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Using therapeutic jurisprudence principles to enhance access to legal proceedings for persons with disabilities: The ICCAP model

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Abstract
This article proposes establishing a new model for making civil legal proceedings accessible to persons with disabilities, combining therapeutic jurisprudence principles with the requirements of the UN Convention on the Rights of Persons with Disabilities. The model suggests integration of a social worker to act as a coordinator for advising judges and prepare litigants using the ICCAP model: identification, communication, courtroom, attorney, and preparation. The model aims to ensure convention principles and relevant laws are implemented, adapting proceedings to the unique needs of persons with disabilities, thereby improving court accessibility and promoting access to justice for persons with disabilities.

Keywords
Accessibility adjustments, Convention on the Rights of Persons with Disabilities, legal proceedings, persons with disabilities, therapeutic jurisprudence

Introduction

Therapeutic jurisprudence is a theoretical concept that emerged from mental health law in the 1980s (Bajović, 2010). It examines the therapeutic and anti-therapeutic effects of the law and legal system on personal well-being (Wexler, 2001, 2014). This approach integrates principles and insights from psychology, psychiatry, clinical behavioral sciences, criminology, and social work into the legal system.

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In accordance with therapeutic jurisprudence principles, 'problem-solving' courts were established as an alternative to criminal proceedings, offering a more rehabilitative approach to justice. Their basic premise was that traditional criminal procedure cannot prevent the phenomenon of recidivism among offenders with complex social and psychological backgrounds.

Thus, therapeutic jurisprudence courts provide court-supervised treatment to certain groups of offenders, while addressing the causes of crime. Examples include courts specializing in drug cases, domestic violence, and homelessness. Mental health courts have been established on the principles of therapeutic jurisprudence for criminal proceedings involving persons with disabilities. The basic process of these courts includes, but is not limited to, requiring a confession of guilt and consent to community care instead of imprisonment, developing an individualized treatment plan, and close supervision by probation officers. Defendants who comply with the individual treatment plan and the conditions prescribed by the court receive a dismissal of charges or a reduction of their sentence (Bajović, 2010; Castellano, 2011; Wexler, 2014). Therapeutic jurisprudence argues that the behavior of the court's main actors (judges and lawyers) toward those involved in legal proceedings, particularly individuals with mental disabilities, has a significant impact on the latter's mental health and self-esteem (Haugli et al., 2020; Perlin, 2009; Perlin and Gallagher, 2019).

The implementation of therapeutic jurisprudence principles gained momentum after Judge Ginger Lerner-Wren established one of Florida's first courts based on therapeutic jurisprudence principles, aiming to protect the rights of defendants with mental disabilities (Perlin, 2013; Wexler, 2014).

In 1987, law professors David Wechsler and Bruce Winick established therapeutic jurisprudence as an interdisciplinary field of study and practice, introducing these principles to the world. What began as an informal global network of scholars, practitioners, judges, and students evolved into a worldwide movement, leading to the establishment of the International Society for Therapeutic Jurisprudence (ISTJ, 2023) in 2017. Over the years, additional countries worldwide have joined the ISTJ global advisory board, including Australia, Canada, France, Italy, Israel, Ireland, Great Britain, South Africa, Japan, Nepal, India, and Puerto Rico. All of these countries have ratified the Convention on the Rights of Persons with Disabilities (CRPD, 2006), which is why the principles of therapeutic jurisprudence align with the convention. They adopted similar approaches in their courts and implemented principles of therapeutic jurisprudence in their legal systems, adapting them to the local and legal contexts unique to each country (ISTJ, 2023; Stobbs, 2020).

Along with the successes of therapeutic jurisprudence there have been assorted criticisms (Wiener et al., 2010; Winick, 2013). For example, Quinn (2009) criticized the movement and its principles and called for a more in-depth and balanced examination that takes into account a variety of voices. She maintained that the movement ignores important accusations, citing the fear of weakening the rights of defendants since the informal proceedings in these courts may harm their right to a fair trial. In addition, she pointed to a conflict of roles when lawyers are required to work as part of the court 'team', perhaps preventing them from effectively protecting the interests of their clients. Quinn also raised the issue of pressuring defendants to plead guilty to be eligible for participation in the treatment programs, even if they are not actually guilty.

Although therapeutic jurisprudence has been extensively used and studied in criminal courts, no evidence has been found regarding its systematic application in civil courts. While in criminal cases, the treatment component often focuses on rehabilitation and the prevention of recidivism, civil proceedings involve a wider range of issues affecting people with disabilities, such as guardianship to discrimination claims to accessibility rights. These cases require different treatment considerations, as they often involve ongoing relationships, complex emotional dynamics, and

long-term consequences for daily life. This gap is particularly significant for persons with disabilities who frequently engage with civil legal proceedings.

To address this gap in civil proceedings, this article presents a synthesized approach to making legal procedures accessible to persons with disabilities, one that combines the principles of the CRPD with the concepts of therapeutic jurisprudence in civil law. The article proposes a new model, developed by the authors of the article, based on the research literature in the field of access to justice for persons with disabilities. This model aims to promote accessibility to civil legal procedures and ensure full equality of opportunity in the legal process, taking into account the unique needs of persons with disabilities.

The CRPD and access to justice for persons with disabilities

The CRPD is a significant treaty adopted by the United Nations in 2006, representing a landmark achievement in the field of human rights. It was built on the principles of equality, non-discrimination and inclusion, emphasizing that persons with disabilities should enjoy the same fundamental rights and freedoms as everyone else.

Central to the CRPD's commitment to justice is Article 13, which states:

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
2. To help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

To implement these requirements, the CRPD provides specific guidance on accommodations; these provisions are designed to ensure that persons with intellectual, mental, or sensory disabilities can in fact fully and equally participate in legal procedures. In addition, if an accommodation request has not been filed by a person with a disability or by the lawyer who represents them in legal proceedings, the judge must identify the litigant as a person with disability during the hearing who, because of the disability, cannot understand the legal process and is not properly represented by an attorney.

To ensure effective implementation, judges are required to explain the legal process, the person's rights, and the decision-making process in an adapted and accessible manner. Furthermore, the judge may order accessibility accommodations based on the type and severity of the individual's disability and the unique circumstances of the case. These accommodations may include, for example, a chaperone who explains what is being said to the person in lay terms using easy-to-understand language formats at the hearing. Using accessible language and implementing the necessary accommodations, this directive ensures that persons with disabilities can fully understand and participate in legal proceedings.

These provisions reflect the CRPD's fundamental commitment to empowering individuals with disabilities within legal proceedings through non-discrimination in judicial processes. This approach emphasizes not only the provision of accommodations but also the importance of training all personnel within the justice system to ensure their ability to provide accessible and adapted services to individuals with disabilities (United Nations, 2006).

Implementing the principles of therapeutic jurisprudence and the ICCAP model: A case example from Israel

In 2012, Israel ratified the CRPD demonstrating its commitment to upholding the rights and dignity of individuals with disabilities. This commitment was further reinforced through Section 5 of the Israeli Equal Rights for Persons with Disabilities Law, 5758-1998, which defines a person with a disability as someone whose functioning is substantially limited due to a physical, mental, or intellectual impairment. The Equal Rights for Persons with Disabilities Regulations (Service Accessibility Adjustments), 5773-2013, require the court to provide accessibility adjustments in judicial instances and bodies with quasi-judicial authority and authorities with the mandate to determine a person's disability and eligibility for service. Section 45 of these regulations states that the court will provide accessibility accommodations based on the disability of the person as well as at the request of persons with disabilities who are parties to proceedings in Israeli courts. The goal was to make the information accessible to every individual and to enable him or her to understand the procedure.

The implementation of these principles has evolved differently in various court settings. The principles of therapeutic jurisprudence in Israel have been reflected in the 2014 establishment of community courts designed to manage the phenomenon of criminal offenses in cases that involve social problems, to prevent subsequent recidivism and to implement a punitive policy that integrated rehabilitation and strengthening of the individual and the community. These principles are also applied in the family court where a social services unit operates, staffed by social workers who are an integral part of the court. Their role is to assist judges in providing evaluation and consulting services. Thus, the judges and social workers work in tandem to apply the principles of therapeutic jurisprudence in legal proceedings (Marcus, 2019).

In the realm of specialized courts, currently, Israel does not have a court specifically for individuals with disabilities, such as a mental health court. However, there is legislation designed to regulate the manner of investigation and testimony of persons with emotional or mental disabilities in criminal proceedings – The Law of Investigation and Testimony (Adaptation to Persons with Emotional or Mental Disabilities), 5666-2005. The law defines the rights of these persons in an investigation and a trial and requires special adjustments to ensure the fairness of the procedure and prevention of harm. Among other things, the law states that the investigation of a person with a mental disability will be done by a special investigator with appropriate training and allows a chaperone to be present on behalf of the person being investigated.

Building on this framework, the law also allows certain adaptation measures, such as the testimony without the presence of the accused, the use of augmentative and alternative communication (AAC) and the presence of an escort. The purpose of the law is to ensure the rights of persons with emotional or mental disabilities in the criminal procedure while maintaining the fairness of the procedure and the dignity of those interrogated and of the witnesses.

To advance these goals, the Haruv Institute launched a project designed to develop and implement a method for making investigation and testimony procedures accessible for persons with disabilities through AAC. Their goal was to increase access to justice for persons with communication disabilities, and to allow them to testify and to report injuries and offenses committed against them. The project emphasized changing attitudes and increasing confidence in the ability of these persons to provide reliable and legally valid information. Special investigators and speech-language therapists were trained to work with this population in the context of investigations. The objective was to increase awareness among professionals, the justice system, the police, and even the families that persons with communication disabilities can be questioned and can testify, as well

as collaborate with representatives of the Ministry of Welfare, the Ministry of Education, the police, the justice system, and others (Haruv Institute, 2019).

Despite these initiatives, challenges remain. A 2019 Israeli report by the State Comptroller on ensuring the rights of persons with disabilities in legal proceedings (The Israeli State Comptroller, 2019) revealed that despite clear and detailed instructions on making the court system accessible to persons with disabilities, the courts' administration did not train all judges in accordance with Israeli Equal Rights for Persons with Disabilities Regulations (Service Accessibility Adjustments), of 5773-2013. In 2018, 44 judges were trained, representing 5 percent of the total. This raises concerns that judges failed to identify a person with a disability during their legal proceedings[1] or that they failed to know what accommodations the person required.

Given these challenges, it is suggested that if the courts should strictly implement the CRPD and legal corpus that is relevant to persons with disabilities, Israel should explore the matter in depth and train all judges; this would be a significant step forward in advancing access to legal proceedings for persons with disabilities. Even so, it appears that this is not enough, and that it is appropriate to propose additional steps based on the principles of therapeutic jurisprudence to assist judges in adapting the proceedings to the unique needs of litigants with disabilities. It may not be sufficient to rely solely on the nature/character of each judge or on his or her personal commitment to the therapeutic approach (Perlin, 2013; Wexler, 2014) nor on the training that the judge has received in the field of disabilities, nor on his or her ability to implement the tools acquired in training in the context of legal proceedings.

Therefore, the proposals in this article are intended for courts that are not based on principles of therapeutic jurisprudence but where persons with disabilities are nevertheless involved in civil legal proceedings, such as procedures for appointing a guardian, civil proceedings, such as tort claims, discrimination in employment, accessibility, and filing a claim in small claims court. In all these proceedings, beyond the right to access legal proceedings, the legal proceedings themselves must be adapted to the specific abilities and needs of the person with disabilities, so that the individual may fully participate in the legal process and realize his or her rights. It is essential that the legal proceedings are accessible and equal for them in accordance with therapeutic jurisprudence principles and the principles of the CRPD (2006; Wexler, 2014).

It is suggested that if the courts are to strictly implement the CRPD and legal corpus that is relevant to persons with disabilities, the country should explore the matter in depth and train all judges; this would be a significant step forward in advancing access to legal proceedings for persons with disabilities. Even so, it appears that this is not enough, and that it is appropriate to propose additional steps based on the principles of therapeutic jurisprudence to assist judges in adapting the proceedings to the unique needs of litigants with disabilities. It may not be sufficient to rely solely on the nature/character of each judge or on his or her personal commitment to the therapeutic approach (Perlin, 2013; Wexler, 2014) nor on the training that the judge has received in the field of disabilities, nor on his or her ability to implement the tools acquired in training in the context of legal proceedings.

The importance of these adaptations is highlighted by the failures found in the State Comptroller's report, according to which the court administration had failed to adjust procedures, train employees and judges, handle requests for accessibility adjustments, and maintain orderly information about these requests in civil proceedings (The Israeli State Comptroller, 2019). Furthermore, in many cases legal proceedings took place without hearing the person with the disability, especially when they had a guardian. Also, while therapeutic jurisprudence has been widely applied in the context of criminal law, its application in civil proceedings has been studied less and therefore presents an opportunity for innovative research and a contribution to the field. Therefore, this article proposes a model for these procedures. Finally, in civil cases, there may be more opportunity for early

intervention and prevention of the escalation of legal problems, which corresponds to the proactive nature of the model proposed later in this article. This proposed model is intended for all persons with disabilities involved in the legal process, including litigants and witnesses.

Integration of a social worker to act as a coordinator in legal proceedings involving persons with disabilities

In the context of therapeutic jurisprudence, to improve the accessibility of legal proceedings involving persons with disabilities, an effective change in the accessibility of legal proceedings for persons with disabilities requires a systemic and institutional commitment to therapeutic judgment. Thus, it proposes integrating a social worker position, requiring a combined degree in social work and law, along with and experience working in the field of disabilities, within Courts Administration, to implement the principles of therapeutic jurisprudence as this would help ensure access to justice for persons with disabilities in civil courts. This social worker should operate according to the proposed ICCAP (identification, communication, courtroom, attorney, and preparation) model, as discussed later in this article.[2]

The qualifications required for this role include an academic degree in social work with a specialization in law and disability studies. In addition, proven experience in working with individuals with disabilities, a deep understanding of the therapeutic jurisprudence principles, and demonstrated ability to coordinate between various entities are necessary.

The integration of social workers in the legal arena is based on successful models already implemented in various contexts. For example, in Israel, support units have been established to operate alongside the courts. These units assist families in marital disputes with rehabilitation, support, and prevention, while also aiding the courts in fulfilling their roles by incorporating therapeutic and emotional aspects. For instance, the units work to help families in conflict through mediation procedures, in an attempt to settle the conflict before the parties reach litigation in family court. The mediation process conducted by the social workers in the unit, focuses on the emotional and psychological needs of the parties and not on the legal aspects (Marcus, 2019). Another example is the model in the Public Defender's Office (2022) for minors, where social workers are integrated into the juvenile public defense system to assist in processes of rights realization and provide emotional and familial support to juveniles and their families.

In Israel, the Ministry of Justice will fund the coordinator position. In other countries, it is recommended that the ministry responsible for the courts fund this role. The success of existing models strengthens the argument for integrating social workers into the courts' administration as part of a broader trend of making the justice system more accessible and improving services for vulnerable populations.

During legal proceedings, the coordinator and his or her team will advise judges on how to incorporate the principles of therapeutic jurisprudence into the judicial process and prepare litigants with disabilities for court based on the ICCAP model.

ICCAP model principles

I – Identification

Identifying the individual involved in the legal proceedings as having a disability. Identifying whether a person with a disability is involved in the legal proceedings (before the commencement of legal proceedings) is one of the basic requirements for exercising the rights of persons with disabilities. Early identification allows for necessary accommodations to be made before legal

proceedings begin, such as arranging sign language interpreters, preparing braille materials, or contacting a language accessibility specialist (Morrison et al., 2021; White et al., 2021).

It is important to acknowledge that identification does not solely depend on self-disclosure, as some individuals may choose to withhold information about their disabilities due to concerns regarding stigma and the psychological ramifications associated with such disclosures (Han et al., 2022; Nario-Redmond et al., 2012). In addition, many disabilities may not be immediately apparent to others, including but not limited to certain intellectual disabilities, hearing impairments, and some manifestations of autism spectrum disorder. The presentation of autism, in particular, varies significantly among individuals – while some may show no outwardly visible signs, others may display more noticeable behavioral characteristics. This diversity in how disabilities manifest emphasizes the importance of a thorough, respectful, and multifaceted approach to disability recognition and accommodation in legal proceedings. Consequently, the identification process should be proactive and sensitive, with the capacity to recognize a diverse range of disabilities even when they are not explicitly communicated. Coordinators can provide training for court staff to identify potential indicators of disability and facilitate appropriate accommodations, all while preserving the individual's privacy and autonomy.

C – Communication

Communicating with the person with a disability prior to the commencement of proceedings is essential. In accordance with Article 21 of the CRPD (2006) regarding Freedom of Expression and Access to Information, the court must ensure that persons with disabilities can exercise their right to seek, receive, and impart information on an equal basis with others, through all forms of communication of their choice. A face-to-face introductory meeting might be necessary to address the needs of the person as a result of their disability. Such an introductory meeting will allow all parties involved to become familiar with the person and determine what accommodations they require in the court proceedings. This introductory meeting will be conducted in a way that is suitable for their specific needs, such as a face-to-face consultation, video call with sign language interpretation, braille materials, or AAC and all other accessible means of communication as specified in Article 21 of the CRPD. When necessary, skilled mediators for communication assistance will be provided, ensuring information is given in accessible formats without additional cost to the person with disabilities.

C – Courtroom

Getting to know the court where legal proceedings will take place. The coordinator will familiarize individuals with disabilities with the court environment where legal proceedings will take place, similar to the way in which a court preparation officer does for children involved in legal proceedings (Perlmutter, 2005).

The coordinator will be responsible for preparing individuals with disabilities for the upcoming legal proceedings, including explaining court processes in accessible and user-friendly language, to reduce anxiety and stress associated with legal proceedings, it is also possible to tour the courtroom in which the hearing will take place and explain, in accessible and clear language based on his or her disability, how the legal proceedings are conducted, providing all necessary preparations tailored to the litigant's specific disabilities. The aim is to ensure that each individual receives comprehensive support, addressing their unique needs and challenges within the legal system.

A – Attorney

Identification of whether the litigant is represented by an attorney. If so, the coordinator will contact the lawyer and brief them on the preparations and adjustments required of the client. In the event that a litigant does not have legal representation, the coordinator will assist them in obtaining appropriate legal representation while listening to her or his needs and wishes.

P – Preparation

Preparation of a summary report. Following these actions, the coordinator should prepare a preliminary report for the judge and communicate the main points of the report to the judge before the legal hearings begin. In addition, it is recommended that the coordinator be available to the judge during the legal proceedings for further advice if necessary. For example, in coordination with the judge and in a manner that does not prejudice the due process of a legal hearing, the coordinator may be present at court hearings to promptly examine any difficulties or needs that may arise for persons with disabilities, and to conduct brief feedback with the judge. The objective is to adapt the legal proceedings to meet the needs of person with disability as a means of ensuring accessibility, equality, and fairness in the legal process.

Conclusion

This article presents a proposal for a new preliminary model, the ICCAP, designed to make civil legal procedures accessible to persons with disabilities by combining the principles of therapeutic jurisprudence with the requirements of the CRPD (United Nations, 2006). The ICCAP model seeks to ensure that the principles of the CRPD and the legal corpus of any country relevant to the unique needs of persons with disabilities will be implemented in legal proceedings by incorporating the role of a coordinator who will function according to the model's specifics. The ICCAP model's implementation may contribute to a significant improvement in the accessibility of the court system for persons with disabilities and a fair and just process.

The model is particularly significant in the context of international social work practice, as social workers are uniquely qualified to serve as coordinators because their expertise in person-centered approaches (Washburn and Grossman, 2017) and their experience working with vulnerable populations and facilitating communication among stakeholders positions them ideally for this role (Harris et al., 2013).

Although the ICCAP model is originally presented in the Israeli context, the international applicability of the model extends to countries facing similar challenges in enhancing the accessibility of legal proceedings. The ICCAP framework can be adapted to various judicial settings, particularly in countries that have ratified the CRPD, while respecting different legal systems and cultural contexts. Implementation requires adequate resources, including specialized training, support staff, and accessibility infrastructure, along with institutional commitment from courts and justice systems. Progress can be evaluated through accessibility outcomes, stakeholder feedback, analysis of procedural efficiency, and monitoring of compliance with the CRPD. However, since the ICCAP is a theoretical model whose effectiveness has not yet been tested, further research is needed to examine its actual efficacy and whether it does, in fact, improve the experience of persons with disabilities involved in legal proceedings and to assess the model's effectiveness across different legal systems while building evidence for its broad international application.

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Notes

1. In accordance with section 46 (b) of the Regulations on the Equal Rights for Persons with Disabilities Regulations (Service Accessibility Adjustments), 5773-2013, the judge may order adjustments in obtaining evidence from a person with a disability, even if that person has not submitted a request for special adjustments in legal proceedings, if they identify that the person is unable to testify in the usual way due to a disability.
2. Throughout this article, this social worker will act as and be referred to as 'the coordinator'.

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