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LAW ENFORCEMENT, JUSTICE, AND PEOPLE WITH DISABILITIES

According to a 1986 FBI report, a murder was committed every 28 minutes, a woman was raped every 6 minutes, a robbery occurred every 63 seconds, a person was assaulted every 44 seconds, a car was stolen every 29 seconds, a burglary occurred every 10 seconds, and a theft occurred every 5 seconds in 1985 the United States.

Few people—disabled or able-bodied—will be untouched by crime during their lives. As deinstitutionalization, community integration, and independent living efforts succeed, the number of people with disabilities who come in contact with the criminal justice system—as victims, witnesses, or offenders—increases.

Research on the interactions between disabled citizens and the criminal justice system is the subject of this *Rehab BRIEF*. Such studies offer answers to the following questions.

- Do disabled people receive equal treatment under the law as our Constitution guarantees?
- What are the psychological, economic, social, and legal experiences of people with disabilities—victims or accused—in the law enforcement, judicial, or correctional systems?
- What information is known about the beliefs, attitudes, or behavior of those in law enforcement toward people with disabilities?
- What can be done to improve the treatment of disabled people when they come in contact with the law enforcement and justice systems?

Recent Research

A good deal of work has been done to document the experiences of people with disabilities in dealing with the criminal justice system. The National Center for Law and the Deaf, a public service of Gallaudet University, in Washington, DC, has taken a leading role in providing information concerning the legal rights of disabled people as they become in any way involved in the law enforcement, justice, or correctional systems.

Disabled People and the Law (1982) by Feinberg et al., overviews the interfacing between disability and the criminal justice system. Other authors hone in on specific areas of interest. For example, Edwin M. Baum, in "Handicapped Prisoners: An Ignored Minority?" in the *Columbia Journal of Law and Social Problems* (1984), looks at disabled prisoners, as does Alan Kalmanoff in a December 1982 *Corrections Today* article entitled "Double Trouble: The Alienation of Disabled Inmates."

The Handicapped Offender (1981), a selected bibliography prepared by W. Donald Pointer and Marjorie Kravitz for the U.S. Department of Justice, lists 182 books and research works on the subject of handicapped offenders. Myra Per-Lee, in *Victim Justice for Disabled Persons: A Resource Manual* (1981), discusses victims and witnesses. H.E. Yunker, in "Disability and the Law: Attitudes of Police, Lawyers, and Mental Health Professionals," in *Rehabilitation Psychology* (Spring 1986), examines the attitudes of police and lawyers toward disabled people.

Two projects have recently been funded by the National Institute on Disability and Rehabilitation Research (NIDRR). Denise Bodman Bustamante, a Mary E. Switzer Fellow (1985/86), herself a police officer, spent 16 months examining several areas of the criminal justice system in Arizona: police-citizen interaction, police training programs, citizen crime prevention programs, victim/witness programs, arrest and booking of disabled people, and accessibility of jail and prison systems.

A second NIDRR-funded study was done by the National Center for State Courts (NCSC). The NCSC is a nonprofit organization dedicated to helping courts better serve litigants and the general public by modernizing court operations and improving justice at both State and local levels throughout the country. Its Institute on Mental Disability and the Law was established in 1981 as a response to the growing body of case law and legislation dealing with mental disability issues. Under a grant from NIDRR, a comprehensive study was carried out on assisting people with disabilities in court. Titled *Criminal Defendants with Trial Disabilities: The Theory and Practice of Competency Assistance*, this report explains the concept of legal incompetency to stand trial and describes a number of compensatory measures that can be used to assist trial-disabled defendants. Of particular interest to rehabilitation professionals is its "taxonomy of trial disabilities," which outlines disorders and defects that may be associated with incompetency to stand trial and suggests the relevance these have for the criminal justice system's handling of disabled defendants.

THE POLICE AND DISABLED PEOPLE

For most people, the first or only contact they have with "the law" is with a police officer. A major portion of Bustamante's work was devoted to examining this

interaction. She particularly looked at how police officers say they treat people with physical disabilities in police/citizen encounters and tried to determine what factors influenced their attitudes and behaviors.

Bustamante's method was to present to the Arizona police officers in her survey five vignettes based on common police/citizen encounters and interview them about what they would do in such situations.

Vignette 1 dealt with a deaf shoplifting suspect; Vignette 2, with a disabled traffic violator; Vignette 3, with a blind victim of burglary; Vignette 4, with a witness who has cerebral palsy; and Vignette 5, with a trespasser who uses a wheelchair. Following the presentation of each vignette, three types of questions were asked:

- General attitude questions, e.g., "How do you feel about people with handicaps driving cars?"
- Factual questions, e.g., "How likely are you to arrest given this situation?"
- Open-ended questions, e.g., "What are you going to do now?"

The results indicate that the majority of police officers reported no differences in their treatment of citizens with disabilities. In the few areas where differences were reported among the majority of officers—such as the amount of time spent with a disabled victim—the officers' responses appeared to be the result of more practical aspects of police duties as opposed to attitudinal aspects related to disability. When officers reported they would treat individuals with disabilities differently, they tended to be more lenient.

Bustamante concludes that "for this sample of police officers, there is little reason to believe that people with physical disabilities are discriminated against."

Other researchers' experiences have been much more negative. E. Elaine Gardner, Staff Attorney at the National Center for Law and the Deaf, reports that the police often fail to understand or meet the needs of deaf people because of their special communication needs. Gardner believes law enforcement agencies should provide a qualified interpreter upon a deaf person's arrest because the law requires that one understand certain rights and consequences at the time of arrest (the *Miranda* warnings).

Many disabled people and advocacy groups report negative experiences with police, indicating that there is more work to be done in this area. Some jurisdictions are beginning to offer, as part of regular police training sessions, instruction about disabilities and guidelines for interacting with disabled people.

VICTIM/WITNESS PROGRAMS

Concern for victims of crime has increased greatly in the last 10 years. As a result, victim/witness programs have sprung up all across the United States. However, those with physical disabilities often hesitate to use established programs because of real or perceived inaccessibility. The Office for Victims of Crime and the National Sheriff's Association developed the National Crime Victim Assistance Program to help sheriffs and other law enforcement personnel improve their responsiveness to the needs of victims/witnesses of

crime. Their guidelines include a section on the special needs of physically and developmentally disabled victims.

The Law Enforcement Assistance Administration, Office of Criminal Justice Programs, U.S. Department of Justice, funded a Victim/Witness Project for the Handicapped. This project resulted in the publication of *Victim Justice for Disabled Persons: A Resource Manual*, by Myra S. Per-Lee. Intended for use by victim/witness service providers, it addresses needs of physically disabled people, with the hope that more victim/witness programs will be accessible to people with disabilities.

The National Crime Prevention Council (NCPC) provides crime prevention information programs that are designed to help people learn how to avoid becoming victims of crimes and how to be good witnesses. The NCPC, at the time of Bustamante's research, had nine such programs that addressed the needs of people with physical disabilities—three for hearing impaired people, four general programs, and two self-preparation programs.

Per-Lee, in preparing a program resource manual, performed a needs assessment survey. Her research showed that in 1980 there were only 181 victim/witness programs (general, domestic violence, and rape crisis), which served 308,600 people. Of this number, 1,300 (.04%) were people with physical disabilities. She comments on this very small percentage, saying that it is obvious that "handicapped victims of crime are being underserved by victim/witness programs."

Frank Bowe, in his demographic studies of the disabled population (see *Rehab BRIEF*, vol. 8, no. 3) reports that the incomes of disabled people are two and a half times as likely to fall below the poverty line as the incomes of people without disabilities. People in the poverty or low income categories generally experience high victimization rates. In addition, disability may make a person appear vulnerable to a criminal. For both of these reasons, one can assume a high victimization rate among disabled people, and so victim/witness programs that seek to inform and serve disabled people are vital.

THE DISABLED OFFENDER

Some disabled people commit crimes and serve time in jails or prisons, and some become disabled *while* committing crimes or while in jail. Exactly how many people with physical disabilities there are in State and Federal prisons is unknown. A 1982 U.S. General Accounting Office report estimated that 4,300 of 314,000 incarcerated felons in State and Federal prisons were receiving Social Security disability benefits, 63% of disabled prisoners had physical disabilities, 31% had mental disabilities, and 6% had both physical and mental disabilities.

Problems of Prisons and Disabled Prisoners

Alan Kalmanoff, Director of the Institute for Law and Policy Planning, in Oakland, California, and a board member of the Disability Rights Education and Defense Fund, describes the dual alienation expe-

rienced by disabled prisoners.

Alienation for the disabled . . . and for prisoners begins with a significant loss of control over the environment. Alienation for disabled prisoners is a more profound estrangement: They are alienated from all levels of society, including the disability culture, as well as the inmate culture. It is a more complete loss of control.

Kalmanoff identifies a number of alienating features of prison life—*overclassification* in maximum security (because disabled inmates are often forced to live in medical areas, which are generally maximum security); *confiscation of certain adaptive equipment* (some prison officials feel that a wheelchair or a Braille stylus is too potentially dangerous to be allowed in a prisoner's possession); and *lack of disability services*, such as independent living training or vocational rehabilitation. Kalmanoff further points out that "for the disabled inmate . . . being different has costs. For the individual, for the staff, and for corrections as a whole, any required variation in routine is an imposition," which, unfortunately, many corrections personnel are unwilling to suffer.

Other prison officials are far more concerned about accessibility for disabled inmates, but are frustrated by limitations of their prison facilities. In Bustamante's study, corrections personnel were encouraged to comment informally on the physical accessibility of their facilities and programs. *None* reported that their facilities were an appropriate placement for inmates with physical disabilities due to problems of accessibility. Some of their informal comments reflect problems experienced in prisons nationwide:

- "Paraplegic inmates require very specific housing areas designed specifically for their needs. Make-shift operations are next to impossible."
- "Handicapped inmates have difficulties using toilets and showers."
- "Wheelchairs do not fit in the cells and the cells are not equipped for wheelchair-bound inmates."
- "There is some concern that . . . pre-release centers will not accept inmates that [sic] have physical handicaps which restrict the inmate from seeking gainful employment which in turn impairs the inmate's ability to access [the] program's early release."

Edwin Baum cites similar situations that exemplify problems commonly experienced in prisons and jails.

- In *Journey v. Vitek*, a paraplegic inmate claimed that the lack of ramps in a prison denied him access to prison activities. 685 F.2d 239 (8th Cir. 1982)
- In *Ruiz v. Estelle*, the district court described at length the inexcusable forms of suffering that handicapped prisoners are forced to endure when a prison system will not accommodate their special needs. For example, paralyzed inmates denied wheelchairs may be forced to scoot around on their buttocks. One such inmate was "forced to make a trip that took an hour and forty-five minutes. The inmate was required to pull two bags of his personal property along with him, and travelled over a rough asphalt surface." 503 F. Supp. at 1343, n. 162

- Even those with wheelchairs may be unable to use showers or sinks, and may be forced literally to crawl up and onto toilets by placing their "hands on the lips of the commode [and] scooting buttocks first onto it from the bunk." 503 F. Supp. at 1341, n. 155

The National Center for Law and the Deaf notes that "frequently, deaf people serving prison terms are denied basic due process rights and access to rehabilitation programs because of the failure of prisons to be sensitive to their communication needs." One situation involved a deaf inmate in Maryland's prison system who was denied an interpreter at a disciplinary hearing and thus was unable to present a defense. The disciplinary board took away "good time" days that would have given him an early release and transferred him from a minimum security camp to a maximum security facility for psychological evaluation. The staff psychologist, however, could not communicate with the deaf inmate and therefore was unable to evaluate him.

Legal Protections

There are legal protections for prisoners that can help insure their legal rights while incarcerated.

- **Section 504 of the Rehabilitation Act of 1973** guarantees equal access for all persons with disabilities to programs receiving Federal financial assistance. The Analysis to the Justice Regulation clarifies that "...detention and correctional agencies must insure that their programs and activities are accessible to handicapped persons." Adherence to section 504 would limit excessive isolation and require the delivery of rehabilitation services in the prison environment.
- **The Civil Rights of Institutionalized Persons Act** covers inmates of any prison, whether local, State, or Federal. It empowers the Attorney General of the United States to initiate and intervene in actions in which prisoners have been denied rights guaranteed to them under United States law.
- **The Department of Justice Standards for Inmate Grievance Procedures** pursuant to the above Act, explicitly require that the Federal prison grievance procedure established by regulation for alleged violations of the Act be "accessible to impaired and handicapped inmates."
- **The United States Justice Department Nondiscrimination Toward Inmates Regulation** provides that "inmates may not be discriminated against on the basis of race, religion, nationality, sex, handicap, or political belief." This general protection is open to wide interpretation and only applies to Federal facilities. There is no comprehensive set of substantive regulations to define and protect the rights of handicapped prisoners.
- **The Eighth Amendment** to the United States Constitution proscribes "cruel and unusual punishment." Inmates frequently look to this prohibition for protection against any kind of abuse or discrimination in correctional institutions. For years the Supreme Court has struggled to arrive at an interpretation of this amendment. In recent cases the Court has stated that the eighth amendment must draw its meaning from the

"evolving standards of decency that mark the progress of a maturing society." (Trop, 356 U.S. at 101, cited in Baum, p. 360)

The *United States Code* contains nearly 100 sections, under 11 titles, that require the accommodation of handicapped people's special needs; these statutes indicate the contemporary understanding of "standards of decency." According to Baum, "where the contemporary standards of decency (i.e., the accommodation of the special needs of handicapped persons) are not met within the prison walls, handicapped inmates may indeed be subjected to wanton pain and suffering in contravention of the eighth amendment."

TRIAL DISABILITY

The National Center for State Courts' (NCSC) study uses the expression "trial disability" to refer to impairments that impede a defendant's participation in the criminal process. The term refers to any impairment of perception, thought, and communication that may be required of a defendant in criminal proceedings. Trial disabilities may be caused by mental illness; mental retardation; speech, hearing, and visual impairments; learning disability; or other mental disabilities or handicaps.

According to the NCSC study, the traditional response of the criminal justice system to defendants with trial disabilities is "either to relieve them of criminal liability and shunt them off to be dealt with by other components of the social service system, or ignore their disabilities altogether and treat them as they would any other defendant."

Establishing that a person is "incompetent to stand trial" is the law's most far-reaching provision for criminal defendants who may have trial disabilities. Principles of fairness and notions of common humanity and dignity underlie the need to suspend a criminal trial against an accused person who is unable to participate meaningfully in the proceeding.

The study explores measures that are collectively referred to as "competency assistance." These can be taken by courts to deal with trial-disabled individuals without relieving them of criminal liability or ignoring their disabilities. The study reviews the development of competency assistance in law and in practice. It shows that legal competency is not only a function of the defendant but also of the environment of the court and the actions taken by the attorney, judge, and others to assist him or her. In fact, "even a limited modification in the physical environment of the courtroom, a modest accommodation to the trial-disabled defendant in the criminal proceedings, or some direct assistance may make an otherwise incompetent criminal defendant fit to stand trial."

Thus competency assistance may include:

- modifications in the courtroom environment or in trial procedures;
- special provisions of law, administrative regulation, or court rule; or

- court-ordered treatment or remediation designed to compensate for trial disabilities and thereby permit defendants with mental or other disabilities to stand trial.

The NCSC study offers a thorough "taxonomy of trial disabilities" and suggests interventions, therapies, or remediations that can bring defendants to trial standard. Technology in the courtroom, mental health interventions, advances in special education techniques, and special accommodations in legal procedures or the courtroom environment can make it possible for trial-disabled defendants, who might otherwise be deemed legally incompetent to stand trial, to participate in the criminal process.

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