Disability 101: Disability in the Criminal Legal System

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FIGHTING STIGMAS. ADVANCING OPPORTUNITIES.

Today's Facilitators

Ariel Simms (they/she), President & CEO at RespectAbility

Graciano Petersen (he/him), Senior Director of Talent, Culture and Training at RespectAbility

RespectAbility is a diverse, disability-led nonprofit. Our mission is to **fight stigmas and advance opportunities** so people with disabilities can **fully participate** in all aspects of community.

Today's Learning Objectives

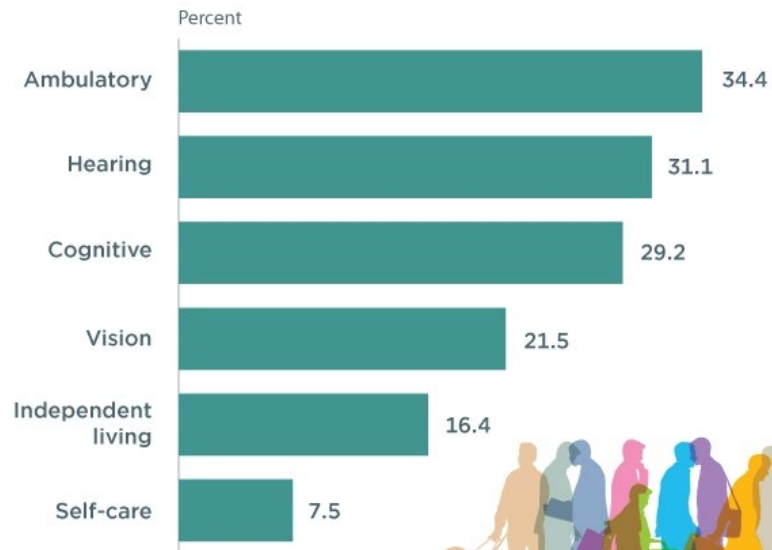**By the end of the session, legal professionals will be able to:**
1. Explain the concept of disability, including both legal definitions of disability as well as disability as an intersectional identity
2. Utilize language and terminology generally preferred by those with disabilities, as well as the broader disability advocacy movement
3. Describe highlights of the disability advocacy movement and disability rights landscape in the United States
4. Articulate the basic rights of disabled individuals participating in the criminal legal process
5. Implement 5 actions to support access, effective communication, and broader disability inclusion efforts, including in their office, agency, and/or firm practices
6. Name at least 3 resources that can support them in their work with disabled individuals and clients

Share in the Chat:
How would you define **disability**?

Defining Disability

Types of Disabilities
Type of Disability Among Workers With a Disability: 2017

Percent

- Ambulatory — 34.4
- Hearing — 31.1
- Cognitive — 29.2
- Vision — 21.5
- Independent living — 16.4
- Self-care — 7.5

Note: The universe is workers ages 16 and older. Some workers may have more than one disability.

United States Census Bureau
U.S. Department of Commerce
Economics and Statistics Administration
U.S. CENSUS BUREAU
census.gov

Source: 2017 American Community Survey, 1-Year Estimates.
www.census.gov/programs-surveys/acs/

The Americans with Disabilities Act (the "ADA") defines disability as "**a physical or mental impairment that substantially limits one or more major life activities.**"

Major life activities include such activities as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
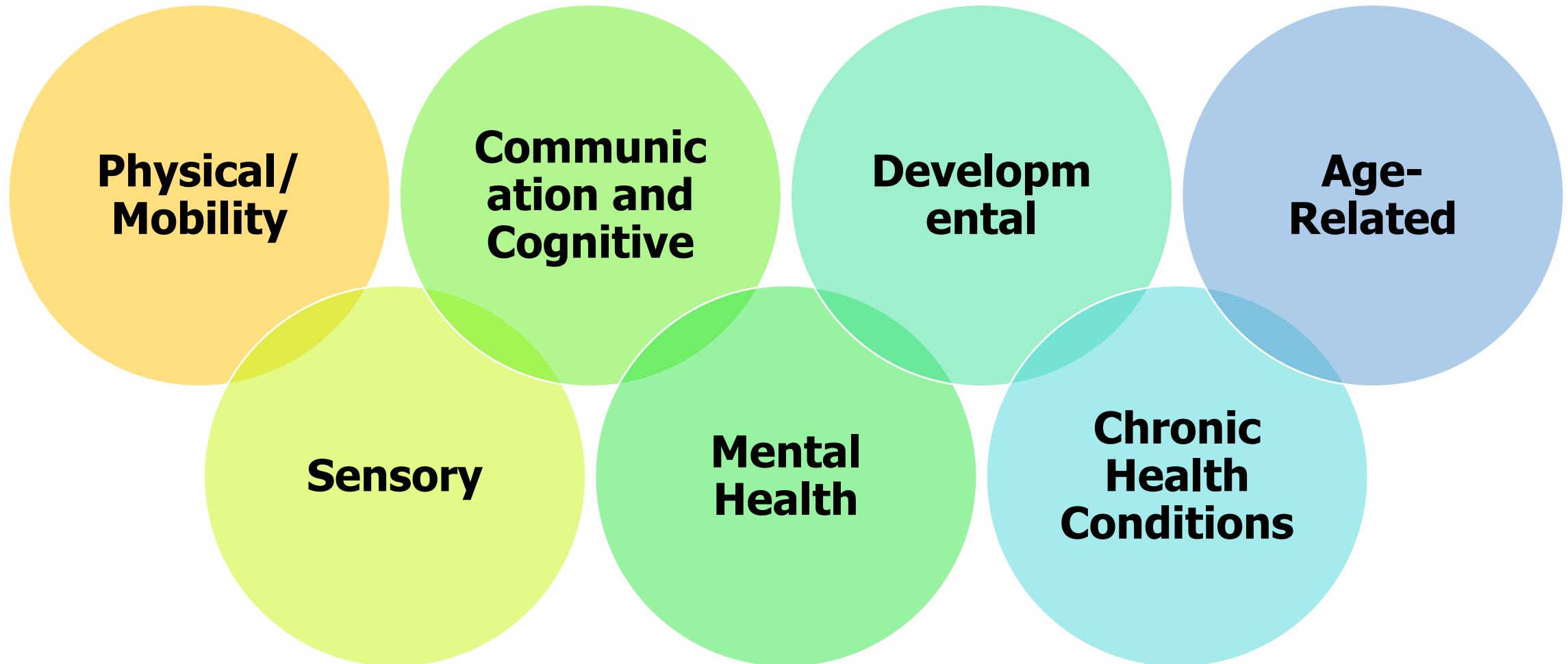
Disabilities are...

Temporary and **Permanent**

Apparent and **Nonapparent**

From Birth or **Acquired Later**

The Diversity of the Disability Community

61 million
people in the
United States
have a disability

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1 in 4

adults have a
disability

(physical,
sensory,
cognitive, mental
health or other)

Models of Disability

- Charity/pity
- Medical/functional limitation
- Social/environmental
- Disability as an **identity**

For practical considerations: access and functional needs

- **What does this person need to communicate or participate?**

Etiquette and Language

Treat People with Disabilities Respectfully

- Acknowledge our differences as you would acknowledge anyone's, but give us respect and agency, just like you would anybody else.
- Do not talk down to us literally or figuratively.
- Listen attentively and patiently to people who have trouble speaking - never pretend to understand if you don't
- Speak directly to the person with the disability not their interpreter, attendant or date.
- Just because someone has a disability, do not assume they need help; Rather, ask and then respect their answer

Talk About Disability

Say the word. "Disability" is not a bad word!

Don't use euphemisms like "differently-abled" or "special needs."

Use "**non-disabled**" instead of "able-bodied" or "normal."

Avoid passive, victim words.
Use accurate, respectful language.

Instead of "he suffers from cerebral palsy," use "he **has** cerebral palsy."

Eliminate common ableist language:
Ex: Crazy

Instead of "confined to a wheelchair" or "wheelchair-**bound**," use "wheelchair **user**."

Avoid referring to "the disabled" in the same way that you would avoid referring to "the Asians," "the Jews" or "the African-Americans." Instead, consider using such terms as "**the disability community**" or "**the disability activist**."

Avoid "high-functioning" and "low-functioning" labels.

People with disabilities should not be described as "inspirational" or "courageous" just because they have a disability.

NCDJ Disability Language Style Guide: http://ncdj.org/style-guide/

Language Matters

- Some people prefer person-first language – "person with a disability" – and others prefer identity-first language – "disabled person"
  - Community preferences
- Avoid outdated terms like "handicapped," "crippled," or the "R" word
- Ask the person what language they prefer and respect their preference

- Just remember: **Ask**

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Disability in the Criminal Legal System

Pathways in the System

Victimization

- First Contact/Investigation
- Trial/Plea Agreement
- Notification
- Healing Services

Accused of Crimes

- First Contact/Investigation
- Trial/Plea Agreement
- Incarceration/Community Supervision
- Transition/Reentry

In the Chat:
What **challenges** do you think individuals with disabilities face in moving through the criminal legal process?

Common Barriers

- **Attitudinal*** – stigmas, stereotypes, and bias
- **Physical** – built environments were not made for the disabled community
- **Communication** – not sharing information in ways that can be easily understood
- **Environmental** – systems, cultures, and practices were constructed without disability in mind
- **Policy and programmatic** – landscape of existing laws, programs, and services
- **Socioeconomic** – limited access to educational and employment opportunities/more likely to live in poverty

Disability Advocacy: Breaking Down Barriers

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- Individuals with Disabilities Education Act (IDEA)
  - Child find
  - Free and appropriate education (FAPE)
  - Individualized education programs (IEPs)
- Rehabilitation Act of 1973
  - Anti-discrimination
- Americans with Disabilities Act (ADA) of 1990
  - Anti-discrimination
  - ADA Coordinators (Title II) – any public entity with 50+ employees

Rights and Responsibilities

- **Rights**
  - Effective communication
  - Access to programs and services
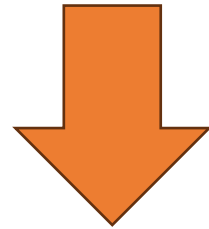
- **Responsibilities:** Anti-Discrimination
  - Auxiliary aids and services
  - Reasonable accommodations

Initial Considerations

- **Does disability even matter?**
  - Start like any other case or matter
- Asking about disability
  - Cannot and should not ask directly
- How do I work with a guardian or other supporters?
- How do I communicate with the person?
- Do I need an expert witness with knowledge about the person's disability?
- What is the impact of the disability on the potential remedy/outcome?

Recognize Your Own Implicit Bias

Major [studies](#) have found that people with disabilities are most often viewed through the lens of what we cannot do.

Are you biased against disabled people?

- You can find out through [Project Implicit](#)

Recognize Ableism:
What Can You Do?

- When you enter a building that does not have a doorway or bathroom accessible to someone who uses a wheelchair, do you recognize it as an ableist choice, and advocate for a solution?
- When a virtual public meeting is happening over Zoom without free instant captioning turned on – so people who are Deaf and/or hard of hearing can participate – do you ask them to click on the button to enable accessibility?

Once you look for ableism, you will realize it is everywhere.

Recognizing it is the first step to dismantling it.

Access and Communication

Partner with and Learn from Groups Led by People with Disabilities

- People with disabilities know what solutions work for them!
- Now we must be much more intersectional, get past the medical model of disability, and move toward a model that focuses on inclusivity, intersectionality, and eliminating the barriers created by societal choices
- These solutions must be led by people with diverse identities, backgrounds, and disabilities

Make It Accessible

- If something is accessible, your target audience can:
    - **Participate**
    - **Understand**
    - **Engage or take action**

- Common types of access needs
    - Physical/mobility access
    - Sensory access (auditory, visual, olfactory, and environmental stimulation)
    - Cognitive access
    - Communication access, including language considerations

Start from Universal Design

- Originated in architecture/physical design
  - Now adapted for many fields

- **7 key principles**
  - Equitable use
  - Flexible use
  - Simple and intuitive use

- Perceptible information
- Tolerance for error
- Low physical effort
- Size and space for approach/use

Meeting Individual Needs

- If something is accessible, your target audience can:
  - **Participate**
  - **Understand**
  - **Engage or take action**

- Meeting individual needs
  - Reasonable accommodations/modifications
  - Auxiliary aids and services

Effective Communication

- Effective communication
  - Communication with persons with disabilities that is just as effective as with persons without disabilities

- Communication disabilities
  - Disabilities that impact seeing, hearing, speaking, writing, reading, understanding or any other trait or activity required for communicating

Legal Responsibilities

- **Provide auxiliary aids and services** to individuals with disabilities, typically upon request
  - But be prepared to do so ahead of time
- Both written and face-to-face communication
- Primary consideration must be given to the individual's choice of aid or service
- Make information available about accessible services, activities, and facilities

Auxiliary Aids and Services

- Devices or services that enable effective communication for people with disabilities
- Examples
  - Qualified interpreters
  - Screen readers
  - Videotext displays
  - Assistive listening devices
  - Captioning/CART services
  - Text-to-speech software

Examples

- Individual who is blind – needs to complete forms
  - Possible auxiliary aids and services: qualified reader; screen reader/digital forms; Braille materials
- Individual who is hard of hearing – needs to be interviewed
  - CART; assistive listening device; ASL interpreter
- Individual with intellectual disability – needs to review a restitution agreement
  - Plain language version; explanation; support person

Asking the Right Questions

- As we work together, there will be a lot of forms and documents. Is there anything I can do to help you better read or understand these documents?

- There may be a lot of complex legal terms and words that we might use. What is the best way for me to explain these words?

- There may be times when you need something to participate in our program/service. What is the easiest way for you to ask for what you might need?

Communication Tips

- Learn how the person best communicates
- Limit distractions (e.g., no hallway discussions) and find an environment where the person feels comfortable
- Be patient and willing to repeat information
- Use visual or other communication aids
- Check for understanding
- Modify common forms (e.g., enlarge fonts (14+); simplify legal jargon)
- Discuss appropriate courtroom behavior and attire in detail—consider using a social story
- Communicate lengths of time in a concrete way
- Simplify complex words or phrases without destroying meaning

Additional Tips for Organizations and Employers

Create An Access and Communication Policy

- Process for requesting/providing accommodations and auxiliary aids and services
  - Employees
  - Non-employees/public
- Point of contact in the agency/responsible party
- Preferred contractors/interpreters
- Grievance procedure
- Ongoing training/orientation for new employees

Commit Publicly to Inclusion

The message that all people are of equal value and must be respected and treated fairly, must be communicated by the leadership of your organization.

Make it a consistent part of your messaging, and build it into all DEI programming, human resource systems, and communications.

Set SMARTIE Disability Inclusion Goals

- SMARTIE: Specific, Measurable, Achievable, Relevant, Time-Bound, Inclusive, and Equitable

- Key goals can include using free accessibility tools and practices to ensure online events are screen reader accessible and have captions

- An easy-to-meet goal is ensuring all in-person events are in fully accessible venues
  - Invite participants to request disability accommodations

Onboard Talent with Disabilities

- People with disabilities are loyal to our employers and are used to solving problems creatively

- People with disabilities are a largely untapped talent pool

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Benefits of Hiring People with Disabilities

GETTING TO EQUAL:
THE DISABILITY INCLUSION ADVANTAGE

- **Followed 140 US companies from 2015-2018**
- **45 Inclusion Champions, 95 peer companies**

Read the full study online!

Over four years, the Champions who embraced the talent of workers with disabilities **vastly outperformed their peers**. They had:

- **2X higher income**
- **30% higher economic profit margin**
- **Up to 30% less staff turnover**

* Study completed by Accenture, Disability:IN and the American Association of People with Disabilities

Resources Are Available To Teach You What You Don't Know

If you are new on your disability inclusion journey, the questions of what to do next may seem daunting.

Yet people with disabilities have been succeeding in the workplace for decades, and there are resources to help.

These include:

- [RespectAbility](#), Best Practices for Employers

- [TAPAbility](#), which can source talent

- [AskJan.org](#), which can problem solve inclusive employment questions for free

Review Your DEIA Practices

1. **Employment** and volunteer practices, encompassing but not limited to accommodations, talent recruitment, and retention policies.

2. **Facilities and events**, use only accessible spaces and practices and promoting universal design, benefiting older adults and those with disabilities.

3. **Online Accessibility**, ensuring websites and social media comply with the most recent Web Content Accessibility Guidelines so all people can benefit and participate in your work and success.

4. **Are we at the table?:** Whether people with disabilities are centered in decision making around issues that impact them.

Continue Your Disability Inclusion Journey

Continue your learning with RespectAbility's Disability Training & Speakers Bureau:

- [Disability 101: Ensuring Best Practices in Disability Inclusion](#)

- [Best Practices: Recruitment and Retention](#)

- [Creating a Welcoming, Inclusive and Accessible Organization](#)

- [Ensuring Accessible In-Person and Virtual Events](#)

- [Living with a Disability in an Inaccessible World](#)

- [Mental Health & Wellness in the Workplace](#)

- [Disability Inclusion in Philanthropy](#)

Email JakeS@RespectAbility.org for more information

Equity and Access Webinar Series

- Disability 101

- Disability History

- How to Ensure Accessible Events

- How to Recruit, Accommodate and Promote People with Disabilities for Paid Employment, Volunteer Leadership and Board Positions

- How to Ensure A Welcoming Lexicon and Inclusive Storytelling

- How to Ensure Accessible Websites, Social Media and Inclusive Photos

- Premium Skills Workshop in Social Media Accessibility

- How to Ensure Legal Rights and Compliance Obligations

Watch Recordings, Download Transcripts and PowerPoints:
https://www.respectability.org/accessibility-webinars/

FOR MORE INFORMATION

Ariel Simms, President and Chief Executive Officer, ArielS@RespectAbility.org

Graciano Petersen, Senior Director of Talent, Culture and Training at RespectAbility: GracianoP@RespectAbility.org

Jake Stimell, Disability Training & Consulting Bureau Associate: JakeS@RespectAbility.org