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July 9, 2020

Lateefah Simon, Chair  
Chief Ron Davis, Chair  
Governor's Police Reform Task Force

Dear Ms. Simon and Chief Davis,

Thank you for inviting us to discuss police reform in California. This issue holds urgency to us, particularly the great risk that people with disabilities—and, overwhelmingly, Black men with disabilities--face when met by police action.<sup>1</sup> To better serve our communities, we call for reforms that:

- Shift resources from policing to community-based services, including crisis services, that are disability-centered and culturally and linguistically competent.
- Remove police from schools and reinvest funding in appropriate social and mental health supports that are disability-centered and culturally and linguistically competent.
- Ensure police response to demonstrations is non-violent and bans the use of “riot control agents”.

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<sup>1</sup> Abigail Abrams, *Black, Disabled and at Risk: The Overlooked Problem of Police Violence Against Americans with Disabilities*, TIME (June 25, 2020, 8:56 AM), <https://time.com/5857438/police-violence-black-disabled/>.

- Ensure standards and training governing policing, including use of force standards, involve input from people with disabilities and individuals with lived experiences in the criminal legal system.

## **1. Shift Resources from Policing to Community-Based Services, Including Crisis Services, that Are Disability-Centered and Culturally and Linguistically Competent.**

Many advocacy groups have called for defunding the police and shifting resources to a community-based crisis response model. We join in this appeal. There are multiple successful models to shift crisis response to trained professionals and away from law enforcement. Based on Disability Rights California’s (DRC) multiple investigations and lawsuits, we know the system must be change. We have observed firsthand how interactions between the police and individuals with disabilities can have dire consequences. In contrast, individuals with disabilities overwhelmingly experience superior outcomes when interacting with peers and community health providers, as well as when afforded access to a greater panoply of community-based mental health services overall.

### **A. Challenges Posed By Limited Community-Based Services, as Illustrated by DRC’s Alameda County Investigation.**

Beginning in 2018, DRC opened an investigation into Alameda County’s lack of community-based mental health services and high rates of unnecessary psychiatric institutionalization.<sup>2</sup> Through the course of this investigation, we learned about the many challenges that arise from relying on law enforcement officers to respond to individuals experiencing mental health crises, particularly against a backdrop of inadequate community-based mental health services.

In Alameda County—as with many counties throughout the state—law enforcement officers spend many hours responding to 911 calls involving

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<sup>2</sup> Community Assessment and Transport Team (CATT) Project Summary, MENTAL HEALTH SERVICES OVERSIGHT & ACCOUNTABILITY COMMISSION (Apr. 13, 2018), [https://mhsoac.ca.gov/sites/default/files/documents/2018-10/Alameda\\_INN%20Project%20Plan\\_Community%20Assessment%20and%20Transport%20Team\\_8.6.2018\\_Final.pdf](https://mhsoac.ca.gov/sites/default/files/documents/2018-10/Alameda_INN%20Project%20Plan_Community%20Assessment%20and%20Transport%20Team_8.6.2018_Final.pdf).

individuals experiencing mental health crises,<sup>3</sup> even though they have limited training in this realm and the individuals in crisis would be better served by behavioral health providers who are culturally and linguistically competent.

When the police do get involved, there is an increased likelihood that an individual will be taken to jail or a psychiatric hospital rather than connected to community-based mental health treatment. We have found that individuals with mental health disabilities who are Black are at a disproportionate risk of unnecessary institutionalization. Although individuals who are Black comprise only 11.2% of Alameda County's population,<sup>4</sup> 53% of people who are both "justice involved" and a "high utilizer" in the mental health system (generally defined as people subject to psychiatric institutionalization) are Black/African American.<sup>5</sup>

When individuals experiencing a mental health crisis are taken to jail rather than provided community-based care, they tend to stay in jail longer than other jail prisoners, are at an increased risk of decompensation and self-harm, and receive more frequent punishments in response to minor infractions. On average, people with serious mental health disabilities spend five (5) times longer in Alameda County's Santa Rita Jail than other prisoners. A large number have died while in jail.<sup>6</sup>

As but one example, Christian Madrigal, a 20-year-old man in need of mental health services, died tragically on June 15, 2019.<sup>7</sup> Despite the fact that Mr. Madrigal's family called 911 seeking mental health treatment, police officers physically assaulted Mr. Madrigal and then took him to Santa Rita Jail rather than to a mental health facility. At the jail, deputies continued to abuse Mr. Madrigal, including chaining him to a door. Mr.

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<sup>3</sup> Under our civil commitment laws, the police are given tremendous authority to determine whether there is probable cause to believe a person is gravely disabled or a danger to self or others based on a mental health disability. The police are then subsequently authorized to transport a person to a locked psychiatric setting for up to 72 hours to determine whether the person needs further treatment. Cal. Welf. Inst. Code § 5150(a).

<sup>4</sup> See *Quick Facts Alameda County, CA*, U.S. CENSUS BUREAU (July 1, 2019), <https://www.census.gov/quickfacts/alamedacountycalifornia>.

<sup>5</sup> See Alameda County Justice Involved Mental Health Taskforce, General Body Meeting at 18-19 (Mar. 2019).

<sup>6</sup> See Lisa Fernandez, *A look at the 45 inmates who have died at Santa Rita Jail in the last five years*, FOX KTVU (Oct. 4, 2019), <https://www.ktvu.com/news/a-look-at-the-45-inmates-who-have-died-at-santa-rita-jail-in-the-last-five-years>.

<sup>7</sup> Lisa Fernandez, *Fremont father will forever feel guilty for calling police to help his son*, FOX KTVU (Nov. 3, 2019), <https://www.ktvu.com/news/fremont-father-will-forever-feel-guilty-for-calling-police-to-help-his-son>.

Madrigal died of the physical injuries he sustained in the custody of the police and jail a few days later. His untimely death was wholly preventable.

On November 1, 2019—following its nearly two-year investigation—DRC found probable cause to believe that Alameda County’s actions constitute abuse and/or neglect based on, *inter alia*, the County’s failure to provide people with serious mental health disabilities with needed services in the most integrated setting appropriate, consistent with the goals of treatment and recovery.

In accordance with our findings in this investigation, we recommend that more resources be invested statewide in community-based mental health services, including assertive community treatment, intensive case management, crisis services, substance use disorder treatment, supportive housing, peer support, and employment services.<sup>8</sup> In order to improve outcomes and decrease racial disparities in behavioral health, these services must be provided in a culturally-responsive manner.

**B. The Benefits of Outreach Efforts Led by Healthcare Providers, as Illustrated by DRC’s Santa Ana Riverbed Lawsuit.**

Our recent settlement on behalf of unhoused individuals in Orange County illustrates the striking difference in outcomes when peers and community health providers engage individuals with disabilities, rather than the police.<sup>9</sup>

Prior to this lawsuit, the Orange County Sheriff’s Department conducted initial sweeps and arrested people for low level crimes in an effort to clear the Santa Ana Riverbed where hundreds of unhoused individuals resided. Subsequently, the police returned and offered social services, but were met with a low 5% response rate, despite learning that over 51% of individuals identified as having a disability.

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<sup>8</sup> See *Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C.* at 8, DEP’T OF JUSTICE CIVIL RIGHTS DIV (last updated Feb. 25, 2020), [https://www.ada.gov/olmstead/q&a\\_olmstead.htm](https://www.ada.gov/olmstead/q&a_olmstead.htm).

<sup>9</sup> See *Settlement Agreement Ramirez v. Orange County* Doc. 318-1 (2019), available at: [https://www.disabilityrightsca.org/system/files/file-attachments/Ramirez\\_v.\\_OC\\_Settlement\\_Agreement-2019.pdf](https://www.disabilityrightsca.org/system/files/file-attachments/Ramirez_v._OC_Settlement_Agreement-2019.pdf).

By contrast, after the parties negotiated an injunctive agreement for clearance of the Riverbed, behavioral health providers led outreach to this same community. This time, the County was met with a 70-90% engagement rate for people willing to access services. The key difference was that behavioral health providers led the outreach with a focus on trauma-informed care and harm reduction, and placement into programs that provided both health and social services such as Mental Health Services Act's Full Service Partnership programs<sup>10</sup> and substance abuse treatment centers. This health-led outreach effort supports the concept that individuals, especially individuals with disabilities, who are approached with a health-led focus, have more trust to utilize the system.

## **2. Remove Police from Schools and Reinvest Funding in Appropriate Social and Mental Health Supports that Are Disability-Centered and Culturally and Linguistically Competent.**

In our work across California, we have seen school police subject students with disabilities to a litany of abuses. In particular, Black students with disabilities are frequently tackled, handcuffed, and arrested for experiencing mental health crises or exhibiting disability-related behaviors that pose no safety threat.

In February 2019, school police in Kern County handcuffed and arrested a fourteen-year-old Black student with a disability for running around campus hallways during school hours. Officers arrested the student for violating Education Code Section 32210. This statute permits arrest of any person who “willfully disturbs” school grounds.<sup>11</sup> It appears intended to apply solely to trespassers posing a safety threat, not students. Yet, officers used this statute to arrest the student for harmless disability-related behavior. In 2019, the Legislature enacted SB 419 to limit the practice of suspending students under a similar Education Code provision

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<sup>10</sup> The Full Service Partnership (“FSP”) Program is a service model developed in California to specifically address the needs of people with serious mental health disabilities, including people who cycle in and out of institutions, are arrested and detained in jail, are homeless, or who sometimes may be challenging for the treatment system to engage. FSPs are designed to provide wrap-around community services as needed. FSPs use multidisciplinary teams to manage the delivery of needed services, which can include assertive community treatment, case management, crisis services, substance use disorder treatment, peer support, employment services, and supportive housing.

<sup>11</sup> Cal. Educ. Code § 32210.

regarding “willful defiance.”<sup>12</sup> Before this change, Black students with disabilities were disproportionately suspended for willful defiance. However, Section 32210 remains in effect and continues to be misapplied by school police in their interactions with students with disabilities.

School staff should not rely on police officers or campus security officers to address such disciplinary incidents. These officers’ heavy-handed responses to disability-related behaviors and minor acts of youthful indiscretion traumatize children, worsen behaviors, and create a dangerous school environment, especially for Black youth with disabilities. Teachers and administrators can and should address disciplinary incidents through Restorative Justice, Positive Behavioral Interventions and Supports (PBIS), and other evidence-based practices.

In recent weeks, districts such as Oakland Unified School District have committed to divesting from school police at the local level. Now, we call upon the Governor and the California Department of Education to provide leadership for statewide efforts to remove police from schools. Over 1.8 million California students attend a school with a police officer, but no psychologist, nurse, social worker and/or counselor.<sup>13</sup> Students with social, emotional, and mental health needs require services from a credentialed professional, not a school resource officer. Schools must have the tools to fully include students with disabilities in the school community, rather than funding models that treat student with disabilities as a threat to be isolated and removed. We ask that you reinvest the misguided funds spent on school police and prioritize funding models that will create safe, inclusive schools for students with disabilities, including funding for mental health services, mandatory and ongoing anti-racism and implicit bias trainings, Restorative Justice, PBIS, and Universal Design for Learning Principles.

We also call upon the Governor and the California Department of Education to increase transparency of policing in schools. We need better data tracking systems in order to hold local education agencies accountable. Local education agencies should be required to annually report referrals to law enforcement and school-based arrests to the

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<sup>12</sup> Cal. Code Ann. § 48901.1 (2019).

<sup>13</sup> See *Cops And No Counselors: How the Lack of School Mental Health Staff is Harming Students*, AMERICAN CIVIL LIBERTIES UNION (Mar. 4, 2019), <https://www.aclu.org/report/cops-and-no-counselors>.

California Department of Education, making this information available and accessible to the public on the DataQuest platform. This data should be disaggregated by race/ethnicity, disability, gender, and type of offense.

Finally, we call upon the Governor to review the Education Code, including Education Code Section 32210, and other code sections to identify laws which may permit or be interpreted to permit arrest of students for minor acts of youthful indiscretion and disability-related behaviors. These laws contribute to the school to prison pipeline and disproportionately impact students with disabilities and students of color.

### **3. Ensure Police Response to Demonstrations Is Non-Violent and Bans the Use of “Riot Control Agents”.**

Police response to protests must be non-violent. Specifically, the Governor should call for California law enforcement to end the use of “riot control agents” such as tear gas and other chemical agents, rubber bullets, and flash bangs. Use of these substances and devices has caused significant harm to the public in many highly publicized and well documented cases, and people with disabilities experience additional harms when “riot control agents” are deployed.

Law enforcement have frequently utilized tear gas and other chemical agents in response to recent protests. These substances cause a number of immediate harmful effects such as burning and tearing eyes, blurred vision, blisters or rashes, violent coughing, crying, and difficulty breathing. In a 2017 review of 31 studies, “a total of 5910 people were exposed to chemical irritants and sought medical attention, of whom 5131 (87%) suffered injuries or died as a result of the exposure.”<sup>14</sup> For people with respiratory disabilities such as asthma, the deleterious health effects of these agents are amplified. Additionally, epidemiologists and health professionals believe the use of chemical “riot control agents” will hasten the spread of COVID-19, both because they cause coughing and because they leave people exposed to them at a higher risk of contracting

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<sup>14</sup> *Health impacts of chemical irritants used for crowd control: a systemic review of the injuries and deaths caused by tear gas and pepper spray*, U.S. NATIONAL LIBRARY OF MEDICINE (Oct. 19, 2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5649076/>.



respiratory illnesses.<sup>15</sup> DRC has long advocated for the discontinuation of chemical agents such as pepper spray in a variety of settings like juvenile and immigration detention facilities, and firmly believes these agents should not be used in any setting including public streets.

Rubber or plastic bullets, bean bag rounds, and flash bangs can also cause significant injury and even death. People who are struck in the head or neck by these projectiles (including the canisters used to deploy the chemical agents above) are the most likely to die or sustain an injury resulting in permanent disability.<sup>16</sup> These supposedly “non-lethal” projectiles can cause broken bones, ruptured eyeballs, fractured skulls, internal organ damage, traumatic brain injury, and death.<sup>17</sup> DRC recommends that their use be terminated across California.

#### **4. Ensure Standards and Training Governing Policing, Including Use of Force Standards, Involve Input from People with Disabilities and Individuals with Lived Experiences in the Criminal Legal System.**

The Governor should appoint leaders with disabilities and individuals with lived experiences in the criminal legal system as Commissioners to the Peace Officers Standards and Training Commission (POST). As the people most often negatively impacted by inadequate law enforcement standards and training, people with disabilities and individuals with lived experiences in the criminal legal system should be active participants at the highest levels of leadership within the Commission for developing appropriate standards to govern the work of policing. Additionally, POST should retain subject matter experts who are people with disabilities and people with lived experiences in the criminal legal system.

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<sup>15</sup> See Lisa Song, *Tear Gas Is Way More Dangerous Than Police Let On – Especially During the Coronavirus Pandemic*, PROPUBLICA (June 4, 2020, 12:25 PM), <https://www.propublica.org/article/tear-gas-is-way-more-dangerous-than-police-let-on-especially-during-the-coronavirus-pandemic>.

<sup>16</sup> See *Death, injury and disability from kinetic impact projectiles in crowd-control settings: a systemic review*, U.S. NATIONAL LIBRARY OF MEDICINE (Dec. 5, 2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5736036/>.

<sup>17</sup> See Liz Szabo, *Police Using Rubber Bullets On Protestors That Can Kill, Blind Or Maim For Life*, KAISER HEALTH NEWS (last updated June 4, 2020, 11:00 PM), <https://khn.org/news/police-use-rubber-bullets-on-protesters-that-can-kill-blind-or-maim-for-life/>.



We recently advocated on behalf of Jacob Bonczyk, a Black paraplegic man in Fairfield who was physically unable to comply with an officer's commands to put his hands above his head. Although Mr. Bonczyk's arms and wheelchair were plainly visible, and the officers were repeatedly informed that Mr. Bronczyk was paralyzed, the police made no effort to accommodate his disability, and instead threw him out of the car and tased him. The excessive use of force by these officers is exactly the kind of conduct POST should actively train officers to avoid and POST must ensure that law enforcement training and standards incorporate accommodation of disability to prevent encounters such as those experienced by Mr. Bonczyk.

POST has only recently increased training at the basic academy from 6 to 15 hours on disability, and requires field training officers to have attended eight hours of crisis intervention team training. Although these efforts are an improvement on past standards, they are insufficient. Considerations of race and disability should be incorporated into every aspect of POST's standards and training, and should reflect the critical input of people with disabilities and people with lived experience of the criminal legal system.

With the strong call to action for police reform, we stand by the need for comprehensive review and fundamental change. The State's review of police action must include the perspective of individuals with disabilities, especially Black men with disabilities. The complex needs in the community cannot be met with the police led efforts. We appreciate your inclusion of Disability Rights California on these critical issues and offer our disability expertise for the changes that we all seek to make.

Sincerely,

A handwritten signature in blue ink that reads "Andy J. Imparato". The signature is written in a cursive, flowing style.

Andy Imparato  
Executive Director

Cc: Kelli Evans, Deputy Legal Affairs Secretary for Criminal Justice