

## Episode 17 (Part 2): 2019 Legislative Wrap-Up

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**Announcer:** Welcome to "You First," the disability rights Florida podcast.

**Keith Casebonne:** I'm Keith Casebonne and welcome back to You First. This is the second half of our 2019 legislative roundup podcast. If you have not listened to part one yet, you really should in order to learn about some legislation that, for better or worse, passed in the Florida legislature, as well as some great insight about the plastic straw ban controversy.

Now, here is part two.

**Tony DePalma:** Another piece of legislation that didn't pass this year that we've been hopeful for many years, now, would pass were Senate Bill 62 and House Bill 349. These were bills related to the restraint and seclusion of students with disabilities in public schools.

Last session, both the House and Senate unanimously passed non-identical legislation that they failed to match up in week nine of the session so the whole idea just sort of died out. This year, the House unanimously passed legislation, but the bill in the Senate was a little stuck and stalled.

Why this is important, just so everyone knows, is about eight or nine years ago the legislature passed into state education laws some data collection and reporting requirements related to restraint and seclusion. Everyone's aware when we talk about restraint, we're talking about devices or holds that restrict a student's freedom of movement.

There's some restraints that are pretty easy to envision, but there's ghastly uses of this authority to do other things to students. Bungee cords. There's lots of grisly reporting on there as to how this actually takes shape.

For several years, intervening since the legislature acknowledged that there's an issue here and that we need to collect data on this because, for the longest time, a lot of school districts were saying, "Nope, this isn't happening. You might be hearing about this on a national level but not in our county."

In the years since, we've advocated nonstop for much needed definitions, standards, prohibitions in this world because if you really read what's in chapter 1003 at the moment regarding this, there aren't definitions for what restraint is or any related prohibitions for what can't be used, or standards for how they should be used.

**Keith:** Oh, wow.

**Tony:** This is, without a doubt, very important material that, no doubt, can harm students if not implemented as a part of a larger understanding for trauma informed principles and what really happens when you restrain or seclude. Leave a student in a room unattended, or unguarded, or with the door closed. Students with disabilities.

Like I said, this legislation didn't pass this session. We're hopeful that it will be reintroduced next session. We will continue advocating for common sense standards.

There's some traction federally on this. There's some legislation in congress to mandate that states collect data different ways, or do reporting, or blanket prohibitions on some of these tactics. The US government accountability office recently issued a report outlining the unsatisfactory ways in which some states and portions of the states report on these incidents.

Since our own data collection standards have been on the books in Florida, we've seen numbers that close to 80,000 restraint incidents have occurred on students with disabilities since 2011, something close to 21,000 seclusion incidents.

Those figures are both under reported. Hopefully, that illuminates the magnitude and the gravity of the situation at hand.

**Keith:** Let's hope so. We'll continue to advocate for those provisions and those responses.

**Olivia Babis:** We also had...This was the year of the alert. We have alerts of multiple colors. We had the orange alert and the camo alert, both of which did not pass through advocacy, through the populations that they were targeted towards.

**Keith:** Is this something like an amber or a silver alert?

**Olivia:** Exactly. We understand the intent of the bills. They were put forth with good intention. They were meant to protect vulnerable populations. However, there were some significant concerns regarding them, and regarding autonomy, and dignity, and privacy concerns.

The camo alert was meant to establish an alert system for veterans. The veterans had concerns that we raised regarding the orange alert, which was targeted towards persons with disabilities. We thought that there weren't enough protections regarding autonomy, and dignity, and privacy.

We did work with the bill's sponsors to get some of that language put in, to put some privacy protections in. A person with a disability does have autonomy to go and do the things that they want to do without having that overprotection of someone reporting them missing without having the grounds or the standing to do so just because.

We wanted a process for law enforcement to have to follow before they could issue that alert and poster someone's face all over the place saying this person is missing. Just by the nature of issuing this orange alert that is targeting a person with a disability, you're outing that person as having a disability.

There is that disclosure aspect to it, as well. These are things that we do expect to pop up again. We want to make sure that we are working with the bill sponsors and with the legislature to make sure that we are implementing correctly because there it's not that there isn't a need for something like that.

Having a disability myself, if Olivia Babis is missing and I'm gone but my chair's still here or my car is there, I hope somebody is looking for me but I hope that they are first checking with the

correct people and implementing this correctly before instantly calling police and plastering my face all over the news and identifying me as a person with a disability.

Just to make sure that there is correct privacy, and that language is implemented correctly, and that we do have the process for law enforcement to make the correct, proper steps before implementing these things.

**Keith:** Interesting.

**Tony:** Like Olivia said, we fully expect to see some of this legislation reintroduced in subsequent sessions, including in 2020.

One final bill that didn't pass, that actually didn't even receive a committee hearing, that we know will be reintroduced in subsequent sessions was House Bill 743 and Senate Bill 940.

This was legislation titled Crimes Evident to Prejudice. Disability Rights Florida is a member of the Florida Hate Crime Coalition.

This is legislation that would be revising the state's hate crimes laws in a couple important regards on the disability specific portion of that, is to modernize and update the definition of disability in these hate crime laws so that it's as fully expansive and in line with the Americans with Disabilities Act definition of disabilities as it's intended to be federally.

This didn't pass this session on a very vibrant and active coalition pushing for this. This is very likely the type of legislation that might not pass until a different political moment in our state's legislative process, but one that we believe is important to message around and let people know what's at stake in these statute books with regards...

Transitioning from legislation that didn't pass into some of what appears in the state's budget which, honestly, could deserve two or three of its own podcasts...

**Keith:** I can imagine.

**Tony:** ...to drill into.

Some of the items we wanted to talk about included what happened with the Affordable Housing Trust Fund. As many listeners, I'm sure, know the state has an affordable housing and accessible affordable housing crisis at the moment. That was only exacerbated given our recent hurricane predicaments, including in the panhandle last year with Hurricane Michael.

In the past, the legislature has regularly swept money out of a trust fund that was established in the early 2000s to try to grow and secure affordable housing expansion in the state. The legislature's taken from this for many, many reasons in the past.

In the last few sessions, you've seen actual legislation introduced to try to cordon that off, to try to prevent legislative grabs into this pocket of money. That was the case this year, as well.

However, given what happened in the panhandle, given the effects of Hurricane Michael, if anyone was reading the tea leaves heading into session, even though the governor's budget

included not raiding from this trust fund, it seemed as though, very likely, there was going to be some grab into this money.

That was the case this year. There was \$137 million swept out of this trust fund, largely for Hurricane Michael related recovery and planning.

**Keith:** How big is the trust fund?

**Tony:** I believe it this trust fund annually has something in the order of more than \$200 million, \$240-50 million.

One way to conceive of this is that, perhaps, this is about half of the trust fund. In some years, it's been completely swept. It's one of those frustrating things where if you're watching this and you're reading the news reporting of the severity of our affordable housing crisis in the state it's tough to know that the legislature's grabbed from that fund, robbing Peter to pay Paul type scenario.

Hopefully, in the future, there will be a process constructed that either, A, keeps the legislature from sweeping out of this trust fund. Or, B, requires that the sweeps have to meet some threshold level of urgency or supermajority votes or something. We'll see how that all goes.

Another area of the budget that we wanted to touch upon, because it actually directly relates to work we're doing at the moment, is in the Department of Corrections budget.

Within the budget this year there was a total of nearly \$34 million and 385 full time equivalent positions that were passed to address needed improvements to inmate physical and mental health accommodation process.

Our organization has recently been engaged in litigation with the Department of Corrections, so we're obviously very pleased to see that the Department and the state is acknowledging that there's a need here.

We've arrived at a moment in time where it's urgent to modernize how we conceive of accommodation processes for people with disabilities who are inmates within these institutions, within these facilities. That's something we're very happy to see passed and hopeful that the state will continue this discussion in the coming years.

We, of course, are doing our best to remain a part of that discussion.

**Keith:** These budget updates, increases, seem to be appropriate to make a real dent in this?

**Tony:** That's tough to tell. We would certainly always say, as a general concept, that more money, more staff that are specifically directed to this issue are always a better thing. As to the sufficiency or adequacy of it, this is the Department's own calculation and the state's own calculation of what's needed now.

Whether this is the first year of a several year phase in of some of this funding and positions, we'll see.

**Keith:** It remains to be seen.

**Tony:** Right.

I'd be remiss if we were talking about corrections work without mentioning another thing that the legislature did right this year, which was passage of HB 49, House Bill 49, which was also recently signed by the governor.

This is Dignity for Incarcerated Women Act. This bill, just real quick, it requires correctional facilities to make health care products available to each incarcerated women, including those at county detention facilities, juvenile detention centers, or residential facilities, temporary holding centers, and any other criminal detention facility operated by the state.

It also prohibits male correctional facility employees from conducting pat down or body cavity searches on an incarcerated woman. Requires that male correctional facility staff must announce their presence upon entering a housing unit for incarcerated women.

Also, specifies that male correctional staff may not enter specified areas of a facility in which an incarcerated woman may be in a state of undress or viewed as such.

For people who don't live in this world, it's kind of jarring and shocking to the senses that some of these dynamics aren't already structured as such.

**Keith:** I'm surprised hearing it right now.

**Tony:** We believe that there's a great, more distance that legislation like this can go. Of course, we're living in 2019. We know, given gender identities and other in flux discussions at the moment, it's difficult to categorize legislation geared toward incarcerating women as only affecting female bodied individuals and transitioned individuals.

The same could apply to correctional facility staff, as well. There's more to this discussion and more to this discussion that naturally bleeds into disability specific components, as well.

We're hopeful that the legislature is looking sincerely at these processes at true criminal justice reform in the state, and true institutional correctional structural reform in the state, and that there will be an opportunity to revisit concepts like this soon.

This was something that the legislature got right, for sure.

At this point, Olivia and I wanted to share a little bit of our tipping of our cards in terms of what we think the run up to the 2020 legislative session will look like and things that we expect to appear on our radar very soon.

**Keith:** Good.

**Olivia:** First and foremost, I think, is supported decision making. I think that will definitely be our top priority for 2020. A lot of states already have this, something that we're lagging behind on.

We have guardianship, of course, in Florida. There's a lot of people that have guardianships that don't necessarily need that, but we don't really have that built into our state statute where we provide guidance to the courts on how they can implement that.

I think there's the possibility that the state guardianship laws will be opened up for reforms.

**Keith:** That would be excellent. We have a previous podcast on supported decision making, so excellent.

**Olivia:** I think that will be a possibility this year to, again, open that up for options that are less restrictive than guardianship. For people to participate in their own decision-making processes.

**Tony:** We've had an internal working group looking at the issue of supported decision making and trying to evaluate how some states and jurisdictions have moved this direction specifically and some of the results of that movement.

Some states have enshrined this concept in the state law. We would be very hopeful that Florida would take a look at doing the same. That requires deep buy in from people who are involved in this process. Judges, courts, the legislature, people inside of guardianships, people who want less restrictive guardianships of their own.

It's a very of the moment discussion and one that we would like to be poised to help influence as the legislature presumably opens this law up.

**Keith:** It's an exciting one to keep our eyes on, for sure.

**Tony:** Yes, definitely.

**Olivia:** Absolutely. Emergency planning and management. We're seeing a lot of this already at the federal level.

There's a law, actually, that just passed last week. It's a mouthful. Pandemic and All Hazard Preparedness and Advancing Innovation Act, which actually just passed last week.

Which created a national advisory committee focused on disaster planning for people with disabilities that has been tasked with reviewing federal policies and making recommendations to ensure that the needs of people with disabilities are properly factored into disaster planning.

There are actually a couple more federal bills that are in the works that are focused specifically on disability and emergency management planning. It's great that it's moving at the federal level, but we would like to see some of this at the state level, as well.

We had Irma come through. We have had Hurricane Michael, of course, come through. The disability population is at higher risk of death, of injury when it comes to disasters. We've this, of course, in Florida. We've seen it in California with wildfires.

This is something that we definitely need to be looking at to protect the disability community not being an afterthought and making sure that we're a big part of the planning. What to do with the

disability community. Make sure that they're protected, or getting them out when dealing with transportation, and where people can go for accessibility for shelters.

Making sure that home and community bases supports aren't lost in the middle of a hurricane or wherever natural disaster happens to move through.

**Tony:** I think that's the important piece. Rather than it being an afterthought, making it a forethought. We've seen in response to a lot of the recent calamities and disasters in the state and elsewhere that our legislature's tendency is to legislate based on what just happened.

If people died in a congregate setting or in a nursing home, or there was something that is headline grabbing, and correctly so, the legislature tends to hyper-focus on that aspect of how we plan, and coordinate, and manage through these terrible times.

Obviously, it's no surprise to anyone that disasters affect all people, regardless of disability status. Like Olivia said, there's certainly very obvious aspects of disability that are unique in this planning and that should be given forethought and pre-coordination so that when a category 5 storm is upon us or has just cleaned us out, we're not scurrying after the fact to try to put this all back together piecemeal.

We advocate to our clients to plan ahead. It would be nice if the legislature did the same thing.

**Olivia:** I think there's also this misconception, a lot of the times, too, that we think of people primarily being in institutional care. That's not necessarily the case. I think we're forgetting about the people that live in their own homes or in their own apartments that have home and community-based support.

We found a lot of that in Irma, that those people were being abandoned and cut off from home and community-based support and abandoned in their apartments for three, four days. Being cut off from those services. Not being provided transportation to shelters. Didn't have the correct disability to qualify for special needs shelters.

They were stuck and abandoned there. That was a huge problem within the communities, as well.

**Tony:** In addition to expecting to see new restraint and seclusion legislation filed in the 2020 session...We are hopeful that that will happen and that there are sponsors and members out there that will help galvanize traction behind this issue and understanding behind this issue.

The other elephant in the room, of course, is the second round of reporting from the Marjory Stoneman Douglass Public Safety Commission.

This year's reporting, which came out in January, you'll see that the commission, largely out of a respect for the fact that the 2018 legislature in Senate Bill 7026 from that session, passed broad revisions to mental health notions within the state education laws. A lot of new processes. A lot of new ideas.

On page two of the commission's reporting, they basically explained that those new changes need time to take root, and to flourish, and also, to be understood and coordinated.

We live in a state with 67 counties, which necessarily means that there's at least 67 different interpretations and understandings of how this all adds up and what should be done in response. It's important to not just pass these things as a patchwork solution one time and then move on.

It's important to recalibrate, and revisit, and to keep these discussions moving, and to keep ourselves connected to the discussions.

The commission has met this year, even after its first round of reporting, several times. It continues to meet. Its next round of reporting is expected out in January 2020, which will put it very close to week two of next year's legislative session.

As we saw with this year's public safety laws, we expect that the recommendations from this commission will be very highly regarded by the legislature and safeguarded as such. Of course, the discussion through the legislature's committee process will be robust. We will be a part of that discussion.

Folks who are interested in this work and in these evolutions, and how this stuff is changing should stay tuned to what we're doing. We'll try to make sure that others that are interested can get the best information so that they, themselves, can advocate, as well.

**Keith:** Absolutely. Thank you both for being guests today. This has been a very informative and enlightening discussion. I hope our listeners really got a lot out of this, as much I did. Thanks again for being here. I really appreciate it.

**Tony:** Definitely.

**Keith:** You can also get more information about the legislation we discussed today, as well as much more, at [www.disabilityrightsflorida.org/legislation](http://www.disabilityrightsflorida.org/legislation).

Thank you to everyone for listening to the You First podcast or reading the transcript online. Please email any feedback about the show to [podcast@disabilityrightsflorida.org](mailto:podcast@disabilityrightsflorida.org).

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