**Committee on the Rights of Persons with Disabilities**

**Making sure disabled people have a right to liberty and good treatment in prison**

Plain English version of:

**Guidelines on the right to liberty and security of persons with disabilities**

**Article 14: Liberty and security of person**

**Note:** Please note this is not a United Nations official document.

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5. **Introduction**

1. The committee on the rights of people with disabilities watches how well countries use the **Convention**. The committee also helps countries to understand what to do to make sure people with disabilities have their rights.

This guide tells you what a state needs to do for people with disabilities to have their rights to **liberty** and being safe. It also looks at the treatment of prisoners when they may lose further rights.

2. The committee accepts this guide so that states and all concerned understand what is expected of them.

1. **The right to liberty and safety for people with disabilities**

3. The right to liberty and safety is very important and a right for everyone. The Convention has this right as article 14 for all people with disabilities especially those with intellectual disabilities.

4. The basis of article 14 is no **discrimination**. It says that all people with disabilities have the right to:

* liberty
* safety
* no discrimination.

Article 14 links to the reason for the Convention:

* to support and protect the ability to enjoy all human rights and freedoms for people with disabilities
* to support respect for them as human beings.

5. Article 14 also shows the close connection between the right to equality and no discrimination. Article 5 says everyone must have the same treatment and protection by the law.

1. **No loss of liberty because you have of impairment**

6. Some states still take away the right to liberty when people have an **impairment**. Or even when they just think people may have an impairment. An impairment is something that makes it more difficult or takes longer to do things. An impairment may be:

* physical, so a person may need to use a wheelchair
* a mental health problem
* a learning disability
* difficulty seeing or hearing

Disability is when there are problems doing things with an impairment because society has not tried to make it possible. Such as a person using a wheelchair unable to get into a building because of steps.

The laws in some states say when a person has an impairment they may hurt them self or someone else. So they lose their liberty. This is not acceptable and as it takes away the liberty of a person with disabilities just because of their impairment.

7. There was a lot of discussion when this was written over how to word this. It was finally decided that there can be no loss of liberty because a person has an impairment or others think they have.

8. Article 12 says the law must accept everyone as equal.

This links with the total ban on loss of liberty because a person has an impairment or others think they have.

This means a state cannot keep anyone in a hospital unless they agree. It is wrong to keep people mental health hospitals without their **consent** because they have an impairment.

The committee is clear that this is loss of liberty and breaks articles 12 and 14 of the Convention.

9. The right to liberty also goes with the article 19, the right to live independently in the community. People with disabilities still live in big hospitals in some states and do not have support to live in a community.

The Committee is clear this must change and hospitals close. More money needs to support people well in the community.

1. **Put in a mental health hospital without giving consent**

10. People with disabilities must not be put in hospitals unless they give their consent. This goes against articles14 and 25 of the Convention.

The committee keeps telling states it is wrong to keep people mental health hospitals without their **consent** because they have an impairment. When a state does this they are not allowing the legal capacity of people with disabilities to decide on their own treatment.

1. **No treatment without consent when a person loses their liberty**

11. States must make sure health services and treatments have the consent of the person involved, who has all the information to make a decision. This includes mental health services.

States must make sure all health staff have the consent of people with disabilities for their treatment. Health staff must give information in a way that the person can understand and not force someone to give consent. Again this includes all mental health staff. This does not allow someone else such as family or support staff to make a decision for a person.

Health staff must make sure each person gets the information they need to make a decision and make that decision for themselves. No one else must try to affect the decision.

1. **Being safe from harm when a person loses their liberty**

12. When a person loses their liberty it is important to make sure they are safe. This means no:

* treatment without consent
* not keeping a person alone, separate from everyone else
* type of **restraints**. This includes no drugs, holding someone or using things like handcuffs.

All these things are cruel and do not treat people with disabilities with respect.

1. **Loss of liberty when others say a person is dangerous or refuses treatment**

13. The committee is clear it is not acceptable to take away the liberty of a person with disabilities because they may harm themselves of others. Article 14 says this. There is no reason to keep a person with disabilities in a place without their consent. States cannot say they do this because the person:

* needs care or treatment
* may harm themselves of others
* has a severe impairment
* needs watching to understand more about their health treatment.

14. When people with intellectual disabilities or mental health problems refuse treatment others often see them as dangerous.

Everyone including people with disabilities must keep the laws that say you must not harm other people. Often people with disabilities are not equal in law as they are put under other mental health laws. These are not always good on human rights especially the right to a fair trial which is article 13 of the Convention.

15. Article 3 gives everyone the right to make their own decisions. This includes the right to make mistakes and take risks as everyone else can.

Decisions about health treatment, including treatment for mental health problems, must have the consent of the person. A person with disabilities must not lose their liberty because of an impairment or refuse treatment. This takes away their capacity and breaks article 12.

1. **No trial because of an impairment**

16. The committee is clear that it is against article 14 to say someone cannot have a trial because they:

* cannot understand what happens in the court
* cannot understand what law they broke
* cannot tell their lawyer what to do
* do not have capacity.

People with intellectual disabilities or mental health problems often come under this.

The committee asks all states to remove these laws. All people with disabilities who did any crime and are in prison or a mental health hospital without a trial need to have a trial. They need a chance to defend themselves.

People with disabilities also need support and possible changes to the way a trial runs to take part in a fair trial

1. **The condition of prisons**

17. The committee has concerns about the condition of some prisons. All prisons and mental health hospitals need to be:

* **accessible** for everyone
* clean and warm.

States need laws that say places where people with disabilities live must be in a good condition that respects their needs. This has to be a right for people with disabilities in prison.

Staff in the police, courts and prisons need training on the rights of people with disabilities.

18. It is important that people with disabilities in prison have the same rights the Convention offers to all people with disabilities. This includes places being accessible and in a good condition.

The committee is clear that people with disabilities in prison or mental health hospitals need to:

* live as independently as they are able
* take part in daily life with everyone else
* have the same access as others to places like;
* bathrooms
* exercise space
* libraries
* study rooms
* workshops
* all health services

States need to make this happen. When it does not happen states are breaking article 17 and possibly article 15 of the Convention.

**10. Checking prisons and mental health hospitals**

19. It is important to have systems to check on the life of people with disabilities in prison and mental health hospitals.

Article 16 says checks must be done on all services for people with disabilities to stop any:

* ways that people may be badly treated
* violence and harm
* abuse.

Article 33 says states need to have independent ways to check everything. This will involve people who do not work for the state.

When checking prisons people need to know why individuals are there. When they think the person has not had a fair trial they must be able to argue about that. Anyone they find who should not be in prison or a mental health hospital must be set free immediately.

1. **Keeping a person locked away**

20. Some states lock someone away because they are ‘insane’ or do not have capacity. They say to keep everyone safe they may have to:

* force health treatment on people
* put a person in prison or a mental health hospital and not say when they will be let out.

The committee says all this is wrong and needs to change

1. **Other ways than prison**

21. The committee says that taking away liberty needs to be the last thing tried. Other ways need trying such as restorative justice where the victim of the crime meets the person who did it. They will look together at how the person who did it can do something to help the victim feel better.

Other ways tried must not involve mental health services in any way. Using mental health services needs free consent with full information.

1. **Consent in emergencies**

22. The committee says that everyone must always respect a person’s ability to make decisions even in emergencies. People will need support to make decisions in emergencies and accessible information.

States need to make sure people with disabilities get this support and make sure no-one gets treatment they do not want.

States must also remove all laws and rules that allow treatment a person does not consent to. All decisions must be made with the person not someone deciding for them.

23. The committee also asks that states do not allow decisions made for someone by saying it is what is best for them.

Sometimes it is very difficult to understand what a person’s decision is. Before now staff decided for that person by thinking about what is best for them. This needs to change to deciding what is their best understanding of what the person may want.

1. **Access to justice and compensation**

People with disabilities who lose their liberty for no legal reason must be able to take this to court. The court must decide what is legal. People with disabilities must be able to get **compensation** when they lose their liberty for no legal reason.

**14. Word bank**

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| **Word** | **What it means** |
| **Accessible** | something that is easy to use for people with disabilities. Such as:   * ramps to get into a building * information in easy read or braille * sign language interpreters |
| **Compensation** | money or something else to help someone feel better when something wrong has been done to them. |
| **Consent** | allowing someone to do something. Such as a doctor giving you pills. |
| **The Convention** | this is the Convention on the Rights of Persons with Disabilities by the United Nations. It says what rights people with disabilities have. |
| **Discrimination** | being treated badly or unfairly because of a disability. |
| **Impairment** | something that makes it more difficult or takes longer to do things. An impairment may be:   * physical, so you may need to use a wheelchair * a mental health problem * a learning disability * difficulty seeing or hearing. |
| Liberty | being able to go where you want, with the people you want, when you want. |
| Restraint | stopping someone from doing something. This may mean:   * holding them * using drugs * using things like handcuffs |