

# Decriminalizing Disabilities: Helping All Kids Thrive


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What percentage of  
youth you work with  
in the delinquency  
system have  
disabilities?  
**Are you  
sure?**

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# 4–22%

of youth in the general population  
have a disability

Source: Jonathan A. Schulz et al., *Measuring Disability Among U.S. Adolescents and Young Adults: A Survey Measurement Experiment*, *Prev. Med. Rep.*, June 2024, at 102770, <https://doi.org/10.1016/j.pmedr.2024.102770>.

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# 65–70%

of youth involved with the juvenile legal system  
have a disability

Source: JESSICA SNYDMAN, NAT'L CTR. FOR LEARNING DISABILITIES, UNLOCKING FUTURES: YOUTH WITH DISABILITIES AND THE JUVENILE JUSTICE SYSTEM 2 (2022), <https://nclcd.org/wp-content/uploads/2023/08/NCLD-Unlocking-Futures-Final-7th-Dec-Updated-.pdf> [<https://perma.cc/2FT3-DSU9>] (citing THE ARC NAT'L CTR. ON CRIM. JUST. & DISABILITY, JUSTICE-INVOLVED YOUTH WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES: A CALL TO ACTION FOR THE JUVENILE JUSTICE COMMUNITY (2015)).

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# Which disabilities are most common?

- Learning Disabilities
- Speech and Language Disabilities
- ADHD
- Autism
- Intellectual Disability
- Post-Traumatic Stress Disorder
- Mental Health
- Oppositional Defiant Disorder

Disability = a physical or mental condition that substantially limits one or more major life activities

Americans with Disabilities Act & Section 504 of the Rehabilitation Act of 1973

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(a) How have you seen disability impact youth within the delinquency system?

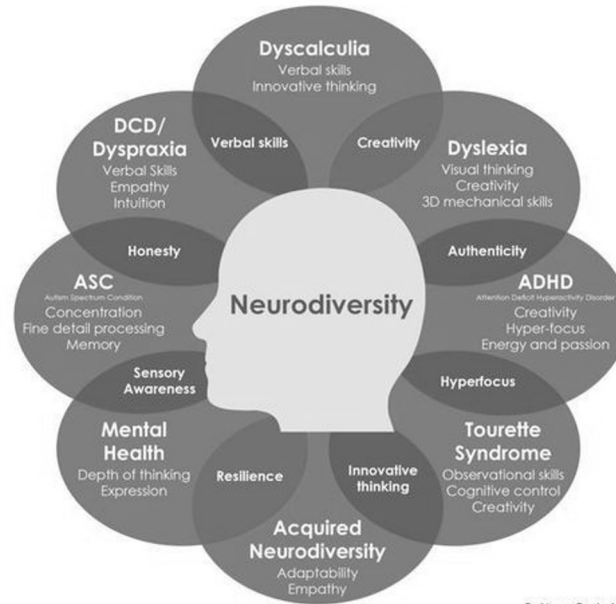
(b) Has the system responded to youth with disabilities in ways that are helpful or unhelpful?

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# The Power of Neurodivergence



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# Stigma



Youth may:

- be uncomfortable with conversations about their disabilities
- not identify as disabled
- not want to seek diagnosis
- not want you talk about their disabilities in court

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## ASK THE YOUTH FOLLOW THEIR LEAD

### KEY TAKE AWAYS:

- Listen and notice what language the young person uses to talk about their disability.
- Ask the young person directly what words they want you to use when talking to and about them.
- Remember, their preferences may not be the same as their parents.

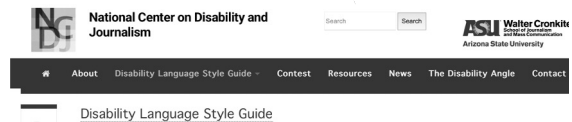


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## Avoid:

- **The r-word:** use “intellectual disability” instead
- **Able bodied:** non-disabled is preferred
  - **Differently-abled, hand-capable:** considered condescending
- **Asperger’s Syndrome:** no longer an official diagnosis; use umbrella term of “autism”
- **Suffers from:** carries the assumption that the person has a reduced quality of life or there is something inherently wrong with them
- **Euphemisms** like “tone deaf,” “turn a blind eye,” or “insane.”

Source <https://ncdj.org/style-guide/>



### Disability Language Style Guide

[https://ncdj.org/  
style-guide/](https://ncdj.org/style-guide/)

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## Be Sensitive

Avoid Using:

- **Disorder, impairment, abnormality:** specific condition is preferred
- **Special:** now widely considered offensive because it euphemistically stigmatizes that which is different (“special education” is still widely used when referring to public school programs).
- **Mental illness:** some impacted people prefer “mental condition” or “mental disability”
- **High functioning / low functioning:** widely used, but not a medical diagnosis, and many consider offensive
- **Severe:** implies judgement; “significant” might be better



Disability Language  
Style Guide  
[https://ncdj.org/style-  
guide/](https://ncdj.org/style-guide/)

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## Identifying Youth with Disabilities



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# Invisible vs. Visible

- **Invisible:** not obvious to the others, but still significantly impact the daily lives of the person with the disability.
  - Many of the disabilities commonly experienced by youth in the juvenile legal system are “invisible,” like autism, ADHD, PTSD, learning disabilities, etc.
  - Other invisible disabilities include diabetes, sickle cell anemia, hearing loss, etc.
- **Visible** disabilities are generally apparent, e.g., when a youth has mobility aids.



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# How do we learn about a young person's disability?

- Interviewing youth
- Interviewing family, teachers, and other close contacts
- Reviewing records for ALL youth
- Considering our own observations
- Referring young people to an evaluator
- Asking court to appoint an expert



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# Interviewing Youth & Families/Support Systems

## Parents/Family

- Ask parents/guardians about youth disabilities at initial interviews.

## Youth

- Build rapport & explain why asking about disabilities
- Asking youth “Do you have any disabilities?” is NOT likely the right question

INSTEAD ask a series of questions about:

- Prior services/therapies or hospitalizations
- Evaluations, 504 plans, IEP plans or meetings
- Challenges the youth faces at school with learning



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# Reviewing Records

## **REVIEW RECORDS THAT YOU HAVE RECEIVED:**

- School - academic & discipline
- Medical
- Mental health
- Any/all therapies
- Group homes, residential treatment centers
- Detention, any other placement
- Child welfare system
- Any prior evaluations



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# Your Observations



Youth may have an undiagnosed disability.

- **Communication**

- Lack of voice modulation
- Difficulty understanding/answering questions
- Inability to focus

- **Behavior**

- Repetitive motions or fidgeting
- Difficulty following directions
- Easily influenced

- **Impulsivity**

- **Social Skills**

- Trouble making or keeping friendships/bullied
- Easily influenced by peers (even more than most youth)
- Avoidance of eye contact

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# Court-Ordered Evaluation, Experts and Referrals

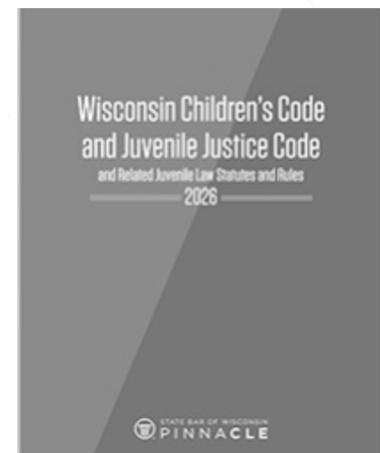
## IS THERE A LOCAL COURT RULE OR STATUTE ALLOWING THE COURT TO ORDER AN EVALUATIONS?

**938.295 Physical, psychological, mental or developmental examination.**

(1) Examination or assessment of juvenile or parent.

(a) After the filing of a petition and upon a finding by the court that reasonable cause exists to warrant a physical, psychological, mental, or developmental examination or an alcohol and other drug abuse assessment that conforms to the criteria under s. 938.547 (4), the court may order a juvenile within its jurisdiction to be examined as an outpatient by personnel in an approved treatment facility for alcohol and other drug abuse, by a physician, psychiatrist, or licensed psychologist, or by another expert appointed by the court holding at least a master's degree in social work or another related field of child development, in order that the juvenile's physical, psychological, alcohol or other drug dependency, mental, or developmental condition may be considered. The court may also order an examination or an alcohol and other drug abuse assessment that conforms to the criteria under s. 938.547 (4) of a parent, guardian, or legal custodian whose ability to care for a juvenile is at issue before the court.

(b) The court shall hear any objections by the juvenile and the juvenile's parents, guardian, or legal custodian to the request under par. (a) for an examination or assessment before ordering the examination or assessment.



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# Kwame

What bothers you about this story?

Kwame is a 14-year-old African American boy who was stopped by police as he tried to enter the subway without paying.

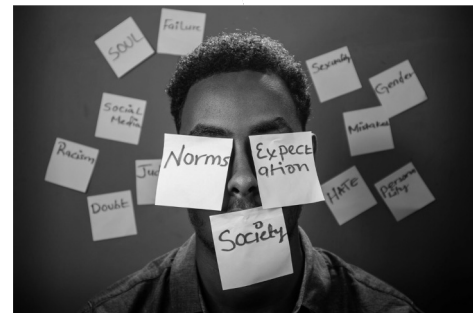


- When the first officer approached, Kwame engaged calmly. Then another officer walked up, put his arm on Kwame's shoulder, and began pulling him toward the door.
- Kwame began to kick, scream, flail his arms, and bang his head on the turnstile.
- Officers dragged him outside and placed him in a police car. Kwame kicked car door off its hinges. **Kwame was charged with Assault on a Police Officer and Malicious Destruction of Property.**
- Officers later told Kwame's aunt that they "thought something was off" about Kwame, noting that Kwame's body tensed up; his expression appeared distant; and Kwame told the officer not to touch him.
- Defense counsel later learned that Kwame was attending a full-time school for students with severe learning disabilities. He had a therapist and was taking 8 different medications for ADHD, mood disorder, anxiety, and sleep disruption. He was scheduled to be tested for autism in the following weeks. Kwame had challenges with auditory processing and short-term memory, making it difficult for him to follow instructions.

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# Criminalizing Disability

Can you think of any examples?



**Youth are drawn into the delinquency system when:**

- A child's behaviors are a manifestation of their disability but also meet the elements of a delinquent offense;
- A child acts out with delinquent behaviors after adults fail to provide needed services and accommodations; or
- Adults who are unfamiliar with—or insensitive to—youth with disabilities **misinterpret** their behaviors as defiant, malicious, or threatening when there is no criminal intent; and

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# Criminalizing Autism



- Up to 18% of youth in the juvenile legal system have autism (compared to < 4% of youth in the general population)
- Nearly 20% of young people on the autism spectrum experience a police encounter before they reach 21, with about half of those encounters occurring before they turn 15.

Police and others may interpret behaviors commonly associated with autism as being suspicious or criminal:

- **Differences in social interaction:** lack of eye contact, refusal to talk or talking too much
- **Sensory processing differences:** Responses to crowds, being touched, or other sensory stimuli
- **Focused interest:** perseverating on a topic or difficulties with being redirected
- **Repetitive behaviors:** fidgeting
- **Preference for predictability & routine:** startled by abrupt police interactions

Sources: <https://pubmed.ncbi.nlm.nih.gov/articles/PMC6828706/>, <https://www.cdc.gov/mmwr/volumes/73/wr/mm7315a5.htm>  
<https://pubmed.ncbi.nlm.nih.gov/articles/PMC6628706/#R12>  
 Julianna Rava, Paul Shattuck, Jessica Rast & Anne Roux, The Prevalence and Correlates of Involvement in the Criminal Justice System Among Youth on the Autism Spectrum, 47 J. AUTISM & DEV. DISORDERS 340, 343–44 (2017).

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## Criminalizing Disability at School

Leading to:

- New criminal charges
- Violations of pre-trial release
- Violations of probation

Youth with disabilities may:

- Find it challenging to sit still or follow the teacher's directions
- Refuse to put away their phone in class
- Move about the classroom
- Fidget
- Make excessive noise, or otherwise distract other children
- Talk to or touch other children, potentially creating conflict during instruction time.



Majority of police in schools have not received special training regarding appropriate engagement with students with disabilities. Police themselves have expressed need for such training.

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# Escalation

Escalation may occur when teachers, police, or other authority figures:

- move closer or touch the child,
- become louder and more authoritative
- appear even more threatening to a young person with a disability.

Escalation often occurs when adults fail to adjust their tactics to account for the unique needs of youth with disabilities.

The escalation may elicit a physical response or protective stance from the child that leads to additional, more serious charges like assaults and threats.

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## Escalation: Speech and Language Disabilities



**Youth who have disabilities affecting their speech and language may:**

- Be unable to process and respond to “WH” questions like who, what, where, when, and why – especially under rapid fire (causing adults to perceive them as evasive and suspicious)
- Curse or erupt in outrage because they cannot process and calmly express their needs and emotions with appropriate words

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# Disability, Trauma, and Reasonable Articulate Suspicion

Manifestations of Disability Misinterpreted as Reasonable Articulate Suspicion

- Inability to quickly form answers to questions (language processing disability) = Failure to respond to police
- Fearful departure upon seeing police (PTSD) = Flight
- Fidgeting (ADHD) = Furtive gestures
- Lack of eye contact (autism) = Nervousness



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# Disability & *Mens Rea*

RESISTING ARREST	DISORDERLY CONDUCT	ASSAULT ON A POLICE OFFICER
Refusing to be handcuffed	Arguing or “mouthing-off” with a police officer	Youth fears and perceptions of excessive police force



**ESCALATION!**

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# Disabilities & Racial Disparities

- A 2023 report found that Black students made up over 17% of students with disabilities, but 33% of arrests.
- Black youth with disabilities were arrested at nearly double the rate that would be expected.



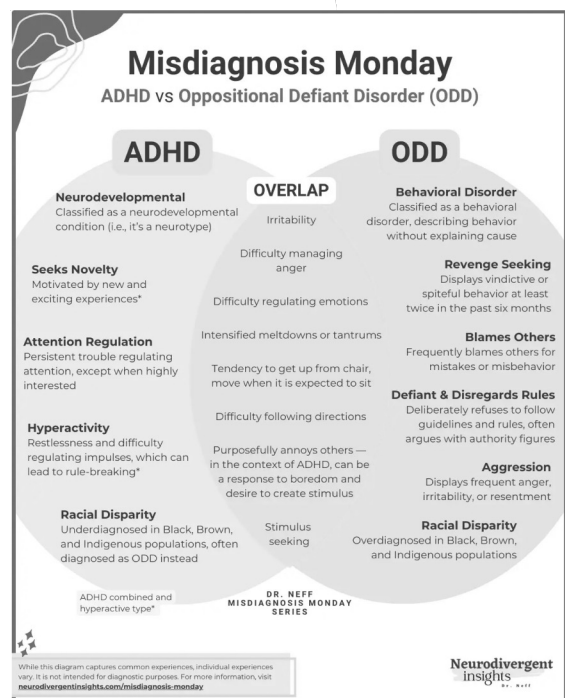
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# Misdiagnosis & Missed Diagnosis

Occurs due to:

- Misinterpreting symptoms
- Overlooking co-occurring disabilities
- Lack of cultural knowledge

Important to avoid or correct misdiagnosis and missed diagnosis.



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# Misdiagnosis: ODD v. ADHD

Dr. Megan Anna Neff

*Black, Hispanic, Latino, & Indigenous children are more likely to be diagnosed with ODD and have missed ADHD compared to white children.*

- Emerging research suggests **Oppositional Defiant Disorder (ODD)** is likely overly diagnosed in Black and non-white Hispanic children, particularly Black boys.
- A white child with similar behaviors is more likely to be diagnosed with **ADHD**.

Misdiagnosis perpetuates negative stereotypes

50% Hispanic children are 50% less likely to receive a diagnosis of ADHD

69% Black American children are 69% less likely to receive a diagnosis of ADHD

**Understanding ADHD, ODD, & Racial Bias**

**BIAS**

Less likely to receive ADHD medication, accommodations and supports

Studies demonstrate unconscious bias may play a role in the diagnosis.

Neurodivergent insights

Source: <https://neurodivergentinsights.com/adhd-odd-and-racial-bias/>


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# Misdiagnosis: Conduct Disorder v. ADHD and Autism

Black and Latine youth are also less likely than White youth to be diagnosed with autism.

- Black youth are 5.1xs more likely to be misdiagnosed with **conduct or adjustment disorders before correctly diagnosed with ADHD or autism.** being
- Indigenous youth have the lowest autism diagnosis rates among all racial groups in the U.S.
- White youth are approx. 19% more likely to be diagnosed with autism than Black children and 65% more likely than Hispanic children.

Source: <https://neurodivergentinsights.com/special-edition-bipoc-and-autism/>



Shannon Wright for NPR

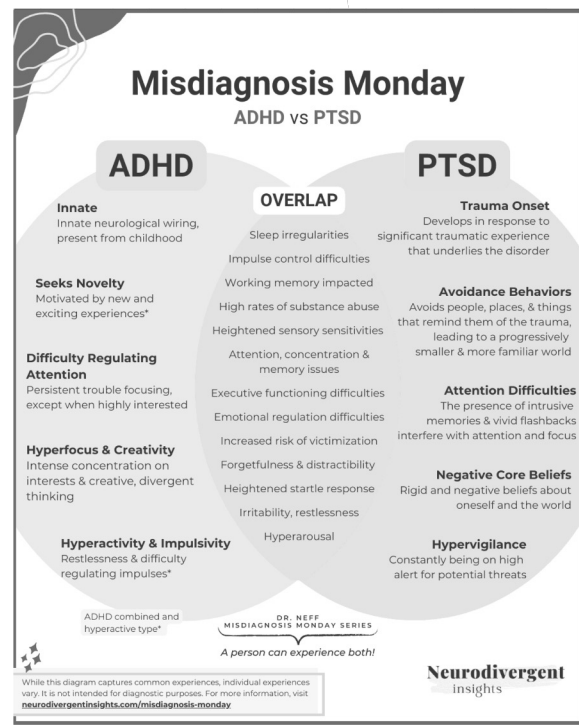
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# Misdiagnosis & Trauma

## PTSD and ADHD may be misdiagnosed

- PTSD and ADHD commonly occur together
- ADHD makes a person more vulnerable to developing PTSD after a traumatic event and can intensify PTSD symptoms.

**PTSD and ODD (offer example)**



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# Late Diagnosis

## Late diagnosis results in youth

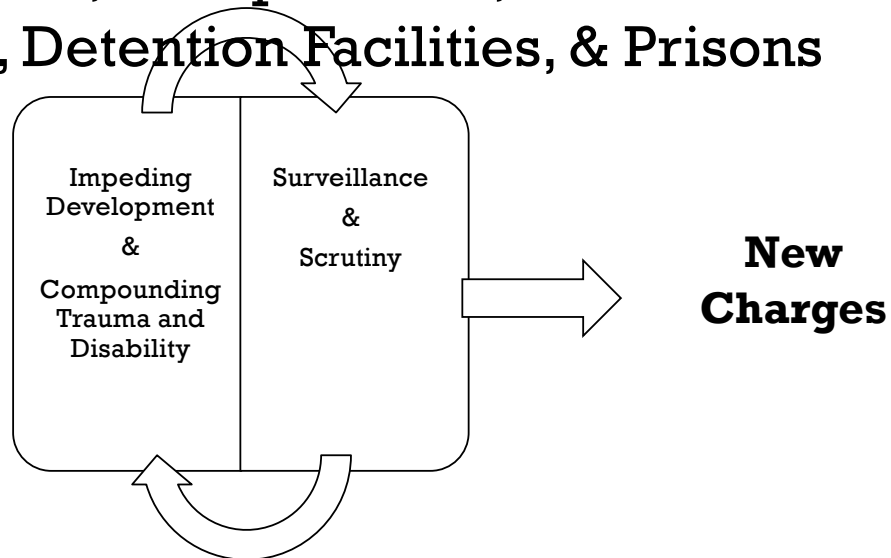
- Missing out on services, support, and skills development in critical years
- Spending more months in mental health treatment before diagnosis,
- needing additional treatment and support because they have been denied the correct support for so long
- Black children typically diagnosed with autism 1.4 years later than white children.
- Latino children diagnosed with autism 2.5 years later than white non-Latino children.
- Both were often missed in diagnoses despite meeting the criteria.
- Black and Latino youth needed up to three times the number of visits as white children before receiving a diagnosis.



Source: <https://neurodivergentinsights.com/special-edition-bipoc-and-autism/>

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## Congregate Care: Foster Homes, Group Homes, Residential Treatment, Detention Facilities, & Prisons



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### YOUTH IN PLACEMENTS ARE:

- Watched more closely
- Have more restrictions and limitations than other youth
- Less privacy
- Less opportunity for play and free time without adults
- Inadequate support for their trauma and disabilities



*What Is the Foster Care to Prison?*, Juvenile Law Center (May 26, 2018), available: <https://jlc.org/news/whaPipeline-foster-care-prison-pipeline>

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## Surveillance & Scrutiny

Less serious behaviors are more likely to result in formal charges for youth who are in congregate care.

Criminal charges in congregate care often arise out of:

- stressful events, including disagreements with staff or peers
- unexpected changes to routines, or
- challenges with family.



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Impeding  
Development,  
Compounding  
Trauma & Disability

## Restrictive & Repetitive Environments

Youth prisons, jails, group homes and residential treatment centers:

- Restrict youths' freedom of movement, limiting recreation, play, leisure, physical activity, socialization, and creative outlets
- Enforce repetitive schedules
- Provide few opportunities to practice independent decision-making or critical thinking skills



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Impeding  
Development,  
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## Learning Disabilities in Carceral Congregate Care

- Students who were served by IEPs in their home school may experience extended delays in receiving services while the youth prison waits to receive their education records.
- Youth prisons may alter IEPs by adding or removing services based on what is already available at the facility.
  - Youth prisons often fail to identify children with learning disabilities and psychological disorders who would be eligible for services under IDEA.
  - Frequent use of restraint and seclusion in youth prisons can make students miss instruction time.



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## School Pushout: Losing Special Education Placements

- Children who get sent to detention or group homes for manifestations of their disabilities often **lose their spot in full time special educations schools o programs.**
- Many of these youth will then be sent to alternative schools or drop out entirely.



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## Peer Dynamics in Placement

- Youth with autism (which impacts social interactions) are especially vulnerable to bullying.
- The frequent introduction of new peers often:
  - disrupts routine
  - disrupts trust necessary for healing from trauma
  - creates pressure for youth to assert their status or show their allegiance to certain peers
  - creates pressure for youth to impress each other by “one upping” other youth, accepting challenges to break rules, and other risk-taking.
- Although this behavior is an expected part of adolescent development, it is criminalized in congregate care settings.

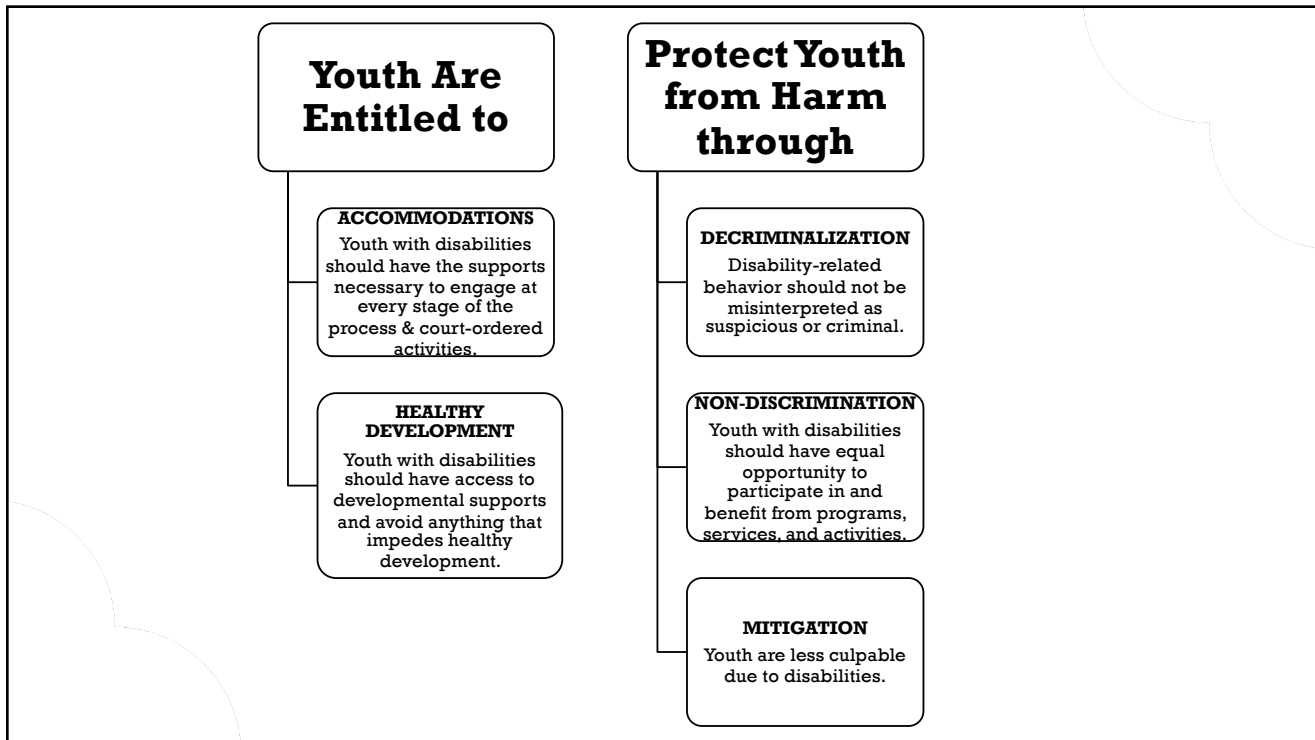


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## Serving youth with disabilities at every stage of the system

<b>Intake</b>
<b>Courtroom Accommodations</b>
<b>Diversion</b>
<b>Detention</b>
<b>Electronic Monitoring</b>
<b>Competency</b>
<b>Fourth Amendment Rights</b>
<b>Consent to Search</b>
<b>Interrogation</b>
<b>Mens Rea</b>
<b>Disposition</b>
<b>Conditions of Confinement</b>
<b>Education Rights in Youth Prisons</b>
<b>Probation &amp; Parole</b>

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## Intake (Kwame)

- Prosecutor and court intake team can consider whether to decline formal prosecution when behavior is a manifestation of a disability. Examples of when declining prosecution may be appropriate:
  - **Decriminalization:** When police/complainant have misinterpreted Kwame's behavior as criminal.
  - **Mitigation:** When Kwame should not be held criminally culpable for his disability-related behavior.
  - **Healthy Development:** When Kwame would have better access to the supports he need to develop if he is served in the community, not the legal system.



- **Systems-actors can work together to implement a process for screening out cases like Kwame's in the future.**

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## Decriminalizing Disability: Americans with Disabilities Act (ADA)

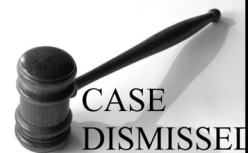


### Title II of the ADA

- Applies to all state actors - courts, court personnel, court actors, and police
- “No qualified individual with a disability shall, by reason of such disability, be excluded from participating in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”
  - Requires “reasonable accommodations”
    - Must be individualized

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## Decriminalizing Disability (ADA): Divert? Decline Intake?



“No qualified individual with a disability shall, by reason of such disability, be excluded from participating in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

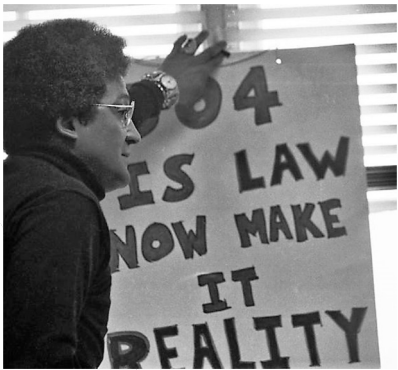
Query: To what extent does prosecution in the juvenile legal system (e.g., as opposed to diversion) subject the youth to ongoing **discrimination** as they attend court hearing, comply with pre-trial release conditions, and endure the burden of defending themselves during a trial arising out of the criminalization of their disability.

- ADA also requires **reasonable accommodations**

Query: To what extent does formal prosecution of youth with disability violate the ADA when the court system **fails to provide accommodations that** allow them be diverted on dismissed

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# Section 504 of the Rehabilitation Act of 1973



- Also requires reasonable accommodations and prohibits discrimination.
- “No qualified individual with a disability shall be excluded from participation in, denied the benefits of, or subjected to discrimination under any federally funded program solely by reason of her or his disability.”

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# Decriminalizing Disability: DOJ Actions

The U.S. Department of Justice (“DOJ”) has made clear that states **must be proactive** in ensuring the delinquency system is **not used to provide services that should be made accessible to disabled youth in their communities** without legal system involvement.

- U.S. Dep’t Just. C.R. Div., Opinion Letter on United States’ Investigation of Maine’s Behavioral Health System for Children Under Title II of the Americans with Disabilities Act 8–9 (June 22, 2022).



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# Decriminalizing Disability: 14<sup>th</sup> Amendment

The 14<sup>th</sup> Amendment protects young people's right to **due process**.

The 14<sup>th</sup> Amendment **equal protection** clause protects youth from:

- Discriminatory Enforcement by Police
- Discriminatory Prosecution
- Discriminatory Sentencing [Disposition]



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# Accommodations Required by Americans with Disabilities Act

- Title II: Public Programs & Activities – State and Local Governments
- Applies to all state actors - courts, court personnel, court actors, and police
- “No qualified individual with a disability shall, by reason of such disability, be excluded from participating in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”
  - Requires “reasonable accommodations”
    - Must be individualized



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# Courtroom Accommodations

## Examples:

- Regular breaks
- Simple language
- Explanations of the process
- Support person / animal
- Pen and paper so they can write and draw
- Patience when they have verbal outbursts



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# ADA Coordinators for Courts

**Federal regulation 28 C.F.R. § 35.107(a) require government entities with more than 50 employees to have a designated person who coordinates its efforts to carry out its ADA Title II responsibilities and investigate any complaints.**

## Frequently Asked Questions about the ADA and Courts Wisconsin Court System

The Wisconsin Court System is committed to providing equal access to court programs consistent with Title II of the American with Disabilities Act 1990 (ADA), as amended (ADAAA), and Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, and their implementing regulations. If you have a disability that restricts your ability to meaningfully participate in court proceedings, you may ask the court to provide you with reasonable and appropriate accommodations.

### What is the Americans with Disabilities Act?

Title II of the ADA states that "no qualified individual shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. §12132. Section 504 prohibits agencies that receive federal financial assistance from discriminating against otherwise qualified individuals on the basis of a disability in programs and activities. 29 U.S.C. § 794.

These laws and regulations are federal civil rights statutes that require state and local governments, including the court system, to accommodate the needs of qualified individuals with disabilities. The ADA benefits people who have an interest in court activities, programs, and services.

### Who qualifies for accommodations?

A person with a disability may receive an accommodation if the person has a physical or mental impairment that substantially limits one or more major bodily functions or major life activities, has a record of such impairment, or is regarded as having such an impairment. Major life activities include caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Examples of disabilities include mobility and motor impairments, psychological and mental illness, vision impairments, deafness and hearing loss, and environmental sensitivities. Temporary disabilities may also qualify.

### What kinds of accommodations are available?

Accommodations may include:

- Making reasonable modifications to policies, practices, and procedures (such as alternative time schedules, telephone conferences)
- Alteration of existing facilities or constructing new facilities (wheelchair accessibility)
- Relocation of a service or program to an accessible site
- Providing auxiliary aids and services (assistive listening devices, real-time captioning, qualified interpreters, readers, large print and Braille)
- Accepting Wisconsin relay calls.

<https://www.wicourts.gov/services/public/docs/faqs.pdf>

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## Where else may youth need accommodations... beyond the courtroom?

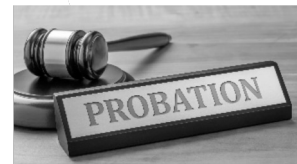
- Youth facilities/Youth placements
- Services provided by child
- Arrest
- Interrogation
- Diversion
- Detention
- Pre-Trial Supervision
- Probation / Parole
- Post-Disposition Placement



**When a child violates pre-trial release conditions, probation requirements, or placement rules, we should consider whether the violation could have been avoided if the child had been given accommodations for their disability.**

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## Probation Conditions



**What conditions of probation, diversion, pre-trial release are most difficult for youth with disability to abide by?**

**What accommodations might a young person with a disability need to successfully comply with probation conditions (or diversion, pre-trial release)?**

- Reminders about appointments
- Requirements explained in clear, simple language
- Modifications of certain requirements
  - E.g. a young person with autism who is sensitive to loud noises may need to do community service hours at the library instead of the animal shelter

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# Probation/Parole Violations

## Criminal Appeal:

### *Harris v. Commonwealth of Virginia* (Va. Ct. App. Nov. 1, 2022).

- Mr. Harris asserted that he was **unlawfully punished** for violating probation conditions with which his disabilities made it impossible for him to comply without accommodations.
- Although ultimately the court did not find that the trial court erred in revoking Mr. Harris' probation, dicta in the majority opinion notes that the court is not necessarily precluded from applying ADA standards in revocation proceedings.

Concurrence cites DOJ guidance:

- recognizing that "Title II [of the ADA] applies to *anything* a public entity does. . . . is not limited to 'Executive' agencies, but **includes activities of the legislative and judicial branches of State and local governments.**"
- asserting "that public entities covered by [T]itle II include courts when 'setting bail or conditions of release,' when 'sentencing,' and when 'determining whether to revoke probation.'"
- As to the question of whether the ADA provides only a civil remedy and not a defense, . . . states are obligated to obey federal statutes and are "**not necessarily free . . . to ignore the nondiscrimination requirements of [T]itle II until [they are] successfully enjoined in a civil suit**"



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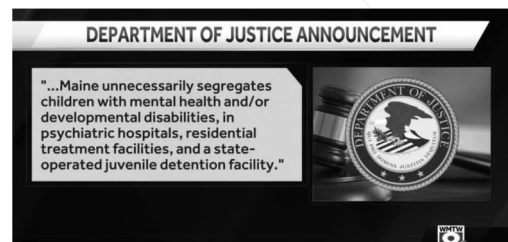
## Disposition: Out of Home Placements & *Olmstead*

*Olmstead v LC*, 527 US 581 (1999): The Court held that under Title II of the ADA unnecessary institutionalization is a form of disability discrimination.

The DOJ has taken actions to ensure that states fulfill their obligations under *Olmstead* to provide access to community-based services for young people with behavioral health needs.

- In October 2022, the DOJ released a report documenting how Nevada institutionalized youth with behavioral health disabilities in violation of Title II of the ADA and *Olmstead* where appropriate community and home services were possible.

*U.S. Dep't Just. C.R. Div., Investigation of Nevada's Use of Institutions to Serve Children with Behavioral Health Disabilities* (October 4, 2022).



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# Accommodations: Incarceration or Placement

*United States v. Georgia*, 546 U.S. 151 (2006) held Title II of the ADA applies to people incarcerated in state prisons.

Accommodations while incarcerated or in placement:

- Guards/Staff slow and patient communication
- Exercise/physical activity
- Visits with family
- Access to specialized services, including medical or psychological providers

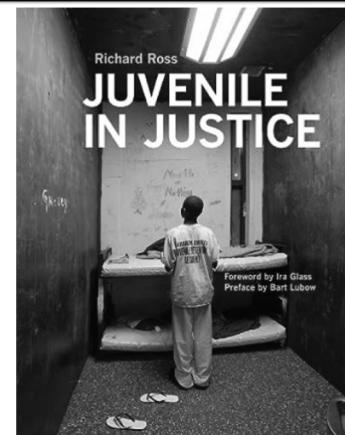


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# 8<sup>th</sup> Amendment Cruel & Unusual Punishment

- Placing a child with disabilities in a prison or jail that is dangerous for them may rise to cruel and unusual punishment.
  - *Cf. Atkins v. Virginia*, 536 U.S. 304 (2002), held that the execution of people with intellectual disabilities violates the 8<sup>th</sup> Amendment.

**A Call to Action:**  
Advancing Tennessee's Juvenile  
Justice System to Strengthen Families,  
Communities, and Oversight



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# Prohibiting Solitary Confinement

There are a number of DOJ Statements Against Solitary confinement for youth with disabilities

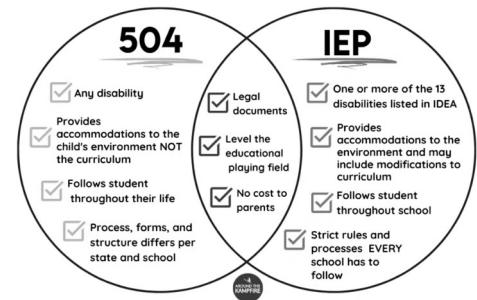
- U.S. Statement of Interest, Disability Rights Vermont v. Vermont
  - arguing that solitary confinement for youth with disabilities violates the First Step Act
- U.S. Statement of Interest, G.F. v. Contra Costa Cnty.(2015)
  - describing how youth “are often subjected to solitary confinement because of their disabilities and are denied special education”
- U.S. Statement of Interest, H.C. v. Bradshaw
  - highlighting that the use of solitary confinement for youth with disabilities violates IDEA



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# IDEA & Education Advocacy in Placement

- IEP/504 Plans: incarcerated/institutionalized students with disabilities are still protected under the Individuals with Disabilities Education Act (IDEA) & Sec. 504



- Manifestation Proceedings: IDEA protects students from being suspended or expelled for manifestations of their disabilities.

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# Systemic Solutions

What **trainings** would help systems-actors (attorneys, juvenile officers, judges, court personnel, juvenile justice staff better serve youth with disabilities and ensure their rights are protected?

- Identifying youth with disabilities
- How disabilities impact a young person's behavior
- Harms of criminalization
- How disabilities impact a young person's experience of the court system
- Accommodations youth with disabilities need at each stage of the process
- Obligations under the ADA



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# Systemic Solutions

What **policies** could be implemented to decriminalize disabilities and protect youth rights and who could implement them?

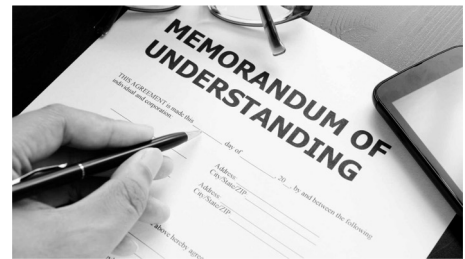
- Courts, Intake Teams, Juvenile Officers: Create new intake process to evaluate whether behavior is a manifestation of a disability and, if so, not file formal petition
- Prosecutors: decline to prosecute petitions for certain offenses (e.g. disorderly conduct, resisting arrest) for youth with disabilities
- Courts, Intake Teams, Juvenile Officers: Hire experts (psychologist, psychiatrist, social worker experienced in serving youth with disabilities, etc.) to
  - consult with to determine if charged behavior is a manifestation of a disability
  - assist in determining what accommodations are necessary
- Courts: Consider the least restrictive alternatives to detention/remove from home & utilize community-based services and supports
- Youth prisons and jails: prohibit segregation / solitary confinement for youth with disabilities
- Police: prohibit use of force on youth with disabilities
- Police: prohibit consent searches of youth with disabilities
- Police: prohibit interrogation without an attorney or disability advocate

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# Systemic Solutions

What **MOUs** might be necessary to decriminalize disabilities and protect the rights of youth?

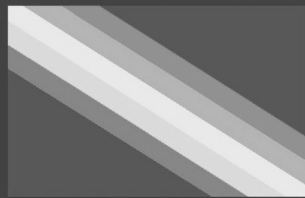
- Schools, residential treatment centers, group homes, detention centers, youth prisons: agree to not call police or make court referrals for certain offenses involving youth with disabilities (identify alternatives!)
- Schools and courts: agree not to pursue petitions where underlying behavior has been determined to be a manifestation of a student's disability



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# Questions?

## Disability Pride Month of July



### Symbolism of Disability Pride Flag

**Includes All Six "Standard" Flag Colors:** Signifies the Disability Community is pan-national, spanning borders between states and nations.

**Black Background:** Mourning those who have suffered or died from Ableist violence, also rebellion.

**Diagonal Band:** "Cutting across" barriers that separate disabled people from contemporary society and also represents light and creativity cutting through darkness.

**Five Colored Stripes:**

- Sensory disabilities
- Invisible and undiagnosed disabilities
- Psychiatric disabilities
- Physical disabilities
- Neurodivergence

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