

Review

Criminal Legal Systems and the Disability Community: An Overview

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Abstract: While the scale and scope of the criminal legal system is often discussed with attention to racial disproportionalities, the fact that disabled people are overrepresented at all points in the system is less discussed by social workers. Disabled people come into contact with the criminal legal system as suspects, defendants, incarcerated persons, victims, and witnesses. Compared to people without disabilities, disabled people are more likely to experience victimization, be arrested, be charged with a crime, and serve longer prison sentences once convicted. These trends are even more profound for disabled people with intersecting marginalized identities, such as people of color, women, poor people, and those who identify as LGBTQ. This article provides an overview of the connections between disability, law enforcement, and practices of imprisonment in the United States. We provide a historical overview of the involvement of disabled people in the criminal legal system, review the prevalence of disability in the criminal legal system, and then discuss the unique ways in which disabled people are impacted by the criminal legal system. We conclude by providing recommendations for social work practice and advocacy based in disability justice.



Citation: Leotti, Sandra M., and Elspeth Slayter. 2022. Criminal Legal Systems and the Disability Community: An Overview. *Social Sciences* 11: 255. <https://doi.org/10.3390/socsci11060255>

Academic Editors:
Lauren Ricciardelli and John R. Barner

Received: 8 April 2022

Accepted: 6 June 2022

Published: 9 June 2022

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Keywords: disability; criminal legal system; law enforcement; courts; disability justice; reform; ableism

1. Introduction

With more than 2.3 million adults in jails and prisons (Sawyer and Wagner 2022) and over 4.5 million people under some form of community supervision including pretrial supervision, probation, and parole (Jones 2018), mass incarceration has become a key feature driving and sustaining inequality in the United States. It is relatively well known that certain populations such as poor people and people of color are disproportionately impacted by mass incarceration. Rarely discussed is the impact of the criminal legal system¹ on disabled people. Yet, disabled people disproportionately fill space in jails and prisons, and are overrepresented at all points in the criminal legal system (Oberholtzer 2017). Disability, situated alongside other intersecting lines of stratification such as race, ethnicity, class, and gender, is central to understanding the complexities of mass incarceration (Ben-Moshe 2011). As such we cannot fully understand the nature and scope of the mass incarceration without including an analysis of disability.

In this paper, we explore connections between disability², law enforcement, and practices of imprisonment, in the United States as it relates to social work practice. Throughout the paper, we use the terms disability and disabilities to refer to people with all types of physical, sensory, cognitive, emotional, or psychiatric disabilities, including people with mental health conditions. We begin our discussion by providing a historical overview of the involvement of disabled people in the criminal legal system. We then move on to review the prevalence of disability in the criminal legal system and the unique ways in which disabled people are impacted by the criminal legal system. We conclude by providing recommendations for policy and practice based in disability justice.

2. Historical Overview

Historically, disabled bodies have been policed in various ways, resulting in a disproportionate number of disabled people being confined in carceral spaces (Appleman 2018; Chapman 2014). While large state institutions for people with psychiatric or intellectual disabilities closed in the 1980s and onward due to deinstitutionalization, many eventually reopened as prisons and detention centers (Ben-Moshe 2011). This occurred alongside a broader and rapid increase in incarceration. However, it should not be understood that deinstitutionalization caused incarceration rates to rise. Broader social and political mechanisms associated with neoliberalism and racism spawned the mass incarceration of disabled people.

The 1970s marked a period of systematic mass imprisonment and heavy reliance on formal social controls primarily targeting marginalized populations (Sokoloff 2005). Mass incarceration can be largely attributed to three intersecting phenomena that emerged in the latter half of the 20th Century (Leotti 2020). The first is the war on drugs, which began in the 1970s and brought about punitive social policies and sentencing enhancements, such as ‘three strikes, you’re out’ laws and mandatory minimum sentencing. Mandatory minimums replaced treatment and community service options when drugs are involved and reflect a policy choice to treat substance use and addiction as a criminal issue versus as a public health problem (Mauer and King 2007). Such sentence enhancements have increased the number of people in prison and the time they spend there (Muehlmann 2018). The second issue is the growth of the prison industrial complex, which constitutes a web of economic, political, and legal relations that results in financial gain through the incarceration and surveillance of marginalized populations. The third of these phenomena is neoliberal globalization, which has brought about a fundamental shift in the role of the state. Neoliberal transformations in the economy have contributed to poverty in the United States and have brought an increasing number of poor and marginalized people into contact with the criminal legal system (Wacquant 2009).

Neoliberalism has driven shifts in policy agendas from a Keynesian approach, which saw government as necessary to ensure the basic social well-being of all, to one of deregulation and privatization (Abramovitz and Zelnick 2018). Neoliberal ideology thus erodes government commitment to social welfare in favor of policies that focus on individual responsibility and market-based rationalities, and it brings with it a hyper focus on the individual as both the cause of and solution to social problems (Brown 2015). Consequently, neoliberal policies have produced an increased reliance on disciplinary measures to manage manifestations of social exclusion, such as poverty and homelessness (Wacquant 2009). With this, the United States has seen a massive divestment from social and welfare spending alongside widespread investment in policing and correctional budgets.

There is a direct relationship between these three phenomena—sentence enhancements, growth of the prison industrial complex, and neoliberal globalization—and the increased criminalization/incarceration of disabled people. The past six decades have seen widespread deinstitutionalization. While deinstitutionalization should be seen as a positive development, it was not accompanied by the public investment necessary to ensure that community supports were made available for disabled people to live independently in the community. As a result, disabled people, particularly those with mental health conditions have been swept up into the criminal legal system, often for non-violent and minor infractions such as sleeping outside (i.e., homelessness) and atypical reactions to social cues which become interpreted as disorderly conduct. Additionally, the war on drugs has criminalized behaviors sometimes related to disability such as substance use, which can be a method of self-medication for disability-related conditions (Oberholtzer 2017).

Undoubtedly, the historical processes of ableism, capitalism, and racism have pushed disabled people to the economic margins of society. Historically, people with physical and psychological behaviors and appearances that do not conform to dominant norms have been segregated and isolated and made more vulnerable to shifting mechanisms of surveillance and control (ableism). Disabled people have thus been shunted out of the

labor market and into institutions (capitalism). The current day iteration of exclusion manifests itself in mass incarceration of the same people once shut away in institutions for psychiatric and developmental disabilities. Furthermore, the people in these institutions do not represent all segments of society—the majority are poor and people of color (classism and racism). This historical (and ongoing) exclusion from the labor market (e.g., processes of segregation and institutionalization) alongside the onset of neoliberalism has had a profound impact on the material well-being of disabled people. Currently, more than half of disabled people live in long-term poverty (Purnell 2021). Poverty is known to create a number of disabling conditions and to be linked to behaviors that are commonly criminalized, such as petty theft or sleeping on the street (Chapman et al. 2014). Coupled with an increasing divestment from public services (e.g., health care, housing services, employment protections, and other social welfare entitlements), disabled people have been disproportionately swept up in the criminal legal system. Such a material historical analysis helps us counteract the often taken for granted assumptions about criminality (those that deviate from ableist understandings of how body-minds are ‘supposed’ to look and behave) that have been attached to disabled people for centuries. Furthermore, it helps us see that criminalization is a product of social and economic processes rather than that of individual deviance and pathology.

3. Prevalence of Disability in the Criminal Legal System

Disabled people are disproportionately impacted by and involved in the criminal legal system (Oberholtzer 2017). Disabled people come into contact with the criminal legal system as suspects, defendants, incarcerated persons, victims, and/or witnesses. Compared to people without disabilities, disabled people are more likely to experience victimization, be arrested, be charged with a crime, and serve longer prison sentences once convicted. These trends are even more profound for disabled people with intersecting marginalized identities, such as people of color, women, poor people, and those who identify as LGBTQ (Vallas 2016).

While disabled people make up 27% of the population in the United States, they represent up to half of people killed by police (Perry and Carter-Long 2016; Varadaraj et al. 2021) and are more likely to experience violence at the hands of police (Vallas 2016). Several high-profile instances of police brutality and police killings, such as those of Freddie Gray, Eric Garner, and Sandra Bland involve disabled people. Police use of force against disabled people is a widespread yet under-discussed issue. Perry and Carter-Long (2016) found that the media often ignore disability identity when reporting on police violence. Understanding disability as a factor shaping interactions with police is important because it intersects with other factors such as race, class, and sexuality to amplify stigma, discrimination, and the risk of police violence. Including an analysis of disability provides more holistic accounts of the lives of victims of police brutality, a more nuanced understanding of the problem, and allows new solutions emerge. To illustrate the importance of considering intersectionality when analyzing disability and the criminal legal system, Vallas (2016) states:

The interplay of disability with race, poverty, sexual orientation, and gender identity further complicates the link between disability and the criminal justice system. There is a disproportionate incidence of intellectual and developmental disabilities among low-income racial and ethnic minority populations, which have higher rates of police involvement in their neighborhoods than higher-income neighborhoods. In 2015, black men between the ages 15 and 34 were nine times more likely than Americans of other races to be killed by police officers. And a 2014 report found that 73 percent of LGBT people and people living with HIV had had in-person contact with the police in the past five years. Of those individuals, 40 percent reported verbal, physical, or sexual assault or hostility from officers (p. 6).

Once in the carceral system, disabled people comprise over 50% of incarcerated adults (Purnell 2021). According to the Bureau of Justice Statistics, people incarcerated in prisons

and jails are three to four times more likely than the general population to report having at least one disability, with an estimated 30–40% of incarcerated individuals reporting at least one disability and about 15% reporting multiple disabilities (Bronson et al. 2015). Among the most commonly reported disabilities among inmates are cognitive disabilities (e.g., Down syndrome, autism, dementia, intellectual disabilities, and learning disabilities). Mobility disabilities are reported among 10% of incarcerated people and 5–10% report vision and hearing disabilities. Mental health conditions are also highly prevalent among the incarcerated population, with about 50% of inmates reporting a psychiatric disability (Schlanger 2017). In addition, 40% of inmates report having a chronic medical condition such as diabetes, cancer, and heart disease (Schlanger 2017) and over 50% of incarcerated disabled people report having a co-occurring chronic condition (Bronson et al. 2015).

4. Challenges Disabled People Face in the Criminal Legal System

Once entangled in the criminal legal system, disabled people face unique challenges, biases, inaccessible services, and lack of accommodations which further perpetuate the length and consequences of criminal legal involvement. Despite long standing federal disability laws, such as the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act, that mandate “equal access to programs, services, and activities” (Department of Justice 2010, p. 110) for disabled people in custody, they are often deprived of medical care, necessary supports, services, and accommodations while interfacing with law enforcement, the courts, and in carceral settings (Oberholtzer 2017; Vallas 2016).

Legal, law enforcement, and security professionals often lack experience and accurate knowledge about disability which can lead to misidentification of disabilities, inaccurate assumptions about competency and credibility, and a heightened risk of violence (Oberholtzer 2017). Lack of knowledge regarding disability among these professionals may also lead to false confessions, lack of necessary accommodations, inappropriate placement in institutions, and the inadvertent waivers of rights. Furthermore, these professionals work according to rules never designed for, or intended to, ‘help.’ Poor conditions in jails and prisons as well as inadequate access to both health and mental health care can exacerbate existing conditions and lead to new physical and mental health problems (Chandler 2003). For example, limited access to regular physical activity, a common condition of confinement, has been shown to be detrimental to overall health and to intensify existing physical disabilities (Morgan 2017). In the remainder of this section, we discuss the involvement of the disability community across the spectrum of the criminal legal system.

4.1. Policing and Law Enforcement

Symptoms of psychiatric, intellectual, physical, or sensory disabilities are often mistaken for non-compliant or hostile behaviors by law enforcement professionals who are not trained in recognizing the signs of disability or intervening in disability-related crisis situations. For example, in 2009, the police were called on Antonio Love, a Deaf individual, for loitering in the bathroom at a Dollar General store (Perry and Carter-Long 2014). After knocking on the bathroom door, ordering Love to come out, and getting no response, the officers pepper sprayed under the door, forcibly opened the door, then repeatedly tasered Love. While the officers viewed Love’s non-response as non-compliance, in actuality, Love could not hear the officers.

d/Deaf³ people cannot be expected to respond to commands of police when delivered out of sight. Their inability to do so heightens their risk of violence when interacting with the police. Many d/Deaf people also use their eyes, hands, and body to communicate. Police officers often misunderstand these components of d/Deaf culture as threatening and aggressive—once again intensifying the risk of violence (Lewis 2014). The ADA mandates that law enforcement officers take appropriate steps to communicate effectively with d/Deaf people by providing sign language interpreters and/or auxiliary aids. Yet, assaults against d/Deaf people occur on a regular basis (Lewis 2014). There is urgent

need for police officers to better understand d/Deaf culture and how to communicate with members of the d/Deaf community.

People with intellectual and developmental disabilities, such as Autism and Down syndrome, are more likely to encounter the police and often have trouble understanding, responding to, and obeying police orders (Hurst 2015). This can be misinterpreted as defiance often resulting in unnecessary use of force and arrest. For example, in 2011, a man with Down syndrome, Gilberto Powell, was walking home one evening when he was stopped by Miami police because they saw a “bulge” in his pants, assuming it might be a firearm (Perry and Carter-Long 2016). The bulge was a colostomy bag. While attempting a pat down, Powell attempted to flee and was beaten on the grounds of resistance and noncompliance. Similarly, individuals exhibiting symptoms of certain conditions such as epilepsy, cerebral palsy, and diabetes are often mistaken as threatening or drunk and subjected to inappropriate and hostile police encounters (Perry and Carter-Long 2014).

By far, the most common type of interaction between the law enforcement and disabled people involves psychiatric disabilities (Vallas 2016). Due to lack of appropriate community resources systems for calling for help (other than 911), the police are often the first responders to a person experiencing a mental health crisis. It is estimated that up to half of officer shootings involved someone in a mental health crisis (Perry and Carter-Long 2016) and that in roughly 36% of those cases, 911 was explicitly called to help the person get medical treatment, not for the police (Oberholtzer 2017). Despite their frequent involvement in mental health crises, police responses are often deeply inadequate and harmful (Oberholtzer 2017).

4.2. Court Systems

After interaction with law enforcement, disabled people also face enormous barriers in the court system. The ADA prohibits discrimination on the basis of disability, mandating that disabled people be provided with equal opportunity to participate in all aspects of life. Title II of the ADA applies to public and governmental entities and the programs and services they provide, including court services and proceedings (Department of Justice 2010). It requires that reasonable accommodations are provided when needed. For example, courts must provide ‘effective communication,’ for example, in the form of qualified sign language interpreters to all persons participating in court processes including witnesses, litigants, jurors, and companions and support people of those participating in the proceedings (Department of Justice 2010).

Still, lack of access and accommodation is widespread in the American court system (National Center for Access to Justice 2020). According to the 2020 Disability Access Index, half of the states do not provide information regarding requesting accommodations on their state judiciary websites (National Center for Access to Justice 2020). Only about 30% of states provide funding or conduct trainings for judges and court staff on how to assist disabled people, and just five states require any type of ongoing training for judges and court staff on the legal requirements for providing equal access to disabled people. Eleven states place restrictions on the use of service animals in courthouses. In 16 states, courts can charge for necessary auxiliary aids (e.g., large print documents, braille printing, closed captioning on television monitors in public areas, mobility devices). Furthermore, courts in a handful of states are still permitted to charge those who are d/Deaf or hard of hearing for their own sign language interpreter, in violation of the ADA (National Center for Access to Justice 2016, 2020). While not captured in the 2020 access report, as of 2016, less than 30% of courts listed psychiatric disability on their websites as a basis for providing needed accommodations, especially troubling given the prevalence of these conditions (National Center for Access to Justice 2016).

When defendants with disabilities are deprived of necessary accommodations and communication access, they are left unable to understand or participate in their own cases and more susceptible to wrongful arrests and convictions. For example, in Arlington, VA Abreham Zemedagegehu, a d/Deaf immigrant man whose first language was Ethiopian

Sign Language was held in county jail and was not provided access to an interpreter during his time awaiting trial or while in court. Lack of appropriate representation led him to serve six weeks of jail time for a crime he did not commit (Zapotosky 2015). Lack of training and knowledge for how to work with disabled people and how to provide accommodations often results in inadequate representation, denying individuals of their constitutional right to a speedy trial, legal representation, and to be informed of the accusations against them.

4.3. Prisons and Jails

Prisons and jails are ill equipped to meet the diverse needs of disabled people, and often perpetuate horrendous discrimination and abuse. Living in a carceral facility entails activities of daily living (ADLs) that are particularly challenging for the disabled people. Disabilities which can be easily navigated in a community setting can become serious barriers to health and safety. For example, in addition to regular ADLs such as bathing and dressing, prison life often involves additional ADLs such as dropping to the floor for alarms, enduring excessive background noise, jumping up and down from an upper bunk, and being able to hear and promptly follow orders (Blanck 2017). States have a responsibility under the ADA to offer accessible programs and services and to provide reasonable accommodations and effective communications for disabled people. Yet, aside from litigation, there appears to be few mechanisms of accountability for ensuring ADA mandates.

Jails are locally operated short-term holding facilities for individuals awaiting trial or sentencing or for those serving sentences of one year or less. Jails currently incarcerate large numbers of people who have not yet been convicted of a crime (Sawyer and Wagner 2022). Individuals who cannot afford bail make up the vast majority of those detained in jails as a form of pretrial incarceration. Further, disabled people who are detained in local jails are often not awaiting trial but are awaiting a transfer to a hospital or other health facility, most often a mental health facility, which may currently be overcapacity (Oberholtzer 2017; Vallas 2016). In this way, jails are being used as substitutes for mental health facilities (Rembis 2014). However, unlike mental health facilities, jails do not have the resources or staff training to adequately address the needs of individuals experiencing psychiatric disabilities or mental health crises (Human Rights Watch 2015).

Despite federal disability protections, jails often deprive disabled people of access to necessary medical care as well as needed supports and accommodations, which can worsen existing health and mental health conditions (Pope et al. 2007). Take for example the case of Abreham Zemedagegehu, the d/Deaf Ethiopian immigrant discussed above. During his six weeks of jail time, he regularly missed meals because he could not hear the announcements for meal times. Because he was unable to communicate with the staff, he was in essence denied access to medication he needed for chronic pain (Zapotosky 2015).

Unlike jails, prisons are state or federally run institutions that typically incarcerate individuals with felony convictions or those serving sentences longer than one year. As in jails, disabled prisoners are entitled to reasonable accommodations and equal access to programs, services, and activities under the ADA and Section 504 of the Rehabilitation Act. However, there are documented widespread and persistent failures to ensure accessibility and to provide needed accommodations in carceral facilities across the United States (Guy 2016). Medical care and accommodations for disabled people in prisons are either inconsistent, sub-par, or routinely denied (Blanck 2017).

The Eighth Amendment, which prohibits cruel and unusual punishment, requires that mentally ill prisoners, including prisoners who become mentally ill while in prison, receive access to proper diagnoses and treatment. Nevertheless, widespread neglect of the mental health needs of incarcerated individuals appears to be the norm (Morgan 2017; Steinberg et al. 2015; Seavers 2016). From a paucity of qualified mental health professionals, to withholding or discontinuing medications, to the inhumane use and overuse of solitary confinement, the human rights of people with psychiatric disabilities are inordinately violated while existing in a prison (Seavers 2016). Furthermore, because of the violent and traumatizing nature of prison life, a significant number of people develop mental health

conditions while incarcerated ([Singal 2014](#)). The use of solitary confinement provides a profound case in point.

Despite the documented psychological harms of segregation and solitary confinement, especially on disabled people, it continues to be a prevalent practice in jails and prisons, including facilities for youth ([Guy 2016](#)). People who spend long stretches in solitary often experience depression, anxiety, and psychosis ([Berman 2016](#)). It is commonplace for disabled people to be held in solitary confinement as a substitute for appropriate accommodations ([Vallas 2016](#)). There have been countless reports of abuse and neglect of disabled people while in segregation and solitary confinement, including prolonged isolation, deplorable conditions, inadequate care, increased self-harm and suicide attempts, and death ([Guy 2016](#)). The case of Kalief Browder serves as a tragic example of the harms of solitary confinement.

Sixteen-year-old Browder spent three years on Rikers Island awaiting trial for an alleged robbery only to have his case dismissed. During his time on Rikers, he spent almost two years in solitary confinement and suffered abuse from the officers and other prisoners. While in solitary, he made several suicide attempts which were disregarded as attempts to manipulate the officers ([Berman 2016](#)). When he was released, he suffered from symptoms of PTSD and within two years, completed suicide ([Gonnerman 2015](#)). Kalief's family articulates his suicide as a byproduct of the torment he experienced on Rikers from which he could not escape after he left ([Berman 2016](#)). Advocates argue that the imposition of restrictive conditions on disabled inmates and those with a mental illness violates the Eighth Amendment prohibition of cruel and unusual punishment, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973.

Doing time is difficult and traumatizing. Jails and prisons are violent, chaotic, and overcrowded facilities. One can imagine how difficult it is to maintain emotional and physical well-being in the context of exploitation, lack of control and privacy, a paucity of meaningful activities, and limitations on contact with family and friends. The difficulties of maintaining one's health and safety while incarcerated are particularly difficult for disabled people. They have unique needs for special programs, facilities, and extensive and varied health services that often go unacknowledged or unmet. When formal accommodations are absent, incarcerated people with disabilities must often resort to obtaining informal accommodations such as paying other prisoners for help with ADLs (e.g., pushing a wheelchair or signing for a Deaf person) ([Blanck 2017](#)).

Research shows that prisoners are at an increased risk for safety threats and inadequate services while incarcerated ([Blanck 2017](#)). For example, prisoners with disabilities have higher rates of injuries compared to prisoners without disabilities. In addition, incarcerated people with disabilities are more vulnerable to exploitation and victimization by other incarcerated individuals and prison staff. Furthermore, widespread lack of reasonable accommodations means disabled people are less able to engage in programs and activities that are offered to other prisoners, which may impact parole or early release, if they are eligible for that. Poor and often inhumane conditions in jails and prisons combined with inadequate access to reasonable accommodations and health care, often exacerbate existing conditions and lead to further physical and mental health problems that did not exist prior to incarceration ([Chandler 2003](#)). As such, incarceration itself can be understood as creating disabling conditions ([Chapman et al. 2014](#)); it is "both detrimental for people with disabilities and responsible for creating new experiences of disabilities" ([Ware et al. 2014](#), p. 164).

4.4. Reentry

A large proportion of disabled people who are incarcerated are eventually released, and their experiences of reentering society have uniquely challenging dimensions, especially when they are denied access to vocational and release planning beforehand. The challenges disabled people face in reentry can be formidable as the culture of punishment and exclusion continues post-incarceration. Incarcerated people, in general, face significant

barriers upon re-entering society, including stigma, lack of resources, and a plethora of ‘collateral consequences’ while reintegrating into their communities—“laws and regulations that serve to diminish the rights and privileges of those convicted of crimes” (Travis 2002, p. 16). For example, formerly incarcerated people are legally discriminated against in employment and housing, and are denied access to public benefits, such as student loans and social welfare assistance (Brown and Patterson 2016). Laws restricting voting rights deny the right to vote to an estimated 5.17 million people with felony convictions (Uggen et al. 2020). Further, research shows that being imprisoned for one year reduces a person’s life span by two years (Wildra 2017) and reduces annual wages by 40% (Pew Charitable Trusts 2010). In effect, collateral consequences serve to restrict the mobility of ‘offenders’, limit options for survival, and reinforce their ‘criminal’ status. When these barriers are compounded by impairments, disabled people face almost insurmountable obstacles while attempting to re-enter their communities.

Correctional programs and services, such as vocational and pre-release planning programs, are shown to facilitate a smoother and more successful reentry experience for individuals upon release. However, similar to their widespread lack of access for health and mental health treatment, disabled people are often denied access to such programs while incarcerated or are placed in programs without accommodations (Seavers 2016). For example, incarcerated people with psychiatric disabilities are frequently released with no plan for reintegration, including no medication prescriptions, no mental health service referrals, and no housing supports (Rembis 2014). The difficulties formerly incarcerated disabled people face are compounded by lack of pre-release assistance in applying for necessary social supports such as Medicaid and Social Security Disability Insurance, which can take months to become eligible for on the outside. Additionally, the absence of reasonable accommodations for disabled prisoners in educational, vocational, work-release, and reentry programs, is associated with increased recidivism (Blanck 2017). In this way, ableism perpetuates discrimination, lack of access at release, and creates conditions for re-incarceration.

5. Recommendations for Social Work Centered in Disability Justice

Following the principles of disability justice as articulated by Patty Berne (2015), we highlight recommendations for social workers to guide their practice and advocacy efforts with disabled people involved in the criminal legal system. While not exhaustive, we discuss recommendations that could prevent incarceration, improve conditions of confinement, and support disabled people during reentry. Implicit in our discussion are broader changes outside of the criminal legal system that could decriminalization and incarceration of disabled people by promoting disability justice.

Disability justice takes an intersectional approach, centers the leadership of those most impacted by social issues, and resists normative understandings of value and worth based in standards of productivity brought on by capitalism. By linking various systems of oppression such as capitalism, ableism, racism, and colonialism, disability justice further emphasizes cross-movement organizing, solidarity, and interdependence. Disability justice’s goals of collective access and collective liberation refuse piecemeal solutions that speak to the needs of some while leaving others behind. Social work practice based in a disability justice framework then “shifts away from carceral responses and corrections . . . and toward strategies that foster long-term change and an embrace of difference in our communities” (Rodriguez et al. 2020, p. 546). Disability justice provides opportunities for practice based in movement-building and social change (Chin 2021). Disability justice requires us to reimagine the world and create a life affirming vision of the future. It “seeks to radically transform social conditions and norms in order to affirm and support all people’s inherent right to live and thrive” (Lewis 2020, para. 11).

While some people believe that social workers can help mitigate the harmful impacts of the criminal legal system on disabled people by working directly with carceral systems, we argue that aligning social work practice with carceral systems is not oriented toward social

justice or other core foundational values of the profession. As such, a practice model to consider that aligns more closely with the National Association of Social Worker's commitment to social justice is that of anti-carceral social work (also known as abolitionist social work) which "seeks to divest from the carceral arm of the state . . . and elevate community voices, community practices, and community problem solving" (Jacobs et al. 2021, pp. 53–54). The logic of abolition rests in a framework of "non-reformist reforms" (Hereth and Bouris 2020; Kaba and Duda 2017). Juxtaposed to reformist reforms which "serve to resolve the crisis of the carceral state through carceral accommodation" (Kim 2020, p. 319), and thus support the status quo, non-reformist reforms work to "imagine a different horizon and are not limited by a discussion of what is possible at present" (Ben-Moshe 2020, p. 16). For example, fighting for safety of disabled people in prisons is supported by abolitionists and considered a necessary non-reformist reform (Davis 2003). In contrast, other seemingly progressive initiatives, such as the uptake of community-based electronic monitoring, are considered reformist in that they strengthen and expand, rather than displace, the reach of carceral systems (Ben-Moshe 2020).

Non-reformist work may include assisting with accessibility audits that will facilitate access to services and facilities while incarcerated. Practices such as these are crucial given the disabling effects of incarceration and social workers can be active role in implementing, facilitating, and monitoring them. Social workers can also serve as powerful advocates for protecting the rights of disabled people in the criminal legal system. For example, social workers may consider working as part of the Protection and Advocacy System (P&As). The Protection and Advocacy System was enacted by congress in the 1970s to protect and advocate for disabled people's rights (Guy 2016; Seavers 2016). The Protection and Advocacy System has the authority to monitor settings where disabled people live, including prisons. As more disabled people have become incarcerated, P&As have taken an active role in monitoring and advocating there (Seavers 2016). This work ranges from providing information and assistance to incarcerated individuals, to monitoring conditions on the inside, to large scale litigation. In prisons, where very few outsiders are ever given access, P&As serve a crucial role in making public the conditions of confinement and helping improve the lives of prisoners.

Meaningful change should not further isolate or segregate people, even 'for their own good.' Historically, people with disabilities have been viewed as a social problem to be segregated from society. The approach of separating people as a way of 'treating' them continues to be a common approach today and often perpetuates harm (Lewis 2020). From a disability justice perspective, reform work is important, but reforms should be geared toward challenging punitive responses to disabled people while simultaneously advocating for life-affirming practices that encourage accountability, repair harm, and promote healing outside of carceral systems.

The [Abolition and Disability Justice Collective \(2022\)](#) cautions against several common types of reforms that are often advanced as 'alternatives' to incarcerating disabled people. The first are reforms that supplant incarceration in prisons and jails with mandatory social or health services, or with other forms of institutionalization, such as hospitalization or drug treatment facilities (Lewis 2020). Disabled people are already more likely to experience violence, and practices that use forced restraint, medication, or isolation only add to the violence they already endure (Mueller et al. 2019). Similarly, mandatory services rely on systems of surveillance and gatekeeping and prevent disabled people from making decisions about their own lives. If we understand the punishing power of prisons to be located in their ability to deny one's freedom, then we can see that forced institutionalization, of any kind, is simply a carceral space dressed up as a space for care: a wolf in sheep's clothing. Ableism reinforces the notion that disabled people are "inherently dangerous and should be subject to forced treatment, institutionalization, restraint and control" ([Abolition and Disability Justice Collective 2022](#), para. 10). Social workers should also work to reframe and challenge the ways in which disabled people's behaviors, which may not align with dominant social norms, get interpreted as threatening or dangerous.

Social workers should also be able to challenge how ableist language or constructs are used in criminal legal systems.

Similar to forced institutionalization, any reforms that require registries, monitoring, or surveillance should be avoided as they have been shown to divert people from carceral settings in the short term only to criminalize them later. For example, people who do not comply with treatment plans or are unable to keep appointments are often penalized when under community supervision. The next kind of reform to avoid are those which require forced compliance with medications. So-called diversion programs or alternatives to incarceration often hinge on compliance with specific treatment regimes. This kind of intervention denies disabled people the right to make decisions about their treatment and what they put in their bodies. As such, it is abusive and coercive. Social workers should also advocate against basing eligibility for housing or other services on restrictive criteria such as sobriety or treatment compliance. These kinds of eligibility criteria do not respect people's autonomy and coping skills and ultimately refuse care and resources to those who are most in need of them. Alternately, models such as harm reduction, mutual aide, restorative justice, and transformative justice can center the needs and autonomy of disabled people while prioritizing strategies for safety and accountability instead of strategies of punitive reaction.

6. Conclusions

There is increasing recognition of the ways in which disabled people are disproportionately and disparately impacted by the criminal legal system. Disabled people are overrepresented at all points of contact in the legal system. Furthermore, the needs and challenges of disabled people are often overlooked or neglected when they come into contact with the criminal legal system, which perpetuates the length and consequences of their criminal legal involvement. Social workers dedicated to advocacy on behalf of disabled people as well as those working to end mass incarceration need to develop both a critical awareness of disability culture, and a deep appreciation for how disability, situated alongside other intersecting lines of stratification such as race, ethnicity, class, and gender, is central to maintaining the carceral state. Disability justice offers a useful framework for informing social work practice at all levels.

Author Contributions: Conceptualization, S.M.L. and E.S.; investigation, S.M.L. and E.S.; writing—original draft preparation, S.M.L. and E.S.; writing—review and editing, S.M.L. and E.S.; All authors have read and agreed to the published version of the manuscript.

Funding: This research received no external funding.

Institutional Review Board Statement: Not applicable.

Data Availability Statement: Not applicable.

Conflicts of Interest: The author declares no conflict of interest.

Notes

- 1 Throughout this paper we use the terms “criminal legal system” and “carceral system” rather than “criminal justice system” to describe policing, prosecution, courts, and corrections in the United States. This is more than just an issue of semantics or political correctness. Language is inherently political, and it shapes how people think. The phrase “criminal justice” reifies taken-for-granted assumptions that justice can be found through punishment and confinement. Furthermore, as activists and scholars have shown, contemporary carceral systems are a product of racialized and ableist historical processes and do not deliver justice but rather perpetuate injustice for the most marginalized among us.
- 2 While at times we shift between person-first and identity-first language, we primarily utilize identity-first language to refer to disabled people as a group or class.
- 3 According to Carol Padden and Tom Humphries, in *Deaf in America: Voices from a Culture* (Padden and Humphries 1988): “We use the lowercase deaf when referring to the audiological condition of not hearing, and the uppercase Deaf when referring to a particular group of deaf people who share a language—American Sign Language (ASL)—and a culture. The members of this group have inherited their sign language, use it as a primary means of communication among themselves, and hold a set of

beliefs about themselves and their connection to the larger society. We distinguish them from, for example, those who find themselves losing their hearing because of illness, trauma or age; although these people share the condition of not hearing, they do not have access to the knowledge, beliefs, and practices that make up the culture of Deaf people".

References

- Abolition and Disability Justice Collective. 2022. Available online: <https://abolitionanddisabilityjustice.com/reforms-to-oppose/> (accessed on 7 March 2022).
- Abramovitz, Mimi, and Jennifer Zelnick. 2018. The logic of the market versus the logic of social work: Whither the welfare state? *Social Work & Society* 16: 1–11.
- Appleman, Laura. 2018. Deviancy, dependency, and disability: The forgotten history of eugenics and mass incarceration. *Duke Law Journal* 68: 417–78. [PubMed]
- Ben-Moshe, Liat. 2011. Genealogies of Resistance to Incarceration: Abolition Politics within Deinstitutionalization and Anti-Prison Activism in the US. Unpublished Ph.D. dissertation, Syracuse University, Syracuse, NY, USA.
- Ben-Moshe, Liat. 2020. *Decarcerating Disability: Deinstitutionalization and Prison Abolition*. Minneapolis: University of Minnesota Press.
- Berman, Mark. 2016. Kalief Browder and What We Do and Don't Know about Solitary Confinement in the U.S. The Washington Post. Available online: <https://www.washingtonpost.com/news/post-nation/wp/2016/01/25/kalief-browder-and-what-we-do-and-dont-know-about-solitary-confinement-in-the-u-s-2/> (accessed on 7 March 2022).
- Berne, Patty. 2015. *Disability Justice—A Working Draft by Patty Berne*. Sans Invalid. Available online: <https://www.sinsinvalid.org/blog/disability-justice-a-working-draft-by-patty-berne> (accessed on 7 March 2022).
- Blanck, Peter. 2017. Disability in prison. *Southern California Interdisciplinary Law Journal* 26: 309–22.
- Bronson, Jennifer, Laura M. Maruschak, and Marcus Berzofsky. 2015. *Disabilities among Prison and Jail Inmates, 2011–2012*; Washington: Bureau of Justice Statistics. Available online: <https://bjs.ojp.gov/content/pub/pdf/dpj1112.pdf> (accessed on 7 March 2022).
- Brown, Wendy. 2015. *Undoing the Demos: Neoliberalism's Stealth Revolution*. Brooklyn: Zone Books.
- Brown, Tony, and Evelyn Patterson. 2016. *Wounds from Incarceration that Never Heal*. The New Republic. Available online: <https://newrepublic.com/article/134712/wounds-incarceration-never-heal> (accessed on 7 March 2022).
- Chandler, Cynthia. 2003. Death and dying in America: The prison industrial complex's impact on women's health. *Berkeley Women's Law Journal* 18: 40–60. [PubMed]
- Chapman, Chris. 2014. Five centuries' material reforms and ethical reformulations of social elimination. In *Disability Incarcerated: Imprisonment and Disability in the United States and Canada*. Edited by Liat Ben-Moshe, Chris Chapman and Allison C. Carey. New York: Palgrave Macmillan, pp. 25–44.
- Chapman, Chris, Allison C. Carey, and Liat Ben-Moshe. 2014. Reconsidering confinement: Interlocking locations and logics of incarceration. In *Disability Incarcerated: Imprisonment and Disability in the United States and Canada*. Edited by Liat Ben-Moshe, Chris Chapman and Allison C. Carey. New York: Palgrave Macmillan, pp. 3–24.
- Chin, Natalie M. 2021. Centering Disability Justice. *Syracuse Law Review* 71: 684–738. [CrossRef]
- Davis, Angela Y. 2003. *Are Prisons Obsolete?* New York: Seven Stories Press.
- Department of Justice. 2010. Americans with Disabilities Act Title II regulations: Nondiscrimination on the Basis of Disability in State and Local Government Services. Available online: https://www.ada.govregs2010/titleII_2010/titleII_2010_regulations.pdf (accessed on 7 March 2022).
- Gonnerman, Jennifer. 2015. *Kalief Browder, 1993–2015*. The New Yorker. Available online: <https://www.newyorker.com/news/news-desk/kalief-browder-1993-2015> (accessed on 7 March 2022).
- Guy, Anna. 2016. *Locked Up and Locked Down: Segregation of Inmates with Mental Illness*. AVID Prison Project. Available online: <http://www.avidprisonproject.org/assets/locked-up-and-locked-down---avid-prison-project.pdf> (accessed on 7 March 2022).
- Hereth, Jane, and Alida Bouris. 2020. Queering smart decarceration: Centering the experiences of LGBTQ young people to imagine a world without prisons. *Affilia: Journal of Women and Social Work* 35: 358–75. [CrossRef]
- Human Rights Watch. 2015. Callous and Cruel: The Use of Force against Inmates with Mental Disabilities in US Jails and Prisons. Available online: <https://www.hrw.org/report/2015/05/12/callous-and-cruel/use-force-against-inmates-mental-disabilities-us-jails-and#8338> (accessed on 7 March 2022).
- Hurst, Adrienne. 2015. *Black, Autistic, and Killed by Police*. Reader. Available online: <https://chicagoreader.com/news-politics/black-autistic-and-killed-by-police/> (accessed on 7 March 2022).
- Jacobs, Leah A., Mimi E. Kim, Darren L. Whitfield, Rachel E. Gartner, Meg Panichelli, Shanna K. Kattari, Margaret Mary Downey, Shate Stuart McQueen, and Sarah E. Mountz. 2021. Defund the police: Moving towards an anti-carceral social work. *Journal of Progressive Human Services* 32: 37–62. [CrossRef]
- Jones, Alexi. 2018. *Correctional Control 2018: Incarceration and Supervision by State*. Prison Policy Initiative. Available online: <https://www.prisonpolicy.org/reports/correctionalcontrol2018.html> (accessed on 7 March 2022).
- Kaba, Mariame, and John Duda. 2017. *Towards the Horizon of Abolition: A Conversation with Mariame Kaba*. The Next System Project. Available online: <https://thenextsystem.org/learn/stories/towards-horizon-abolition-conversation-mariame-kaba> (accessed on 7 March 2022).
- Kim, Mimi E. 2020. Anti-carceral feminism: The contradictions of progress and the possibilities of counterhegemonic struggle. *Affilia: Journal of Women and Social Work* 35: 301–26. [CrossRef]

- Leotti, Sandra M. 2020. The discursive construction of risk: Social work knowledge production and criminalized women. *Social Service Review* 94: 445–87. [CrossRef]
- Lewis, Talila A. 2014. *Police Brutality and Deaf People*; ACLU. Available online: <https://www.aclu.org/blog/national-security/police-brutality-and-deaf-people?redirect=blog/criminal-law-reform-free-speech/police-brutality-and-deaf-people> (accessed on 7 March 2022).
- Lewis, Talila A. 2020. *Disability Justice Is an Essential Part of Abolishing Police and Prisons*. The Level. Available online: <https://level.medium.com/disability-justice-is-an-essential-part-of-abolishing-police-and-prisons-2b4a019b5730> (accessed on 7 March 2022).
- Mauer, Marc, and Ryan S. King. 2007. *A 25-Year Quagmire: The War on Drugs and Its Impact on American Society*. The Sentencing Project. Available online: <https://www.sentencingproject.org/publications/a-25-year-quagmire-the-war-on-drugs-and-its-impact-on-american-society/> (accessed on 7 March 2022).
- Morgan, Jamelia N. 2017. Caged in: The devastating harms of solitary confinement on prisoners with physical disabilities. *Buffalo Human Rights Law Review* 24: 81–178. [CrossRef]
- Muehlmann, Shaylih. 2018. The gender of the war on drugs. *Annual Review of Anthropology* 47: 315–30. [CrossRef]
- Mueller, Caryn O., Anjali J. Forber-Pratt, and Julie Sriken. 2019. Disability: Missing from the conversation of violence. *Journal of Social Issues* 75: 707–25. [CrossRef]
- National Center for Access to Justice. 2016. *Disability Access 2016*. Available online: <https://ncaj.org/state-rankings/2016/disability-access> (accessed on 7 March 2022).
- National Center for Access to Justice. 2020. *Disability Access 2020*. Available online: <https://ncaj.org/state-rankings/2020/disability-access> (accessed on 7 March 2022).
- Oberholtzer, Elliot. 2017. *Police, Courts, Jails, and Prisons All Fail Disabled People*. Prison Policy Initiative. Available online: <https://www.prisonpolicy.org/blog/2017/08/23/disability/> (accessed on 7 March 2022).
- Padden, Carol, and Tom Humphries. 1988. *Deaf in America: Voices from a culture*. Cambridge: Harvard University Press.
- Perry, David M., and Lawrence Carter-Long. 2014. *How Misunderstanding of Disability Leads to Police Violence*. The Atlantic. Available online: <https://www.theatlantic.com/health/archive/2014/05/misunderstanding-disability-leads-to-police-violence/361786/> (accessed on 7 March 2022).
- Perry, David M., and Lawrence Carter-Long. 2016. *The Ruderman white Paper on Media Coverage of Law Enforcement Use of Force and Disability*; Ruderman Family Foundation. Available online: https://rudermanfoundation.org/wp-content/uploads/2017/08/MediaStudy-PoliceDisability_final-final.pdf (accessed on 7 March 2022).
- Pew Charitable Trusts. 2010. *Collateral Costs: Incarceration's Effect on Economic Mobility*. Available online: https://www.pewtrusts.org/-/media/legacy/uploadedfiles/pcs_assets/2010/collateralcosts1pdf.pdf (accessed on 7 March 2022).
- Pope, Andrew, Cori Vanchieri, and Lawrence O. Gostin, eds. 2007. Today's prisoners changing demographics, health issues, and the current research environment. In *Ethical Considerations for Research Involving Prisoners*; Washington, DC: National Academies Press. Available online: <https://www.ncbi.nlm.nih.gov/books/NBK19877/> (accessed on 7 March 2022).
- Purnell, Derecka. 2021. *Becoming Abolitionists: Police, Protests, and the Pursuit of Freedom*. New York: Astra House.
- Rembis, M. 2014. The new asylums: Madness and mass incarceration in the neoliberal era. In *Disability Incarcerated: Imprisonment and Disability in the United States and Canada*. Edited by Liat Ben-Moshe, Chris Chapman and Allison C. Carey. New York: Palgrave Macmillan, pp. 139–59.
- Rodriguez, Sabrina M., Liat Ben-Moshe, and Heather Rakes. 2020. Carceral protectionism and the perpetually (in) vulnerable. *Criminology & Criminal Justice* 20: 537–50.
- Sawyer, Wendy, and Peter Wagner. 2022. *Mass Incarceration: The Whole Pie* 2022. Prison Policy Initiative. Available online: https://www.prisonpolicy.org/reports/pie2022.html?c=pie&gclid=CjwKCAjwkYGVBhArEiwA4sZLuNXziQRlrvo2eHHstWV25-NGi5UIDjgkRUauIZnxzq8c0GUIT0y-gRoC9qYQAvD_BwE (accessed on 7 March 2022).
- Schlanger, Margo. 2017. Prisoners with disabilities. In *Reforming Criminal Justice: Punishment, Incarceration, and Release*. Edited by Erik Luna. Phoenix: Academy for Justice, pp. 295–323.
- Seavers, Rachael. 2016. *Making Hard Time Harder: Programmatic Accommodations for Inmates with Disabilities under the Americans with Disabilities Act*. AVID Prison Project. Available online: <http://avidprisonproject.org/Making-Hard-Time-Harder/> (accessed on 7 March 2022).
- Singal, Jesse. 2014. *Kajieme Powell Died Because Police Have Become America's Mental-Health Workers*. The Cut. Available online: <https://www.thecut.com/2014/08/police-kajieme-powell-and-mental-illness.html> (accessed on 7 March 2022).
- Sokoloff, Natalie. 2005. Women prisoners at the dawn of the 21st century. *Women and Criminal Justice* 4: 127–37. [CrossRef]
- Steinberg, Darrell, David Mills, and Michael Romano. 2015. When Did Prisons Become Acceptable Mental Healthcare Facilities. *Stanford Law School: Three Strikes Project*. Available online: https://law.stanford.edu/index.php?webauth-document=child-page/632655/doc/slspublic/Report_v12.pdf (accessed on 7 March 2022).
- Travis, Jeremy. 2002. Invisible punishment: An instrument of social exclusion. In *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*. Edited by Marc Mauer and Meda Chesney-Lind. New York: The New York Press, pp. 15–36.
- Uggen, Chris, Ryan Larson, Sarah Shannon, and Arleth Pulido-Nava. 2020. *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction*. The Sentencing Project. Available online: <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/> (accessed on 7 March 2022).

- Vallas, Rebecca. 2016. Disabled Behind Bars: The Mass Incarceration of People with Disabilities in America's Jails and Prisons. Center for American Progress. Available online: <https://www.americanprogress.org/issues/criminal-justice/reports/2016/07/18/141447/disabled-behind-bars> (accessed on 7 March 2022).
- Varadaraj, Varshini, Jennifer A. Deal, Jessica Campanile, Nicholas S. Reed, and Bonnielin K. Swenor. 2021. National Prevalence of Disability and Disability Types Among Adults in the US, 2019. *JAMA Network Open* 4: e2130358. [CrossRef] [PubMed]
- Wacquant, Loïc. 2009. *Punishing the Poor: The Neoliberal Government of Social Insecurity*. Durham: Duke University Press.
- Ware, Syrus, Joan Ruzsa, and Giselle Dis. 2014. It can't be fixed because it's not broken: Racism and disability in the prison industrial complex. In *Disability Incarcerated: Imprisonment and Disability in the United States and Canada*. Edited by Liat Ben-Moshe, Chris Chapman and Allison C. Carey. New York: Palgrave Macmillan, pp. 163–84.
- Wildra, Emily. 2017. *Incarceration Shortens Life Expectancy*. Prison Policy Initiative. Available online: https://www.prisonpolicy.org/blog/2017/06/26/life_expectancy/ (accessed on 7 March 2022).
- Zapotosky, Matt. 2015. A Deaf Man's Jail Ordeal in Arlington: 'I Felt Stuck. I Was Stuck'. The Washington Post. Available online: https://www.washingtonpost.com/local/crime/mistreatment-of-the-deaf-in-prison-in-2015/2015/09/30/0c1244e8-5e1a-11e5-9757-e49273f05f65_story.html?utm_term=.df18a041f02d (accessed on 7 March 2022).