

August 6, 2020

Joint Committee on Transparent Policing and Use of Force Reform
Oregon Legislature

Dear Honorable Co-Chair Senator Manning, Co-Chair Representative Bynum and Members of the Joint Committee on Transparent Policing and Use of Force Reform:

Thank you for examining the dangerous intersection between racism and disability discrimination in the criminal justice system. It is a big, urgent problem. [McCauley \(AJPH Research 2017, linked here\)](#) showed that the probability of being arrested by age 28 for a Black, *disabled* male is 66%. Lord, have Mercy! The additional identity of disability increases the risk of arrest by at least another 10% regardless of gender or race. The greatest increase in arrest-risk was 20% (from 22% to 42%) for Black women. The same increased risk for those living with disabilities has been shown for assaults and hate crimes. This tells me that we cannot address systemic racism without addressing systemic ableism (discrimination against people living with disabilities). Likewise, we cannot address the justice system's blind spot for disabled people without attending to the additional right to equity and inclusion of co-existing stigmatized identities such as race.

Introductions: I am a White critical care and pulmonary physician, a person of privilege who cares for people with disabilities and diverse other identities. I am the father of young adult children we adopted from Oregon's beleaguered foster care system, young people living with multiple developmental and physical disabilities related to prematurity, neglect and abuse by their biological parents. Someone I love became entangled in the justice system, labeled as a suspect. He was excluded from justice processes, denied credibility (including the presumption of innocence) and his benign disability characteristics were misrepresented as a danger to the community by a series of mis-informed justice professionals. Abused first by his biological father, he was discarded into the "school to prison pipeline" to be abused again by the system.

I realized from the beginning that if our loved one was a first-generation Hispanic college student whose family struggled to make ends meet in Hermiston, or a Black student from Portland, our loved one would have been incarcerated. We realized that incarceration would carry a certainty of physical, sexual and emotional abuse for our loved one.

Transformation: As a result of our family's experience, with a sense of obligation not only to my loved one but also that hypothetical disadvantaged person in Hermiston and Portland, I reduced my professional clinical obligations and began looking at disability intersects in the justice system. I have spoken with many¹ and confirmed that there is a dangerous and injurious blind spot for developmental and other disabilities in the criminal justice system. We (Benton County) are building a prototype

¹ There are many professionals in Oregon who recognize the developmental disability blind spot and want to reform the justice system to correct systemic racism and ableism. The first step is to train up our existing infrastructure. A few of those supporting our efforts include the Oregon's Public Defense Services led by Lane Borg, DPSST led by Eriks Gabliks, The Oregon Sheriff's Association led by Jason Myers, Multnomah Co. District Attorney Mike Schmidt, The Oregon Criminal Justice Commission, Benton County, the Oregon Center for Behavioral Health and Justice Integration, the Corvallis and Philomath Police Departments, the Benton County Health Department and others.

Disability Resource Team (DRT) with the goal of scaling it statewide, including a plan for bringing national disability justice trainers to Oregon in order to train-the-trainers so that we have regional training experts here in the Northwest. This program is the established, field-tested [Pathways to Justice training developed by The Arc of the United States and funded through a grant by the U.S. Department of Justice, linked here](#). There is no time like the present for this past-due awareness, access and accommodations. I have some foundational principals to share with you and plan to add you to our monthly DRT newsletter so that your staff can track and assist our progress.

The CAHOOTS model is insufficient for developmental disabilities: Eugene and Lane County's CAHOOTS program is innovative and effective for people experiencing mental illness, homelessness and addictions. However, CAHOOTS is not designed to illuminate the criminal justice blind spot for people with developmental and other disabilities. Likewise, Crisis Intervention Training (CIT) does not answer the needs of people with disabilities. The [difference between a CIT and Disability Resource Teams are described in this link](#) (quick reference is the table on the last page of that document).

When you have time, please consider ten things I have learned while stumbling around in Oregon's criminal justice system blind spot for developmental disabilities.

1. **Avoid the euphemism "special needs."** People with disabilities and their advocates are not asking for "special needs," we are asking for the same needs that able people claim including life, liberty, respect, property, access, inclusion and accommodations. "Special needs" is offensive to many people with disabilities. We do not want pity. There is nothing wrong with being disabled. Research shows "special needs" is an ineffective phrase for providing accommodations. Just say disability and strive to provide ADA and Section 504 compliant awareness, access and accommodations in every bill and every process.
2. **Avoid the euphemism "mental disorder."** Mental disorder is too often used as pejorative stereotype. We are all in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5). Let us say what we mean: "human being" or "mental illness" or "I'm not sure" is usually what people mean when they say mental disorder.
3. **Disabilities are not mental illnesses.** Governments and other entities have entangled mental illness and developmental disabilities as a matter of convenience and ignorance. They are different. Mental illnesses call for treatment. Developmental disabilities are an identity, they are neuro-diversity, they call for accommodations. When one feels a temptation to change a person because of their identity – the color of their skin or their disability – that person can find the one who needs to change or be treated when they look in the mirror. Historically, attempts to "treat" people with developmental disabilities, whether by health care or justice care, have

been disastrous.



Figure 1: Sharisse Tracey (left) has three Black sons, but is most concerned about her son who has autism because he is different, like Elijah McClain. Elijah died last year from a police chokehold and ketamine injection because he exhibited benign autistic characteristics of preferring to wear a ski mask, “acting weird” and “waving his arms around.” Ms. Tracey is afraid for her son’s life, a fear informed by facts.

4. **“Dual Diagnosis”** is a term designed for the intersection between mental illness and substance abuse. Please do not use it to describe people with developmental disabilities (DD). People with DD often develop anxiety and depression. Often the person with DD who develops more anxiety or depression, the most common “mental illnesses” in that cohort, are situational, related to lack of accommodations, bullying or abuse. In many of those cases, addressing the situation and providing accommodations is all the “treatment” they need. Additionally, you can’t hope to treat the mental illness of a person living with disabilities until you accommodate the disability. Disabilities always require accommodations up front, not as an after thought when “treatment” fails.
5. **“Behavioral Health”** is a destination that is often used to include in the same breath mental illness, substance abuse and DD. Doing so causes confusion and process errors. Effective processes require we disentangle those categories. Here is my breakdown of the three categories we usually mean by the euphemism “behavioral health” and the divergence in necessary next steps.
 - a. **Mental Illness.** Health care and justice care should make a more precise diagnosis and provide *treatment*.
 - b. **Substance Abuse.** Health care and justice care should offer *sobriety* and treat co-existing mental illnesses and psychosocial determinants of health.
 - c. **Developmental disabilities.** *Always start with accommodations.* These accommodations are inexpensive and have a great return on investment. Early accommodations reduce the need for expensive services (such as incarceration, government housing and unemployment). Early accommodations also reduce the need for additional accommodations! Sadly, we have many instances in which accommodations are only considered when people fail in an ill-designed, unaccommodated “treatment” program.
6. **Prevalence of DD in the community is probably greater than you realize.** The data is consistent: 17-19% of Oregonians live with a developmental disability (1 in 6). People who quote low single digit prevalence data (1-2%) are using the prevalence of those who have qualified for expensive,

hard-to-get state services. “It is way higher than that,” a pediatrician told me.² One in six Oregonians is 744,000 people, a population greater than Portland proper. If people living with DD had their own legislative district, they would have 11.7 Representatives and 5.8 Senators. You must remember this group of your constituents and represent them.

7. **People with DD are over-represented in justice entanglements** whether labeled as victims, witnesses or suspects. We do not know exactly how high the prevalence in Oregon is because we are not screening or measuring DD in our justice system blind spot. We do know that the prevalence of sexual assault is 7-fold higher for those with DD (DOJ), there is a spike in disability hate crimes since 2016 (FBI), a four-fold increase in arrests and a 6-10 fold increased prevalence of incarceration among those living with DD. Of course, all those numbers are higher when people have another stigmatized identity such as skin color. An informed police officer said, “People with DD are the last to leave, the first to be arrested and the first to offer a false confession” in a law enforcement group. They are also the last to be considered credible witnesses or victims.

8. **Remember the Titanic!** Rather, remember the iceberg that sank the Titanic. The iceberg below represents people with developmental disabilities in Oregon. The 10% of those people above the surface are those receiving expensive government services. The Oregon Legislature counts them because they are a line item expense. That group is pretty well protected by statute, especially if they enter the justice system through a victim portal. The portion of the iceberg below the surface are the uncounted hundreds of thousands of vulnerable, neurocognitively disabled people living beneath your radar. They do not need, and often do not want, government services. They do want and need disability awareness, access and accommodations. Those reasonable accommodations are for the most part inexpensive disability and civil rights; which should be our habit, not an exception. I can show you that people living with developmental disabilities are not well protected unless they are receiving government services or if they enter the system through a suspect portal. The legislature should provide consistent vulnerable person protections based on the disability, not based on the service level or justice

² Here is a list of the people using the higher, accommodations-based prevalence figures: clinicians, educators, parents, the CDC, the WHO, the U.S. Dept. of Justice, the Office for Civil Rights, the ADA, Section 504 of the 1973 Rehab Act, IDEA and the Affordable Care Act.

label.



Figure 2: Iceberg representing those with disabilities living in Oregon. Many are unseen and unprotected vulnerable adults and vulnerable children.

9. **Include all justice intercepts.** I see that your focus is on the police. True reform for racial and developmental disabilities requires a broader field of vision to include all justice intercepts, as illustrated in Figure 3. We want to train all of these intercepts. I hope you do too because all of these intercepts have blind spots for racial and neurodiversity. Enforcement, in addition to training, should address all these intercepts as well. For example, the travesty of immunity for corrupt law enforcement officers who deny civil and disability rights should be extended to

officers of the court.

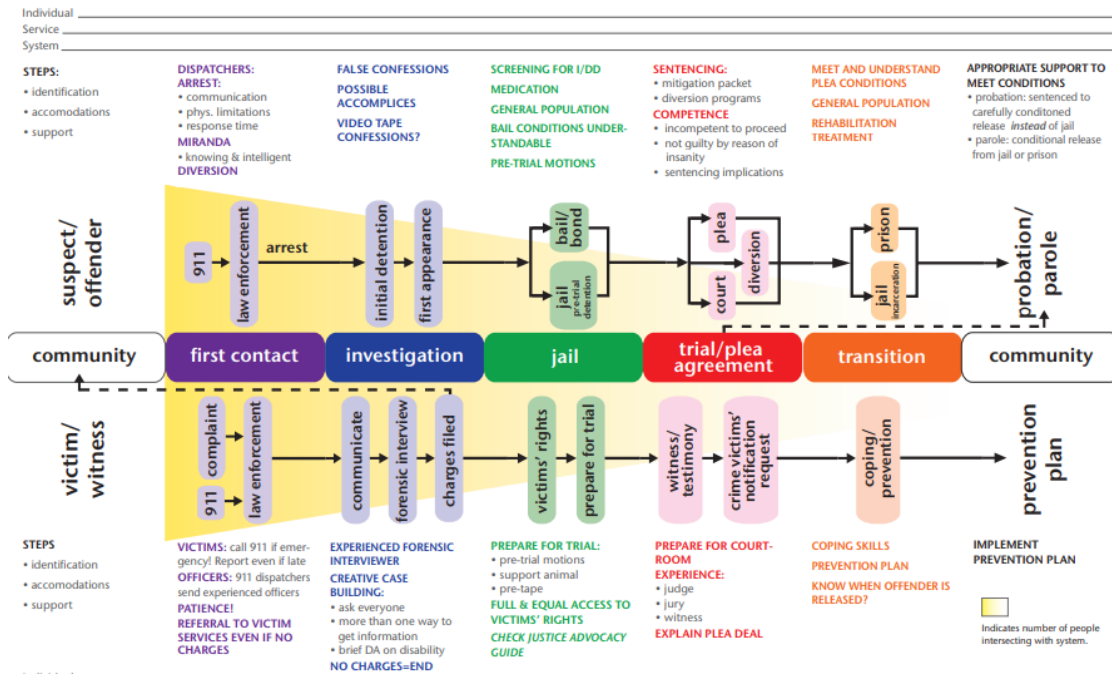


Figure 3: Sequential intercept map for disability accommodations in the justice system, addressing the needs of those many disabled people who enter labeled victim, suspect and witness (The Arc of the U.S.).

10. Including disability accommodations benefits all Oregonians. There are other reasons to consider disabilities in your justice reform focus. Roughly 25% of Oregonians live with a disability, the rest of us are only temporarily abled. Disability accommodations usually benefit all Oregonians. For example, that beautiful new ramp at Oregon’s Capitol benefits not only those who use wheelchairs for a mobility disability, but also accommodate people pushing strollers or pulling wheeled briefcases. It is not just a kindness or ADA mandate to ensure disability accommodations, it is also smart politics. The extended disability community is roughly a supermajority of Oregon voters. They are usually more active voters, unconstrained by racial, gender or political party tribalism.

Thank you for your time and (hopefully) your inclusive, equitable leadership.

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