

ANNEX III SUMMARY OF THE PRACTICAL GUIDANCE AND SYSTEMIC RECOMMENDATIONS

III. Access to Justice for Persons with Disabilities

A. Equal treatment before the law, legal capacity and equal participation

Practical guidance and recommendations

1. **State justice actors must, within the parameters of their respective responsibilities, ensure that they accord persons with disabilities equal treatment with others in interactions with the justice system. Responsible authorities must provide persons with disabilities with gender⁶⁶⁰ and disability appropriate procedural and reasonable accommodations where needed to facilitate their participation on an equal basis**
 - A. Justice actors should interpret existing laws and policies consistently with the CRPD.
 - B. Justice actors should act to ensure that procedural accommodations and other supports to facilitate their effective participation are provided for persons with disabilities, where necessary.
2. **Responsible justice actors should respect and ensure the effective right to participate from the first contact with law enforcement, during the proceedings and in all following stages of it.**
 - A. The right encompasses access to counsel and, where necessary, legal aid, and the accompaniment of support persons of the defendant's choosing in all stages of criminal proceedings, starting from the first contact with law enforcement.
 - B. No person with a disability should be compelled to have a person assisting them without them being able to voice their preferences or without their consent.

⁶⁶⁰ For more details on gender-appropriate procedural accommodations, please see: Validity Foundation, [Fair Trial Denied: Defendants with Disabilities Face Inaccessible Justice in the EU](#), 2024, p. 71ss.

3. **Responsible justice actors should ensure safe, fair and effective engagement of persons with disabilities in the proceedings and the opportunity to fully participate in proceedings.**
4. The responsibility includes the provision of adjustments, accommodations and supports, including intermediaries, support services, or support persons, wherever and whenever needed, to enable clear communication among and between persons with disabilities and courts, **Responsible justice actors should implement a supported decision-making approach, whereby a person with a disability continues to hold all decision-making authority and autonomy. Judges should always ensure direct contact with the defendant with a disability even where others are included in such contact to provide that person with support.**
 - A. If a petition for guardianship is made, it should be denied on the grounds of violating the person’s individual autonomy.
 - B. **The role of an intermediary or a lawyer must not** replace the direct contact of the defendant with the judge.
5. **Lawyers should ensure that decisions that directly or indirectly involve participation in the proceedings of the defendant with a disability, are with the defendant.**
 - A. The supported decision-making model for defendants with disabilities means that the defendant with a disability is the person making the decision. If they choose to include a support person, the work of the support person is to ensure the decision is made at the defendant’s will and preference.
6. Justice actors must **ensure that constructs such as “cognitive incapacity” and “mental incapacity,”** as determined, for instance, by functional or mental status assessments, are not used to restrict a person’s right to legal capacity.

7. If a defendant with a disability is determined, after the provision of all necessary support to participate in a complete legal process to **lack the necessary intent** (mens rea) within the usual meaning of the term, they should be treated the same way as any other defendant who lacks intent.⁶⁶¹
8. Justice actors must ensure that **any assessments** conducted in respect of defendants with disabilities before and during court proceedings are **aimed only at determining the procedural accommodation and support** required to ensure their full and effective participation in the proceedings. Such assessments must have the will and preference of the individual with a disability as their central focus.

Systemic Recommendations

1. **Persons with disabilities must have equal access to the proceedings and to the defence**
 - A. **A system of support services** and procedural accommodations to **ensure effective participation** of persons with disabilities in proceedings and trials must be developed and implemented in practice (*see below the details on procedural accommodations*), from the first stages of the criminal justice process, and throughout the proceedings.⁶⁶²
 - B. From the earliest stages of the proceedings, identification of the needs for procedural accommodations and supports must take place (*see section IV.1.2 Process for individual assessment for adoption of procedural accommodations below*). Procedural accommodations should be present before, during and after the termination of proceedings to prevent discrimination **and throughout all processes**.

⁶⁶¹ Access to Justice Knowledge Hub, Implementing the Convention on the Rights of persons with disabilities in criminal justice systems, A briefing paper, July 2022, p. 19.

⁶⁶² Access to Justice Knowledge Hub, Implementing the Convention on the Rights of persons with disabilities in criminal justice systems, A briefing paper, July 2022, p. 19.

- C. A **monitoring mechanism** should be put in place in order to monitor whether procedural accommodations are being used and complied with.
- 2. **Recognize and assume the full legal capacity and right of defendants with disabilities to participate in all stages of the proceedings and in all courts.**
 - A. Ensure that defendants who have been previously **declared to be without legal capacity** to participate in court proceedings have the right to appeal or otherwise seek restoration of their legal capacity and have access to accommodations and supports, as well as legal assistance to participate in court proceedings.
 - B. Judges and other relevant justice actors should bring to the attention of the lawmakers any legislation that is in violation of the CRPD.

Promising Practice –

In Spain, Law 8/2021⁶⁶³ recognized legal capacity for all people with disabilities, guardianship was eliminated, and judicial measures of support for people with disabilities are adopted as a last resort. In this way, the Spanish legislation moved from a system of substitution of decision-making to a system of support in decision-making.

- C. Where possible under the national legal system, the judges may initiate proceedings for review of the validity of the legislation incompatible with the CRPD

Promising Practice

For instance, judges in Slovakia may start proceedings before the Constitutional Court to strike down the legislation.

- 3. **A review of policies, guidelines and practices should be undertaken by State authorities.**

⁶⁶³ Law 8/2021, Ley de 2 de junio, por la que se reforma la legislación civil y procesal para el apoyo a las personas con discapacidad en el ejercicio de su capacidad jurídica, «BOE» No. 132, 3 June 2021.

- A. States shall review and, where necessary eliminate or revise policies, guidelines and practices that serve directly or indirectly restrict the legal capacity of persons with disabilities, including those that contain and apply doctrines of **“unfitness to stand trial”** and **“incapacity to plead”**, which prevent persons with disabilities from participating in legal processes based on questions about or determinations of their capacity;
 - B. States shall review and where necessary eliminate or revise policies, guidelines and practices that authorize **medical professionals** to be the sole or preferred “experts” in determining how and to what extent and with what support persons with disabilities can participate in legal proceedings;
 - C. States shall review and where necessary eliminate or revise policies, guidelines and practices, including court orders, that subject defendants with disabilities to **detention** (whether in a prison, a mental health facility or any other institution) for a definite or indefinite term based on perceived “dangerousness” or need for care that arises from the condition of disability.
- 4. **States should develop community-based support and services to replace institutionalization, security measures or forced medical and psychiatric treatment in institutions.**
 - 5. States should take measures to improve the current process for **exchanging medical records** in order to establish a clear system for passing on information as individuals move through the criminal justice system, which is essential to minimize errors and guarantee appropriate care and medication access.⁶⁶⁴

⁶⁶⁴Mental Health Perspectives, [Briefing paper on barriers faced by defendants with intellectual and/or psychosocial disabilities in the Criminal Justice System in Lithuania](#), Vilnius, ENABLE Project, 2023, p. 60.

6. **States should collect disaggregated data** on the participation of persons with disabilities in the justice system and, using that data, develop and implement strategies to reform policies, practices and laws to ensure equal access to justice.

B. Restorative justice principles

Systemic recommendations

1. **Systemic: Alternatives to traditional criminal justice systems such as through restorative justice processes and principles should be implemented across the criminal justice systems and be equally accessible to persons with disabilities.**⁶⁶⁵
 - A. Alternative systems should ensure that defendants with disabilities are provided whatever accommodations and supports are needed to participate equally.
 - B. Restorative justice should be included in legal studies curricula, as well as in trainings for justice actors. (*See also further below in training*)

C. Training of professionals

Systemic recommendations

1. **States should provide, periodic and high quality training, on a mandatory basis, to justice actors.**
 - A. Develop a consistent and **coordinated training plan** regarding disability issues targeting the different justice system professionals.
 - B. Create a **system of ongoing mandatory training** for justice actors who interact with persons with intellectual and/or psychosocial disabilities:⁶⁶⁶

⁶⁶⁵KERA Foundation, [Briefing paper on barriers faced by defendants with intellectual and/or psychosocial disabilities in the Criminal Justice System in Bulgaria](#), Veliko Tarnovo, ENABLE Project, 2023, p. 68.

⁶⁶⁶ Centre for Legal Resources, [Briefing paper on barriers faced by defendants with intellectual and/or psychosocial disabilities in the Criminal Justice System in Romania](#), Bucarest, ENABLE Project, 2023, p. 36.

- i. For judges, legal practitioners and police personnel there should be a focus on the **human rights-based model of disability, on access to justice, procedural accommodations, identification of persons with disabilities, and on communication** with all persons with disabilities including persons with intellectual and/or psychosocial disabilities.
 - ii. For all justice actors, there should be focus on **how to communicate with a person with disability, on the impact of detention and medical treatment of persons with disabilities** and how in particular medication affects them in court, or a hearing. (These include, for example, slow responses or the fact that hearings should not be scheduled shortly after the person received medical treatment).
2. **States should guarantee effective participation of persons with disabilities in training.**
 - A. Persons with disabilities **should be involved in the development and training of justice actors**, including, for the purpose of facilitating a better understanding by justice actors of the experiences of persons with disabilities in legal processes.

IV. Procedural rights of persons with disabilities at all stages of the administration of justice⁶⁶⁷

A. Right to procedural accommodations

Requests for and offers of accommodations

Practical guidance and recommendations

1. **A defendant's right to a fair trial and due process in the administration of justice, on an equal basis**, with others must be respected from the first contact with law enforcement officers and throughout all processes, *including* through access to **procedural accommodations**.
 - A. **Responsible justice** actors must ensure that **procedural accommodations** are available for persons with disabilities to allow for their participation in each procedure, from the first contact with law enforcement authorities and through all processes.
 - B. All procedural accommodations should be **gender- and age-appropriate**.
 - C. Persons with disabilities should **participate in the process of the identification and determination of their disabilities**. Where there is an indicia that an individual may have a disability there is an obligation on the authorities to make a full determination, taking into account the individual's views.
 - D. **Adequate support services** should be made available within the criminal justice system to ensure the provision of procedural accommodations for persons with disabilities.
 - i. **Where identification of needs for procedural accommodations needs to be in place, it must be done at the beginning of the proceedings, at the earliest stage.**

⁶⁶⁷ Recommendations in sections IV.1-IV.4 are applicable to all proceedings, not only criminal proceedings.

- ii. **Preparations** for procedural accommodations and other adjustments in the hearing must be made prior to the police or other official interview, or prior to the hearing/trial.
2. All participants, including defendants with disabilities, should **be informed about their rights and the availability of procedural accommodations** throughout the course of the proceedings.
 - A. Authorities must ensure that defendants **are made aware of the possibility** of having procedural accommodations throughout the proceedings and know that **they can request them at any time**.
 - B. It should **not be the sole responsibility** of the defendant to request the accommodations. Responsible justice actors have a proactive duty to initiate the provision of accommodations.
3. Justice actors and national authorities should **consult closely with and actively involve persons with disabilities** and their representative organizations in all discussions and decision-making regarding procedural accommodations.
4. **Responsible actors should cooperate** to establish a uniform and effective framework for providing appropriate procedural accommodations for defendants with disabilities. Effective coordination is necessary at central and local levels.

Systemic recommendations

1. Judiciaries should develop and adopt regulations and standards that recognize and enforce the right to receive procedural, age and gender-appropriate accommodations, including support, necessary to enable defendants with disabilities to exercise their legal capacity, and participate effectively in any applicable judicial or administrative proceedings.⁶⁶⁸

⁶⁶⁸ These include adaptation of the venue allowing leading questions, avoiding compound questions, finding alternatives to complex hypothetical questions, providing extra time to answer, permitting breaks as needed and using plain language; and use of pre-trial video recording of evidence and testimony, if necessary, practical and possible, in such a manner as not to contravene

2. A **comprehensive procedure for recognizing, requesting, assessing, and providing** individual support for persons with disabilities should be developed and implemented.
3. Clear and **effective procedures relating to the provision of procedural accommodations** must be developed and implemented by justice actors whenever a person with a disability, and in particular a person with intellectual and/or psychosocial disabilities, interacts with the criminal justice system.
 - A. A **guide or manual on procedural accommodations for the administration of justice** should be produced and widely disseminated to facilitate the correct approach by justice actors concerning persons with disabilities.

Process for individual assessment for adoption of procedural accommodations

Practical guidance and recommendations

1. A **practical mechanism to identify disability early in legal processes through an individual assessment** should be developed and implemented, so that all necessary measures are taken to ensure that the person with a disability will go through the entire criminal justice process on an equal basis.
 - A. identification, for example through an individual assessment, should occur early in the criminal justice process **at the very beginning of the proceedings, and prior to any actions undertaken** as part of the criminal justice proceedings, for instance prior to a police interview.
 - B. The police, other law enforcement authorities and any other justice actor or individual involved in the identification of **disability must, after identifying the individual has a disability, ensure the provision of**

basic rights, such as the right to confront and cross-examine witnesses.; appropriate waiting spaces; removal of cloaks and wigs; adjustments to the pace of proceedings; separate building entrances and waiting rooms and protective screens to separate persons with disabilities from others if necessary due to physical or emotional distress; modifications to the method of questioning in appropriate circumstances, such as

assistance, accommodations and support from the early stages of the proceedings.

- C. Justice actors and other individuals involved in the identification of disabilities during criminal justice processes should be **adequately trained on the nature and definition of disability and the purpose of the identification of an individual's disability; the legal rights of persons with disabilities; and the duty to provide procedural accommodations to persons with disabilities.**

Promising Practice

In some, countries, such as the UK and Spain, this assessment can be done by intermediaries. In Spain, intermediaries can be provided freely by NGOs like Plena Inclusion.⁶⁶⁹ When prison officers suspect that a person has an intellectual disability, they contact Plena Inclusion that conducts an assessment and provides assistance in obtaining official recognition.⁶⁷⁰

- D. The primary purpose of the identification of a disability should be to obtain the information required for the competent authority to determine and decide, in consultation with the person with a disability **the provision of procedural accommodations.** This process should never be used as a means of diminishing participation of an individual or excluding participation entirely.
2. Judges and other justice actors should, at later stages in the legal process, **verify that the individual assessments have been completed** early in the process prior to the matter appearing before them.
 3. Defendants so assessed should be informed about the details of the individual assessment, **be involved in its development,** and should receive it when

⁶⁶⁹Plena Inclusion, *Briefing paper on barriers faced by defendants with intellectual and/or psychosocial disabilities in the Criminal Justice System in Spain*, Madrid, ENABLE Project, 2023, p. 20.

⁶⁷⁰ Ibid. 667. p. 30.

finalized. They should have the right to comment on such an assessment and, if necessary, contest it.

Systemic Recommendations

1. **Responsible authorities should identify and disseminate best practices** regarding the identification of disability and develop and implement trainings focusing on the human rights model of disability and the procedural accommodations which should be made so that persons with disabilities can participate on an equal basis in all legal processes.⁶⁷¹

Promising Practice

In Bulgaria, the courts use an “NGO assessment of the social functioning of persons with disabilities and their special needs.”⁶⁷² This assessment is designed to be used in all courts addressing cases with persons with disabilities. It aims to increase effective participation in the trial and to improve the protection of the person’s rights and interests.⁶⁷³

2. **Information sharing rules and safeguards** should be in place when an individual assessment is being conducted by justice actors.

Independent intermediaries / facilitators

Practical guidance and recommendations

1. **Where needed, an intermediary should be called to assist in communication during police interviews with the person with a disability suspected of the crime.**
2. **As a form of procedural accommodation, intermediaries should be provided to defendants with disabilities wherever and whenever needed, to enable clear**

⁶⁷¹ FENACERCI, [Briefing paper on barriers faced by defendants with intellectual and/or psychosocial disabilities in the Criminal Justice System in Portugal](#), Lisbon, ENABLE Project, 2023, p. 61.

⁶⁷² KERA, Plena Inclusión, [Briefing paper on barriers faced by defendants with intellectual and/or psychosocial disabilities in the Criminal Justice System in Bulgaria](#), Veliko Tarnovo, ENABLE Project, 2023, p. 31.

⁶⁷³ Ibid.

communication between them, the police, and justice actors, including the courts, to ensure safe, fair and effective engagement, and to provide the opportunity to fully participate in all stages of proceedings. This requires that:

- A. A sufficient number of trained intermediaries be made available for persons with disabilities from the start of the proceedings, and at all stages of the administration of justice.
- B. Systematic training on the role of intermediaries are in place.
- C. The use of intermediaries do not generate costs for persons with disabilities.
- D. In the absence of sufficient and qualified court-appointed intermediaries, courts work collaboratively with stakeholders who provide such support to persons with disabilities.

Systemic recommendations

1. In the long-term, procedural accommodations – including the possibility of an intermediary– should be included in national legislation and rules applicable to the Courts to ensure the full implementation of the CRPD in the justice systems.
2. National law should include the regulation on the position of intermediaries, which should include who can be an intermediary, what conditions need to be fulfilled, a code of ethics, and the need to remain independent part in the process.
3. Even where NGOs provide the resources to ensure intermediaries in the proceedings, the State has the obligation to provide necessary financial, material and human resources (for intermediaries) and should give practical effect to this responsibility.

Right to be accompanied by a support person

Practical guidance and recommendations

1. From the first contact with the authorities, persons with disabilities should **be informed of their right to be accompanied by a support person of their choice, that could include a family member. States should ensure that:**
 - A. if an individual with a disability so wishes, such trusted support persons can be present during all stages of the proceeding;
 - B. a procedure by which the role of such a support person is clearly determined and regulated;
 - C. no person with a disability is compelled to allow the participation of any such support persons in their legal affairs at any stage of legal proceedings against their will and preferences;
 - D. the role of an intermediary is not conflated with or replaced by a support person. The intermediary and the support person have different roles, and, where needed, provision for the participation of both should be made.
2. There should always be a **face-to-face contact with the trusted support person** if the individual with a disability desires such contact.

Procedural adjustments and modifications

Practical guidance and recommendations

1. The responsible State authorities should ensure that venues in the justice system where legal processes take place, including waiting areas, are always sufficiently adapted and accessible for persons with disabilities – and appropriate to the specific needs of the person.
2. **In addition to a physical environment, responsible State authorities should consider adaptation of venues on a case-by-case basis in consultation with an**

individual with disability, their intermediary and/or support person. The following could be considered:

- A. Limiting the exposure of the defendants to the public or more generally their contact with other persons;⁶⁷⁴
- B. considering the seating and positioning to be adapted when needed (for instance lawyers sitting with their backs to the defendant with disability in court may need adaptation); and
- C. taking measures to ensure that the contact with the justice system is, as far as possible, not intimidating.

B. Right to information and communication in accessible formats

Practical guidance and recommendations

1. **Every person with a disability has the right to make choices for themselves, and should have access to all the relevant information and support required to do so from the first contact with law enforcement authorities. Pursuant to this obligation:**
 - A. Information should be shared with defendants at all stages of the proceedings, including but not limited to the pre-trial phase, during the trial, and post-trial information.
 - B. **Information on existing support resources and accommodations** for persons with disabilities, as well as on how to access and use them, should be available and clearly communicated to persons with disabilities.
 - C. **An appointment of an intermediary and/or other support person(s)** should be considered and where necessary effectuated, in order to significantly help in communication and ensure that all relevant information is transmitted to and communicated by the defendant.
2. **The police authorities and other justice professionals must ensure that individuals with disabilities understand their rights and all relevant legal procedures and processes.**

⁶⁷⁴ Judicial College (United Kingdom), 'Equal Treatment Bench Book' (February 2021), p 123.

3. **Justice professionals must ensure that at all stages of the proceedings, defendants with disabilities are provided with accessible and understandable information about their rights, including:**
 - A. the right not to incriminate oneself;
 - B. what is likely happen in the applicable legal procedure;
 - C. the rules of places of detention; and
 - D. that they can rely on the support of the public institutions starting with their first contact with the justice system.
4. **When sharing information, the responsible authorities should ensure that it is being communicated in a way that is accessible to the defendant, with regard to their specific communication needs. Language needs to be adapted to the individual communication needs.**
 - A. Justice professionals should have access to a list of concrete tools (including the tools from the International principles) and clear guidance and examples on how to use them to facilitate effective communication with individuals with disabilities.
 - B. Where necessary, information should be presented in a simplified, comprehensible, easy-to-understand format or manner.
 - C. Specifically, justice actors shall adapt the following elements: the speed and tone of delivery, level of vocabulary, level of grammar, and the complexity of questions. While adapting their language, justice actors should also consider the defendants' ability to narrate independently and to understand questions related to time, their orientation and distance, and their level of literacy.⁶⁷⁵
 - D. Ensure the pace of the proceedings is well adjusted – ensure for instance rather short sessions, frequent breaks.⁶⁷⁶
5. **Written information** should be available in alternative formats: justice actors must ensure the elaboration of and provision of access to easy-to-read documents.
6. Responsible authorities should ensure that information about court procedures, including notices that require a response or an action to be taken, including summonses, subpoenas, writs, orders and sentences, is **provided in accessible formats**.⁶⁷⁷

⁶⁷⁵ Access Ability Australia (AAA), The Capital. Social Story, available at [A-visit-to-The-Capital-Social-Story-V1.pdf \(accessabilityaustralia.com\)](#), p. 6.

⁶⁷⁶ Justice Intermediary Starter Kit, Module 7 Accommodations, p.5.

⁶⁷⁷ Accessible formats include: Sign language; Video and audio guides; Telephone line advice and referral services; Accessible websites; Induction loop, radio or infrared systems; Closed captioning; Braille; Easy Read and plain language; Facilitated communication; and amplification devices and document magnifiers.

7. **Responsible authorities should at all stages of the proceedings ensure that all court processes provide the technical and other support necessary for defendants with disabilities to use any form of communication necessary for their full participation.**⁶⁷⁸

These forms of communication may, among others, require the use of:

- A. assistive listening systems and devices;
 - B. open, closed and real-time captioning, and closed caption decoders and devices;
 - C. voice, text and video-based telecommunications products;
 - D. videotext displays;
 - E. computer-assisted real-time transcription;
 - F. screen reader software, magnification software and optical readers; and
 - G. video description and secondary auditory programming devices that pick up audio feeds for television programs.
8. Responsible authorities should provide communication support, including through third-parties, for example
 - A. note-takers;
 - B. qualified sign language and oral interpreters;
 - C. relay services; and
 - D. tactile interpreters, where and when necessary.
 9. Responsible authorities should provide justice professionals with communication tools to use in communication with persons with disabilities.
For instance:
 10. The right to interpretation and translation should be fulfilled at all stages of the proceedings. Translators, interpreters, and intermediaries play different roles, but sometimes an intermediary can be helpful in fulfilling the right to interpretation and translation.

Systemic Recommendations:

1. The responsible authorities should act to ensure that all **communication support persons** are able to interpret effectively, accurately and impartially, both receptively (understanding what persons with disabilities are saying) and

⁶⁷⁸ These include- Assistive listening systems and devices; Open, closed and real-time captioning, and closed caption decoders and devices; Voice, text and video-based telecommunications products; Videotext displays; Computer-assisted real-time transcription; Screen reader software, magnification software and optical readers; Video description and secondary auditory programming devices that pick up audio feeds for television programmes.

expressively (having the skill necessary to convey information back to those persons), while using any necessary specialized vocabulary, such as legal or medical language, and respecting professional and ethical standards;

2. The responsible authorities should act to **provide for adequate training** on communication tools and methods for all justice professionals, including by ensuring the language barrier is overcome through training of justice actors as well as training on the rights of persons with disabilities of the all other relevant professionals like interpreters and intermediaries.

Promising practice

According to the Australian Disability Access Bench Book, an easy way to avoid this language barrier is to avoid using legal terminology and to use instead concrete and plain language. For instance, the judges and legal representatives should use the verb “to follow” instead of the verb “to comply”. Judges and legal practitioners should also explain particular terms and check during the hearing whether the defendant understands the meaning of specific words.⁶⁷⁹

C. Right of access to a lawyer and to legal aid

Practical guidance and recommendations

1. **The right to access to a lawyer must be guaranteed and facilitated from the outset of detention through the from the pre-trial stages of legal proceedings and processes, before the first actions in criminal proceedings, and throughout the trial. To ensure effective access to legal assistance responsible State authorities should ensure that measures are in place to:**
 - A. **Afford defendants with disabilities the right to legal assistance from the first contact with law enforcement, regardless of the nature of the crime they are accused of, and on terms that are no less favourable than all other persons.**
 - B. **Guarantee that all defendants are informed of their right to have access to a lawyer and effective legal assistance.**
 - C. **Inform persons with disabilities of their right to legal aid – including, where necessary to free effective legal assistance - and other possibilities, such as access to legal representation through civil society organizations.**
 - D. **Maintain and regularly update a list of legal representatives with expertise in disability. These legal representatives should under what are the rights of**

⁶⁷⁹ Australian Disability Access Bench Book, available at [Disability Access Bench Book \(judicialcollege.vic.edu.au\)](http://disabilityaccessbenchbook.judicialcollege.vic.edu.au).

persons with disabilities, including under the CRPD, and understand the obligation to provide procedural accommodations for persons with disabilities;

- E. Make procedural accommodations, such as interpreters, assistive technology and intermediaries, or the resources necessary to obtain such accommodations, **available to lawyers** to support effective communication with persons with disabilities in the discharge of their professional duties;
- F. **When a person is detained they must enjoy effective access to a lawyer and legal aid.**

Promising Practice

In Ireland, the National Advocacy Service for People with Disabilities provides communication and assistance services to persons with disabilities. They also help persons with disabilities in instructing a lawyer who represents their will and preferences. In Austria, a similar service is offered by a peer support group (BIZEPS).⁶⁸⁰

Systemic Recommendations

1. **The right to access to a lawyer must be guaranteed from the time of arrest to pre-trial stages of the proceeding, before the first actions in criminal proceedings, and throughout the trial. Measures should be taken to ensure that:**
 - A. **The public defence system can ensure equal access to lawyers that provide high-quality services to all defendants, including those with disabilities;**
 - B. **Legal assistance is effect and that there is a supervisory mechanism put in place by institutions charged with regulating the bar, such as bar associations and law societies. In doing so emphasis should be put on the lawyers' supportive role, being sufficiently proactive, and maintaining personal and sufficiently frequent contact with clients with disabilities.**⁶⁸¹
2. **Legal aid must be provided for all persons with disabilities who do not have the means to afford legal assistance,.**

⁶⁸⁰ E. Flynn, C. Moloney, J. Fiala-Butora, I. Vicente Echevarria, Report Access to Justice of Persons with Disabilities (2019), available at [CDLP-Finalreport-Access2JusticePWD.docx \(live.com\)](#), p. 18.

⁶⁸¹ FORUM, [Briefing paper on barriers faced by defendants with intellectual and/or psychosocial disabilities in the Criminal Justice System in Czechia](#), Praha, ENABLE project, 2023, p.75.

3. States should guarantee that initial training for lawyers on the rights of persons with disabilities is provided.

D. Accessibility of court facilities, information and services

Systemic Recommendations

1. Responsible authorities should ensure the accessibility of all court facilities, information, communications and other services, including information and communications technology and systems in accordance with the principles of universal design. Ensure all buildings in the justice sector, such as police stations, courthouses, and prosecutorial offices, are accessible to persons with disabilities. In order to achieve this, they should:
 - A. Make adequate financial resources available so that the courts, police stations, prosecutors offices and other physical structures encountered during justice processes are physically accessible to persons with disabilities. This may require the modification of existing buildings and structures as well as a prohibition of any further new buildings or structures being created that are not compatible with the principles of universal design and therefore accessible to all persons with disabilities.
 - B. Guarantee the provision of reasonable and procedural accommodations when facilities and services fail to ensure access to the existing physical environment for all persons with disabilities on an equal basis.
 - C. Accessible buildings and other places should retain their accessibility after their declaration. There are cases where accessible spaces have been converted to other uses due to alleged disuse (e.g. an accessible toilet has become a storage area for cleaning supplies).
 - D. Universal design guides provide specific suggestions, which should be implemented, including ramps, rails, lifts, grooving on the ground, specific parking lots, automatic doors, etc.⁶⁸²

E. Right to be present at trial and the right to presumption of innocence

Practical guidance and recommendations

⁶⁸² For specific guidance, please refer to article 2 CRPD – Definition of Universal Design, article 4.f CRPD and Principle 2 of the UN International Principles and Guidelines. See here for instance a guide for designers/engineers, which is being used in a number of universities - [PUD.pdf \(stanford.edu\)](#).

1. **Responsible authorities should take measures to ensure the right to be present at trial and to defend themselves in person, is respected for defendants with disabilities.**
 - A. Any exceptions to the right to be present at trial should not be disability-specific and should apply equally to all persons with disabilities.
2. **Identify and carefully consider for whom the remote hearing might be (un)suitable.**
 - A. If using remote hearings, ensure adequate training, IT tools, and a reliable internet connection for justice actors and equally secure such access on an equal basis to persons with disabilities involved in such proceedings.
 - B. Respect the person's will and preferences on remote hearings. Pursue the "best interpretation of the will and preference" only when the person cannot express them directly.
 - C. **Ensure access to procedural accommodations**, in remote hearings,
 - i. including where applicable, the participation of intermediaries and other support persons;
 - ii. providing that all communication support, including through third parties, (note-takers, qualified sign language and oral interpreters, relay services and tactile interpreters), is equally and effectively available to all persons with disabilities in the context of remote hearings.
 - D. Ensure effective access to a lawyers/ legal aid even in the context of remote proceedings..
 - E. Ensure that during a remote hearing, the role of each person taking part in the online hearing is clear, to all, including to the defendant with disability.
 - F. Ensure the pace of the proceedings is well adjusted – ensure for instance rather short sessions, and frequent breaks.

Systemic Recommendations

1. The responsible authorities should ensure that all suspects and accused persons with disabilities effectively enjoy the presumption of innocence presumed innocent until proven guilty under the law, including at pre-trial phases

F. Procedural rights regarding detention

Practical guidance and recommendations

1. Detention centres must be accessible, and where necessary, support to persons with disabilities must be provided.

Promising Practice

In Spain, prisoners and ex-prisoners can benefit from the Plena Inclusion Programme that aims to offer support at all stages: during legal proceedings, in prison, and after the release.

Systemic Recommendations

1. Deprivation of liberty should be considered a measure of last resort.
 - a. Community-based alternatives to incarceration should be available to all defendants, including those with disabilities.⁶⁸³
 - b. Alternatives to incarceration should be developed and implemented.
2. States must not allow for disability-based detention, institutionalization and other acts that result in disability-related torture and ill-treatment. No one should be detained in any facility on the basis of actual or perceived disability.
3. States cannot use involuntary institutionalization to compensate for the lack of adequate facilities.

⁶⁸³ Access to Justice Knowledge Hub, Implementing the Convention on the Rights of persons with disabilities in criminal justice systems, A briefing paper, July 2022, p. 19.