

Rios v. City of North Miami – Settled. Now What?

By: [Matthew Dietz, Esq.](#)

On June 26, 2019, Arnaldo Rios-Soto's family resolved its case against the City of North Miami and several of its police officers stemming from the incident on July 18, 2017, where Officer Jonathon Aleda shot at Arnaldo, and hit and injured his behavioral therapist, Charles Kinsey.

Sitting cross-legged on the street in North Miami on July 18th, Arnaldo was exhibiting behaviors that should have been a neon sign that Arnaldo was Autistic. He was oblivious to the significance of the officers around him or Charles Kinsey lying supine on the street with his arms up; he was playing with a toy truck; he was rocking back and forth, and he was stating lines from the movie, Toy Story. After the shooting, Arnaldo was arrested and repeating talismanically, "Minnie Mouse." During his interrogation while handcuffed, Arnaldo complicitly repeated the words stated to him and agreed with the statements of the detective.

During this entire time, it was clear to the officers (that did not shoot at Arnaldo) that something about Arnaldo was "off" but did not know how to handle the situation, or whether the behavior of Arnaldo Rios-Soto posed a danger to himself or others. Unfortunately, it is not unusual for police officers to assume that persons with intellectual and developmental disabilities pose a danger. The failure to distinguish between developmental disabilities and psychiatric conditions, and the assumption that persons with any type of neurodiverse condition are inherently dangerous, leads to dangerous situations with a risk of injury, hospitalization or imprisonment.

As a result of the incident, The City of North Miami recognized the need to fully integrate persons with disabilities, including people with intellectual and/or developmental disabilities in the City of North Miami. The City is committed to ensuring that police are not only trained in how to recognize the behavioral needs of its residents with developmental disabilities, but also expanding community policing by having its police officers visit group homes, schools and community centers to meet and build ties with all residents.

Institutionalization and persons with intellectual and developmental disabilities

What occurred with Arnaldo happens with thousands of adults with intellectual and developmental disabilities per year in Florida. When the police encounter a disturbance with an individual with an intellectual and developmental disabilities, the person is routinely taken in to custody and placed in psychiatric institution and held for at least 72 hours and sedated.

Mental illness and a developmental disability are not synonymous. Under Florida Law, mental illness is defined as "an impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, which impairment substantially interferes with the person's ability to meet the ordinary demands of living." This definition *specifically excludes* developmental disability, which is defined as "a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome."

Because police officers are not behavioral therapists and are not trained to determine the differences between the sequela of developmental disability versus mental illness, police do not appropriately gauge the danger posed by the individual with a disability. As a result, the person is restrained, subject to abuse, or tased.

The use of police officers for calls involving persons with disabilities is the overall issue of a health care system that does not provide adequate supports for persons with disabilities in the community. Such supports would be simple and cost-effective, such as mobile crisis units or additional behavioral services available during the time of crisis.

Because of the inability of the State of Florida to devote appropriate resources to provide adequate services in the community, the police are used as a reactive strategy, which leads to involuntary institutionalization. This institutionalization is patently unlawful under the Americans with Disabilities Act. Thirty years ago, the Supreme Court decided *Olmstead v. L.C.*, where the Court found the following:

Recognition that unjustified institutional isolation of persons with disabilities is a form of discrimination reflects two evident judgments. First, institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life. ... Second, confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment. ... Dissimilar treatment correspondingly exists in this key respect: In order to receive needed medical services, persons with mental disabilities must, because of those disabilities, relinquish participation in community life they could enjoy given reasonable accommodations, while persons without mental disabilities can receive the medical services they need without similar sacrifice.

Accordingly, appropriate services should be reentered to people with disabilities so they are not forced into institutional settings.

The Failure of the State of Florida does not Excuse Unlawful Police Action.

During the shooting of Arnaldo Rios-Soto and Charles Kinsey, Arnaldo was not demonstrating any adverse behaviors that could be deemed to be a danger to any other person. The assumption that Arnaldo was “crazy” or “mentally ill” was sufficient for the police to arrest and take him into custody. This same assumption is applied when the police are called into a nursing home, group home, or school when called to handle a situation with a person who has a behavioral crisis that is not a result of mental illness. In such a circumstance, if a police person is called, the police should defer to appropriately trained behavioral staff, and ensure others are safe until the situation is deescalated. Even when a person has a mental illness, the person

can only be involuntarily committed is that person is not receiving adequate care or treatment in their current location that would prevent substantial harm or serious bodily harm.

Training is Required for Police.

In 2017, the Florida Legislature recognized that law enforcement should be provided with training related to autism spectrum disorder, as follows:

§ 943.1727. Continued employment training relating to autism spectrum disorder.—

The department shall establish a continued employment training component relating to autism spectrum disorder as defined in s. 627.6686. The training component shall include, but need not be limited to, instruction on the recognition of the symptoms and characteristics of an individual on the autism disorder spectrum and appropriate responses to an individual exhibiting such symptoms and characteristics. Completion of the training component may count toward the 40 hours of instruction for continued employment or appointment as a law enforcement officer required under s. 943.135.

Earlier, in 2016, the legislature required accommodations for suspects or witnesses with Autism, as follows:

§ 943.0439. Interviews of victims, suspects, or defendants with autism or an autism spectrum disorder.

(1) A law enforcement officer, a correctional officer, or another public safety official shall, upon the request of an individual diagnosed with autism or an autism spectrum disorder or his or her parent or guardian, make a good faith effort to ensure that a psychiatrist, psychologist, mental health counselor, special education instructor, clinical social worker, or related professional is present at all interviews of the individual. The professional must have experience treating, teaching, or assisting patients or clients who have been diagnosed with autism or an autism spectrum disorder or related developmental disability or must be certified in special education with a concentration focused on persons with autism or an autism spectrum disorder. All expenses related to the attendance of the professional at interviews shall be borne by the requesting parent, guardian, or individual. If the individual is a victim, the defendant shall reimburse the victim for all expenses related to the attendance of the professional at the interview, in addition to other restitution or penalties provided by law, upon conviction of the offense of which the individual is a victim. Failure to have a professional as defined by this subsection present at the time of the interview is not a basis for suppression of the statement or the contents of the interview or for a cause of

action against the law enforcement officer or agency. This subsection applies to such an individual who is the victim, a suspect, or a defendant formally accused of a crime.

(2) Each law enforcement agency must ensure that appropriate policies are developed which implement this section and that training is provided to its law enforcement and correctional officers based on those policies.

However, it is my opinion that the 2016 statute violates the Americans with Disabilities Act because it requires an Autistic person to pay for their own accommodation, and it may mislead an Autistic person, his or her parent or guardian, that a professional would take the place of an attorney, and the professional may then be used as a tool by law enforcement to obtain a confession.

What training is Appropriate for Police?

There is a great diversity within the autism spectrum, so to define autism solely in a classroom cannot encompass the differences within the neurodiversity spectrum. As Autism advocate, Dr. Steven Shore famously stated, "If you've met one person with autism, you've met one person with autism." As such, any training should include an experiential learning component, as well as efforts to engage in community policing to meet with individuals with disabilities to have interaction before the need arises.

The Wallet Card® Project.

One of the projects that Disability Independence Group conducts is the The Wallet Card® Project, which is an innovative partnership between people with autism or other developmental or intellectual disabilities and law enforcement using its Wallet Card, as the empowerment and self-advocacy tool to allow these two communities to understand each other, respect each other, live in the community together, and learn how to respond appropriately when they interact with each other through the use of simulations of real-life experiences. The Wallet Card itself is a tool to assist a person to disclose his or her disability, as such the choice to disclose is always with the person with a disability. However, the project is provided with training for the individual with a disability on how to safely use the card, and interactive training is provided to have persons with autism or intellectual disabilities to train police to interact with the disability community, reduce stigma and build relationships.

It is essential that persons with autism or intellectual disabilities are involved in the training. The training is interactive with the police working hand in hand with people or students with disabilities. In this way, both law enforcement and persons with autism or intellectual disabilities learn from each other and thus reducing the stigma and fear of the other. Groups of students with autism and other intellectual disabilities roll play scenarios with actual police officers to learn how to disclose their disability, and demonstrate actions or statements that may be unintentionally misconstrued. Students receive an individualized "Wallet Card" and learn to use

it as a tool to disclose their disability and disability related needs. The scenarios between the officers and students mimic real life situations and best practices on how to communicate successfully during these situations. So far, this project has been given to 64 Law Enforcement Agencies with over 11,000 officers/staff, and Disability Independence Group has made over 4,000 wallet cards and they have been requested in all 50 states, Canada, Puerto Rico, Australia, England, and Ireland. For more information please watch our video at: <https://vimeo.com/117175394>