There is evidence that a significant proportion of individuals who come into contact with the legal system have a disability. Data from the Bureau of Justice Statistics from 2016 show that about 38 percent of individuals incarcerated in state and federal correctional facilities reported having at least one disability, a rate that is higher than the estimated proportion of adults with disabilities in the general population (Maruschak, Bronson, and Alper, 2021). Though it is difficult to know how many individuals facing civil legal proceedings have disabilities, issues

**KEY FINDINGS**

We conducted an environmental scan to understand the current state of literature and policy related to individuals with disabilities who interact with the legal system.

- The most common disabilities reported in the literature were intellectual disabilities (56 percent of articles), developmental disabilities (28 percent), and other cognitive disabilities (24 percent). Sensory and mobility-related disabilities were less common. There was variability in how disability was defined and even in whether a definition was provided.

- Articles varied with respect to the level of detail or analysis they provided for certain disabilities. Some presented an in-depth analysis of a single group in a single context; others reported on multiple groups at a lower level of detail. Most of the literature (90 percent) focused just on the criminal legal system (rather than the civil legal system)—especially, issues related to capital sentencing and incarceration.

- There was substantial variability in the degree to which articles explored issues related to disability. Some simply reported on the prevalence of disability across a variety of contexts or provided guidance to practitioners on potential accommodations. Others presented an in-depth legal analysis, and a small number evaluated a program for people with disabilities.

- A subset of the literature included analysis related to race, ethnicity, gender, and age, with some articles highlighting the importance of applying an intersectional lens to this topic.
related to health and disability often bring people into contact with the civil legal system (Legal Services Corporation, 2017).

In turn, individuals with disabilities may encounter a variety of issues once they are involved in the legal system. For example, they may experience challenges engaging in both civil and criminal legal proceedings, including limits to the accessibility of courthouses or difficulties communicating with key legal professionals (Schetzer and Henderson, 2003). Criminal legal system–involved populations may have difficulty obtaining needed services: For example, correctional facilities can be difficult places for people with mobility, visual, or hearing impairments to navigate (Bradbury, 2021; U.S. Department of Justice Civil Rights Division, 2020); some intellectual or developmental disorders may go undetected (Eisner, 2020); and individuals on community supervision or participating in diversion programs may find that providers are reluctant to serve justice-involved individuals, as has been found in other service-providing contexts (Frank, Wang, et al., 2014).

In the United States, the Americans with Disabilities Act (ADA) is the primary federal legislation protecting the rights of individuals with disabilities. Federal guidance and legal precedent have demonstrated that Title II of the ADA applies in the context of law enforcement, jails and prisons, and courtrooms (Eisner, 2020; Taylor and Weisberg, 2020; U.S. Department of Justice Civil Rights Division, 2017).

Section 504 of the Rehabilitation Act (often referred to as the “Rehab Act”) also provides protections (specifically, in the context of federal facilities; Taylor and Weisberg, 2020). Despite these protections, there are many examples of correctional facilities (Seevers, 2016) and courthouses (Lochner, 2005) failing to provide necessary accommodations to individuals with disabilities. There are also many people—especially those with intellectual and developmental disabilities—whose disabilities go undetected (Hellenbach, Karatzias, and Brown, 2017; Segrave, Spivakovskiy, and Eriksson, 2017).

Research has the potential to play a critical role in better understanding the prevalence of disabilities in the legal system, the challenges that people with disabilities face when navigating the system, whether there are certain groups that are particularly vulnerable due to intersectional identities (e.g., race, ethnicity, gender), and the policies and programs that might effectively meet the needs of people with disabilities. Over the years, there have been some efforts to review the literature focused on the needs of people with disabilities (e.g., Jones, 2007). But some of these efforts use more of a narrative review approach rather than comprehensively searching the literature; many are focused on a specific subpopulation of individuals with disabilities (e.g., intellectual disability [Jones, 2007] or learning disability [Hyun, Hahn, and McConnell, 2014]); and many focus on a particular context within the legal system (e.g., policing; Gulati et al., 2020). Meanwhile, there has been a relatively greater focus on issues related to psychiatric disabilities and the legal system, as evidenced by the practice guides, casebooks, legal scholarship, and comprehensive reviews on such topics as forensic mental health.

### Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>ADA</td>
<td>Americans with Disabilities Act</td>
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<tr>
<td>FASD</td>
<td>fetal alcohol spectrum disorder</td>
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<tr>
<td>HH</td>
<td>hard of hearing</td>
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<tr>
<td>IQ</td>
<td>intelligence quotient</td>
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<tr>
<td>SSI/SSDI</td>
<td>Supplemental Security Income/Social Security Disability Income</td>
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<tr>
<td>TBI</td>
<td>traumatic brain injury</td>
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### A Note About Language

There are various perspectives within the disability and advocacy communities about the use of person-first language versus identity-first language. There tend to be norms within certain disability communities, and we attempted to follow those as best we could, based on consultation with experts and our review of explanations written by advocacy organizations and individuals with disabilities. Therefore, we use identity-first language for some populations (e.g., D/deaf and hard of hearing individuals, autistic individuals) and person-first language for others (e.g., people with intellectual disabilities). When we refer broadly to people with disabilities, we also default to person-first language. That said, we acknowledge that there are varying preferences even within disability communities, and there is no one-size-fits-all approach.
assessment and community-based treatment alternatives (e.g., Heilbrun et al., 2014; Griffin et al., 2015; Perlin, 2021), as well as rigorously conducted reviews on specific topics, such as police crisis intervention teams (Taheri, 2016), mental health courts (Loong et al., 2019), and prison reentry (Hopkin et al., 2018). There is also a framework—the Sequential Intercept Model—specifically designed to identify points in the legal system at which people with mental health and substance use disorders could be identified and connected with needed treatment (Munetz and Griffin, 2006), which has served as a way to evaluate research and practice on the topic of psychiatric disability and the legal system.

By comparison, the literature on nonpsychiatric disabilities in legal settings is less well developed. The scoping review detailed in this report aimed to address these gaps. This review was part of a larger project that aimed to develop a research agenda focused on individuals with disabilities involved in the legal system in the United States. Scoping reviews are well suited for summarizing the evidence on a given topic, identifying the methods used to conduct such research, and identifying gaps in the literature (Munn et al., 2018), and these were the goals of our review. We focused on understanding the disabilities and aspects of the legal system represented in the literature, with a secondary goal of describing the methods and key themes present across this literature.

**Methods**

For the scoping review, we began by searching seven academic databases: Academic Search Complete, Criminal Justice Abstracts, the National Criminal Justice Reference Service (NCJRS), PsycINFO, Social Science Abstracts, Sociological Abstracts, and Web of Science. We searched both academic publications and other publications, such as trade journals and magazines published by professional organizations. We excluded theses and dissertations, book chapters and books, and popular press articles (e.g., those published in *Time* magazine or the *New York Times*). We first focused on articles published in English from 2000 to 2023. The search was conducted in February 2023 and returned 10,333 items; after deduplication, there were 7,582 unique results. Following discussions with our advisory board and Pew Charitable Trusts, we decided to focus our review on publications in the past 15 years (2007 to 2023) that focused on the U.S. context and adult populations (18 and older). To be included, articles had to reference both the legal system and disability. For the purposes of this study, the legal system was conceptualized broadly and included both criminal and civil legal contexts (i.e., criminal and civil legal settings, such as courtrooms or jails, and criminal and civil legal issues, such as initial police encounters or parental rights cases). For articles focused on the criminal legal system, we excluded articles in which the person with a disability was a victim; rather, we focused on individuals who were suspected of, charged with, or convicted of crimes. For the civil legal system, we excluded articles related to ADA litigation if the ADA violation occurred in a context outside the legal system (e.g., employment contexts), unless the article explicitly described the experience of a plaintiff with a disability and how they navigated the legal settings or legal issues.

Our definition of disability included physical disabilities; communication disorders; intellectual disabilities; developmental disabilities; dementia; and disability associated with medical conditions if there was reference to functional impairments, accommodations, or accessibility needs. We excluded articles that reported only on disability associated with mental health disorders (e.g., depressive disorders, anxiety- and trauma-related disorders, psychotic disorders). This decision was not intended to suggest that people with mental health disorders do not experience disability; rather, topics such as serious mental illness have received more attention in the legal literature (Watson, Compton, and Pope, 2019), and our goal was to focus on disabilities that have been underrepresented. However, if an article included people with psychiatric disabilities and disabilities that met our inclusion criteria, we included the article but only abstracted information related to the disabilities meeting our inclusion criteria. We did not place any requirements on the specific way disability was defined in the article (e.g., requiring that a formal diagnostic criterion be applied or an objective assessment occur), as we anticipated that our search would return a mix of conceptual and empiri-
cal articles, and therefore some articles might use a term related to disability but not formally provide a definition. Our abstraction forms and operational definitions were reviewed by subject-matter experts at Pew Charitable Trusts before the abstraction process began.

After limiting the publications to the past 15 years and conducting a title and abstract screening to screen out articles that clearly did not meet our inclusion criteria, 968 articles were included for full-text review. After full-text review, there were 309 articles that met our inclusion criteria and that the research team had access to. Common reasons that articles were excluded at the full-text review stage were focusing on international contexts, not describing legal system contexts, or only focusing on mental health disorders.

To supplement our search of the academic databases, we conducted a manual search for other published literature. To identify these articles, we drew on the expertise of the research team, asked our advisory board for recommendations, searched websites of organizations working on topics related to disability and the legal system (e.g., The Arc, Prison Policy Initiative, RespectAbility), and conducted an internet search. We identified 25 additional sources during this search. Therefore, in total, we reviewed 334 publications.

Key data were abstracted from each of the publications using a structured abstraction form, including the disabilities represented in each source and how they were defined; legal system contexts; details of the study methodology (e.g., qualitative, quantitative, mixed methods, legal analysis, as well as sample size and sampling plan, if relevant); research questions; a summary of findings; whether the article included findings related to programs, services, activities, or accommodations that were used to better meet the needs of people with disabilities; and whether data were disaggregated by gender, race or ethnicity, age, or immigration status. Box 1 provides a summary of each abstraction field and key definitions. To develop and refine the abstraction form and associated definitions, three members of the research team abstracted an initial set of six articles and discussed findings to reach consensus. These discussions resulted in a set of abstraction rules that were documented meticulously as we expanded and refined them. Each additional member of the coding team was provided with the abstraction examples and the rules document. Each article was abstracted by one member of the research team, and our team met weekly throughout the coding process to discuss the coding process and refine abstraction field definitions. One senior member of the research team reviewed the abstraction table in full to address questions and resolve any discrepancies by reviewing source articles. An annex to this report, which contains a complete list of the search terms used and summarizes the included articles, is available at www.rand.org/t/RRA2880-1.

We analyzed the findings of this search both to understand the broad characteristics of the literature (e.g., the percentage of articles discussing criminal versus civil legal topics) and common themes. We began by conducting descriptive analyses of the types of articles, types of disabilities, legal system contexts, and methods used in the literature. We then conducted a thematic analysis, focused on each category of disability, with the goal of explaining the types of topics that were covered by the literature. Though we abstracted some key findings from each study, our analysis was more focused on describing the legal settings and common topics covered by the literature than on reviewing the specific findings of the studies in depth. In part, this approach was due to the wide variety of topics and research methods included in these articles. In addition, many of the articles were conceptual in nature rather than presenting empirical analysis of qualitative or quantitative data, making it more challenging to pool common findings across articles. We presented interim findings to our advisory board for feedback before finalizing our analysis. We present the results of this analysis, structured by disability and legal system context, in the next section.

Findings

Types of Articles Included in the Literature

About half of the included articles (51 percent; \( n = 169 \)) were published in academic journals, and
Here, we summarize the data abstracted from each article.

- **Article type.** Academic journal, law review, trade publication, or other technical report.
- **Disability population.** Target population, as defined in the article. This field was initially abstracted in an open-ended way, then coded into the following categories: hearing, vision, intellectual, developmental, mobility/motor, other cognitive, other physical.
- **Study definition of disability.** Whether a formal definition was provided by the study (e.g., specific diagnostic criteria) and, regardless of whether a formal definition was used, how the target population was defined (e.g., self-reported, medical records, unspecified).
- **Legal system context.** Criminal, civil, or both.
- **If criminal legal–related, which intercepts?** Coded with each intercept of the Sequential Intercept Model (Munetz and Griffin, 2006) present in the article. Intercepts were defined as follows:
  - Intercept 1. Law enforcement (e.g., police encounters, initial arrest).
  - Intercept 2. Initial detention/initial court hearings (e.g., initial hearings before conviction occurs).
  - Intercept 4. Reentry and community-based supports (including services that begin during incarceration to prepare someone for release and reintegration/reentry services provided once someone has returned to the community).
  - Intercept 5. Community corrections (i.e., probation, parole, postrelease community supervision).
- **Intercept, additional detail.** Provide qualitative information about the intercepts (e.g., for Intercept 3, “jail” or “prison” or “capital sentencing”).
- **If civil legal–related, what is the setting or legal issue?** Provide qualitative information about the setting (e.g., county court) or legal issue (e.g., eviction, child custody).
- **Research questions.** Report the research question(s) addressed by the study. If not clearly stated, infer as best as possible (e.g., review the aims or focus of analysis). Note that research questions may not be applicable to some publications (e.g., trade publications), and this item can focus on the main topic of the article.
- **Method.** Options are quantitative, qualitative, mixed methods, literature review (narrative review, systematic review), meta-analysis, legal analysis, and other (please specify). Note that this item may not be applicable to some publications (e.g., trade publications).
- **If quantitative, what type of study?** Descriptive or correlational (non-intervention), observational (intervention, cross-sectional), observational (intervention, longitudinal), quasi-experimental (intervention), experimental (non-intervention), other.
- **If intervention study, describe program.** Include a two-to-three-sentence description of intervention/program being evaluated.
- **If qualitative, was a reporting framework used?** If yes, please specify the framework.
- **Data source.** For primary or secondary quantitative or qualitative analysis, indicate source of data (e.g., survey, administrative data sources, interviews, focus groups). For literature reviews, indicate type of sources (e.g., peer-reviewed literature, gray literature). If another method, please indicate data source (e.g., review of legal cases). Note that this item may not be applicable to some publications (e.g., trade publications).
- **Sample size.** For primary or secondary data, indicate the number of participants. For intervention studies, please capture the size of the treatment and comparison groups separately. For mixed methods studies, report separately on the number of participants included in quantitative and qualitative analyses, if relevant. If literature review or meta-analysis, report the number of studies. Please include the unit (e.g., “282 participants” or “39 studies”).
- **Summary of findings.** Provide a two-to-six-sentence summary of findings, which should be specific to the disability population(s) that meets the study inclusion criteria.
- **Discussion of accommodations or efforts to improve accessibility.** Brief description of accommodations or efforts to address accessibility. Note that an accommodation or effort to improve accessibility could be things to improve physical accessibility (e.g., adding wheelchair ramps), communicative accessibility (e.g., using ASL [American Sign Language] interpreters), or cognitive accessibility (e.g., including ways to more effectively communicate about legal proceedings with people with disabilities, such as an explanation of the proceedings they face), or other practical efforts to ensure fair access for people with disabilities, among others. This item can also include navigation, efforts to provide tailored services, treatment plans, or programs.
- **Discussion of differences by racial or ethnic group.** Provide description of any findings reported by racial/ethnic group. This item should focus on formal efforts to explore differences by group (e.g., including such efforts as a research question, conducting moderation analysis), not simply including race or ethnicity as a covariate in statistical models.
- **Discussion of differences by gender.** Provide description of any findings reported by gender. This item should focus on formal efforts to explore differences by group, not simply including gender as a covariate in statistical models.
- **Discussion of differences by age.** Provide description of any findings reported by age. This item should focus on formal efforts to explore differences by group, not simply including age as a covariate in statistical models.
- **Discussion of differences by immigration status.** Provide description of any findings reported by immigration status. This item should focus on formal efforts to explore differences by group, not simply including immigration status as a covariate in statistical models.
25 percent were published in law review journals \((n = 85)\). Our search also identified a fair number of articles in trade publications (17 percent; \(n = 57\)), including *American Jails*, *Correctional Health Care Report*, *Sheriff & Deputy*, and *FBI Law Enforcement Bulletin*. Seven percent of articles \((n = 23)\) were categorized as “other reports” and generally included reports published by such organizations as The Arc and Vera Institute of Justice. (For a summary, see Figure 1.)

**FIGURE 1**
Types of Included Articles \((n = 334)\)

**Disabilities Included in the Literature**

Across the included articles, intellectual disability was the most commonly represented disability (56 percent of articles), followed by developmental disabilities (28 percent) and other cognitive disabilities (24 percent), which included traumatic brain injury (TBI), dementia and other neurodegenerative disorders, articles referring to brain damage, and articles referring broadly to cognitive disorders (see Figure 2). Sensory disabilities, including hearing-related disabilities (e.g., D/deaf, hard of hearing [HH] individuals) and vision-related disabilities (e.g., visual impairment, low vision, blindness), were less common (15 percent and 10 percent of articles, respectively), as were mobility-related disabilities (11 percent). Though “other” disabilities were reported in 71 articles (21 percent), this category included a wide mix of disabilities, including disability associated with aging or medical conditions, terminal illness, disabilities that would be covered under the ADA, and individuals applying for or eligible for disability benefits. It also included articles that broadly referred to disability without providing further details. Of note, these categories were not mutually exclusive, with many articles covering multiple disabilities.

**FIGURE 2**
Types of Disabilities Included in Articles \((n = 334)\)
Legal Contexts Represented in the Literature

Though we scoped our literature review to include both civil and criminal legal system contexts, most of the literature we identified focused on criminal legal settings or issues (90 percent; \( n = 302 \); see Figure 3). By comparison, only 7 percent of articles (\( n = 23 \)) focused exclusively on civil legal settings or issues.

A small number of articles focused on both criminal and civil legal settings or issues; these articles typically touched on issues related to courtroom settings that applied to both criminal and civil legal issues.

For the articles that focused on criminal legal settings or issues, we adapted the Sequential Intercept Model (Munetz and Griffin, 2006) to describe the different points in the system that were represented (see Figure 4). About 24 percent of articles (\( n = 74 \)) touched on issues related to Intercept 1, which includes contact with law enforcement (e.g., initial arrest, interrogation, Miranda rights comprehension). Eighteen percent of articles (\( n = 55 \)) touched on Intercept 2, which includes initial detention and initial court hearings. Intercept 3 was the most represented intercept in the literature, appearing in 80 percent of the articles. This frequency is likely in part due to the breadth of settings and contexts covered by Intercept 3, including courts and correctional settings (e.g., jails, prisons). We specifically included specialty court and sentencing-related articles in this intercept. Intercept 4 includes reentry and community-based supports, and we expanded this intercept to include articles focusing on recidivism. Intercept 4 was reflected in 11 percent of articles (\( n = 34 \)). Finally, 8 percent of articles (\( n = 24 \)) touched on Intercept 5, which included community corrections (e.g., probation, parole). Of note, these categories were not mutu-
ally exclusive: 23 percent of articles (n = 71) covered more than one intercept. We found that articles tended to cover topics related to Intercepts 2 and 3 together, which reflects the court-related focus of those intercepts (n = 22). There were also a handful of articles (n = 17) that covered four or more intercepts: for example, talking about issues related to intellectual disability (Salekin, Olley, and Hedge, 2010) or D/deaf individuals (Vernon, 2010) across multiple settings.

Given the variation within Intercept 3, we explored the common themes within that intercept. For about half of the Intercept 3 articles (n = 116), we identified capital sentencing as a theme. We found that 94 Intercept 3 articles pertained to correctional settings (e.g., prison or jail).

There was much more variation in the civil legal issues that were represented in the literature (see Figure 5). Family law–related articles (typically, focused on parental rights) were the most common (31 percent of articles; n = 10), followed by guardianship and supported decisionmaking (28 percent; n = 9). Other articles were broad in their focus, commenting on a variety of issues related to self-represented litigants (n = 2), civil justice broadly speaking (n = 1), or court contexts broadly speaking (n = 4).

**FIGURE 5**
Legal Issues or Settings Reflected in the Civil Legal Literature (n = 32)

Differences in Disability and Legal Contexts Across Different Types of Literature

We examined whether there were differences in the disabilities and legal system contexts that were present in the academic literature, law reviews, trade publications, and other reports. We found some variability: For example, academic and law review articles were less likely to report on sensory or mobility-related disabilities than trade publications or other reports (see Figure 6). Among academic articles and law reviews, intellectual disabilities were the most common topic.

There also were differences with respect to the legal system context discussed in the articles (see Figure 7). For example, civil legal contexts were underrepresented across article types, and academic articles were less likely to focus on Intercepts 1, 2, 3, and 4. By contrast, Intercept 3 was covered at fairly similar rates across the article types. During our abstraction, we did not formally count the articles focusing on capital sentencing versus incarceration within Intercept 3. However, an analysis of the qualitative descriptions of the Intercept 3 articles suggests that at least 116 articles discussed capital sentencing; of those, just over half were in the academic
literature, about one-third were law reviews, and the remainder were trade publications or other reports. By contrast, of the articles focusing on incarceration (which included at least 94 articles), about half were in the academic literature, and one-quarter were in trade publications.

**Methodology and Research Approach**

We also explored the methodology used across articles. The articles in trade publications were not formal research studies and therefore did not specify or apply a research methodology. For example, these articles often summarized an issue, policy, or program for a trade audience and did not reference published literature, although there were rare exceptions. However, because these were not research-focused articles, we did not track methodology for these 57 articles.

For the remaining 277 articles, we assessed the type of methodology (see Figure 8). The most common methodology was *legal analysis* (49 percent;
n = 135), a term we used for studies that explored one or more legal cases and the legal or practical implications of those cases. Narrative reviews of the literature were common (16 percent; n = 44); there were also a small number of formal systematic reviews (1 percent; n = 3). Studies reporting on primary or secondary data collection were less common. Twenty-one percent of studies (n = 59) used quantitative methods, and 4 percent (n = 12) used qualitative methods. There were also a small number of mixed methods studies (5 percent; n = 15), which typically combined quantitative and qualitative methods or combined quantitative methods with a formal legal analysis. The “other” category included commentaries, a policy brief, case studies, and technical reports from nonprofits.

Topics and Methodological Approaches Within the Quantitative Literature

We explored the articles that used quantitative methods in more detail (n = 73). Most of these articles (85 percent) presented a descriptive or correlational analysis. Many of these studies described the prevalence of individuals with disabilities across legal contexts. Some focused on a specific disability: for example, the prevalence of intellectual disability in mental health courts (Burke et al., 2012) or the prevalence of TBI among adults on probation (Gorgens et al., 2021).

Others focused on a variety of disabilities in a certain legal context: for example, the prevalence of various disabilities among individuals incarcerated in state and federal prisons (Bronson, Maruschak, and Berzofsky, 2015) or among individuals on probation or parole (Smith et al., 2019). There were also some studies that specifically explored prevalence rates by age group (Prost, Archuleta, and Golder, 2021), gender (Maruschak, Bronson, and Alper, 2021), or race or ethnicity (Baloch and Jennings, 2019).

Other studies investigated the correlation between disability and legal or health outcomes. For example, is disability associated with the likelihood of competency restoration (Mossman, 2007; Morris and DeYoung, 2012)? How does disability contribute to the likelihood that someone accesses health services after release from incarceration (Oser et al., 2016)? Or how often do jurors accept evidence of disability as a mitigating factor in capital sentencing cases (Miley et al., 2020)? Though most of the studies were focused on criminal legal topics, there were some civil legal studies in this category as well. For example, one study focused on factors associated with the likelihood that parental rights would be terminated, including “limited IQ [intelligence quotient]” (McWey, Henderson, and Burroughs Alexander, 2008). Across these descriptive and correlational studies, we found varying sample sizes. Some studies relied on large-scale epidemiological surveys—e.g., the Survey of Prison Inmates (Maruschak, Bronson, and Alper, 2021; Bixby, Bevan, and Boen, 2022), National Inmate Survey (Bronson, Maruschak, and Berzofsky, 2015), or National Survey of Drug Use and Health (Winkelman et al., 2020)—or administrative datasets (e.g., data from the Rehabilitation Services Administration; Baloch and Jennings, 2021), and these studies included sample sizes of 15,000 individuals or more. But other studies relied on smaller samples, including those that involved primary data collection. Examples of these include studies that surveyed incarcerated older adults (Prost, Archuleta, and Golder, 2021), police officers (Krishan et al., 2014), or other first responders (Kelly and Hassett-Walker, 2016), as well as studies that conducted case or file reviews, such as forensic evaluations (Gay, Ragatz, and Vitacco, 2015; Hanlon et al., 2010) or medical records (Mossman, 2007; Kivisto, Porter Staats, and
These studies generally had sample sizes of 500 individuals or fewer.

Only five articles (6 percent) presented an evaluation of a program or intervention, and four of those studies were observational. These studies covered a variety of topics, including crisis intervention training and developmental disabilities (Compton et al., 2014), supportive housing for people exiting the prison system (Fontaine et al., 2012), and videoconferencing for competency evaluation (Luxton and Niemi, 2020).

There were three experimental studies that used vignettes to assess factors that affect decisionmaking (e.g., jury decisions, diagnostic decisions), all in the context of capital sentencing and intellectual disability (Johnson et al., 2019; Reardon, O’Neil, and Levett, 2007; Shaw, Scurich, and Faigman, 2018). There also were three studies looking at scale development or the psychometric properties of an existing scale. One study developed a measure to assess police officer self-efficacy for working with autistic individuals (Love et al., 2021); one compared the Wechsler Adult Intelligence Scale (WAIS)-III with the WAIS-IV for the assessment of intellectual disability (Taub and Benson, 2013); and the last explored ways of detecting malingering in the assessment of intellectual disability (Graue et al., 2007).

**Topics and Methodological Approaches Within the Qualitative Literature**

We also examined the qualitative literature in more depth. The qualitative literature covered a variety of civil and criminal legal topics, including how law enforcement interacts with people with disabilities (Bezyak et al., 2019; Laan, Ingram, and Glidden, 2013); the experiences of parents with disabilities, child welfare workers, and attorneys in parental rights cases (Powell and Albert, 2021); the process of obtaining benefits (Sajadi, 2021; Grodensky et al., 2018); and serious or terminal illness in correctional settings (Kanbergs and Durfey, 2019; Depner et al., 2018). Some of these studies collected data through semistructured interviews (Depner et al., 2018; Grodensky et al., 2018) or group discussions—e.g., focus groups (Bezyak et al., 2019) or conference meetings (Davis, Petty, and Sick, 2015). Others included such data sources as courtroom observations (Cadi- gan and Smith, 2021) or congressional oversight hearing transcripts (Patel, 2022).

**Findings by Disability**

To better understand the specific topics covered by the literature, we conducted a thematic analysis structured by disability category. Within each disability category, our analysis focused on several dimensions. First, we were interested in which intercepts were covered in the criminal legal literature and which civil legal topics were reviewed. We also focused to some degree on whether there were articles that solely focused on one disability versus covering a variety of disabilities. For instance, some articles presented an in-depth analysis of one disability in one legal context or one disability across multiple legal contexts; others presented several types of disabilities in a more cursory way, such as presenting basic prevalence estimates for multiple disabilities in a particular legal context or briefly describing case examples related to multiple types of disabilities. We were interested not just in the number of articles related to each context but also in the breadth of analysis provided. In the sections that follow, we present an overview of these findings by disability type. To contextualize these findings, we also generated a heat map to depict the volume of literature related to each disability across legal contexts (see Figure 9).

**Hearing-Related Disabilities**

There were 49 articles that included some coverage of hearing-related disabilities (i.e., D/deaf and HH individuals).

**Criminal legal topics.** Generally speaking, the academic and law review literature included hearing-related disabilities alongside other disabilities, such as in articles describing the prevalence of disabilities in prison (Trotter and Noonan, 2016; Bronson, Maruschak, and Berzofsky, 2015). In some cases, hearing-related disabilities were referenced in the context of the aging criminal justice population (Bedard and Pelleg, 2019; Skarupska et al., 2018; Smyer and Bur-
bank, 2009) or among women who are pregnant and have a history of incarceration (Testa et al., 2022).

However, some articles focused more specifically on the needs of D/deaf/HH individuals in criminal legal contexts. Some trade publications provided education on the types of issues that D/deaf people might face when they encounter the criminal legal system at Intercept 1, such as having difficulties communicating with others, being inclined to agree with what police officers or interpreters suggest, or unintentionally waiving their Miranda rights due to a lack of understanding (Grossman, 2015). Another article reviewed ways that police officers can more effectively engage with D/deaf/HH individuals, such as ensuring that discussions take place in well-lit areas, minimizing background noise, using visual aids, and providing auxiliary services (Murgado, 2013; “Philadelphia Police Department Must Improve Communication with People Who Are Deaf,” 2018). Another article focused on Intercept 3, especially in the context of correctional settings. One technical report focused on communication with D/deaf, HH, blind, and low-vision individuals in correctional settings (Bialek and Schlanger, 2022). The report described the applicability of federal regulations, including the ADA, to incarcerated individuals with sensory disabilities and provided model policies for jails and prisons. It reviewed key topics, such as the need for a tailored approach to accommodations, the role of ADA coordinators, and the importance of training staff. It also included language specifically related to potential accommodations and auxiliary aids for D/deaf and HH individuals, including qualified interpreters and video remote interpreting, captioned telephone or videophone, teletypewriters, and non-auditory alarms.

There are other publications that have addressed the rights of incarcerated D/deaf or HH individuals as well. For example, one trade publication reviewed legal cases related to the rights of incarcerated D/deaf and HH individuals over the past ten years, with a focus on unequal access to communication accommodations (Miller and Walter, 2017). Others described criminal justice agencies that have been legally compelled to ensure that D/deaf/HH individuals are included in programming (“South Dakota Must Ensure Equal Access for Inmates with Disabilities,” 2019). Some trade publications also discussed potential security implications associated with accommodations such as video relay service in correctional settings (Talbot, 2016), including ways to mitigate those security risks (McWilson, 2017).
Articles focused on reentry and community reintegration have highlighted such issues as the ways that a lack of meaningful access to programming while incarcerated can reduce the likelihood of successful community reintegration (Crowe and Drew, 2021) and how having a criminal record compounds the barriers to employment that people with disabilities already face (Vallas, 2016). However, these articles tended to cover multiple types of disability, not just D/deaf/HH individuals.

**Civil legal topics.** There were three articles that touched on civil legal issues. An article that focused on dependency court reported on the prevalence of parental disability; less than 0.5 percent of its sample identified as Deaf. The other two articles focused on accommodations in the context of civil courts (Grohs, 2015) and online dispute resolution systems (Larson, 2019).

**Vision-Related Disabilities**

There were 34 articles that reported on vision-related disabilities.

**Criminal legal topics.** In the criminal legal literature, there were very few articles that had vision-related disabilities as a sole focus. In most cases, vision-related disabilities were discussed alongside a variety of other disabilities. Examples include studies that reported the prevalence of various disabilities, including visual impairment, in such contexts as prisons (Derzis et al., 2017; Bronson, Maruschak, and Berzofsky, 2015) and community supervision (Winkelman et al., 2020).

In terms of Intercepts 1 and 2, the literature included some references to accommodations that could be made, such as providing large-print documents (Leotti and Slayter, 2022) or using technology (Grohs, 2015). McCauley (2017) reported on the association between disability and likelihood of arrest; although people reporting blindness in one or both eyes were included in the definition of disability, there were no separate estimates of the risk of arrest for that subgroup.

Most articles focused on Intercept 3 (particularly, jail and prison settings), including the technical report referenced previously on communication with D/deaf, HH, blind, and low-vision individuals in correctional settings (Bialek and Schlanger, 2022). The sections specific to auxiliary aids and accommodations for blind and low-vision individuals include references to “accessible means of reading and writing independently,” special watches (i.e., talking, vibrating, Braille), and the role of prisoner assistants (i.e., “a sighted prisoner assistant” who can serve as a guide; Bialek and Schlanger, 2022, pp. 46, 50). Trade publications addressed such topics as necessary accommodations for blind and low-vision individuals. Some described lawsuits or claims against departments of corrections, alleging that they failed to provide adequate accommodation (e.g., having “treacherous paths”; Cohen, 2010, p. 78), while others highlighted the need for accommodations such as allowing canes (Wright, 2010).

**Civil legal topics.** There were a small number of civil legal articles reporting on vision-related disabilities. Though some were about court accommodations, there was one article focused on dependency and family court proceedings, which noted the importance of showing a link between a parent’s disability and their parental abilities rather than assuming someone with disabilities cannot retain custody of their child (National Council on Disability, 2012).

**Mobility-Related Disabilities**

There were 36 articles that focused on mobility-related disorders.

**Criminal legal topics.** Though a small number of articles described issues related to Intercepts 1 and 2, these tended to be articles that covered multiple legal settings: for example, policing and court access (Kanable, 2008) or policing and incarceration (Vallas, 2016). Some of the literature also described cases in which the legal system failed to protect the needs of people with mobility-related disabilities at these stages: For example, Gorman v. Bartch was the case of a paraplegic man who was “arrested and transported in a vehicle not equipped for wheelchairs” and was seriously injured after falling within the vehicle (Maas, 2011, p. 219). Technical reports and gray literature sometimes reported on cases in which legal system facilities (e.g., courthouses, correctional facilities) failed to provide adequate accommodations. For example, one article described the story of...
Civil legal topics. Mobility-related disabilities were described in civil legal contexts in only four of the included articles. Such references typically related to accessibility barriers in courthouses (Grohs, 2015; Russon and Pike, 2009) and ways to make needed accommodations, including through the use of technology (Ortoleva, 2011; Larson, 2019).

**Intellectual Disabilities**

**Criminal legal topics.** Intellectual disabilities were the most common disability represented in the literature (186 articles), with several dedicated articles across legal contexts. In terms of law enforcement, articles highlighted ways that individuals with intellectual disabilities might be vulnerable to waiving their Miranda rights without sufficiently understanding them or to providing “police-induced false confessions” (Kassin et al., 2010; Salekin, Olley, and Hedge, 2010). Typical interrogation techniques can be problematic for people with intellectual disabilities because they may want to please authority figures, have short attention spans, or attempt to seem more competent than they are (Perske, 2010). Indeed, a study examining exonerees who gave false confessions found that there were signs of intellectual disability in more than one-fourth of the cases (Schatz, 2018). Moreover, these false confessions tended to be in the context of very serious charges, such as murder and sex crimes (Johnson, Blume, and Hritz, 2019; Schatz, 2018).

Several articles also focused on intellectual disability and competency to stand trial. People with intellectual disability may have an impaired ability to understand the court proceedings (Gay, Ragatz, and Vitacco, 2015). However, there is evidence that people with intellectual disabilities, when found incompetent to stand trial, have a lower probability of having their competence restored (Morris and DeYoung, 2012; Mossman, 2007). Some portion of people found incompetent to stand trial have comorbid intellectual disability and mental illness (Kivisto, Porter Staats, and Connell, 2020; Morris and DeYoung, 2012).

By far the most common topic in the intellectual disability literature was capital sentencing. In 2002, the Supreme Court of the United States prohibited the execution of individuals with intellectual dis-
abilities in Atkins v. Virginia. The court stated that execution of these individuals would violate the Eighth Amendment, which protects against cruel and unusual punishment, highlighting the decreased culpability of individuals with intellectual disabilities (DeMatteo, Marczyk, and Pich, 2007). Many law review articles focused on issues related to Atkins. Several of these articles pertained to the ways that intellectual disability is defined. Though Atkins created a categorical exclusion that applies nationwide, the court left the decision on how to define intellectual disability to the states (Hagstrom, 2009), and many articles discussed the implications of that choice (Barker, 2017; DeMatteo, Marczyk, and Pich, 2007; Freeman, Forrest, and Molden, 2021; Hagstrom, 2009; Khan and Noffsinger, 2018; Libell, 2007; Raffensperger, 2013; Readon, O’Neil, and Levett, 2007; Wood et al., 2014). For example, states vary with respect to how they define intellectual disability and the burden of proof for determinations of intellectual disability (Raffensperger, 2013; Wood et al., 2014; Hagstrom, 2009). In some cases, this variation led to states applying a definition that was found to be inconsistent with the intention of the decision (Khan and Noffsinger, 2018). Some scholars have called for the development of a national standard to define intellectual disability (DuPey, 2018; Wood et al., 2014).

Many articles also covered topics related to the applicability of clinical criteria in the context of capital sentencing cases. When there are concerns regarding intellectual functioning in capital sentencing cases, a clinical forensic evaluator is typically retained to conduct an evaluation. This evaluation is designed to assess for the diagnostic criteria related to intellectual disability, including IQ and adaptive functioning (DeMatteo, Marczyk, and Pich, 2007; Macvaugh and Cunningham, 2009). However, there are many complexities to these evaluations described in the literature. Some of these complexities relate to the assessment of intellectual disability, a determination that involves assessing intellectual functioning with a standardized IQ test and assessing adaptive functioning, with onset before age 18 (DeMatteo, Marczyk, and Pich, 2007). One issue relates to cases in which there are multiple IQ scores available, some of which may be below the generally accepted cutoff score of 70 on a standardized IQ test, and some of which are not (Appelbaum, 2009). Related to this issue are discussions about the psychometric properties of IQ tests, including the role of measurement error and how courts should take such error into consideration (Guyer and Fluent, 2014); adjustment for the Flynn effect, which “refers to the finding that the general population’s average IQ test scores have increased over the past several decades” (Hagan, Drogin, and Guilmette, 2008, p. 619); and “ethnic adjustments” to IQ scores—i.e., demographically adjusting IQ scores based on normative data, which typically results in adding points to the IQ scores of individuals from marginalized racial and ethnic groups—which the literature suggested was an ethical violation (Perlin, 2016; Sanger, 2015; Shapiro et al., 2019). A related issue is the use of intellectual assessments for racial groups that were underrepresented in the development and validation of the tests (e.g., Native Americans; Callahan, 2007). Other articles focused on the assessment of adaptive functioning, including whether someone’s functioning in a correctional environment should be used as evidence of adaptive functioning (Macvaugh and Cunningham, 2009), the lack of validated measures of adaptive functioning suitable for this context (Denkowski and Denkowski, 2008; Tassé, 2009), and the value of relying on multiple sources when assessing adaptive functioning (Widaman and Siperstein, 2009). Finally, some articles referenced the requirement that deficits be observed before age 18. One article noted that this requirement means that individuals with similar impairments, but with onset after age 18, could be eligible for the death penalty (Larimer, 2010). Another described potential challenges establishing that an impairment began before age 18, especially if the person had not previously been formally evaluated (Mulroy, 2013). Finally, some authors highlighted the tension between current clinical definitions and legal standards for intellectual disability, including whether clinical and legal definitions align (Bahekar and Watson, 2020) and how to handle evolving clinical definitions (Gory, 2018).

Several articles raised issues related to the burden and standard of proof for establishing that an individual has an intellectual disability. Authors noted that the burden of proof often rests on the defendant
(Johnson, 2010; Wilkinson, 2016). In most states, the presence of intellectual disability must be proven by a preponderance of the evidence (Hurley, 2022). However, a small number of states impose a higher standard of proof, such as Arizona, which requires it be proven by clear and convincing evidence (Holningsworth, 2007), and Georgia, which uses beyond a reasonable doubt (Hurley, 2022). Authors raised concerns about this higher standard increasing the likelihood that someone with an intellectual disability is executed because they cannot meet the standard of proof (O'Grady, 2014; Ricciardelli and Ayres, 2016; Ricciardelli and Jaskyte, 2019).

There were fewer articles focused on intellectual disability in jail or prison settings; such issues usually were raised in combination with other disabilities, such as articles describing broader issues of disability in correctional settings (e.g., Vallas, 2016). There were a small number of articles focused on reentry, such as issues relating to registries for people convicted of sexual offenses (Wilson, Prescott, and Burns, 2015). One study focused on the use of risk assessments with people with intellectual disabilities, finding that some existing measures might be appropriate for use with this population but highlighting a need for more research (Salekin, Olley, and Hedge, 2010). Another article described a potential method of improving the experience of people with intellectual and developmental disabilities who come into contact with the legal system: Disability Response Teams (Davis, 2018). These teams bring together legal professionals and members of the disability community with the goal of ensuring that professionals have adequate training for interacting with people with intellectual disabilities and to ensure that responses to people with intellectual and developmental disabilities are more appropriate.

**Civil legal topics.** When intellectual disability was discussed in relationship to the civil legal system, one common topic was guardianship and supported decisionmaking. Two law review articles focused on a statute in New York that allows for guardianship of people with intellectual and developmental disabilities, raising concerns about a lack of procedural protections, autonomy of the individual under guardianship, and the need for flexibility in agreements as people’s conditions change with time (Campigotto and Hilburn, 2016; Bailly and Nick-Torok, 2012). The literature also highlighted that “people who live with intellectual disability do not necessarily lack capacity to make all decisions” (Arsenault, 2017, p. 44) and raised supported decisionmaking as an alternative that can better meet the needs of individuals with intellectual and developmental disabilities (Theodorou, 2018). There also were articles describing the need for accommodations for individuals who represent themselves in civil legal cases, such as providing a volunteer attorney or other trained individual to serve as a representative (Sullivan and Meotti, 2019; Marx, 2018).

### Developmental Disabilities

Many articles included developmental disability alongside intellectual disability, even though not all developmental disabilities have intellectual dysfunction as an associated symptom. Among the 88 articles discussing developmental disability, 41 also included some reference to intellectual disability, with some of these articles explicitly combining these two groups for analysis. Therefore, it was only sometimes possible to tease apart findings specific to developmental disability. In our analysis of these articles, in addition to identifying key themes specific to the criminal versus civil legal system, we found that there were certain developmental disabilities that were represented more in the literature. Therefore, in this section, we present themes related to developmental disabilities broadly speaking for both criminal and civil legal contexts. We then describe the themes that arose specific to three types of developmental disabilities: fetal alcohol spectrum disorder (FASD), autism spectrum disorders, and learning disabilities.

**Criminal legal topics.** Intercept 1 and policing-related topics were among the more common issues discussed in the developmental disability literature. For example, one study explored police encounters with (and without) people perceived to have intellectual and developmental disabilities, including whether they were believed to have a comorbid mental health or substance use problem, the common behavioral issues, and the typical outcomes of the encounters (Watson, Phan, and Compton, 2022). Others covered topics such as how to improve inter-
actions between law enforcement and people with intellectual and developmental disabilities (Pecorini, 2016; International Association of Chiefs of Police Law Enforcement Policy Center, 2017), crisis response models for people with intellectual and developmental disabilities (Watson, Compton, and Pope, 2019), and how crisis intervention training affects outcomes for people with developmental disabilities (Compton et al., 2014). Intercept 2 and 3 topics included competency to stand trial and competency restoration (Spina, Anacker, and Pinals, 2018; Shea and Goldman, 2017) and community-based forensic services (Tsagaris et al., 2015). One study explored a specialty court for individuals with mental health disorders and developmental disability, finding that many clients had co-occurring mental illness and substance use disorders and frequently were facing charges for serious crimes (Seck, Tsagaris, and Rowe, 2017). Others explored issues that might arise across intercepts; for example, one report discussed issues specific to people with intellectual and developmental disabilities who have committed sexual offenses, including issues related to competency, court interactions, community supervision, and community reintegration (National Center on Criminal Justice & Disability, 2015) and the frequency with which people with intellectual and developmental disabilities move between correctional settings and other institutional settings (Neidorf, 2023).

**Civil legal topics.** In the civil legal domain, there were articles focused on intellectual and developmental disabilities in the context of parental rights and child welfare cases (Smith, 2015; Callow, Tahir, and Feldman, 2017) and supported decisionmaking (Theodorou, 2018). There also were some that focused on civil commitment, particularly in the context of individuals convicted of sexual offenses who are facing commitment under sexually violent predatory statutes (Abbott, 2022; National Center on Criminal Justice and Disability, 2015).

**Specific Developmental Disabilities Reflected in the Literature**  
**FASD.** One of the developmental disabilities that was more commonly represented in the literature was FASD. The literature included such topics as behavioral features that may result in someone with FASD encountering the legal system, such as diminished impulse control, suggestibility, gullibility, poor judgment, and difficulty weighing the consequences of their actions (Novick Brown and Greenspan, 2022; Fast and Conry, 2009). Relatedly, there was an article that discussed FASD in the context of sexual offense charges, raising questions about the ability of individuals with FASD to understand appropriate sexual behavior and consent to sexual activity (McMurtrie, 2011). Other themes in the FASD literature included the likelihood of individuals with FASD to confabulate (i.e., fill in gaps in one’s recollection with fabricated elements without a specific intent to deceive) and strategies to reduce confabulation (e.g., using direct language, avoiding pressure; Brown, Jonason, et al., 2022); the value of expert evaluations of individuals with FASD in court contexts (Fast and Conry, 2009); and some of the challenges to meeting the needs of individuals with FASD in legal settings, such as the lack of formal diagnosis or limits to the supportive services available to this population (Jeffery, 2010).

**Autism spectrum disorders.** Brown and colleagues provided a review of the obstacles that autistic individuals might face across the criminal legal system, including interactions with law enforcement, courts, and community supervision (Brown, Hastings, et al., 2016). But most of the autism-related articles focused more specifically on law enforcement. For example, two articles focused on training law enforcement on interacting with autistic people, though findings were mixed as to whether police officers receive sufficient training (Kelly and Hassett-Walker, 2016; Laan, Ingram, and Glidden, 2013). Another article reviewed the nature of police interactions with autistic people through a review of news stories, finding that about 22 percent of incidents involved an altercation, 7 percent resulted in injury to an autistic person, and 4 percent resulted in the autistic person’s death (Copenhaver and Tewksbury, 2019). There was also a study exploring how autistic adults perceive law enforcement, finding that past experiences with law enforcement were associated with the degree to which autistic adults perceive police officers as procedurally just (Parry and Huff, 2022). Wallace and colleagues (2022) described behaviors that law enforcement should be aware of when interacting
with autistic people, including failure to maintain eye contact, not answering questions, and difficulty communicating, among others. Another article highlighted the importance of educating jurors and judges on these types of behaviors to ensure that they are not interpreted as signs of culpability (Perlin and Cucolo, 2021).

**Learning disabilities.** Many of the articles that focused on learning disabilities were in the context of jails or prisons. For example, articles highlighted the ways that existing correctional educational programs are not effective at meeting the needs of people with learning disabilities (Koo, 2015), reporting that individuals with learning disabilities have significantly lower literacy levels, which has implications for correctional education (Barnard-Brak and Sulak, 2010; Tighe et al., 2019). Other articles discussed the prevalence of learning disabilities. For example, Cassidy and colleagues (2021) surveyed incarcerated men and women, finding high rates of dyslexia (47 percent), though the study was limited to individuals who were able to access the facility education buildings, making it a somewhat specific subsample. A study using the National Assessment of Adult Literacy also found evidence of an association between incarceration and the presence of a learning disability (Barnard-Brak and Sulak, 2010).

**Other Cognitive Disabilities**

Articles within the “other cognitive disabilities” category (79 articles) sometimes referenced the presence of cognitive dysfunction without expanding further on the specific types of disabilities or the nature of the cognitive deficits. However, there were two types of cognitive disabilities that were addressed across multiple articles: TBI and dementia. A more consistent and more meaningful set of themes arose when we focused on these two cognitive disabilities than when we focused on the legal context. Therefore, in this section, we present our analysis by disability.

**TBI.** TBI-related articles addressed topics related to arrest, court involvement, and both correctional settings and community corrections. Some articles discussed the disproportionate prevalence of TBI in criminal legal settings compared with community settings (Güter, Philibert, and Hollenbeck, 2009; Nagele et al., 2018), including the prevalence of TBI among people in correctional settings and community corrections (Gorgens et al., 2021; Moynan and McMillan, 2018). Another article highlighted the importance of considering the impact of TBI in court contexts, particularly when symptoms of TBI resemble those of other conditions (e.g., antisocial personality disorder), such as lack of remorse (Berry and Knott, 2015). Chan and colleagues (2023) conducted a scoping review to understand the state of the literature related to rehabilitation programs for people with TBI involved in the criminal legal system, finding both behavioral interventions and linkage programs that connect individuals with needed services.

**Dementia.** A study released by the American Bar Association Commission on Law and Aging focused specifically on the issue of dementia in criminal legal contexts (American Bar Association et al., 2022). The report highlighted the lack of data regarding the prevalence of dementia in correctional settings. For some individuals, behaviors associated with dementia might be the reason they come into contact with the legal system (e.g., agitation; American Bar Association et al., 2022), highlighting the importance of training police officers on how to recognize and work with people with dementia (Sutton, 2014). Others develop dementia while incarcerated (American Bar Association et al., 2022). Correctional settings can be difficult places for people with dementia, given a lack of specialized programming and the risk of victimization (American Bar Association et al., 2022; Maschi et al., 2012). Some places, such as New York, have developed special facilities for incarcerated individuals with dementia (Wright, 2010). There also are compassionate release programs for people with significant medical issues, which seem like they could be an appropriate fit for individuals with dementia; however, these programs tend to be infrequently used because of narrow eligibility criteria and procedural barriers (Williams et al., 2011).

**Other Physical Disabilities**

There were 27 articles included in this category, and they tended to refer broadly to “physical disabilities” without providing additional detail. For this reason, it was more challenging to identify a consistent set
of themes within this subset of the literature. Criminal legal topics included studies relating to efforts to apply for Supplemental Security Income/Social Security Disability Income (SSI/SSDI) following release from incarceration (Sajadi, 2021), participation in vocational rehabilitation (Baloch and Jennings, 2021), courtroom accessibility (Riehl, 2008), and provision of accommodations in correctional settings (Parry, 2009; Seevers, 2016).

Regarding civil legal topics, physical disability was referenced in articles related to guardianship (Villavicencio and Cuello, 2013); elder abuse and neglect (Mosqueda, Sivers-Teixeira, and Hirst, 2017); and parental disability, parental rights, and dependency courts (Callow and Jacob, 2014; Powell et al., 2020).

Other Disabilities

Within the “other disabilities” category (71 articles), it was also more challenging to identify a consistent set of themes, given that there was frequently little detail given to define what the “other disability” was. However, a small number of themes emerged.

The first theme related to articles discussing the process of applying for disability benefits (Sajadi, 2021; Lowder et al., 2020). There were some articles reviewing programs that are designed to help incarcerated people obtain benefits (Lowder et al., 2020; Conly, 2007; Ware and Lupfer, 2019), including a study examining the implementation of the SSI/SSDI Outreach, Access, and Recovery (SOAR) model, a “national model designed to improve disability application outcomes for adults experiencing homelessness” (Lowder et al., 2020, p. 245), which can include justice-involved individuals. These articles suggested that people with disabilities would benefit from greater assistance with enrolling in benefits (Groden-sky et al., 2018; Sajadi, 2021).

There also were articles referencing disability associated with medical conditions. For example, Frank and colleagues (2013) explored asthma prevalence and morbidity as a function of past incarceration, and Conyers and Boomer (2017) examined vocational rehabilitation among people with HIV/AIDS and a history of incarceration. Some of these articles focused on potential accommodations, including programs that train incarcerated people to work as caregivers to their peers with disabilities (Kanbergs and Durfey, 2019) or terminal illnesses (Depner et al., 2018). Compassionate release was also raised in this context (Williams et al., 2011; Silber, Shames, and Reid, 2017).

Themes Related to Programs, Services, Activities, and Accommodations

As we reviewed the literature, we were interested in understanding the types of specialized programs, services, and activities that were available to people with disabilities, as well as examples of accommodations that were described. During the abstraction process, we encountered the following themes related to accommodations (among others):

- discussing how legal professionals, such as police officers, judges, lawyers, and forensic evaluators, should interact with people with intellectual and developmental disabilities (e.g., using clear and precise language, avoiding leading questions; Macvaugh and Cunningham, 2009; Guina et al., 2022; Flynn and Martinez, 2015; Brown et al., 2022)
- providing training to legal professionals on how to most effectively work with individuals with disabilities (Callow, Tahir, and Feldman, 2017; Li, Williams, and Barry, 2022; Lorr, 2022; Schatz, 2018)
• emphasizing the importance of auxiliary aids and devices for individuals with sensory disabilities, including telecommunication devices, interpreters, and light-based alarm systems for D/deaf and HH individuals (Cohen, 2012; Grossman, 2015; McWilson, 2017; Talbot, 2016), as well as magnifiers, better lit facilities, Braille, and screen readers for visually impaired individuals (Mosqueda, Sivers-Teixeira, and Hirst, 2017; Ortoleva, 2011; Lederer, 2021)
• providing diversion opportunities or specialized dockets (and associated supports) for individuals with disabilities (Minick, 2020; Seck, Tsagaris, and Rowe, 2017)
• implementing and/or improving screening processes to better detect individuals with disabilities in civil and criminal legal settings (Minick, 2020; Callow and Jacob, 2014)
• ensuring equal access to programs, as well as educational and work opportunities in correctional settings (Crowe and Drew, 2021; "South Dakota Must Ensure Equal Access for Inmates with Disabilities,” 2019)
• providing reentry planning (Dlugacz and Droubi, 2017; Nagele et al., 2018) and specialized programs in the community (Davis, undated)
• ensuring that facilities (e.g., courts, jails) are physically accessible to individuals with mobility problems (Cohen, 2015; “Thalidomide Baby Grows Up: Prison Is Unlikely New Home,” 2014; Smyer and Burbank, 2009)
• providing hospice, palliative care, and personal care–focused assistance for aging incarcerated individuals (Lee et al., 2019; Bedard and Pelleg, 2019; Depner et al., 2018) and increasing the use of compassionate release (Williams et al., 2011; Silber, Shames, and Reid, 2017)
• providing representational accommodation for litigants in civil legal contexts (Sullivan and Meotti, 2019; Marx, 2018).

As noted above, however, there were very few studies that formally evaluated the effectiveness of these types of programs or accommodations. Rather, these articles tended to focus on describing the importance of providing these types of programs, services, activities, and accommodations or giving examples of what they may look like in practice.

Equity Considerations and Themes Related to Intersectional Identities

We were also interested in how often articles addressed themes related to the ways that race and ethnicity, gender, age, and immigration status might intersect with disability in legal contexts. We found that some quantitative studies provided breakdowns for these different groups: for example, examining the racial demographics of incarcerated individuals with disabilities (e.g., Baloch and Jennings, 2019; Bixby, Bevan, and Boen, 2022) or examining the probability of arrest by racial group (McCaulley, 2017). There were also some articles that took an explicitly intersectional approach to understanding the intersection of race, justice, and disability (Crowe and Drew, 2021; Harris, 2021; Morgan, 2022; Perry and Carter-Long, 2016). For example, Harris conducted an in-depth analysis of the intersection of race, justice, and disability and presented the case study of a Black autistic man to illustrate the “compounded harms” that disabled people of color experience (Harris, 2021, p. 937). Crowe and Drew (2021) also explored the intersection of race and disability, highlighting the fact that Black, Indigenous, and People of Color (BIPOC) individuals have the highest rates of disability and criminal legal involvement.

We found similar themes emerging related to gender. Some studies discussed the prevalence of disability by gender: for example, highlighting the higher rates of disability among incarcerated women (Bronson, Maruschak, and Berzofsky, 2015; Trotter and Noonan, 2016; Bixby, Bevan, and Boen, 2022). Callow, Tahir, and Feldman (2017) reviewed appellate parental rights cases, finding that most cases involving intellectual and developmental disability involved mothers. A study of exonerees found that most individuals with intellectual disability—and most exonerees in general—were male (93 percent; Johnson, Blume and Hritz, 2019). There were a small number of articles examining genders beyond men.
and women. For example, Morgan (2021) noted that trans and gender-nonconforming people with disabilities are at higher risk for police-related violence, particularly when they also come from marginalized racial groups. Parry and Huff (2022) explored autistic adults’ perceptions of police, finding that gender-nonconforming individuals and women were more likely to have negative perceptions of the police.

Some quantitative studies also provided a breakdown of findings by age. For example, they found higher rates of disability among older age groups in correctional settings (Maruschak, Bronson, and Alper, 2021; Trotter and Noonan, 2016). In addition, as previously described, there were many articles that explicitly focused on older adults in legal system contexts. They underscored that older adults are a quickly growing incarcerated population (Lee et al., 2019; Li, Williams, and Barry, 2022) and that conditions associated with incarceration tend to “accelerate the onset and progression of many chronic conditions associated with aging” (Skarupski et al., 2018, p. 158).

Finally, we found only a small number of articles that discussed immigration status or related topics. For example, one article argued that cultural factors should be taken into consideration when evaluating individuals for intellectual disabilities in capital sentencing contexts, including whether English is the individual’s first language (Macvaugh and Cunningham, 2009). An article that focused on capital sentencing described the potential difficulty that immigrants might have in documenting that intellectual impairment began before the age of 18 (Mulroy, 2013). Another study examined the association between neighborhood factors and police encounters, finding that police encounters in immigrant neighborhoods (defined using census data) were marginally more likely to involve individuals with developmental disabilities (Krishan et al., 2014). However, there generally were few articles focusing on immigration-related themes.

Discussion

This scoping review provides a broad review of the state of the literature related to adults with disabilities who encounter legal system settings and issues in the United States. A summary of our key findings and gaps in the literature is presented in Box 2.

Our search revealed that there is a fairly large body of literature related to disability and the legal system, though it is clear that there are several gaps in the literature. One clear gap relates to the legal context. Significantly more publications focused on criminal legal issues than on civil legal issues. Because the civil legal literature was fragmented across several contexts (e.g., family law, guardianship, self-represented litigants), there were limited findings related to any given context.

Articles that focused on court and correctional settings (or Intercept 3) were much more common than other criminal legal contexts, and articles that focused on reentry, probation, and parole were the least common, despite the fact that this could be a particularly vulnerable time for people with disabilities and that twice as many people are under community supervision compared with correctional settings (Kluckow and Zeng, 2022).

We also observed that certain disabilities have received more attention in the literature. Intellectual disability was the most commonly addressed disability, whereas D/deaf/HH individuals and those with visual or mobility impairments tended to be understudied. When those populations were included in the literature, it was often related to the prevalence of those disabilities (in the peer-reviewed literature) or accommodations (in trade publications and technical reports), highlighting the need for more empirical literature focused on these populations. However,
it is also important to note that more than half of the articles in the intellectual disability literature discussed capital sentencing, despite declines in the use of the death penalty and the small number of people currently on death row (Gramlitch, 2021). This emphasis leaves room for research on the experience of people with intellectual disabilities in other legal system settings.

It is also important to note that we were fairly inclusive in our abstraction process. Therefore, we considered a study to have discussed a particular disability if it (1) explicitly focused on the disability as a main topic or presented a breakdown of data with a given category or (2) presented case examples that included one of these disabilities. However, this determination means that there was wide variation across included articles. Some articles were completely focused on a single disability within a single legal setting, reporting an in-depth conceptual analysis of the relevant legal landscape or presenting more-nuanced data about the population and its needs. Others created a composite definition of disability that included members of many disability groups but did not report on the specific needs or experiences of any one of those groups. This variation was also seen with respect to intercept: There were some articles that focused fully on a specific context, such as policing, and others that had one or two paragraphs about each criminal legal intercept. Therefore, we also caution against overinterpreting the volume of data in some of these categories, because a particular disability or intercept may have received only cursory attention.

Regarding methodology, many included studies presented narrative reviews of the literature or legal analyses, but analysis of primary or secondary data was more limited. Data-driven studies tend to be more descriptive and correlational in nature; there were very few evaluations of programs for disability populations or qualitative studies. There was also limited mixed methods work, despite the fact that these studies can provide a more complete picture of the topic being investigated because such methods combine the strengths of quantitative and qualitative data (i.e., breadth and depth).

We also noted some differences in the topics covered by academic literature and law reviews compared with trade publications. For example, the academic literature and law review articles were more likely to cover issues related to capital sentencing...
(Intercept 3) and less likely to address certain disabilities (e.g., sensory disabilities); trade publications were more likely to discuss the other intercepts and to address sensory and mobility/motor disabilities. This is a key distinction because trade publications typically did not report information for peer-reviewed literature and were not formal research studies themselves; rather, they seemed to report on issues that might have practical relevance to legal professionals. This finding suggests a potential mismatch between the issues that are most relevant to professionals and those that have received the most attention in the research.

It is important to note the limitations of our review. First, our review excluded articles focused only on youth or juvenile justice populations or individuals interacting with the legal system as victims or survivors of crime. These are critical topics and deserving of their own scoping reviews. We also excluded international literature, given our focus on the U.S. legal system. However, there are lessons that can be learned from international contexts that may have implications for the U.S. legal system, which we explore more in our recommendations for future research (Brooks Holliday, Palimaru, and Gittens, 2023). Although we abstracted information from each article to better understand themes related to age, gender, race, and immigration status, there are other marginalized communities who may have distinct needs, such as members of the LGBTQ+ community.

In addition, an initial goal of our data abstraction was to identify the types of definitions that were used to operationalize disability across our studies, particularly because we were intentionally broad in our search strategy and inclusion criteria. However, we found it difficult to reliably determine the specific definition being used for many of the articles. For example, some had insufficient methodological detail (e.g., related to source data or the ways that diagnoses were determined); some used a disability-related term but never formally defined it or indicated how the authors determined whether a person had that disability; other articles (especially, conceptual articles) presented several potential definitions or explicitly focused on the variety of potential definitions for a given disability. This made it difficult to draw firm conclusions about the types of definitions being used but also potentially points to a limitation of the current literature.

Another limitation pertained to our use of the Sequential Intercept Model to explore the criminal legal literature. Intercept 3 is broad and includes a diverse set of topics, including jails and dispositional courts. When we adapted the model, we included prison settings in this intercept, as Intercept 4 focuses on reentry. However, it likely would have been beneficial to separate prison settings—and perhaps even jail settings—from court settings, based on our findings. There were other legal issues that seemed to span multiple intercepts. For example, literature focused on competency and competency restoration could be considered Intercept 3, as these proceedings typically occur after a person's initial court appearance. But issues related to competency can arise even before that time, and some of these articles touched on broader issues about the person’s ability to interact with the court that had implications for Intercept 2 as well. Therefore, we tended to include competency-related issues as relating to both Intercepts 2 and 3.

Finally, though we consulted with civil legal experts when designing our search strategy, it is possible that a different set of search terms may have been more sensitive to detecting that literature. For example, the literature that focused on institutionalization of people with intellectual and developmental disabilities might touch on relevant civil legal concerns. This may be a relevant avenue for future research.

It is also important to keep our search strategy in mind when interpreting the findings of this review. Specifically, we used terms that cast a broad net because of the scoping review methodology—for example, “disability” or “Americans with Disabilities Act”—and then observed the topics that appeared within that literature. By contrast, if we had done a more targeted search for some of the subtopics that came up in our search, such as FASD or TBI, we would likely have found a larger literature. However, this strategy also highlights a broader issue related to the use of the term disability and the wide variety of definitions that can be applied. If someone publishing on a topic such as TBI did not refer to it as a disability, the article may not have been detected in this literature search. But there are benefits to more consistently applying the term disability in the literature.
Some might argue that this could be stigmatizing; however, these are individuals who are genuinely vulnerable to adverse outcomes in the legal system and who are protected by federal legislation, and using this keyword consistently in the literature will ensure that we better understand the needs of all people with disabilities.

In the final stage of this project, we synthesized findings of this review with findings from qualitative interviews with representatives from relevant professions and communities (Palimaru, Gittens, and Brooks Holliday, 2023) to propose a research agenda focused on disability and the U.S. legal system. More specifically, we (1) combined information yielded from the scoping review about the most common gaps in the research with findings from our qualitative interviews, which assessed the ways that legal professionals and legal settings seek to meet the needs of people with disabilities, including strengths and limitations; (2) highlighted promising practices; and (3) identified gaps in the data and perceived research needs. We then presented these findings to our study advisory board, comprising professionals and individuals with lived experience, and discussed the implications of our findings. Our full set of recommendations for future research using these methods can be found in Intellectual, Developmental, and Physical Disabilities in U.S. Legal Settings: A Proposed Agenda for Future Research (Brooks Holliday, Palimaru, and Gittens, 2023).

Notes

1 As previously noted, the Sequential Intercept Model was first developed to identify points in the legal system at which people with mental health and substance use disorders could be identified and connected with needed treatment. The model has more recently been adapted to other populations, including individuals with intellectual and developmental disabilities (Bureau of Justice Assistance, 2021).
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About This Report

There has been substantial focus on the prevalence of mental health and substance use disorders in the criminal legal system, as well as how best to accommodate and address the needs of those individuals. However, there has been comparatively little focus on justice-involved individuals who have physical, intellectual, and developmental disabilities and how best to meet their unique needs, as well as limited focus on the civil legal system. The challenges faced by this population might include barriers that could prevent individuals with disabilities from meaningfully engaging with the court system during civil or criminal proceedings or from receiving needed services while incarcerated. There is a need to capture these challenges more systematically and to identify factors that might facilitate the treatment of this subpopulation of justice-involved individuals. To address these gaps, we conducted an environmental scan and interviews with representatives from relevant professions and communities, with the goal of developing a research agenda related to individuals with physical, intellectual, and developmental disabilities involved in the criminal and civil legal systems.

This report presents the findings of our environmental scan. It can be read as a stand-alone report but can also be used in conjunction with two related publications: Intellectual, Developmental, and Physical Disabilities in U.S. Legal Settings: Perspectives from People with Relevant Experience, which documents findings from our qualitative interviews, and Intellectual, Developmental, and Physical Disabilities in U.S. Legal Settings: A Proposed Agenda for Future Research, which outlines our recommendations for future research focused on this population. These findings should be of interest to researchers, policymakers, practitioners, and advocates working with people with disabilities who are involved in the legal system.

Justice Policy Program

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