



## **THE RUDERMAN WHITE PAPER**

# **ON THE PROBLEMATIZATION AND CRIMINALIZATION OF CHILDREN AND YOUNG ADULTS WITH NON- APPARENT DISABILITIES**

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## THE RUDERMAN FAMILY FOUNDATION

One of our goals at the Ruderman Family Foundation is to change the public’s awareness of people with disabilities. More specifically, we make the argument that full inclusion of people with disabilities is not a matter of charity, but of civil rights. We researched this White Paper in order to further the awareness around this civil rights movement. We believe that the results we found will meaningfully contribute to the conversation of media coverage around people with disabilities, specifically the coverage of the murders of people with disabilities at the hands of their caregivers—a topic that needs to be addressed more extensively by media outlets, journalism courses, and the public at large.

### Our Mission

The Ruderman Family Foundation believes that inclusion and understanding of all people is essential to a fair and flourishing community.

Guided by our Jewish values, we support effective programs, innovative partnerships, and a dynamic approach to philanthropy in our core area of interest: advocating for and advancing the inclusion of people with disabilities in our society.

The Foundation provides funding, leadership, expertise and insight in the U.S. and Israel, with offices in both countries. Visit us at: <http://www.rudermanfoundation.org>

## PRIMARY CONTRIBUTORS

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**Note:** The views expressed in this document are solely those of the authors.

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## **LANGUAGE DISCLAIMER**

We at the Ruderman Family Foundation want to acknowledge that language use in the context of disabilities is an important issue that generates both strong discussion and strong feelings. The most frequent point of contention is whether people-first or identity-first language should be used. While it is our policy at the Ruderman Family Foundation to use people-first language (i.e. a person with a disability), we acknowledge that several segments of the disability community prefer identity-first language (i.e. a disabled person). The author of this Ruderman White Paper intends to follow the best practices of the self-advocates within any given community, and will vary usage as seems appropriate when it comes to general descriptions of disability.

Also relevant to this white paper is the term “stigma”. While we understand that the term “stigma” is often used to describe the discrimination that people with disabilities are facing, and also why some of them choose not to publicly disclose their disability, we will not use that term in this paper. After consulting with experts and each other, we feel that it is a term that is viewed with skepticism and dislike from the disability community and in particular the mental health consumer world. This is because “stigma” is viewed as individualized, as situating the location of harm in the individual instead of the social structure. In this paper we are examining the social structure and its systemic discrimination against the disability community.

The Ruderman Family Foundation and the writers of the Ruderman White Paper denounce the use of any discriminatory or derogatory language.

This paper makes use of the term ‘inequity’ in lieu of ‘disparity’. The latter is defined in terms of difference, without regard to context or root cause. ‘Inequity’ is intentionally utilized to underpin the structurally mediated, disparate impact of the School-to-Prison Pipeline on children and youth with disabilities.

## **EXECUTIVE SUMMARY**

### **Overview**

Unlike people with visible or apparent disabilities, people with non-apparent disabilities often don't receive the accommodations guaranteed to them under the Americans with Disabilities Act (ADA). Due to the "invisible" nature of disabilities like autism, Crohn's disease, chronic fatigue syndrome, dyslexia, or any number of mental illnesses, some behaviors that are a direct result of these disabilities are often seen in school contexts as laziness, inattention, disrespect or defiance. Instead of receiving legally due accommodations for their disabilities, students with non-apparent disabilities are disproportionately labelled problem students.

In combination with zero tolerance policies at schools, these students are suspended at disproportionately high rates and ultimately criminalized. The result of this systemic discrimination is that over half of our incarcerated population has a mental illness and another 19-31% have a non-apparent disability, like cognitive or learning disabilities. Our jail and prison systems are effectively warehouses for people with non-apparent disabilities. This problematization and criminalization starts very young—even in preschool.

### **Focus and Findings**

We examine in detail the disproportionate impact that the School-to-Prison Pipeline, and the Foster-Care-to-Prison Pipeline have on children and youth with non-apparent disabilities. While the effects of these Pipelines are well-known in regards to other minorities, we have found that people with disabilities are over-represented in all the minority groups traditionally impacted by this type of systemic discrimination. These findings suggest that the intersection between disability, in this case specifically non-apparent disability, is a significant factor in systemic discrimination.

We also examined the role of trauma in the development of non-apparent disabilities. Trauma-survivors are more likely to develop mental illness and about 35% of them develop learning disabilities. This means that children who have Adverse Childhood Experiences (ACEs) are more likely to be caught up in the School-to-Prison Pipeline. And given that children are very often placed in foster care because of abuse or neglect, these findings about trauma also indicate some of the underlying causes in the Foster-Care-to-Prison Pipeline.

To better illustrate the impact of this systemic injustice on individuals, we collected personal statements and vignettes from persons impacted by this discrimination. One contributor's words about these systems that work against our youth captured the injustice of it all very incisively: "... you feel like you're being punished when you haven't committed any crime."

## **Conclusion**

This systemic violation of the rights of people with non-disabilities, not only impacts the individuals funneled into the to-Prison Pipelines, but disrupts and harms communities by having the stress and discrimination and incarceration burdening and separating families.

The long-term consequences of incarceration are devastating given the high recidivism rate (almost 50%) and the lack of supports in place to re-integrate people, especially people with non-apparent disabilities, back into the community.

Finally, this system of discrimination also hurts the wider community and tax payers given that it costs more than \$140,000 a year to incarcerate a young person, and only about \$10,000 to educate them.

Therefore every one of us is impacted by this injustice in our communities and we must put an end to it. Disrupting the to-Prison Pipelines with more sensible school discipline policies, greater awareness raising, more support for trauma-survivors, more wide-spread testing for non-apparent disabilities, better supports and education of teachers and school resource officers are among the first steps we can and must take now.



## SECTION ONE: INTRODUCTION

### Non-Apparent Disabilities

It has become relatively common to read stories about people with disabilities (PWD) returning to their cars—which they have parked in the accessible parking spot—to [find them vandalized](#), or find disparaging notes stuck to the windshield. The reason behind this harassment is inevitably that the PWD in question just does not *look* disabled, regardless of the fact that they may have a valid parking permit for accessible spots. This phenomenon, in short, encompasses the problem people with non-apparent disabilities (PWND) frequently face in our society. Non-apparent disabilities are also often referred to as “invisible” or “hidden” disabilities, but for the purposes of this paper, we’ll be using the term “non-apparent.”

There are simply different assumptions levied on those with apparent disabilities—such as wheelchair users—versus those with non-apparent disabilities, like congestive heart failure, for example. The former group is frequently met with pity and the assumption of inability or helplessness, whereas the latter group often receives skepticism about whether their disability is even real. In response to the prevalence of such attitudes, recent years have seen the creation of several [videos](#), [comic strips](#), and [articles](#) that all point out the stark contrast with which we regard apparent disabilities and illnesses versus non-apparent ones.

These social commentaries are often humorous. After all there is a degree of hilarity in scenarios like these: a person with a broken leg struggles to go up the stairs with crutches and instead of offering to help, their friend just looks at them and says something like, “I know you’ve a broken leg and all, but I feel you’re not even trying to get better.” The dialogue echoes sentiments people with non-apparent disabilities often hear from well-meaning, but ultimately unhelpful associates. The bottom line is that if we can’t see something, we as a society have trouble understanding and accepting its existence. Unfortunately, when we look at the consequences that most PWND face due to the prejudice against non-apparent disabilities and lack of understanding around them, the humor disappears from the situation.

### Attitudes toward People with Non-Apparent Disabilities

It is hard to get an exact picture of the attitudes toward PWND in part because of the breadth of the term and in part because of lacking research. However, a look at existing research shows that nearly universally attitudes toward PWD are negative in society in general, if not explicitly, then implicitly.

For example, [an article published by Michelle Clare Wilson and Katrina Scior in the journal PLOS ONE](#) explores “Implicit Attitudes towards People with Intellectual Disabilities.” As recent social changes push toward equality and full inclusion of minorities, it has become less socially acceptable to express negative attitudes toward PWD. Wilson and Scior therefore measured implicit attitudes (those not openly expressed or even consciously embraced) toward people with intellectual disabilities in their study along with explicit attitudes (those openly expressed.) They have found that “on the whole, participants showed a slight negative implicit bias yet positive explicit attitudes towards individuals with intellectual disabilities.” In other words, even though people did not openly admit bias against people with intellectual disabilities, they did perceive this population negatively.

Looking at mental illness, the negative attitude persists. In the article [“The Public Stigma of Mental Illness—What Do We Think; What Do We Know; What Can We Prove?” published in the Journal of Health and Social Behavior](#), Bernice Pescosolido finds that “stigma levels for [standard psychiatric categories] were substantial and by no means suggested the “dissipation” of stigma alluded to in research and policy statements. At least in Western nations, findings from representative regional and national studies on adult issues were remarkably similar.” She notes that while there has been a slight decline in bias against mental illness over decades, ultimately “stigma is alive and well with relatively stable gradients.” Pescosolido also suggests that this negative perception of mental illness keeps people from not only disclosing it, but ultimately from seeking treatment. The National Institute of Mental Health supports this interpretation in that their data shows that [only 58.7% of adults with a serious mental illness sought treatment](#) (2008). While it’s not clear whether mental illness is unique among non-apparent disabilities regarding the high rate of lack of treatment, it is important to note what startling effect public attitude has on the community of people who are mentally ill.

It is possible that one type of non-apparent disability, say congestive heart failure, for example—would on average be viewed less negatively by the public than another type, say mental illness, which is so often viewed as a type of character flaw or moral failing on behalf of the person. However, the general trend is clear: non-apparent disabilities—like disabilities in general—elicit negative social attitudes. This reality has profound and serious consequences for the millions of people living with non-apparent disabilities.

### **Prevalence of Non-Apparent Disabilities**

Before we outline the systemic discrimination the PWND experience, we’d like to establish just the sheer magnitude of PWND. For the purposes of this paper, when we use the term “disability” we are referring to the definition accepted by the [Americans with Disabilities Act](#) (ADA) which is the U.S.’s landmark anti-discrimination legislation protecting people

with disabilities. The ADA states that “The term ‘disability’ means, with respect to an individual, (A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.” Building off this definition, the [Invisible Disabilities Association](#) further clarifies that a non-apparent disability “is a physical, mental or neurological condition that limits a person’s movements, senses, or activities that is invisible to the onlooker.”

Given that non-apparent disabilities are—well, non-apparent—it is hard to pin down their prevalence. A PWND may choose not to disclose their disability or it may not be diagnosed at all. According to the latest [U.S. census](#), approximately one in five people living in the U.S. have a disability. This figure encompasses all types of disabilities—apparent and non—and includes 57 million people. However, we believe that if non-apparent disabilities were more accurately reported, the numbers could be much higher.

For example, if we look at the most recent data from the National Institute of Mental Health (NIMH), they report that the prevalence of any [mental illness among adults in 2015 was 17.9%](#). This figure is pretty close to the 19% figure the U.S. census reports for all disability. Now, this is not to say that every mental illness qualifies as a disability; in fact only [4% of the adult population were classified as having a serious mental illness](#) according to NIMH. Based on the descriptive criteria, this 4% of the population would definitely fit into the ADA definition of disability, but it is not entirely clear that the number is not higher than that.

All this to say, the high numbers of people with mental illness in the U.S. suggest that the estimated percentage of the population with disabilities is likely higher if all non-apparent disabilities were factored in. This assessment is further supported by the fact that the NIMH excludes substance use disorders or developmental disabilities when calculating their data.

### **Non-Apparent Disabilities and the Violation of Civil Rights**

It is well-known that the United States imprisons more residents than any other Western country. According to the [Bureau of Justice Statistics’s latest available data \(2015\)](#) the U.S. has 458 prisoners per 100,000 residents of all ages. By comparison, the [Council of Europe’s Annual Penal Statistics Survey for 2015](#), shows that the median imprisonment for European countries, including Russia, is 115.6 prisoners per 100,000 residents. While the high imprisonment rate is startling in and of itself, we’d like to focus on the fact that people with mental illness are disproportionately represented.

The last available [report on inmate mental health](#) from the Bureau of Justice Statistics is from 2004. It states that “56% of State prisoners, 45% of Federal prisoners, and 64% of jail inmates” had a “mental health problem.” Although the report is 13 years old, there is no reason to believe that current figures are drastically lower. It is furthermore worth noting that the figures for female inmates are significantly higher at 73%, 61%, and 75% respectively (for more on the intersection between non-apparent disabilities and women, please see Section Five). The average of these figures indicates that 55% of the prison population has a mental illness. This is nearly three times the 18% estimated in the general population and given the barriers to effective diagnosing, it is very likely that this number is an undercount. The magnitude of disproportional representation is simply staggering and we assert that it indicates systemic discrimination against people with mental illness.

Additionally, a [Bureau of Justice Statistics study of disability in prison and jail inmates from 2011-2012](#) notes that the incarcerated population was approximately three times more likely to have a disability than the non-incarcerated population (almost 3 times more for prison inmates and more than 4 times the general population for jail inmates). Within this staggering overrepresentation of disabilities, non-apparent cognitive disabilities dominated. The report defined a cognitive disability “as serious difficulty concentrating, remembering, or making decisions,” and notes that it “was the most common disability reported by prisoners (19%) and jail inmates (31%).” These statistics demonstrate that non-apparent disabilities other than mental illness are also over-represented in the inmate population, a fact that once again points toward systemic discrimination against people with non-apparent disabilities.

It could be said that while this disproportionate representation is unfortunate, it is not in and of itself a violation of the rights of these citizens with disabilities. **In this white paper we are going to make the argument that the early, systemic, and systematic discrimination that people with non-apparent disabilities encounter does in fact amount to the violation of the civil rights of this population.**

The path to inequality for people with non-apparent disabilities starts early and it starts with inequality of access to opportunities, specifically education. According to [Title II of the Americans with Disabilities Act \(ADA\)](#),

all activities of State and local governments regardless of the government entity's size or receipt of Federal funding [are required to] give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities (e.g. public education, employment, transportation, recreation, health care, social services, courts, voting, and town meetings).

In practice though, we often see a lack of an equal opportunity for education for students with disabilities. Instead of receiving reasonable accommodations as the ADA requires,

students with disabilities receive out-of-school suspensions. [The U.S. Department of Education’s data on “School Climate and Discipline”](#) shows that students with disabilities are twice as likely as their non-disabled counterparts to receive out of school suspensions—a practice that not only [disturbs student’s access to education](#), but also correlates with higher chances of incarceration later on in life. This is the direct result of schools across the nation problematizing and often criminalizing students with non-apparent disabilities. These figures are likely higher given that non-apparent disabilities are not always diagnosed.

We are seeing a similar problem where children with non-apparent disabilities are not being given their rightful opportunity for education and flourishing when it comes to the foster care system. In their report [“Forgotten Children” United Cerebral Palsy and Children’s Rights](#) collect data from multiple studies to show the over-representation of children with disabilities in the national foster care system. When it comes to non-apparent disabilities specifically, the report showed the following figures:

- 30-60% of children in the foster care system have developmental delays
- 50-80% have mental and behavioral health problems
- 30-40% are receiving special education services

Similar to schools, non-apparent disability is also being criminalized and problematized in this system. Foster care alumni are more likely than their counterparts to have been arrested. The research center Chapin Hall at the University of Chicago conducted a longitudinal study of approximately 600 foster care youth in the Midwest. According to their final report published in 2011, titled [“Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 26”](#) they conclude that:

Although young men were more likely to have reported arrests, convictions and incarcerations than young women, the cumulative percentages are very high for both genders. A majority of the young women and more than four-fifths of the young men reported ever having been arrested.

Overall, we are witnessing that the systems established to ensure that children have a safe environment for flourishing that ultimately directs them on a path of success in our society, have been repeatedly failing children with non-apparent disabilities.

## **SECTION TWO: SYSTEMIC AND EARLY CRIMINALIZATION—FROM SCHOOL TO PRISON**

### **The School-To-Prison Pipeline**

Most people are familiar with the term “School-to-Prison Pipeline” though few of us recognize the extent of the process and mechanisms by which children are funneled out of their schools and into the criminal justice system. Every year, tens of thousands of vulnerable children are pushed out of their classrooms and into courtrooms by inadequate educational programs and overly harsh and inappropriate disciplinary policies and practices.

Data from the [U.S. Department of Education’s Civil Rights Data Collection](#) casts light on the magnitude of the School-to-Prison Pipeline. During the 2011-2012 school year, schools referred approximately 260,000 students to law enforcement, and approximately 92,000 students were subject to school-related arrests. These numbers are reflective of the growing trend of increasing rates of student suspension and expulsions. During the 2011-2012 school year, of 49 million students enrolled nationwide, approximately 3.5 million students (7%) received in-school suspensions, 1.9 million students (4%) received single out-of-school suspensions, and 1.55 million students (3%) received multiple out-of-school suspensions, while approximately 130,000 students (0.3%) were expelled.

By contrast, [in 2000](#), just 11 years earlier, of the 46 million students enrolled nationwide, approximately 3 million students (6.5%) were suspended at least once, while approximately 97,000 students (0.2%) were expelled. These numbers overall indicate a doubling in suspension rates since 1970.

Perhaps the worst aspect of this increase in suspensions is that most of them are [the result of minor infractions](#) rather than violent behavior or drug-possession. The 2014 U.S. Department of Education [Guiding Principles](#) report which is intended to serve as “a Resource Guide for Improving School Climate and Discipline” cites one study that found that up to 95% of all “out-of-school suspensions were for nonviolent, minor disruptions such as tardiness or disrespect.” This exact number hasn’t been replicated by other national or even state studies, but [literature on the topic](#) widely agrees that there is a problem with overly punitive policies. For example, [research of Massachusetts schools](#) found that 66.3% of disciplinary actions were administered in response to non-violent, non-criminal, and non-drug related offenses.



Part of the reason for such inappropriate schools punishments that far exceed the scope of the infraction stems from the fact that many schools [still subscribe to zero-tolerance policies](#)—a system that was [implemented in 1994](#) after Congress made federal funding contingent upon the suspension of students who brought guns to schools. Unfortunately we have witnessed a slippery slope where zero tolerance has been applied to infractions astronomically less severe than gun possession in school.

Therefore, much of the discourse on this issue has focused on the draconian school discipline policies as the main pathway to the criminalization of children. In dysfunctional environments, schools try to punish children into obedience rather than focus on creating an atmosphere of engagement and learning. A [survey of existing literature](#) posits that when children fall behind their peers in the classroom, they become disengaged and disillusioned with the educational process as they do not believe it is one that works for them, and thus act out and misbehave. When teachers, staff, and administrators are faced with responding to such behavior, they often resort to harsh and inappropriate punitive measures that ultimately do not correct such behavior or provide better learning environments, but rather reinforce toxic interactions and reproduce cycles of perceived misbehavior and subsequent punishment. Over time this escalates until the child is pushed out of the school and what should have been a productive and nurturing learning environment. Once a child has been suspended, expelled or has dropped out, they become much more likely to be involved with the juvenile justice and child welfare systems, and then more likely to be involved with the adult criminal legal system in the future. This cycle is exacerbated by the routine presence of [school police officers](#) in schools across the country. Since the [proliferation of law enforcement officers in schools post-Columbine](#), school police are often asked to intervene into minor non-dangerous typical adolescent misbehavior that formerly would have been handled by the school administration, thus increasing the likelihood of court involvement.

The criminalization that defines the Pipeline has [devastating consequences](#) that include difficulty securing a living wage job, accessing safe, stable housing, establishing health-promoting behaviors, becoming at increased risk of violent victimization, and otherwise contribute as a resilient, engaged member of society. The Pipeline cuts across race, dis/ability, sexuality, trauma, socio-economic status, gender, language, and age. In our society, we commonly discuss the implications of socio-economic and gender inequities when it comes to the Pipeline. However, non-apparent disabilities are largely overlooked, even though it is the presence of undiagnosed and/or unaccommodated non-apparent disabilities that makes children more vulnerable to getting caught up in this Pipeline. The “invisible” nature of these disabilities makes it particularly difficult, but also particularly important to address that this is a matter of systemic discrimination.

## **Prevalence of Disability in the School-to-Prison Pipeline**

Inequities within the School-to-Prison Pipeline are readily evident, especially among those with disabilities. In the 2011-2012 school year, students with disabilities served the Individuals with Disabilities Education Act (IDEA) represent 12% of the overall student population, yet represented [25% of students arrested and referred to law enforcement](#). In the same school year, students with disabilities were found to be [more than twice more likely to receive an out of school suspension](#) than students without disabilities.

Students with non-apparent disabilities are particularly susceptible to being targeted by the School-to-Prison Pipeline – for many, the [effects are compounding](#) and result in enormous harm. One example is students who are trauma survivors (you can learn more on the connection between trauma and non-apparent disability in Section Four). We focus first on trauma survivors because little data exists on the outcomes of students with non-apparent disabilities (in part because they often go undiagnosed). However, we believe, for reasons outlined in this section, that the statistics of trauma survivors and trauma-developed disabilities are strongly applicable to children with non-apparent disabilities in general.

A research article written by Christopher Mallet, a professor of social work at Cleveland State University, published in *Education and Urban Society* found that children who had experienced abuse and neglect were [more likely to have decreased cognitive and language capacities, decreased standardized testing outcomes, and a decreased ability to learn](#) within the standardized settings and approaches most schools offer. Exposure to prolonged or repeated violence caused the bodies and brains of young people to adapt and [become focused on survival by promoting distrust, hypervigilance, impulsive behavior, isolation, and a host of other maladaptive behaviors](#) that make it harder to successfully learn in a traditional classroom setting. These adaptations reduce children's ability to delay impulses and gratifications – a known predictor of academic success. The severity and pervasiveness of maltreatment was found to be [proportional to larger risks of decline in school performance](#). In the classroom, children who had experienced abuse and neglect were [more likely to have poorer grades and be held back, especially in kindergarten and first grade, and on average entered a half-year behind on academic performance and had poorer academic performance and adaptive functioning at ages 6 and 8](#). Thus, children who have experienced abuse and neglect and other forms of trauma are more susceptible to the severe and inappropriate punishment that too frequently follows misbehavior [borne out of frustration and embarrassment with their inability to master classroom material](#). Recent arrest data in Massachusetts shows that the schools with the highest arrest rates in two of the largest districts in the state, Boston and Springfield, were alternative and therapeutic schools. This is incredibly concerning given that these schools are purportedly designed to



support students who have non-apparent behavior or emotional disabilities, or learning disabilities. The arrest rate at these schools is [sometimes up to 10 times the district-wide rate](#). This is just one example of the systemic discrimination children with non-apparent disabilities face.

These inequities carry over into the juvenile justice system. Thus, it can be no surprise that [in 2010, an estimated 75 to 93% of youth entering the justice system annually had experienced some degree of trauma](#), while 34% of children in the nation had experienced at least one traumatic event. In detention, [youth were three times more likely to have been exposed to multiple types of violence and traumatic events](#), compared to a national sample of youth. In Massachusetts, a 2015 study revealed that of 831 juveniles referred to the court in the state, [63% of them had experienced 4 or more Adverse Childhood Experiences \(ACEs\)](#), compared to 12.5% nationally.

Thus, the Pipeline opens up funnels for students with non-apparent disabilities to fall in. By missing school and/or being ostracized by peers, students with non-apparent disabilities are likely to experience the same [sense of frustration and embarrassment that causes students to disrupt activities, push back against attendance policies, look for alternative \(and often illegitimate\) ways to establish their self-worth, identity, and status among peers](#).

Unfortunately, for children with non-apparent disabilities, the effects of the Pipeline do not limit themselves to a late onset. In fact, the Pipeline can begin to take hold as early as preschool. In two-thirds of states with preschool programs, [expulsion of children is either explicitly allowed or providers are given the discretion to do so](#). In fact, the prevalence of expulsion among preschools is so great that it happens at [a rate three times of that of K-12 children](#). Children with non-apparent disabilities may be particularly susceptible to this egregious outcome, given that many go non-diagnosed, particularly when children are very young and only just beginning schooling. This practice can only have negative consequences, as for young children school becomes a place where they are not welcome or supported. Additionally, suspension and expulsion during early childhood is [associated with further suspension and expulsion in later grades](#).

### **Consequences of the School-to-Prison Pipeline**

For those sucked into the School-to-Prison Pipeline, the consequences are profound and long lasting with tangible effects even when a child has transitioned from youth to adult. An article written by Jason Nance, a professor of law and the Associate Director for Education Law and Policy at the Center on Children and Families at the University of Florida Levin College of Law, published in the Arizona State Law Journal found that from the first

suspension in 9<sup>th</sup> grade, [the odds of dropping out from high school double from 16% to 32%](#), with the odds increasing each additional time the child is suspended. In terms of graduating from high school, that same researcher found that each suspension decreased the odds of graduating from high school by 20% and the odds of attending some form of post-high school education by 12%. Furthermore, when a child was excluded from school and not monitored by professionals or were at home without parental suspension, they were more likely to commit crimes and incur further exclusionary punishment, which further increased the odds of involvement with the juvenile justice system. When it comes to incidents that result in arrest in the school, the effects are equally stark. A research article by Gary Sweeten, an associate professor of criminology and criminal justice at Arizona State University, published in Justice Quarterly found that a child arrested in school was [2 times less likely to graduate high school](#), and if that same child appeared in court, they became 4 times less likely to graduate high school. Once detained by the justice system in a correctional facility, a child is even more unlikely to complete high school – in Massachusetts, [43% of youth in detention did not return to school upon release, and an additional 16% enrolled upon release, but dropped out after only 5 months](#). On the whole, youth in detention are [19% less likely to graduate](#) than their similarly situated peers who are not detained.

Without the support they need to access the education to which they are legally entitled, a child becomes [more likely to be involved in the criminal justice system at some point in their lives](#). In fact, children who have been expelled are [3 times more likely to interact with the juvenile justice system](#) while children who have dropped out of high school are [3.5 times more likely than high school graduates to be arrested](#). From there, children who had been incarcerated as youths experienced an [increase in the likelihood of adult incarceration by 22%](#). In 2006, [nearly 1 out of 10 male drop outs were institutionalized on any day](#), as compared to less than 1 in 33 male high school graduates. Further, in 2006, the likelihood of becoming institutionalized was 63 times greater for a drop out than for a four-year college graduate. In 2009, [40% of all institutionalized individuals had dropped out of high school](#), whereas only 8% of noninstitutionalized individuals had dropped out of school.

When taking in these statistics, it is important to understand that we're addressing overall numbers and that there obviously are variabilities among individuals in terms of the effects they experience. But with this said, the ultimate root cause behind this slew of adverse consequences goes back to a systemic discrimination against youth with non-apparent disabilities. Even though children with disabilities are legally entitled to accommodations, the reality is that they too often do not receive them, and instead receive punishments that fundamentally disadvantage them for the rest of their life in an extensive system of discrimination.

Furthermore, the consequences of the School-to-Prison Pipeline are not limited to those who are directly ensnared by it. This problem is one that extends to all of us – even those of us who succeed in graduating from high school and even have a four-year college degree. This problem imposes systemic costs for the entirety of our society. When we do not support all children to reach their full potential, we all lose.

In 2013, [it cost an average of \\$148,767 to institutionalize a child for a year](#), versus the \$10,700 it costs to educate a child in public school. Unsurprisingly, these costs amount as the child is trapped in the Pipeline and the consequences accrue. Over time, [the long term costs of confining youth are estimated to be between 70.9-21.47 billion per year](#), once costs associated with recidivism, lost future earnings, lost future tax revenue, additional spending in Medicaid and Medicare, the impact of sexual assault on confined youth, etc. are considered. That is to say, the earliest failings of our children have the most profound consequences over their lifetimes, our lifetimes, and the generations to come after.

### **Case Study of Massachusetts**

The complexities of the School-to-Prison Pipeline span across federal and state laws and vary from state to state (while [the federal government doesn't recognize education as a fundamental right](#), several, but not all [state constitutions do](#) list education as a right), and even school district to district. Given the multitude of policies in place, it is hard to directly compare which state has the best or worst situations when it comes to the Pipeline, but we can come to reasonable assessments indirectly. According to 2013 data from the [U.S. Office of Juvenile Justice and Delinquency Prevention](#), Massachusetts has the second-lowest juvenile custody rate nationwide at 60 per 100,000 people (tied with Hawaii, with Vermont having the lowest at 48 per 100,000). In this section we will highlight the work of the Youth Advocacy Foundation's work in Massachusetts in their mission to shut down the Pipeline. We believe their approach can serve as a model for all states on how to disrupt the insidious cycle of juvenile incarceration when it comes to children with non-apparent disabilities as well as all other vulnerable populations.

The [Youth Advocacy Foundation \(YAF\)](#) is a 501(c)(3) non-profit organization, established in 2001 with the mission of protecting the educational rights of Massachusetts' most vulnerable children to keep them in school and out of prison. YAF is housed within the [Youth Advocacy Division \(YAD\)](#) of the Massachusetts public defender agency, the Committee for Public Counsel Services (CPCS). YAF supports the development and implementation of the holistic advocacy model practiced by YAD. One of YAF's cornerstone initiatives in this holistic model is the EdLaw Project. The EdLaw Project is a team of expert education attorneys who work to dramatically increase both the quantity and

quality of education advocacy available to court involved and otherwise vulnerable children in an effort to abolish the School-to-Prison Pipeline.

The EdLaw Project –has been providing excellent education advocacy for Massachusetts highest-risk youth since its formal inception in January 2000. To date, the EdLaw Project staff has directly advocated for over 1,800 low-income children to receive a quality education. The Project’s focus on court-involved children and youth seeks to address a critical root cause of court involvement – school failure. By providing this legal intervention, EdLaw is able to encourage success in school so that it offers a truly accessible, alternate path to falling victim to the School-to-Prison Pipeline.

The EdLaw Project is currently focusing their expertise on training, empowering, and supporting the court-appointed attorneys across the state who represent children in the juvenile court to engage in education advocacy. Each year, CPCS deploys approximately 1,800 attorneys to provide representation to 20-25,000 children in the child welfare and juvenile justice system. EdLaw is working to train and support these lawyers so that they are able to provide all of their clients with the critical education advocacy they need, and in doing so, is permanently transforming the standard of practice for child advocacy in Massachusetts. This approach will dramatically improve education and life outcomes for thousands of poor children annually.

This approach is designed to catalyze systemic change in public school systems that have historically and persistently neglected children in impoverished communities. EdLaw’s aggregate litigation model forces underperforming school districts to conform to the state law entitling all children to a quality education.

Expert child advocates working to help students access the appropriate educational services for court involved youth is not simply a moral imperative; it is also a far more effective, and efficient approach to issues of systemic poverty, public safety, and state budget deficits. With the support of education law experts at the EdLaw Project, Massachusetts’s dedicated and skilled juvenile bar can have a profound impact on the educational, legal, and life success of thousands of poor court-involved children and youth—many of whom have non-apparent and undiagnosed disabilities—every year and, in turn, help address economic and social disparities affecting multiple communities throughout the Commonwealth.

### **SECTION THREE: SYSTEMIC AND EARLY CRIMINALIZATION—FROM FOSTER CARE TO PRISON**

As discussed in the previous section on the School-To-Prison Pipeline, the common reasons why children with non-apparent disabilities end up disproportionately impacted by this Pipeline is because their disabilities are not accommodated and instead are too often penalized, in direct violation of their civil rights. A sub-section of children within that pool who are equally, if not more, targeted by the systems at play in the Pipeline are children in the foster care system.

According to the [U.S. Children’s Bureau](#), 427, 910 children were in the nation’s foster care system in 2015—a number that has been steadily rising over the years. The most common reason children enter the foster care system is because their [family environment is unsafe, and/or they are being abused or neglected](#). These traumatic experiences predispose children to developing non-apparent disabilities, like learning disabilities or mental illness with behavioral risk factors—a topic we will discuss more in depth in the next section. Thereby foster children have a greater likelihood of needing additional school support in school, but due to the non-apparent nature of their disabilities, they are not as likely to receive that support and needed accommodations. So a situation is created where foster care children are especially vulnerable to the School-to-Prison Pipeline, which is one of the contributing factors to the phenomenon often termed the Foster-Care-to-Prison Pipeline.

#### **Foster-Care-to-Prison-Pipeline**

The most salient argument for the existence of systemic factors that funnel children in foster care and alumni of the foster care system into the criminal justice system is a look at how many incarcerated individuals have been in the foster care system. The California State Senate conducted just such research in 2011 in a survey of state prisoners. Their report [“What Percentage of the State’s Polled Prison Inmates Were Once Foster Care Children?”](#) indicates that 14% of the inmates had once been in the foster care system. The longitudinal [2011 University of Chicago study](#) described in the introduction concluded that more than 50% of female foster care alumni had been arrested at least once and about 80% of the male ones had too. The stark disparity between these two studies can be attributed to study design (California sampled their prison population and the University of Chicago the foster care alumni) as well as to location (the University of Chicago study focused on the Midwest). In the absence of consistently-collected nation-wide data, the national prevalence is hard to assess. However, it is [generally estimated](#) that about [25%](#) of foster care alumni nation-wide end up in prison.

To get a sense of the context as a whole, it is important to consider the overall incarceration-rate in the U.S. [According to the U.S. Census](#), the population of people age 19 or older in 2016 was 77.2%, or roughly 249 million people. Detailed reporting by the [Prison Policy Initiative](#) shows that more than 2.3 million people are incarcerated in the U.S. in prisons, jails, and juvenile detention facilities. Thus, percentage-wise the U.S. incarcerates about 0.9% of its population. And since we didn't include juveniles in the general population number, but just people aged 19 and older, the 0.9% figure is likely to be slightly lower. All this to say that when we look at the population as a whole, we imprison about 1% of our adults, but when we look at adults coming out of the foster care system, we imprison somewhere between 14% - 80% of them. The disparity, even if we look at the lower end, is staggering and indicates that there really are factors at work that disproportionately target people who have been through the foster care system. This systemic discrimination against the foster care population is what we term the Foster-Care-to-Prison Pipeline.

The duty of the foster care system is to protect neglected and abused children and provide them with environments that allow them to flourish and become productive, valued, and fully integrated members of our society. The incarceration statistics just discussed indicate that our system is clearly failing at that. Furthermore, even if foster care children and alumni do not come into contact with the criminal justice system, there is a [high incidence of homelessness in this population](#)—another problematic outcome.

### **Prevalence of Disability in the Foster Care System**

We argue that the slew of negative outcomes associated with the foster care system's lack of appropriate supports for the children and youth in their care disproportionately affects people with non-apparent disabilities. We have already established that people with disabilities are disproportionately represented in our prison system. Children with disabilities are also disproportionately represented in the foster care system.

According to the most recent [U.S. Census, about 5.2%](#) of all school aged children in non-institutionalized settings have been reported to have a disability (in 2010). Due to the fact that the disabilities have to be diagnosed to be reported, this number is likely an undercount, but it nevertheless gives us a starting point for the general population.

When it comes to nation-wide prevalence of disability in the foster care system, the data is harder to find, in part because of [definition inconsistencies](#) across states and agencies. However, the most thorough study to date conducted in the State of Minnesota, [Prevalence of Children with Disabilities in the Child Welfare System: An Examination of Administrative Records](#), published in 2011 in the Children and Youth Services Review, found that about

28% of children in the Minnesotan foster care system had at least one disability. The [Forgotten Children](#) report we mentioned in the introduction compiles various ranges of numbers that vary because the definitions used in the data collection vary. The lowest estimate therein cites a 20% prevalence for “fully handicapped” children. With either data point, there is a clear over-representation of children with disabilities in the foster care system. But the prevalence becomes even more staggering when we look at non-apparent disabilities, specifically mental illness.

Research by Martha Dore published in 2005 in the [Child Welfare for the Twenty-first Century—A Handbook of Practices, Policies, and Programs](#) estimates that about 80% of all foster care children are impacted by at least one mental illness. The Casey Field Office Mental Health Study surveyed 188 children ages 14-17 in the care of the [Casey Family Programs](#)—an organization dedicated to helping foster care children thrive. They found that out of that sample about [63% of children had at least one lifetime diagnosis of mental illness](#). Additionally, a [2005 Harvard Medical School study](#) found that foster care alumni have Post Traumatic Stress Disorder (PTSD) at twice the rate of U.S. war veterans. As repeatedly noted, exact numbers are hard to pin down due to a lack of systematic study of the subject, but these figures of 80%, 63% and 50% when it comes to just PTSD give us a ballpark.

By comparison, when we look at the population as a whole, according to the [National Institute of Mental Health](#), the lifetime prevalence of any mental illness in children ages 13-18 is 46.3%. The lifetime prevalence of a serious mental illness in children, [defined as](#) “Resulting in serious functional impairment, which substantially interferes with or limits one or more major life activities” is 21.4%. Again we see that when comparing the foster care population with the general population, incidences of non-apparent disabilities are significantly higher.

Given that there is a Foster-Care-to-Prison Pipeline and that a disproportionate number of foster care children have non-apparent disabilities, it is evident that children with non-apparent disabilities are yet again disproportionately impacted by a dysfunctional system that does not provide them with sufficient support and structures to thrive in our society. We once again cannot help but conclude that we are witnessing a systemic discrimination against and criminalization of children with non-apparent disabilities that amounts to the violation of their civil rights—the right to an education, [the right to be protected from harm](#), and the right to access mental health services, among others. The repeated strife that unaddressed non-apparent disabilities can result in too often leads to additional trauma that, if left unaddressed, exacerbates negative outcomes.



## SECTION FOUR: TRAUMA, DISABILITY, AND DISCRIMINATION

In the previous sections we have referred to a link between trauma and the development of non-apparent disabilities; we will discuss this link in this section. In the last few years “Trauma” has become the new buzzword within the criminal justice system and criminal justice reform movement, but it is a term that unfortunately doesn’t yet have consistent use and application. For the purposes of this paper, we will be referring to Judith Herman’s definition in her book, [\*Trauma and Healing: The Aftermath of Violence from Domestic Abuse to Political Terror\*](#) as we find it to be one of the most accurate definitions. Herman writes:

Psychological trauma is an affiliation of the powerless. At the moment of trauma, the victim is rendered helpless by overwhelming force. When the force is that of nature, we speak of disasters. When the force is that of other human beings, we speak of atrocities. Traumatic events overwhelm the ordinary systems of care that give people a sense of control, connection, and meaning. . . .Traumatic events are extraordinary, not because they occur rarely, but rather because they overwhelm the ordinary human adaptations to life. Unlike commonplace misfortunes, traumatic events generally involve threats to life or bodily integrity, or a close personal encounter with violence and death. They confront human beings with the extremities of helplessness and terror, and evoke the responses of catastrophe. (New York, Basic Books: (1992), p. 33)

While Herman’s definition may seem dated it falls in line with current research and treatment for trauma survivors. According to the [Substance Abuse and Mental Health Services Administration \(SAMHSA\)](#) , “Traumatic experiences have an especially adverse impact on children’s mental health.” The research has shown that there is a direct link to substance use disorder and mental health problems.

Although there are many types of trauma, for the purposes of this research psychological trauma in children and youth and how it leads to mental health disabilities is what will be discussed. When a person has a traumatic physical event in their life that leads to an apparent disability (Traumatic Brain Injury, paralysis, loss of limbs etc.) the Americans with Disabilities Act (ADA) is easily applied. However, when there is a psychological disability from trauma the disability is not always apparent (ND). On their page [“Types of Trauma and Violence”](#) , SAMSHA list 17 types of traumas that can cause mental health disabilities that are not apparent. Amongst these 17 traumas the ones that children and youth may experience are: physical abuse; sexual abuse; emotional abuse or psychological maltreatment; neglect; serious accident, illness or medical procedure; victim or witness to domestic violence; community-based violence; historical trauma, school violence; bullying;



natural or human-made disaster; forced displacement; war terrorism or political violence; victim or witness to extreme personal or interpersonal violence; traumatic grief or separation; and system-induced trauma and re-traumatization.

A commonly used term for certain kinds of trauma that children and youth experience it is also [Adverse Childhood Experiences \(ACEs\)](#). ACEs factors include: physical abuse, sexual abuse, emotional abuse, physical neglect, emotional neglect, mother treated violently, substance misuse within household, household mental illness, parental separation or divorce, and incarcerated household member

While there are many campaigns and initiatives to combat the abuse of children—just the other day one of us walked into a store to find a large sign on an easel asking customers to help end violence against children—the long-term consequences and the legal, rights-based implications of ACEs are too rarely discussed. According to research by Christopher Mallet of Cleveland State University, in his article [“The School-to-Prison Pipeline: Disproportionate Impact on Vulnerable Children and Adolescents”](#) about 35% of traumatized students develop learning disabilities. As outlined in previous sections, the School-to-Prison Pipeline disproportionately targets children with non-apparent disabilities. This amounts to systemic discrimination against trauma survivors who are more likely to be caught up in the Pipeline on the basis of their trauma-induced learning disabilities.

Furthermore, what happens to the students that do not show signs of learning disabilities or acute cognitive disabilities who have experienced one or more of the traumas above on one or more occasion? [SAMHSA](#) studies show that children and youth who have experienced trauma or ACEs develop mental health disabilities such as: depression; anxiety disorders; post traumatic stress disorder; disruptive behavior disorders; obsessive compulsive disorders; eating disorders; and insomnia. These mental health disabilities are non-apparent and impact the way children and youth engage in school and with adults and their peers. With these links in mind, we need to recognize that the victims of the School-to-Prison Pipeline are too often trauma-survivors.

### **National Prevalence of Childhood Trauma and ACEs**

Although there is no definitive nation-wide data on ACEs, the [Center for Disease Control and Prevention](#) (CDC) does collect information on the topic through states opting into administering the [Behavioral Risk Factor Surveillance System \(BRFSS\)](#) questionnaire. As with all data collection, there are confounding variables and limitations when it comes to self-disclosure and opting in. With that said, the BRFSS nevertheless gives us powerful insight into the approximate prevalence of childhood trauma in the population.

In 2010, [ten states \(HI, ME, NE, NV, OH, PA, UT, VT, WA, and WI\)](#) in addition to the District of Columbia administered BRFSS surveys to their residents, making it the largest data-collection year for the study with over 50,000 participants. The tables below depict the results.

**Prevalence of ACEs by Category for Participants Completing the ACE Module on the 2010 BRFSS.**

ACE Category	Women	Men	Total
	Percent (N =32,539)	Percent (N =21,245)	Percent (N =53,784)
<b>ABUSE</b>			
Emotional Abuse	34.1%	35.9%	35.0%
Physical Abuse	15.8%	15.9%	15.9%
Sexual Abuse	15.2%	6.4%	10.9%
<b>HOUSEHOLD CHALLENGES</b>			
Intimate Partner Violence	15.6%	14.2%	14.9%
Household Substance Abuse	27.2%	22.9%	25.1%
Household Mental Illness	19.3%	13.3%	16.3%
Parental Separation or Divorce	23.1%	22.5%	22.8%
Incarcerated Household Member	5.2%	6.2%	5.7%

Note: Reports and articles that use data from other years and/or other states may contain different estimates.

**ACE Score Prevalence for Participants Completing the ACE Module on the 2010 BRFSS.**

Number of Adverse Childhood Experiences (ACE Score)	Women Percent (N =32,539 )	Men Percent (N =21,245)	Total Percent (N =53,784)
0	40.0%	41.4%	40.7%
1	22.4%	24.9%	23.6%
2	13.4%	13.2%	13.3%
3	8.0%	8.1%	8.1%
4 or more	16.2%	12.4%	14.3%

Note: Reports and articles that use data from other years and/or other states may contain different estimates.

Source: [CDC](#).

As illustrated in the above tables, more than half of all participants have experienced at least one instance of ACEs. 35% have experienced emotional abuse, about 16% have experienced physical abuse, and about 11% have experienced sexual abuse. Based on these numbers, it is statistically unlikely to find a classroom where no child has experienced trauma. If we assume that these findings are roughly representative of the nation as a

whole, it is easy to recognize that trauma is a serious and pervasive factor in many children’s lives. While not every traumatized child develops learning disabilities or mental illness due to their experiences, the magnitude of the problem makes it clear that an awareness of the problem must exist nation-wide. Additionally, school services and accommodations for non-apparent disabilities induced by trauma must be available and implemented nation-wide.

### **What “Counts” As Trauma?**

We would be remiss not to address spanking in this section. Popular opinion is wildly divided when it comes to the topic of whether or not spanking constitutes child abuse. Even the very language we use differentiates it from “beating” which we more commonly associate with abuse. According to a University of Texas and University of Michigan meta-analysis of five decades of research published in the *Journal of Family Psychology* and discussed in the article, [“Risks of Harm from Spanking Confirmed by Analysis of Five Decades of Research,”](#) spanking is abuse. The study revealed that, “The more [children] were spanked, the more likely they were to exhibit anti-social behavior and to experience mental health problems.” The report studied more than 160,000 children and anti-social behavior is linked to criminal behavior in children and adults. As always, there is variability among individuals, but when discussing trauma, evidence indicates that spanking, though not listed by that name under ACEs, is ultimately physical abuse and parents and school administrators should avoid it as a disciplinary tool.

When we evaluate how children and youth survivors of trauma are treated in the school systems we are talking about institutions that are run in a “standardized” manner. Standardization discriminates against students who do not fit the mold and denies students the services they need. Those who do not have an apparent or visible disability too often may not receive disability related services; instead they receive punitive treatment. While the ADA dictates that schools have to offer services to students with learning and cognitive disabilities as well as those with physical disabilities, it does not mandate the identification of non-apparent disabilities. However, the [Individuals with Disabilities Education Act 2004](#) (IDEA) does mandate screening of students if there is a suspected disability. Unfortunately enforcement of this law is inconsistent across school districts.

### **Trauma, Imprisonment, and the Foster Care System**

Another system that ignores youth with non-apparent disabilities that are directly related to trauma is the foster care system. As cited above, SAMHSA has identified, “Traumatic grief or separation and system-induced trauma and re-traumatization,” as types of trauma. When children and youth enter the foster care system it is not because they lived in a fairy

tale setting with a house, and the proverbial white picket fence. When the child welfare system decides to remove a child from their parents or caregivers it is because of some type of abuse, neglect, or because the child is in a generally unsafe environment. Thus there is trauma from separation and this is compounded by a system that is overwhelmed. Heartbreakingly, this behavior too often leads to prison. As Patton asserts in her article [“Breaking the Foster to Prison Pipeline”](#):

Nationally, one-quarter of foster youth and two-thirds of ‘crossover youth’ have a jail stay in early adulthood. And some states have reported that nearly 70% of adults in their prisons have had contact with foster care. Children in foster care are at greater risk for involvement in the justice system due to abuse, neglect and home removal that stem from conditions of poverty, community instability, parental incarceration and parental substance abuse and mental health issues. Academic struggles and behavioral problems cause nearly 30% of foster children to ‘cross over’ into the juvenile delinquency system by their early teen years. Often, they spiral lower, drop out of school and face unemployment, homelessness and incarceration. (Dr. Stacey Patton, [Breaking the Foster to Prison Pipeline](#))

Dr. Patton’s evaluation of the foster care system and the negative impact on children and youth with non-apparent disabilities from trauma is more visible in the article, [Statistics Suggest Bleak Futures for Children Who Grow Up in Foster Care](#). Journalist Brittany Nunn reports, “According to national statistics provided by Arrow, 40 to 50 percent of those children will never complete high school. Sixty-six percent of them will be homeless, go to jail or die within one year of leaving the foster care system at 18.”

The debate of whether or not trauma-induced mental illness is a disability that needs to be addressed and treated as such to interrupt the cycles of abuse and justice-involvement of children and youth came to a head in Compton California in the summer of 2015. [“Are Traumatized Students Disabled? A Debate Straight Outta Compton,”](#) a report by National Public Radio about a class action lawsuit brought against the Compton Unified School District details specifics of trauma and mental illness and why the school district is being sued for discriminating against youth who are survivors of trauma. The reporter, Corey Turner, writes, “Now, a handful of students say they’ve been traumatized by life in Compton and that the schools there have failed to give them the help they deserve.” The complaint argues “...that trauma is a disability and that schools are required — by [federal law](#) — to make accommodations for traumatized students, not expel them.” Therefore, “The plaintiffs want Compton Unified to provide teacher training, mental health support for students and to use conflict-mediation before resorting to suspension.” The complaint goes on to detail triggers such as someone bumping into a student in the hall who has witnessed

or experienced violence and starts a fight. Instead of dealing with the trauma trigger the student faces expulsion and/or arrest.

Regardless of what we call it, the School-to-Prison Pipeline, the Trauma-to-Prison Pipeline or the Foster-Care-to-Prison Pipeline, the common result is that children and youth who survive trauma are ending up in our criminal justice system or [dead](#). In order to dismantle this system that funnels children and youth who experience various traumas into the prison pipeline we must begin to acknowledge and treat trauma-induced mental illness that is not apparent.

As stated, this ultimately amounts to systemic discrimination and the violation of civil rights for people with disabilities. In their work "[Ending Mass Incarceration](#)" the Vera Institute for Justice emphasizes the consequences well: "Literally millions of men and women are jailed over the course of a year, mostly for crimes related to poverty, mental illness, and addiction...Even a few days in jail can derail their lives and throw their families into turmoil."

## SECTION FIVE: INTERSECTIONALITY AND DISCRIMINATION

While the term “intersectionality” is not a new one—it was coined in 1989 by [Kimberle Crenshaw](#), a law professor at UCLA—it has only recently been gaining public traction. The term addresses the fact that people with multiple marginalized identities often experience simultaneous, overlapping, and compounding types of discrimination. Therefore, in a paper on the systemic discrimination faced by people with non-apparent disabilities (PWND), we would be remiss not to acknowledge the crucial reality that this discrimination is too often compounded when PWND are also Black, or women, or part of the LGBTQ community. The fact that marginalized identities can intersect has to be taken into account when discussing approaches to solutions. In this section, we will lay out the impact of the intersection of non-apparent disabilities with other marginalized racial, gender, and sexual identities.

### The Black Community and Historic Trauma

It is widely known that Black children and youth are more impacted by the School-to-Prison Pipeline and our criminal justice system in general given that [Black people are incarcerated five times more than White people](#). This disparity stems in part from a cultural bias in the perception of responsibility between the races. For example, Black children and youth who exhibit similar behaviors as their White peers are often viewed as more culpable. In the newly released study published by Georgetown Law Center on Poverty and Inequality, “[Girlhood Interrupted: The Erasure of Black Girls’ Childhood](#),” the authors point out that Black children are seen as older and therefore more responsible for their actions than other youth. The authors report, “Our findings reveal a potential contributing factor to the disproportionate rates of punitive treatment in the education and juvenile justice systems for Black girls.” Although the report focuses primarily on Black girls the authors did release studies related to Black boys. “Recent research reveals that differential treatment of Black male youth based on race continues today. Most notably, in 2014, [Professor Philip Goff](#) and colleagues published an experimental study demonstrating that from the age of 10, Black boys are perceived as older and more likely to be guilty than their White peers, and that police violence against them is [perceived to be] more justified.”

This problematic perception is significant because [Black children and youth are exposed to more trauma than White children](#); especially violence, poverty, food deprivation historical trauma and physical abuse. Dr. Stacey Patton, the author of *Spare the Kids* sums up this issue well in her NY Times article, [Stop Beating Black Children](#). Patton writes, “Today, black parents are still about [twice as likely](#) as white and Latino families to use corporal punishment on their children. I’ve heard many black people attribute their successes, or the fact that they weren’t in jail, on drugs or dead, to the beatings they received as children.” In fact, as Patton and other researchers (addressed in our Trauma section) have

pointed out, spanking and beating children does not make them more compliant, it creates trauma, which often leads to mental health disabilities. And in the Black community it is clear that beating children puts them on the trauma-to-prison pipeline as their behavior is penalized in school systems that too often lands them in the juvenile justice system. Beating our children does not keep them out of jails and prisons. In her article Patton aptly sums up, “...if whupping children kept black people out of prison or safe from abusive cops, there would be no mass incarceration or police brutality. If beatings were a prerequisite for success, black people would be ruling the world.”

As noted in Section Four, trauma is directly linked with the development with mental illness and other non-apparent disabilities, which are problematized and criminalized by our educational institutions and the social justice system. There is an element of historical and cultural trauma that is specific to the Black community and schools and school services need to be more aware of the intersection of race and trauma. This phenomenon is also often termed the [Post Traumatic Slave Syndrome](#) and is perhaps best explored in Joy DeGruy’s book by the same name.

### **Race and Mental Health**

When it comes to trying to compare racial groups in terms of mental health there are several confounding variables having to do with differences in cultural language-use and the seeking of treatment as well as availability of diagnoses. A 2008 UCLA study titled [New Evidence Regarding Racial And Ethnic Disparities In Mental Health: Policy Implications](#) outlines the limitations and uses of a variety of data and overall concludes that while mental health may be comparable between races, there is evidence to believe that non-White minorities experience greater incidences of symptoms associated with adverse mental health.

A 2015 study by the National Institute of Mental Health further notes that there are differences in the prevalence of using treatment services for mental health among various races. These differences are not so much linked to the incidences of mental illness as they are to the available access to services and the cultural propensities to make use of available services. Due to the strong discrimination against mental illness—the view of mental illness as a personal weakness rather than a medical condition—some groups of people are significantly less likely to seek treatment even when needed. [NIMH reports](#) the cultural differences as follows:

The adults most likely to use mental health services in the past year (17.1%) were in the group reporting two or more races. This group was followed by white adults (16.6%), American Indian or Alaska Native adults (15.6%), followed by black



(8.6%), Hispanic (7.3%) and Asian (4.9%) adults.

The racial/ethnic groups most likely to use a prescription for psychiatric medication were white adults (14.4%), adults reporting two or more races (14.1%), and American Indian or Alaska Native adults (13.6%), followed by black (6.5%), Hispanic (5.7%), and Asian (3.1%) adults.

While this report studied adults, it is important to keep in mind that children are impacted by the beliefs, culture, and practices of the families they are raised in. A reluctance to seek treatment can often lead to the compounding of adverse symptoms and exacerbate non-apparent disabilities.

### **Sexual and Gender Identity and Disability**

Children who are gay, lesbian, bisexual, questioning, queer, transgender and/or gender non-conforming face unique challenges in our society. While acceptance of the LGBTQ community has been increasing nation-wide due to awareness-raising campaigns, education, and simply better representation of LGBTQ characters in our entertainment and public life, many children and people coming out as LGBTQ still face an unwelcoming and occasionally hostile environment. There are still instances where families kick out children who come out as LGBTQ. This is in part why [LGBTQ children and youth are over-represented in our foster care system](#)—it’s estimated that about 7% of youth are LGBTQ in the general population, but more than 13% of foster care youth identify as such. Additionally, as recently as 2006, [40% of homeless youth](#) were estimated to be LGBTQ due to the same cultural factors of rejection and hostility.

As can be predicted given so many adverse social factors, there is a significantly higher rate of disability within the LGBTQ community. In the 2012 study [Disability Among Lesbian, Gay, and Bisexual Adults: Disparities in Prevalence and Risk](#) published in Am J Public Health Journal, the researchers note that:

... the prevalence of disability is higher among lesbian, gay, and bisexual adults compared with their heterosexual counterparts; lesbian, gay, and bisexual adults with disabilities are significantly younger than heterosexual adults with disabilities. Higher disability prevalence among lesbians and among bisexual women and men remained significant after we controlled for covariates of disability.

And they conclude that these findings are of “major concern.”



Given the impact of trauma on mental health, it is no surprise that LGBTQ youth on average [experience worse mental health](#) than their straight counterparts. The rate of depression among LGBTQ youth is 6 times that of the general population, accompanied by more suicidal thoughts, suicide attempts, alcohol and drug abuse and other detrimental behaviors associated with depression. Therefore, LGBTQ youth are at higher risk for adverse life outcomes. Educators and foster care personnel must be better informed about the intersectional challenges that put LGBTQ youth at greater risk for non-apparent disabilities, which in turn put them at greater risk to become enmeshed in the School-to-Prison and Foster-Care-to-Prison Pipelines.

### **Gender and Disability**

The [BRFSS table](#) reproduced in Section Four, measuring ACEs (Adverse Childhood Experiences) show that while men and women experience similar levels of some trauma, women in general experience ACEs more often and in particular experience more than twice the levels of sexual abuse that men do. These statistics alone predict that women would have a higher incidence of some non-apparent disabilities.

In the study [Mental Health Services for Children Placed in Foster Care: An Overview of Current Challenges](#) published in 2009 in *Child Welfare*, the authors find in a sample of 708 foster care alumni that women had nearly twice the rate of depression as men and nearly three times the rate of PTSD.

A 2012 general population study published in the [Journal of Abnormal Psychology](#) supports this finding of greater incidences of depression in women. They also find that by contrast men tend to develop more substance abuse problems and antisocial behavior, such as aggression.

There are many social and cultural factors as well as gender bias that account for the different likelihoods of mental illness development. While women and girls are at higher risk for abuse and trauma, it's important to note that [boys and men are less likely to seek help](#) for their mental illness. The general negative perception of mental illness and the mistaken view that if we are strong we should and can just tough out non-apparent disabilities is a likely culprit in this behavior difference.

When it comes to incarceration, women with mental illness are significantly over-represented by comparison to male inmates as indicated by the table below, suggesting that the intersection of sex and disability makes women with non-apparent disabilities even more vulnerable to discrimination than men.

Table 1—Inmates with Mental Illness

	<b>Women</b>	<b>Men</b>
<b>State Prisons</b>	73%	55%
<b>Federal Prisons</b>	61%	44%
<b>Local Jails</b>	75%	63%

Source: [Bureau of Justice Statistics](#)

Overall it is important and valuable to be aware of the different risk factors for non-apparent disabilities that impact the two genders of our cis-gendered population. When it comes to trans-gender men and women, the risk factors they face are better described in the previous sub-section on Sexual and Gender Identity and Disability.

### **Socio-Economic-Status and Disability**

It would be difficult to overstate the connection between poverty and disability. In the 2014 article “[Disability Is a Cause and Consequence of Poverty](#)” Rebecca Vallas and Shawn Fremstad document the feedback loop that poverty and disability create between themselves. Due to limited employment opportunities (that are too often a result of both, physical inaccessibility of spaces and employer bias) PWD struggle significantly to rise above the poverty level. At the same time, due to poverty-induced lack of access to medical care and resources, disabilities can too often be exacerbated, creating a cycle.

According to [University of California, Davis](#) research in 2014, the national poverty prevalence is 15%. However, 29% of PWD live below the poverty level, while only 12% of non-disabled people do. Data like this makes it clear why an understanding of the intersection between disability and poverty is important.

When it comes to non-apparent disabilities the intersection is particularly striking. A 2010 meta-analysis titled [Poverty and common mental disorders in low and middle income countries: A systematic review](#), in the journal *Social Science and Medicine* examined 115 studies across the world and found that 80% of them indicated that poor people lived with higher rates of mental illness. A 2013 study published in [Science](#) sought to explain these and similar findings. Its title captures its findings: “Poverty Impedes Cognitive Function.” After analyzing several experiments, the authors conclude that “it appears that poverty itself reduces cognitive capacity. We suggest that this is because poverty-related concerns consume mental resources, leaving less for other tasks.”

Findings like these provide additional reasons for why [low-income students are disproportionately impacted by the School-to-Prison and Foster-Care-to-Prison Pipelines](#). A confluence of factors that come together for students growing up in poverty contribute to

the [development of learning disabilities](#), which, as we've seen, increase the likelihood of discrimination by the Pipelines.

### **All of the Intersections**

It goes without saying that the intersections addressed in this section do not necessarily stop at two identities. The bottom line we are illustrating is that the presence of a non-apparent disability makes systemic discrimination, starting from an early age, more likely. When paired with other marginalized identities, this likelihood of discrimination becomes compounded and the risk of negative life-outcomes increases. In short, if you are a low-income, LGBTQ Person of Color with a non-apparent disability, the intersection of your identities will be much more likely to make you a victim of systemic discrimination than if you just had one of those marginalized identities.

The consequence of this entrenched system of discrimination is that our prisons are disproportionately filled with [Hispanic and Black people](#), with [LGBTQ people](#), with [poor people](#), and above all, with people with non-apparent disabilities. Ending this vicious trend needs to begin early in the lives of at-risk children. Understanding the intersection between these marginalized identities will go a long way toward understanding how bring an end to systemic discrimination.

## SECTION SIX: ANECDOTAL EVIDENCE

As we all know, we absorb stories differently than we do statistics. There is a certain impersonal feeling when we hear about 4 million children being suspended or expelled nation-wide, most due to their non-apparent disabilities. The number is staggering and unimaginable for most. This is why we are providing personal statements and case vignettes in this section in order to better illustrate the impact the systemic discrimination we have described so far has on individuals. The following segments humanize and personalize the effects of the insidious Pipelines that discriminate against children and youth with non-apparent disabilities.

### **Words from a Gay Foster Care Alumnus Living with Learning Disabilities**

*The following statement is in a Q & A format. Chris Kohler dictated his answers to his (former foster) mother, Claudia Center, who typed them up. Chris then went over the statement by reading parts of it himself and having Claudia read parts to him. The statement details the challenges Chris faced for 18 years in the Foster Care System especially as a multi-racial, gay, trauma-survivor living with learning disabilities, as well as the challenges he still faces now that he has transitioned out of the system.*

*Tell me a little bit about yourself.*

I'm 28 years old. I went into foster care at three years old. I was born in San Francisco, at San Francisco General. I'm multi-racial -- Black, White, and Native American. I was in 40+ placements during my time in foster care. I'm gay.

I don't want to get into the details of everything that has happened to me, but I have experienced physical abuse, sexual abuse, and mental abuse. Both inside and outside of the foster care system.

A lot of the other kids that were in foster care with me, that I grew up with, are out on the streets, on drugs, or with serious mental issues that have been unaddressed. Sometimes I see kids that I grew up with and that attended the independent living skills program with me. The program is supposed to help you transition out of foster care into housing and employment, but there's not enough housing. And you're not a priority for housing lists unless you have kids.

If I didn't have a support system, I would probably be out on the streets, on drugs, in jail, or dead.

*Have you experienced discrimination? What kind of discrimination?*

When I was in foster care, I experienced discrimination. I was sent back to the shelter because either I was too gay, or I wasn't the right religion, or I didn't make the family look good at church. Or I was too black or not black enough.

I knew I was different when I was a young child, but I didn't know what gay was. I only heard bad things about gay people from what people told me about the Bible. When I was 12 or 13, I was sent to a Christian middle school – against my wishes. I knew I was gay by then, and I came out. It was in a rural predominantly white area. Other children made fun of me and called me a faggot.

Also I didn't just come out as gay once. Every time I had a new placement or a new school I had to come out again. That was very hard. They wrote it in my papers but they said I was "gender confused," when I told them I was gay.

I was gay bashed a few times in high school, but they didn't do anything about it. I was also harassed at group homes. I spent more time defending myself than being a kid or focusing on education.

My education was constantly disrupted, and the outcome of that was that I started falling behind in school, especially reading and spelling. I have learning disabilities. And some of the kids at school are mean or cruel because you're in the foster care system, they tease you based on your appearance. But you don't have enough money for clothes because of the foster care system. They'll spend money on group homes but not on basics like clothes or getting a haircut.

Even just being in foster care, you feel like you're being punished when you haven't committed any crime. It's like you're being punished for something your parent did. The rules at group homes, it's like being in prison. Sometimes the other kids or even the employees are violent. I would call licensing if there was an issue – they would send somebody out but the issue was never resolved. I was physically threatened once by the boyfriend of a foster parent when I complained to licensing that we didn't get enough food.

*What are your challenges today?*

Housing. I've signed up for housing ten years ago and I'm still waiting. They've lost my applications. You can't win. I'm not homeless but I'm close. The only place that I can afford is an SRO (Single Room Occupancy), and there are drugs everywhere in the building and near the building. I'm a recovering addict. I had a drug problem and had to go to rehab. I'm more than one year clean.

It's hard for me to find jobs because of my education and learning disabilities. And when I do find work the SSA (Social Security Administration) takes half of the money.

*What helps you?*

Support systems help me. For me, this includes Claudia – she's my mama, my guardian. Patty, who was my lawyer while I was in the system. She still helps me.

Honestly, my smart phone helps me a lot. The voice recognition; I use it every day. My spelling is at elementary school level. Written English is really complicated. I used to get lost all the time, but now I use my GPS to get around.

### **Words from a Formerly Incarcerated Trauma Survivor Living with Mental Illness**

*This personal statement by Taylar Nuevelle details the link between trauma and mental illness as well as the difficulty in getting support—something that wasn't possible until Taylar was declared to be a problem case. Many terms in it are further addressed in Section Four — Trauma, Disability and Discrimination.*

It has taken me 47 years of living and four and a half years of incarceration as an adult to understand that I have trauma induced mental illness from childhood abuse and domestic violence as an adult. More importantly, my disability is not visible, but has been present since early childhood. Throughout my trial and sentencing the issue of my mental health and the trauma I endured, as a child and adult were much debated. The conclusion was that I am too intelligent to have a mental health disability (unless I wanted to agree with a White judge that I have Borderline Personality Disorder—which I do not). In fact after many psychological test before, during, and post incarceration I have been diagnosed with Complex Post Traumatic Stress Disorder (CPTSD), Major Depressive Disorder (MDD), and Acute Panic and Anxiety Disorder. My mother tells me by the time I was two and could speak she had to start beating me. My earliest memories are from age four and are riddled with images of verbal and physical violence against me and my brother at the hands of my mother, stepfather, aunt, and uncles.

My disability is not apparent, yet it has been present and acute since childhood. As a child I remember when I first started self-harming—I was in the second grade. I used to take straight pins and stick them through the flesh in my chest, cover myself in a shirt and go about my day as the pins tore into my skin. This was nothing compared to the physical violence I endured almost everyday from my mother and/or stepfather. Whenever I was beat or witnessed my brother being physically and verbally punished I would disappear by flying up to the ceiling. I now know this is Dissociative Disorder and it still happens to me when I am triggered.

The first time I ever told about the abuse was in the fourth grade. My stepfather had beaten me with the buckle of a leather belt. When the prongs of the belt tore into my arm (I used it to protect my face) pieces of my flesh were torn away. This was the first time I was ever assaulted before school and I was enraged. I told a friend on the way to school and she took me to the school nurse when we arrived.

The school nurse, a White woman (in skin tone and the color of her uniform), looked at my arm and walked me down the hall to the vice-principal's office. I will never forget her name, Ms. Morrison. Ms. Morrison, a Black woman, looked at my arm and said, "Oh those are welts. My two-year old gets those when I smack his legs." Then she picked up the phone

and announced, “I’m calling your mother.” The nurse took me back to her office, cleaned the dried blood off of my arm and gave me ice for the swelling. As I walked out of her office, the nurse called out, “If it gets worse come back and tell me.” It would take me five years before I ever told again and nine years to understand she was not talking about my arm, but the abuse.

When I arrived home from school I had to wait for my mother. I remember the ache in my chest and covering my heart because I thought I was having a heart attack. This was my first memory of a panic attack. I remember my mother calling out to me, but I do not remember how I arrived in the dining room. I do not remember seeing my mother. I remember the question that would silence me for five years, “Don’t ‘chu know you coulda had him arrested?” I remember seeing the metal legs of the dining room table, but not the slap that sent my falling and banging my head so hard against them that I was briefly knocked unconscious. It was more important to protect a Black man from the police than keeping me safe. When I returned to school, the incident was never mentioned.

It would take me until high school to risk speaking again. My guidance counselor observed me interact with my mother at a parent conference in which she had been asked to attend because I kept falling asleep in classes. My grades were fine, but my teachers were frustrated and found my sleeping disrespectful. At the meeting my mother explained to my guidance counselor that I was, “Just trifling and lazy.” Which did not comport with my grades and otherwise outgoing behavior and participation in extracurricular activities. After my mother left the school, he asked, “What does she do to you when you are at home?” I looked at him and said, “If I tell you it has to be a secret or she will kill me.” He did not say anything; just nodded his head, and I told him almost everything.

The guidance counselor called Child Protective Services (CPS), not my mother. A social worker came to speak with me and I repeated the story and she responded, “You don’t act like an abused child. Abused children never talk to strangers and you are in the gifted and talented program.” I responded, “Please don’t tell my mother.” She did not tell anyone. Two weeks later my mother tried to strangle me to death. The following day she phoned the school and informed the vice-principal, “If you send her home I’m going to kill her.” This is what was reported to me when I was called down to speak to the school social worker, vice principal and my guidance counselor. I opened my shirt to answer their questions and my neck and chest—covered in strangulation marks and bruises from a wooden hairbrush—told the story.

The school did not phone CPS. Instead I went home with one of my teachers. Two days later my brother told my mother that I was not in the juvenile detention center where she had demanded the school to send me. I was told my mother had phoned the police and reported my teacher. I took 25 Tylenol and my best friend told my teacher. This was also unreported and ignored. I went about the rest of the school day vomiting and pretending nothing was wrong. I attended the basketball game and performed as a cheerleader.

That night, at my teacher’s house, a policeman arrived. He had spoken to my mother. I was asleep in my red, white, and blue cheerleading outfit. That officer never spoke to me, only

to my teacher and before he left I heard, “Okay. I’m not taking her back there but I will have to declare her a runaway to get a hearing.” I had to become a problem to get help.

The first judge I had glared at me from his bench as my mother sat weeping and asked, “If you don’t live with your mother how will you raise your children?” I looked at him and said, “I would never raise my children like she treats me.” His response, “I see why your mother hits you. You push her buttons.”

“I’d rather you send her with a friend than juvie,” cried my mother. Gaslighting me was one of her tools of abuse. Thus, I was removed for 90 days because she was the victim of my behavior. The second judge I had was named Judge Valentine. “Ms. Jackson,” he asked my mother, “Do you abuse your daughter?” My mother shook her head no and said, “Your honor I beat her. I don’t abuse her.” Then Judge Valentine said, “To beat her is to abuse her.” He saved my life, but the damage was done as I went from one foster home to another.

I would spend the next couple of years trying to kill myself, starving myself and drinking during and after school with friends. My junior and senior year of high school I over dosed on pills and alcohol and both times I landed in the Intensive Care Unit and then a psychiatric hospital. Weeks of hospitalizations and then I would return to school and my hyper active life of advanced classes for the “gifted and talented”, soccer, track, cheerleading and hanging out and drinking with friends. Unlike other girls (and boys) with apparent learning disabilities and acute cognitive disabilities, I presented with no such issues and no one asked me why I wanted to die.

I was smart, gifted, Black and beating the odds. My suicide attempts were deemed, “Attention Seeking,” and my self-starvation was diagnosed as normal because, “all teenage girls diet.” Everyone around me was blind to my depression, anxiety and what would later be diagnosed as Complex PTSD. My social worker, foster parents, judge, lawyer, schoolteachers and counselor all had the same focus, “We just need to get her to college and she will be fine.”

When my court hearings occurred my social worker presented to the judge that I needed to attend university out of state and change my name and all would be well. It is baffling that a system created to protect children believed that removing me from a home in which I survived acute trauma and violence (direct and indirect) would solve the impact of years of abuse. When the bruises disappeared no one thought to think about the impact on my psyche and they left me to figure it out by trial and error.

### **Words on Intersectionality from a Former Foster Parent with a Non-Apparent Disability**

*This personal statement by Claudia Center details her experience as a young professional woman living with a non-apparent disability and the ways in which she struggled in a non-*



*inclusive environment. She also reflects on the systemic issues embedded in the Foster Care System through her experience with her now-grown foster children.*

Like many individuals in the legal profession, I am a person with depression, a psychiatric disability that often runs through families (and does through mine). In recent years my condition has been mostly in remission through treatment and recovery. But the experience of having chronic major depression for decades, including during law school, is part of who I am. I regularly had symptoms such as psychic pain, suicidal thoughts, distorted thinking, the inability to focus, loss of appetite, insomnia, fear, self-loathing, and disorientation. But far more difficult than experiencing these common mental health symptoms was interacting with the outside world as a young woman with depression. I felt battered by the rigid male-dominated law school experience, by garden-variety sexism at school and at work, by the gender-based street harassment that is a daily reality for many young women. I hid my therapy appointments from my employers, and the anxiety of the closet made my symptoms worse. I worried obsessively about filling out my “moral character” questionnaire for the state bar, which I knew asked about mental health conditions. Once when I tried to share what I was going through with a more senior male coworker, he responded sharply that I should never let anyone at work see me cry.

What made all of the difference for me was that first opportunity – a job where I felt valued and supported, where I did work that I found meaningful, where women were in leadership roles. I still had depression, but it was so much more manageable. In time, I learned about disability rights, and the foundational idea that it is not the impairment itself that is disabling so much as the way that our world is organized and constructed. Disability discrimination happens at the point of interaction between the individual with a disability and a barrier in the world. And generally, people with all kinds of disabilities function better and have more satisfaction with life when we are included, when the barriers to inclusion are removed.

Today the work of disability rights builds on this concept by incorporating trauma and intersectionality into the disability experience. I learned about this from my law clients, of course, but even more so from my two foster children (now adults living independently). They were teenagers, children of color, gay, gender non-conforming, survivors of multiple traumas, and living with the intertwined effects of these statuses. What they (and so many others) needed was inclusion, acceptance, flexibility, and support, for every aspect of themselves. Even with my law degree, my advocacy background, and my many privileges, I struggled to meet these needs within the confines of the foster care system, the juvenile justice system, the school district, the Social Security Administration, and Medicaid. Often, the rules and limitations of these systems imposed their own traumas, making the already

challenging reality worse for everyone. My foster kids survived, and ultimately thrived, but the road was long and far more hazardous than it needed to be.

These life experiences keep me committed to the ongoing project to apply the principles of disability rights to the systems that regulate and frequently re-traumatize some of the most marginalized individuals with disabilities – many of whom have additional marginalized statuses. These include children with behavioral disabilities restrained and secluded at school, teenagers with learning disabilities shuttled into the school-to-prison pipeline, individuals in psychiatric crisis confronted by armed police officers, homeless individuals with multiple disabilities sent to inaccessible shelter programs or to jail, and the hundreds of thousands of jail and prison inmates with disabilities who are serving more and harder time, and who face enormous barriers to reentry and community living. The zealous enforcement of disability rights laws in these contexts is essential to the liberation and integration of disabled persons.

### **Vignettes of Legal Intervention for Youth Headed into the School-to-Prison Pipeline**

*These third-person stories were provided by the [Youth Advocacy Foundation](#) and detail four cases of the organization has encountered among many others in their annual caseload. They depict incidences of schools violating students' ADA rights, misdiagnoses, and general systemic failure when it comes to providing education for children with non-apparent disabilities, along with the legal steps the EdLaw project took to help the children. All names have been changed to protect the students' privacy.*

Christopher:

For Christopher, going to middle school was a daily struggle. Intelligent, articulate, charming and a love for science, he dreamed about becoming a nuclear physicist. But with significant anxiety about academic tasks and lacking the skills to manage his emotions in school, Chris needed extra support.

A vicious cycle was created: Chris would act out to mask his anxiety, but instead of providing him the support he needed, the school would react by repeatedly sending him out of the classroom and suspending him from school, which led to Chris falling farther behind, and thus acting out more. Eventually it reached a point where the school filed a Child Requiring Assistance (CRA) petition against Chris in Juvenile Court. Chris's court-appointed lawyer turned to EdLaw for help. EdLaw helped Chris's lawyer advocate for an evaluation that finally uncovered the emotional disability at the root of Chris's behaviors. Unfortunately, the school neglected to adhere to federal and state laws prohibiting schools

from repeatedly suspending students for behavior that is caused by a disability, and continued to suspend Chris for longer and longer periods of time.

During one month, Chris spent nearly every day either suspended or sent home early from school. EdLaw appealed to the state Bureau of Special Education Appeals (BSEA) to challenge the suspensions. Finding that the school had violated the law by repeatedly suspending him, Chris received compensatory services and EdLaw helped him obtain a new school placement with the necessary social-emotional support. Since his placement in a new school, Chris's mother reports that he has been thriving.

Franklin:

Franklin never thought he was smart—at least, that is what his school led him to believe. Misdiagnosed with an intellectual disability at a young age, the school placed Franklin in classes with cognitively-challenged students. As he entered his teen years, he began to check out, fed up with not fitting in with his classmates and being bullied and ridiculed; he felt the need to prove his worth by acting out. Worried that her son's minor misbehaviors would grow from innocuous misconduct to something that could land him in court, his mother sought help. Thus, at age 16, Franklin was referred to the EdLaw Project.

We reached out to our Pro Bono Panel and Michael Pappone, a partner at Goodwin who had received EdLaw's education advocacy training, volunteered to represent Franklin (with EdLaw's support). With Michael's involvement, Franklin's situation at school quickly began to turn around. An independent evaluation revealed that Franklin was struggling in school not because of an intellectual disability, but rather because of dyslexia – which had remained unidentified and unaddressed in Franklin for years. With this new information, Michael advocated for the school district to place Franklin in a class intended for students with dyslexia, as well as provide after-school reading lessons for Franklin.

However, it soon became apparent that the accommodations were insufficient to mitigate the years of academic neglect he experienced. Michael's request for Franklin's placement in a private school that specialized in language-based learning disabilities was denied, leading Michael to file for a hearing at the Bureau of Special Education Appeals (BSEA). In response, the school finally agreed to the placement request, and Franklin is now at a school geared to meet his specific needs and receives supplementary tutoring to help bridge the gaps in his education. As Franklin told the BSEA during settlement discussions, he used to think he wasn't very smart; not until somebody he respected (Michael) finally told him that he was in fact smart did he start believing it and begin dreaming about his future. Now, Franklin has plans to graduate from high school, enlist in the military, and become an engineer.

Ben:

Ben enjoys working with his hands and helping his dad, an auto mechanic, fix up old equipment. In spite of an intellectual disability, thanks to very specialized attention in elementary and middle school, he was able to remain in mainstream classes. In high school things changed. He was overwhelmed by the size of the school, the complexities of social interactions, and the academic expectations. The school ignored his mother's concerns and skipped his required three-year special education reevaluation. When the police got involved in an incident in which Ben became upset due to taunting by another student, he found himself suspended from school and possibly facing criminal charges.

The family reached out to the EdLaw Project for help with both situations. EdLaw connected the family to a delinquency attorney who was able to get the charges dismissed; on the school front, EdLaw requested an immediate reevaluation, during which Ben was diagnosed as being on the autism spectrum. The school removed the disciplinary infraction from his student record and he is currently attending a vocational school program for students with special needs. He loves his new school and is absolutely blossoming; in fact, his teacher reports that Ben is funny and a pleasure to have in class. This complete turnaround in both Ben's school and court situation happened within a short space of six months, and is thanks to the innovative approach.

Sean:

Sean, a young man with an intellectual disability, was 18 when he was sentenced to the House of Correction. When the EdLaw Project began working with him two years later, it was clear he had been abandoned by both the system and his school district—despite having an IEP (Individualized Education Program) that called for intensive educational and counseling services; he had not received any education in jail.

As a result of EdLaw's initial advocacy, he began attending classes in the House of Correction and received extra tutoring to help prepare him for passing the two remaining Massachusetts Comprehensive Assessment System exams needed to qualify to receive his high school diploma. While he subsequently passed both and thereby met the necessary requirements to graduate, he had not been prepared for employment, post-secondary living, or further education as is required by the Individuals with Disabilities Education Act (IDEA 2004). At EdLaw's advice, Sean has refused his diploma for now, thus keeping his school district accountable to provide more services.

EdLaw approached Sean's case from two different angles: they simultaneously advocated for ways to bring more services into the prison while also searching for a way to get Sean released into a more appropriate setting for someone with his disabilities. Despite the fact that Sean is a client of the Department of Developmental Services (DDS), they seldom provide housing to clients until they turn 22. This meant that without an alternative, Sean

would have to remain in prison until he was 22. EdLaw was able to convince DDS to find a group home for Sean and he was subsequently released last December right before his 21st birthday. He is thriving at the group home, and receiving vocational training every day in addition to tutoring provided by his school district in writing, mathematics, and computer skills. EdLaw is continuing to work with Sean to make sure he gets the support he needs so that he has an opportunity to lead a happy and healthy life.

## SECTION SEVEN: INTERVENTIONS AND RESOURCES

### The Long-Term Consequences of Imprisonment

In establishing that there is systemic discrimination against children with non-apparent disabilities, we have used the prison system as the ultimate sign of the violation of their civil rights—primarily the ADA guaranteed right of access to education, but also the foundational right to life, liberty, and the pursuit of happiness. Having demonstrated the to-Prison Pipelines, we feel that it is important to emphasize that the consequences of imprisonment, especially for people with non-apparent disabilities are severe.

Human Rights Watch, in their piece [Mental Illness, Human Rights, and US Prisons](#) spells out the long-term implications of imprisonment for people with mental illness:

There is increasing awareness among public officials of the importance of providing re-entry services to prisoners leaving prison as an effective means of increasing the likelihood they will successfully make the transition back to the community. Men and women with mental illness have unique needs for discharge planning and re-entry services. In addition to support for housing, employment, and income, they also need links to appropriate mental health treatment and access to public assistance. According to the Council of State Governments:

individuals with mental illnesses leaving prison without sufficient supplies of medication, connections to mental health and other support services, and housing are almost certain to decompensate, which in turn will likely result in behavior that constitutes a technical violation of release conditions or a new crime.

Unfortunately, the need for re-entry services far exceeds the supply. All too many mentally ill prisoners leave prison without arrangements to ensure they will continue to receive an appropriate level of mental health treatment, without ready access to public assistance, and without assistance to navigate the difficult waters of life after prison, in which the stigma of being a felon now accompanies all the problems that existed before incarceration.

In part due to the lack of structures put in place to aid in the transition back to the community [almost half of all prisoners end up back in prison](#) within only eight years of their release.

### Conclusion

We are witnessing millions of lives of people with non-apparent disabilities cast to the margins of society, funneled behind bars by the very institutions that exist to protect and educate them and transition them into socially integrated, productive adult lives. This inequity and this abuse of the civil rights of nearly a fifth of our population simply must stop. Below you will find resources and best practices to disrupt the to-Prison Pipelines.

### **Resources and Best Practices**

- For schools: Implement ACEs

If we think about children and youth “acting out” instead of suspending them or reporting them to the justice system it seems a trauma-induced disability could be evaluated using the ACE’s questions and based upon the results a IEP is put in place to deal with the non-apparent disability that is trauma induced. For more information, see the work of the Crittenton Foundation: <http://nationalcrittenton.org/aces-toolkit-for-providers/>

- For any organization: Trauma-Informed Approach and Trauma-Informed Interventions:

<https://www.samhsa.gov/nctic/trauma-interventions>

- For foster care professionals: The Need for Transitional Supports in the Foster Care System:

<http://nationswell.com/first-place-for-youth-foster-care-transitional-support/>

- For parents and professionals: The U.S. Department of Health and Human Services’ Resources on Ensuring the Welfare of Children with Disabilities

<https://www.childwelfare.gov/topics/outofhome/casework/children/children-with-disabilities/>

- For students, parents, youth workers, educators and attorneys:

Are you concerned about a young person's access to education or inclusion at school? The EdLaw Project is available for case consultations and advice. If you are calling from out-of-Massachusetts, they will do their best to walk you through ideas that may be helpful, and connect you to a local resource. Their helpline number is 617-910-5829. Their website is [www.youthadvocacyfoundation.org/the-edlaw-project/](http://www.youthadvocacyfoundation.org/the-edlaw-project/)

- For parents: Know how to ensure that your child is evaluated for a disability:

<http://www.parentcenterhub.org/evaluation/>

- For educators: Helping traumatized children learn:  
<https://traumasensitiveschools.org/wp-content/uploads/2013/06/Helping-Traumatized-Children-Learn.pdf>
- For police officers: Resources on encounters with people with mental illness  
<https://www.nami.org/Get-Involved/Law-Enforcement-and-Mental-Health>
- For school resource officers: Disability awareness training:  
[https://www.kennedykrieger.org/sites/default/files/community\\_files/disability-training-poster-aucd-2010.pdf](https://www.kennedykrieger.org/sites/default/files/community_files/disability-training-poster-aucd-2010.pdf)
- For parents and educators: how to detect learning disabilities  
<https://www.nichd.nih.gov/health/topics/learning/conditioninfo/pages/diagnosed.aspx>
- For anyone: Be informed about your rights:  
<https://www.aclu.org/know-your-rights>