CREATING INCLUSIVE POLICIES:
Looking at Disability in the Criminal Justice System

There are many lenses or models through which to view people with disabilities. Which models create inequities, and which models will contribute towards reducing incarceration? Below, we provide a basic discussion tool to support your process in creating inclusive criminal justice policy.
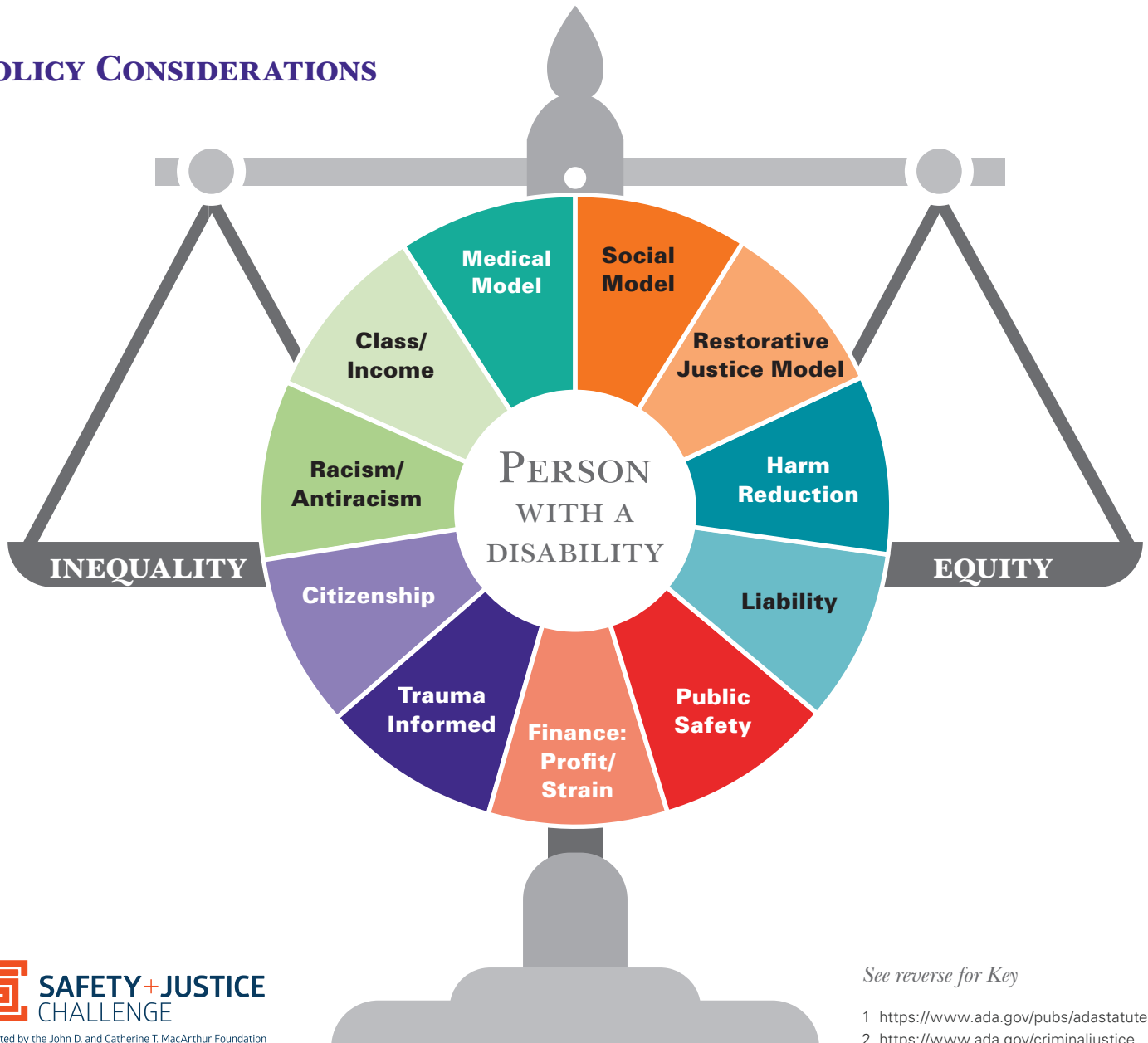
In general, society has many ways of looking at a person with a disability. Below, the person with a disability is seen at the center of a wheel of different lenses, models or frames. Some of these lenses create harm for the person with a disability and contribute to unnecessary incarceration. Other models reduce harm, and are pathways towards reducing incarceration.

What is a disability? In this tool, we use the definition of disability as used in the Americans with Disabilities Act (ADA). The ADA defines a person with a disability as a person who has a physical or mental impairment that substantially limits one or more major life activity. In practice, this definition is broadly applied and most people who consider themselves
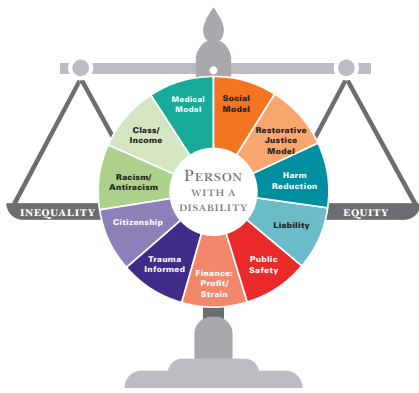
to have a disability are covered by the ADA.[1] The ADA requires criminal justice entities—including, but not limited to, attorneys, courts, jails, juvenile justice entities, police, prisons, prosecutors, and public defense attorneys—to avoid discriminating against people with disabilities…and to avoid unnecessary criminal justice involvement for people with disabilities."[2]

Read through the various ways of looking at disability and consider their impact on the incarceration of people with disabilities. Which models cause harm or inequity? Which models reduce harm and promote equity, and ultimately, reduce incarceration?

POLICY CONSIDERATIONS

INEQUALITY — EQUITY

Wheel: PERSON WITH A DISABILITY (center); Medical Model, Social Model, Restorative Justice Model, Harm Reduction, Liability, Public Safety, Finance: Profit/Strain, Trauma Informed, Citizenship, Racism/Antiracism, Class/Income

See reverse for Key

1 https://www.ada.gov/pubs/adastatute
2 https://www.ada.gov/criminaljustice

CREATING INCLUSIVE POLICIES:
Looking at Disability in the Criminal Justice System

KEY

● **Medical Model** Identifies a person with a disability as a problem to be fixed and not the environment. Flags a person's diagnosis, not their needs. Relies on cure and compliance.

● **Social Model** Developed by people with disabilities, the social model says that people are disabled by barriers in society, not by their diagnosis or difference. Barriers can be physical, like buildings not being accessible, or they can be created by attitudes, such as assuming incompetence. Addressing and removing social barriers creates equality and is a pathway to inclusion.[3]

● **Restorative Justice Model** Involves the offender, victim, and community in decision making to promote restoration, build community, and repair harm caused by most systemic approaches to justice. A person with a disability could be the offender, victim or community member.

● **Harm Reduction** Harm reduction is "a set of practical strategies and ideas aimed at reducing negative consequences associated with drug use. Harm reduction is also a movement for social justice built on a belief in, and respect for, the rights of people who use drugs.[4]" Some people with disabilities use drugs; those in recovery are considered to have a disability under the ADA.

● **Liability** Liability is a legal lens and consists of being responsible for something. Criminal justice system stakeholders are often very concerned about being held liable in situations involving disability.

● **Public Safety** Refers to the welfare and protection of the community. This is one of the main goals of the criminal justice system. Public safety concerns both in and out of institutions are most effectively addressed, mitigate liability, and reduce repeat offenses by using social model of criminal justice reform policy.

● **Financial: Profit/Strain** Through this viewpoint, people with disabilities are viewed as a source of profit or loss to the finances of the criminal justice system.

● **Trauma Informed** Through this lens, responses to people with disabilities, and other discriminated against groups, acknowledge they have been forced into situations and environments that have caused harm/trauma.

● **Citizenship** Through this lens, we look at understanding a person with a disability based on their citizenship or immigration status. This lens takes into consideration the need for accommodations for language barriers, barriers to reporting crime, and receiving urgent medical care/attention.

● **Racism/Antiracism** The criminal justice system incarcerates people of color in grossly disproportionate rates. Through this lens, we see how racial bias and discrimination overlap with the lived experience of a person with a disability.

● **Class/Income** Through this lens, we look at addressing the roots of poverty for people with disabilities. As a whole, people with disabilities tend to be lower income due to unaffordable medical options and discrimination that affects housing and job opportunities. People who are of lower income are overrepresented in police contact and jail populations.

3 https://www.scope.org.uk/about-us/social-model-of-disability
4 https://harmreduction.org/about-us/principles-of-harm-reduction