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Chief Jacobs, Mayor Ginther, Director Pettus, and President Hardin:

Disability Rights Ohio is the federally and state-designated protection and advocacy system in Ohio. See 42 U.S.C. § 15041. Our mission is to advocate for the human, civil, and legal rights of people with disabilities throughout the state.

We are writing because we have serious concerns regarding the Columbus Police Department's ("CPD") policies and practices on transporting arrestees who have disabilities, particularly those using wheelchairs. We request to meet and discuss a resolution to these issues.

As you may know, a large group of people gathered at Senator Rob Portman's Columbus office on July 7, 2017 to protest against congressional proposals to cut Medicaid. That afternoon, CPD officers arrested sixteen of these people, nearly all of whom have disabilities. Most of the arrestees use wheelchairs. After their arrest, CPD officers transported them to the Franklin County Jail.

We interviewed many of the people arrested that day and reviewed CPD policies, incident reports, and video recordings. From this review, it appears that the CPD did not transport these individuals in a safe, appropriate, and accessible manner as required by the

Americans with Disabilities Act (“ADA”). By sharing the individual stories, the pertinent legal requirements under the ADA, and other municipalities’ policies that comply with the ADA, we hope to begin a dialogue that will result in reforms here in Columbus.

The CPD officers did not transport arrestees with disabilities to the Franklin County jail in a safe, appropriate, or accessible manner.

The CPD incident reports and videos show that CPD officers were confused about the proper way to transport the arrestees to the jail. We understand this is not a situation that arises every day; but that only underscores the need for clear policies and procedures to ensure that individuals with disabilities are transported after arrest in a safe, appropriate and accessible manner.

Most of the vehicles utilized that day were not wheelchair-accessible, and this caused CPD officers to remove a number of people from their wheelchairs to load them into these vehicles. Separation from one’s wheelchair is not only traumatic, doing so placed individuals in harm’s way because there was no way to properly or safely secure the individuals in the transport vehicles. After being loaded into the vehicles, they remained there for hours in the heat, which aggravated several individuals’ medical conditions. As the stories below show, many of the arrestees experienced injury, or were placed at serious risk of injury, during the transport. Below are their stories.

Due to her disabilities, Priyadarshini Penner has arthrogyriposis. This impairs her mobility and her use of her arms and legs and affects her joints, muscles, ligaments, and bones. She uses a power wheelchair with a customized seat molded to her body and specially designed to allow for circulation in her legs. This is the only seat in which she can sit for any length of time. She communicated this to the CPD officers, to no avail. CPD officers removed her from her customized wheelchair, and placed her in an inaccessible paddy wagon. She remained seated in this vehicle for approximately four hours. This was not only uncomfortable, but was also very unsafe and dangerous for her, so she unbuckled herself and lied down on the floor. She was writhing in pain and at times moaning because of the level of discomfort. At some point, she lost total sensation in her legs because of the loss of circulation.

Jennifer Sims has a severe form of multiple sclerosis, has limited mobility, and cannot ambulate. As a result, Ms. Sims is unable to support the weight of her own torso and uses a manual wheelchair. CPD officers removed her from her wheelchair as she screamed in pain, and placed her on a thin flat bench in an inaccessible paddy wagon. She was unable to use her legs to keep her torso erect, so one officer vainly tried to assist her in keeping her knees propped up, causing her additional pain. Ms. Sims remained in this vehicle, continuing to scream and cry in pain. The officers at one point inexplicably decided to turn off the air conditioning inside the vehicle and then shut the vehicle doors. Ms. Sims is very sensitive to heat, and she started having painful arm spasms while handcuffed; she has permanent scars from this. CPD officers then decided to return Ms. Sims to her wheelchair and move her to a COTA Mainstream paratransit vehicle. Though this vehicle is wheelchair-accessible, officers did not properly secure her wheelchair, so that she was at risk of serious injury throughout the transport.

Another arrestee, Ericka Jones, has spina bifida, which affects her balance and her ability to walk. She uses a wheelchair, which contains side guards to keep her upright. CPD officers removed her from her wheelchair and placed her on the floor of the police paddy wagon vehicle, where she remained for over four hours. She fell over several times during transport; her head and body slammed multiple times against the side of the vehicle. She sustained bruises all over her legs.

Officers also arrested Julie Cee Farrar-Kuhn, who uses a power wheelchair due to her disabilities. CPD officers removed her from her wheelchair and placed her in an inaccessible police paddy wagon. CPD officers did not safely or properly secure her in this vehicle, where she remained for around four hours. She too slid around on the seats in the back of the vehicle and slammed into the sides of the vehicle during transport.

Stephanie Woodward also uses a customized wheelchair because of her disabilities. She needs her wheelchair to sit upright and to prevent her body from getting pressure sores and ulcers on her skin. CPD officers removed her from her wheelchair and placed her in an inaccessible police paddy wagon. It is dangerous for Ms. Woodward to be sitting in a seat other than her customized wheelchair. To alleviate the pressure on her body, she lied down on the floor of the vehicle while waiting four hours to be transported to the jail.

The Americans with Disabilities Act requires police departments to transport arrestees with disabilities in a safe, appropriate, and accessible manner.

Title II of the Americans with Disabilities Act (“ADA”) prohibits public entities, including police departments, from discriminating against people with disabilities 42 U.S.C. § 12132. The ADA requires public entities to “make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.” 28 C.F.R. §35.150(b)(7)(i).

Federal courts have interpreted Title II of the ADA to apply to police officers’ transport of arrestees with disabilities, which must be safe, appropriate, and accessible. A federal case in Missouri, *Gorman v. Easley*,¹ involved very similar circumstances to those of the people arrested in Columbus last summer. The plaintiff, a man with paraplegia, lacked “voluntary control over his lower torso and legs,” and used a wheelchair with a molded cushion to keep him upright and for mobility purposes. After his arrest, officers removed him from his wheelchair, placed him on a narrow bench in a vehicle, and inadequately restrained him with both a seatbelt and his own belt. While inside the van during transport, his “body swayed with every turn and acceleration.” He eventually fell to the van’s floor and suffered numerous permanent and serious injuries and pain.

The man later filed suit under Title II of the ADA and Section 504 of the Rehabilitation Act of 1973, a federal law prohibiting recipients of federal funding from discriminating against people with disabilities. The trial court instructed the jury to decide whether the police “failed to provide plaintiff appropriate transportation that reasonably accommodated his disability after he was arrested.” The court determined that “making a ‘reasonable accommodation’ for

¹ 257 F.3d 738 (8th Cir. 2001)

the plaintiff means making modifications to the defendants' practices for transporting the plaintiff after he was arrested so that he would be transported in a manner that was safe and appropriate consistent with his disability." 257 F.3d at 750. The jury found in his favor.

Upon appeal, the federal Eighth Circuit Court of Appeals held that the trial court properly instructed the jury regarding the police's obligations under the ADA. Title II of the ADA, the Eighth Circuit decision concluded, "requires reasonable transportation modifications if necessary," and "the police cannot reasonably accommodate a disabled detainee by placing him in a position where, by virtue of his disability, he is left helpless." *Id.* at 751.

The Columbus Police Department should enact policies and provide training to ensure people with disabilities are transported in a safe, appropriate, and accessible manner.

While CPD has a policy regarding "non-ambulatory prisoners," this policy does not provide sufficient guidance to ensure that CPD officers comply with the ADA when transporting individuals with disabilities. CPD Directive 3.03(I)(F)(1) states that

[n]on-ambulatory prisoners requiring transportation to a detention facility may be transported by emergency medical personnel. Officers needing a medic for transport shall contact a Division supervisor, who shall contact Communications Bureau personnel to arrange the transport. When there is a question concerning whether a prisoner needs to be transported by a medic, a Division supervisor shall respond to the scene. The physical well-being of the prisoner shall be considered in determining the transport method.

Transportation by medical personnel likely would still require the removal of an individual from their wheelchair; something to be avoided particularly where the individual relies upon that wheelchair for physical support and medical well-being. Moreover, Ikena Forensic Video captured by police at the time of the arrests reveal that officers struggled with transportation protocols. One officer is seen on video consulting a laminated manual on the top of the hood of a police vehicle. Clearer policies and adequate training are needed to correct this problem.

Other municipalities have adopted policies that can serve as a starting point for discussing how CPD can change their policies and practices to comply with the ADA. For example, in Minneapolis, before a police officer can transport an arrestee in a wheelchair, the officer must ask the arrestee if he or she can be removed from their wheelchair. Minneapolis Police Department Policy and Procedure Manual, 7-1004 Transportation of Person with Disabilities in Wheelchairs (last updated May, 6 2015). If the person states that he or she cannot leave their wheelchair, the officer must call for a vehicle with a hydraulic lift. The San Francisco Police Department also has a specific protocol for transporting people with disabilities: their policy provides that "[m]obility[-]impaired prisoners must be transported in the appropriate vehicle. A prisoner using a wheelchair, who cannot transfer on their own, should be transported in a wheelchair lift[-]equipped vehicle." General Order 5.18(D)(7), Disabled Prisoners (effective May 14, 2008).

These two municipalities' policies are consistent with formal guidance from the Civil Rights Division of the U.S. Department of Justice, which states that "[s]tandard transport practices may be dangerous for many people with mobility disabilities....The best approach is to

ask the person what type of transportation he or she can use, and how to lift or assist him or her in transferring into and out of the vehicle.”² Furthermore, “[s]afe transport of other individuals who use manual or power wheelchairs might require departments to make minor modifications to existing cars or vans, or to use lift-equipped vans or buses.” The CPD should take this approach.

Conclusion

The law - and common decency - requires that individuals with disabilities be transported in a safe, appropriate and accessible manner. We hope you share that concern with us.

Our goal is to work collaboratively with you to address this problem through new policies and appropriate training. The arrests and transportation concerns of July 7, 2017 are of great importance to the disability community, and we intend to report out our investigation, findings, and conclusions. We anticipate that this report will also include commendation for the positive changes CPD will take to correct the problem and to ensure that its polices and training ensure safe, appropriate, and accessible transportation for arrestees with disabilities.

Please contact Kevin Truitt at (614) 466-7264 ext. 122 or by email at ktruitt@disabilityrightsohio.org at your earliest convenience to arrange a meeting to discuss these goals.

Respectfully,



Kevin Truitt
Attorney at law

Lauren Kraft
Advocate

² Disability Rights Section, Civil Rights Section, U.S. Department of Justice, Commonly Asked Questions about the Americans with Disabilities Act and Law Enforcement (last revised April 4, 2006). https://www.ada.gov/q&a_law.htm (last accessed on May 10, 2018)