

Overrepresented and Overlooked: People with disabilities and Deaf people in the criminal legal system

Part 1: How racism, ableism, and audism result in disability disparities

January 10, 2022



Activating
Change's
Mission

**To end victimization,
criminalization,
incarceration and
institutionalization of
people with disabilities and
Deaf people**

Activating Change's Goal

Safety and freedom – not
harm and punishment – for
people with disabilities and
Deaf people



Today's agenda

1. Broadening our understanding of disability and Deaf communities
2. Local mass incarceration of people with disabilities and Deaf people
3. Drivers of disability disparities in the criminal legal system
4. How the system perpetuates disparities and worsens outcomes
5. Ableism, audism, and racism

**Broadening our understanding
of disability and Deaf
communities**



Words matter

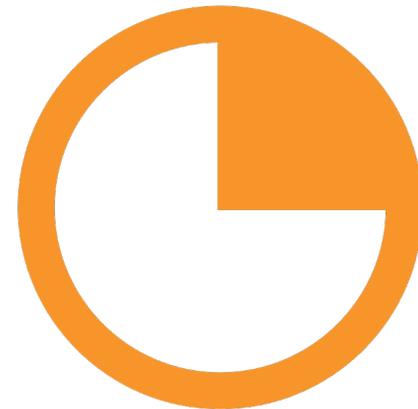
- Using people first language

- **Emphasize abilities**, not limitations.
 - Ex: Person who uses a wheelchair vs. wheelchair-bound
- **Refer to the person first** and the disability second.
 - Ex: Person with paraplegia vs. paraplegic man
- **Use neutral language.**
 - Ex: Person who had a stroke vs. stroke victim
- **Use language that emphasizes the need for accessibility** rather than the presence of a disability.
 - Ex: Accessible parking vs. handicap parking



Disability is prevalent in the US

- According to the CDC, 61 million Americans have some type of disability
 - That is **26% (1 in 4)** of the total US population



**Disability is a
broad category...**



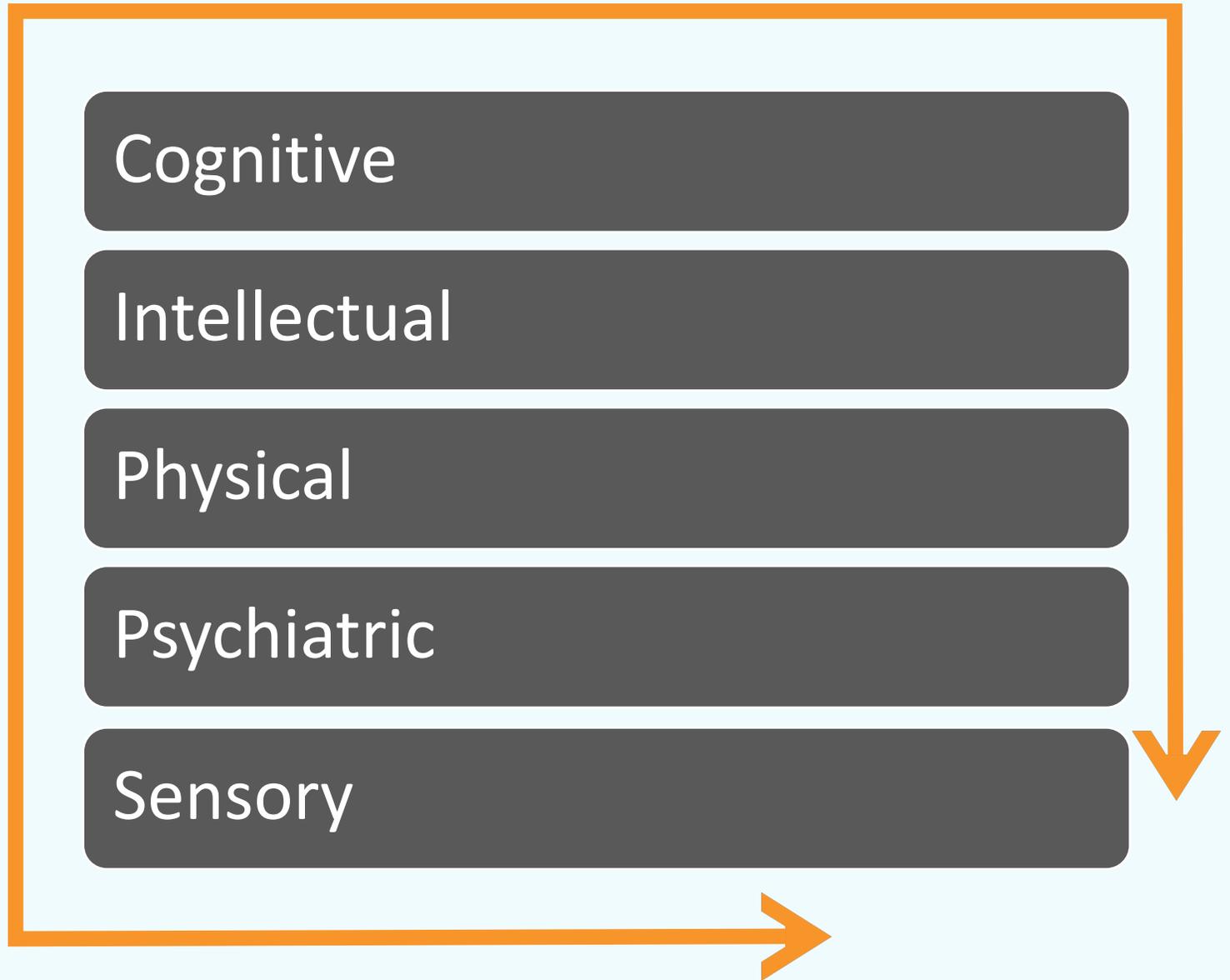
Cognitive

Intellectual

Physical

Psychiatric

Sensory



Disabilities can be...



Invisible or visible

Acquired or congenital

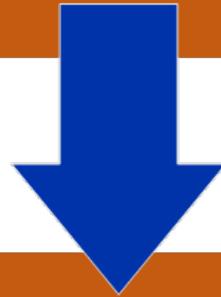
Temporary,
reoccurring, or chronic

Multiple



No one-size-fits-all approach

Disability is a diverse, broad category

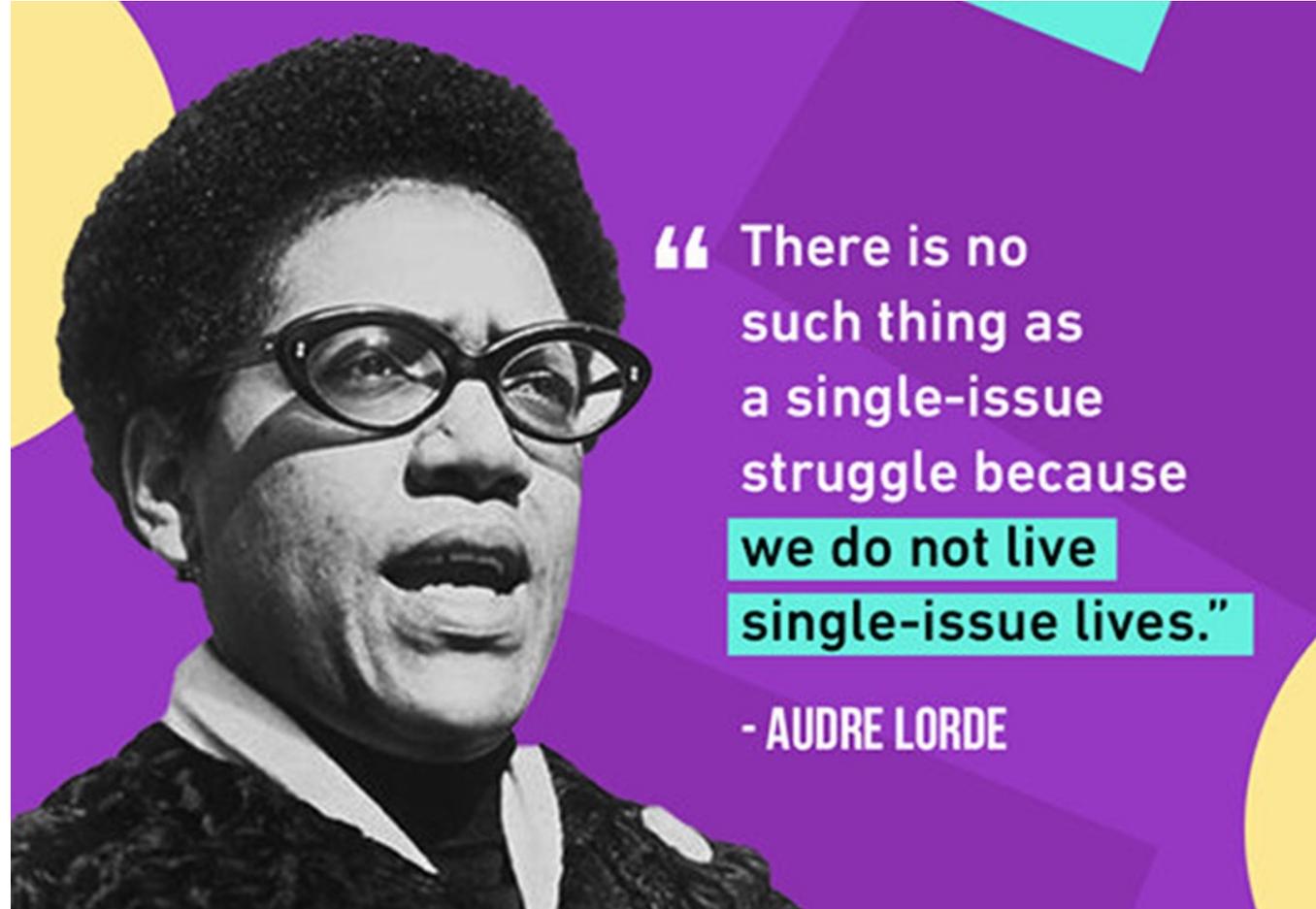


Needs of people with disabilities are just as diverse and broad

Disability

+

Intersectionality



Deaf culture, communities, and languages

→ Distinct cultural group

→ Communities

→ Languages

→ American Sign Language (ASL)

→ Black American Sign Language (BASL)

→ Protactile

MAINSTREAM ASL Signed by Jason Begue	BLACK ASL Signed by Carolyn McCaskill
"Really dressed up" or "dressed to the nines"	"Tight" meaning well dressed
"Sorry"	"My bad"
Pregnant (one of several signs)	"Stuck" meaning pregnant
More one-handed signs Lower location Smaller signing space Less repetition	OTHER FEATURES More two-handed signs Forehead location Larger signing space More repetition

**Local mass incarceration of
people with disabilities and
Deaf people**



Arrest

Odds of arrest before age 28

Disability disparities

All people without disabilities:
30%

All people with disabilities: **43%**

Compounded racial disparities

White people with disabilities: **40%**

Hispanic* people with disabilities: **46%**

Black people with disabilities: **55%**

Psychiatric disabilities in jails

64% of people in jails:

- Had 'serious psychological distress' in the past month; and/or
- Had been told by a clinician in the past that they have a 'serious mental health disorder'

BJS, *"Indicators of Mental Health Problems Reported by Prisoners, 2011-12"*

Other disabilities in jails

→ **40% of men** and **half of women** in jails have a disability

→ Compared with baseline of **9%**

Bureau of Justice Statistics (BJS), *“Disabilities Among Jail Inmates, 2011-2012”*

Cross-disability data (prisons)

80% of women and **65% of men** in prisons have a disability

Laurin Bixby, Stacey Bevan, and Courtney Boen. *The Links Between Disability, Incarceration, And Social Exclusion*

**Drivers of disability
disparities in the criminal
legal system**



Criminalization

- Homelessness
- Addiction
- Poverty
- Having a disability in the US

Criminalization of disability

Disability is over-policed

- Mostly for non-violent and minor infractions
 - Medicating physical manifestations of disability
 - Sleeping outside (i.e. homelessness)
- NY City Mayor instructing police to involuntarily hospitalizing people experiencing homelessness for mental health evaluations
 - Other jurisdictions are looking at similar policies

Criminalization of disability

- Atypical reactions to social cues
- Manifestations of disability
 - Slurred speech
 - Difficulty walking or unusual gait
 - Slow processing of questions or commands
 - Unable to respond: Deaf or cannot process
- Self-medication with substances

Criminalization of Deaf people

- Unable to respond to commands given without ASL interpreters can result in arrest
- Movement involved in communication is misinterpreted as danger can result in state violence
- Unable to understand what is happening or be able to clarify misconceptions can result in being jailed for no reason

Punitive responses

Starts young

- Because schools are designed by and for people **without** disabilities, many children with disabilities are not identified
- Many children with disabilities are not supported and accommodations are not being provided
- Unmet needs mean children with disabilities are having difficulty learning & frustration mounts
- The lack of engagement and frustration show up in behaviors in school

Punitive responses + bias

The lack of accommodations are even more profound for BIPOC disabled children in schools

- Zero-tolerance policies and bias lead to the punishment of disabilities rather than support and accommodations
- School security criminalizing BIPOC with disabilities
- Labeled young as problematic
- School suspensions and expulsion

Disability and poverty

Historically people with disabilities pushed into the economic margins of society

- Much higher rates of poverty than people without disabilities
- Much higher rates of unemployment
 - Disability benefits – caps
 - Lack of accommodations
- Lack of affordable housing & very high rates of homelessness
 - 43 % of homeless people have disabilities

**How the system perpetuates
disparities and worsens
outcomes**



Lack of understanding & training around disability

Example: policing

- Manifestations of disability can be perceived as non-compliant and/or hostile; in part because of lack of training and understanding
- Insufficient or complete lack of means for effective communication, particularly for Deaf people, escalate interactions

Accommodations: inadequate or difficult to secure

Example: courts

- 70% of states do not provide funding or training for judges and court staff about legally required equal access for people with disabilities
- Half of state court websites do not have information for the public about requesting accommodations
- 16 states' courts charge people for accommodations such as large print documents

Accommodations: inadequate or difficult to secure

Example: community supervision

Cobb v. Georgia Department of Community Supervision (2019):

Seeking an order requiring the agency to immediately provide American Sign Language interpreters, auxiliary aids and services, and reasonable modifications to deaf and hard of hearing people on parole or probation.

Barriers to system alternatives and off-ramps

Example: pre-trial diversion programs

- Community-based inequities (i.e., lack of accessible transportation options) can make conditions harder/impossible to meet
- When alternatives are discretionary, biases can appear
- Programming, including mandated programs, not offered in equally accessible ways

Experiences of Deaf People in the criminal legal system

"While I was in prison they had no American Sign Language (ASL) interpreters. None of the staff knew sign language, not the doctors or the nurses, the mental health department, the administration, the chaplain, the mail room. Nobody. In the barbershop, in the chow hall, I couldn't communicate with the other inmates. When I was assaulted, I couldn't use the phone to call the Prison Rape Elimination Act hotline to report what happened. And when they finally sent an interviewer, there was no interpreter. Pretty much everywhere I went, there was no access to ASL. Really, it was deprivation."

Jeremy "Jay" Woody, formerly incarcerated Deaf man in the Central State Prison in Georgia

"The Isolation of Being Deaf in Prison"

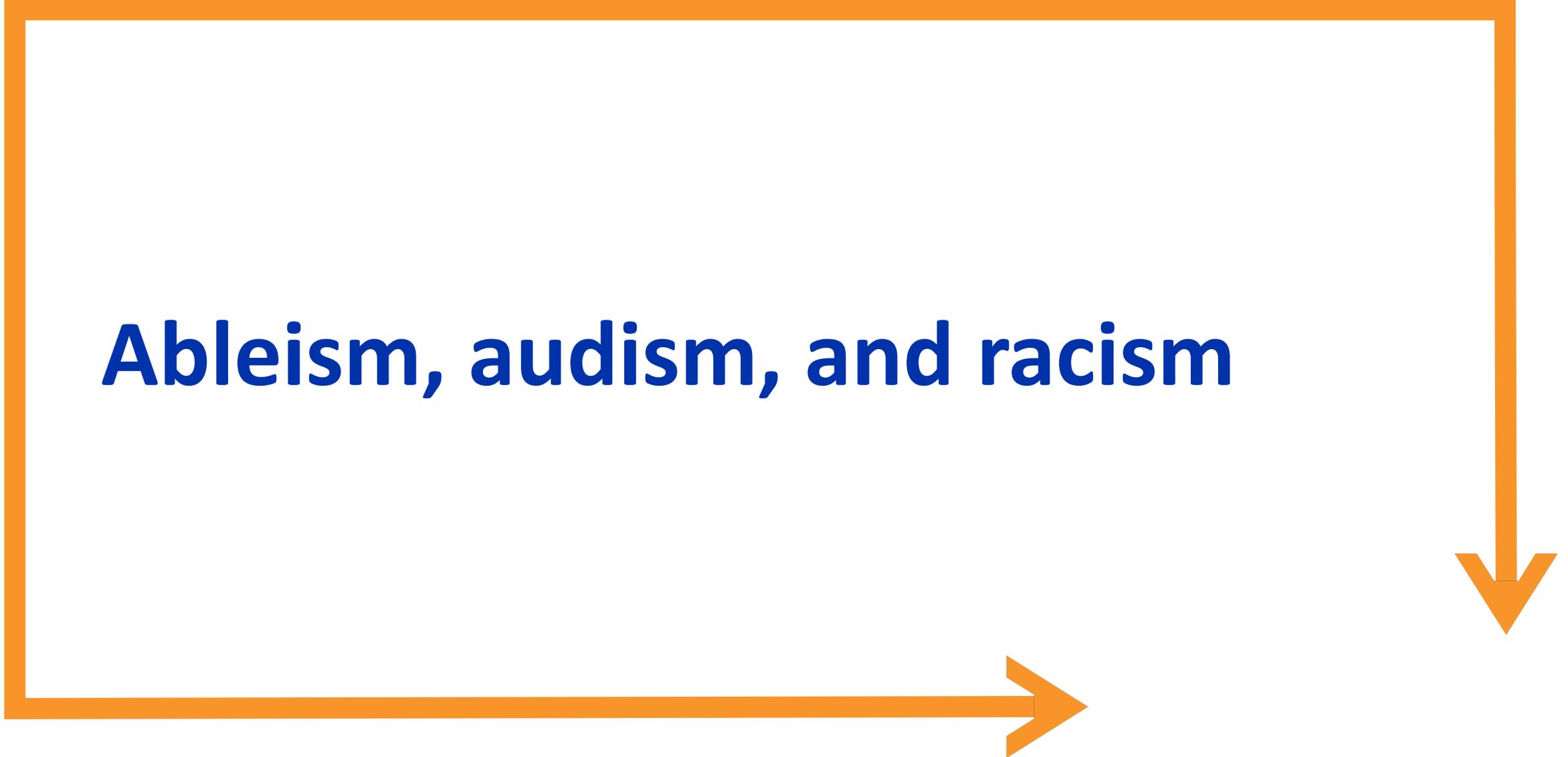
The Marshall Project

<https://www.themarshallproject.org/2018/10/18/the-isolation-of-being-deaf-in-prison>

Experiences of Deaf people in the criminal legal system



Ableism, audism, and racism



Ableism

- Prejudice, bias, and discrimination directed towards people with disabilities.
- Risk factors for system-involvement

Audism defined

"The notion that one is superior based on one's ability to hear or to behave in the manner of one who hears"
(Humphries, 1977)

"Audism is an attitude based on pathological thinking that results in a negative stigma toward anyone who does not hear; like racism or sexism, audism judges, labels, and limits individuals on the basis of whether a person hears and speaks"
(Humphrey & Alcorn, 1995: 85).

Audism

- Asking a Deaf person to read your lips or write when he/she/they indicated this isn't preferred
- Making phone calls for a Deaf person since they "can't."
- Refusing to call an interpreter when one is requested
- Assuming that those with better speech/English skills are superior
- Asking a Deaf person to "tone down" their facial expressions because they are making others uncomfortable

Racism

Racism

- Prejudice + social and institutional power
- A system of advantage based on race
- A system of oppression based on race
- A system of white supremacy

Racism is when the power elite of one group, the white group, has the power to carry out systematic discrimination through the institutional policies and practices of the society while shaping the cultural beliefs and values that support those racist policies and practices.

**Activating Change and our
work together**



Questions and comments



Up next

Part II on January 31, 2-3:30 ET: *The impact of structural oppressions on people of color: a panel discussion*

Part III on February 23, 2-3:30 ET: *Applying a disability equity lens into SJC initiatives*

Thank you!



Citations

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Slide 12:

Nancy Smith and Charity Hope. *Culture, Language, and Access: Key Considerations for Serving Deaf Survivors of Domestic and Sexual Violence*. New York: Vera Institute of Justice, 2015. And: Joanne Cripps. *What is Deaf Culture?*. Deaf Culture Centre.

Slide 14:

Erin J. McCauley. “The Cumulative Probability of Arrest by Age 28 in the United States by Disability Status, Race/Ethnicity, and Gender.” *American Journal of Public Health*, December 2017.

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Slide 17

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Slides 19-21:

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Slides 23-24:

Jyoti Nanda. "The Construction and Criminalization of Disability in School Incarceration," *Columbia Journal of Race and Law* 9(2), 2019.

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Slide 28:

National Center for Access to Justice, *Disability Access Justice Index*, 2020.

Slide 29:

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Slide 31:

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Slide 32:

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