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## Disability and Policing

Britney Wilson

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*Existing rules can help ensure police use best practices for interacting with those who have special needs.*

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Video footage of Miami-Dade police officers arresting [Mary Brown](#)—a Black woman and double amputee—for panhandling outside of a gas station recently [went](#) viral. In the video, police handcuff Brown, who [tells](#) the officers to “stop

hurting [her].” In the course of being transported from her wheelchair to the police car, Brown falls. The officers leave her on the ground and discuss whether they have gloves to pick her up while she asks for assistance.

After the incident, the Director of the [Miami-Dade Police Department](#), [Juan J. Perez](#), called the arrest “appropriate,” but instructed his Department to contact disability rights organizations to determine whether the Department was using best practices for interacting with people with special needs.

As I argued in my [article](#), “#BlackDisabledLivesMatter,” and as the encounter with Brown further demonstrates, issues of race and disability should be analyzed together when addressing police brutality. While there *is* a general recognition that police reform should include changes concerning people with disabilities, particularly with respect to equipping law enforcement officials to address challenges facing people with mental disabilities, incidents like Brown’s raise larger questions about whether police departments are fulfilling their basic duties to accommodate people with disabilities.

Title II of the Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities in the provision of public services, including services provided by state and local law enforcement agencies. As “programs of State or local governments,” law enforcement agencies must comply with Title II whether or not they receive federal funds.

Title II applies to routine law enforcement activities, such as the arrest, interrogation, and detention of suspects. The [U.S. Department of Justice](#) (DOJ) is tasked with implementing Title II through regulations that *require* public entities to make “reasonable modifications” to “policies, practices, or procedures” when such modifications *are* “necessary to avoid discrimination on the basis of disability.” For example, the [Disability Rights Section](#) of the DOJ [Civil Rights Division](#) has included among potential modifications the “regular practice of handcuffing arrestees behind their backs” the way Ms. Brown was handcuffed in the video.

Perez instructed his Department to contact disability rights organizations to consult on best practices *after* Brown’s arrest, and the Department has since [promised](#) to review its practices for dealing with special needs populations. However, a regulation under Title II already [requires](#) public entities to “evaluate [their] services, policies, and practices” to determine whether they are in compliance with Title II and to [make](#) the “necessary modifications” if they are not in compliance with the law. The Title II regulation also [requires](#) that interested parties, “including individuals with disabilities or organizations representing individuals with disabilities,” be allowed to submit comments as part of the evaluation process. This regulation originally went into effect in 1992.

Therefore, without having conducted any sort of audit of its compliance with Title II or its use of the already required regulatory procedures, one has to wonder why the Miami-Dade Police Department was forced to take such a post hoc approach to assessing its use of best practices. More importantly, how many other departments nationwide, if faced with a similar situation, would have been forced to do the same?

Scholars have [argued](#) about the benefits of using administrative law to achieve police reform, but have also [lamented](#) the lack of applicability of a statute like the [Administrative Procedure Act](#) (APA), which [establishes](#) a process for the public to receive notice about and an opportunity to comment on proposed regulations, to “most municipalities.” However, disability may be the one area where the use of administrative law in crafting police policy is not as novel a concept and where the applicability of administrative regulations to municipalities does not pose as big of a challenge.

Title II already applies to law enforcement agencies as “programs of State and local government,” regardless of [whether](#) “most municipalities” are governed by a statute like the APA. Additionally, the general applicability of Title II to state and local governments may be especially important to advocates for police reform as we move into the new Trump Administration that [devalues](#)

regulation and a DOJ led by U.S. Attorney General [Jeff Sessions](#), who has [expressed](#) opposition to “[federal interference](#)” in local policing.

Finally, by creating an opportunity for the public to submit comments as part of police departments’ evaluation process, the government has already recognized the need for public input when assessing police departments’ compliance with Title II and their need to make modifications. If used properly, the notice-and-comment process could function as an essential tool of community policing by gathering insight and suggestions from affected populations in a convenient and efficient way.

Thus, mechanisms designed to protect the interests of people with special needs already exist. It is up to the public to ensure that these procedures are used and enforced. Such procedures should also be routinely included in police trainings and regularly updated based on input from affected communities. Brown’s arrest should serve as another stark reminder that local law enforcement must give interactions with people with disabilities the necessary and required forethought—not afterthought.



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*This essay is part of a fifteen-part [series](#), [Regulating Police Use of Force](#).*

Tagged: [Americans with Disabilities Act](#), [Department of Justice](#), [Law Enforcement](#), [Municipal Regulation](#), [Race](#), [Series](#)