

MEMORANDUM

Re: Problems with Electronic Monitoring for Young People with Disabilities

Date: July 16, 2025

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I. Introduction

Electronic monitoring (EM) programs have been broadly criticized for failing to promote public safety or rehabilitation, harming people placed under surveillance, and exacerbating inequities across racial and economic lines.¹ Rather than providing an alternative to physical confinement, EM expands mass incarceration, operating as a digital form of imprisonment and often leading people back into physical jails and prisons for minor technical violations. EM programs are a particularly bad fit for young people with disabilities, who face unique barriers to compliance.

People with mental, physical, intellectual, and developmental disabilities are overrepresented in the criminal legal system.² Prevalence studies have found that over 65% of young people involved in the criminal legal system meet the criteria for disability, a rate three times higher than the general population.³ Common disabilities among young people in the criminal legal system include learning disabilities, intellectual and developmental disabilities, attention-deficit/hyperactivity disorder (ADHD), post-traumatic stress disorder (PTSD), mental health issues including depression and anxiety, and other emotional and behavioral disorders.⁴

¹ ACLU, *Rethinking Electronic Monitoring: A Harm Reduction Guide*, <https://assets.aclu.org/live/uploads/publications/2022-09-22-electronicmonitoring.pdf>, 4 (Sept. 2022).

² See Laura M. Maruschak, et al., Bureau of Justice Statistics, *Survey of Prison Inmates, 2016: Disabilities Reported by Prisoners*, 1 (2021), <https://bjs.ojp.gov/content/pub/pdf/drpspi16st.pdf> (in 2016, nearly 2 in 5 people in state and federal prison had at least one disability); Laura Hawks, et al., *Health Status and Health Care Utilization of US Adults Under Probation: 2015-2018*, 110 Am J. Pub. Health 1411 (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7427211/> (study showed “[p]ersons on probation had a higher burden of physical conditions, mental illnesses, and substance use disorders than did the general population”); see also NACDL, *Disability in the Criminal Legal System*, <https://www.nacdl.org/Landing/RespectAbility-Disability-and-the-CLS> (last accessed June 16, 2025); Qudsiya Naqui, *Advancing Equal Justice for Americans with Disabilities*, DOJ Office for Access to Justice, <https://www.justice.gov/archives/atj/blog/advancing-equal-access-justice-americans-disabilities-moving-towards-closing-justice-gap> (July 26, 2023).

³ National Disability Rights Network (NDRN), *Recommendations to Prevent the Disproportionate Placement and Inadequate Treatment of Children with Disabilities in the Juvenile Justice System*, <https://www.ndrn.org/resource/new-report-finds-children-with-disabilities-abused-denied-treatment-and-education/> (June 2015) (see FN 16 for list of studies).

⁴ *Id.*, see case studies at 23-30: https://www.ndrn.org/wp-content/uploads/2019/02/NDRN_-_Juvenile_Justice_Report.pdf; on learning disabilities, see generally Jessica Snyderman, *Unlocking Futures: Youth with Learning Disabilities and the Juvenile Justice System*, National Center for Learning Disabilities (2022), <https://nclcd.org/wp-content/uploads/2023/08/NCLD-Unlocking-Futures-Final-7th-Dec-Updated-.pdf>; on intellectual and developmental disabilities, see Estefania Simon, et al., *Interactions of Juveniles with Intellectual and Developmental Disabilities in the Criminal Justice System: A Systematized Review*, J. of Vocational Rehabilitation, 62(2) (2025), 128-140. doi:10.1177/10522263241310062 (pdf: <https://worksupport.com/research/documents/pdf/simonetal2025interactionsofjuvenileswithintellectualanddevelopmentaldisabilitiesinthecriminaljustice.pdf>); see also ACLU, *Reducing Barriers: A Guide to Obtaining Reasonable Accommodations for People with Disabilities on Supervision*, <https://assets.aclu.org/live/uploads/2024/03/2024.03.19-DisabilitySupervision-1.pdf>, 6 (Mar. 2024) (“Common disabilities among people under correctional control include mental health conditions such as post-traumatic stress disorder (PTSD), anxiety, depression, obsessive-compulsive disorder (OCD), schizophrenia and other psychotic disorders, bipolar disorder, and borderline and antisocial personality disorders (BPD and ASPD); neurodevelopmental disorders including attention-deficit/hyperactivity disorder (ADHD); intellectual/developmental disabilities (ID/D) including autism spectrum disorders (ASD); substance use disorder (SUD); and physical

While authorities typically frame EM as an alternative to incarceration, in reality, these programs often fail to serve that purpose, especially for young people with disabilities. In theory, the juvenile justice system is meant to be rehabilitative. Judges may choose to put young people on EM rather than incarcerating them because they do not pose a public safety risk. Such programs are ostensibly designed to help young people reenter their communities. But EM is onerous, especially for young people with disabilities who face heightened barriers to complying with EM requirements, including trouble understanding the EM rules, sitting still to charge their device for multiple hours each day, and following curfew and supervision check-in schedules.⁵ As a result, EM regularly sets kids with disabilities up to fail, often landing them in jail and prison for technical violations.

Thus, rather than serving as a true “alternative to incarceration,” EM expands the net of carceral surveillance through constant monitoring and punishments, undermining young people’s efforts at reentry and rehabilitation. Judges who view EM as a more humane solution must be presented with the reality that, particularly for young people with disabilities, monitoring programs do not achieve their stated public safety goals and often result in the incarceration that they intended to prevent.

Overall, this research project/memo aims to reduce the use of EM for kids with disabilities. Although there is no straightforward disability or accommodations-related argument for ending EM entirely, advocates should first consider whether a judge might be amenable to electing against EM even in the absence of a clearcut disability rights argument. If, however, it seems likely that EM will be applied, this memo provides recommendations to make these programs more manageable where they are the only option for release. Through accommodations to make EM more feasible, these adjustments can help get clients off EM as soon as possible. Additionally, by highlighting why EM is particularly harmful for young people with disabilities, defense attorneys can strengthen a broader argument for why alternative approaches should be used instead.

A couple of caveats are necessary here. First, the specifics of EM programs vary by jurisdiction. Moreover, people's disability-related barriers and accommodation needs are

conditions such as chronic illnesses, traumatic brain injury (TBI), mobility disorders, and auditory and/or vision disorders.) (sources for each diagnosis in FNs 13-28 of report); Division for Emotional and Behavioral Health, *Behavior Disorders: Definitions, Characteristics, and Related Information*, <https://debh.exceptionalchildren.org/behavior-disorders-definitions-characteristics-related-information> (last accessed July 10, 2025).

⁵ Kate Weisburd, *Monitoring Youth: the Collision of Rights and Rehabilitation*, 101 Iowa L. Rev 297 (2015), 302-03, <https://ilr.law.uiowa.edu/sites/ilr.law.uiowa.edu/files/2023-02/ILR-101-1-Weisburd.pdf>; for issues with young people understanding and following EM rules, see Catherine Crump, *Tracking the Trackers: An Examination of Electronic Monitoring of Youth in Practice*, 53 U.C. Davis L. Rev. 2 (2019), https://lawreview.law.ucdavis.edu/sites/g/files/dgvnsk15026/files/media/documents/53-2_Crump.pdf; for issues with charging devices, see Shubha Balasubramanyam and Jethro Antoine, *Young Offenders, Electronic Monitoring, Cell Phones, and Battery Life*, J. of Offender Monitoring (2019), <https://www.innovatingjustice.org/wp-content/uploads/2019/06/jom-3101-01-balasubramanyam-battery.pdf>.

inherently unique. Thus, this is not a comprehensive guide covering all possible EM requirements, disabilities, barriers to compliance, or possible accommodations. Instead, we aim to provide a general overview of challenges to complying with EM requirements for young people with disabilities, as well as potential reasonable accommodations to make these programs more reasonable and accessible for this group.

II. Legal Requirements: Federal Disability Law

Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 (Rehabilitation Act) prohibit discrimination against people with disabilities.⁶ The ADA applies to state and local government entities. The Rehabilitation Act applies to federal executive agencies and entities that receive federal funding.⁷ Since courts largely interpret the statutes interchangeably, this memo focuses on the ADA.⁸

Disability discrimination includes failures to make “reasonable modifications” (often called “reasonable accommodations”) to “policies, practices, or procedures” that “are necessary to avoid discrimination on the basis of disability” unless “the modifications would fundamentally alter the nature of the service, program, or activity.”⁹

Federal disability laws apply to authorities that administer electronic monitoring programs, including courts, parole boards, probation departments, and pre-trial services agencies. However, in reality, authorities often fail to assess whether people on EM have disabilities that require program modifications, and they often do not provide the accommodations necessary for people to succeed.¹⁰ As a result, many people with disabilities are denied an equal opportunity to successfully complete EM programs, despite being entitled to this right under federal law.

Juvenile defense attorneys can raise “reasonable accommodations” claims to ensure that their clients have an equal opportunity to access EM programs. These claims can be raised throughout juvenile delinquency legal proceedings, including detention hearings (initial

⁶ 42 U.S.C. § 12132 (ADA); 29 U.S.C. § 794(a) (Rehabilitation Act).

⁷ State and local government entities can be subject to both the ADA and the Rehabilitation Act. *See Am. Council of the Blind v. Paulson*, 525 F.3d 1256, 1260 n.2 (D.C. Cir. 2008) (collecting cases); *Randolph v. Rodgers*, 170 F.3d 850, 858 (8th Cir. 1999). Some courts apply a stricter causation standard to Rehabilitation Act claims.

⁸ Note that because state juvenile justice programs are exclusively state-operated, attorneys should also check whether their state has a more expansive state law analogue to the protections in federal disability law.

⁹ 28 C.F.R. § 35.130(b)(7); *see also Alexander v. Choate*, 469 U.S. 287, 301 (1985).

¹⁰ NDRN, *Recommendations*, [https://www.ndrn.org/wp-content/uploads/2019/02/NDRN - Juvenile Justice Report.pdf](https://www.ndrn.org/wp-content/uploads/2019/02/NDRN_Juvenile_Justice_Report.pdf); Juvenile Law Center, *A Powerful Tool for Change in the Child Welfare and Justice Systems: The Americans with Disabilities Act* (July 2017), <https://jlc.org/news/powerful-tool-change-child-welfare-and-justice-systems-americans-disabilities-act> (“Large numbers of youth end up in or returning to the juvenile justice system because of behavior related to a disability, or because of the [failure to provide adequate supports](#) and treatment in the community or to youth who enter the system.”); *for similar issues in the adult system, see* PEW Charitable Trusts, *Adults with Mental Illness Are Overrepresented in Probation Population: But Many Probation Agencies Lack Specialized Training or Tools to Supervise them Effectively* (Jan. 10, 2024), <https://www.pew.org/en/research-and-analysis/reports/2024/01/adults-with-mental-illness-are-overrepresented-in-probation-population>.

appearances), adjudication proceedings (trial), dispositional hearings (sentencing), and supervision revocation processes. Attorneys should raise accommodation needs as early as possible.

To state a disability-discrimination claim, a person must generally show that: 1) they are a qualified individual with a disability, 2) they have been subject to discrimination, and 3) the discrimination they experienced was due to their disability.¹¹ These criteria will be discussed in detail below.

1) Covered Individuals and Entities

The ADA defines “disability” “broadly” as “a physical or mental impairment that substantially limits one or more major life activities,” “a record of such impairment,” or “being regarded as having such an impairment.”¹²

A particular diagnosis of disability is not required for someone to be covered by the ADA. Further, the ADA defines disability “broadly in favor of expansive coverage to the maximum extent permitted by the terms of the ADA” and thus “[t]he question of whether an individual meets the definition of ‘disability’ . . . should not demand extensive analysis.”¹³

Under the ADA, some conditions should virtually always be considered disabilities, including deafness, intellectual disabilities, and autism.¹⁴ One exception is that currently using illegal drugs is not a protected disability. However, people in recovery from substance use disorder (SUD) are protected.¹⁵ Many people with SUD also have other co-occurring disabilities and would thus be covered under the ADA.¹⁶

2) Disability Discrimination

The ADA bans various forms of discrimination, including denying an equal opportunity or benefit based on a person’s disability, using eligibility criteria that screens out people with

¹¹ See, e.g., *Furgess v. Pa. Dep’t of Corr.*, 933 F.3d 285, 288–89 (3d Cir. 2019); *Wright v. N.Y. State Dep’t of Corr.*, 831 F.3d 64, 72 (2d Cir. 2016).

¹² 42 U.S.C. § 12102(1); 28 C.F.R. § 35.101(b) (2025); see also 29 U.S.C. § 705(20)(B) (defining disability under Section 504).

¹³ 28 C.F.R. § 35.101(b); see 42 U.S.C. § 12102(4)(A) (noting the “definition of disability . . . shall be construed in favor of broad coverage of individuals”).

¹⁴ 42 U.S.C. § 12102(1) (ADA); see also 29 U.S.C. § 705(20)(B) (Rehabilitation Act).

¹⁵ ACLU, *Reducing Barriers* at 16.

¹⁶ 42 U.S.C. § 12210.

disabilities, failing to effectively communicate with people who have disabilities by providing necessary auxiliary aids and services¹⁷, and failing to make reasonable accommodations.¹⁸

In the context of electronic monitoring, authorities must make reasonable accommodations to allow young people with disabilities an equal opportunity to participate in these programs and comply with requirements. Some courts have held that entities must *proactively* make reasonable accommodations to policies and practices, even absent a specific request.¹⁹

Whether a proposed accommodation is “reasonable” involves a “fact-specific, case-by-case inquiry.”²⁰ An accommodation is unreasonable, and therefore not legally required, if it would “fundamentally alter the nature of the service, program, or activity.”²¹ Overall, the focus is on whether the proposed accommodation “would be so at odds with the purposes behind the [entity’s program, service, or activity] that it would be a fundamental and unreasonable change.”²²

To determine whether an accommodation is reasonable or a fundamental alteration, courts must “engage in an individualized inquiry” considering factors such as “the effectiveness of the modification in light of the nature of the disability in question and the cost to the organization that would implement it.”²³ Agencies cannot simply impose a blanket ban on types

¹⁷ In determining which communication method is best for someone under EM, federal law mandates that an entity give “primary consideration” to the auxiliary aids and services that the person with the disability requests. Types of auxiliary aids and services include qualified sign language interpreters, qualified deaf interpreters, assistive listening devices, and communication access real-time translation (CART). Federal law prohibits entities from imposing charges to cover the costs of auxiliary aids and services, or from asking people with disabilities to provide or pay for these accommodations themselves. 28 C.F.R. § 35.160(b)(2); 28 C.F.R. §§ 35.104, 35.160(b)(1); 28 C.F.R. § 35.130(f).

¹⁸ 28 C.F.R. § 35.130(b)(1); 49 28 C.F.R. § 35.130(b)(8); 50 28 C.F.R. §§ 35.160, 35.164; *see also* U.S. Dep’t of Just. Effective Communication, <https://www.ada.gov/effective-comm.htm> (last updated Feb. 28, 2020); 28 C.F.R. § 35.160(b)(2); 51 28 C.F.R. § 35.130(b)(7).

¹⁹ *See, e.g., Pierce v. District of Columbia*, 128 F. Supp. 3d 250, 267 (D.D.C. 2015) (prison engaged in disability discrimination “as a matter of law when it failed to evaluate [a disabled individual’s] need for accommodation at the time he was taken into custody.”); *Armstrong v. Davis*, 275 F.3d 849, 859 (9th Cir. 2001) (upholding injunction requiring California parole board “to identify. . . which prisoners have a disability, create and maintain a system for tracking disabled prisoners and parolees, and provide them with accommodations at parole and parole revocation proceedings”); *Lewis v. Cain*, No. 15-cv-318, 2021 WL 1219988, at *59 (M.D. La. Mar. 31, 2021) (prison violated ADA by “[f]ailing to identify and track disabilities and accommodation requests in a meaningful way”); *Tellis v. LeBlanc*, No. 18-541, 2022 WL67572, at *8-10 (W.D. La. Jan. 6, 2022) (same); *Dunn v. Dunn*, 318 F.R.D. 652, 665 (M.D. Ala. 2016) (same); *L.H. v. Schwarzenegger*, 645 F. Supp. 2d 888, 892 (E.D. Cal. 2009) (approving class settlement on ADA disability claim in parole revocation context).

²⁰ *Mary Jo C. v. N.Y. State & Loc. Ret. Sys.*, 707 F.3d 144, 153 (2d Cir. 2013) (quoting *Staron v. McDonald’s Corp.*, 51 F.3d 353, 356 (2d Cir. 1995)); *see McGary v. City of Portland*, 386 F.3d 1259, 1270 (9th Cir. 2004).

²¹ 28 C.F.R. § 35.130(b)(7).

²² *Dadian v. Village of Wilmette*, 269 F.3d 831, 838-39 (7th Cir. 2001) (internal citation and quotation marks omitted).

²³ *Mary Jo C.*, 707 F.3d at 153 (internal citation and quotation marks omitted).

of proposed accommodations. Additionally, budgetary constraints alone are insufficient to establish a fundamental alteration defense.²⁴

Young people with disabilities do not need to wait until they have suffered a downstream consequence, such as punishment for violating their EM terms, to experience discrimination based on an entity’s failure to accommodate. Instead, people suffer discrimination where “they face ‘obstacles’ . . . ‘that impede[] their access to a government benefit or program,’” such as being required “to participate in the Government’s supervision programs without reasonable accommodations.”²⁵ In other words, the inability to effectively participate in legal proceedings, including supervision or EM terms, is disability discrimination *in itself* – even if people do not suffer other consequences such as sanctions or revocation proceedings.²⁶

3) Causation

Many failure-to-accommodate cases do not address causation, and federal courts have formulated the standard differently.²⁷ Some jurisdictions apply a stricter causation standard to claims under the Rehabilitation Act (which prohibits discrimination “solely by reason of” one’s disability) than to ADA claims (which prohibits discrimination “on the basis of” one’s disability).²⁸ Causation is generally satisfied where a plaintiff “does not claim that he required and/or was denied a reasonable accommodation for any reason other than his disability.”²⁹

²⁴ *Pennsylvania Protection & Advocacy v. Pennsylvania Dep’t of Public Welfare*, 402 F.3d 374, 380 (3d Cir. 2005) (collecting cases).

²⁵ *Mathis v. U.S. Parole Comm’n*, No. 24-cv-01312, 2024 WL 4056568, at *5–6 (D.D.C. Sept. 5, 2024) (quoting *Am. Council of the Blind v. Paulson*, 525 F.3d 1256, 1267 (D.C. Cir. 2008)).

²⁶ *See, e.g., id.* at *6; *Luke v. Texas*, 46 F.4th 301, 306 (5th Cir. 2022) (“Not being able to understand a court hearing or meeting with a probation officer is, by definition, a lack of meaningful access to those public services. . . . Lack of meaningful access is *itself* the harm under Title II, regardless of whether any additional injury follows.”); *Robertson v. Las Animas Cnty. Sheriff’s Dep’t*, 500 F.3d 1185, 1199 (10th Cir. 2007) (plaintiff was “injured” under the ADA when he “was denied the ability to participate in his probable cause hearing to the same extent as non-disabled individuals” even though he was not required to attend the court proceeding, and the hearing resulted in dismissal of all charges); *Montgomery v. District of Columbia*, No. 18-cv-1928, 2022 WL 1618741, at *25 (D.D.C. May 23, 2022) (plaintiff was “injured” under ADA and Section 504 when he could not “meaningfully access his interrogations” due to his psychiatric disability—“even if [his] prosecution were inevitable”); *Paulone v. City of Frederick*, 787 F. Supp. 2d 360, 405 (D. Md. 2011) (plaintiff was denied meaningful access to supervision-mandated program she could not understand due to her disability, even though she was not accused of violating her supervision); *Armstrong*, 275 F.3d at 865 (noting the “failure to make accommodations that would enable [people] to attend or comprehend parole and parole revocation hearings” “constitutes ‘actual injury’” for standing purposes).

²⁷ *See, e.g., Henrietta D. v. Bloomberg*, 331 F.3d 261, 291 (2d Cir. 2003) (discrimination is “by reason of” an individual’s disability “even if there are other contributory causes for the exclusion or denial, as long as the plaintiff can show that the disability was a substantial cause of the exclusion or denial”); *Wis. Cmty. Servs., Inc. v. City of Milwaukee*, 465 F.3d 737, 752 (7th Cir. 2006) (en banc) (holding that establishing a Title II claim “requires the plaintiff to show that, ‘but for’ his disability, he would have been able to access the services or benefits desired”); *Brown v. District of Columbia*, 928 F.3d 1070, 1098 (D.C. Cir. 2019) (Wilkins, J., concurring) (collecting cases discussing the causation standard).

²⁸ *See Drasek v. Burwell*, 121 F. Supp. 3d 143, 154 (D.D.C. 2015) (collecting cases applying a stricter causation standard under Section 504).

²⁹ *Schine ex rel. Short v. N.Y. State Off. for People with Developmental Disabilities*, No. 15-CV-5870, 2017 WL 9485650, at *4 (E.D.N.Y. Jan. 5, 2017), *report and recommendation adopted*, 2017 WL 1232530 (E.D.N.Y. Mar.

III. Common EM Requirements

While electronic monitoring programs vary by jurisdiction, most programs share several types of requirements. Many jurisdictions impose movement restrictions, permitting young people on EM to leave home only for pre-approved activities, such as school, work, court appearances, or religious services. They must generally receive advance notice and prior approval from EM program administrators for any changes to their schedule, with required timeframes ranging from up to 24 hours to one week before the activity. In addition, young people must attend regular check-ins with EM administrators or probation officers at specific times. Young people are required to keep their EM devices charged, which may involve long periods of sitting still while the device is plugged into the wall, sometimes during particular hours of the day (e.g., every morning and every evening).

EM programs also require participants to comply with extensive, complex sets of rules. These policies tend to be written in highly advanced language that may be far beyond a young person's reading comprehension level. The terms of EM agreements can be overly broad and vague, making them even more difficult to understand. For example, program terms and conditions may prohibit "the discovery and presence of alcoholic beverages," without specifying whether the provision bars all members of the child's household from possessing or consuming alcohol at home.³⁰ Moreover, young people may struggle to follow two sets of rules: one for EM programs specifically, and one for general probation.

Finally, young people may face significant consequences for even minor, technical violations of EM rules. These can range from participating in counseling programs or writing an essay to spending time in jail or prison. Because EM requirements are often inflexible and inaccessible for young people with disabilities, compliance may be difficult and punishments for these violations may be imposed frequently.

IV. Common Disabilities + Key Symptoms/Features

While this section discusses the features of individual disabilities, it is important to note that many people have multiple co-occurring disabilities. This could include several psychiatric disabilities or a combination of psychiatric, intellectual/developmental, and physical disabilities.³¹ Defense attorneys should consider the compounding barriers created by co-

31, 2017); *see also Mathis v. U.S. Parole Comm'n*, No. 24-cv-01312, 2024 WL 4056568, at *5 (D.D.C. Sept. 5, 2024) (causation established where plaintiffs' "injur[ies]—obstacles to equal access [to supervision]—exists 'solely by reason' of their disabilities" (quoting 29 U.S.C. § 794(a)).

³⁰ East Bay Community Law Center, *Electronic Monitoring of Youth in the California Juvenile Justice System*, UC Berkeley School of Law (2017), 11, https://www.law.berkeley.edu/wp-content/uploads/2017/04/Report_Final_Electronic_Monitoring.pdf.

³¹ *For evidence from the adult prison system, see Facer-Irwin et al., PTSD in Prison Settings* at 12;); Fred Osher et al., Council of State Gov'ts Just. Ctr., *Adults with Behavioral Health Needs under Correctional Supervision: A Shared Framework for Reducing Recidivism and Promoting Recovery*, 6 (2012), https://csgjusticecenter.org/wp-content/uploads/2020/02/9-24-12_Behavioral-Health-Framework-final.pdf.

occurring disabilities that may impact their clients. Additional disability-specific barriers are discussed in Section V and in Appendix A.

1) ADHD

Attention-deficit/hyperactivity disorder (ADHD) is characterized by a persistent pattern of inattention and/or hyperactivity-impulsivity.³²

Symptoms of ADHD include:

- Careless mistakes, forgetfulness, or lack of attention to detail
- Difficulty sustaining attention
- Not following through on instructions
- Difficulty organizing tasks and activities
- Restlessness and fidgeting³³

Probation officers have reported that people with ADHD have “difficulties associated with adhering to rehabilitation plans” including “with attendance, maintaining appropriate boundaries, and accepting instructions.”³⁴ Further, difficulty completing “tasks that require sustained effort” among people with ADHD “is often interpreted by authorities as laziness, irresponsibility, or failure to cooperate.”³⁵

2) PTSD

Post-traumatic stress disorder (PTSD) may occur among people who have experienced or witnessed traumatic events.

Symptoms of PTSD include:

- Re-experiencing the events, including through flashbacks and physical signs of stress
- Avoidance of stimuli associated with the traumatic events, including situations that arouse distressing memories, thoughts, or feelings
- Cognition and mood alterations, including negative or distorted thoughts and feelings of social isolation
- Heightened arousal and reactivity, such as irritable behavior, hypervigilance, feeling “on edge,” difficulties concentrating or focusing on tasks, and reckless or self-destructive actions.³⁶

³² Am. Psychiatric Ass’n, Diagnostic and Statistical Manual of Mental Disorders, 59 (Am. Psychiatric Ass’n eds., 5th ed. 2013) (“DSM-5”).

³³ *Id.* at 59-60.

³⁴ Susan Young et al., *Beyond the Gates: Identifying and Managing Offenders with Attention Deficit Hyperactivity Disorder in Community Probation Services*, 1 AIMS Pub. Health 33, 37 (2014).

³⁵ DSM-5 at 63.

³⁶ DSM-5 at 271.

3) Depression, Anxiety, Emotional Disturbance

Major depressive disorder is characterized by:

- “Depressed mood most of the day, nearly every day” and/or “[m]arkedly diminished interest or pleasure in” nearly all daily activities
- Insomnia or hypersomnia
- Decreased concentration
- Thoughts of death/suicide³⁷

Depression thus can make social interactions more difficult.³⁸

People with generalized anxiety disorder generally experience:

- Restlessness
- Being easily fatigued
- Difficulty concentrating
- Irritability
- Sleep disturbance³⁹

People with anxiety often worry excessively “about everyday, routine life circumstances” or “minor matters” in a way that “takes time and energy” and impairs their general functioning.⁴⁰

Emotional disturbance is defined by the Individuals with Disabilities Education Act (IDEA) as “a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance:

- (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- (C) Inappropriate types of behavior or feelings under normal circumstances.
- (D) A general pervasive mood of unhappiness or depression.
- (E) A tendency to develop physical symptoms or fears associated with personal or school problems.”⁴¹

³⁷ DSM-5 at 160-61.

³⁸ See Wai S. Tse & Alyson J. Bond, *The Impact of Depression on Social Skills: A Review*, 192 J. Nervous & Mental Disease 260 (2004), https://journals.lww.com/jonmd/Abstract/2004/04000/The_Impact_of_Depression_on_Social_Skills_A.2.aspx.

³⁹ *Id.* at 221-22.

⁴⁰ *Id.* at 222, 225.

⁴¹ 20 U.S.C. §§ 1400-1482.

As defined by the IDEA, emotional disturbance includes schizophrenia but does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.⁴²

4) Learning Disabilities and Other Developmental Disabilities

Learning disabilities are generally defined as “differences in a person’s brain that can affect how well they read, write, speak, do math, and handle other similar tasks.”⁴³

Symptoms of learning disabilities include:

- Not being able to master reading, spelling, writing, or math skills at the expected age and grade levels
- Trouble understanding and following instructions
- Problems with short-term memory
- Easily losing homework and school supplies
- Trouble completing academic assignments on time
- Acting out of having defiant, angry, or emotional reactions at school⁴⁴

Intellectual Disability (ID) generally describes deficits to a person’s intellectual functionality and adaptive behaviors.⁴⁵ Deficits in intellectual function can include difficulties with “reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience,” as well as difficulty following rules.⁴⁶

5) Substance Use Disorder (SUD)

Substance use disorder (SUD) is a “chronic disease characterized by a cluster of cognitive, behavioral, and physiological symptoms indicating that the person continues using the substance despite significant substance-related problems.”⁴⁷

Symptoms of SUD include:

⁴² Division for Emotional and Behavioral Health, *Behavior Disorders: Definitions, Characteristics, and Related Information*, <https://debh.exceptionalchildren.org/behavior-disorders-definitions-characteristics-related-information> (last accessed July 10, 2025).

⁴³ National Institute of Child Health and Human Development, *Learning Disabilities*, National Institutes of Health, <https://www.nichd.nih.gov/health/topics/learningdisabilities> (last accessed July 15, 2025).

⁴⁴ Mayo Clinic, *Learning Disorders: Know the Signs, How to Help*, <https://www.mayoclinic.org/healthy-lifestyle/childrens-health/in-depth/learning-disorders/art-20046105> (last accessed July 15, 2025); see also National Institute of Child Health and Human Development, *What Are Some Signs of Learning Disabilities?* National Institutes of Health, <https://www.nichd.nih.gov/health/topics/learning/conditioninfo/signs#f1> (last accessed July 15, 2025).

⁴⁵ Am. Ass'n on Intell. & Developmental Disabilities, *Defining Criteria for Intellectual Disability*, <https://www.aaid.org/intellectual-disability/definition> (last accessed July 15, 2025).

⁴⁶ Dilip R. Patel et al., *A Clinical Primer on Intellectual Disability*, 9 *Translational Pediatrics* S23, S25 (2020) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7082244/>; Am. Ass'n on Intell. & Developmental Disabilities, *Defining Criteria for Intellectual Disability*.

⁴⁷ Centers for Disease Control and Prevention, *Treatment of Substance Use Disorders*, <https://www.cdc.gov/overdose-prevention/treatment/index.html> (Apr. 2024) (last accessed July 15, 2025).

- Difficulties abstaining from drug use
- Experiencing intense urges for the drug that block out any other thoughts
- Over time, needing more of the drug to get the same effect
- Making certain to maintain a supply of the drug
- Spending money on the drug beyond what the person can afford
- Not meeting obligations or cutting back on social and recreational activities due to drug use
- Engaging in out-of-character activities to obtain the drug, such as stealing
- Experiencing withdrawal symptoms when attempting to stop using the drug⁴⁸

As a result of these symptoms, people with SUD may struggle to perform daily tasks.⁴⁹ SUD often co-occurs with other disabilities, such as psychiatric disabilities.⁵⁰ This is partly because many people turn to drugs to manage symptoms of their disabilities. For example, people with PTSD may use in response to a triggering event.⁵¹

Note that, as stated above, “currently engaging in the illegal use of drugs” is not considered a protected “disability” under the ADA.⁵² However, SUD is a protected disability where, for example, the individual completed drug treatment or is currently “participating in a supervised rehabilitation program” including medication-assisted treatment (MAT) under the supervision of a licensed medical professional.⁵³ Additionally, a young person who is illegally using drugs is still protected if they have a co-occurring disability that *is* protected under the ADA.

V. Barriers to Compliance and Potential Reasonable Accommodations

Young people with disabilities face unique barriers to compliance with EM program requirements.

⁴⁸ *Id.*

⁴⁹ Lena J. Jäggi et al., *The Relationship between Trauma, Arrest, and Incarceration History among Black Americans: Findings from the National Survey of American Life*, 6(3) Soc’y & Mental Health 187, 189 (2006) <https://journals.sagepub.com/doi/abs/10.1177/2156869316641730>; Allison Frankel, Human Rights Watch & ACLU, *Revoked: How Probation and Parole Feed Mass Incarceration in the United States*, 170-171 (2020), <https://www.aclu.org/publications/aclu-and-hrw-report-revoked-how-probation-and-parole-feed-mass-incarceration-united-states>.

⁵⁰ Fred Osher et al., Council of State Gov’ts Just. Ctr., *Adults with Behavioral Health Needs under Correctional Supervision: A Shared Framework for Reducing Recidivism and Promoting Recovery*, 19 (2012) https://csgjusticecenter.org/wp-content/uploads/2020/02/9-24-12_Behavioral-Health-Framework-final.pdf

⁵¹ Substance Abuse and Mental Health Serv. Admin. (SAMHSA), *Trauma-Informed Care in Behavioral Health Services*, 87 (2024) (ebook).

⁵² 42 U.S.C. § 12210(a), (b).

⁵³ *Id.*; ADA Network, *The Americans with Disabilities Act, Addiction, and Recovery for State and Local Governments*, <https://adata.org/factsheet/ada-addiction-and-recovery-and-government> (last accessed June 27, 2025).

1) Following Complex Rules

The need to adhere to multiple complicated sets of rules can be particularly difficult for young people with disabilities. Kids with learning disabilities and other developmental disabilities may have limited reading comprehension and may struggle with abstract reasoning, making it challenging to understand or remember their many requirements. Medications to treat conditions such as depression, anxiety, and PTSD may have side effects impairing memory and attention, interfering with recall of the rules. For those with SUD, past substance use may have caused cognitive impairments that undermine memory and retention.

Defense attorneys should push for reasonable accommodations, including plain-language explanations of the EM requirements. The rules must be tailored to the child's appropriate reading level or communicated in another way that they can fully understand—for instance, authorities might use iconic images to communicate key concepts (i.e., visual calendars with icons to represent important dates or drawing a stick figure walking through the door of a house with a clock above the house showing 8pm and a darkening sky to represent an 8pm curfew). Authorities should also speak slowly and repeat instructions.

2) Movement Restrictions

Having their movement restricted to certain timeframes and locations can prevent young people on EM from connecting with their peers, as they may be unable to participate in extracurricular or social activities. This can lead to withdrawal, exacerbating underlying mental health conditions such as anxiety or depression. Additionally, the stigma of being forced to wear visible EM devices while at school may further isolate young people from their peers and worsen their mental health.

For young people who have PTSD, spending long periods of time on home confinement may be re-triggering if they struggle with claustrophobia or are prevented from engaging in healthy activities to manage stress, such as going for walks outside. Movement restrictions may also interfere with necessary medical appointments, including doctors' appointments for people with chronic illnesses and medication-assisted treatment (MAT) programs for young people with substance use disorders, if the healthcare facility is outside of the limited area where they are permitted to travel. Young people with disabilities often must travel to get adequate education and support services as well, and movement restrictions make this more difficult.

Defense attorneys should seek reasonable movement and expansion standards for clients on EM, avoiding full home confinement. Medical appointments, including for medication assisted treatment for substance use disorder, should be treated as an approved reason for young people to leave home, and accommodations should be made to allow them to attend supportive programs and socialize with their peers.

3) Notice and Approval for Schedule Changes

Young people with disabilities may also struggle to provide advance notice and get approval for all changes to their schedule, which many EM programs mandate.

For kids with ADHD, this advance planning requires a level of organization and executive functioning that can be extremely difficult. Those who struggle with depression or anxiety may find the logistics of planning challenging. Feelings of overwhelm and avoidance may make it harder for young people with mental health conditions to communicate schedule changes to authorities in advance. Furthermore, young people with learning disabilities, intellectual disabilities, or other developmental disabilities may struggle with communication and with the abstract reasoning involved in advance planning.

Defense attorneys should push for flexibility in these notice requirements for young people with disabilities on EM. Shorter windows of notice for schedule changes, such as 24 hours instead of a full week, or allowing notice within a reasonable time period *after* the schedule change where advance notice is not feasible, should be allowed whenever possible.

4) Regular Check-Ins with EM Administrators

Young people with disabilities may have trouble remembering or adhering to the regular check-in schedules that EM programs require.

For example, young people with developmental disabilities may miss meetings because they do not understand or recall the check-in schedule. Those with mental health issues may avoid meetings due to extreme nervousness about interacting with authorities. Young people with PTSD may have a heightened sensitivity to authority figures, causing them to react to feedback during check-ins with defensiveness or avoidance. People with mobility difficulties can face difficulties physically getting to meeting locations.

To make check-in requirements more manageable, defense attorneys should push for flexibility and supports. Young people with disabilities may benefit from real-time reminders, such as text alerts or calls from EM administrators, to facilitate compliance. Authorities could also expand check-in options, such as by allowing young people to check in anytime within a given day rather than at a specific time. Check-ins should also be timed to avoid interfering with school or other planned activities.

5) Keeping Device Charged and Secured to Body

Young people with disabilities may struggle to charge their EM devices in accordance with program requirements. For instance, kids with ADHD may have significant difficulty adhering to the schedule and sitting still while the device charges for multiple hours per day. Those with learning disabilities or developmental disabilities may have trouble understanding and remembering the daily charging timeframes.

Additionally, wearing the EM device at all times—especially bulky ankle monitors—may worsen paranoid thoughts and be re-triggering for those with PTSD. The stress of constant surveillance may also exacerbate other underlying mental health issues.

To make these requirements more feasible, defense attorneys should push for the use of devices that do not require long, continuous daily charging periods. In some situations, check-in apps or phone calls may be possible as a less invasive alternative to wearing an EM device. However, attorneys should be mindful that some such devices are even *more* invasive than ankle monitors and thus have other harmful costs. Attorneys should advocate for the least intrusive, least burdensome device possible.

6) Consequences for Violations

Without reasonable accommodations, young people with disabilities will often violate EM requirements due to disability-related barriers. It is crucial for authorities to understand that these violations are not due to intentional noncompliance. Judges and EM administrators must work with defense attorneys to develop accommodations that adjust the program to a child's unique needs and make it possible for them to participate.

This is especially important because the stakes of incarceration are particularly high for young people with disabilities. The experience of incarceration can exacerbate certain disabilities, including PTSD, depression, and anxiety. People also regularly lack access to adequate health care and needed medications while in jail or prison. And those with SUD may experience withdrawal while incarcerated and turn to substances to cope with the trauma of incarceration post-release.⁵⁴

Defense attorneys should push for increased flexibility for young people with disabilities so that they are not excessively punished for technical violations. Programs should avoid using incarceration as punishment for EM violations at all costs.

VI. Guidance for Juvenile Defenders on Proactively Identifying Disabilities and Seeking Accommodations

It may be difficult to get clarity on whether or not a client has a disability. Many children with disabilities in the criminal legal system have not been diagnosed or have been misdiagnosed.⁵⁵ Even if a child does have a diagnosis, their Individualized Education Program (IEP) or other disability-related documentation may not travel with them through the delinquency system, especially in a pre-adjudication setting. Further, a child may not know their diagnosis or may not fully understand what it means in this context.

⁵⁴ ACLU, *Reducing Barriers* at 10, n. 78.

⁵⁵ Christina Rainville, *Recognizing Signs of Undiagnosed and Misdiagnosed Disabilities in Your Child Client*, Am. Bar Ass'n (July 2014), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-33/july-2014/recognizing-signs-of-undiagnosed-and-misdiagnosed-disabilities-i/.

In order to ascertain whether ADA arguments are available for a child, defense attorneys will need to gather specific information about their client. Attorneys should keep in mind that disabilities may not be immediately apparent, and symptoms of a disability may change or worsen⁵⁶ as the child engages with the criminal legal system, which can be particularly triggering for individuals with anxiety and other disabilities.

Defense attorneys should:

1. Ask their client in a simple and non-judgmental way if they know if they have a diagnosis. If a child doesn't know if they do, defense attorneys should ask follow-up questions.
 - a. For example: Did you get extra support in school to complete tasks or understand instructions?
2. Consult with adults who know the child well, such as family members, social workers, or teachers.
3. Review the child's school and disciplinary records.

If a child and/or adults in their life do not know if they have a diagnosed disability, or think that they do not, defense attorneys may:

1. Ask their client and adults in their life questions related to symptoms of a disability:
 - a. For example: Do you have trouble concentrating in school? Is it hard to understand forms/directions/rules? Are you feeling anxious or sad right now?

Once an attorney has established if their client has a disability or disability-symptoms, they should:

1. Consult with clients about what kinds of accommodations would be most effective to support them if they are placed on EM. While the goal is to avoid EM entirely, in some cases that may not be possible. In those instances, providing clients with some agency to advocate for the accommodation(s) that they feel are best suited for them is important. Defense attorneys should brainstorm possible accommodations with their clients and recognize that they may not know what accommodations will work best for them or have any prior experience considering accommodations.
 - a. Defense attorneys can find proposed accommodations in Section V above and in Appendix A.
2. Raise clients' accommodation needs as early as possible. Attorneys can do so by filing motions for accommodations and/or engaging in informal advocacy with prosecutors recommending EM and/or authorities administering EM.

⁵⁶ Katie Rose Quandt, Alexi Jones, *Research Roundup: Incarceration Can Cause Lasting Damage to Mental Health*, Prison Policy Initiative (May 2021), <https://www.prisonpolicy.org/blog/2021/05/13/mentalhealthimpacts/>.