

ARTICLES

DISABILITY CRIMINALIZATION: A PRIMER

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ABSTRACT

Disability criminalization occurs when individuals are exposed to criminal legal system involvement—whether stops, arrests, detention, discipline, and punishment—for engaging in behaviors, norms, and conduct linked to, or caused by, their disabilities. This Article provides a short primer on disability criminalization. It defines the concept before turning to key sites where disability criminalization occurs. The Article concludes with a discussion of Critical Disability Studies and how that discipline may be used by advocates as a vehicle for contesting disability criminalization.

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INTRODUCTION

Disabled people are arrested, prosecuted, and punished for behaviors linked to their disabilities. Disability criminalization occurs when individuals are exposed to

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** Professor of Law, Northwestern Pritzker School of Law, and Founding Faculty Director of the Center for Racial and Disability Justice. I would like to thank Samantha Santoro, my co-author, for her thought-provoking discussions on the subject of this Article. I would also like to thank Kate Caldwell, Jordyn Jensen, Dimitri Nesbitt, Kyanda Bailey, and Karima Itayem for their helpful contributions to my thinking on disability criminalization.

criminal legal system involvement—whether stops, arrests, detention, discipline, or punishment—for engaging in behaviors, norms, and conduct linked to, or caused by, their disabilities.¹ Arrest, prosecution, and punishment can occur when behaviors linked to mental, physical, or cognitive disabilities contribute to the acts that satisfy the elements of a crime or provide a basis for suspicion. Disabled people also face disproportionate exposure to police violence and are disproportionately more likely to be killed during encounters with police.² High profile examples of police killings of disabled people illustrate the nature and scope of violence stemming from criminal legal systems.³

Though there is no systematic data on the number of cases where disability-related behaviors led to criminal legal system involvement, the fact of this disability criminalization is reflected in the disproportionate percentages of disabled people in prisons and jails across America.⁴ While incarcerated, disabled individuals often face barriers to accessing high-quality, appropriate, and timely medical and mental health care.⁵ When individuals are denied access to medical and mental health care, they may face subsequent disciplinary charges for behaviors stemming from this lack of care.⁶

Children with disabilities have also been arrested, prosecuted, and punished for behaviors linked to their disabilities. Children with disabilities, particularly disabled children of color, are disproportionately more likely to face restraints, seclusion, suspension, expulsion, and other punitive sanctions for behaviors linked to their disabilities.⁷

1. *Disability*, PRISON POL’Y INITIATIVE, <https://www.prisonpolicy.org/research/disability/> (last visited Apr. 28, 2025).

2. Press Release, Inter-Am. Comm’n on Hum. Rts., United States Must Address Ethno-Racially Motivated Police Violence Against Persons with Psychosocial Disabilities (Sept. 3, 2024), https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2024/203.asp&utm_content=country-usa&utm_term=class-mon#:~:text=The%20IACHR%20urges%20the%20United,appropriate%20alternative%20first%20response%20programs.

3. The police killings of Ryan Gainer, a Black teenager with autism, and Sonya Massey, a Black woman experiencing a mental health crisis, both demonstrate the ways in which racism and ableism intersect in instances of police killings. See Melda Gurakar, Comment, *Race, Disability, and Police Misconduct: A DisCrit Approach to Privacy Law and the Killings of Ryan Gainer and Sonya Massey*, 124 COLUM. L. REV. F. 221 (2024).

4. *Disability*, PRISON POL’Y INITIATIVE, *supra* note 1.

5. *Mental Health Treatment While Incarcerated*, NAT’L ALL. ON MENTAL ILLNESS, <https://www.nami.org/advocacy/policy-priorities/improving-health/mental-health-treatment-while-incarcerated/> (last visited Apr. 28, 2025).

6. Kimberly A. Houser, E. Rely Vilcica, Christine A. Saum & Matthew L. Hiller, *Mental Health Risk Factors and Parole Decisions: Does Inmate Mental Health Status Affect Who Gets Released*, 16 INT’L J. ENV’T RESP. PUB. HEALTH 2950, 2953 (2019) (“Inmates with mental health disorders are more likely to report serious disciplinary actions taken for their infractions and are disproportionately represented in segregation units.”).

7. Jyoti Nanda, *The Construction and Criminalization of Disability in School Incarceration*, 9 COLUM. J. RACE & L. 265, 276, 278, 293–94 (2019) (“For Black and Latinx students disproportionately placed in certain disability categories and in an environment with heavy police surveillance and zero-tolerance discipline policies, the outcomes can be dire: incarceration and ultimately criminalization of their (possible) disability.”); Corey Mitchell, *Schools Target Students with Disabilities for Discipline ‘Too Often,’* THE CTR. FOR PUB. INTEGRITY (Aug. 12, 2022), <https://publicintegrity.org/inside-publici/newsletters/watchdog-newsletter/schools-target-students-disabilities-discipline/>.

They are also disproportionately more likely to be referred to police and sheriff departments.⁸

Taken together, what we have described is part of a broader constellation of laws, policies, and practices that contribute to what is known as the “criminalization of disability.” By criminalization of disability, we mean acts, behaviors, mannerisms, speech, affect, and aesthetics that lead to citation, arrest, prosecution, and punishment. Through legal cases and case studies, this Article will provide an in-depth overview of the criminalization of disability.

Though criminal legal system actors arrest, prosecute, and punish disabled people for behaviors linked to or caused by their disabilities, few legal defenses exist to explicitly challenge disability criminalization. In this short Article, we seek to reconsider, as an initial matter, the critique of criminalization as a way of providing a methodology for contesting the criminalization of disability across a range of spheres (including and beyond the criminal legal system). The cases and case studies that we provide explain the phenomenon, but more research is needed to develop an extensive critique of disability criminalization as applied to specific areas of law.

This Article proceeds as follows: Parts I and II of the Article identify how disabled people face criminalization on account of behaviors linked to, or caused by, their disabilities with a focus on police encounters and prisons and jails, respectively. Part III identifies how Critical Disability Studies offer a framework for contesting criminalization.

I. POLICING

Distinct modalities of policing contribute to disability criminalization. In this Part, we discuss four sites of policing that contribute to the criminalization of disability: crisis-care policing, policing in and around hospitals, quality-of-life policing, and policing in schools. Each site is discussed in turn below with a focus on how the site contributes to the criminalization of disability.

A. *Crisis-Care Policing*

On October 26th, 2020, Walter Wallace Jr., a twenty-seven-year-old Black man, was fatally shot fourteen times by a Philadelphia police officer.⁹ As a child, Walter had been diagnosed with bipolar disorder and ADHD; as an adult, he was diagnosed with schizophrenia and bipolar disorder.¹⁰ Walter’s family responded to his mental health crises by calling an ambulance and requesting an emergency evaluation

8. Dom DiFurio & Emma Rubin, *Students with Disabilities Are Referred to Law Enforcement Twice as Often as Their Peers*, BUCKS CNTY. HERALD (Mar. 13, 2025) https://www.buckscountyherald.com/students-with-disabilities-are-referred-to-law-enforcement-twice-as-often-as-their-peers/article_a2dd00cc-0f19-50d7-8395-c15e528802a5.html?=/&subcategory=136%7CWriting.

9. *Parents of Walter Wallace Jr. Demand Justice and Police Reform in Philadelphia*, 6 ABC ACTION NEWS (May 7, 2021), <https://6abc.com/walter-wallace-jr-shooting-philadelphia-police-police-involved-west-philly-protest/10594187/>.

10. *Id.*

and treatment for mental disability.¹¹ After police arrived, his wife shouted, “he’s mental,” attempting to signal to them that her husband was experiencing a mental health crisis.¹² Instead of receiving non-carceral care and treatment, Walter was killed by the police. This is too often the reality when police are deployed as the response to people experiencing mental health crises, and is more likely to result when the individual in crisis is disabled and Black.¹³ Research from the Treatment Advocacy Center suggests that individuals with severe mental illnesses such as schizophrenia, bipolar disorder, and major depression with psychotic features are at the greatest risk of “having their mental illness criminalized.”¹⁴ These individuals are also sixteen times more likely to die in an encounter with police, and “there are ten times more individuals with [severe mental illnesses] in jails or prison than in state psychiatric hospitals.”¹⁵ People who have developmental disabilities, such as autism, are seven times more likely to encounter police than neurotypical people.¹⁶

Criminalization begins in schools, where children with disabilities are 400% more likely than children without disabilities to be arrested in elementary school.¹⁷ Further, as of 2016, “approximately 20% of [incarcerated people] in jails and 15% of [incarcerated people] in state prisons [were] estimated to have a serious mental illness.”¹⁸

Countless stories horribly exemplify this criminalization. In 2016, when they arrived to do a safety check, New York Police Department (NYPD) officers shot and killed Deborah Danner, a sixty-six-year-old Black woman with schizophrenia, as she was experiencing a mental health crisis in her home, picked up a bat, and swung at them.¹⁹ After Danner’s murder, the NYPD Inspector General Philip Eure recommended “that the NYPD update its dispatch system to automatically route 911 mental health calls to police officers with [Crisis Intervention Training]”; however, this recommendation was never heeded.²⁰ In October 2022, Porter Burks, a twenty-year-old Black man with schizophrenia, experienced a mental health crisis, his family called 911, and five officers arrived at his house and fired thirty-eight

11. *Id.*

12. *Id.*

13. Vilissa Thompson, *Understanding the Policing of Black, Disabled Bodies*, CTR. AM. PROGRESS (Feb. 10, 2021), <https://www.americanprogress.org/article/understanding-policing-black-disabled-bodies/>.

14. *What is SMI?*, TREATMENT ADVOC. CTR., <https://www.tac.org/what-is-smi/> (last visited Jan. 26, 2025).

15. *Criminalization*, TREATMENT ADVOC. CTR., <https://www.tac.org/criminalization/> (last visited Jan. 26, 2025).

16. See Dennis Debbaudt & Darla Rothman, *Contact with Individuals with Autism: Effective Resolutions*, FBI ENF’T BULL., Apr. 2001, at 20.

17. *Disability*, PRISON POL’Y INITIATIVE, *supra* note 1.

18. TREATMENT ADVOC. CTR., *SERIOUS MENTAL ILLNESS (SMI) PREVALENCE IN JAILS AND PRISONS 1* (2016), <https://www.tac.org/wp-content/uploads/2023/11/smi-in-jails-and-prisons.pdf>.

19. Jamiles Lartey, *NYPD Officer to Face Murder Charge After Killing Mentally Ill Woman*, GUARDIAN (May 31, 2017), <https://www.theguardian.com/us-news/2017/may/31/nypd-police-shooting-hugh-barry-deborah-danner>.

20. Greg B. Smith, *What Happens When Police Show Up for Mental Health Calls?*, THE CITY (Dec. 12, 2022, 5:00 AM), <https://www.thecity.nyc/2022/12/12/what-happens-police-respond-mental-health-calls-edp/>.

rounds at him, killing him.²¹ Erick Tavira, a Mexican man with schizophrenia living in a shelter for the unhoused, had the police called on him while he was seeking treatment in a hospital waiting room.²² He ended up on Rikers Island and, while on mental health observation in October 2022, hung himself with a bedsheet.²³ Sandra Bland, a Black woman with severe depression and epilepsy, died in police custody in her jail cell after being stopped for a traffic violation.²⁴ Around March 2023, “NYPD officers shot and critically injured 42-year-old Raul de la Cruz, who was experiencing a schizophrenic episode,” after “[h]is father . . . called 311 for medical intervention.”²⁵ And in June 2023, San Antonio police officers shot and killed Melissa Perez, a mentally ill woman with schizophrenia, while she was in the midst of a mental health crisis.²⁶

The Prison Policy Initiative highlights how “U.S. prisons and jails incarcerate a disproportionate amount of people [with] current or past mental health problem[s],” with police responses to mental health crises “frequently resulting in violence or incarceration.”²⁷ Forty-three percent of people in state prisons have been diagnosed with a mental disorder; forty-four percent of people have been diagnosed with one in locally-run jails; one quarter of people are experiencing “serious psychological distress” in jails.²⁸

Bread for the City, a Washington, D.C. nonprofit that supports low-income residents, along with the ACLU of D.C., sued Washington, D.C. for deploying armed police as a primary response to mental health crises.²⁹ The lawsuit alleges that “D.C.’s current approach to emergency response services violates the Americans with Disabilities Act by denying people with mental health disabilities” access to emergency care in the form of trained mental health clinicians rather than armed police.³⁰ The lawsuit also highlights how D.C.’s community response team, designed to

21. Sarah George, Miriam Krinsky & Brendan Cox, *A Family Asked Police to Help Man Struggling with Mental Illness. Instead, They Shot Him.*, USA TODAY (Dec. 8, 2022, 5:00 AM), <https://www.usatoday.com/story/opinion/policing/2022/12/08/people-mental-illness-treatment-help-support-not-prison/10835829002/>.

22. Nick Pinto, *Erick Tavira Went to the Hospital Seeking Treatment. Instead, He Died on Rikers Island*, HELL GATE (Jan. 10, 2023, 10:13 PM), <https://hellgatenyc.com/erick-tavira-sought-treatment-instead-he-died-on-rikers/>.

23. *Id.*

24. Debbie Nathan, *What Happened to Sandra Bland?*, NATION (Apr. 21, 2016), <https://www.thenation.com/article/archive/what-happened-to-sandra-bland/>.

25. Candacé King, *Police Are Not Equipped To Handle Mental Health Crises*, COMMON JUST.: BLOG (Sept. 22, 2023), <https://commonjustice.org/blog/police-are-not-equipped-to-handle-mental-health-crises>.

26. *San Antonio Police Officers Indicted in Shooting Death of Melissa Perez*, NEWS 4 SAN ANTONIO, (Dec. 15, 2023, 7:54 AM), <https://news4sanantonio.com/news/local/san-antonio-police-officers-indicted-in-shooting-death-of-melissa-perez-crime-people-safety-bexar-county-june-law-district>.

27. *Mental Health*, PRISON POL’Y INITIATIVE, https://www.prisonpolicy.org/research/mental_health/#:~:text=U.S.%20prisons%20and%20jails%20incarcerate,resulting%20in%20violence%20or%20incarceration (last visited Mar. 1, 2025).

28. *Id.*

29. Colleen Grablick, *D.C. ACLU Sues City for Sending Armed Police to Mental Health Emergencies*, DCIST (July 6, 2023, 1:45 PM), <https://dcist.com/story/23/07/06/aclu-sues-dc-over-police-response-mental-health-emergencies/>.

30. *Id.*

provide mental health clinicians and peer support specialists to individuals in mental health crises, “has failed to sufficiently invest [in], train, and coordinate staff”; fewer than one percent of calls placed in D.C. for a mental health crisis receive a response from a mental health professional.³¹ Further, the lawsuit underscores how Metropolitan Police Department (MPD) officers “frequently aggravate the emergency” when arriving at a mental health crisis and “increase the trauma experienced by the individual in crisis” through traumatizing actions like “handcuffing the person or using excessive force.”³² Overall, police nationwide are 11.6 times more likely to use force against people with serious mental health disabilities than against other individuals.³³

Use of force in police interactions with individuals experiencing a mental health crisis escalates the situation and often results in the death of the individual in crisis, either in police custody or during the interaction. For example, instead of taking Gianna Wheeler—a Black student attending American University who was experiencing a mental health crisis in 2019—to a mental health facility as administrators had asked, campus police arrived at her apartment, stayed for several hours after she had been assessed as stable, and tackled, handcuffed, and forcibly removed her from the apartment.³⁴ Tanisha Anderson, a Black woman with schizophrenia and bipolar disorder, died in a hospital after being restrained face-down by police on an icy sidewalk during a mental health crisis.³⁵ Daniel Prude, a forty-one-year-old Black man, was killed during a mental health crisis after his brother called the police for assistance; officers placed a mesh hood over his head, pinned him to the pavement. He stopped breathing two minutes and fifteen seconds later, dying a week later at the hospital.³⁶ Justin Baerga, a twenty-one-year-old diagnosed with depression, ADHD, and bipolar disorder, was experiencing a mental health crisis inside the apartment he shared with his mother, who specifically requested that the police not be dispatched, when the police showed up anyway, they handcuffed Justin and his mother, took Justin to Queens General Hospital where he received no treatment, and arrested and initially charged his mother with obstruction of justice.³⁷

In 2024, 119 killings by police occurred during a mental health crisis or in response to “someone behaving erratically.”³⁸ For example, after falling one month

31. *Id.*

32. Complaint for Declaratory & Injunctive Relief at 1–2, *Bread for the City v. District of Columbia*, No. 23-cv-01945 (D.D.C. July 6, 2023).

33. Ayobami Lanionu & Phillip Atiba Goff, *Measuring Disparities in Police Use of Force and Injury Among Persons with Serious Mental Illness*, 21 BMC PSYCHIATRY 1, 6 (2021).

34. Grablick, *supra* note 29.

35. Tara Morgan, ‘Tanisha’s Law’ Steps Closer to Reality; Family Shines Light on Mental Health, ABC NEWS 5 CLEVELAND, (Nov. 11, 2022, 7:01 PM), <https://www.news5cleveland.com/news/local-news/tanishas-law-steps-closer-to-reality-family-shines-light-on-mental-health>.

36. Nicholas Turner, *We Need to Think Beyond Police in Mental Health Crises*, VERA INST. OF JUST. (Apr. 6, 2022), <https://www.vera.org/news/we-need-to-think-beyond-police-in-mental-health-crises>.

37. See Smith, *supra* note 20.

38. MAPPING POLICE VIOLENCE, <https://mappingpoliceviolence.org/> (Feb. 26, 2025).

behind on rent, Eleanor Bumpurs was fatally shot while resisting eviction from her Bronx apartment on October 29, 1984.³⁹ Bumpurs was an arthritic, sixty-seven-year-old woman with a history of mental illness.⁴⁰ When a team of five New York City police officers forced their way into Bumpurs' apartment, they found her "brandishing" a knife.⁴¹ The attempted eviction quickly devolved into a struggle, and officers unsuccessfully tried to restrain Bumpurs using plastic shields and a restraining hook.⁴² Officer Stephen Sullivan then fired two shots from his shotgun; one hit Bumpurs' hand and the other hit her chest, killing her.⁴³ In 1987, Sullivan was tried and acquitted of second-degree manslaughter and criminally negligent homicide.⁴⁴

Community members' racist and ableist perspectives can lead to the police being called and the murder of disabled people, especially Black and Brown disabled people, by the police. In April 2019, police fatally shot Kawaski Trawick in his Bronx apartment.⁴⁵ Earlier that day, Trawick had locked himself out of his apartment while cooking.⁴⁶ He knocked on a few neighbors' doors before calling for help, and the New York Fire Department responded to let him back into the apartment by breaking the lock.⁴⁷ However, someone else had called 911 to complain that someone "with a history of mental health issues and drug addiction" had been wandering the hallways with a knife.⁴⁸ In response to this call, a pair of New York City police officers arrived at the apartment building, pushed their way into Trawick's apartment, and found Trawick standing by his stove with a kitchen knife in hand.⁴⁹ Body camera footage of the incident shows the officers ordering Trawick, who told the officers he had the knife because he was cooking, to drop the knife before tasing him.⁵⁰ In response to being tasered, Trawick had stood back up and began approaching the officers when Officer Brendan Thompson shot him twice.⁵¹ The entire encounter lasted fewer than two minutes.⁵² What had started as a simple lockout ended in death.

39. Patricia Williams, *Spirit-Murdering the Messenger: The Discourse of Fingerprinting as the Law's Response to Racism*, 42 U. MIA. L. REV. 127, 130 (1987).

40. *Id.*; Alan Feuer, *Fatal Police Shooting in Bronx Echoes One from 32 Years Ago*, N.Y. TIMES (Oct. 19, 2016), <https://www.nytimes.com/2016/10/20/nyregion/fatal-police-shooting-in-bronx-echoes-one-from-32-years-ago.html>

41. Feuer, *supra* note 40.

42. *Id.*; Williams, *supra* note 39, at 130–31.

43. Feuer, *supra* note 40.

44. *Id.*

45. Reuven Blau, *Bronx Cops in Kawaski Trawick Killing Guilty of Misconduct, CCRB Finds*, THE CITY (June 10, 2021, 6:38 PM), <https://www.thecity.nyc/2021/6/10/22528600/bronx-cops-in-kawaski-trawick-killing-guilty-of-misconduct-ccrb>.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

Under the Obama Administration, Department of Justice (DOJ) investigations into a number of police departments around the country, including the Baltimore City Police Department, revealed serious problems with respect to policing and disabled people.⁵³ These problems ranged from excessive force to unlawful seizures to policing and abuse, including unwarranted and punitive responses to individuals in mental health crises.⁵⁴ For example, a 2011 investigation into the Seattle Police Department (SPD) revealed not only that SPD officers “escalate[d] situations and use[d] unnecessary or excessive force when arresting individuals for minor offenses,” but also that this pattern was particularly “pronounced in encounters with persons with mental illnesses or those under the influence of alcohol or drugs.”⁵⁵ The investigation also found that, according to SPD reports, approximately “70% of use of force encounters involve[d] these populations.”⁵⁶

In the DOJ’s investigation into the Baltimore Police Department (BPD), the DOJ’s findings letter, documenting its investigation, dedicated an entire section to the BPD’s incidents of excessive force against individuals with mental disabilities, or those in crisis, who had committed no crime.⁵⁷ The letter noted that “BPD provides less effective services to people with mental illness and intellectual disabilities by failing to account for these disabilities in officers’ law enforcement actions, leading to unnecessary and excessive force being used against them”⁵⁸ and that BPD “[o]fficers also use heavy-handed tactics when civilians simply refuse to obey their commands and escalate encounters by resorting to force too quickly, including against individuals who are not being arrested for any crime, [those] with mental health disabilities or [those] in crisis.”⁵⁹ According to the data gleaned from BPD’s use of force files, “[twenty] percent of use of force files BPD provided involved individuals with mental health disabilities or in crisis.”⁶⁰ Some of these reported excessive force incidents included actions against individuals in mental crisis who were being transported to a hospital for a mental health evaluation.⁶¹

More recently, in March 2024, police in San Bernardino, California shot and killed Ryan Gainer, a Black, autistic, fifteen-year-old boy, outside his home while

53. See, e.g., U.S. DEP’T JUST., INVESTIGATION OF THE BALT. CITY POLICE DEP’T 74–115 (2016), <https://www.justice.gov/crt/file/883296/download>.

54. *Id.*

55. U.S. DEP’T JUST., INVESTIGATION OF THE SEATTLE POLICE DEP’T 4 (2011), https://www.justice.gov/sites/default/files/crt/legacy/2011/12/16/spd_findletter_12-16-11.pdf.

56. *Id.*

57. U.S. DEP’T JUST., *supra* note 53, at 80–85. With a nod to ADA claims, the investigation letter concluded that “BPD ha[d] failed to make reasonable modifications in its policies, practices, and procedures to avoid discriminating against people with mental illness and intellectual disabilities.” *Id.* at 8.

58. *Id.* at 8.

59. *Id.* at 78.

60. *Id.*

61. *Id.* at 79–80.

he was holding a gardening tool during a mental health crisis.⁶² His family had called 911 when he was upset during an argument.⁶³ Officers waited more than five minutes to give Ryan emergency medical aid as he lay on the driveway bleeding, prevented his family from helping him, and pointed their firearms at them.⁶⁴

Mental health crisis is one site where the criminalization of disability is on full display. Few interventions exist to respond to individuals in crisis, which means that police are often first responders or co-responders. When law enforcement is dispatched, officers often fail to take disability into account when intervening at the point of crisis and, even when they do, such recognition leads to an increase in force. When police are dispatched to respond to individuals in crisis, it sends the message that such conduct is the appropriate subject for law enforcement intervention, which can reinforce the association between disability and criminality, and contribute to the criminalization of disability as a social process.

B. Policing in and Around Hospitals

Disabled people are vulnerable to arrest, prosecution, and punishment for behaviors linked to their disabilities even when an individual is at a hospital for medical treatment and care. In hospitals, coercion and violence are often deployed alongside care and treatment. Physicians, nurses, and hospital staff routinely rely on police and private security to respond to individuals with disabilities who are labeled as posing safety and security risks. As scholars like Ji Seon Song have argued, criminalized disabled subjects within hospitals lose access to constitutional rights when they enter hospitals.⁶⁵ Using police as a response to mental health crises criminalizes the illnesses themselves and leads to care being seen as carceral.⁶⁶ Similarly, carceral logics are embedded within the operation of psychiatric hospitals; as one scholar described, even therapeutic institutions “confine, segregate, and punish disabled people.”⁶⁷

Disabled veterans have been similarly policed in Veterans Affairs (VA) hospitals. For example, in *Harris v. United States Department of Veterans Affairs*,⁶⁸ the D.C. Circuit affirmed that there was probable cause to arrest Harris for disorderly conduct in a VA hospital. Harris refused to leave group therapy after he was ordered to leave by one of the mental health personnel.⁶⁹ When he refused to comply,

62. Sam Levin, ‘A Talented, Goofy Kid’: Family of Ryan Gainer, Autistic Teen Killed by Police, *Speak Out*, GUARDIAN (Mar. 21, 2024, 7:26 PM), <https://www.theguardian.com/us-news/2024/mar/21/ryan-gainer-autistic-teen-police-killing-california>.

63. *Id.*

64. Hannah Fry, *Fatal Shooting of Autistic Teen Raises Concerns About Police Response to People with Mental Health Issues*, L.A. TIMES (Mar. 12, 2024, 3:10 PM), <https://www.latimes.com/california/story/2024-03-12/fatal-police-shooting-of-autistic-teen-raises-concerns-about-police-response-to-mental-health-issues>.

65. Ji Seon Song, *Policing the Emergency Room*, 134 HARV. L. REV. 2646, 2707–20 (2021).

66. Sunita Patel, *Transinstitutional Policing*, 137 HARV. L. REV. 808, 872–73 (2024).

67. Laurin Bixby, Stacey Bevan & Courtney Boen, *The Links Between Disability, Incarceration, and Social Exclusion*, 41 HEALTH AFFS. 1460, 1461 (2022).

68. *Harris v. U.S. Dep’t of Veterans Affs.*, 776 F.3d 907, 912 (D.C. Cir. 2015).

69. *Id.* at 910.

the staff member called the police, and when Harris refused to obey commands to leave the premises, he was arrested for disorderly conduct.⁷⁰ Under the VA regulations, “failure to leave the premises when so ordered constitutes a further disturbance” in violation of the regulations against disorderly conduct.⁷¹ Moreover, the regulation prohibits conduct that tends to disturb the VA hospital’s routine operations.⁷² The D.C. Circuit determined that Harris’ conduct interrupted the therapy session, forcing the staff member to respond to the disturbance.⁷³ Additionally, Angelo Quinto was a Navy veteran, honorably discharged in 2019, who died from medical complications three days after a police officer knelt on his neck for nearly five minutes in December 2020.⁷⁴ Quinto had a history of depression and had begun experiencing episodes of paranoia and anxiety in early 2020 after he was assaulted.⁷⁵ Quinto’s family had called the police for help because he was suffering a mental health crisis.⁷⁶ In response to the call, officers arrived to find, according to Quinto’s family, that Quinto was calm and laying in his mother’s arms.⁷⁷ Still, the officers proceeded to handcuff and restrain Quinto, with one officer kneeling on his neck and another restraining his legs.⁷⁸ Quinto eventually lost consciousness and was taken by ambulance to a hospital, where he died three days later due to complications related to the police encounter.⁷⁹

Another case, *United States v. Agront*, exemplifies how law enforcement is deployed as a tool to *manage* disabled people even when they are accessing health care inside a site. Louis Agront Sr. was taken to the emergency room at the VA hospital in Palo Alto, California.⁸⁰ Agront’s adult son and two daughters reported that they brought their father to the VA hospital because they were concerned about their father’s recent erratic behavior.⁸¹ Upon arriving at the hospital, Agront was taken into the facility for treatment for what he believed to be knee pain and significant weight loss. After he failed to receive the treatment he was expecting, Agront left the facility and began to walk home.⁸² Agront’s children followed him and convinced him to return to the hospital by telling him that a podiatrist would see him if he returned to

70. *Id.*

71. Conduct that “tend[s] to disturb the routine operations of a VA hospital . . . is prohibited” under 39 C.F.R. § 1.218(a)(5) (2024).

72. *Id.* § 1.218(b)(11).

73. *Harris*, 776 F.3d at 912–13.

74. Jacey Fortin, *California Man Died After Police Knelt on Him for 5 Minutes, Family Says*, N.Y. TIMES (Feb. 25, 2021), <https://www.nytimes.com/2021/02/25/us/angelo-quinto-death-police-kneel.html>.

75. *Navy Veteran Died After Police Knelt on His Neck for Nearly 5 Minutes, Family Says*, CBS NEWS (Feb. 24, 2021, 11:38 AM), <https://www.cbsnews.com/news/angelo-quinto-navy-veteran-death-police/>.

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *United States v. Agront*, 773 F.3d 192, 193 (9th Cir. 2014).

81. *Id.*

82. *Id.*

the hospital, which was untrue. Agront returned to the hospital, but left again soon after—this time in what was described by witnesses as an agitated state.⁸³

Agront's son then followed his father to the parking lot. While there, the confrontation between the two escalated.⁸⁴ The two began shouting and started pushing and shoving.⁸⁵ According to evidence presented at the bench trial, "[t]he yelling could be heard from inside the hospital lobby 25 yards away and from inside a running police car with the windows up and the doors closed 15 yards away."⁸⁶ Back at the hospital, a nurse and social worker heard the commotion and called the police. The arresting officer testified that

he arrested Agront because Agront had maintained his position blocking access to the parking lot, refused to comply with the verbal commands of a uniformed police officer, took a combative position, actively resisted the orders of other police officers who had later arrived on the scene, continued to yell loudly[,] and tried to reengage in an argument with his son.⁸⁷

For the disturbance, Agront was charged with disorderly conduct in a criminal complaint pursuant to a VA regulation that prohibits "'engag[ing] in disorderly conduct which created a loud, boisterous, and unusual noise, while on property under the charge and control' of the VA."⁸⁸

The Ninth Circuit upheld Agront's conviction on the grounds that his actions constituted disorderly conduct due to the loud noise and testimony that his conduct disturbed the normal functioning of the VA hospital by distracting hospital staff and taking them away from their duties.⁸⁹ In reaching its decision, the Ninth Circuit noted the following:

As the VA nurse testified in this case, it is particularly important that VA medical facilities maintain a calm environment because: "We have a lot of people that suffer from psychiatric disorders, and that could be really disruptive having someone yelling or two people yelling, anyone yelling. It could be really harmful to the people because it could trigger—certain events cause more problems to people in the hospital, especially the Veterans Hospital, given what they've been through."⁹⁰

At oral argument, the government justified its prosecution of Agront based on a similar rationale. When counsel for the government was asked why it continued to prosecute Agront, a person who had refused treatment and was in the process of leaving when prevented from doing so by his son, counsel for the government

83. *Id.* at 194.

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.* at 194–95 (footnote omitted).

88. *Id.* at 195 (alteration in original) (quoting 38 C.F.R. § 1.218(b)(11)).

89. *Id.* at 198.

90. *Id.* at 196–97.

referenced back to the testimony of the VA nurse.⁹¹ Counsel for the government defended the policy behind its prosecution as follows: “The government does [this] because there is an importance to both the nurse and the social worker [who] testified about the importance of being able to enforce quiet at the hospital particularly at night and that this was not”⁹²

Aggressive law enforcement in and around hospitals punishes disabled people at the sites where they have accessed, are attempting to access, or will access care. Disruptions at hospitals are justified as part of an effort to ensure peace and tranquility in hospital environments, as well as to prevent disruptions to care. These are worthy goals. At the same time, arresting individuals for disrupting areas in and around hospitals contributes to the criminalization of disability.

C. Quality-of-Life Policing: A Focus on “Disability Policing”

Being Black and mentally ill results in further criminalization,⁹³ as in the case of Jordan Neely. Jordan Neely was a Black man experiencing homelessness who was murdered by Daniel Penny, a white supremacist vigilante, on the New York subway.⁹⁴ Jordan Neely had been involuntarily hospitalized and had a history of mental illness.⁹⁵ Penny murdered Neely by placing him in a nearly six-minute-long chokehold, assisted by other passengers on the subway. Yet, Daniel Penny was ultimately found not guilty of criminally negligent homicide in Jordan Neely’s murder.⁹⁶

Neely’s murder cannot be divorced from the anti-unhoused, ableist rhetoric of New York City Mayor Eric Adams, a former police officer, who announced in November 2022 that he intended to remove unhoused people with mental illness from streets and subways, against their will if necessary, by police and city employees.⁹⁷ Adams’ mandate would authorize the removal by police of anyone who “appears to be mentally ill and displays an inability to meet basic living needs even when no recent dangerous act has been observed.”⁹⁸ In February 2022, when Adams declared that he authorized the New York Police Department to enforce rules on the subway against lying down on seats, amongst other restrictions

91. Unofficial Transcript of Oral Argument, *United States v. Agront*, 2014 WL 7149802 (9th Cir. Mar. 11, 2014) (No. 13-10218).

92. *Id.*

93. Sonya M. Shadravan, Matthew L. Edwards & Sarah Y. Vinson, *Dying at the Intersections: Police-Involved Killings of Black People with Mental Illness*, 72 PSYCHIATRIC SERVS. 623, 623 (2021).

94. Adam Iscoe, *The System That Failed Jordan Neely*, NEW YORKER (May 10, 2023), <https://www.newyorker.com/magazine/2023/05/22/the-system-that-failed-jordan-neely>.

95. *Id.*

96. Andrea González-Ramírez, *The Man Who Put Jordan Neely in a Deadly Choke Hold Found Not Guilty*, CUT (Dec. 9, 2024), <https://www.thecut.com/article/daniel-penny-not-guilty-in-jordan-neely-choke-hold-death.html>.

97. Iscoe, *supra* note 94.

98. Greg B. Smith, *What Happens When Police Show Up for Mental Health Calls?*, THE CITY (Dec. 12, 2022, 5:00 AM), <https://www.thecity.nyc/2022/12/12/what-happens-police-respond-mental-health-calls-edp/>.

designed to criminalize and harass unhoused people, Adams said in reference to unhoused people: “You can’t put a Band-Aid on a cancerous sore. That’s not how you solve the problem. You must remove the cancer to start the healing process.”⁹⁹

Skyrocketing housing prices coupled with city-wide housing shortages have converged in recent years to create a nation-wide affordable housing crisis.¹⁰⁰ According to a 2024 report by the National Low Income Housing Coalition, in order to meet existing housing demand, about 7.2 million more affordable housing units would be required across the United States.¹⁰¹ Although the severity of the problem varies across jurisdictions, the same report indicates that “[n]o state has an adequate supply of rental housing for extremely low-income households.”¹⁰² In Los Angeles, perhaps the epicenter of the affordable housing crisis, the number of people experiencing homelessness has increased twelve percent in Los Angeles County and sixteen percent in the city of Los Angeles over 2019—a fifty-two percent increase for the city since 2011.¹⁰³ Approximately seventy-five percent of people experiencing homelessness in Los Angeles are unsheltered and live outside.¹⁰⁴

The housing crisis has prompted local jurisdictions to increase order-maintenance or quality-of-life policing efforts in public spaces. Quality-of-life policing is another constellation of practices that contributes to the criminalization of disability. Scholars link the theoretical lineage of quality-of-life or order-maintenance policies to Wilson and Kelling’s broken windows theory.¹⁰⁵ Broken windows policing is a “theory that visible signs of disorder, such as a broken window, encourage[] a decline in respect towards law and property.”¹⁰⁶ New York City’s adoption of quality-of-life or order-maintenance policing in the 1990s is probably the most

99. Jayson Buford, *Eric Adams’s Attacks on Homeless People Helped Bring Us to Jordan Neely’s Death*, JACOBIN (May 13, 2023), <https://jacobin.com/2023/05/nyc-eric-adams-jordan-neely-daniel-penny-subway>.

100. NAT’L LOW INCOME HOUS. COAL., THE GAP: A SHORTAGE OF AFFORDABLE HOMES 1, 3 (2025), <https://nlihc.org/gap>.

101. *Id.* at 8.

102. *Id.* at 18.

103. Benjamin Oreskes & Doug Smith, *Homelessness Jumps 12% in L.A. County and 16% in the City; Officials ‘Stunned,’* L.A. TIMES (June 14, 2019, 11:00 AM), <https://www.latimes.com/local/lanow/la-me-ln-homeless-count-encampment-affordable-housing-2019-results-20190604-story.html>; Reihan Salam, *Los Angeles Is in Crisis. So Why Isn’t It Building More Housing?*, ATLANTIC (June 19, 2019), <https://www.theatlantic.com/ideas/archive/2019/06/how-solve-los-angeles-homelessness-crisis/591976/>.

104. Jacob Siegel, *Managed Obsolescence: Homelessness in America’s Gilded Cities*, 3 AM. AFFS. 59 (2019), <https://americanaffairsjournal.org/2019/02/managed-obsolence-homelessness-in-americas-gilded-cities/>.

105. George L. Kelling & James Q. Wilson, *Broken Windows*, ATLANTIC (Mar. 1982), <https://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/>; Nirej S. Sekhon, *Redistributive Policing*, 101 J. CRIM. L. & CRIMINOLOGY 1171, 1203 (2011) (“Quality-of-life or ‘order-maintenance’ policing has its theoretical mooring in James Wilson and George Kelling’s now-iconic ‘broken windows’ argument.”); BERNARD E. HARCOURT, *ILLUSION OF ORDER* 128 (2001); see also Debra Livingston, *Police Discretion and the Quality of Life in Public Places: Courts, Communities, and the New Policing*, 97 COLUM. L. REV. 551, 578–79 (1997) (arguing “reform era police departments’ focus on law enforcement—on solving more serious crimes, making more arrests for their commission, and gathering better evidence to ensure conviction—had resulted in the neglect of a vital police role in promoting the quality of life in local neighborhoods”).

106. Cade Terada, *The Return of Broken Windows Policing*, COMMON JUST. (Mar. 25, 2024), <https://commonjustice.org/blog/the-return-of-broken-windows-policing>.

well-known example. During this period, the NYPD dramatically increased the number of misdemeanor arrests made in an effort to reclaim public spaces for law-abiding citizens.¹⁰⁷ Zero-tolerance policies are another application of order-maintenance policing and refer to aggressive enforcement of misdemeanor and other “low-level” offenses through arrests.¹⁰⁸

Disability policing is a framework for understanding the contours of disability criminalization. Disability policing refers to the ways that disabled people are targeted for criminal law enforcement for behaviors that are closely linked to their disabilities. Quality-of-life policing sweeps up individuals who exhibit behaviors linked to mental distress, casting individuals experiencing crisis as disruptions to social order in public spaces. Quality-of-life policing poses unique risks of criminalization for disabled people.¹⁰⁹

Quality-of-life policing aimed at managing, reducing, and eliminating disorder in communities sweep individuals into a web of criminalization—putting them at risk of arrest, detention, prosecution, and punishment. Efforts to regulate disorder sweep up individuals whose behaviors and appearances appear to be “disorderly.” As a constructed concept, allegations of “disorderly conduct” can be a basis for criminalizing conduct that is inextricably linked to disability-related behaviors. Such criminalization becomes another pillar of disability criminalization.

II. PRISONS AND JAILS

Perceptions of disabled people as “criminal” have contributed to the disproportionate confinement of disabled people in the prison-industrial complex.¹¹⁰ According to an October 2022 study, 37.2% of people surveyed in state and federal prisons reported previous residence in a therapeutic institution, such as a residential treatment facility, which often reinforces social control through methods like involuntary commitment.¹¹¹ Additionally, “[m]ore than fifty percent of disabled Black people have been arrested by age twenty-eight.”¹¹²

First, as to the disparity problem: people with disabilities are overrepresented in prisons and jails.¹¹³ The most recent national study by the U.S. Department of Justice’s Bureau of Justice Statistics found that twenty-six percent of incarcerated people have a disability. Specifically, the study found that: ten percent of survey respondents reported a mobility impairment; over six percent reported that they are

107. HARCOURT, *supra* note 105, at 10 (noting misdemeanor arrests jumped fifty percent between 1993 and 1996 despite a constant complaint rate).

108. Sekhon, *supra* note 105, at 1204 (“[T]he NYPD opted for an arrest-intensive version of order-maintenance policing dubbed ‘zero tolerance.’”).

109. For examples of cases illustrating this problem, see Jamelia Morgan, *Why Disability Studies in Criminal Law and Procedure?*, 71 J. LEGAL EDUC. 124, 129–30 (2021).

110. Bixby et al., *supra* note 67, at 1460.

111. *Id.* at 1463, 1465.

112. *Id.* at 1466.

113. *Disability*, PRISON POL’Y INITIATIVE, *supra* note 1.

deaf or low-hearing; and over seven percent reported that they are blind or low-vision, defined as uncorrectable with glasses.¹¹⁴ In another study, depending on the facility and the definition, approximately four to ten percent of respondents reported having an intellectual disability.¹¹⁵ Over half of survey respondents in state prisons in yet another study reported symptoms that met the criteria for various mental illnesses; mania and depression predominated, but fifteen percent of state prisoners reported symptoms of psychosis, such as delusions or hallucinations.¹¹⁶ Finally, more than half of prisoners with a disability also reported some kind of long-lasting medical condition, including diabetes, cancer, heart disease, and high blood pressure.¹¹⁷

Gender and disability intersect in prisons and jails to render women with disabilities uniquely vulnerable to incarceration. As many as eighty percent of incarcerated women meet the criteria for having at least one psychiatric disability.¹¹⁸ Incarcerated women have higher rates of disability than the general population; twelve percent of women in the general population have symptoms of a mental disorder or psychiatric disability, compared to seventy-three percent of women in state prison, sixty-one percent of women in federal prison, and seventy-five percent of women in local jails.¹¹⁹

A second, related issue is that disabled people are particularly vulnerable to violence and physical and psychological harms in prisons and jails. Prisons and jails are violent, dangerous places that produce severe harms to physical, mental, and emotional health and wellbeing. All people incarcerated in prison and detained in jail are vulnerable to these risks. As the World Health Organization succinctly explained, “prisons are bad for mental health” due to “overcrowding, various forms of violence, enforced solitude or conversely, lack of privacy, lack of meaningful activity, isolation from social networks, insecurity about future prospects (work, relationships, etc), and inadequate health services, especially mental health services, in prisons.”¹²⁰ At the same time, these carceral spaces produce unique harms

114. JENNIFER BRONSON, LAURA M. MARUSCHAK & MARCUS BERZOFKY, U.S. DEP'T OF JUST., OFF. OF JUST. PROGRAMS, BUREAU OF JUST. STAT., *DISABILITIES AMONG PRISON AND JAIL INMATES*, 2011–12 3 (2015), <https://bjs.ojp.gov/library/publications/disabilities-among-prison-and-jail-inmates-2011-12>.

115. LEIGH ANN DAVIS, THE ARC, *PEOPLE WITH INTELLECTUAL DISABILITIES IN THE CRIMINAL JUSTICE SYSTEMS: VICTIMS & SUSPECTS 1* (2009) (citing JOAN PETERSILIA, CALIF. POL'Y RSCH. CTR., *DOING JUSTICE? CRIMINAL OFFENDERS WITH DEVELOPMENTAL DISABILITIES* (2000)), <https://thearc.org/wp-content/uploads/forchapters/Criminal%20Justice%20System.pdf>.

116. DORIS J. JAMES & LAUREN E. GLAZE, U.S. DEP'T OF JUST., *MENTAL HEALTH PROBLEMS OF PRISON AND JAIL INMATES 1* (2006), <https://bjs.ojp.gov/content/pub/pdf/mhppji.pdf>.

117. BRONSON ET AL., *supra* note 114, at 6.

118. Barbara E. Bloom & Stephanie S. Covington, *Addressing the Mental Health Needs of Women Offenders*, in *WOMEN'S MENTAL HEALTH ISSUES ACROSS THE CRIMINAL JUSTICE SYSTEM* (Rosemary Gido & Lanette Dalley eds., 2008) (manuscript at 1) (citing studies), http://www.nationaljailacademy.org/_documents/resources/female/addressing-women-mental-health.pdf.

119. JAMES & GLAZE, *supra* note 116, at 3–4.

120. WORLD HEALTH ORG., *INFORMATION SHEET: MENTAL HEALTH AND PRISONS 1* (2006), https://static.prisonpolicy.org/scans/mh_in_prison.pdf; *see also* Syrus Ware, Joan Ruzsa & Giselle Dias,

and injuries for people with disabilities, who face a heightened risk of violence, deprivation, and discrimination.¹²¹ Incarcerated people with disabilities are at a greater risk of encountering violence while in prison and suffering injuries from violent encounters.¹²² Prisoners with disabilities face an increased risk of being denied access to appropriate mental health and medical services, including therapeutic supports, which puts them at greater risk of declining health outcomes.¹²³ Discrimination experienced by people with disabilities takes many forms, ranging from denials of access to medical services, educational, and rehabilitative programs, to segregation in solitary confinement, which includes isolation in cells in conditions amounting to extreme deprivations of social and environmental stimuli.¹²⁴

In *Madrid v. Gomez*, Chief Judge Henderson held that solitary confinement was unconstitutional for those “at a particularly high risk for suffering very serious or severe injury to their mental health” including those with pre-existing mental illnesses, intellectual disabilities, and brain damage, and determined that placing these incarcerated people in solitary confinement was the “mental equivalent of putting an asthmatic in a place with little air to breathe.”¹²⁵

Examples abound of the harms of solitary confinement on incarcerated individuals with disabilities. Biya Belayneh, a Black man diagnosed with schizophrenia, hypermania, and bipolar disorder, was wrongfully accused of assaulting a cellmate in jail and put in solitary confinement in Maryland’s Montgomery County Correctional Facility for a year.¹²⁶ Maurice Anthony, a forty-two-year-old Black man who is legally blind, was subjected to solitary for nearly two years by the New

It Can’t Be Fixed Because It’s Not Broke: Racism and Disability in the Prison Industrial Complex, in *DISABILITY INCARCERATED: IMPRISONMENT AND DISABILITY IN THE UNITED STATES AND CANADA* 163, 170 (Liat Ben-Moshe et al. eds., 2014).

121. See Peter Blanck, *Disability in Prison*, 26 S. CAL. INTERDISC. L.J. 309, 314 (2017). Blanck writes:

Research shows that prisoners with disabilities are at an increased risk for inadequate rehabilitation and safety while incarcerated. Inmates with disabilities have higher rates of injuries from violence and unintentional causes as compared to the general population of inmates without disabilities. Inmates with comorbid mental health conditions, and psychosocial and cognitive impairments (who are overrepresented in prisons) are at a higher risk of being victims of violence and displaying more violent behaviors relative to inmates without such disabilities. Incarceration is also generally associated with greater and deteriorating health conditions.

Id. (footnotes omitted). People with disabilities also face disproportionate exposure to violence in the free world. According to a 2017 DOJ study, the rate of violent victimization for people with disabilities was 2.5 times that of people without disabilities, adjusting for the age distributions for individuals who have disabilities and those who do not. ERIKA HARRELL, U.S. DEP’T OF JUST., *CRIMES AGAINST PERSONS WITH DISABILITIES, 2009-2015-STATISTICAL TABLES 1* (2017) (on file with author).

122. Blanck, *supra* note 121, at 314.

123. *Id.*

124. Jamelia N. Morgan, *Caged In: The Devastating Harms of Solitary Confinement on Prisoners with Physical Disabilities*, 24 BUFF. HUM. RTS. L. REV. 81, 82, 87 (2018).

125. *Madrid v. Gomez*, 889 F. Supp. 1146, 1265 (N.D. Cal. 1995).

126. Deena Zaru, *The National Issue of Criminalizing Our Mentally Ill*, ABC News (Jan. 15, 2024, 6:05 AM), <https://abcnews.go.com/US/national-issue-criminalizing-mentally-ill/story?id=106324105>.

York State Department of Corrections and Community Supervision (DOCCS).¹²⁷ Andy Gneco, a thirty-nine-year-old Black and Latinx man with hearing and mental health disabilities, has been imprisoned since 2019 and subjected to solitary confinement, resulting in a worsening of his depression and anxiety.¹²⁸ Stephanie Peña, a twenty-three-year-old Black and Latinx woman with post-traumatic stress disorder (PTSD) who has been incarcerated by DOCCS since 2022, has said that solitary confinement has “greatly increased her mental and emotional distress,” including a paranoia of being returned to isolation.¹²⁹ Jose Vega, a formerly-incarcerated disabled person who uses a wheelchair, indicated that some corrections officers punish disabled people with solitary confinement when they request accommodations. That was his experience when his specialized wheelchair was taken away during his incarceration and he was “deprived of necessary medical resources,” such as catheters while in solitary confinement.¹³⁰ Charles Leo Daniel, a mentally ill migrant from Trinidad and Tobago, died after being held in solitary confinement for at least 811 consecutive days, and likely closer to a thousand consecutive days in solitary confinement.¹³¹ “In 2021, Joshua McLemore, a twenty-nine-year-old with schizophrenia held for weeks in an isolation cell in Jackson County, [Indiana], died of organ failure resulting from a ‘refusal to eat or drink.’”¹³² “Nicholas Feliciano, a young man with a history of mental illness, suffered severe brain damage after attempting to hang himself on Rikers Island” while “correctional officers stood by.”¹³³ Markus Johnson, a twenty-one-year-old serving a short sentence for gun possession in the Danville Correctional Center near Chicago, died while experiencing a mental health crisis after refusing his medication for bipolar disorder and schizophrenia, refusing to drink water, and losing fifty to sixty pounds while in solitary for three weeks.¹³⁴ Prison guards pepper sprayed Johnson when he “was barely able to move.”¹³⁵ Eric Lee, who was diagnosed with bipolar disorder and schizophrenia, was held in solitary confinement at the Shawangunk Correctional Facility in New York for about two weeks and, at other prisons, in “alternative disciplinary units for [seventeen] hours a day for months at a time.”¹³⁶ He attempted suicide while being held in isolation in

127. Elly Belle, *New York Prisons Are Illegally Subjecting Disabled People to Solitary Confinement*, PRISM (May 28, 2024), <https://prismreports.org/2024/05/28/new-york-prisons-disabled-people-solitary/>.

128. *Id.*

129. *Id.*

130. *Id.*

131. Maurizio Guerrero, *Death of a Mentally Ill Migrant in Solitary Confinement Lays Bare ICE's Cruelty and Lack of Accountability*, PRISM (Apr. 1, 2024), <https://prismreports.org/2024/04/01/ice-cruelty-kills-another-migrant-solitary-confinement/>.

132. Glenn Thrush, *When Prison and Mental Illness Amount to a Death Sentence*, N.Y. TIMES (May 7, 2024), <https://www.nytimes.com/2024/05/05/us/politics/prison-mental-health-care.html?searchResultPosition=3>.

133. *Id.*

134. *Id.*

135. *Id.*

136. Jan Ransom, *N.Y. Prisons Holding Mentally Ill People in Solitary, Lawsuit Says*, N.Y. TIMES (May 8, 2024), <https://www.nytimes.com/2024/05/08/nyregion/ny-prisons-solitary-confinement.html>.

Attica Correctional Facility.¹³⁷ Charlene Liberty, a woman with “childhood trauma and mental health diagnoses,” “cycled in and out of Rhode Island’s Adult Corrections Institute” for years, where she was subjected to solitary confinement and “ran her head into her cell door and dove off the cell sink” to injure herself.¹³⁸ The “treatment plan” that the facility created for her involved a restraint chair, “restricting her movement with belly and leg chains,” and a guard monitoring her with pepper spray.¹³⁹ This resulted in a class-action lawsuit that alleged the Rhode Island Department of Corrections violated the Eighth and Fourteenth Amendments, as well as the Americans with Disabilities Act due to its practice of keeping people with mental illnesses in solitary confinement for “weeks, months, and even years at a time.”¹⁴⁰

Despite legal challenges to eradicate solitary confinement, carceral institutions continue to impose it by another name. For instance, the New York Civil Liberties Union filed a class-action lawsuit against DOCCS, alleging that prison officials held prisoners in solitary confinement beyond the time limits set by law.¹⁴¹ In addition, in a class-action lawsuit, the Legal Aid Society in New York, along with other organizations, accused prisons of holding mentally ill and people with disabilities in isolation in violation of the Humane Alternative to Long-Term Solitary Confinement Act (“HALT Act”).¹⁴² The HALT Act, or S.2836, “limits the use of segregated confinement for all incarcerated people to 15 days, implements alternative rehabilitative measures,” “expands the definition of segregated confinement, and eliminates the use of segregated confinement for vulnerable incarcerated” individuals.¹⁴³ This lawsuit also stated that from May 2022 to April 2024, more than a quarter of the incarcerated individuals in solitary confinement had a diagnosed mental illness.¹⁴⁴ DOCCS’ Office of Mental Health allows for those not deemed “seriously mentally ill,” a term seemingly narrowly applied to diagnoses such as schizophrenia and bipolar disorder but not to other diagnoses like PTSD or anxiety, to be held in solitary.¹⁴⁵

Additionally, the lawsuit *Briggs v. Dunn* was filed by the Southern Poverty Law Center and the Alabama Disabilities Advocacy Program in response to the Alabama Department of Corrections (ADOC) “systemically put[ting] the health and lives” of

137. *Id.*

138. Ella Fassler, *Disabled People Are Tortured in Solitary Confinement, But Tides May Be Turning*, TRUTHOUT (Jan. 25, 2020), <https://truthout.org/articles/disabled-people-are-tortured-in-solitary-confinement-but-tides-may-be-turning/>.

139. *Id.*

140. *Id.*

141. Hurubie Meko, *N.Y. Prisons Have Ignored Limits on Solitary Confinement, Judge Finds*, N.Y. TIMES (June 20, 2024), <https://www.nytimes.com/2024/06/20/nyregion/new-york-state-prisons-solitary-limit.html?searchResultPosition=2>.

142. *Id.*

143. Press Release, New York State Senate, Senate Passes the ‘HALT’ Solitary Confinement Act (Mar. 18, 2021), <https://www.nysenate.gov/newsroom/press-releases/2021/senate-passes-halt-solitary-confinement-act>.

144. Ransom, *supra* note 136.

145. *See id.*

incarcerated individuals with disabilities at risk.¹⁴⁶ The lawsuit includes examples, such as an incarcerated individual who was stabbed fifteen times with an ice pick, not having his wounds cleaned or treated, and instead being placed in segregation for three months.¹⁴⁷ After a two-month trial, a federal judge eventually found “the mental health care system in Alabama prisons to be ‘horrendously inadequate’” and “an unconstitutional failure” of a system that had resulted in a “skyrocketing suicide rate” among incarcerated individuals.¹⁴⁸ The ruling also found that ADOC systemically “disciplines mentally ill” incarcerated individuals “for the symptoms of their mental illness and segregates them for prolonged periods.”¹⁴⁹

Approximately “2 million times each year, people with serious mental illnesses are booked into jails,” and about forty percent of people who are incarcerated have a history of mental illness.¹⁵⁰ Prison rules for incarcerated individuals significantly limit the “nature and quantity of mental health services that they can receive.”¹⁵¹ Recent studies have indicated that approximately two-thirds of incarcerated individuals are disabled.¹⁵² “Compared with nondisabled incarcerated people, disabled incarcerated people were more likely to have previously resided in other institutions, such as juvenile detention and psychiatric hospitals.”¹⁵³ And research shows that Black and Latin Americans with mental illness are two-and-a-half times more likely to be placed in solitary confinement.¹⁵⁴

People in solitary confinement comprise six to eight percent of the total prison population, yet “they account for approximately half of those who die by suicide.”¹⁵⁵ Suicide rates are “significantly higher” for those who have been in solitary, even post-release.¹⁵⁶ Also, even if an incarcerated individual did not enter solitary confinement with a mental disability, the effects of the isolation can cause a “psychiatric syndrome” that results in a “progressive inability to tolerate ordinary things”: “severe panic attacks; difficulties with thinking, concentration, and memory;” obsessive thoughts; “paranoia”; and “delirium.”¹⁵⁷ Isolation can be as “distressing as

146. *Braggs, et al. v. Jefferson Dunn, et al.*, S. POVERTY L. CTR., <https://www.splcenter.org/resources/civil-rights-case-docket/braggs-et-al-v-jefferson-dunn-et-al/> (last visited Apr. 23, 2025).

147. *Id.*

148. *Id.* (quoting *Braggs v. Dunn*, 257 F. Supp. 3d 1171 (M.D. Ala. 2017)).

149. *Id.*

150. *Criminalization of People with Mental Illness*, NAT’L ALL. ON MENTAL ILLNESS, <https://www.nami.org/advocacy/policy-priorities/stopping-harmful-practices/criminalization-of-people-with-mental-illness/> (last visited Feb. 25, 2025).

151. Jeffrey L. Metzner & Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. AM. ACAD. PSYCHIATRY & L. 104–8 (2010).

152. Belle, *supra* note 127.

153. Bixby et al., *supra* note 67, at 1460.

154. *Criminalization*, TREATMENT ADVOC. CTR., <https://www.tac.org/criminalization/> (last visited Mar. 13, 2025).

155. Tiana Herring, *The Research Is Clear: Solitary Confinement Causes Long-Lasting Harm*, PRISON POL’Y INITIATIVE (Dec. 8, 2020), https://www.prisonpolicy.org/blog/2020/12/08/solitary_symposium/.

156. *Id.*

157. *Id.*

physical torture.”¹⁵⁸ Solitary can also lead to the development of serious health issues including hypertension and musculoskeletal pain.¹⁵⁹ Further, it can also have “cognitive consequences,” including brain damage, as well as an increased risk of premature death and suicide.¹⁶⁰ Additionally, prisons “disproportionately segregate disabled people” by placing them in solitary confinement as a result of the prisons’ lack of accommodating spaces, and also “often fail to provide” other accommodations and treatment.¹⁶¹ Solitary confinement is also traumatic; its impacts are “analogous” to harm experienced by trauma victims.¹⁶²

As shown above, incarceration inflicts grievous harms on individuals. It can produce new disabilities and exacerbate existing disabilities. Prisons and jail officials routinely fail to provide incarcerated people with disabilities with accommodations to programs, services, and activities within their facilities. They also fail to provide adequate medical and mental health care for this group, which contributes to disablement. Individuals who struggle to adhere to the rules and regulations of life in prison are disciplined with solitary confinement, even when they are unable to understand, or unable to comply with, the rules and regulations. Collectively, these processes and practices contribute to the criminalization of disability.

III. CRITICAL DISABILITY STUDIES AS A VEHICLE FOR CHALLENGING DISABILITY CRIMINALIZATION

Critical Disability Studies provides criminal legal system practitioners with a lens to understand disability criminalization.¹⁶³ We maintain that this knowledge can inform criminal law practice and advocacy on behalf of disabled people. Critical Disability Studies is a multidisciplinary field of study that “seeks to understand and expose the continued history of oppression and marginalization of people who experience disability.”¹⁶⁴ The discipline offers a lens for analyzing disability as a

158. Metzner & Fellner, *supra* note 151, at 104.

159. Justin D. Strong, Keramet Reiter, Gabriela Gonzalez, Rebecca Tublitz, Dallas Augustine, Melissa Barragan, Kelsie Chesnut, Pasha Dashtgard, Natalie Pifer & Thomas R. Blair, *The Body in Isolation: The Physical Health Impacts of Incarceration in Solitary Confinement*, PLOS ONE (Oct. 9, 2020), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0238510>.

160. Dana G. Smith, *Neuroscientists Make a Case against Solitary Confinement*, SCI. AM. (Nov. 9, 2018), <https://www.scientificamerican.com/article/neuroscientists-make-a-case-against-solitary-confinement/>.

161. Bixby et al., *supra* note 67, at 1467.

162. Jessica Levy, *Solitary Confinement, Mental Illness, and Trauma*, DANIELLE ROUSSEAU (Aug. 11, 2022) (quoting Brian O. Hagan, Emily A. Wang, Jenerius A. Aminawung, Carmen E. Albizu-Garcia, Nickolas Zaller, Sylvia Nyamu, Shira Shavit, Joseph Deluca, Aaron D. Fox & Transitions Clinic Network, *History of Solitary Confinement Is Associated with Post-Traumatic Stress Disorder Symptoms among Individuals Recently Released from Prison*, 95 J. URB. HEALTH 141, 142 (2018)), <https://sites.bu.edu/daniellerousseau/2022/08/11/solitary-confinement-mental-illness-and-trauma/>.

163. See, e.g., Subini Ancy Annamma, David Connor & Beth Ferri, *Disability Critical Race Studies (DisCrit): Theorizing at the Intersections of Race and Disability*, 16 RACE ETHNICITY & EDUC. 1 (2013) (discussing intersectional approaches to disability, race, gender, and class).

164. Ramona L. Paetzold, *Why Incorporate Disability Studies into Teaching Discrimination Law?* 27 J. LEGAL STUD. EDUC. 61, 64–65 (2010).

category of subordination, along with race, gender, sexual orientation, and class.¹⁶⁵ Critical Disability Studies scholars argue that disability is a social construct and reject medical and biological models of disability.¹⁶⁶ Recognizing disability as a social construct does not mean that these scholars do not acknowledge experiences with pain or differences in bodies and minds.

To engage in a critical analysis of disability requires “scrutinizing not bodily or mental impairments but the social norms that define particular attributes as impairments, as well as the social conditions that concentrate stigmatized attributes in particular populations.”¹⁶⁷ As legal scholars Doron Dorfman and Rabia Belt explain, “a social model of disability” contrasts with a biological one in that the former focuses not just on “impairment” but also on the social meanings that attach to impairments.¹⁶⁸ In other words, core tenets of the analysis recognize that disabled people are not defective persons or victims of bad circumstance, but rather are inhibited by societal and environmental barriers. Scholars within this tradition recognize that what makes a “disability” is as much about norms, structures, and ideologies as it is about physical and mental impairments.¹⁶⁹

Socially constructed meaning of disability can function to link certain disabilities with notions of criminality, particularly psychiatric disabilities and intellectual and developmental disabilities. Psychiatric disability, also termed “mental illness,” has been linked with notions of dangerousness, disorder, and criminality.¹⁷⁰ These notions stem from social meanings, stereotypes, and myths of disability. Intellectual disability is linked to dangerousness and risk due to lack of competence. The task for advocates is to understand how the specific disability in the police stop, arrests, or encounter serves to construct the individual with that particular disability as dangerous, risky, or criminal. Of course, officers, residents, and officials may not know the precise disability diagnosis for the person they’re engaging with on any particular occasion. They will react in large part based on the specific facts on the ground. Both perceptions will shape those facts, and perceptions are influenced by socially constructed meanings of disability. Advocates should recognize disability in their advocacy, examine how disability may have influenced the encounter, and identify

165. See, e.g., Annamma et al., *supra* note 163, at 5.

166. See generally Christopher Newell, *The Social Nature of Disability, Disease and Genetics: A Response to Gillam, Persson, Holtug, Draper and Chadwick*, 25 J. MED. ETHICS. 172 (1999) (criticizing the then-dominant “biomedically informed view of disability” and arguing for an increased acceptance of the “social nature of disability . . . especially in terms of oppression”).

167. Sami Schalk, *Critical Disability Studies as Methodology*, LATERAL (Spring 2017) (quoting Julie Avril Minich, *Enabling Whom? Critical Disability Studies Now*, LATERAL (Spring 2016)), <https://csalateral.org/issue/5-1/forum-alt-humanities-critical-disability-studies-now-minich/>, <http://csalateral.org/issue/6-1/forum-alt-humanities-critical-disability-studies-methodology-schalk/>.

168. Rabia Belt & Doron Dorfman, *Reweighing Medical Civil Rights*, 72 STAN. L. REV. ONLINE 176, 185–87 (2020).

169. See *id.*

170. See Jamelia N. Morgan, *Disability’s Fourth Amendment*, COLUM. L. REV. 489, 513 (2022).

specific remedies to respond to the disability-specific harm, along with other relevant legal injuries.

Accepting that disability is a social construction means accepting that how society perceives the risks of certain disabilities will vary based on the nature of that disability and how it is expressed.¹⁷¹ This suggests that the specific modalities of criminalization will change depending on the social setting. Disability is fluid, contingent, and strongly dependent on social relations and institutional arrangements. What society regards as a disability, and what aspects of a person's impairment proves disabling will vary across time and place. As Richard Devlin and Dianne Pothier maintain,

Whether a person is “disabled” is highly dependent on the social organization of society—not only in the way we construct our buildings and our transportation systems, but also in the performance benchmarks we utilize to assess people and in the ways in which people are expected to engage in the daily activities of work, leisure, and living.¹⁷²

As a result, responding to disability oppression requires reshaping social practices and institutions across a range of social domains.

We have outlined several different domains where disabled individuals who live in communities are at-risk of criminalization—through police encounters, proximity to heavily-policed areas, or simply for engaging in non-normative behaviors in public spaces. Because these social domains exist across a diverse array of jurisdictions within the United States, no one jurisdiction's response to disability will be the same and neither will the specific modalities of disability criminalization. The task is to identify and surface the zones of risk and to identify through data specific causes for criminalization. Of course, the risk of criminalization is ever-present in communities where access to behavioral health services is underfunded, or housed within the criminal legal system.¹⁷³ But policing practices, particularly those related to homelessness and public substance use, are often instances in which disability criminalization will be likely.

The treatment of disabled people in prisons and jails simply reflects the social norms that govern carceral facilities. Incarcerated people with disabilities face an entirely different social setting that prioritizes maximum control and security. To be disabled in prison or jail upsets the usual expectations for individuals within these facilities. Command and control policies and facility rules are designed to

171. See *id.* at 510 (2022) (discussing how common stereotypes of certain disabilities as “inherently dangerous” serves to “reinforce associations between disability and criminality”).

172. Dianne Pothier & Richard Devlin, *Introduction: Toward a Critical Theory of Dis-Citizenship in Critical Disability Theory: ESSAYS*, IN *CRITICAL DISABILITY THEORY: PHILOSOPHY, POLITICS, POLICY, AND LAW* 1, 5–6 (Dianne Pothier & Richard Devlin eds., 2011) (citation omitted).

173. See Jamelia N. Morgan, *Psychiatric Holds and the Fourth Amendment*, 124 COLUM. L. REV. 1363, 1384 (2024).

apply to everyone.¹⁷⁴ The needs of disabled people—medical care, mental health care, disability accommodations—are often ignored or dismissed. In the carceral setting, uniformity in bodies is the presumed norm, with every request for different treatment regarded as a deviation from the norm. Individuals who deviate from the norm—say, on account of neurodiversity or being denied access to mental treatment—are disciplined, punished, and often subjected to brutal conditions like solitary confinement. For disabled people incarcerated in jails, abysmal jail conditions can lead to disciplining in the form of denied access to medications and life-saving treatment. For disabled people who are incarcerated in prisons, to be criminalized in prison is to be punished on top of the punishment that forms the basis for the criminal conviction, often for behaviors directly stemming from disability-related behaviors and attendant symptoms over which they often have little to no control.

Collectively, to understand disability criminalization across social domains, we should examine how, as Schalk reminds us, social norms help to construct certain attributes as impairments. We should understand, for example, how harmless non-normative behaviors become a basis for criminal suspicion, or how and why mental crisis creates pathways into police violence.¹⁷⁵ Importantly, we have to understand how to identify disability criminalization's root causes, and develop transformative change proposals that will undo the underlying social relations and conditions that contribute to disability criminalization.

CONCLUSION

Critical Disability Studies offers a lens for critique, but also pathways to transformative social change. The analysis offers a lens for examining the policies, practices, and procedures that contribute to disability criminalization. By focusing on societal norms, stereotypes, myths and attitudes, along with legal, administrative, and organizational policies, practices and procedures that contribute to, or put individuals at risk of disability criminalization, we can begin to understand the full scope of the problem and begin to identify adequate responses. Our primer is not a comprehensive list. An exhaustive examination of the forms of disability criminalization should form the topic of future research agendas. What we have aimed to show is that disability criminalization is a social phenomenon that raises pressing concerns regarding the rights of disabled people and their abilities to live safely and thrive in their communities.

174. See Jamelia N. Morgan, *The Paradox of Inclusion: Applying Olmstead's Integration Mandate in Prisons*, 27 GEO. J. ON POVERTY L. & POL'Y 305, 317 (2020).

175. See Morgan, *supra* note 174, at 495–97 (citing Devon W. Carbado, *From Stopping Black People to Killing Black People: The Fourth Amendment Pathways to Police Violence*, 105 CALIF. L. REV. 125 (2017)).