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Accommodation of Wheelchair-Bound Prisoners

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Introduction

A growing issue in many detention and correctional facilities, and for any agency, including police departments, which takes persons into custody, is that of accommodating the needs of disabled prisoners and detainees, including those who utilize wheelchairs for mobility because of physical impairments or illness. A growing population of aging prisoners, as a result of a number of factors, including sentencing changes with more lifetime or effectively lifetime sentences, along with denial of parole for repeat offenders or offenders with more serious crimes, also has presented correctional officials with many more disabled prisoners.

See “The [high costs of an aging prison population](#),” (January 4, 2009), which mentions one facility, dedicated to geriatric prisoners and prisoners with special medical needs, where “wheelchairs and walkers line aisles in the secured assisted living dormitory” that seems like a “nursing home” and in which there are over 90 prisoners in wheelchairs.

This article takes a brief look at how the courts have grappled with the question of persons reliant on wheelchairs in custody, including accessibility to needed facilities for daily living, such as restrooms, showers, and medical care, as well as with concerns over access to participation in a variety of types of programs and services available to prisoners. Also examined are cases involving the safe transport of wheelchair-bound persons in custody.

This article does not address disability discrimination legal requirements related to the construction or renovation of correctional facilities.

At the end of the article, there is a short listing of some useful resources.

Accommodation of Wheelchair-Bound Prisoners

Lawsuits challenging alleged failures of detention and correctional facilities to adequately accommodate the needs of detainees and prisoners using wheelchairs have raised Eighth Amendment claims as well as claims under federal and state disability statutes.

A recent case illustrating a number of such claims is [Shariff v. Coombe](#), #96-Civ-3001, 2009 U.S. Dist. Lexis 69119 (S.D.N.Y.). In this case, a number of plaintiff inmates who depend, for their mobility, on wheelchairs, sued the state of New York and a number of prison officials. They claimed that conditions where they were incarcerated violated their rights under 42 U.S.C. Sec. 1983, as well as the First, Eighth, and Fourteenth Amendments, Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. Sec. 12132, and Sec. 504 of the Rehabilitation Act of 1973, 29 U.S.C. Sec. 794(a).

Among other things, they contended that they soiled themselves as often as several times each week, all because the restrooms at the facility were not wheelchair accessible.

Rejecting the defendants' motion for summary judgment on an Eighth Amendment cruel and unusual punishment claim arising out of these circumstances, the court indicated that, if true, the frequency with which the inmates soiled themselves would indicate that they had been denied the "minimal civilized measure of life's necessities." There was, the court said, a genuinely disputed issue of material fact as to whether correctional officials were aware of their ensuing difficulties, but failed to take corrective measures, acting with deliberate indifference.

On the other hand, ruling on some of the prisoners' other complaints, the court found no valid Eighth Amendment claim arising from challenges to the absence of accessible water fountains, the height of a food service counter, allegedly broken concrete and potholes in the recreation yards, accessibility problems with telephones and the library, and malfunctioning of an elevator. Those alleged conditions, the court reasoned, did not pose an unreasonable risk of serious damage to the inmates' health or deprive them, as possibly did the inaccessible restrooms, of the "minimal civilized measure of life's necessities."

The court also found that the prisoners could not recover money damages under the disability discrimination statutes because there was no proof that prison officials, in allegedly failing to remedy the problems, acted with a motive of ill will or "discriminatory animus" towards the wheelchair-using inmates.

The court also dismissed Fourteenth Amendment equal protection claims, and injunctive relief claims by some plaintiff prisoners, which were moot because either the problems involved had been remedied, or else because the prisoners who claimed to have suffered the deprivation had been transferred elsewhere.

In a similar earlier lawsuit, [Simmons v. Cook](#), #97-2324, 154 F.3d 805 (8th Cir. 1998), two wheelchair-bound paraplegic inmates placed in solitary confinement, where they were unable to reach their food trays or use the toilet for thirty-two hours, were properly awarded \$2,000 each for cruel and unusual punishment.

In [United States v. Georgia](#), #00-1737, 546 U.S. 151 (2006), a Georgia paraplegic inmate alleged that that, as he was unable to move his wheelchair in his cell, he had to sit in his own bodily waste. Additionally, he claimed that, because prison officials declined to provide assistance, he lacked needed physical therapy and medical treatment and was denied access to almost all prison programs and services on the basis of his disability.

The federal government intervened to defend the constitutionality of Title II of the ADA's abrogation of state sovereign immunity. The Court unanimously ruled that Title II of the ADA validly abrogates state sovereign immunity insofar as it creates a private cause of action for damages against the States for conduct that actually violates the Fourteenth Amendment.

Federal anti-discrimination statutes do provide that no one should be denied participation in government programs or denied government services on the basis of their disability. In [Ellis v. Hager](#), #C07-00665, 2009 U.S. Dist. Lexis 14835 (N.D. Ca.), a wheelchair-bound paraplegic prisoner failed to show that he was excluded from participation in the correctional department's "medical services" program because of his disability. The prisoner claimed that he received a "defective assistive device," a pressurized mattress that was five inches wider than his bed frame, causing him to fall and be injured while transferring to his wheelchair. This did not show discriminatory intent, as required for liability under the Americans with Disabilities Act, but, at most, negligence, which was insufficient for an ADA claim. Additionally, the ADA claim could only be brought against the agency, and not against individual officers.

In [Flakes v. Frank](#), 322 F. Supp. 2d 981 (W.D. Wis. 2004), a federal trial court reinstated a prisoner's disability discrimination case against prison officials under the Americans with Disabilities Act (ADA), 42 U.S.C. Sec. 12101 et seq. claiming that his rights were violated when he was denied the services of an aide to take him to the law library, school, recreation and the barbershop. The prisoner uses a wheelchair because of severe osteoarthritis in his hips, and the trial court originally dismissed the ADA claim on the basis of it being barred by sovereign immunity under the Eleventh Amendment because his claim was against state officials. The claim was reinstated on the basis of [Tennessee v. Lane](#), #02-1667, 541 U.S. 509 (2004), finding that Congress expressed its intent to abrogate Eleventh Amendment immunity unequivocally when it wrote the ADA and that it had the power to enact at least that portion of it that applies to cases implicating the fundamental right of access to the courts.

Wheelchair-using prisoners (and those who claim to need them) have occasionally raised claims concerning whether necessary assistive equipment and devices have been supplied. In [Brown v. Lamanna](#), #08-6840, 2008 U.S. App. Lexis 26501 (Unpub. 4th Cir.),

the court found that a prisoner presented genuine issues as to whether prison officials' alleged denial of crutches or a wheelchair, or of a handicap accessible shower, prevented him from taking a shower or participating in recreation for over two months, and whether crutches or a wheelchair were medically needed to ease his pain, prevent further damage, and shower. His claims for violations of disability discrimination statutes, however, were correctly rejected for lack of a showing of discriminatory intent or animus.

Similarly, in [Foreman v. Bureau of Prisons](#), #06-1274, 2007 U.S. App. Lexis 879 (Unpub. 3rd Cir.), a paraplegic prisoner failed to show that he was subjected to cruel and unusual punishment because prison officials failed to provide him with an appropriate shower chair and shoes. The record showed that he was, in fact, provided with a shower chair, but not the specific type he argued was appropriate. The court also rejected the argument that the prisoner had been forced to use his wheelchair in the prison shower, finding that he had chosen to do so because of his belief that it was safer than the chair provided by the prison. Further, when he fell out of the chair once, that only resulted in minor scratches, which was insufficient to violate his rights.

The expressed desire to have a wheelchair does not always mean that the prisoner is entitled to receive one. In [Callahan v. Poppell](#), #06-6090, 471 F.3d 1155 (10th Cir. 2006), the court found that the refusal of a prison and its medical personnel to provide an inmate with a wheelchair after he suffered an injury did not violate his Eighth Amendment rights. Medical personnel were concerned that the use of a wheelchair would actually have harmed and weakened him under the circumstances, resulting in muscle atrophy causing his legs and back to deteriorate, and they supplied him instead with crutches to use.

In [Todd v. Walters](#), #05-1020, 166 Fed. Appx. 590 (Unpub. 3rd Cir. 2006), the court found that a prison nurse's alleged failure to use gloves when giving an inmate medications was insufficient to establish a claim for cruel and unusual punishment under the Eighth Amendment. Plaintiff prisoner also failed to show that prison medical personnel acted with deliberate indifference in denying him a wheelchair, given evidence that the inmate "exaggerated" his purported inability to walk, and the absence of specific records identifying a reason for his supposed difficulty doing so.

In [Estrada v. Reed](#), #07-C-442, 508 F. Supp. 2d 699 (W.D. Wis. 2007), on the other hand, a prisoner who suffered a stroke adequately stated claims for possible deliberate indifference to his serious medical needs. Among other things, he claimed that he was placed in a special housing unit without a needed wheelchair or walking aid, that his blood pressure was not consistently monitored, and that he was denied access to materials necessary for his physical therapy.

Prisoners who are seeking to exercise other important constitutional rights, such as participating in and defending themselves in disciplinary hearings, cannot be denied those rights on the basis of disability. In [Serrano v. Frances](#), #01-57036, 345 F.3d 1071 (9th Cir. 2003), the court ruled that the refusal to allow a wheelchair-bound prisoner to present live witness testimony from inmates during a disciplinary hearing violated his due process

rights. The prisoner had a protected liberty interest based on a combination of his physical disability and his confinement for two months in administrative segregation in a housing unit that was not designed to accommodate disabled prisoners, and where he was denied access to his wheelchair.

It is obvious that wheelchair-bound prisoners have the same rights as other prisoners to adequate medical care. In Navedo v. Maloney, 172 F. Supp. 2d 276 (D. Mass. 2001), a court found that a prison superintendent and deputy superintendent did not act with deliberate indifference to disabled (wheelchair-confined) inmate's serious medical needs when the deputy approved recommendations for his transfer to another facility where his medical concerns could be better addressed and superintendent promptly responded to inmate's requests by asking medical personnel to make an assessment.

Similarly, in Ellis v. Hager, #C07-00665, 2009 U.S. Dist. Lexis 14835 (N.D. Ca.), a wheelchair-bound paraplegic prisoner failed to show that he was excluded from participation in the correctional department's "medical services" program because of his disability. The prisoner claimed that he received a "defective assistive device," a pressurized mattress that was five inches wider than his bed frame, causing him to fall and be injured while transferring to his wheelchair. This did not show discriminatory intent, as required for liability under the Americans with Disabilities Act, but, at most, negligence, which was insufficient for an ADA claim. Additionally, the ADA claim could only be brought against the agency, and not against individual officers.

In addition to accessibility issues within detention and correctional facilities, a frequent issue involving wheelchair-reliant prisoners and detainees, including arrestees in police custody, is that of safety when they are being transported.

One such case went all the way to the U.S. Supreme Court. In Gorman v. Easley, #00-1029, 257 F. 3d 738 (8th Cir. 2001), a federal appeals court found that punitive damages were available for injuries sustained by a paraplegic prisoner who was transported in a van without wheelchair restraints. A jury then awarded \$1,034,817 in actual and \$1,200,000 in punitive damages.

The plaintiff was a paraplegic man arrested for misdemeanor trespass. When the police van arrived it lacked wheelchair locks, which would have permitted the man's transportation in his wheelchair.

He swayed and fell to the van floor, exploding his urine bag. After arriving at the station, the man was booked and released. He was subsequently convicted of the minor offense.

After these events, the arrestee suffered a bladder infection from urine backing up into his system and serious lower back pain. His injuries left him unable to work a full day; he suffers frequent pain, uncontrollable spasms in his paralyzed areas, and permanent shoulder problems.

He sued the chief of police and others, under Title V of the Rehabilitation Act (29 U.S. Code 794) and Title II of the ADA (42 U.S. Code 12132).

Ultimately, the U.S. Supreme Court ruled that punitive damages may not be awarded in private lawsuits under provisions of the Americans With Disabilities Act (ADA) and Rehabilitation Act prohibiting disability discrimination by public entities or the recipients of federal funding. That decision overturned the \$1.2 million punitive damage award against the city for failure to provide wheelchair restraints in a vehicle in which a wheelchair-bound detainee was transported and injured. [Barnes v. Gorman](#), #01-682, 536 U.S. 181 (2002).

Some other cases involving similar questions of transportation of such prisoners include [St. John v. Hickey](#), #04-3388, 411 F. 3d 762 (6th Cir. 2005), in which a federal appeals court reinstated a suit brought by a wheelchair-bound plaintiff with muscular dystrophy who sued officers for excessive force for "attempting to place him in the back seat of a police cruiser after he explained that his legs could not bend."

See also [Evans v. Page](#), #5-99-0216, 755 N.E.2d 105 (Ill. App. 2001), holding that a paraplegic prisoner could pursue a claim against prison warden for failure to provide him with wheelchair-accessible transportation to and from court hearings and with a wheelchair-accessible scale to allow medical personnel to accurately weigh him. Claims concerning denial of access to library, exercise, and recreational facilities, however, were properly dismissed as lacking specific factual allegations.

Other cases of interest in this area include:

[Roby v. McCoy](#), #07-3647, 2009 U.S. App. Lexis 3677 (Unpub. 8th Cir.), holding that a trial court improperly issued summary judgment to defendants in pretrial detainee's lawsuit claiming that he was subjected to excessive force at a county detention center. The wheelchair-reliant detainee, who has an amputated leg, claimed that he was held down, kicked, lifted out of his wheelchair, and carried to his cell by his jaw after failing to comply with an order to leave a shower, and that he did not threaten or assault officers. If true, a reasonable jury could find that excessive force was used.

[Miller v. Donald](#), #06-10536, 541 F. 3d 1091 (11th Cir. 2008), in which a quadriplegic inmate confined to a wheelchair may have filed at least thirty prior frivolous cases against correctional officials but an injunction against his filing future lawsuits was overbroad in that it went beyond barring duplicative lawsuits concerning his conditions of confinement and did not uphold his right of access to the courts. His disability discrimination claim being asserted was at least arguable, when the prisoner had been moved in and out of various correctional facilities, so that his claim that he was not provided with adequate accommodation for his physical limitation and medical problems, that he was placed in a cell too small for his wheelchair to move, and that he was not provided with accessible toilets and catheters might be true of different locations. The dismissal of his lawsuit was therefore reversed.

Gillen v. D'Amico, #06-15733, 2007 U.S. App. Lexis 13846 (Unpub 9th Cir.), in which prison officials were not shown to have acted with deliberate indifference in denying a prisoner's request for a replacement prosthetic leg, based on his claim that it fit poorly and caused him pain. The prisoner was offered alternatives of using crutches, a cane, or a wheelchair instead of getting a replacement prosthetic leg, and his mere disagreement with his treating doctors about these alternatives for his serious medical condition, an amputated leg, was insufficient to show deliberate indifference.

Munera v. Metro West Detention Center, #02-23612-Civ, 351 F. Supp. 2d 1353 (S.D. Fla. 2004), finding that a correctional officer did not use excessive force in using restraints to keep prisoner seated in wheelchair while escorting him to optometrist when prisoner was repeatedly moving himself between the wheelchair and another seat in the doctor's waiting room.

Becker v. Oregon, 170 F. Supp. 2d 1061 (D. Or. 2001), ruling that the availability of relief for alleged disability discrimination against wheelchair-bound inmate under the Americans With Disabilities Act, 42 U.S.C. Sec. 12132 and the Rehabilitation Act of 1973, 29 U.S.C. Sec. 701 did not bar his claim for damages against individual prison officials under 42 U.S.C. Sec. 1983, despite the fact that the claims involved the same facts of denial of access to handicapped shower facilities

Beckford v. Portuondo, 151 F. Supp. 2d 204 (N.D.N.Y. 2001), in which the court ruled that prison officials did not impose cruel and unusual punishment on a prisoner, in violation of his Eighth Amendment rights, by restricting his rights to in-cell water for six days as a punishment after he flooded his cell, when he was allowed access to water elsewhere at least twice per officer shift. Temporary placement of inmate in a cell not equipped to accommodate his wheelchair did not constitute disability discrimination when it was done after he soiled his regular cell with feces and urine.

Nikac v. Pozzi, 172 F. Supp. 2d 414 (S.D.N.Y. 2001), in which the court found that the burden on a disabled plaintiff, wheelchair-confined, of transferring location of trial of his federal civil rights lawsuit to a location more convenient for correctional defendants outweighed the inconvenience to defendants of holding the proceedings in the courthouse where the plaintiff originally filed it. The trial court therefore denied a change of venue in the plaintiff's lawsuit over his medical treatment while incarcerated.

Schmidt v. Odell, 64 F. Supp. 2d 1014 (D. Kan. 1999), ruling that a failure to provide a double amputee with a wheelchair during his incarceration in a county jail did not violate the Eighth Amendment since jail corridors were too narrow for wheelchair access and there were legitimate security concerns about the presence of a wheelchair in the general population; the prisoner did, however, state possible claims for violation of the Eighth Amendment and disability discrimination statutes based on alleged "deliberate indifference" to his serious medical needs.

[Tesch v. Co. of Green Lake](#), #97-3930, 157 F.3d 465 (7th Cir. 1998), stating that difficulties that a wheelchair-confined detainee experienced during his two days of confinement in jail did not amount to deliberate indifference to his serious needs.

[More v. Farrier](#), 984 F.2d 269 (8th Cir. 1993), stating that a wheelchair-bound inmate's equal protection rights were not violated by prison officials refusal to install cable television in their cells, even if other inmates had been allowed in-cell cable.

[Smith v. New York](#), #13223/91 (N.Y. Sup. Ct., Kings Co., N.Y.), June 21, 1995, reported in The National Law Journal, p.5, Aug. 21, 1995, rendering the city liable for \$1.2 million to a prisoner injured when the ceiling of a holding cell fell on him, and further injured when he fell from a wheelchair supplied to him.

[Weeks v. Chaboudy](#), 984 F.2d 185 (6th Cir. 1993), in which a prison medical director was held liable for \$50,000 for failing to admit a paralyzed prison inmate to the infirmary, the only place in the prison allowing access to wheelchairs.

Resources

The following are a few useful resources on the topic of this article.

- [Baltimore Police Department General Order on Prisoner Transport](#).
- United Nations Office on Drugs and Crime, [Handbook on Prisoners with special needs](#). (2009).
- [Health and Health Care in the Nation's Prisons](#), by Denise Humm-Delgado, Chapter 6, section on disabilities. (2008)
- [Justice Project Improves Conditions for People with Disabilities in Prisons and Jails](#), Disability Rights Online News, USDOJ, Civil Rights Division (Feb. 2008).
- [The ADA and Inmates With Disabilities](#), by Paul Evans, 22 Journal of Law and Public Policy 563 (2006).
- "[Know Your Rights. Legal Rights of Disabled Prisoners](#)," ACLU National Prison Project. (November 2005).
- [PN/Paraplegia News](#), the magazine for wheelchair users.
- [Bibliography of Law Review Articles on Disability Law, Section on Prisons](#).

- [Police Response to People with Disabilities](#): Eight-Part Series, Dept. of Justice videos.

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