

# APPENDIX TO POLICY 8

## Policing of Youth with Disabilities, Experiencing Mental Health Crises, or Impaired by Drugs or Alcohol

Strategies for Youth has created [12 Model Law Enforcement Policies for Youth Interaction](#) to provide law enforcement agencies and officers with guidance on how to interact with youth in developmentally appropriate, trauma-informed, equitable ways that comply with the law. This appendix contains additional source and background information for [Policy 8: Policing of Youth with Disabilities, Experiencing Mental Health Crises, or Impaired by Drugs or Alcohol](#).

### Americans with Disabilities Act

**Americans with Disabilities Act (ADA), 42 U.S.C. § 12102(1)(A), and implementing regulations for Title II of the ADA at 28 C.F.R. Part 35. The regulations include:**

- Definitions at 28 C.F.R. § 35.104 (2023), including the definition of disability, the definition of auxiliary aids and services, and the definition of service animal.
- The requirement that state and local government entities, such as law enforcement agencies, make “reasonable modifications” to their policies, practices, or procedures when necessary to avoid disability on the basis of disability, unless the modification would fundamentally alter the nature of the service, program, or activity. 28 C.F.R. § 35.130(b)(7)(i) (2023).
- The requirement that communications with law enforcement must be “as effective” as communication with people without disabilities. 28 C.F.R. § 35.160 (2023).
- The requirement that state and local government entities, such as law enforcement agencies, provide appropriate auxiliary aids and services, including qualified interpreters, transcription services, written materials, text telephone (TTY) devices, video remote interpreting (VRI) services, and other communication methods. 28 C.F.R. §§ 35.160, 35.104, 35.164 (2023).
- Limitations and defenses. For example, when an individual poses a “direct threat” to the health or safety of others, Title II of the ADA does not require a public entity to permit that individual to participate in, benefit from, services, programs, and activities. However, the direct threat determination must be an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur;

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and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk. 28 C.F.R. § 35.139.

### **U.S. DEP'T OF JUST., C.R. Div., ADA.gov**

<https://www.ada.gov/>

This website includes regulations, legal documents, and other ADA resources.

## Youth with Disabilities and Their Interactions with Law Enforcement

### **NAT'L DISABILITY RIGHTS NETWORK, PROBATION REFERRAL: MODEL FOR DIVERSION OF CHILDREN AND YOUTH WITH DISABILITIES FROM THE JUVENILE JUSTICE SYSTEM 11 (2019)**

[https://www.ndrn.org/wp-content/uploads/2019/10/Probation\\_Referral\\_Report\\_FINAL\\_w\\_Appendices.pdf](https://www.ndrn.org/wp-content/uploads/2019/10/Probation_Referral_Report_FINAL_w_Appendices.pdf)

“Youth with disabilities may be arrested in the community for behaviors that appear concerning but are actually quite harmless. They may be arrested for behaving strangely or other actions that are not actually crimes. Police training can be successful at preventing negative police interactions under such circumstances. Disabilities may prevent youth from advocating appropriately for themselves at the time of arrest and/or for appropriate dispensation within the system. Youth with particular types of disabilities may be more likely to confess to a crime they did not commit, may not be able to express exactly what happened during an incident, or may be named by another youth in an attempt to deflect responsibility, and be unable to explain their perspective regarding an incident.”

## Students with Disabilities and Interactions with Law Enforcement and the Juvenile Legal System

### **U.S. DEP'T OF EDUC. OFF. FOR C.R., CIVIL RIGHTS DATA COLLECTION REPORT, REFERRALS TO LAW ENFORCEMENT AND SCHOOL-BASED ARRESTS IN U.S. PUBLIC SCHOOLS 1 (2023)**

[https://ocrdata.ed.gov/assets/downloads/Referrals\\_and\\_Arrests\\_Part5.pdf](https://ocrdata.ed.gov/assets/downloads/Referrals_and_Arrests_Part5.pdf)

According to data reported to the U.S. Department of Education, in the 2017-2018 school year, students with disabilities were approximately 15% of public school enrollment, but represented approximately 30% of students referred to law enforcement and approximately 29% of students subjected to school-based arrests.

### **Supporting Youth with Disabilities in Juvenile Corrections, U.S. DEP'T OF EDUC. OFF. OF SPECIAL EDUC. & REHABILITATIVE SERVS. (MAY 23, 2017)**

<https://sites.ed.gov/osers/2017/05/supporting-youth-with-disabilities-in-juvenile-corrections/>

“Though precise figures are difficult to come by, it is estimated that the percentage of incarcerated youth with disabilities typically range from 30 percent to 60 percent, with some estimates as high as 85 percent.”

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**NADIA MOZZAFFAR ET AL., CREDIT OVERDUE: HOW STATES CAN MITIGATE ACADEMIC CREDIT TRANSFER PROBLEMS FOR YOUTH IN THE JUVENILE JUSTICE SYSTEM, JUV. L. CTR. 16 (2020)**

[https://jlc.org/sites/default/files/attachments/2020-10/Credit%20Overdue\\_0.pdf](https://jlc.org/sites/default/files/attachments/2020-10/Credit%20Overdue_0.pdf)

Youth with educational disabilities are over-represented among incarcerated youth.

## Individuals with Autism, Intellectual and Developmental Disabilities, and Their Interactions with Law Enforcement

**What Is Autism Spectrum Disorder?, CTR. FOR DISEASE CONTROL & PREVENTION**

<https://www.cdc.gov/ncbddd/autism/index.html>

**What is ADHD?, CTR. FOR DISEASE CONTROL & PREVENTION**

<https://www.cdc.gov/ncbddd/adhd/facts.html>

**What is Cerebral Palsy?, CTR. FOR DISEASE CONTROL & PREVENTION**

[https://www.cdc.gov/ncbddd/cp/facts.html#:~:text=Cerebral%20palsy%20\(CP\)%20is%20a,to%20do%20with%20the%20brain](https://www.cdc.gov/ncbddd/cp/facts.html#:~:text=Cerebral%20palsy%20(CP)%20is%20a,to%20do%20with%20the%20brain)

**INT'L ASS'N OF CHIEFS OF POLICE, LAW ENFORCEMENT RESPONSE TO PEOPLE WITH DEVELOPMENTAL DISABILITIES: STEPS FOR DEFLECTION OR PRE-ARREST DIVERSION (2023)**

[https://www.theiacp.org/sites/default/files/CRIT/LEO\\_DDandDiversion.pdf?utm\\_source=Informz&utm\\_medium=email&utm\\_campaign=Informz%20Email](https://www.theiacp.org/sites/default/files/CRIT/LEO_DDandDiversion.pdf?utm_source=Informz&utm_medium=email&utm_campaign=Informz%20Email)

“This resource provides insights into the developmental disability community, offers suggestions for successful interactions, and outlines options for safe and effective deflection and pre-arrest diversion when people with developmental disabilities encounter law enforcement and may be experiencing a crisis or are otherwise in need of services.”

**INT'L ASS'N OF CHIEFS OF POLICE, INTERACTIONS WITH INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES (2017)**

<https://www.theiacp.org/sites/default/files/2018-08/IntellectualDevelopmentalDisabilityBinder.pdf>.

This document includes a model policy, a “concepts and issues” paper, and a one-page “Need to Know” paper about interactions with individuals with I/DD.

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**Danielle Wallace et al., *The Frequency and Clustering of Autism-Related Behaviors During Encounters Between the Police and the Autism Community*, 45 POLICING: AN INT'L J. 403, 403-420 (2022).**

Results from a survey demonstrated that many of the behaviors that individuals with autism are reported to exhibit in law enforcement encounters “overlap in concerning ways with general police training on deception, compliance, and resistance.” *Id.*, at 414. Therefore, training for officers is “especially critical for decoupling behaviors and characteristics associated with autism from behaviors police officers are taught to represent suspiciousness or deception, as well as non-compliance and passive resistance. *Id.* Without training on [Autism Spectrum Disorder], police officers are at risk of making decisions during encounters that may be inappropriate for the circumstances, risking injury to all parties and legal ramifications for the department.” *Id.*, at 414-15.

**Julianna Rava et al., *The Prevalence and Correlates of Involvement in the Criminal Justice System Among Youth on the Autism Spectrum*, 42 J. AUTISM & DEVELOPMENTAL DISORDERS 340 (2017).**

In a “nationally representative sample” of youth with autism, approximately 20% of these youth had been stopped and questioned by police and nearly 5% had been arrested. *Id.* Of those youth stopped and questioned, about half reported this police conduct by age 15, and the majority by age 17. *Id.*

**KRISTIN HENNING, *THE RAGE OF INNOCENCE: HOW AMERICA CRIMINALIZES BLACK YOUTH* 168 (2021)**

Children with disabilities such as autism, Attention Deficit Hyperactivity Disorder and severe learning disabilities often “have limited memory and recall, making it difficult for them to follow instructions – especially the rapid-fire, multistep instructions that are often given by police. In addition [b]ecause youth with cognitive disabilities often behave and respond in ways that appear aggressive, noncompliant, and violent, police who are not trained to identify and manage the signs of mental illness or disability can misinterpret those behaviors as mean, malicious, and threatening. Encounters escalate quickly when officers have little patience to deal with an emotional outburst from a child.” *Id.* at 170. Youth with I/DD who cannot process their feelings and cannot express themselves may curse, fail to respond to questions, or appear suspicious or evasive. *Id.* at 171-72.

### **Information for Law Enforcement, AUTISM SPEAKS**

<https://www.autismspeaks.org/information-law-enforcement>

This document provides information for first responders about how to recognize the signs of autism, recommendations for interacting with a person with autism, general training guidelines for law enforcement, and other resources.

## Individuals Experiencing a Mental Health Crisis and Their Interactions with Law Enforcement

**U.S. DEP'T OF JUST., INVESTIGATION OF THE CITY OF MINNEAPOLIS AND THE MINNEAPOLIS POLICE DEPARTMENT 57-66** (2023) [hereinafter INVESTIGATION OF THE CITY OF MINNEAPOLIS AND THE MINNEAPOLIS POLICE DEPARTMENT]

[https://www.justice.gov/d9/2023-06/minneapolis\\_findings\\_report.pdf](https://www.justice.gov/d9/2023-06/minneapolis_findings_report.pdf)

DOJ found that the City and the Department violate the ADA in responding to individuals with behavioral health disabilities. “Many behavioral health-related calls for service in Minneapolis do not require a law enforcement response. These calls often involve no violence, weapon, or immediate threat of harm .... Such calls could be safely resolved with a behavioral health response, such as a mobile crisis team. Other calls may present public safety concerns that may require a joint response involving police and behavioral health responders.” *Id.* at 58. DOJ also noted an incident where officers handcuffed the ankles and wrists of an 11-year-old Black girl who was suspected of overdosing on pills, and stated, “[a] behavioral health-informed response is uniquely important when responding to children.” *Id.* at 60.

**U.S. DEP'T OF JUST., INVESTIGATION OF THE LOUISVILLE METRO GOVERNMENT 59-60** (2023)  
[hereinafter INVESTIGATION OF THE LOUISVILLE METRO GOVERNMENT]

<https://www.justice.gov/crt/case-document/file/1572951/download>

Calls for police service in Louisville involving behavioral health concerns “can involve a range of circumstances, many of which do not involve violence or threatening behavior”. Instead, these situations “often involve calls about a person with suicidal thoughts but no immediate plan; a person experiencing delusional thinking or responding to hallucinations; or someone who is loitering.” *Id.* at 59. Although some calls for service involving behavioral health issues require a “primary law enforcement response because of violence or threats of violence, thousands of calls per year could be safely and more effectively resolved through a response by behavioral health professionals, such as a mobile crisis team, or with co-responding behavioral health professionals paired with appropriately selected and trained officers.” *Id.* “When an individual is experiencing a behavioral health crisis and officers do not utilize those well-known tactics for communicating with that individual, the law enforcement agency may not have taken appropriate steps to ensure that communications with individuals with disabilities ‘are as effective as communications with others,’ as required by the ADA.” *Id.* at 64 n.77.

**U.S. DEP'T OF JUST., INVESTIGATION OF THE BALTIMORE POLICE DEPARTMENT 80-85** (2016)  
[https://www.justice.gov/d9/bpd\\_findings\\_8-10-16.pdf](https://www.justice.gov/d9/bpd_findings_8-10-16.pdf)

DOJ found that the Baltimore Police Department “routinely uses unreasonable force against individuals with mental health disabilities” and fails to make reasonable modifications necessary to avoid discrimination on the basis of disability.

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### **U.S. DEP'T OF JUST., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 2, 28, 35-37 (2015)**

[https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf)

DOJ found that Ferguson police records “suggest a tendency to use unnecessary force against ...people with mental health conditions or cognitive disabilities.”

### **U.S. DEP'T OF JUST., INVESTIGATION OF THE ALBUQUERQUE POLICE DEPARTMENT 15, 20-22 (2014)**

[https://www.justice.gov/sites/default/files/crt/legacy/2014/04/10/apd\\_findings\\_4-10-14.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2014/04/10/apd_findings_4-10-14.pdf)

DOJ found that Albuquerque police officers “used excessive force against individuals with mental illness, against individuals with impaired faculties, and against individuals who require medical treatment.”

### **U.S. DEP'T OF JUST., INVESTIGATION OF THE SEATTLE POLICE DEPARTMENT 4 (2011)**

[https://www.justice.gov/sites/default/files/crt/legacy/2011/12/16/spd\\_findletter\\_12-16-11.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2011/12/16/spd_findletter_12-16-11.pdf)

The Seattle Police Department estimates that 70% of its use-of-force encounters involve persons with mental illness or those under the influence of drugs or alcohol.

### **INT'L ASS'N OF CHIEFS OF POLICE, RESPONDING TO PERSONS EXPERIENCING A MENTAL HEALTH CRISIS IV.B.1. (2018)**

<https://www.theiacp.org/sites/default/files/2021-07/Mental%20Health%20Crisis%20Response%20FULL%20-%2006292020.pdf>

“Most [persons experiencing a mental health crisis] are not violent and some may present dangerous behavior only under certain circumstances or conditions.”

### **Jamelia N. Morgan, *Policing Under Disability Law*, 73 STAN. L. REV. 1401, 1469 (2021)**

The article discussed how Title II of the ADA applies to lawsuits challenging police conduct, argued that courts should analyze these lawsuits in a way that provides greater protections for people with disabilities, and described “both the limits and possibilities of police reform.”

### **Erin McCauley, *The Cumulative Probability of Arrest by Age 28 in the United States by Disability Status, Race/Ethnicity, and Gender*, 107 AM. J. PUB. HEALTH 1977, 1977-81 (2017)**

Individuals with disabilities had an approximately 43% probability of arrest by age 28, as compared to the probability of arrest of approximately 30% for people without disabilities, with the peak probability of arrest occurring in mid- to late adolescence.

## Individuals Who Are Deaf or Hard of Hearing, and Interactions with Law Enforcement

### **Settlement Agreement, *Gordon v. Texas*, No. H-98-0394 (S.D. Tx. 1999)**

In this settlement, Harris County, Texas agreed to adopt and enforce a number of policies regarding communication with individuals who are deaf in the County's criminal justice system. Among other things, Harris County agreed to provide auxiliary aids and services without charge, including sign language interpreters, to people who are deaf when those aids and services are necessary to ensure effective communication.

## Individuals with Substance Use Disorders and Interactions with Law Enforcement

### **U.S. DEP'T OF JUST., BUREAU OF JUST. ASSISTANCE, HOW LAW ENFORCEMENT AGENCIES AND OFFICERS CAN WORK PROACTIVELY WITH HEALTH-ADJACENT PROGRAMMING 1-3 (2022)**

[https://www.cossup.org/Content/Documents/Articles/RTI\\_How\\_LE\\_Can\\_Work\\_Proactively\\_With\\_Health\\_Adjacent\\_Programming\\_Part\\_I\\_Naloxone.pdf](https://www.cossup.org/Content/Documents/Articles/RTI_How_LE_Can_Work_Proactively_With_Health_Adjacent_Programming_Part_I_Naloxone.pdf)

This guideline describes programs to train law enforcement officers and community members to administer the opioid overdose reversal drug naloxone.

### **U.S. DEP'T OF JUST., BUREAU OF JUST. ASSISTANCE, LAW ENFORCEMENT AND FIRST RESPONDER DIVERSION PATHWAYS TO DIVERSION CASE STUDIES SERIES: OFFICER INTERVENTION 2 (2020)**

[https://www.cossup.org/Content/Documents/Articles/Pathways\\_to\\_Diversion\\_Case\\_Studies\\_Series\\_Officer\\_Intervention.pdf](https://www.cossup.org/Content/Documents/Articles/Pathways_to_Diversion_Case_Studies_Series_Officer_Intervention.pdf)

"First responder diversion occurs at the front end of the justice system. It can occur before an arrest is necessary. This early intervention can help individuals avoid the direct costs and collateral consequences that result from arrest and involvement with the justice system. A single arrest, even if the individual is never charged or found guilty, can entangle an individual—especially a vulnerable one—in a cycle of costly and detrimental justice system involvement. Harmful collateral consequences to affected individuals and their families can include fines and fees, housing instability, unemployment or underemployment, educational deficiencies, and reduced economic mobility. When those who are arrested are near or below the poverty line, the impact of the arrest is multiplied." *Id.* at 2.

### ***Substance Use and Co-Occurring Mental Disorders*, NAT'L INST. OF MENTAL HEALTH (Mar. 2023)**

<https://www.nimh.nih.gov/health/topics/substance-use-and-mental-health>



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**Understanding the Dangers of Alcohol Overdoses**, NAT'L INST. ON ALCOHOL ABUSE & ALCOHOLISM (Jan 2023)

<https://www.niaaa.nih.gov/publications/brochures-and-fact-sheets/understanding-dangers-of-alcohol-overdose>

**SUBSTANCE ABUSE & MENTAL HEALTH ADMIN., OPIOID OVERDOSE PREVENTION TOOLKIT** (2018)

<https://store.samhsa.gov/sites/default/files/d7/priv/sma18-4742.pdf>

**CTR. FOR HEALTH & JUST., PRE-ARREST DIVERSION/DEFLECTION FRAMEWORKS: A DECISION MAKING TOOL FOR POLICE LEADERS** (2017)

[https://www.theiacp.org/sites/default/files/Opioid%20Response%20Center/DeflectionFramework-excerpt\\_Final.pdf](https://www.theiacp.org/sites/default/files/Opioid%20Response%20Center/DeflectionFramework-excerpt_Final.pdf)

This document for law enforcement leaders describes the use of pre-booking or pre-arrest diversion strategies—also known as deflection—for individuals with substance use problems, rather than “arresting and re-arresting individuals who have drug problems.” See *id.*, at 1.

## Supported Decision-Making

**AM. C.L. UNION, SUPPORTED DECISION-MAKING: FREQUENTLY ASKED QUESTIONS** (2016)

<https://www.aclu.org/documents/faqs-about-supported-decision-making>

**National Resource Center for Supported Decision-Making**, NAT'L RES. CTR. FOR SUPPORTED DECISION-MAKING

<https://supporteddecisionmaking.org/> (last visited Oct. 11, 2023).

## Law Enforcement Interactions with Supporters, Caretakers, Responsible Adults, or Community Members

**Estate of Saylor v. Regal Cinemas, Inc.**, No. WMN-13-3089, 2016 WL 4721254 at \*2-3 (D. Md. Sept. 9, 2016)

Ethan Saylor was a Maryland man with intellectual disabilities who refused to leave a movie theater, and whose full-time caretaker requested that county law enforcement officers allow him to sit quietly in the movie theater until his mother arrived. Saylor's family alleged that the officers instead handcuffed, sat on, and physically restrained Saylor, who died. See *Estate of Saylor*, 2016 WL 4721254 at \*2-3. The family sued the county, the officers and the movie theatre, alleging negligence, battery, and violations of the ADA. See *Estate of Saylor*, 2016 WL 4721254 at \*1. The case was ultimately settled for approximately \$1.9 million. Theresa Vargas, *Settlement Reached in Police-Custody Death of Frederick County Man with Down Syndrome*, BALT. SUN (Apr. 25, 2018),

<https://www.baltimoresun.com/maryland/bs-md-settlement-saylor-death-20180425-story.html>



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**NAT'L DISABILITY RIGHTS NETWORK, *supra*.**

"Youth who have community based services, such as wrap around services and case management, may have a built in professional advocate to explain to authorities why the youth acts in a particular way and assist to divert them from arrest. However, these services are not uniformly available."

**Amiel Fields-Meyer, *When Police Officers Don't Know About the ADA*, The Atlantic**  
(Sept. 26, 2017)

<https://www.theatlantic.com/politics/archive/2017/09/the-steadily-problematic-interactions-between-deaf-americans-and-police/541083/>

This article describes a 2017 incident in which police officers reportedly shot and killed a deaf Oklahoma City man at his home when he did not comply with commands to drop a metal pipe that he used for communication. Media reports said that before police fired, "exasperated neighbors" shouted that the man was deaf and could not hear officers' commands.