals with psychiatric disabilities are disproportionately placed in solitary confinement without adequate monitoring and medication.⁶³ Incarcerated individuals with mobility difficulties often have no means of attending programming in older multi-story facilities that do not have working elevators.

⁶⁰ See, e.g., *Lewis v. Cain*, 701 F.Supp.3d 361, 439 (M.D. La. 2023) (holding that the ADA imposes on carceral facilities the “obligation to provide accommodations . . . to the discipline of disabled inmates”); *Clark v. Calif.*, 739 F.Supp.2d 1168, 1179 (N.D. 2010) (holding that the “ADA requires that prison staff try to counsel [developmentally disabled prisoners], rather than subjecting them to the disciplinary process, when they break prison rules that they do not understand”); *Clarkson v. Coughlin*, 898 F. Supp. 1019, 1039-40 (S.D. N.Y. 1995) (finding that the New York Department of Correctional Services violated deaf plaintiffs’ constitutional rights to due process and statutory rights under the ADA for failing to provide interpreters during disciplinary proceedings);

⁶¹ Morgan, *Reflections*, *supra* note 14, at 984 (“Whether a particular physical, mental, or psychiatric disability is identified and diagnosed depends on the quality and effectiveness of the prison’s health care system.”)

⁶² Balaban, *supra* note 2, at 15; Tammy Smith, Edward A. Polloway, James R. Patton & Julia F. Beyer, *Individuals with Intellectual and Developmental Disabilities in the Criminal Justice System and Implications for Transition Planning*, 43 EDUC. & TRAINING IN DEVELOPMENTAL DISABILITIES 421, 424 (2008) (noting that being labeled as intellectually disabled causes stigmatization within the prison population); Anna Scheyett, Jennie Vaughn, Melissa Taylor & Susan Parish, *Are We There Yet? Screening Processes for Intellectual and Developmental Disabilities in Jail Settings*, 47 *Intell. & Developmental Disabilities* 13, 14 (2009) (explaining that persons with intellectual disabilities are vulnerable to victimization by other incarcerated individuals).

⁶³ Center for Racial and Disability Justice, Northwestern University Pritzker School of Law, *An Intersectional Approach to Advocacy on Prison and Jail Conditions* 26 (June 2025), available at <https://safetyandjusticechallenge.org/wp-content/uploads/2025/06/ReportIntersectionalApproachToAdvocacyOnPrisonAndJailConditions.pdf>.

Because carceral facilities often have more limited medication formularies than those available in the community, medications that have successfully treated an individual outside prison are often withheld or substituted in prison, exacerbating the person's symptoms.⁶⁴

In addition, carceral staff who are unfamiliar with disability often incorrectly assume that a person's disability precludes the individual from learning, working, engaging productively in activities with peers, and fully and meaningfully achieving rehabilitation. Many prison programs exclude people with disabilities by, among other reasons, (1) imposing admissions criteria that preclude their participation by imposing educational prerequisites or minimum scores on standardized testing; (2) offering only employment opportunities that require manual labor and are inaccessible to incarcerated people with dexterity limitations; (3) failing to offer programming in the particular housing units in which the individuals live or to facilitate movement to classes for those with mobility issues; or (4) withholding accommodations and supports they need to meaningfully access the programs' content (such as materials in Braille for people with vision impairments or ASL interpreters for deaf people).⁶⁵

⁶⁴ See, e.g., Center for Racial and Disability Justice, Northwestern University Pritzker School of Law, *An Intersectional Approach to Advocacy on Prison and Jail Conditions* 27-28 (June 2025), available at <https://safetyandjusticechallenge.org/wp-content/uploads/2025/06/ReportIntersectionalApproachToAdvocacyOnPrisonAndJailConditions.pdf>.

⁶⁵ See, e.g., Kronick, *supra* note 2, at 1009-10 (observing that an eighth grade educational level is required for participation in some Federal Bureau of Prison drug programs, and that the only BOP program specifically designed for people with intellectual disability is offered in only two of 110 federal facilities); Victoria Hay, *Educational Requirements as Barriers to Release for Incarcerated People with Cognitive Disabilities*, COLUMBIA HUM. RTS. REV. 225, 228 (2021); Morgan, *Reflections*, *supra* note 14 at 977 & n.18 (collecting cases demonstrating such discrimination in Alabama, California, Florida, Georgia, Illinois, Louisiana, and Maryland); Balaban, *supra* note 2, at 28; Miranda Hutchison, Don Hummer & Alese Wooditch, *A Survey of Existing Program Strategies for Offenders with Intellectual and Developmental Disabilities Under Correctional Supervision in Pennsylvania*, 60 PROB. J. 56, 58 (2013) ("Many correctional facilities do not have suitable programming for those with special needs . . ."); see also Morgan, *Contesting*, *supra* note 2, at 1908.

Correctional officers may also retaliate against those with disabilities who they perceive as making additional work for them by requesting modifications or accommodations under the ADA. Formerly incarcerated individuals with disabilities have reported experiencing reprisals from correctional officers who perceived them as causing trouble for needing and asking for adjustments that disrupt the uniformity of the facility.

Without means to engage in carceral programming or to easily blend in with the norms of the facility, individuals with disabilities lack the opportunity to demonstrate to prison personnel, prosecutors, victims and their family members, parole boards, governors who hold clemency power, and courts that hear resentencing petitions that they have reformed and rehabilitated over the course of their periods of incarceration. This clearly limits their access to relief from extreme sentences, even when they technically are eligible to petition for sentence review under existing law (for example, because they were youth or emerging adults at the time of their offense of conviction).

D. Restrictions on Release and Limited Availability of Appropriate Reentry Resources

Some jurisdictions impose hurdles to granting parole or sentence reductions that people with certain disabilities may not be able to overcome. For example, Louisiana, Michigan, Missouri, and Oklahoma require incarcerated individuals to attain particular educational requirements in order to establish eligibility for parole.⁶⁶ Other states premise parole upon an incarcerated person's participation in programming from which those with disabilities are excluded due to prerequisites they do not satisfy or which they cannot complete because they

⁶⁶ LA. STAT. ANN. § 15:574.4(A)(4)(e) (2019); MICH. COMP. LAWS SERV. § 791.233(1)(f) (2019); MO. REV. STAT. § 217.690(13) (2018); OKLA. STAT. tit. 57, § 332.8 (2019); *see also* Victoria Hay, *Educational Requirements as Barriers to Release for Incarcerated People with Cognitive Disabilities*, COLUMBIA HUM. RTS. REV. 225 (2021).

have not been afforded necessary supports (such as employment opportunities that are geared toward people without disabilities).⁶⁷

In addition to these problems, few of the already decidedly insufficient number of reentry programs available for people returning from prison provide the additional supports necessary to promote access to the programs by individuals with disabilities.⁶⁸ This can lead parole boards and courts to reject a bid for release or resentencing due to concern that the reentry will not succeed.

VI. The Goals of Second Look Laws Apply Equally to Individuals with Disabilities

Enacting laws that provide those with disabilities eligibility for and meaningful access to sentence review opportunities—the recommendation of this article—will further each of the goals set forth in Section IIA above that sentence review procedures are designed to accomplish. Provisions that give those with disabilities the opportunity to have their lengthy sentences reviewed would serve these goals, in the following ways:

Reduce overcrowding in carceral facilities and costly expenditures associated with mass incarceration: Reducing the incarcerated population could be accomplished by ensuring that people with disabilities have an opportunity for a court to review their lengthy sentences with the benefit of information about how their disabilities contributed to their contact with the criminal

⁶⁷ Hay, *supra* note 66.

⁶⁸ See Access Living of Metropolitan Chicago, *Expecting Difference: Reorienting Disability Strategy for Jail Decarceration* at 19 (March 2025); Access Living, *supra* note 14, at 27; Bonnie J. Sultan, *Barriers to Employment, Expanding Collateral Consequences, and Elusive Mental Health: Law and Policy Perspectives*, 13 Geo. J. on Poverty L. & Pol'y 357, 373-74 (2006); Arthur J. Lurigio, Angie Rollins, John Fallon, *The Effects of Serious Mental Illness on Offender Reentry*, 68 SEP FED. PROBATION 45, 47 (2004).

legal system, impeded their access to due process at trial, or precluded them from participating in traditionally accepted programming while incarcerated. This could also be achieved by permitting those with disabilities to present alternative types of evidence of their rehabilitation. In addition to lowering the cost of incarceration generally, this would come with decreased costs in medical care and other consequential costs of housing people with disabilities, and would permit released individuals to engage in gainful employment in the community, thereby reducing the harm of lost wages to families of those affected by the criminal legal system.⁶⁹

Address the effects of insidious racial bias that result in the gross overrepresentation of Black and brown people criminalized and imprisoned: It is well established that Black and brown people are disproportionately represented in the criminal legal system.⁷⁰ There is a large intersection of overincarceration of people of color and those with disabilities.⁷¹ Native American and Black people have disabilities at rates higher than other races and ethnicities due at least in part to factors related to poverty, including living near environmental toxins, lack of

⁶⁹ See, e.g., Balaban, *supra* note 2 (reporting that the cost to jail a person with mental illness in Los Angeles was more than twice the cost of providing for treatment and supportive housing for that individual); see also Brian Elderbroom, Peter Mayer, & Felicity Rose, *We Can't Afford It: Mass Incarceration and the Family Tax*, FWD.us Education Fund (June 2025), available at <https://www.wecantaffordit.us/> (last visited January 6, 2026); Stuart John Wilson and Jocelyne Lemoine, *Methods of Calculating the Marginal Cost of Incarceration: A Scoping Review*, 33 Crim. J. Pol'y Rev. 639, 640 (2022).

⁷⁰ See, e.g., Daniel Loehr, *The Eugenic Origins of Three Strikes Laws: How "Habitual Offender" Sentencing Laws Were Used as a Means of Sterilization*, (March 2025), available at <https://www.sentencingproject.org/reports/the-eugenic-origins-of-three-strikes-laws-how-habitual-offender-sentencing-laws-were-used-as-a-means-of-sterilization/>; Joshua Rovner, *Tribal Disparities in Youth Incarceration* (August 2025), available at <https://www.sentencingproject.org/fact-sheet/disparities-in-tribal-youth-incarceration/> (reporting that tribal youth are almost four times as likely to be incarcerated than their white peers);

⁷¹ Morgan, *Reflections*, *supra* note 14, at 980 (observing that "[d]isability in prison is also racialized and gendered," and "[l]ow income, Black, Latinx, and indigenous people are 'disproportionately disabled and disproportionately incarcerated'").

access to a range of nutrients, and poorer access to quality healthcare.⁷² Moreover, just as Black and brown youth are adultified in policing, charging, and sentencing contexts, they are also more likely than their white peers to be expelled from school or referred to law enforcement based upon behavior attributed to their disabilities.⁷³

Recognize reduced criminal culpability due to personal characteristics and life experiences: Like persons who committed their crimes at a youthful age, before their brains were fully developed to enable them to exercise good judgment, avoid peer pressure, and weigh consequences, persons with some disabilities impacted by the criminal legal system lack or have limited skills in reasoning, problem solving, judgment and learning that affected their capacity to avoid criminal activity.⁷⁴ Similarly, like those who have suffered traumatic events in their lives such as having served in combat or survived domestic violence, many people with disabilities have experienced violence through victimization that has taught them to react impulsively or without careful deliberation in the face of threats of harm.⁷⁵

⁷² Kaitlin Kall & Jennifer Sarrett, *The Overrepresentation of People with Disabilities and Deaf People in Local Criminal Legal Systems*, Safety & Justice Challenge and Activating Change, at 12 (2025), available at <https://www.activatingchange.org/resources-1> (last visited December 23, 2025).

⁷³ Erin J. McCauley, *The Cumulative Probability of Arrest by Age 28 Years in the United States by Disability Status, Race/Ethnicity, and Gender*, 107 Am. J. Pub. Health 1977 (2017); Kall et al., *supra* note 72, at 11; Chris Chapman, Allison C. Carey & Liat Ben-Moshe, *Reconsidering Confinement*, in Disability Incarcerated 140 (Ben-Moshe et al. eds., 2014) (“Prisoners are not randomly selected and do not equally represent all sectors of society. A disproportionate number of persons incarcerated in US prisons and jails are disabled, poor, and/or racialized.”).

⁷⁴ See, e.g., James W. Ellis & Ruth A. Luckasson, *Mentally Retarded Criminal Defendants*, 53 GEO. WASH. L. REV. 414, 417 (1985) (referring to “the accepted analogy between the presumed incapacity of children and [intellectually disabled] adults to form criminal intent”); Kronick, *supra* note 2, at 962 & n.21 (noting that “the criminal legal system has often treated those who committed offenses as children and individuals with intellectual disability similarly”).

⁷⁵ See, e.g., Sarah Wigham & Eric Emerson, *Trauma and Life Events in Adults with Intellectual Disability*, 2 CURR DEV DISORD REP 93-99 (2015) (noting that those with ID have a higher rate of exposure than their non-disabled peers to adverse life events, environmental stressors, and other traumatic experiences); University of New Hampshire Institute on Disability, Trauma and Stressor-Related Disorders, available at <https://iod.unh.edu/integrated-mental-health-treatment-guidelines-prescribers-intellectual-developmental->

Mitigate the harm of unduly harsh outdated sentencing policies that fail to reflect the reality that extreme sentences do not improve community safety: Substantial research demonstrates that lengthy sentences fail to serve valid criminological purposes. Lengthy sentences result in the continuation of incarceration of people who have long aged out of crime and pose little danger of future violence or recidivism.⁷⁶ Furthermore, lengthy sentences do not have material deterrent effects on crime, because deterrence is accomplished through certainty of apprehension and prosecution, not through a threat of a long period of incarceration.⁷⁷

Provide meaningful motivation for, and recognition of, rehabilitation efforts and demonstrations of remorse: People with disabilities may experience deep remorse for past criminal activity and the harm their actions caused, but they may not vocalize or directly express remorse in ways that prosecutors, courts, or victims and their family members recognize. People with certain disabilities may not have the vocabulary to articulate remorse or they may demonstrate difficulty expressing more complex ideas verbally.⁷⁸ Those with disabilities that affect language processing may encounter other communication barriers. And importantly, due to their being disciplined for infractions related to their disabilities and their exclusion from

[disabilities/view-guidelines-online/best-practices-mh-diagnosis-treatment/trauma-stressor-related-disorders](#) (last visited October 9, 2025) (noting that persons with intellectual and developmental disabilities commonly report experiencing traumatic events including physical abuse and exploitation, neglect or abandonment, family life that includes parental incarceration or domestic violence, rape, and bullying/social exclusion).

⁷⁶ R. Loeber & D. Farrington, D. *Age-crime curve*, Bruinsma & D. Weisburd (Eds.), *Encyclopedia of Criminology and Criminal Justice* 12–18 (2014); R. Neil & R. Sampson, *The birth lottery of history: Arrest over the life course of multiple cohorts coming of age, 1995–2018*. 126 *American J. Soc.* 1127–78 (2021), available at <https://doi.org/10.1086/714062>; Office of Juvenile Justice and Delinquency Prevention Statistical Briefing Book, *Age-specific arrest rate trends*.

⁷⁷ P. Robinson & J. Darley, *Does criminal law deter? A behavioral science investigation*, 24 *Oxford J. Legal Studies* 173–205 (2004), available at <https://ssrn.com/abstract=660742>.

⁷⁸ See Katie Kronick, *Intellectual Disability, Mitigation and Punishment*, B.C. L. REV. 1561, 1609 (2024).

meaningful carceral programming as described above, incarcerated people with disabilities often are precluded by the limitations externally imposed upon them to engage in work, complete educational requirements, and otherwise demonstrate growth in the manner that parole boards, courts, and clemency gatekeepers understand and expect.

VII. Proposal for Change

Scholars including Katie Kronick, Alexis Karterton, and Timothy Cone have proposed strategies to correct the exclusion of individuals with intellectual and other disabilities from relief from extreme sentencing, including amending resentencing laws to include intellectual disability as a statutory basis for eligibility,⁷⁹ expanding case law to find mandatory minimum sentences unconstitutional for persons with intellectual disability,⁸⁰ and improving access to parole.⁸¹ Here I propose specifically enacting Second Look legislation to meaningfully expand access to sentencing relief to those with disabilities generally, and provide an example of model legislation to accomplish this purpose.⁸²

Second Look laws require a court to consider not just the specific eligibility criteria (youth, veteran status, etc.), but also the progress the particular individual has made during incarceration to demonstrate growth since the sentence was imposed, along with the individual's ability to safely and productively reenter the larger community. Such Second Look statutes

⁷⁹ Kronick, *supra* note 2, at 965.

⁸⁰ Cone, *supra* note 26.

⁸¹ Karterton, *supra* note 2; Resendes et al., *supra* note 2.

⁸² Jurisdictions should of course also provide protections for individuals with disabilities at their initial sentencing proceedings, and many of the factors for consideration proposed in the statute below should apply to reduce the impact of extreme sentencing on those individuals from the outset.

afford courts the ability to address the particularities of an incarcerated person’s experiences in the context of honoring that person’s unique evolution and ability to function fully, with the support they need, in society as a whole.

A Second Look statute that provides this avenue for relief could take as its model the District of Columbia’s Incarceration Reduction Amendment Act and Second Look Amendment Act.⁸³ Such a disability second look statute could read as follows:

1. A court shall reduce a term of imprisonment imposed upon a petitioner with a disability for an offense if:
 - a. The petitioner has one or more disabilities that contributed to or resulted in:
 - (1) their commission of the underlying offense(s),
 - (2) their conduct and/or misperceptions of their conduct following the offense(s) prior to sentencing,
 - (3) a reduction in their ability to participate in their defense,
 - (4) their experience of incarceration, including but not limited to access to rehabilitative programming and medical care and their disciplinary history, *or*
 - (5) obstacles to their developing reentry plans.
 - b. The petitioner has served at least 50% of their originally imposed sentence or 10 years in prison, whichever is less,⁸⁴ *and*
 - c. The court finds, after considering the factors set forth in subsection (3) of this section, that the petitioner is not a danger to the safety of any person or the community and that the interests of justice warrant a sentence modification.
2. An incarcerated petitioner (or his or her proper representative) may file in the sentencing court a petition for sentence modification.

⁸³ D.C. Code § 24–403.03.

⁸⁴ The National Association of Criminal Defense Lawyers (NACDL), the American Bar Association, and The Sentencing Project have previously recommended that Second Look laws provide an opportunity for sentence review after a person has served ten years incarceration. Murray et al., *supra* note 5; Section 502, American Bar Association (2022); Nazgol Ghandnoosh & Ashley Nellis, *How many people are spending over a decade in prison?* The Sentencing Project (2022). Research has demonstrated that ten years “in prison is often far longer than public safety concerns justify” because “[m]ost criminal careers typically end within approximately 10 years and recidivism rates fall measurably after about a decade of imprisonment.” Liz Komar, Ashley Nellis & Kristen Budd, *Counting Down: Paths to a 20-year Maximum Prison Sentence*, The Sentencing Project (2023).

- a. Upon a petitioner's request for appointment of counsel, and demonstration of indigency, the court shall appoint counsel to represent the petitioner at no cost to the petitioner.
 - b. The petition may be supported by affidavits, expert reports, videos, and other documentary evidence.
 - c. The court may direct the parties to expand the record by submitting additional testimony, examinations, or written materials related to the petition.
 - d. The court shall hold a hearing on the petition at which the petitioner and witnesses as designated by the petitioner and the prosecutor shall be permitted to testify.
 - e. The petitioner shall be present at any hearing conducted under this section unless the petitioner waives the right to be present. The court shall consider and accommodate the petitioner's needs related to the disability in order to maximize the petitioner's participation in and understanding of the proceedings. At the request of the petitioner and/or counsel, the court shall appoint a medical, mental health, or occupational expert to evaluate the petitioner's needs and present a report of necessary accommodations for court proceedings.
 - f. The court shall issue an opinion in writing stating the reasons for granting or denying the petition filed under this section, and may proceed to resentencing immediately upon granting the petition.
3. The court, in determining whether to reduce a term of imprisonment pursuant to subsection (1) of this section, shall consider:
 - a. The history and characteristics of the petitioner;
 - b. Evidence pertaining to the petitioner's disability(ies), including but not limited to the petitioner's physical, cognitive, and/or psychiatric symptoms, the date of onset of the disability(ies), and any treatment or supports the petitioner requires. The court shall consider reports prepared by medical, mental health, or occupational experts;
 - c. The vocational, educational, recreational, and other programming offered and available to the petitioner during the course of the petitioner's incarceration. "Available" is defined as accessible to the petitioner with or without accommodations for petitioner's disability(ies);
 - d. Whether the petitioner has substantially complied with the rules of the institution(s) to which the petitioner has been confined, including participation in programming that has been made available to the petitioner. The court shall consider the impact of the petitioner's disability(ies) on petitioner's compliance with rules and participation in programming;

- e. Whether the defendant has demonstrated maturity, rehabilitation, and a fitness to reenter society with or without accommodations and modifications;
 - f. Any report or recommendation by the prosecutor.
 - g. Any statement, provided orally or in writing, by a victim of the offense for which the petitioner is imprisoned, or by a family member of the victim if the victim is deceased;
 - h. The petitioner's family and community circumstances at the time of the offense, including any history of abuse, trauma, involvement in the child welfare system, and supports available to the petitioner to accommodate the petitioner's disability(ies);
 - i. The extent of the petitioner's role in the offense, whether and to what extent other persons were involved in the offense, and any contribution of the petitioner's disability(ies) to the commission of the offense; and
 - j. Any other information the court deems relevant to its decision.
4. If the court denies or grants only in part the petition, the court shall entertain a subsequent petition filed not less than three years after the denial or partial grant.
 5. Any petitioner whose sentence is reduced under this section shall be resentenced. The court:
 - a. May issue a sentence less than the minimum term otherwise required by law; and
 - b. Shall not impose a sentence longer than the sentence originally imposed.
 6. If the court grants the petition and reduces the petitioner's sentence, the court shall order that a reentry plan be prepared with involvement by the petitioner and medical, cognitive, or psychiatric professionals that accounts for the petitioner's needs deriving from the petitioner's disability(ies). The court shall further order that the services delivered under the approved reentry plan comply with the Americans with Disabilities Act by avoiding discrimination that would exclude petitioner from the programs and by providing necessary accommodations to the petitioner.⁸⁵
 7. The right to resentencing under this section cannot be waived.

⁸⁵ Although this article makes recommendations limited to sentence review proceedings for individuals with disabilities, many of these considerations apply to original sentencing proceedings as well. If a court made specific findings about appropriate modifications and accommodations upon original sentencing, and imposed an order requiring carceral facilities to comply with them during a person's period of incarceration, such would lead to greater inclusion and fairness for incarcerated persons with disabilities.

A jurisdiction enacting such a statute should also institute mandatory training for law enforcement officers, judges, prosecutors, and defense counsel on disability and the legal obligations under the ADA, Section 504 of the Rehabilitation Act, and state statutes to provide accommodations for those with disabilities who interact with the justice system.⁸⁶

VIII. Conclusion

By enacting Second Look legislation that accounts for an individual's disability, and recognizing that individual's personal accomplishments within their singular capacities, jurisdictions can accomplish the synchronous goals of reducing mass incarceration and extreme sentencing, addressing racial disparities, avoiding unnecessary ableist assumptions, honoring the path to rehabilitation, improving community safety, as well as advancing toward the goal of ensuring that criminal legal reform is accessible to all.

⁸⁶ Organizations such as Activating Change (www.activatingchange.org) provide resources participants in the criminal legal system that can serve as models for such training.