

# **Access to Justice: A Cross-Disability Perspective on Reducing Jail Incarceration**

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**Access Living of Metropolitan Chicago**

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We look forward to expanding our conversations about disability and jail incarceration with local and national partners going forward. The work is not over.



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## **Preface**

# **Why Access Living?**

In 2018, Access Living was granted a one-year planning grant as a strategic ally from the MacArthur Foundation's Safety and Justice Challenge (SJC). The grant's purpose was to look at reducing jail incarceration, primarily in Cook County, Illinois, through a cross-disability lens. The SJC is a large-scale national investment project aimed at reducing mass incarceration in the United States.

Why did Access Living take on this project, especially given the existing body of work done on disability and incarceration to date?

Since 1980, Access Living has been the Center for Independent Living (CIL) serving people with disabilities living in the city of Chicago. "CIL" is the federally designated category for a nonprofit whose staff and board are comprised of a majority of people with self-identified disabilities providing core services, including peer support, advocacy, independent living services, information and referrals and transition to community integrated living for youth and residents of institutions.

While Access Living's assigned geographic area of direct service is the city of Chicago, the organization has a well-established reputation as not only a national leader but also a global one in transforming society's conversations about people with disabilities and expanding civil rights. This means that one of the basic functions of Access Living is to serve as a crossroads for many kinds of conversations about how to shape society to both remove disability barriers, and to normalize having a disability.

Over the past 39 years, Access Living has served a number of people who have also been impacted by the Cook County, and other, criminal justice systems. For many, disability began or worsened as a result of their criminal justice involvement. Time and again, our community members have told us about situations where people with disabilities would have benefited from supports and diversion rather than incarceration.

Locally, we have also collaborated with community members who are part of Access Living's Advance Your Leadership Power (AYLP) group. AYLP is comprised of people with disabilities who organize for social change. Formed in 2004, AYLP has evolved over the course of several years into a multigenerational group of disability activists who center racial justice. AYLP has historically worked with local community groups to address the school-to-prison pipeline and to build restorative justice practices in underserved communities. AYLP's work has increased Access Living's broader understanding of racial justice.



These grassroots advocates showed us that Access Living has value in serving as a place to have a process of dialogue and creativity towards solutions, centering the voices of those most impacted. Those conversations led us to ask: how can we further lift the voices of justice-involved people with disabilities? How do we show support for good work that has already been done? What else can we do to reduce the number of people with disabilities entering the criminal justice system? How can we invest more in our communities while not leaving behind those of us who are currently or have been in jail or prison?

For Access Living, it was clearly a matter of community responsibility that we should improve our efforts in criminal justice reform and restorative justice practice. Conversations with the MacArthur Foundation showed us that bearing down on the question of reducing jail incarceration might provide more opportunities for sparking new conversations and opening opportunities for innovation.

This paper is our effort to begin answering these questions.



# About Language

Throughout this document, where appropriate, we use gender-neutral terms such as “they” and “their” in place of gender-binary terms such as “he” or “she.” This is part of Access Living’s commitment to the evolving self-identification language options as voiced by the LGBTQIA+ community.

Readers also will also notice a mixed use of person-first disability and identity-first disability language; sometimes we will talk about “people with disabilities” as a general group and at other times we may use the general phrase “disabled people” or “disabled person.” This reflects the evolving nature of how we who live with various disabilities choose to identify ourselves. For some members of our community, person-first language is extremely important; for others, identity-first language critical. As a cross-disability group, Access Living respects and includes all points of view.

Language is similarly important in the criminal justice field. The word “offender” suggests that anyone in the justice system is guilty and has been convicted of an offense. Increasingly, through exoneration and pardons, it is clear that not all people accused or convicted are guilty of a criminal offense. Alternative language includes “justice-involved” and “people impacted by the criminal justice system.” When referring to people returning from incarceration, some prefer “returning citizens;” others believe this phrase may fail to capture those who are not citizens but may legally be in the United States. The terms “people returning from incarceration” and “formerly incarcerated” avoid any ambiguity. Using the term “people” in any descriptor has the value of underscoring that those in the justice system are, first and foremost, people.

Likewise, the phrase “people of color” is used throughout this document. This phrase is frequently used to describe members of non-white groups who have experienced marginalization and disenfranchisement. This phrase emphasizes the shared common experiences of systemic racism in the United States and includes a vast array of racial and ethnic groups that form alliances and work together to combat racism inflicted upon them and their cultures. This phrase is commonly used in social justice, civil rights and human rights contexts.<sup>1</sup> Within this document we refer to a specific race at times to detail an individual’s or a specific group’s experiences, such as when we point to the historically disproportionate number of black people incarcerated in the United States.<sup>2</sup>

# Executive Summary

## The Problem

According to statistics gathered from the 2011-2012 National Inmate Survey administered by the U.S. Department of Justice's Bureau of Justice Statistics, an estimated 40 percent of individuals in jail self-reported having at least one disability.<sup>3</sup> Navigating jail with a disability can be complex, overwhelming, and costly. The impact of jailing a person with a disability also impacts their families and communities. The incarceration of one is essentially the incarceration of many.

In the United States, the use of jail to confine people with disabilities is closely aligned with efforts to place disabled people in asylums and institutions, similar to the criminalization of black people resulting in mass incarceration following the abolition of slavery. From the end of slavery to today, laws have been enacted to criminalize and devalue both people of color and disabled individuals. These laws further socially justify these populations' incarceration and further fuel biases and fear towards these groups.<sup>4</sup>

Efforts to reduce jail incarceration nationwide have resulted in a range of innovative strategies, such as reducing the use of cash bail<sup>5</sup> and the way that prosecutors make decisions about charges.<sup>6</sup> There is certainly a serious effort to shift how jails engage with people who need mental health supports, notably at Cook County Jail.<sup>7</sup> **However, despite the general prevalence of disability in jails, there remain a range of under-addressed opportunities to discuss how to further reduce the jail incarceration of people with disabilities overall.** A number of disability advocates have been working for many years to bring what is essentially a cross-disability look to criminal justice and restorative justice work; we need to hear and build on these efforts.

Moreover, even as the National Inmate Survey showed high rates of self-reported disability status, it also showed that incarcerated people of color tended to underreport disability status.<sup>8</sup> This poses a complex challenge to understanding the disability experience in different demographics who are impacted by police contact and jail incarceration. We feel this dynamic is of great note given current national work on reducing racial disparities in arrest trends and jail populations. This is especially important for Access Living, as the majority of people we serve directly are from black and brown neighborhoods in Chicago.

For this paper, we reviewed the different ways people with disabilities have contact with the criminal justice system. We took a look at existing work in the field. We interviewed impacted community members and people with disabilities who have been incarcerated. We asked what their policy recommendations would be for local officials and asked local criminal justice stakeholders what further information would be needed to provide accommodations and access to services for justice-involved people while also reducing the unnecessary over-incarceration of people with disabilities. We also pulled together, in this paper's Background Section, a basic explanation for criminal justice professionals to better understand how to see disability from a cross-disability, social model perspective.

Through research and community dialogue, we were made aware of specific situations and patterns where people with disabilities would have benefited from community supports and diversion, rather than arrest and jail incarceration. We identified areas in the realm of current criminal justice practice and community supports where disability has been hidden, unaddressed, or inadequately understood.

We discovered these reoccurring themes for policymakers to consider when revamping law, policy and practice to ultimately reduce mass incarceration and justice system involvement of people with disabilities.





## Summary of Policy Recommendations

1. Increase **storytelling and advocacy opportunities** for people with disabilities who have had contact with the criminal justice system.
2. Convene **cross-disability policy committees at the local and national levels** that include decision-makers and impacted community members, with the goal of reducing incarceration.
3. Establish and enforce **clear cross-disability accommodation policies and protocols** covering all areas where people interact with the criminal justice system.
4. **Train front-line professionals and criminal justice agency staff on a cross-disability framework** to be able to identify and support people with disabilities who are in jail or at risk of incarceration.
5. Enhance the **transparency of disability policy and disability data** to open opportunities for substantial lasting change to the continued reduction of the number of people with disabilities in jail.
6. Within the criminal justice system, **implement internal employee Americans with Disabilities (ADA) accommodation guidance and training.**
7. Provide **meaningful alternatives to a police response** when someone is in crisis to deflect/divert people with disabilities who do not pose a public safety concern into non-restrictive supportive environments.
8. Invest in **housing options that are both affordable and accessible** for people with a range of disabilities and to people who have a criminal history.

Most importantly, over the course of our year in looking deeply at this area of our community, we learned that the effort to reduce jail incarceration of people with disabilities demands substantial additional work – research, analysis, review of policy and practices plus evaluation and continued public dialogue. We look forward to furthering this work with local and national community members.

# **Background: Learning to Recognize Disability & Developing a Cross-Disability Consciousness**

*“People who don’t work in disability have a hard time identifying who has a disability. It’s vital to know what the right questions to ask to identify disability are, so the correct accommodations can be provided immediately.”*

**Susan Kahan**

*University of Illinois at Chicago Family Clinic  
& Chicago Children’s Advocacy Center*

*“Communities of color aren’t talking about disability in a way that youth can identify what their body does, how it responds, and what you need in order to be a fully accommodated person in these spaces. So I believe that is what leads these youth in front of police, especially when you don’t have the services and supports you need just to be yourself.”*

**Candace Coleman**

*Racial Justice Organizer, Access Living*

The starting point for systems and community change, from a cross-disability standpoint, begins with acquiring the ability to see disability in all its forms, existent in every community and throughout every walk of life. The following section offers tools to better see where disability is, and just how complex it can be.

## **A Definitions of Disability**

In the United States, disability is most commonly defined according to the definition under the Americans with Disabilities Act of 1990 (ADA), a civil rights law that was a major milestone in the development of the disability movement. The ADA prohibits discrimination against individuals with disabilities and broadly applies to public accommodations, employment, commercial facilities and transportation and is applicable to the United States Congress.<sup>9</sup> In public use, it tends to be the most commonly cited law related to disability rights.

The ADA defines a person with a disability as a person who has a physical or mental impairment that substantially limits one or more major life activity. This includes people who have a record of such an impairment, even if they do not currently have a disability.<sup>10</sup> It also includes people who are “regarded as” having a disability. Coverage of disability was expanded under the ADA Amendments Act of 2008 to include “intermittent disabilities,” such as epilepsy, which were not clearly included originally.<sup>11</sup> The amendment was intended to ensure that courts did not define disability too narrowly and that areas such as epilepsy, cancer and diabetes were covered. In other words, the act was intended to ensure that the ADA’s definition of disability was indeed broad.<sup>12</sup>

The ADA is applicable to “all activities of state and local government” regardless of funding source. This means a government agency cannot “opt out” of providing disability accommodations. The ADA thus applies to criminal justice entities – including but not limited to attorneys, courts, jails, juvenile justice agencies, police, prisons, prosecutors and public defense attorneys. Title II of the ADA requires that all state and local governments “give people with disabilities an equal opportunity to benefit from all of their programing, services and activities.”<sup>13</sup>

The 1999 U.S. Supreme Court decision in *Olmstead v. L.C.* is based on application of Title II of the ADA. It requires entities to avoid unnecessary institutionalization and confinement of people with disabilities.<sup>14</sup> Justice Ruth Bader Ginsburg issued the decision in *Olmstead*, holding that the ADA requires people with mental health disabilities to be in the least restrictive, community-integrated settings.<sup>15</sup> In the context of *Olmstead*, it is critical to understand that jails and prisons qualify as institutions.<sup>16</sup>

Prior to the ADA, the major piece of law that protected the rights of people with disabilities was Section 504 of the Rehabilitation Act of 1973. Section 504 is a broad application of disability protections under federal law. It held that essentially, any entity or program receiving federal funding could not discriminate against people with disabilities.<sup>17</sup> This includes criminal justice entities.

For the purposes of the Social Security Administration and its benefits, disability is defined differently. If an incarcerated person is receiving Social Security payments, benefits will be suspended if they are admitted to jail or prison for more than 30 continuous days. If an incarcerated person’s confinement lasts for 12 consecutive months or longer, their eligibility for Social Security Supplemental Security Income benefits will terminate and they must file a new application for benefits. This contributes to great difficulties for the person’s re-entry process.<sup>18</sup>

It’s also key to know that some existing law that focuses on institutionalization of persons with disabilities specifically names jails and prisons as sites of institutionalization. The Civil Rights of Institutionalized Persons Act of 1980 (known as CRIPA) empowers the Special Litigation Section



in the United States Department of Justice Civil Rights Division to investigate and prosecute complaints in terms of this legislation.<sup>19</sup>

Disability, as a U.S. legal definition, can be masked by the many terms and phrases that are or have been used in society regarding people with disabilities. Terms and phrases such as “special needs,” “differently abled” and “crazy,” and other outdated terminologies such as, “handicapped” or “retarded” can convey stigma, a patronizing perspective or simply outdated values. It’s important to see disability as a neutral term, neither good nor bad, simply one facet of what and who a person is.

*“Don’t look at me with pity. I earned this wheelchair. I own this wheelchair. I’m proud of it, and I’m going to use it to get places a hell of a lot faster than you could ever run.”*

U.S. Senator Tammy Duckworth

## **B Looking at Disability by the Numbers**

How many people with disabilities are in U.S. jails? It depends. Disability demographics can be hard to pin down. Whether a person with a disability is counted can depend upon the definition of disability used, whether the person is willing to self-identify, whether a professional has labeled or diagnosed someone and, finally, whether disability is included in the design of demographic tools and questions. Demographic parameters can shift for a number of reasons and opportunities for data collection can be overlooked.

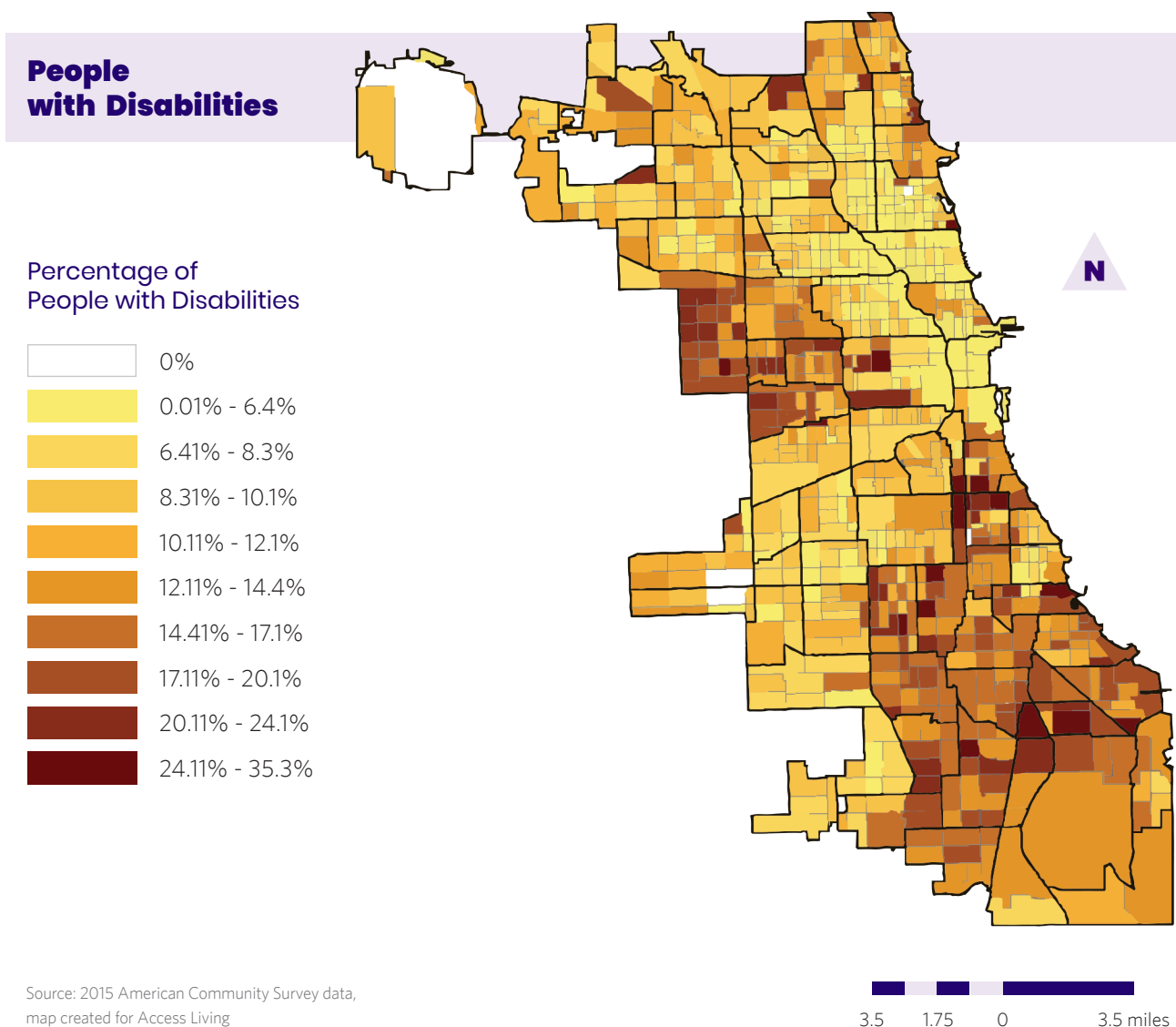
Outside of jail settings, the best estimate of the percentage of people with disabilities is about one in five.<sup>20</sup> In 2018, a United States Census Bureau data report said that, based on the Social Security Administration’s definition of “disability,” 85.3 million people ages 18 to 65 in the United States have a disability and 55.2 million people have a severe disability.<sup>21</sup>

Let us now look to these statistics in the light of jail incarceration. Statistics gathered from the 2011-2012 National Inmate Survey administered by the U.S. Department of Justice showed that ***an estimated 40 percent of individuals in jail self-reported having at least one disability.***<sup>22</sup>

University of Michigan professor and attorney Margo Schlanger elaborated on these statistics while researching reasonable accommodation barriers for people with disabilities who are incarcerated. Schlanger explains that most people in jails have at least one disability, noting more specifically that approximately 40 percent have a chronic medical condition, 6.5 percent are deaf or have low hearing, 7.3 percent are blind or have low vision, 9.5 percent have an ambulatory disability and 60 percent have mental illness.<sup>23</sup>

“The numbers mean that how jails and prisons deal with disability is far from a niche issue,” Schlanger pointed out. “Rather, choices relating to disability are central to the operation of U.S. carceral facilities – their safety and humaneness, and their success or failure in facilitating the pro-social community reentry of prisoners who get out.”<sup>24</sup>

According to 2015 American Community Survey data, in Chicago, people with disabilities are more concentrated on the South and West sides. Most of the areas highlighted on the map below are also neighborhoods where poverty rates are higher and are primarily communities of color.



People with disabilities are collectively the largest minority group, totaling 61 million adults in the United States<sup>25</sup> — at least when you look outside carceral settings.

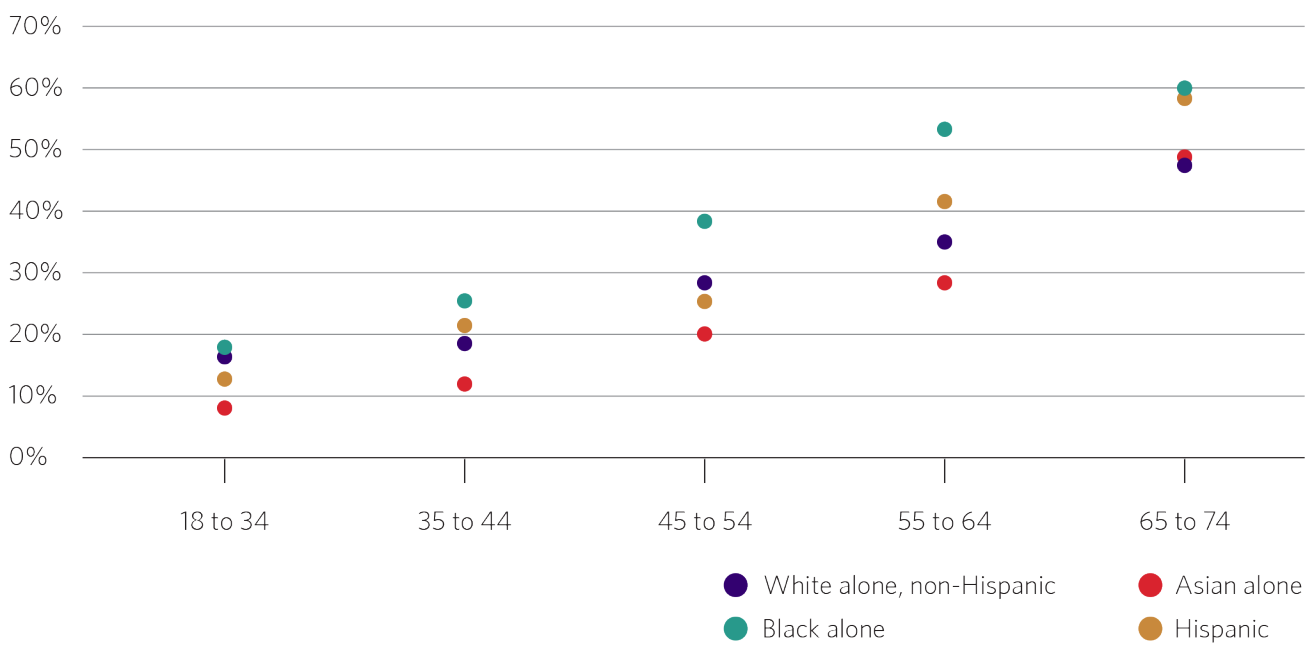
## The Roots Are Intertwined: The History of Systemic Segregation

Race and poverty are major contributing factors to over-incarceration of certain populations. When you combine disability, race, poverty and family incarceration, the odds of police contact and incarceration increase.<sup>26</sup>

Nationally, Native Americans have the highest rates of disability among working adults, followed by black people at 11 percent; white people, 9 percent; Hispanic people, 7 percent; and Asian-Americans, 4 percent.<sup>27</sup> People with disabilities account for one-third to one-half of all the people killed by law enforcement.<sup>28</sup> When discrimination and bias overlap with other marginalized identities, an identity may become lost or mislabeled and therefore the story is never accurately accounted for, especially when it comes to race and disability.

Notable are the slightly higher rates of disability reported for black people in the United States. According to the study *Black-White Differences in Self-Reported Disability Outcomes in the U.S.: Early Childhood to Older Adulthood*, black people experience higher percentages of learning disabilities; for all disabilities in midlife, black people have 1.5 to two times the odds of disability over white people.<sup>29</sup> Disability advocates we spoke with attributed disability discrepancies across race to historical harms to communities of color, including the legacy of enslavement and lack of access to equal educational opportunities.

### Disability Prevalence by Selected Race and Age: 2014



Source: United States Census Bureau: Americans With Disabilities: 2014



*“Disabilities are intergenerational in impoverished communities. So the conditions and the lack of education, the crime, and the ignorance and the poverty lends itself to the next generation of broken families. And, you know, that’s it basically. The harm, historical harm.”*

**Patrick Pursley**

*Impacted Community Member*

Michelle Alexander’s influential book *The New Jim Crow* points out that mass incarceration occurs for two reasons. First, law enforcement personnel are given vast discretion of where and whom to police. Second, the court system and laws are set to force a person who claims racial bias motives for their criminal justice involvement to “offer, in advance, clear proof that the racial disparities are the product of intentional racial discrimination.” The media and many Hollywood producers have put forth a false narrative, portraying young black men as violent and dangerous and people to be feared. The media at times functions as a lamp or a mirror to societal problems and stereotypes. These stereotypes are perpetuated through repeated exposure to disparaging images and messages.

This discriminatory stigmatization has carried over into households, police stations and our courts, in terms of sentencing trends. Simultaneously, the stigma of mental health has falsely portrayed people with mental health issues as scary and vile. By exiling certain populations from our communities, we devalue their lives, their belonging and their invaluable contributions to society. As one impacted community member said, “I think the fear of government puts my community in this sense of paranoia.”

In the United States, we incarcerate people of color and, particularly, young black people at astonishing rates. Black people are incarcerated at a rate five times that of white people.<sup>30</sup> One in three black men in the United States faces incarceration at some point in their lifetime.<sup>31</sup> That takes only race into account; when we look at disability, the numbers are also staggering. People with disabilities are represented in jails and prisons at higher rates than non-disabled individuals. People in jail are *six times* more likely to report having a cognitive disability than the general population.<sup>32</sup> It is not unfathomable to presume that there is significant overlap between race and disability, especially when we take into account the historical harm perpetuated against black communities in the United States.<sup>33</sup> A black child is six times more likely to have a parent incarcerated than a white child.<sup>34</sup> Children who have or have had an incarcerated parent are more likely to develop attention-deficit/hyperactivity disorder (ADHD), post-traumatic stress disorder, asthma, anxiety or depression.<sup>35</sup> In fact, 35 percent of trauma survivors develop learning disabilities.<sup>36</sup>

*“Every time I go into the [Cook County] courtroom, I get disgusted because the majority of people there fighting the cases are black, a few whites, a few Latinos, and all the personnel is white. You go to the prison and it’s the same thing, but that’s an issue nobody wants to talk about.”*

**Ray Robinson**

*Community Leader and  
Impacted Community Member*

In the 1980s and 1990s, Black disability activist Leroy Moore worked to shed light on the issue of police brutality and the over-incarceration of people with disabilities in California. Through his work, he educated parents of youth with disabilities who were facing criminal charges on how to discuss the topic of disability in their criminal cases. Leroy traveled the state educating judges and juries about disability. “They had no clue when it came to disabilities,” he said. Leroy also works closely with *POOR* magazine. The non-profit publication based in Oakland, Calif., holds a workshop called “Never Call the Police.” It teaches people in intersectional communities to create stronger bonds to achieve the goal of avoiding the need to call the police.

*“I believe in police and prison abolition – because it causes deadly harm to communities of color and disabled communities. There is no such thing as a humane jail or prison.”*

**Lydia X. Y. Brown**

*Disability Justice Activist*

Today, increasing numbers of disability advocates are calling for an intersectional understanding of how incarceration is impacting, in particular, disabled black and brown communities.

## What is a Cross-Disability Approach?

*“We are all very different and powerful and unfortunately, largely separated and taught to be separated by disability type.”*

**Cathleen O'Brien**

*Housing Organizer, Access Living*

Historically, different types of disabilities have been treated in a siloed fashion, usually by providers and policymakers. Deaf problems are handled by people focused on deafness and hearing loss; barriers for blind and visually impaired people are handled separately; barriers for people with physical disabilities are handled by people who focus on physical disabilities. This silo effect is reflected in everything from the design of Medicaid waivers for different disabilities to lawsuit settlements that outline certain disability types to be served to nonprofits that focus on single disability types.

Disability, by and large, tends to be identified and defined by the system or resource a person may be trying to access more than it is defined by any other standard. This is the bureaucratic framing that leads to viewing disability as a series of lists. However, there is another way to look at disability which is more practical than memorizing disability types or an etiquette list: the cross-disability approach.

“Cross-disability” as a term is defined by the Rehabilitation Act of 1973 as primarily applicable to Centers for Independent Living (CILs), which are disability services and advocacy organizations run and governed by a majority of people with disabilities. Access Living is a CIL, and as such we are required to strive towards a cross-disability approach in both our programs and in the actual design of our organization itself. Not only do we serve people across a range of disabilities, we embody a cross-disability approach in that our staff self-identify as having a range of disabilities. This has serious impact on our workplace culture and our commitment to disability reasonable accommodations.

As we practice it at Access Living, a cross-disability approach is a matter of core values, a commitment to not leaving anyone behind and recognizing that people may experience multiple disabilities at the same time, as well. Functionally, a cross-disability approach means that staff are prepared for inclusion by the probability of any kind of disability crossing one's path and is willing to support people across disability types. No one disability type is more important than another. However, because disability comes in an infinite variety of forms and progressions,

those engaged in a cross-disability approach have to commit to an ongoing process of learning and problem-solving towards supporting and including people with different disabilities.

Furthermore, a cross-disability approach is one that looks at all people with disabilities as a whole, regardless of disability type. A cross-disability approach recognizes that there are aspects of the disability experience that people with disabilities share to at least some degree. Some examples of these aspects are experiences of lack of access or discrimination, or using disability as a creative catalyst to solve social problems. Although access needs may greatly differ among us, our access needs are the common factor requiring a cross-disability approach.

What we at Access Living have learned is that a cross-disability approach is one that holds that society is in fact better when diverse disabilities are supported and included in social processes, because of the interpersonal wisdom gained and problem solving achieved. A cross-disability approach requires the flexibility to individualize supports. This is the cross-disability approach we strive to exercise at Access Living. Most of the time, in those interactions from a cross-disability approach, we are not asking those with disabilities to “prove” themselves with medical documentation. We simply remain open to asking what they need, being asked for support and committed to ensuring that that support happens. We aim to presume competence and to trust what people tell us they need.

*“Without all the pieces it’s impossible to understand the full picture.”*

**Efferson Williams**

*Impacted Community Member*

A cross-disability approach means being open to the idea – every day – that you will encounter people whose disabilities you do not know or understand, and from whom you are willing to learn. This openness is also fertile ground for innovation in looking at how social structures and programs can better serve all of us.

Back to the silo approach: when the general public refers to people with disabilities, many times they are coming from a standpoint of discussing physical disabilities, such as a person who has mobility limitations and uses a wheelchair as an accommodation. Other times, and most often in criminal justice fields, when efforts to make accommodations are emphasized, officials are referring to a population of people with mental health disabilities or substance abuse issues, specifically.

Where criminal justice reform buys into a silo approach however, opportunities for innovation may be lost. Addressing mental health without also addressing physical disability is not a



complete approach to meeting a person's needs and potentially limiting or avoiding jail incarceration altogether. Addressing chronic pain without also addressing traumatic brain injury is likewise an incomplete approach. Dealing with substance abuse recovery without also accommodating a person's deaf status is, again, incomplete. There are far too many people who have contact with law enforcement and who are/have been incarcerated and have multiple disabilities that require the flexibility, access and creativeness of a holistic cross-disability approach.

Efforts at reducing jail use or jail incarceration will not be complete until the cross-disability conversation is fostered towards innovations that meet everyone's needs.

A cross disability approach, after all, is ultimately about the conversation we have to have with ourselves about the place of disability in our world. To fully view disability in a cross-disability sense and to fight back ableist tendencies, it is crucial that we delve into what disability means for us personally, within our families and within the context of incarceration. People might ask themselves, why are there so many people with disabilities incarcerated? We will not, however, arrive at the answer by looking at only one disability alone.

## **E The Medical and Social Models of Disability**

Bearing in mind both the definitions of disability above and the cross-disability view, it's important to know that there are multiple models of looking at disability that currently tend to drive systems design. In this section, we will focus on the medical versus the social model of disability.

The medical model of disability relies on viewing disability as something that is wrong, or broken, with the person.<sup>37</sup> This approach relies on the identification of a person's diagnosis or medical label. Under this model, a person with a disability is seen as "incapable." The medical model has been used to propagate stigma and segregation of people with disabilities for centuries, and it has been used to justify criminalization on the basis of the disability label. It is also the model that tends not to recognize people with disabilities as people in charge of their own lives.

In contrast, the social model of disability is not about fixing people but about fixing barriers in society. Disability studies scholars credit British academic Mike Oliver with framing and conceptualizing the social model of disability in his 1990 book *The Politics of Disablement*.<sup>38</sup> While the origin of this model emerged in the 1960s, it was Oliver who clearly framed it in the sense that it is used today. The social model holds that disability is not created by the person's condition; rather, disability is the barriers forced onto the person by society.<sup>39</sup>

Under this model, a person with a disability is like anyone else, except they need the social structures of access to thrive. This can be as straightforward as accessible building design, a wheelchair, a hearing aid, Braille, lighting or a cane, to name a few such structures. With invisible disabilities, access can include more time and more space for de-escalation or processing.

The social model of disability holds that all people can equally participate in society with the right accommodations in place. The problem is not the individual but whether society has created the right environment and eliminated artificial barriers. The biggest problem facing people with disabilities is that society isn't flexible enough to accommodate all the differences in people – and that's a serious system design issue for the criminal justice system.

## **F The Criminal Justice System and Disability Clash**

As you might imagine, disability tends to clash with the criminal justice system; disability by its very nature is a state of non-compliance. A clash can start very early on in the contact process. At first point of contact with 911, a person with a disability may be misunderstood and diagnosed or categorized as a person requiring an elevated police response. The person may be perceived as someone who isn't "normal" and may be "unpredictable" and sometimes even categorized as an "unknown threat."

Command culture is fertile ground for disability clash and law enforcement in particular may not immediately spot any disability issues. This kind of conflict leads to harm and sometimes death of people with disabilities. For example, when a police officer shouts commands at a deaf person and the person does not follow the officer's directions, the deaf person might be shot. A person with cognitive processing issues likewise may not understand or interpret commands in a way that appears compliant to an officer, and therefore is put at risk for factors beyond their control. Command culture also does not tolerate physical disability well; an officer conducting a traffic stop may order a person who can't walk to get out of a car.

Elliot Oberholtzer of the Prison Policy Initiative has highlighted that courts also can be a place of disability clash for people with disabilities in jail, who are most often awaiting trial. "For those disabled people who do need to interact with the courts," he said, "they deserve the treatment that the United States has committed to providing in the Bill of Rights: a speedy trial, legal representation and to be informed of the nature and causes of the accusations against them. When courts fail to provide these basic rights for disabled people accused of crimes, they demonstrate clearly that our society treats disabled people as second-class citizens."<sup>40</sup>

Another area of disability clash is within the jail. Frequently, people with disabilities come into a jail that is not equipped to screen their disability appropriately or immediately accommodate; this leads to further harm and sometimes death. Many disability activists agree that inadequate medical care in custody is responsible for many of these preventable deaths.<sup>41</sup> According to the Prison Policy Initiative, the top cause of death in jail is suicide and less than half of jails are equipped to offer people who are detained mental health treatment services.<sup>42</sup> When speaking with impacted community members locally, all reported not having adequate disability accommodation supports in place while in jail. Furthermore, involvement in the criminal justice system can cause new disabilities for a person, most notably affecting their mental health.

Margo Schlanger gets to the root of the deeply individual nature of disability as it battles with the compliance culture in a jail or prison setting:

“Incarceration isn’t easy for anyone. But sharply limited control over one’s own routines and arrangements make life behind bars particularly difficult for prisoners with disabilities. Prisoners with mobility impairments, for example, “cannot readily climb stairs, haul themselves to the top bunk, or walk long distances to meals or the pill line. ... Prisoners who are deaf may not hear, and prisoners with intellectual disabilities may not understand, the orders they must obey under threat of disciplinary consequences that include extension of their term of incarceration. And prisoners with intellectual disabilities may be unable to access medical care or other resources and services, because officials require written requests and they are illiterate.”<sup>43</sup>

Jail intake is a significant area of opportunity to understand the disability demographics of those being booked and also to begin proactively asking people if they need a disability related accommodation. This opportunity is made more complicated by the fact that it can be difficult for jails to screen and accommodate the vast array of needs of people entering the door on any given day. Some jails, such as Cook County Jail, are simply handling enormous volume on a daily basis; the average daily count of Cook County is 6,100.<sup>44</sup> However, from a social model standpoint, level of difficulty or time required is insufficient justification to not provide someone with the very things they need to survive. Realistically, how should these competing priorities be balanced?

All of this highlights the importance of understanding disability more in-depth from a social model viewpoint and to prioritize creating policies and protocols which focus on access being provided across disabilities in all settings.

# Disability and the Sequential Intercept Model

## What is the SIM?

The Sequential Intercept Model (SIM),<sup>45</sup> originally developed more than 20 years ago, maps out different points of contact (intercepts) where community members interact with or are deflected from the criminal justice system.

This model is a way of breaking down the processes of the criminal justice system to view the processes in segments. This brief explanation can be used as an introductory overview of how the process might look when people with disabilities interact with the criminal justice system.

The SIM labels these points of contact (intercepts of the criminal justice system) zero through five, zero being prior to contact with the system and five being once a person goes through the justice system and is released on community supervision.

The steps are as follows:

**Point of Contact Zero:** Community Services

**Point of Contact One:** Law Enforcement

**Point of Contact Two:** Initial Detention/Initial Court Hearings

**Point of Contact Three:** Jails/Court

**Point of Contact Four:** Re-entry

**Point of Contact Five:** Community Corrections

Our interviews illuminated what it looks like when a person with a disability comes into contact at these different points.



## **Point of Contact Zero: Community Services**

Community services that are accessible and affordable *can* provide people with disabilities what they need in the community and can be provided prior to a person engaging with the criminal justice system. Accessible community services can potentially contribute positively to a person's avoiding other points of contact.

Accessibility at point of contact zero has to be intentional. Both government and funding organizations should hold providers accountable for designing accessibility accommodations as part of annual and long-term planning. This includes budgeting for reasonable accommodations and including access features in new developments as well as rehab efforts of old facilities. Where state and federal dollars come into play, state and federal disability civil rights law also apply.

These same entities should also ask whether people with disabilities and impacted community members are on their advisory boards and equally employed within their organizations. Peer representation is critical across all points of contact, but could have particular impact at point zero.

## **Point of Contact One: Law Enforcement**

This point of contact is most commonly the entry point or deflection point into the criminal justice system. When community services are not provided at point of contact zero, a person with a disability, their family or the community may reach out to 911 for help. At this point, 911 operators must make the difficult decision of routing the call to the correct response. With limited options and the ways in which disability actions and behaviors present themselves, many calls get a police response – and sometimes an elevated police response.

While some law enforcement personnel have Crisis Intervention Training (CIT), the disability range covered by such training is limited to specific disability categories, as opposed to being comprehensive of a broader cross-disability standpoint grounded in a social model of accommodations over compliance.<sup>46</sup>

Many of the agency staff stakeholders interviewed for this report also reported not knowing how to access accommodations for themselves. When first responders are unclear about how to access accommodations for their own mental health and other disability needs, this creates a workplace culture of compliance and non-accommodation ripe with disability stigma and the false belief that either people with disabilities are not capable or that a person should just push through without the needed and legally mandated employer accommodations. This environment fosters compliance over collaboration.

Viewing each other in terms of compliance sets law enforcement agency staff up for conflict in both work environments and with the public being served. When first responders take calls and arrive on the scene without a mindset of collaboration and accommodation, the scene is set for misunderstanding, escalation and repeated trauma to both the first responders and the person with a disability accessing a public service. Occasionally and tragically, death can result.<sup>47</sup>

One interviewee, Jennifer McGowan-Tomke, with the National Alliance on Mental Illness of Chicago (NAMI), pointed out that disability accommodations should be provided as a first response by law enforcement when they interact with people with disabilities. Further, she said many behaviors are not in fact criminal but a result of the disability, and to criminalize these behaviors is in direct conflict with the required obligation to provide accommodations.

Alternatives to calling 911 and more alternatives to arrest are recurring policy recommendations. Interviewee Susan Kahan reported that in her experience in supporting people with disabilities, if law enforcement is aware that a person has a disability or is aware they are connected to services, they will try to avoid arrest and connect the person back with the community services.

## **Point of Contact Two: Initial Detention/Initial Court Hearings**

This point of contact is when a person is charged with a crime and initially booked into the police station holding facilities. If a person cannot be averted from this point of contact, it is vital that all screenings are accessible and accommodated. This means that the screening should be completed in such a way that the person charged with a crime understands what is going on, including their legal rights and their right to request reasonable accommodations.

Era Lauder milk of the Cook County Law Office of the Public Defender says the Public Defender's Office will respond at police stations to represent people who are under arrest, but those people must, first, know a phone number to contact a lawyer, and second, rely on police to give them a phone to use.

Susan Kahan stressed the importance of people being moved into the criminal justice system understanding the process that occurring to them. She explained, "Every human has a right to participate in his or her own defense. And so if you're not able to do that, then... you shouldn't be in the criminal justice system if you can't participate in your own defense."

## **Point of Contact Three: Jails/Courts**

Point of contact three is when people with disabilities are transported to jail, screened for their risk to the community for potential release from jail and, based on these screenings and/or their first court appearance, either being released on cash bail or continued to be held in jail. This point of contact includes pretrial services and a person's first court appearance. If a person cannot be averted from jail in prior points of contact, all intake forms must be accessible and questions about reasonable accommodations must be asked and accommodations provided. This point of contact also refers to any services provided within the jail which also must be accessible to people with disabilities.

## **Point of Contact Four: Re-entry**

This point of contact occurs when a person with a disability is released from jail or prison back into the community. This starts as soon as a person is processed in the jail for release and includes issues of time of day of their release, what resources they are given upon release and if a case plan for discharge is established. Many people are released in the evening with no resources, case plan or bus fare. Ideally, the release plan would be crafted by the person getting released and identify accessible resources and housing.

Amanda Antholt, a Chicago attorney at Equip for Equality, reports frequently hearing from people in Illinois that they cannot get into halfway houses because of their disability.<sup>48</sup> Due to a lack of accessible housing for people with disabilities with criminal records, they are staying longer in prison and are more likely to end up homeless after their release. If any part of the release plan is inaccessible and a person cannot comply with the plan, it almost guarantees they will return to jail.

## **Point of Contact Five: Community Corrections**

Point of contact five is supervision in the community either by being assigned to a probation officer or, in some states, a parole officer or home electronic monitoring (EM). It is important that community corrections services are accessible and can accommodate a person with a disability. Many times, conditions are set that can result in a person returning to jail. These commonly include curfew, limitations on who a person can associate with, work or educational requirements, checking in with a probation officer at certain times, drug testing and more. Disability and reasonable accommodations must be taken into consideration when forming these conditions to avoid a clash with a person's ability to follow the conditions. A disabled person's unintentional "non-compliance" with a condition they cannot meet may result in violation and a repeated cycle of jail time.

# Formerly Incarcerated Disability Voices

In this work, we are committed to driving reform with the voices of impacted people. During the research for this initiative, we interviewed a range of people who have been incarcerated in jails. Our primary focus was on those who have been through Cook County Jail, although we also interviewed some people who had been in jail in other locations. All interviewees self-identified as people with disabilities.

It is important to note that many people find it extremely difficult to tell their story about jail incarceration. While only some stories were shared on the record, all the stories carried common themes: off-the-record storytellers were most concerned with anonymity for fear of retaliation, further criminalization, job loss, loss of academic opportunities, further stigmatization and potentially discriminatory consequences, plus ill treatment by police, probation officers and jail staff.

Most justice-involved interviewees with disabilities that we talked to came from disinvested, inaccessible neighborhoods. Most were people of color. None were asked if they needed an accommodation when they first came into contact with the system. All believed that being incarcerated made their disabilities worse and created new disabilities. All experienced some form of financial instability prior to or after incarceration. All felt that their experience as a person of color and/or a person with a disability made the interaction with the criminal justice system worse. All felt the medical care provided while incarcerated was inadequate.

Those who had been incarcerated many times did share that they felt there has been slight improvement over the years within the Cook County jail system.

All reported loss of at least one of the following as a result of their contact with the criminal justice system: custody of children, a relationship or marriage, of credit, academic opportunities, employment and housing plus an increase in debt.

Most interviewees did not want to see investment in redesigning the criminal justice system but rather in community services accessible to all. Almost all interviewees said they felt that law enforcement needed to respect them, follow the law, provide accommodations and meet people where they are.



# On-the-Record Stories

## Chris Huff

Chris Huff is a Black Chicagoan with a disability who was incarcerated at a young age in Cook County. He has a master's degree in social work and a bachelor's in political communication and economic development.

*"I do not want my voice silenced. I want my voice heard."*

He feels like his incarceration was one of punishment and being treated as an adult even though he was a teenager at the time: "Much of my understanding of the justice system is rooted in my experience being incarcerated when I was 15 years old."

He believes the trauma of being a person with a disability while incarcerated made him very sensitive to his environment. This sensitivity made him easily triggered by his confinement, creating severe chronic depression. "I would describe my disability as an information-processing problem that leads to emotional instability and what would be considered erratic behavior."

He feels his time in detention was worse as a person with a disability because there was no acknowledgment of his disability. When he was going through court procedures, his attorney did not bring up his disability, saying it would be detrimental to his case. He said the attorney instead wanted to focus on him being a positive member of society, his good grades and his supportive family. Disability was left out of the discussion completely, and the attorney didn't acknowledge that someone can be both a person with a disability who needs accommodations and a positive contributor to society. Huff explains, "Being a person with a disability is a very important part of my identity, not a part that can be dismissed."

*"I think it [my disability] has made my family scared of me."*

*"I think the fear of government puts my community in this sense of paranoia and that sense of paranoia can lead to frustration on how to escape violence that comes from the government, that comes from the system, and that frustration makes my community angry at the government."*

He further explains that stigma is very detrimental to disability identity and accessing accommodations in jail. He was never asked if he needed accommodations in jail nor were they provided.

Huff said his incarceration labeled him, and placed him in a box constructed from systemic racism that's rooted in violence. He explains, "My experience is a system that's one of punishment and not of rehabilitation, one of condemnation rather than redemption."

He believes the criminalization of people like himself hurts communities and perpetuates the development of violence in the community.

His interactions with the justice system have made him want to take on a leadership role and shape laws and policies to transform the system so nobody else will have to experience what he did, and carry with them that which he holds onto.

## Efferson Williams

Efferson Williams is a young, disabled, Black man from Chicago whose positivity and infectious smile light up the darkest of rooms. We first met Williams a few years ago when he applied to volunteer as a mentor to youth with disabilities at Access Living.

*"I just got pulled over with my best friend, and they treated me like, as if I could get up and run away from them. They pulled out they gun, I said, 'Man, what is you doing? I can't even walk. I'm paralyzed, I can't do nothing. Only thing I can do is move my upper body. Officer, I ain't got nothing.' I said, 'What do you want me to do? I can't even kick my legs. He said, 'Get out the car.' I said, 'Is you for real?' I said, 'I feel as if you're trying to disrespect me now, because I've told you I'm a paraplegic, and you told me to step out the car. I got to put my hands down here so I can get my leg up, please don't shoot me.' Like, you got to give a person instructions, with a person that's a paraplegic, that's not cool. You shouldn't even be done like that."*

Efferson was 11 the first time he interacted with the criminal justice system. He grew up on Chicago's South Side in the Randolph Towers, a former housing project. He was raised by a single mother; his father was not present. Efferson, like many others criminalized in their youth, joined the local economy by selling drugs in his neighborhood.

Prior to becoming disabled, he spent time in a youth correctional facility. After his release he had several minor criminal violations and then felony violations. Efferson was arrested for aggravated battery of a police officer after an officer beat Efferson and the officer injured himself in the process. The officer charged Efferson with assault.

After being shot two years ago, Williams became paraplegic and disabled. "I have no problem with my disability," he said. "I want everyone to know that." Simultaneously he noted that he has never felt so much hate and judgment in his entire life until he started using a wheelchair.

His criminal record, combined with his newly acquired disability, have made it virtually impossible for him to find a job and housing. To get any criminal charges removed from his record, he must petition and pay. While finding a job

and housing seem like uphill battles due to his criminal record and issues with accessibility, coming up with money to pay fines can seem insurmountable.

Efferson says of the system, “They drain you instead of help you ... if it’s called the Department of ‘Corrections,’ then why are people coming home, going right back into the jail one month, two months later?” People are being sent back out with several barriers to face and no direction to navigate these obstacles, particularly if they have a disability.

He said it hurts that people treat him so differently now, but despite that, he has no room to hate others, even the person who shot him. He referenced the teachings of Dr. Martin Luther King Jr., who taught us to work together, not against one another.

## Patrick Pursley

Patrick was incarcerated in Illinois as an innocent man for more than 20 years. He was recently released after being exonerated by a ballistics report. While incarcerated, he acquired physical and mental health disabilities, as many prisoners do. Though Pursley appears physically fit on the outside, incarceration has taken a toll on his mind and body. “I basically get through my days with a handful of pills starting in the morning and a handful of pills at night.”

*Patrick said he wishes that the criminal justice system understood that “disabilities are intergenerational in impoverished communities. So the conditions and the lack of education, the crime and the ignorance and the poverty lend itself to the next generation of broken families. And, you know, that’s it, basically. The harm, historical harm.”*

Patrick’s cell measured about nine steps toe-to-toe in length, and smaller than the width of arms extended, wall-to-wall; he shared the cell with another man. Incarcerated people spend about 23 hours a day in their cells. Many activists have been fighting to reduce confinement for people with mental health disabilities, asserting that such confinement is inhumane.<sup>49</sup>

While Patrick was confined, he wrote and taught himself law. He eventually challenged the evidentiary rules that had led to his confinement by proposing that the state not be able to

convict using new technology unless the state also exonerates using new technology. This led to a state bill that in turn led to testing the evidence that convicted Patrick. The evidence was deemed false, leading to his release and exoneration.<sup>50</sup>

We asked Pursley what he thinks should be the top priorities for policy-makers. He said, “Review at every level. Watchdogs at every level, whether it’s a conviction, whether it’s retaliation from guards, whether it’s physical safety, medical issues and demonetization. Accountability for cops and forensic experts and prosecutors who lie.”

"There's economic differences ... the two tales of America," he said. "Every 28 hours, a black man gets shot down by police. I fear driving. That's why I only wear collared shirts when I'm out in public, because I want to pass. I want you to look at me and think I'm a professional, and let me get the fuck on. I fear the day I get pulled over by the Illinois State Police ... and they pull up my name."

## Ray Robinson

Ray Robinson is a community engagement and outreach coordinator for the Alumni Association in Chicago, established in 2009 by graduates of substance abuse treatment programs in Cook County. The social network group is comprised of formerly incarcerated people dedicated

*"My disability, the genesis of my disability is due to my environment. ... You know, my level of illness is a result of poverty and substance abuse. When you live in an impoverished state, like, resources, basic amenities can't be met on a daily basis. Then you try to escape the reality by turning to drugs and alcohol or other kind of addictive behavior and then that addictive behavior turns into a mental illness because life can't function without drugs and the drugs just mess up your mind and biology to the point where, for a long period of time, I didn't know whether I was coming or going."*

to sobriety and to strengthening ties and positive contributions to their communities. They provide positive, peer-based support to assist other formerly incarcerated people with their transition back into the community. The group has locations on the South and West sides of Chicago, in the Auburn Park and Lawndale neighborhoods. Ray also does outreach work for the Lighthouse Institute, providing outreach and community services to people who have substance abuse addictions.

Ray was formerly incarcerated in Cook County Jail and knows firsthand how difficult it can be for a person

with a disability to access accommodations and services. He explained his disabilities started when he was a young child and were compounded by the toxic environment surrounding him, and then further compounded by being in jail. Ray explained that being inside Cook County Jail is like going into survival mode; the No. 1 objective becomes survival. He explained that with a mental illness, you have to try and conform your behavior to safely navigate the environment. He said a person's mental illness is exacerbated, and once released, the person is worse off than when he or she went in.

In terms of accommodations being provided within the jail, Ray describes it as, "A quick conversation, like a drive-by, no sincerity, just part of a routine."

His take is that most people do not want to get sent to Cermak, the health department section of Cook County Jail. Many people try to cover up their disability to not only avoid going to Cermak, but also to avoid being labeled: the “disability” label in jail can lead a person to being more vulnerable to others, including both peers and corrections officers.

“I think a lot of my mental illness started when I was locked up, too, you know what I mean? ... When you’re locked in a box for a long period of time, that affects you.”

Ray stressed the dire importance of not covering up the truth of mass incarceration in the United States. “One of the biggest failures in the system is trying to make a lie work,” he says. “It ain’t going to work. I know truths don’t have no friends. I understand that. I know that. ... But the reality is, when you’re in a position to help people and you’re a provider or you have these resources ... it got to be a deeper level of integrity there.”

Ray talked about the impact of incarceration on him personally. “It stole something from me. It stole my belief that the world and people that there is some good in it. It kind of robbed me of that.”

Ray says it is important that policymakers and service-providers meet people where they are. It is important that people do not assume they know what other people need and that they ask questions.

## Lisha Fields

We met with Lisha Fields at a nursing home for our interview. She sat half propped on the nursing room bed with a cast on one leg. Lisha explained she is a product of her environment and that she has been fighting her entire life for the same opportunities as others.

Lisha grew up on the West Side of Chicago and never had any good experiences with the police. They didn’t come when they were needed, she said, referring to dead bodies in the streets and domestic violence in homes, but they targeted community members for petty things such as running a yellow light. Lisha said in the area where she grew up, police didn’t arrest people for killing other people even when everybody knew who did it. Lisha said she saw a lot of drug use, drug sales and violence while growing up.

*“There are certain things that people shouldn’t be subjected to, but unfortunately, we are, and in those events, you have a choice – that neither option can result in a great outcome, but you must choose – to try to achieve your objective or goal to get in a better situation so then you can access greater choices.”*



*"Where there's supposed to be support, I found none, whether from the community, whether from family. ... And at the same time, there was victimization from everywhere you turn, from community to family to police to every channel. There's no support, especially for women, single women."*

*"I don't want housing in jail. I want my own housing and if I had that, a lot of this wouldn't be happening."*

Lisha says it's important for people to know she went to college, had a good job and a good life and was independent prior to becoming disabled. This was despite being raised in a community with no support.

Lisha explains her disability as an inability to walk or stand for more than two hours. Affordable, accessible housing has been her biggest barrier, she said. In her experience, most emergency shelters are not for single women and are not accessible to people with disabilities. Lists for such housing are lengthy and sleeping in a car in the meantime isn't an option because the police will cite, arrest or fine you.

Lisha's top recommendations for policy reform would be for the police to represent the people's needs rather than trying to look for what a person is doing wrong. "People that are police, they need to represent the community, and they need to represent the people and they need to stop representing the

police organization. It's as if they're wanting to go back and have points or say that they got a lot of warrants ... but they're not really servicing the needs of the people."

Lisha recommends a point system for saving lives rather than for making arrests. She feels strongly that having proper resources and police taking their focus away from low-level crimes would reduce barriers for herself and many others in the community.

She said the last time she was in jail, after being arrested for not having a valid driver's license, her bond was \$250,000, and her disability wasn't accommodated in the Cook County Jail's medical unit.

## John Atlas

John Atlas has lived in Illinois since 1966. He has a learning disability and several mental health disabilities which he says he has learned to work with, not against. His interactions with police started while he was in his early 20s, when he received a few warnings for accidentally trespassing onto property. John later spent time in Cook County Jail and in prison in Illinois and felt like he never understood what he was being charged with or what his legal rights were. He is still having problems adjusting to society.

As a person with multiple disabilities, John reported being removed from his medication and placed on new medication in the jail. He said that when he was arrested, no one asked him if he would like to speak to an attorney, would like to make a phone call or if he needed his medications.

After 13 years of incarceration, he reports having a hard time connecting with people. He doesn't know how to communicate anymore in the outside world and his anxiety has worsened. John reported that sexual assault was common in Illinois prisons and people with disabilities were targets of peers and guards.

John said being having a disability made incarceration much worse. He explains regardless of the person's disability – physical or mental – that person would be treated like anyone else.

It's not an accommodating environment and medical care is poor, he said. He recalls that while in the medical facility at Cermak, he saw people with disabilities get "roughed up" by guards who would get upset when people didn't or couldn't comply with what the guards were asking.

The best improvement the criminal justice system could make, he said, would be to stop making assumptions about what a person wants and needs before talking to that person. The "system" thinks it knows what is best and sometimes, many times, those assumptions cause more long-term harm to a person. It would be a miracle if people assisting those in jail would adapt to a person's needs to help them get better, he said.

*"If you got out of line, they would have dragged you out of that [wheel]chair. Which I saw one or two guys getting dragged out of their chair or off their cane or off their walker."*

John said he is concerned about the ways that people with disabilities are assaulted by law enforcement and in the jail simply for not being able to comply. He also thinks it is important that people with disabilities are not

interrogated without accommodations and that a person has their rights read to them or communicated to them in a way they understand. John reports he was not read his Miranda rights until after being stripped naked, his arms and legs chained with handcuffs and shackles and after at least four hours of interrogation.

He wishes that the criminal justice system would adapt and improvise and not make people's lives worse, particularly through false incrimination "for something they didn't do."

*Impacted community interviews took place in 2018 and 2019. The information gathered from these interviews further drove our conversations with local and national criminal justice policy-makers, committee members and community engagement teams. The results of these interviews and community dialogues informed the recommendations in this report.*




# Stakeholder Insights

Innovative concepts emerged from the insights shared by criminal justice professionals, policymakers, disability activists, law professors and other stakeholders in response to being asked the following questions:

- 1.** What is the definition of crisis?
- 2.** What is the definition of harm?
- 3.** What is the definition of crime?
- 4.** What is the definition of community safety?

Some interviewees shared their responses anonymously. In the interest of equality of response, all responses are anonymous and in direct quotes.



Who do you want to call?

( ) -



Call

★ Favorites

Call History



SignMail

Camera privacy on

★

Video Center

Phone book

Settings

DYNEX



## Insight 1 Defining Crisis

*"A need that has continuously gone unaddressed and therefore immediately needs to be met."*

*"A situation where someone is at harm or risk of harm, where the person's basic needs for quality of life are not being met or are being threatened."*

*"Something that interferes with the person's ability to continue on with their lives at whatever level they were working on before."*

*"A crisis to me is like someone's life is in jeopardy. Someone's about to die. Someone's about to be seriously injured. Some serious harm is about to come to like people's individual lives or groups of people. Like that to me is a crisis. Anything short of that to me personally is not a crisis."*

*"Any situation that an individual encounters where they don't have the means of resolving that situation in a way that's productive for them."*

*"A crisis is when you are not getting your basic necessities met and on top of that from the perspective of personal disability, not getting your access needs met either."*



## Insight 2 Defining Harm

*"Emotional, physical or mental pain."*

*"Physical, economic, structural, emotional, sexual or psychological force exerted for the purpose of coercing, violating, damaging or abusing."*

*"There's clearly physical harm, but I think the greatest harm is done to an individual psyche in the sense of how they feel about themselves. I kind of look at three things. You know, harm in the sense of not feeling safe about where you are, about who you are or about what you're doing. And so looking at that from an environmental lens, it's like we've created these environments, these social conditions that do harm to people who live in communities like East, West Garfield Park; Austin; North Lawndale; every single day because they don't feel safe in any of those categories. Their children don't feel safe. So, yeah, they are harmed directly and vicariously. Kids who grow up in the community where they see other people who are not respected, who are shunned, you know, who don't have access to resources. I think that's harm."*

*"Bodily harm is sort of anything that interferes with your bodily integrity, but we harm people in all kinds of ways that are not physical. So, I think it's anything that prevents you from becoming the best person you can be, is a harm."*

*"Anything that perpetuates you being physically harmed, emotionally harmed, lack of access. I think that is a harm people don't talk about. Socially harmed – a lot of people with disabilities are isolated. A natural way of socializing with people is not the norm, so that can become a harm. I guess what is not normal for your being yourself and anyone trying to push against that is harm."*





## Insight 3 Defining Crime

*"Something illegal."*

*"Crime just comes down to what the people in power and the policy-makers have established as crime at that time because ultimately there are so many acts that I think are criminal that are not recognized as a crime. So even when we talk about the decision to cut back on community-based mental health centers and to close six of them, I think that's criminal. I think it's criminal to even have such a police presence ... When we talk about schools and how children are being treated and disciplined, I think it's criminal for us to have an unequal education system. It's criminal for our housing system that we actually have to sit down and put together data to advocate and say that people need a good place to live. We actually need to come up with data because we've devalued people that much. I think that's criminal. ... I think just even, thinking about the intersection, thinking of going back to the war on drugs – what that did to communities of color, what it's done to people with disabilities. And now when we talk about the opioid crisis, and the face of the opioid crisis being white. ... I just think of growing up in the war on drugs and what was done on TV ... I look at some of the news stories now, and it's such a dehumanizing way that we are talking about people; even thinking about how many stories I've seen about mothers and their children and just thinking back to when I was growing up and seeing on the nightly news of the crack babies and how there were these people who were terrible that needed to be incarcerated. So I think all of that is just criminal."*

*"An action that violates the criminal code."*

*"Anything that is done to another human being that is against their will or consent."*



*"I think that crime occurs on both sides of the aisle, so to speak. So individual human beings in the community can clearly commit crimes against other people in the community, but the system also commits crimes against individuals in the community. Chicago is one of the most segregated cities in the United States, where if you're black, you're more likely to live in a community that is all black. To me, that's a crime because that doesn't occur by chance. That occurs as a result of institutional racism."*

*"I think that, you know, probably more crime is committed systemically via institutional racism than is committed by the people we lock up and cart off to jail every day."*

*"I think in a more philosophical sense a crime is anything that society has decided they want to discourage and that they've decided to use the coercive methods to discourage that activity. However, when we talk about the criminal justice system, it includes a lot of things that really aren't crimes in any reasonable definition of them, but it's a way that society has developed to hide its problems. So, for example, homelessness activities."*

*"It's hard for me as a Black woman to determine what a crime is. On so many levels, I mean, the fact that we are devalued, the fact that our natural bodies is being, the fact that if we have black pride we must be anti-everybody else. I mean it is just really hard for me to define crime just because I am an organizer and me speaking up or stepping up for somebody's rights and pushing the envelope and putting my body and voice on the line deems me a criminal and let's not go with disability. My lack of understanding, my lack of communication, my lack of body movements can all lead to being a crime. So, I have seen it play out on so many levels for so many people of color and so it is just hard for me to define what a crime is. Just a form of control of what institutions deem the norm, which there is nothing normal."*

*"I tend to use criminalized behavior, because I think that our current society kind of forces folks to do things that are then deemed as crime in order to survive and, also, I think a lot of things that are defined as crime aren't actually harmful, and, so, I also try not to use the word crime."*



## Insight 4

# Defining Community Safety

*"It depends on what each community needs and asks for and what makes them feel empowered and safe."*

*"I really think of people's basic needs and quality of life being met. Housing, food, whatever you need for economic stability, just all those needs being met. Quality education."*

*"Everyone having access to adequate food, shelter, healthcare, education and employment."*

*"I think that it certainly includes a sense of well-being and freedom from the crime that I just kind of talked about, a sense of belonging within a culture ... that's accepting ... where people feel like they're part of the fabric of the community, and obviously where violence doesn't occur at all. That's probably very, you know, idealistic on my part, but even at my age, I still hold on to that idealism. I think it is possible to create communities where violence doesn't occur. I don't believe that ... it's just built into our human nature. I think that it is created out of circumstance, and circumstances quite often are controlled by other people."*

*"A strong network of neighbors and friends that are mutually reinforcing and have their own sort of accountability structure, which is not coercive, at least in the state sense of using violence to lock people away."*

*“Enough money for people with disabilities to eat, pay rent, have medical care and live happily in society.”*

*“Where people having the choice to pick people within their community, within their safe spaces who can support them and have access to your basic necessities, your basic needs in order to survive. It is a loving environment and love looks different for people. But it is a space where you can be yourself, where your needs are being met, you are in community, whatever community looks like for you. You are living and thriving.”*

*“Community safety looks like kids playing in a park, kids playing Double Dutch in the street without fear of harm, without fear of a crisis coming around the bend at any second. It’s kids walking to school without having to have escorts paid for by the city to make sure they get there safely. It’s grocery stores. It’s home ownership and people complaining about (other people) walking on their lawn, like people take pride in where they live, and that’s reflected in kids being out on the street, homes being maintained. There being local businesses, there being block clubs or other like group activities that people get to engage in, like going to a softball game after school with no worries. Like that to me, like that whole picture of what people get to experience in like the north and west suburbs on a regular basis that they take for granted, that to me is what community safety should look like for everybody.”*



# Stakeholder Themes

From our interviews, the following themes emerged repeatedly regarding people with disabilities and the criminal justice system:

- 1. Destabilization of the social safety net**
- 2. Investment in communities**
- 3. Communication access and cognitive processing**

We have provided a few direct quotes from interviews highlighting the recurring themes.







## **Theme 1**

# **Destabilization of the Social Safety Net**

*"I don't think a lot of housing providers have been trained in providing reasonable accommodations. So, if there is a criminal record that is related to the disability or receiving treatment for mental health that led to some sort of situation with the criminal justice system, reasonable accommodation housing advocacy could take place for that person's criminal charge – but I don't think people always think that way."*

*"If you are a person who is surviving and you need food and someone is not understanding what you are saying, that could lead you into the system. This is usually predicated off you surviving and the system doesn't understand you and pushes you in."*

*"When people with disabilities are released from jail and do not have other housing options, they sometimes get placed into nursing homes as the only viable option. People with disabilities can get trapped in nursing homes and lose all their independence and self-sufficiency."*



## Theme 2

# Investing in Communities

*"I just feel our criminal justice system in general just doesn't meet anyone's needs. We don't have a system that focuses on restorative justice and rehabilitation. We have a system, as it's called the 'criminal justice system,' that it criminalizes people. ... Ultimately we need to focus on providing services to communities that have been disinvested."*

*"I think ultimately the goal of it should be to have them not be a part of the system anymore. I think people just keep cycling through it. If people with disabilities are constantly in it instead of back in the community thriving, then it's not working. And so, if they never get out of it, then it's fundamentally not meeting their needs."*

*"If we're constantly giving up on humans, I think we have to come up with a system where we're not giving up on people. We have to believe in treatment and we have to believe that people can be taught new behavior."*

*"Everybody's basic needs should be met, so: housing, food, emotional well-being, education, physical safety and that, to me, in this current situation, looks like fair distribution of resources and also freedom from exploitative and dangerous labor."*





## **Theme 3**

# **Communication Access and Cognitive Processing**

*"If someone misunderstands how your body operates and they call the police – once you are in the system there are communication barriers – and if your reading level is extremely low, you don't know what you are signing and what you are reading."*

*"If you have disability access barriers, you can be charged as an accessory to a crime unknowingly by being around people you think are cool at a place and time a crime is occurring."*

## ***Finding a Solution:*** **Our Recommendations**

In looking to the way forward in reducing jail incarceration of people with disabilities, we first want to acknowledge the hard work of the many disability advocates who have worked to bring attention to solutions for change. Their work was acknowledged in our conversations with local and national stakeholders and impacted persons.

Based on these conversations and interviews, we prioritized eight specific avenues to reducing jail incarceration for people with disabilities from a cross-disability standpoint. While they are certainly not the sum total of all possible solutions, we feel they are the most critical based from what we have learned to date from our work. We are committed to ongoing discussions with our local and national communities to achieve progress towards meaningful change.

These recommendations are driven directly by the voices of impacted community members, criminal justice stakeholders, community-based advocates, organizers, activist groups and other civic leaders dedicated to strengthening communities, safely reducing inappropriate interactions with the police and contributing to reducing the number of people currently incarcerated in Cook County Jail and nationally.

## **Recommendation 1**

### **Increase storytelling and advocacy opportunities for people with disabilities who have had contact with the criminal justice system.**

*"I do not want my voice silenced. I want my voice heard. ...  
To have a disability and have it not be acknowledged is like  
not acknowledging a very important part of my identity."*

**Chris Huff**

*Impacted Community Member*

*"I have no problem with my disability and I want everyone  
to know that."*

**Efferson Williams**

*Impacted Community Member*

Again and again, we encountered justice-involved persons with disabilities who made it clear that they do not feel seen for the totality of who they are, especially as persons with disabilities. We also know from long experience in our disability advocacy that the media is a significant tool for driving systems change, and stories are deeply necessary, particularly stories of black and brown disabled people who have had contact with the criminal justice system.

In reviewing existing media reports and literature and in direct interviews, the voices of the people with disabilities most impacted by the criminal justice system are frequently left out of the conversation and mischaracterized by media. This was affirmed by those we interviewed. It is critical to interrupt this kind of storytelling.

By elevating and humanizing people with disabilities from all walks of life and their interactions with the criminal justice system, we can create a more complete picture of how persons with disabilities may be unnecessarily incarcerated. Moreover, we can get a stronger sense of how incarceration affects individuals' families and communities.

Like other disability advocates before us, we see that the media and society also tend to not only stigmatize disability generally, but also specifically segregate disability types. For example, people with mental health disabilities are portrayed as "crazy" and "dangerous," while people with physical disabilities are portrayed as "helpless" and "incapable." These labels perpetuate stigmatization and discrimination. In particular, the media tends to contribute to a view of mental health and neurodivergent disability behaviors as criminal.

There are a range of criminal justice reform efforts specifically highlighted in the media, but the disability impact or profile for those efforts is low even though the impact on persons with disabilities is high. Locally in Cook County, cash bail reform has been much in the news, driven by the excellent work of the Chicago Community Bond Fund (CCBF). The CCBF operates a revolving bail fund, paying bail money to get people in Cook County Jail released. In the past three years it has paid more than \$1 million in bond and released more than 200 people, with some great media coverage about its work.

The CCBF is also a great disability ally. Both Sharlyn Grace and Ruby Pinto of CCBF noted in interviews with us that in their observation, jail is not the appropriate place for people with disabilities. “Anyone with extra needs is at an increased disadvantage in terms of their ability to comply with what the ‘system’ itself expects,” they told us. Rebecca Vallas at the Center for American Progress noted that 70 percent of people with disabilities would not be able to come up with an estimated \$2,000 for a sudden, unplanned expense, compared to 35 percent of non-disabled people.<sup>51</sup> Cash bail is essentially a serious disability problem.

The public absolutely needs to hear from people with disabilities about cash bail reform. When a person with a disability is unable to make bail, he or she is at risk because jail staff may not make disability accommodations; as well, necessary community supports to survive may be lost while the person is detained. The person also may be refraining from asking for disability supports or hiding their disability in order to survive in the jail environment. Without appropriate supports, harm may occur to accused people being held pretrial, who are unable to pay for their release to obtain the disability supports they need to survive.

Health benefits represent another opportunity for highlighting disability voices in criminal justice reform. Alan Mills, executive director and attorney with Uptown People’s Law Center in Chicago, can attest to the large number of incarcerated individuals who lose Medicaid benefits after 30 days or more in jail. For those who have Medicare Part B, coverage does not continue during incarceration if the monthly premiums are not paid. Mills notes that “progressive policy actions should not be considered *second* chances for disabled justice involved populations, as many were never properly given a *first* chance.”

We recommend greater investment in sharing the stories of impacted individuals and families across disability types through mainstream media outlets, podcasts and documentaries. We are encouraged by incredible storytelling such as the “We Are Witnesses” series by the Marshall Project and the “70 Million” podcast, both of which have stories that look at disability. But we need to see many more. Specifically, we recommend learning from individual and family experiences with an eye on disability accommodations and a focus on the social model of disability theory. To engage disability advocates, it is vital these stories are produced in accessible formats, including captioning, audio description and versions in plain language or Easy Read.

## **Recommendation 2**

**Convene cross-disability policy committees at the local and national levels that include decision-makers and impacted community members with the goal of reducing incarceration.**

*“There are certain things that people shouldn’t be subjected to, but unfortunately, we are, and in those events, you have a choice that neither option can result in a great outcome, but you must choose to try to achieve your objective or goal to get in a better situation so then you can access greater choices.”*

**Lisha Fields**

*Impacted Community Member*

Creating better choices through cross-disability informed policy-making is a matter of life or death for people with disabilities who are impacted by the criminal justice system. But for authenticity, that policy-making needs to be collaborative.

Based on our conversations about this project locally, we believe there is a will to change and to collaborate. Commissioner Karen Tamley of the Mayor’s Office for People with Disabilities in Chicago said, “If we can do more to bring attention to this issue of how disability overlays the number of people incarcerated, we might be able to make greater changes in the disability community for all people.” Tamley and other disability advocates said they feel strongly that addressing community disability barriers is essential to also addressing jail incarceration of people with disabilities.

The school-to-prison pipeline is one important area rampant with disability barriers. Candace Coleman, racial justice organizer at Access Living, stressed the importance of addressing and closing the school-to-prison pipeline for disabled youth of color in Chicago. According to a report by the Vera Institute of Justice, an organization dedicated to the improvement of justice systems, one-third of young adults and one in two of all black men in the United States have an arrest record by the age of 23.<sup>52</sup> Many also have disabilities, often but not always identified by the school system itself. Coleman views the central issue for jail reduction as “the lack of accommodations within schools and particularly those in communities of color. ... Students with disabilities are being funneled into the system at higher rates than non-disabled students, most of them black males.”

Coleman and her cross-disability advocacy group, Advance Youth Leadership Power (AYLP), worked on an anti-bullying campaign to address the root cause of why so many young black men with disabilities were being expelled because of non-conforming behaviors. They discovered that students with disabilities were not being given proper accommodations. If students were behaving as their “natural self,” this led to disciplinary action, resulting in calls to police and subsequent arrest in some cases. Arrest is not a disability accommodation. For these reasons, including educational policymakers at the table is imperative.

We would like to further emphasize that partners for meaningful policy change include both disability organizations and non-disability focused organizations. An excellent example of this is the aforementioned Vera Institute of Justice, which highlighted the importance of accessible victim services in relation to the requirements of the Prison Rape Elimination Act (PREA).<sup>53</sup>

The goal of creating cross-disability policy committees to reduce unnecessary justice system involvement of people with disabilities should be to aim for a diverse set of partners, even unexpected ones.

We should highlight that both locally and nationally there is a significant effort dedicated to addressing the needs of people with mental health issues. At the forefront are groups such as the National Alliance on Mental Illness (NAMI) and a range of providers of mental health services. These groups are also heavily involved in policy-making for criminal justice reform. However, we would urge that such groups collaborate with others who represent different types of disabilities to ensure that a real cross-disability view is brought to bear on reform. In reality, many people have more than one disability.

It is our view that criminal justice and community entities will benefit from a cross-disability perspective to identify opportunities for innovation and alternatives to compliance-based polices, and it is essential to make a start. Forming cross-agency committees that include impacted persons can provide a space to start robust discussions and create new policies.

Strategies should involve:

1. Narrowing the definition of what arises to a public safety concern
2. Creating policy and practice to identify people with disabilities
3. Creating policy and practice to fully accommodate people with disabilities
4. Evaluating practice and protocol for non-person crimes
5. Relying upon the *Olmstead* Supreme Court decision to drive investment in more robust community services as alternatives to incarceration



## Recommendation 3

**Establish and enforce clear cross-disability accommodation policies and protocols covering all areas where people interact with the criminal justice system.**

*“If you got out of line, they would have dragged you out of that [wheel]chair. Which I saw one or two guys getting dragged out of their [wheel]chair or off their cane or off their walker.”*

**John Atlas**

*Impacted Community Member*

*“I say this a lot, whenever the human element is removed from any relationship or the equation, you’re never going to be able to accomplish the greater good, and that’s what’s happening. It’s all mechanics.”*

**Ray Robinson**

*Impacted Community Member*

Representatives of the nonprofit organizations and criminal justice entities we talked to reported generally there are not clear cross-disability accommodation policies either for the public or persons who are incarcerated. Jail settings, and related law enforcement agencies and offices, often had policies that were inclusive for some disability types but not all. Unsurprisingly, those who serve as legal advocates for people with disabilities in jails had a lot to say about this.

Prominent San Francisco attorney Michael Bien represents a large portion of people with disabilities who are in jails and prisons in California and throughout the country. He told us that in his experience, criminal justice systems rarely meet the needs of people with disabilities.

Bien mapped out several reasons for this:

- Most encounters with police are unplanned and providing accommodations is not usually rapidly available because such accommodations require planning.
- People with disabilities may not self-identify due to fear, stigma or denial.
- Many encounters with the criminal justice system require a high level of English literacy and comprehension (to hear, for example, explanation of rights to a hearing, getting an attorney, rules and procedures of a prison or jail, forms to request medical care and more).

- Criminal justice systems have difficulty identifying and tracking people with disabilities.
- Numerous barriers exist. These include stairs, cells without grab bars and inability to assist people with disabilities in reading and filling out forms required to get access to programs and services.

The population of people with serious mental illness is higher in jails and prisons than in the general population, Bien added. Predictably, these individuals encounter disability-related difficulties with the official rules of incarceration and this results in increased disciplinary violations with both staff and other incarcerated people.

Without disability accommodations, a confined person's confrontation with environmental barriers can be harmful or deadly. Per Rebecca Vallas, though reasonable accommodations for disability are required by the ADA, Section 504 of the Rehabilitation Act of 1973 and the U.S. Constitution, these accommodations are frequently substandard or not provided at all in jails.<sup>54</sup> Many people with disabilities live within a complex web of disability supports, and jail resources are typically inadequate to provide these supports.<sup>55</sup> It is a matter of record that when accommodations are not provided to people with disabilities, they often suffer injury and, in some cases, death.<sup>56</sup>

These incidents can occur either through use of force, substance withdrawal or other unmet medical needs. Diane O'Connell, an attorney with the Chicago Coalition for the Homeless, represents people experiencing homelessness in criminal cases in Cook County. She also facilitates the "Housing Path" court, a deferred prosecution program for people experiencing homelessness. O'Connell reports that almost 50 percent of her clients have a disability. One, who was addicted to heroin and arrested for possession, died in Cook County Jail of cardiac arrest related to withdrawal symptoms. Tragically, this is not an uncommon occurrence. Recently, a federal appeals court ruled that a rural Maine jail should have provided substance abuse treatment as a disability accommodation.<sup>57</sup>

At a minimum, a clear definition of disability, based on the ADA's definition, should be a baseline in every criminal justice agency's policies and procedures. A clear definition, and a clear understanding of that definition by staff, would ensure that people with disabilities are more readily identified across the areas of contact with criminal justice systems, with an emphasis on 911 services, law enforcement and jail staff during processing points. It is important for people to have the chance to self-identify that they have a disability both demographically and for accommodations.

Accommodation policies should be established and in practice at key contact points, including calls for emergency or non-emergency services, law enforcement interaction, in court and during attorney meetings, and at jail entrance, internal movements and release.

We should note that accessibility policies and accountability also need to be consistently in place for probation and re-entry programs. For example, NAMI Chicago provides some support to the Cook County Jail for people with disabilities by linking them to information, including access to over 700 referral sources in the Chicago area. However, impacted community members we interviewed reported not feeling plugged into accessible community services upon their release. According to these accounts, there appears to be a disconnect between the jail, impacted community members and service-providers. We recommend that providers and those involved with programs for diversion and release/probation should be accountable for knowing and providing disability access support.

## **Recommendation 4**

**Train front-line professionals and criminal justice agency staff on a cross-disability framework to be able to identify and support people with disabilities who are in jail or at risk of incarceration.**

All stakeholders we interviewed reported not having a solid understanding of a “cross-disability” viewpoint, but generally expressed a strong desire to learn more. Most nonprofit and criminal justice professionals expressed concern with not knowing how to ask the right questions and not knowing how to screen for disabilities and feeling overwhelmed by the complexity of serving people who may not know they have a disability.

It is a lot to ask the criminal justice reform sector to know about a cross-disability lens, because its use is not widespread. We would argue that it should be. The cross-disability lens has largely been limited to Centers for Independent Living over the past few decades. The cross-disability practice is where people and the organizations they represent ideally operate with a preparedness to engage in serving people with any kind of disability. In everyday use, it is an important aspiration towards inclusion that can come with a range of challenges in terms of practice, information and accommodation.

Since the early days of the disability movement in the 1970s, there have been overlapping disability identities where people with disabilities both identify collectively as a group and individually by disability type.<sup>58</sup> Some of the historical barriers to a collective identity of disability is due to stigma amongst different disability types.<sup>59</sup> If some disabilities are privileged over

others, a disability hierarchy is created and can perpetuate discrimination and further disability stigmatization and harm. For example, someone could say, “I may have depression but at least I don’t use a wheelchair,” or, “I may use a wheelchair but at least I don’t have an intellectual disability.”

Yet there is significant merit to bringing all disabilities together and looking for opportunities to innovate, including in the area of furthering civil rights. The American Coalition of Citizens with Disabilities, founded in 1975, was one of the first cross-disability coalitions of its kind and was essential in getting Congress to pass key rules related to implementing Section 504 of the Rehabilitation Act of 1973.<sup>60</sup> This coalition was comprised of all races, genders and disabilities.

“They were deaf, blind, paraplegic, epileptic and cerebral palsied. Some were lawyers and college professors, while others had been on welfare and SSI (Supplemental Security Income) for years. Some were radical, some were moderate, some were conservative. They came because they wanted to enhance their human and civil rights, because they wanted better education and better jobs, because they needed housing and transportation.”<sup>61</sup>

We believe a cross-disability approach is essential to identifying and providing accommodations to reduce incarceration. We know that a cross-disability practice is not just a coalition of people representing disability types, but one that encompasses leadership, organizational values, preparation and budgeting. It is a practice that values inclusivity by making sure no person is left out or harmed by not asking the right questions or by not providing accommodations. A key part of a cross-disability practice is also teaching people with disabilities to advocate for what they need. We know people become more empowered when they are in an environment that is open to communication, accommodation supports and learning from one another and thus are more likely to take advantage of supports and services.

When we spoke with policy staff members at the Cook County Adult Probation Office, they stated, “The whole system needs to be trained on people with disabilities and how to interact with them. It would be beneficial for organizations to be trained on best policies and practices when serving people across disability type.” Jordan Boulger, the Director of Research and Program Evaluation at Cook County’s Adult Probation Department, said, “We are talking about a lack of access to justice. For example, what do facilities look like, how can we improve on accessibility? It’s important that everyone is at the table to understand how to accommodate those working within the system and those we serve.”

Nationally, Crisis Intervention Training (CIT) is looked to as a way to de-escalate situations in which people with disabilities come into contact with police. In Chicago, this training has recently

expanded its topics beyond mental health to include additional disability types, but it is still not fully inclusive of all disabilities. Lt. John “Jack” Benigno, the Chicago Police Department’s commanding officer of instructional design and quality control, said that CPD now includes “force mitigation” and de-escalation techniques in its annual in-service training. This is in addition to having CIT-trained officers, whose specialty is responding to people experiencing a mental health crisis. He agreed that there is a lot more to explore in serving people with different kinds of disabilities.

People with disabilities should have access to any and all resources that help prevent them from becoming justice-involved, but we may be missing something if these resources are not evaluated from a cross-disability standpoint. It is equally important that criminal justice providers be trained in cross-disability awareness, practice and accommodation processes to avoid possible harm to people with disabilities.<sup>62</sup> Locally, nonprofits and criminal justice agencies should consider working with local CILs, which are run by a majority of people with disabilities and which are supposed to operate from a cross-disability standpoint.

Providing cross-disability training to both community organizations and criminal justice systems should decrease misunderstandings about disability, reduce stigmatization and help organizations make all people feel comfortable and welcome. However, when disability needs clash with an unaccommodating, compliance-based environment, people with disabilities can be misinterpreted, categorized as defiant, criminalized and pushed directly into the criminal justice system.

## ***Recommendation 5***

**Enhance the transparency of disability policy and data to open opportunities for substantial lasting change to the continued reduction of the number of people with disabilities in jail.**

It can be challenging to get a full picture of how many people with disabilities are in jail and what types of disabilities are being counted. A jail’s population shifts daily and a jail may serve only certain groups of people who are being charged with crimes. An additional challenge is that not everyone who has a disability may know it or reveal it.

The last major national survey of people in jail that relied on self-reporting of disability was the National Inmate Survey of 2011-2012. This report surveyed prison inmates (people serving time

after being sentenced) and jail inmates (people held in jail awaiting pretrial or sentencing). The report, “Disabilities Among Prison and Jail Inmates, 2011-2012,” was based on this survey and revealed:

- An estimated 32 percent of prisoners and 40 percent of jail inmates reported having at least one disability.
- Prisoners were nearly three times more likely and jail inmates were more than four times more likely than the general population to report having at least one disability.
- About two in 10 prisoners and three in 10 jail inmates reported having a cognitive disability, the most common reported disability in each population.
- Female prisoners were more likely than males to report having a cognitive disability, but were equally likely to report having each of the other five disabilities.
- Non-Hispanic white prisoners (37 percent) and prisoners of two or more races (42 percent) were more likely than non-Hispanic black prisoners (26 percent) to report having at least one disability. More than half of prisoners (54 percent) and jail inmates (53 percent) with a disability reported a co-occurring chronic condition.
- Compared to those without a disability, prisoners with a disability were about four times more likely and jail inmates with a disability were nearly 2.5 times more likely to report past 30-day serious psychological distress.
- Thirty-three percent of prisoners and 47 percent of jail inmates with a cognitive disability reported past 30-day serious psychological distress, compared to 11 percent of prisoners and 24 percent of jail inmates with a disability other than cognitive.<sup>63</sup>

This national data reveals that people with disabilities in jail tend to have more than one disability and to be experiencing more acute distress than their non-disabled peers. It also tells us, importantly, that there is a dynamic that seems to prevent black people from self-reporting disability. These are important insights in identifying areas for possible innovation.

However, on the local level, trying to get this level of data is very difficult.

The Cook County Sheriff’s Office posts daily bulletins, “Behind the Wall,” containing basic demographic information on the jail’s current population.<sup>64</sup> This is an important public service for those looking to understand who is in the jail and how to strategically work to reduce the jail population. The report includes demographics for gender, race and age, but not disability. In August 2019, more than 90 percent of people incarcerated in Cook County Jail were male, approximately 70 percent were black and approximately 60 percent were 34 and younger.<sup>65</sup>



We spoke with staff at the Cook County Sheriff's Office to ask whether disability information was collected. Our thinking was that asking people to identify whether they had a disability might help trigger the reasonable accommodation process. The response at that time was that certain pieces of disability information were in fact being collected, but not at initial intake and that the information was not public. Moreover, the collection of disability data was viewed as more of a medical effort related to securing healthcare; Cook County Jail medical data is gathered and kept by a separate entity, the Cook County Health and Hospitals System. Sheriff's Office staff members were open to discussing ways to get a better data picture of people with disabilities in the jail, and the office does employ an ADA coordinator.

Chicago Police Department representatives said their arrest intake forms do not ask if a person being arrested needs a reasonable disability accommodation. It is unknown whether nationally any police department or jail intake forms are consistently asking this question or even whether 911 operators and first responders ask if callers need any disability accommodations upon their first contact. NAMI advises that those who call 911 should identify whether someone is in psychiatric crisis and that they should ask for a CIT-trained officer.<sup>66</sup>

Increasing transparency in disability data and disability policy allows for greater community input and a more collaborative relationship between systems and the people they serve. Furthermore, the data collected should be cross-disability and should be viewed as an opportunity to see disability as a factor of social barriers, not medical diagnosis. This increased transparency would also provide information the community needs to best accommodate the needs of their community members and justify opportunities to seek funding to increase accessibility.

Representatives of criminal justice systems interviewed stressed they need more data to get the full scope of disabilities across disability type who are coming into contact with and represented across the criminal justice system. The representatives also said that this data would help identify missing links in accommodations, services and resources.

Sharing disability policy and data publicly is also important for building trust with the community. Transparency can open agencies to increased community support, collaboration and instrumental feedback. Many grassroots, community-based organizations rely on data sharing to apply for funding for their community-based work. Without data sharing, many small organizations within the most impacted communities struggle to maintain funding to continue to provide meaningful services to those in the community who need these services the most.

Local criminal justice agencies should proactively begin asking criminal justice-involved persons to self-identify, at first point of contact, whether they have a disability and whether they need disability accommodations. This creates a way to track and publish data to increase opportunities for collaborative efforts to reduce the incarceration of people with disabilities.

## **Recommendation 6**

**Within the criminal justice system, implement internal employee ADA accommodation guidance and training; helping accommodate staff might, in turn, help them help community members.**

Our interviews with professional stakeholders highlighted a lack of understanding on how to personally access ADA accommodations for oneself. Through our research during this initiative and through Access Living's work historically, employment discrimination towards people with disabilities is well-known. This can occur before a person is even considered for employment or after when they try to access accommodations. Many workers expressed fear of stigma and retaliation if they were to ask their supervisors or human resources personnel about how to access accommodations. Some of the stakeholders interviewed self-identified as persons with a disability but did not want to be identified publicly for this report. Criminal justice professionals reported they fear they may face job suspension or job loss if they access resources for certain disability-related needs.

The question of workplace accommodations is especially important for any front-line criminal justice agency worker who is responsible for enforcing the compliance of justice-involved persons. Police function in the United States was initially established to prevent crime and support community social service needs. Over the years this function has changed into an enforcement/compliance-based model of policing, placing increased stress upon law enforcement personnel and the communities they serve. Stress and its effects, when they impede a person's ability to do their job, can be a disability under the ADA.

We have to ask: is it possible that criminal justice employees who receive better training and support for their own disabilities could, in turn, better recognize, acknowledge and respond to people in the community with disabilities?

Among those we interviewed was Edward Simmons, a person with a disability who uses a wheelchair. Simmons is a prior Cook County Jail employee and previous Access Living board member. He reports that while he was working at the Cook County Jail, accessibility was historically an uphill battle. Simmons attests that some accessibility accommodations were made for him to do his job, but this was a process and not fully inclusive of all his needs. Simmons said it is imperative that criminal justice agencies hire more people with disabilities to create a truly inclusive environment with a shared internal understanding of the vast variety of supports that people with disabilities need.

In certain situations, an employee's disability needs may conflict with what is legally required for their job role. CPD Lt. Benigno pointed out that officers who seek assistance for mental health may lose their right to carry their duty weapon. From Access Living's many years of cross-disability practice, including peer support, we know that those who have disabilities are important for supporting the success of their peers with disabilities. Thus, we would urge criminal justice agencies to carefully consider how disability status may actually be an asset to their talent pools.

Many criminal justice employees report fear of judgement, discrimination, stigmatization and workload bias. Workplaces should train their employees on how to access disability accommodations for themselves if they need them – and encourage diversity and inclusion through the employment of people with disabilities and establishing internal employee disability councils. These supports can lead to an increased level of workplace comfort in talking about disabilities, increased understanding of disability rights and the knowledge to feel more comfortable and confident talking about disability to the public.

Criminal justice agencies should evaluate opportunities to encourage staff to self-identify as people with disabilities and recognize the advantages of a diverse workplace that respects staffs' individualized strengths. Criminal justice employees should have access to understanding the process of how to request disability accommodations for themselves. Establishment of internal employee resource groups centered on disability status would help promote inclusivity and remove stigma.

## **Recommendation 7**

**Provide meaningful alternatives to a police response when someone is in crisis to deflect/divert people with disabilities who do not pose a public safety concern into non-restrictive supportive environments.**

*“I just got pulled over with my best friend, and they treated me like, as if I could get up and run away from them. They pulled out they gun, I said, man, what is you doing? I can’t even walk. I’m paralyzed.”*

*“If it’s called the Department of ‘Corrections’ then why are people coming home, going right back into the jail one month, two months later?” People are being sent back out with several barriers and no direction to navigate these obstacles, particularly if they have a disability.”*

**Efferson Williams**

*Impacted Community Member*

Accessible diversion/deflection programs, as well as non-law enforcement options for people with disabilities in crisis, could be crucial to reducing jail incarceration. Community engagement teams and programs that focus on listening to the needs of the community, strengthening community trust and reducing disability stigmatization can reduce the reliance on a law enforcement response. Furthermore, such programs are important for building community members’ disability identities and further focusing on strengthening relationship-building within the community.

Many times, family, friends or concerned community members may call 911 because they want to help a person in crisis and are unaware of alternatives to a police response. However, the Illinois Criminal Justice Information Authority found that “researchers estimate officers are 1.4 to 4.5 times more likely to use force during [mental health crisis calls] interactions, increasing the risk of harm for both the officer and the individual in crisis.”<sup>67</sup> When the need for disability flexibility conflicts with a rigid criminal justice system, the results can be deadly.

To prevent this, emergency response options for 911 dispatchers should include non-law enforcement personnel who can be dispatched when a person with a disability is having a crisis. The criminal justice system is largely compliance-based and the disability experience by and large is one of noncompliance. Some aspects of law enforcement response, such as uniformed police services and using bright flashing lights and sirens, can create additional barriers for a person with

a disability. The criminal justice system sometimes requires a person in crisis to do something they physically or mentally cannot do. “[There will be a problem] if someone orders you out of a car and your legs do not function. It’s just that simple,” said Lt. Benigno with the CPD. “Officers need to know that there are resources out there to divert people.” Non-law enforcement resources should be made available and law enforcement personnel should know what these resources are.

CILs located within communities most impacted by crime and incarceration could, with investment, provide for a safe haven for people with disabilities. They and their families could access resources and mentorship, learn more about disability identity, disability community, disability justice and their legal rights, and gain self-advocacy skills. Investing in such programs could give rise to options not available elsewhere.

The Westside Community Triage and Wellness Center in Chicago’s West Garfield Park neighborhood is another example of one alternative police can utilize instead of jail. The triage center is open 24/7 for police drop-offs and individual walk-ins. These voluntary wellness centers provide alternatives to sole reliance on 911 operators and law enforcement responses, and ultimately help build community by helping people avoid incarceration for criminalized behaviors that do not necessitate arrest. The Center services the community through mobile crisis resources, a crisis line and its drop-in center which provide a safe space, crisis intervention, referrals and follow-up services.

Dr. Rashad Saafir, president and CEO of the Bobby E. Wright Mental Health Center, which also operates a mobile crisis program, says his agency wants people who can go out into the community to prevent people from having to utilize emergency rooms. Stress and the resulting behaviors from stress, such as suicide attempts and substance abuse, are prevalent in the community, especially during the holidays. “We are hoping to avert some of the issues that come up that would typically would require someone from the Chicago Police Department to respond, like a CIT officer,” he said. The agency’s mobile crisis workers respond to the community without police, to provide point-in-contact services to the community. This fills a gap in services and provides an alternative to incarceration.

Treatment Alternatives for Safe Communities (TASC) is an Illinois statewide provider serving people in courts, corrections and child welfare, primarily with mental health and substance abuse disabilities. Officials there also stress the importance of diversion efforts. Director of Policy Laura Brookes said, “We know that many people involved in the criminal justice system have under-treated behavioral health conditions that can be better addressed in the community than in correctional settings. Many (people) can be safely diverted into these systems.” For many with visible and invisible disabilities, this could go a long way in helping to alleviate the chronic involvement in correctional and other public systems.

Of note nationally, an emergency response program in Oregon, CAHOOTS (Crisis Assistance Helping Out On The Streets), has garnered attention for providing mobile crisis intervention 24/7 in the Eugene-Springfield metro area. Each response team has a medic and a caseworker who work to coordinate a range of services for the person in crisis.<sup>68</sup>

Era Laudermilk of the Cook County Public Defender’s Office emphasized the importance of deflection and diversion programs. She is trained in restorative justice practices and believes that such interventions are more effective than typical enforcement responses. “Restorative justice practices help to address historical harm to help make people and communities whole,” said Laudermilk. She noted that restorative justice diversion courts better help the community and those charged with a crime to understand each other and produce healthier harm-reduction outcomes. Rather than strictly punitive measures, a crime victim can personally learn more about the individual charged with a crime and what community resources that individual might be lacking, while the person charged with a crime learns how their actions impacted the victim and community. Once a person successfully completes restorative justice court, the criminal charges are expunged. “It’s a powerful thing when everyone comes together and can work together,” said Laudermilk.

## **Recommendation 8**

**Invest in housing options that are both affordable and accessible for people with a range of disabilities and to people who have a criminal history.**

*“I don’t want housing in jail. I want my own housing, and if I had that, a lot of this wouldn’t be happening.”*

**Lisha Fields**

*Impacted Community Member*

Affordable and accessible housing is an essential community-based service, as Access Living has recognized since opening its doors in 1980. Less than 5 percent of the housing stock nationally is accessible to people with moderate to severe physical disabilities, and less than 1 percent is accessible to those who use wheelchairs.<sup>69</sup> The search for housing is further complicated when a person with a disability has been charged with or convicted of a crime.



Those who struggle the most to secure housing are people in poverty with disabilities who need accessibility accommodations. When a person is disabled and has a criminal record their discrimination is compounded by ever-shrinking options. Investing in safe, affordable and accessible housing in disinvested communities would increase the availability of safe spaces available in highly criminalized areas. It is vital that current and new affordable, accessible housing options do not discriminate against people with disabilities who have a criminal record or who have a household member with a criminal record. It is equally imperative that the definition of “affordable” and “accessible” are outlined by those who need the housing most.

Cathleen O’Brien, housing organizer at Access Living, advocates for accessible affordable housing for people with disabilities in Chicago. She noted that people with disabilities who are unemployed may receive Social Security income which maxes out at \$771 a month, making it virtually impossible to find an accessible studio apartment in the city, where the average rent is \$1,500 a month. Even if a person with a disability can afford the rent, O’Brien explained, “Most of the people seeking housing with criminal records are excluded from housing wait lists due to their criminal records.”

Unstable housing is a recurring theme as a precursor to further criminal justice system involvement, along with other factors. In Chicago, people with disabilities live in higher percentages in the South Side and West Side neighborhoods, according to the 2012-2016 U.S. Census’ five-year Disability Data-Set Estimates. Many of these neighborhoods are overwhelmingly communities of color.

In addition, individuals with criminal records are more likely to be homeless,<sup>70</sup> and individuals who are more likely to be homeless are more likely to be jailed for minor quality-of-life or survival crimes.<sup>71</sup>

The CCH’s O’Connell told us of an interview with a homeless disabled woman who has been in and out of Cook County Jail for petty crimes and unpaid fines. This client is “scared to death to be locked up in Cook County Jail as a person with a disability,” since she requires accommodations in the jail setting. The client grew up in Chicago, was a victim of domestic violence and simply wishes that community resources were prioritized over criminalization. O’Connell believes if her client had been given more opportunities within the community, she wouldn’t be homeless and jobless and trapped in a cycle of incarceration with no other place to go. This cycle can be fed by a lack of accessible programs upon release from jail, such as inaccessible housing options and probation conditions that conflict with disability accessibility.

In 2019, the Illinois Justice Project and the Metropolitan Planning Council released a report detailing the lack of housing for the formerly incarcerated. The report noted: “Without stable housing, a justice-involved person’s life frequently gets disrupted, often with negative consequences

as Illinois' current 40 percent recidivism rate confirms."<sup>72</sup> According to the report, public housing authorities have discretion to deny admission for "criminal activity that interferes with the health, safety or right of peaceful enjoyment of the property by other tenants."<sup>73</sup> This leaves many individuals and families exposed to potentially discriminatory housing application rejections.

Housing discrimination against those with criminal backgrounds is so pervasive that Chicago housing advocates have worked for the past several years to pass the Just Housing Ordinance through the Cook County Board.<sup>74</sup> This county ordinance prohibits a criminal history question box on housing applications and implements an individual assessment test, with the goal of reducing discriminatory housing practices and providing greater access to safe, accessible housing for all people. As of this writing, the ordinance is in its final rule-making stages.

Gianna Baker, co-director of the Chicago Area Fair Housing Alliance, helped shepherd the ordinance through the process. She emphasized the importance of housing reforms being driven by impacted community members who can share direct lived experience, and by community faith leaders who can speak with moral authority. According to Baker, the first place many people in the Chicago Black community will go for help is to their local churches. Local churches should be not just included, but also informed and working collaboratively with activists and policymakers at the forefront of reform efforts, she said. While working on the ordinance, Baker said she found that people with any criminal conviction were struggling to obtain housing, but that housing instability especially impacts communities of color. These communities tend to have more people with disabilities.

The Frequent User Systems Engagement (FUSE) program from the Corporation for Supportive Housing (CSH) is a model for possible replication. FUSE focuses on housing solutions for frequent utilizers of jails, hospitals, shelters and other crisis services.<sup>75</sup> FUSE connects vulnerable people to supportive housing and CSH reports seeing a reduction in criminal justice involvement, hospitalizations and shelter stays, and increased housing retention rates.

The ordinance has now passed the County Board and will go into effect on December 31, 2019.

# In Conclusion

More than 85 million people in the United States ages 18 to 65 have a disability.<sup>76</sup> It is reported that an estimated 40 percent of people in jail have at least one disability,<sup>77</sup> though we presume this is an underestimate due to the difficulties in tracking disability within the criminal justice system. The overrepresentation of people with disabilities in jail should spark thoughtful conversations in the efforts to reduce jail incarceration.

Overall during the course of our project, we learned that several steps can be taken to move forward the ongoing dialogue about reducing harm to people with disabilities in the criminal justice system, and improving communication and access. This report is a look into ways to implement change through a framework, the cross-disability lens, that is both vital and not always at the forefront of criminal justice reforms. Based on what we have learned to date, Access Living believes that through focusing on the voices of impacted community members, providing robust cross-disability support and guidance to policymakers, and investing in non-incarcerative community supports, it is possible to further reduce the unnecessary incarceration of people with disabilities.

We are grateful for the support and teaching of many community leaders, disability activists and criminal justice stakeholders throughout the formation of this report. Although our report is unlikely to be fully inclusive of all community needs, we see it as a starting point for Access Living, and we invite stakeholders to consider the recommendations presented and the noteworthy ideas and models highlighted, to expand collaboration moving forward.

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