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Disability and the Criminal Justice System

A Justice Reform Initiative Briefing Paper
October 2025

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Introduction

In Australia, people who live with disability are more likely to come into contact with the criminal justice system than those who do not have a disability. People with disabilities are more likely to come into contact with the police, more likely to have difficulty complying with onerous bail conditions and are over-represented in custodial settings.¹

Recent linked administrative data research in Australia shows that having an unsupported disability is a key social determinant of incarceration.² The reasons for the over-representation of people with disability, particularly intellectual or cognitive disability, in the criminal justice system are complex and interrelated. It is not the result of any inherent relationship between living with a disability and criminal behaviour, and people with disability are not more inclined to criminal offending than people who do not have a disability. However, people with disabilities are more likely to experience multiple forms of disadvantage, including poverty, homelessness, unemployment, substance abuse, other health problems and social isolation. All of this is exacerbated by a lack of support services in the community.³ These hardships can lead to frequent and intense contact with police.

For particular groups of people living with disability, the over-representation at all stages of the criminal justice system is even more telling. First Nations people with cognitive impairment, women living with disability who experience violence, people with particular disabilities such as cognitive impairment, hearing disability or acquired brain injury, are all more likely to be subject to intense policing, come into contact with the criminal justice system and be incarcerated.⁴

People living with disability who are incarcerated are more likely to have difficulty coping within the prison environment, more likely to experience other mental and physical health problems, will find it difficult to access necessary supports that they would otherwise have access to in the community, and upon release will be at a higher risk of returning to custody.⁵

There is overwhelming evidence that people living with disability are disproportionately represented at all stages of the criminal justice system. People in need of vital services and supports in the community are instead being funnelled into prisons, where they risk being subject to human rights abuses, further mistreatment, and an inability to access adequate supports.

There is a need to build pathways out of the justice system for people with disabilities. This paper focuses on identifying the multiple points of contact that people with disability encounter in the criminal justice system, and the structures and legislation that impact upon their experience at each stage. This paper highlights the need to focus attention on alternatives to criminalisation and incarceration for people with disabilities. Options and supports need to be available in

¹ Baldry, E. (2014). Disability at the margins: limits of the law. *Griffith Law Review*, 23(3), 370–388. <https://doi.org/10.1080/10383441.2014.1000218>; McCausland, R., Baldry, E., Johnson, S. & Cohen, A. (2013). *People with Mental Health Disorders and Cognitive Impairment in the Criminal Justice System: Cost-benefit Analysis of Early Support and Diversion*, PwC & UNSW.

² Ruth McCausland and Eileen Baldry, 2023. 'The Social Determinants of Justice: 8 Factors that increase your risk of imprisonment'. *The Conversation*. Available online <<https://theconversation.com/the-social-determinants-of-justice-8-factorsthat-increase-your-risk-of-imprisonment-203661>>.

³ Senate Select Committee on Mental Health, Parliament of Australia, 'A national approach to mental health – from crisis to community' (Report 1, 30 March 2006) [13.26].

⁴ Leanne Dowse, Simone Rowe, Eileen Baldry & Michael Baker, *Police responses to people with disability*, Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, October 2021, 3.

⁵ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Final Report. Volume 8: Criminal justice and people with disability ('Disability Royal Commission'). 4.

the community to enable pathways that do not lead to prison (e.g. at the point of interaction with police/alternative first responders and at the point of interaction with courts). People with disabilities who are trapped in cycles of incarceration and disadvantage also need sustainable pathways out of the justice system. If people with disabilities are incarcerated, then the conditions of detainment should be humane, and people should have access to the same disability supports and care that they are able to receive in the community.



Snapshot: The over-representation of people with disability in the criminal justice system

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability ('the Disability Royal Commission') found that there was no national, state or territory reporting of data in relation to people with disability in the criminal justice system.⁶ The true number of people with disability in the criminal justice system is unknown.⁷ However, various custodial health services across Australia have provided estimates of the high proportion of people in custodial settings who live with disability.

According to the Australian Institute of Health and Welfare (AIHW) 2018 adult prisoner entrant survey, **29%** of people entering prison reported a chronic condition or disability that affected their participation in day-to-day activities, education or employment. This compares with 22% of people in the general community.⁸

The 2018 AIHW survey did not include NSW. However, a NSW survey of adults in prison found that 28% of surveyed people in NSW prisons reported experiencing difficulties with everyday activities related to long-term health conditions or disability. The survey also found that **15%** of people entering prison were in receipt of the disability support pension (DSP) prior to their incarceration.⁹

Several studies have consistently found higher rates of intellectual disability or cognitive impairment in custodial populations than in the

community, with some indicating that **25-30%** of people in prison have borderline intellectual disability and **10%** have a mild intellectual disability.¹⁰

There is also evidence indicating the over-representation of people with acquired brain injury (ABI) coming into contact with the criminal justice system. In 2018 the AIHW reported that ABI was a risk factor in criminal offending, and particularly for offending after release from prison.¹¹ High rates of ABI amongst adults in prison have been reported by several studies, ranging from **40-90%**.¹²

For First Nations People in prison and detention, the over-representation of people with disability is even more stark:

- Almost **one in four** First Nations young people in detention are likely to have an intellectual disability, compared with **1 in 12** non-Indigenous young people;¹³
- The rate of cognitive disability for First Nations men charged with criminal offences in NSW is higher (**13%**) than non-Indigenous men charged with criminal offences (**5.4%**);¹⁴
- **43%** of First Nations women in custody in NSW reported living with disability.¹⁵

⁶ Disability Royal Commission (n 5) 234.

⁷ Clare Ringland, Stewart Boiteux & Suzanne Poynton for NSW Bureau of Crime Statistics and Research, *People with disability and offending in NSW: Results from the National Disability Data Asset pilot*, Crime and Justice Statistics Bureau Brief no.164, January 2023, p 19; Julian Trofimovs, Leanne Dowse, Preeyaporn Srasuebkul & Julian Trollor, 'Using linked administrative data to determine the prevalence of intellectual disability in adult prison in New South Wales, Australia', (2021), vol 65 (6), *Journal of Intellectual Disability Research*, pp 589-600.

⁸ Australian Institute of Health and Welfare (AIHW), *The health of Australia's prisoners 2018*, Report, 2019, 78.

⁹ Justice Health and Forensic Mental Health Network, *2015 Network patient health survey*, Report, May 2017, 28, 47.

¹⁰ AIHW (n 8) 77.

¹¹ Ibid 106.

¹² Ibid; Stan Winford, Anna Howard & Jessica Richter, *Recognition, respect and support: Enabling justice for people with an acquired brain injury*, Report, 2017.

¹³ Justice Health and Forensic Mental Health Network (n 9) 84.

¹⁴ Clare Ringland, Stewart Boiteux & Suzanne Poynton for NSW Bureau of Crime Statistics and Research, *People with disability and offending in NSW: Results from the National Disability Data Asset pilot*, Bureau Brief no. BB164, January 2023, 15-16.

¹⁵ NSW State Government Justice Health and Forensic Mental Health Network, *2015 Network patient health survey: Aboriginal people's health report*, 2017, 20.

There is no comprehensive national source of data regarding the number of children and young people with disability in youth detention, but the data which is available indicates that a significant majority of children and young people in youth detention have a disability.¹⁶

- The most recent survey of children and young people in custody in NSW found that **24%** of First Nations children and young people in custody have an intellectual disability.¹⁷
- In Queensland, the 2022 Youth Justice Census reported that of the children and young people in youth detention centres or police watch-houses, **12%** had diagnosed or suspected Fetal Alcohol Spectrum Disorder (FASD) and **26%** had diagnosed or suspected cognitive or intellectual disability.¹⁸
- In Victoria, a survey of 176 children and young people in youth detention in 2017 found that **24%** presented with issues concerning their intellectual functioning.¹⁹
- A 2018 study by the Telethon Kids Institute and the University of Western Australia showed that **9 out of 10** incarcerated children and young people in WA had some form of neuro-disability, ranging from dyslexia or similar learning disability, language disorder, attention deficit hyperactivity disorder (ADHD), intellectual disability, executive function disorder, memory impairment or motor coordination disorder.²⁰ More than **1 in 3** had FASD.²¹
- A sample of children and young people in detention in SA found that **9 out of 10** children and young people had disability-related needs.²²
- In 2017, multidisciplinary assessments of children and young people in youth detention in the NT found that **56%** had FASD and **31%** had some form of brain injury.²³

Despite the difficulties in data collection, there is overwhelming evidence that people living with disability are over-represented in the criminal justice system and in custodial settings in Australia.

¹⁶ Disability Royal Commission (n 5) 85.

¹⁷ NSW Government, *Young people in custody health survey: key findings*, 2015, 3.

¹⁸ Queensland Government, Department of Children, Youth Justice and Multicultural Affairs, *Youth Justice Census Summary*, 2022, 1.

¹⁹ Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Report, March 2017, 35.

²⁰ Drum, M., & Buchanan, R. (2020). *Western Australia's prison population 2020: Challenges and reforms*. The University of Notre Dame Australia and the Catholic Archdiocese of Perth. http://csswa.perthcatholic.org.au/wp-content/uploads/2022/05/FINAL-WA-Prison-Population-Report-2020_WEB.pdf

²¹ Telethon Kids Institute, 'Nine out of ten young people in detention found to have severe neuro-disability' (13 February 2018).

²² Government of South Australia, Training Centre Visitor, *Great responsibility: Report on the 2019 Pilot Inspection of the Adelaide Youth Training Centre (Kurlana Tapa Youth Justice Centre)*, 2020, 99.

²³ Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Final report*, volume 2A, 31 March 2017, ch 15, 354.



Policing people with disability

The Disability Royal Commission received evidence indicating that police responses to people with disability are generally inadequate, and often damaging to their well-being, significantly impacting on their rights to justice. The suggested reasons for this are:

1. The increasing **expansion of policing** and the related use of policing as the **default institutional response** to the social, cultural and economic forms of disadvantage that propel people with disability into contact with the police, and to which police are not the appropriate responders; and
2. The **reduction of funding** for appropriate social and human services.²⁴

There is no definitive data in Australia regarding the frequency, extent or nature of policing in relation to people with disability. However, government inquiries and empirical research have indicated that for people with a disability, contact with police is frequent and often inadequate.²⁵ Sometimes behaviours exhibited by people with cognitive impairment are interpreted as being difficult or defiant, resulting in disproportionate and confrontational interactions with police.²⁶

The high levels of police contact with people with disability is often as a result of lack of appropriate support in the community or alternative pathways. Without these supports people with cognitive disabilities are routinely forced into criminal justice interventions that are rarely supportive.²⁷

A number of researchers have pointed to features of police interactions that increase the likelihood of the escalation of criminal justice system involvement for people with disabilities, alongside the barriers to fair treatment. A 2021 research report provided to the Disability Royal Commission detailed the key issues. These include:

- **Negative attitudes, assumptions and stereotypes of people with disability when being accused of crime** (for example, police viewing people with disability as lacking credibility and/or reliability);
- **The failure of police to identify disability** in people who are alleged to have committed an offence and to respond to it appropriately – that police lack an understanding about disability and how it affects a person's behaviour or ability to comply with police orders;
- **The failures of police to provide appropriate supports to people with disability** – widespread unmet need for the provision of procedural and emotional supports by police to people with intellectual disability who are suspected of criminal offences;
- **People with cognitive impairment are more vulnerable to police misconduct** and have distinctive challenges to making complaints about police misconduct. Police responses to people with disabilities can escalate when disability-related behaviours are misinterpreted as defiant.²⁸

²⁴ Dowse et al (n 4) 111.

²⁵ Dowse et al (n 4).

²⁶ Legislative Council, Legal and Social Issues Committee, Parliament of Victoria (Victoria Parliament CLSIC) (2022), *Inquiry into Victoria's criminal justice system*, 206.

²⁷ Dowse et al (n 4).

²⁸ Dowse et al (n 4).

People with cognitive impairment, once in police custody, may be disadvantaged in police interrogation and investigation procedures.

Factors that contribute to people with cognitive impairment being charged with criminal offences include:

- **Being prone to suggestibility**, making them more likely to agree to propositions being put to them by interviewing police officers;
- **Being eager to please** a perceived authority figure by providing what they consider to be expected answers to leading questions in a formal interview;
- **Having a poor understanding** of questions asked and the implications of the answers they provide;
- **Trying to hide their disability** by endeavouring to answer a question to which they do not know the answer.²⁹

The following initiatives would improve police responses to people with disability:

- **Increased resourcing to social services** such as housing, health and disability-related supports;
- **The expansion of programs** to provide support persons for people in police custody together with a legal mandate for police to use such support persons;
- **Greater independent oversight of the police** in order to hold police accountable for violence perpetrated by police against people with disability;
- **Expansion of progressive models of policing**, including pre-court diversion of people accused or suspected of criminal offences at the point of initial police contact, such as police referral to other emergency or support services, or the exercise of discretion to issue a caution or warning rather than charge the person with an offence; and
- The introduction of programs that provide **alternative first responders** to police that are well-equipped to respond to the needs of people with disability.

²⁹ Australian Human Rights Commission. The Rights of People with Disabilities: Areas of Need for Increased Protection, Chapter 5: Criminal Justice System, <https://humanrights.gov.au/our-work/rights-people-disabilities-areas-need-increased-protection-chapter-5-criminal-justice#police>

Difficulties for people with disability in obtaining bail

People with vulnerabilities such as mental illness and disability are more likely to be refused bail than other populations.³⁰

While this over-representation may be due to being perceived as a greater risk to community safety, it also reflects the limited availability of, and access to, appropriate support services that would enable people to remain in the community pending their court hearing.³¹ Many people are refused bail not because they are 'dangerous', but because they are homeless, disadvantaged, or experiencing a combination of vulnerabilities which influences court decisions around their reliability in terms of attending court when required.

Increasingly restrictive bail laws around Australia have unintended consequences for populations that were not the target of the legislative changes. For example, the introduction of more restrictive bail laws in Victoria in 2018 led to an increased likelihood of people with cognitive impairment who were charged with criminal offences being remanded in custody.³²

The use of bail conditions and conduct requirements provide an avenue to mitigate some of the risks that would otherwise make it difficult for a person to be granted bail. However, bail conditions imposed by police on persons with intellectual disability are often onerous and beyond what is necessary to reduce the risk of re-offending. The imposition of such conditions creates a significant risk of a subsequent breach, often resulting in the cancellation of bail and detention on remand.³³

The Intellectual Disability Rights Service (IDRS) considers that a bail authority should not impose a bail condition on a person who has an intellectual disability unless satisfied that the bail condition is appropriate, and that there should be a requirement that the person is able to understand and comply so far as possible.

In addition, there should be a requirement that the person granted bail should leave the police station or the court understanding and able to comply with conditions imposed.³⁴

The IDRS has also noted that people with intellectual disability frequently have a history of breaching their bail with failures to appear in court and previous convictions for failing to appear on bail. People with intellectual disability may inadvertently fail to appear at court due to their lack of understanding and their difficulty with planning ahead and managing their commitments without assistance. The IDRS express concern that many failures to appear in court by people with intellectual disability are a direct result of the effect of the person's disability, lack of support and the failure of the justice system to adjust its processes to accommodate people with intellectual disability. Creating a separate offence for failing to appear in court on bail may have a particularly discriminatory effect on people with intellectual disability.³⁵

³⁰ Travers M, Colvin E, Bartkowiak-Théron I, Sarre R, Day A & Bond C 2020. Bail practices and policy alternatives in Australia. *Trends & issues in crime and criminal justice* no. 610. Canberra: Australian Institute of Criminology. <https://doi.org/10.52922/ti04589>

³¹ Ibid 19–20.

³² Emma Russell, Bree Carlton and Danielle Tyson, "It's a gendered issue, 100 per cent": How tough bail laws entrench gender and racial inequality and social disadvantage' (2022) 11 *International Journal for Crime, Justice and Social Democracy* 107.

³³ Intellectual Disability Rights Service. 2011. *Bail – Question for Discussion*. Submission to the NSW Law Reform Commission Inquiry into Bail. 30 July 2011. 3.

³⁴ Ibid.

³⁵ Ibid 2.

Police and other bail authorities should be required to actively take into account a person's intellectual disability, the person's circumstances and the specific nature of the breach in responding to a breach of bail, both in terms of breaching specific bail conditions and also failing to appear in court.

In order to reduce the over-incarceration of people with disabilities on remand, it is necessary to establish and appropriately resource bail support services including accommodation support and pre-trial diversionary support options. Provision of appropriate diversion and

bail support services (such as drug and alcohol services, mental health and disability support and accommodation) assists in addressing the needs of people with disability charged with criminal offences, reduces the likelihood of reoffending while on bail or not appearing in court, and provides alternatives to detention.³⁶ Providing support and accommodation services to people with disability who have been charged with a criminal offence also serves to enhance both community safety and the interests and welfare of the person facing criminal charges.

³⁶ Matthew Willis. 2017. 'Bail support: A review of the literature' (Australian Institute of Criminology, Research Report, 2017) 27; Asher Presneill. 2018. 'A Viable Solution? Bail Hostels in the ACT' (Research Report, ACT Inspector of Correctional Services, 2018), 5-6, 34; Travers et al (n 30),19-20.



Court-based diversion for people with cognitive disability

There is strong evidence to indicate that a disproportionate number of people who appear before the lower criminal courts (Local/Magistrates' Court) have a cognitive disability.³⁷

Court-based pre-sentence diversion programs can provide an important mechanism by which people with a disability are referred to support programs or treatment services, or have the matter listed before a specialist court, rather than being convicted and progressing deeper into the criminal justice system.

Such programs can provide an alternative to a custodial sentence and address some of the underlying needs of the person which can reduce the likelihood of further offending.

The Disability Royal Commission recognised that for such diversionary programs to be effective, people with disability must be connected to a range of government and non-government support agencies that meet their individual needs, particularly in the areas of health, education and housing.³⁸ However, the limited availability of diversionary programs and options, particularly in regional and remote areas, is a significant contributing factor to people with cognitive disability being overrepresented in the criminal justice system. Moreover, effective diversionary programs are often not available

or not effective due to a lack of the necessary community supports and services.³⁹

Specialist courts or lists for people with cognitive disability incorporate a therapeutic approach to responding to criminal offending. These have been established in South Australia, Tasmania, Western Australia and Victoria. Although the models vary, they are available to people charged with summary offences or indictable offences which can be dealt with summarily. A plan of treatment and engagement with services is provided for each person charged with an offence and regular court hearings are held to review their progress. If the person does not comply with the treatment plan, they are encouraged, supported and assisted to comply. If non-compliance continues then the program can be terminated.⁴⁰

Court-based diversion programs for people with cognitive disability charged with summary offences are provided in NSW, South Australia, Western Australia and Victoria. These programs assist people as their case progresses through the court process and helps them to access treatment and other community supports to address the underlying causes of their offending.⁴¹

³⁷ Eileen Baldry, Leanne Dowse & Melissa Clarence, *People with mental and cognitive disabilities: Pathways into prison*, Background paper for Outlaws to Inclusion Conference, 2012, 14–15; New South Wales Law Reform Commission, *People with cognitive and mental health impairments in the criminal justice system: Diversion*, Report No. 135, June 2012, 63–65.

³⁸ Disability Royal Commission (n 5) 286.

³⁹ Just Reinvest NSW, Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability in response to *Criminal justice system issues paper*, 14 April 2020, 18; Dowse et al (n 4) 8.

⁴⁰ Legal Services Commission South Australia, 'Treatment Intervention Court', *Legal Services Commission South Australia*, web page, 1 May 2019. <lsc.sa.gov.au/dsh/ch04s11.php>; Magistrates Court of Victoria, 'Assessment and Referral Court (ACR)', Magistrates' Court of Victoria, web page, 14 September 2022. <www.mcv.vic.gov.au/find-support/assessment-and-referral-court-arc>; Magistrates Court of Tasmania, 'The Diversion List', Magistrates Court Tasmania, web page. <www.magistratescourt.tas.gov.au/about-us/criminal_division/diversion_list>; New South Wales Law Reform Commission, *People with cognitive and mental health impairments in the criminal justice system: Diversion*, Report No. 135, June 2012, xxiii.

⁴¹ 'Magistrates Court Diversion Program', Legal Services Commission South Australia, web page. <lawhandbook.sa.gov.au/ch12s04s05.php>; Intellectual Disability Rights Service, 'Justice Advocacy Service: Fact sheet', New South Wales (25 October 2016); Dowse et al (n 4) 31.

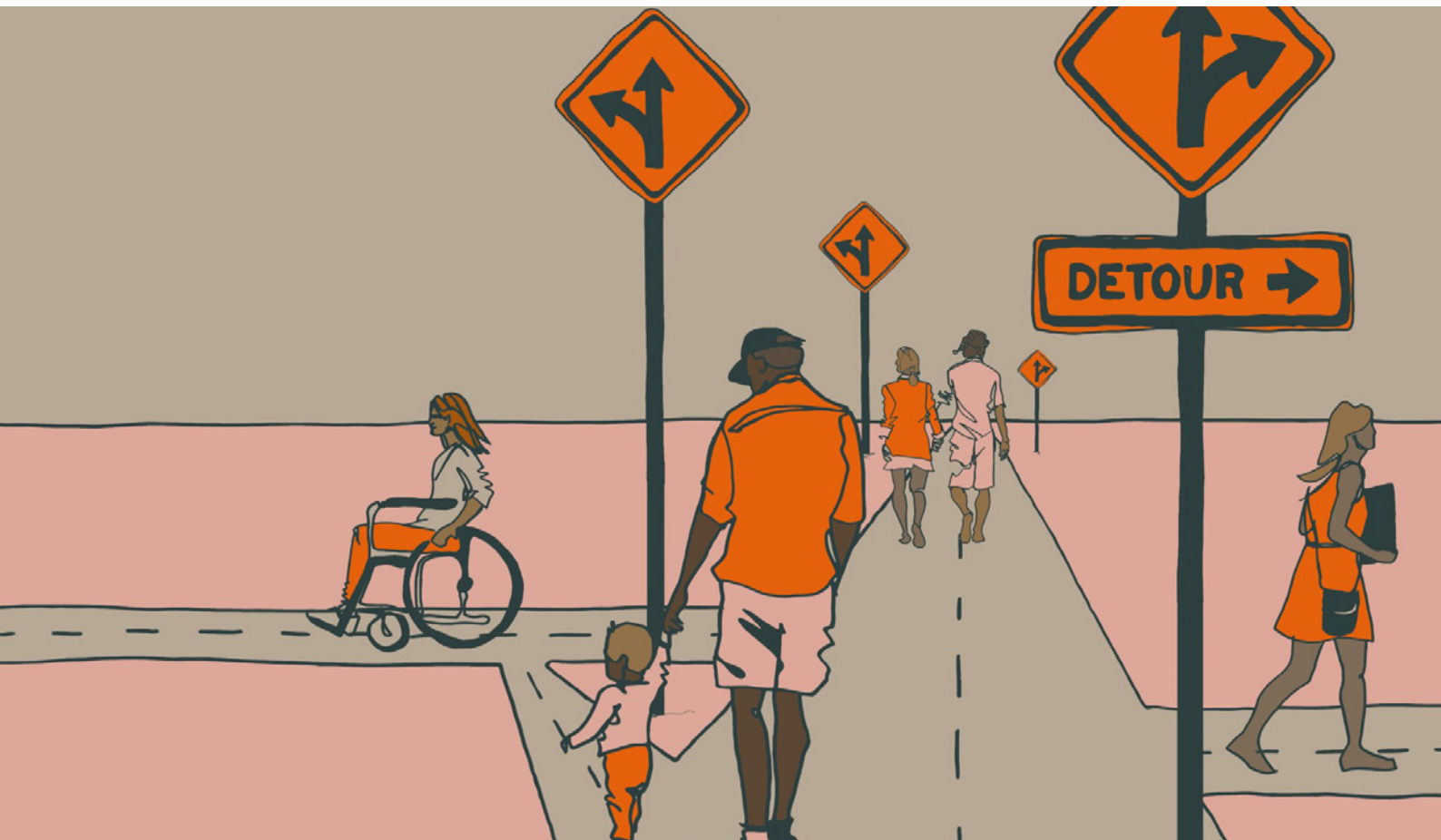
The benefits for people with cognitive disability who have access to criminal justice diversionary programs include:

- Targeted programs often address the underlying causes of the offending conduct;
- Participants in diversionary programs are less likely to re-appear before the courts;
- Participants are more likely to access National Disability Insurance Scheme (NDIS) supports and experience genuine inclusion in their communities;
- Participants avoid the stigma associated with a criminal conviction and a custodial sentence;
- There are significant financial cost savings from diverting a person from prison.⁴²

Despite the identified benefits of these specialist courts and diversionary programs, the Disability Royal Commission received evidence that these programs have often been under-utilised due to problems in linking people to necessary and appropriate supports. This has been due to a lack of viable community options, insufficient time for solicitors to speak with their clients, delays in obtaining formal reports needed to justify diversion options to the court, and inadequate access to programs and supports in regional and remote areas. There is also a lack of diversionary programs that can provide culturally competent support services for First Nations people with cognitive disability.⁴³

⁴² Disability Royal Commission (n 5) 295; Australian Human Rights Commission, *Human Rights Brief No.5: Best practice principles for the diversion of juvenile offenders*, 2001; New South Wales Law Reform Commission, *People with cognitive and mental health impairments in the criminal justice system: Diversion*, Report No. 135, June 2012, 38.

⁴³ Disability Royal Commission (n 5) 294.



People with disability in custodial settings

As noted above, nearly **one in three** people who enter prison report having some form of disability. For people with disabilities, life in prison is particularly harsh. People with disability are often not provided with enough assistance to navigate the prison environment. They lack adequate access to medical attention, medication or appropriate mental health care. People with cognitive disability are vulnerable to exploitation and are more likely to experience violence while incarcerated.⁴⁴

Prisons are operated by the states and territories so when someone goes into custody, the responsibility for their care transfers from the Federal Government (which administers Medicare, PBS and NDIS) to the state or territory government responsible for their incarceration. This means that people who are in prison lose access to all **Medicare** services and the **Pharmaceutical Benefits Scheme (PBS)**,⁴⁵ and they also often lose access to supports provided by the **National Disability Insurance Scheme (NDIS)**.⁴⁶ Therefore when people go into prison, they cannot access Medicare-funded services and particular medications they had access to in the community. Furthermore, they often cannot access the supports that are essential to living with a disability.

In 2009 the Australian Government ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD). Under Article 14 of the CRPD the Australian Government has an obligation to ensure that state and territory

governments uphold the rights of people with disability who are in custody and that all corrective service and youth justice agencies provide people with disability the disability supports they need while in custody.⁴⁷ This includes all necessary medications and the key supports that are essential to living with a disability.

In December 2017 the Australian Government ratified the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).⁴⁸ This means that the Australian Government has clear obligations to ensure that people with disability deprived of their liberty are protected from cruel, inhuman or degrading treatment or punishment, and from torture. In addition, the United Nations Standard Minimum Rules for the Treatment of Prisoners ('the Nelson Mandela Rules') explicitly prohibit solitary confinement 'in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures'.⁴⁹ However, there is no publicly available data regarding the use of restrictive practices such as seclusion and solitary confinement in custodial settings for people with a disability in Australia.⁵⁰

⁴⁴ Ibid 64–67.

⁴⁵ Damien Linnane, Donna McNamara and Lisa Toohey. 2023. 'Ensuring universal access: The case for Medicare in prison'. *Alternative Law Journal*, 48(2), 102–109. <<https://doi.org/10.1177/1037969X231171160>>.

⁴⁶ Caroline Doyle, Shannon Dodd, Helen Dickinson, Sophie Yates and Fiona Buick. 2022. 'There's not just a gap, there's a chasm': The boundaries between Australian disability services and prisons. 10.13140/RG.2.2.2156922883.

⁴⁷ United Nations Convention on the Rights of Persons with Disabilities and Optional Protocol. 2007. Article 14, available online at <<https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>>; Australian Human Rights Commission, United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), <<https://humanrights.gov.au/our-work/disability-rights/united-nations-convention-rights-persons-disabilities-uncrpd>>.

⁴⁸ Australian Human Rights Commission (2024) OPCAT: Optional Protocol to the Convention Against Torture (Web-page) <https://humanrights.gov.au/our-work/rights-and-freedoms/projects/opcat-optional-protocol-convention-against-torture>

⁴⁹ United Nations Office on Drugs and Crime (UNODC). 2015. *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*. General Assembly resolution 70/175, annex, adopted on 17 December 2015. Rules 45.1 and 45.2.

⁵⁰ Disability Royal Commission (n 5) 67–68.

Inadequate support for people with disability leaving prison

Many people with disability who have been incarcerated are not able to access the kinds of support that they require at the point of release from prison.

Most people leave prison with nowhere safe to live, no meaningful community-based supports, minimal financial stability, and limited employment opportunities. While there are some effective specialist services that work to support people with disability who exit prison, these programs are under-resourced.

For many people with disability who are incarcerated on remand, pre-release preparation and post-release support is not available. There is often no pre-release case planning and management to provide for post-release housing or housing support. The rapid increase in the remand population over the last decade has resulted in a higher number of people with disability being released from remand or after serving short sentences.

The provision of post-release programs, particularly those that incorporate pre-release planning, has been shown to be very effective when it comes to reducing ongoing criminal justice system contact.⁵¹

There is an urgent need to improve access to post-release support for people with disabilities leaving prison. For instance, at least three months prior to a person's release from prison,

correctional centres should facilitate access to a range of community based and government services in order to plan for release.

These services should include:

- **Community led reintegration services** (including First Nations led services);
- **Housing and homelessness services;**
- **Community-based employment providers;**
- **Community-based health services** (including alcohol and other drug and mental health services);
- **Centrelink**, and;
- **The National Disability Insurance Agency** (with assessment and planning for release).

These services are critical for all people released from prison, but particularly people with disability. In addition, for people with disability in prison with short sentences or no release date, services and supports should be established that provide immediate support when it comes to meeting the basic needs for people with disability released from prison or court on short notice.

⁵¹ Dr Mindy Sotiri, Dr Ruth McCausland, Dr Rebecca Reeve, Lucy Phelan and Terry Byrnes. 2021. "They're there to support you and help you, they're not there to judge you" *Breaking the cycle of incarceration, drug use and release: Evaluation of the Community Restorative Centre's AOD and reintegration programs*. Report for NSW Health. 1 December 2021. 16-17. Available online at <<https://www.health.nsw.gov.au/aod/programs/Documents/crc-final-report.pdf>>.

Conclusion

People living with disability are disproportionately represented at all stages of the criminal justice system. This does not mean that people with disability are more inclined to criminal offending than people who do not have a disability but are more likely to experience poverty, homelessness, unemployment, substance abuse, other health problems and social isolation, all of which increase the risk of engagement with the criminal justice system.

People with disabilities are also subject to discriminatory and inappropriate policing responses, are less likely to be granted bail, or if granted bail may find compliance with onerous bail conditions challenging.

Specialist courts and diversionary programs for people living with disability can provide some important circuit breakers in terms of involvement with the criminal justice system. However, the benefits of such programs are undermined by the lack of viable services and community options, particularly in regional and remote areas.

These factors all contribute to the over-representation of people with disability in custodial settings. In prison, people with disability are

particularly vulnerable to mistreatment and violence from other people in prison. They lack adequate access to medical attention, lose access to all Medicare services, the Pharmaceutical Benefits Scheme and NDIS funded supports.

People with disabilities should not be criminalised or incarcerated. Police responses to people with disability need to be significantly improved. Additional resources are required for community-based support services for people with disability so that people are not trapped in cycles of incarceration and disadvantage.





The Justice Reform Initiative is an advocacy organisation working to reduce the use of harmful incarceration and build communities in which disadvantage is no longer met with a criminal justice system response.

We work in partnership with other organisations and individuals seeking to bring about justice system change.

The Initiative respectfully acknowledges and supports the current and longstanding efforts of Aboriginal and Torres Strait Islander people to reduce the numbers of First Nations people incarcerated in Australia and, importantly, the leadership role which First-Nations-led organisations continue to play on this issue.

The Justice Reform Initiative is backed by eminent patrons, including former Governors-General Dame Quentin Bryce AD CVO and Sir William Deane AC KBE as patrons-in-chief. A full list of patrons is available on our website.

The Justice Reform Initiative is also supported by hundreds of organisations who are also working to reduce incarceration. A list of supporter organisations is also available on our website.

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