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COMPELLED SPEECH: YOU CAN'T MAKE ME SAY THAT



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Managing Risk by Embedding Mental Health Co-responders in Police Departments

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JASMINE DUTTON, *Administrative Associate, Eau Claire, Wisconsin Police Department*



INTRODUCTION

The impact of individuals experiencing mental illness is a growing challenge in our country. Nearly 44 million people suffer from mental illness each year, and many of them lack access to adequate resources to address their difficulties. It is also common for people to struggle with short term emotional crises brought on by specific events, drug or alcohol use, or other factors. Suicide rates continue to increase across the country even among individuals with no known mental illness.

People experiencing mental illness often neglect their basic needs which leads to welfare check calls to law enforcement. Because the signs of mental illness can mirror the signs of drug or alcohol impairment the police are sometimes called to investigate disorderly conduct when individuals are undergoing mental health crises.

Individuals experiencing mental illness are more likely to come into contact with law enforcement, and those law enforcement interactions carry significant risks. Police officers often contact people experiencing mental illness because there is no one else available to respond. The behavior of these individuals can be erratic, unpredictable, and sometimes dangerous. People struggling with mental illness are less likely to comply with verbal commands, and police use force more often in encounters with these individuals than with the general public. Increased use of force levels also carries increased risks of injuries and litigation.

Lawsuits filed against law enforcement agencies can cost taxpayers millions of dollars, and can also negatively impact police department morale and the relationship between the police department and the community. Even when police interactions with individuals experiencing mental illness do not carry an elevated risk of injuries or litigation, the interactions can require significantly more time and resources than other calls for service. Prudent municipal attorneys do not wait to act until problems arise from these encounters, but instead work proactively with their risk managers and law enforcement agencies to develop evidence-based programs to reduce these potential risks. As Lexipol founder Gordon Graham is fond of saying, risks that are predictable are preventable.

As communities across the country continue to examine ways to improve outcomes and reduce the costs of interactions between police officers and individuals experiencing mental illness, many have adopted a risk management approach. Risk management seeks to identify, assess, and prioritize risks and then develop policies and programs that help manage or mitigate those risks. Gathering and analyzing data is an important component in developing effective risk management plans.

Police work carries inevitable risks, which often fall within one of three categories: 1) injury or harm to the public caused by an officer or agency's actions; 2) injury or harm to officers; or 3) injury or harm to public trust or law enforcement agency's public perception. The costs associated with these risks are significant, and national initiatives have begun to collect data that will support best practices to manage and mitigate these risks.

Communities across the country have spent years seeking to manage or mitigate the risks associated with police department interactions with people experiencing mental illness. Crisis intervention training for law enforcement officers has become a recognized best practice to improve outcomes in such cases. Recently many communities have developed policies and programs that include embedding mental health co-responders within their police departments. Because many mental health co-responder programs were recently

implemented, data on their effectiveness is limited. However, the results appear to show that these programs complement the extensive crisis intervention training already provided by many communities to law enforcement officers.

This article will examine the potential benefits of embedding mental health co-responders within police departments. The potential benefits include increasing the safety of those involved in such encounters; helping ensure that people experiencing mental illness are directed to the most appropriate resources; decreasing the number of police encounters with such individuals; reducing the costs associated with these encounters (including litigation costs); and improving the speed with which problems associated with these encounters are solved.

Mental Health Co-Responder Programs

Law enforcement agencies across the country have spent the last 40 years working with mental health professionals to develop innovative strategies to improve outcomes with individuals experiencing mental illness. In the 1980s many law enforcement agencies began to implement crisis intervention training. The purpose of crisis intervention training was to train law enforcement on how to understand the signs and symptoms of mental illness so that people experiencing mental illness could receive treatment instead of incarceration, and to improve law enforcement outcomes with people suffering from mental illness. Crisis intervention training is now widely accepted as a best practice for law enforcement.

Seeking to build on the progress made by crisis intervention training, many communities have developed programs that include police department embedded mental health Co-Responders. Programs utilizing mental health Co-Responders can vary by community depending on the size of the community and police department, and based on other factors.

Eau Claire, Wisconsin, established the mental health Co-Responder program within its Police Department to safely and effectively provide services to individuals with mental illness, and to complement the extensive crisis intervention training provided to police officers. In describing the new program, Eau Claire Police Chief Matt Rokus mentioned the significant rise in police calls involving individuals experiencing mental illness, and said the police department needed to develop preventative approaches to this issue. The initial Co-Response team consisted of a Co-Response coordinator and a Special Operations Sergeant, and the community is considering expansions to the program. The Eau Claire Police Department collaborates with co-response to develop an overall intervention strategy to guide police officers' interactions with those experiencing a mental health crisis or other behavioral health component where co-response would be beneficial. Eau Claire's mental health Co-Responder is a licensed clinician and is responsible for management of the program, clinical oversight, provision of mental health assessment for individuals in need, follow up contacts, and referrals to appropriate services.

Yakima County, Washington embeds four designated crisis responders within the Yakima Police Department. Their Co-Responders work out of the police department buildings, and ride in squad cars wearing tactical vests helping respond to individuals having mental health crises or otherwise in need of behavioral health services.

The San Antonio Police Department has an internal mental health unit with an assigned sergeant, two detectives, ten patrol officers, and three civilian clinicians who are master's-level professional counselors. One counselor in the unit specializes in drug and alcohol treatment. Each police officer on the San Antonio mental health unit receives extensive training in crisis intervention techniques, de-escalation, and connecting people in crisis with necessary mental health resources.

The Duluth, Minnesota Police Department Mental Health Unit includes two licensed independent clinical social workers who work out of the same location as the sworn officers assigned to the mental health unit. Duluth's Co-Responders respond to requests for service alongside officers or on their own, and they collaborate with numerous agencies in Duluth that provide services to individuals with mental illness.

Grand Junction, Colorado developed a police department embedded Co-Responder program in 2018 after receiving a state grant. Their program paired a licensed professional counselor or social worker

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Co-responders *cont'd from page 17*

with a sworn police officer, and they responded together to active crisis calls in the community with a focus on de-escalation, screening and assessment, and the development of next step action plans. The goals of Grand Junction's program were to 1) resolve forty percent of the calls without transporting the individual to a hospital; 2) minimize the use of high-cost services like the emergency room; and 3) increase the availability of other uniformed police officers to respond to incoming criminal calls.

Although there may be differences in how communities construct their mental health Co-Responder programs, their common purpose is to improve outcomes and manage the risks inherent in police department encounters with individuals experiencing mental illness.

Increasing Safety

Developing policies and procedures that include a police department embedded mental health Co-Responder can make police encounters with individuals experiencing mental illness safer. As noted earlier, police encounters with such individuals are more likely to involve force than encounters with the general public. This includes increases in the use of lethal force. According to one study, people with untreated mental illness are sixteen times more likely to be killed during a police encounter than the general public. These disparities are unsurprising because the behavior of individuals struggling with mental illness can be erratic, unpredictable, and sometimes dangerous. Decreases in police use-of-force results in fewer injuries to suspects, to law enforcement officers, and to the general public.

Crisis intervention training for police officers is an important component of increasing the safety of police encounters in these scenarios. After the introduction of crisis intervention training in Memphis, police officer injuries during encounters with individuals experiencing mental illness dropped by eighty percent. Embedding Police Department mental health Co-Responders complements crisis intervention training and further increases the safety of police encounters with individuals experiencing mental illness.

Grand Junction, Colorado's Police Department provides an example of the increased safety provided by embedded mental health Co-Responders. During a two-year reporting period, Grand Junction mental health Co-Responders accompanied police officers on thousands of calls, and they reported the use of force in only five of those calls. After initially utilizing a verbal de-escalation technique, three of those calls concluded in police officers going "hands-on," two involved no injury, and one ended with a minor scrape to the officer's knuckle. The two other incidents involved use of less lethal tools in situations that could have escalated if police officers were not also present. The teamwork of the Co-Responders and police officers safely resolved the situation and the persons in crisis were successfully connected with appropriate services.

Recent use of force lawsuits also demonstrate opportunities to make police encounters with individuals experiencing mental illness safer. In *Kisela v. Hughes* the United States Supreme Court examined a case where law enforcement shot an individual (Hughes) engaged in erratic behavior with a knife. When police arrived, Hughes held a large kitchen knife, had taken steps toward another woman standing nearby, and refused to drop the knife after at least two commands to do so, whereupon an officer shot Hughes. Police then handcuffed Hughes, called paramedics, transported her to a hospital for treatment of non-life-threatening injuries.

All three police officers later said that at the time of the shooting they believed Hughes to be a threat to a bystander. Officers later discovered that Hughes had a history of mental illness that likely contributed to her erratic behavior shortly before the shooting.

Another instructive recent case is *Aguirre v. City of San Antonio*. In Aguirre police were dispatched to respond to an apparently mentally disturbed man walking down the middle of a busy divided highway waving his hands. The first officer on the scene drew her firearm, ordered the man to "come here" and then followed with "I'm going to shoot you, mother f----r." He ignored the commands and kept walking. Officers observed what appeared to be fresh needle marks on the man. Three police officers grabbed grabbed him, handcuffed him, and then dropped him over a concrete barrier. The man resisted, and eventually five different officers struggled to gain control of the man. After more than five minutes of being held down with pressure to his arms and back the officers observed that the man was no longer breathing or responsive, and eventually he died in police custody.

Kisela and *Aguirre* provide examples of situations where a police department embedded mental health Co-Responder could be beneficial. Situations involving individuals experiencing a mental health crisis can be made safer with both law enforcement and mental health professionals quickly responding, particularly when the individual is armed or otherwise poses a threat to public safety. Sending mental health professionals without law enforcement to situations similar to *Kisela* or *Aguirre* would not be safe. Although the mental health training might provide benefits in communicating with the mentally ill individual and possibly assist in de-escalation, the mental health professional lacks law enforcement officers' training, experience, and tools to protect the public from violent individuals or individuals who may need to be restrained for their own safety or the safety of the public.

Communities utilizing police

department embedded Co-Responder programs get the benefits of sending both law enforcement and mental health professionals to situations involving people experiencing mental illness, and these skills complement each other in ensuring the safety of everyone concerned.

Directing Individuals to Appropriate Mental Health Resources

Individuals experiencing mental illness are often better served by behavioral health professionals rather than incarceration. Embedded mental health Co-Responders can help contribute to more timely and accurate needs assessments compared to being arrested, incarcerated, or transported to a facility. Once an on-scene needs assessment is complete, then appropriate resources can be directed. But the benefits of embedded Co-Responders do not stop at the scene of an encounter.

Co-Responders gather helpful information on scene which can be used for case management and effective follow up after the initial contact. Once clearing the initial scene, Co-Responders have the time and expertise to create an ongoing plan for services. In formulating these ongoing plans Co-Responders often interview family members and others familiar with the individual experiencing mental illness, and share this information with law enforcement and other agencies to ensure future contacts with the individual are trauma informed and fit the needs of the specific individual experiencing mental illness. Because Co-Responders are licensed mental health professionals, they understand which resources best fit an individual's specific needs, and can help coordinate ongoing services between organizations to provide a wraparound level of care

A study of county jails in Washington State found that of the inmates receiving Medicaid booked into the Yakima County jail in 2013, forty-eight percent needed mental health treatment and fifty-four percent needed substance abuse treatment. Yakima's Co-Responder program now seeks to ensure that people are not incarcerated if mental health treatment is more appropriate and effective.

Decreasing the Number of Encounters with Law Enforcement

Repeat police contacts for people experiencing mental illness is a significant problem. A recent survey of law enforcement officers asked what are the top three challenges they face on calls involving people who are mentally ill or experiencing a mental health crisis. The most common answer, with eighty percent of respondents, was repeat contacts with same person who does not or cannot seek help.

By helping connect individuals experiencing mental illness with the most appropriate resources, embedded mental health Co-Responders help decrease law enforcement encounters. For example, Grand Junction, Colorado enjoyed a significant reduction in repeat encounters with individuals experiencing mental illness after instituting its Co-Responder program, with seventy-eight percent of those individuals contacted only once. Other communities utilizing police department embedded mental health Co-Responders have experienced a similar decrease in the number of repeat encounters with law enforcement.

Reducing Costs and Litigation

Reducing law enforcement encounters with individuals experiencing mental illness, reducing the likelihood force is used in such encounters, and improving the overall resolution of these encounters will lead to reduced law enforcement and litigation related costs. Unnecessary arrests and avoidable use of force incidents not only harm people experiencing mental illness, but can also cost communities more money and invite more litigation.

Yakima County, Washington estimates it costs approximately ninety-two dollars a night to house someone with mental illness. If the jail houses multiple people each day that would be more appropriately served by mental health treatment then the County would spend tens or hundreds of thousands of dollars on an approach that is not effective. That does not include the amount of money spent on prosecutors, public defenders, judges and court staff, and other employees needed to manage the criminal caseload resulting from the arrests and incarceration.

Additionally, the more time law enforcement spends on individuals experiencing mental illness, the less time thy can devote to other policing efforts, such as proactive policing, crime prevention, community outreach, and other emergency calls for service. Halifax, Nova Scotia, found the time police officers spent on the scene of mental health calls fell significantly the year following the implementation of co-responder team services. Similarly, another study reported the average time officers devoted to calls with a person in a mental health crisis was fifty-two minutes when a co-responder was involved, compared to two hours and forty-six minutes without a Co-Responder.

Reducing the likelihood that force is used in encounters with individuals experiencing mental illness reduces litigation related costs. The cost of litigation involving law enforcement use of force is skyrocketing, and the landscape of federal civil rights lawsuits involves significant risks of loss even when law enforcement use of force is consistent with legal standards. Federal civil rights lawsuits are generally tried in the counties where federal district courts are headquartered. The jury pools from many of these urban areas tend to be less favorable to law enforcement compared to the general public. More federal civil rights lawsuits are being filed in the wake of George Floyd's death,

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Co-Responders *cont'd from page 19*

and involve higher settlements and judgments compared to similar lawsuits brought only a few years ago, even in cases involving no wrongdoing by law enforcement. Additionally, successful plaintiffs in federal civil rights lawsuits are entitled to attorney's fees, and these fees can sometimes exceed millions of dollars even in cases where the underlying judgment is small.

The potential risks and costs of police encounters with people experiencing mental illness are quite significant, so the cost of mental health Co-Responders could be a very effective investment. This may be a situation where an ounce of prevention is worth a pound of cure.

Deploying Mental Health Services More Efficiently

Police department embedded mental health Co-Responder programs allow communities to deploy mental health services more efficiently. Police departments across the country report that even when well trained officers make mental illness assessments it can take hours for mental health counselors from other agencies to arrive. Many government agencies employing mental health clinicians are not staffed 24/7, and tracking down an available mental health clinician from another agency includes inevitable delays.

Mental health Co-Responders embedded within police departments, on the other hand, can often respond immediately. Fast response times can be critical in many mental health crises. A faster response can help de-escalate a situation before it gets out of hand, and as discussed earlier, it can help make police encounters with individuals experiencing mental illness safer.

Other Benefits

Beyond the crisis intervention benefit in the field, Co-Responders are also a valuable asset and training resource for police departments. The presence of embedded mental health Co-Responders provides additional training and discussion opportunities for police departments seeking to address the challenges of encounters with people experiencing mental illness in the most effective way. In the City of Eau Claire, the mental health Co-Responder provides annual mandatory crisis intervention training to all police officers in addition to significant amount of other related training officers receive.

Conclusion

Because police department embedded mental health Co-Responder programs are still relatively new, outlets continue to gather data regarding their efficacy. Nevertheless, initial results demonstrate police department embedded mental health Co-Responders can help improve outcomes, and can help manage and mitigate risks inherent in police encounters with individuals experiencing mental illness. Prudent municipal attorneys will recognize the potential benefits and will explore ways to ensure that police encounters with individuals experiencing mental illness carry as little risk as possible.

Notes

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13. Abramson, *supra* note 1.
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24. Lexipol, *supra* note 1.
25. Gregory, *supra* note 1.
26. Goodell, *supra* note 12.
27. *Assessing the Impact of Co-Responder Team Programs: A Review of Research*, IACP/University of Cincinnati Center for Police Research and Policy (2020) available at https://www.theiacp.org/sites/default/files/IDD/Review%20of%20Co-Responder%20Team%20Evaluations.pdf.
28. Goodell, *supra* note 12

Listserv *cont'd from page 25*

Houston 2,288,250; Phoenix 1,624,569; Philadelphia 1,576,251; San Antonio 1,451, 853; San Diego 1,381,611; Dallas 1,288,457; San Jose 983,489; Austin 964,177; Jacksonville 954,614; Fort Worth 935,508; Columbus 906,528; Indianapolis 882,039; Charlotte 879,709; San Francisco 815,201; Seattle 733,919; Denver 711,463; Oklahoma City 687,725; Nashville 678,851; El Paso 678,415; Washington 670,050; Boston 654,776; and Las Vegas 646,790.

A few observations: Cities on the 1970 list that did not appear on the 2022 list include Detroit, Baltimore, Cleveland, Milwaukee, Memphis, St. Louis, New Orleans, and Pittsburgh. Detroit suffered the longest fall dropping off the 2022 list after being number five in 1970. Baltimore dropped off from number seven. Other significant drops include Cleveland, which dropped off from tenth on the list, and Milwaukee, which dropped off from number twelve.

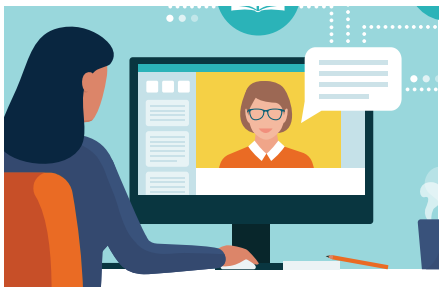
Cities that were not on the list in 1970 but do appear in 2022 include San Jose, Austin, Fort Worth, Charlotte, Oklahoma City, Nashville, El Paso, and Las Vegas. The highest jump belongs to San Jose which went from not on the list to number ten. It was closely followed by Austin which jumped from not being on the list to number eleven, Fort Worth which showed up at thirteen, and Charlotte at sixteen.

The top three cities on the list stayed the same, except Los Angeles and Chicago switched places, while six of the top ten cities in 1970 remained in the 2022 top ten. In all, seventeen cities appeared on both lists.

One could look at the same factors used in comparing Columbia and Charlotte for virtually all explanations on the list. San Jose's move from off the list to the top ten is likely due in large part to its location in Silicon Valley and the rapidly evolving technology industry. It is home to Apple, Google and Facebook. Conversely, Detroit dropping off the list from its number five position is likely in great part because of its dependence on the auto industry and the changes that sector has seen over the past fifty years.

In some cases, it is easy to pinpoint the likely cause of rises and falls in population. But in others it appears to be a mixture of all things discussed herein. One thing is for sure, however: annexation will continue to be a significant factor as cities grow, and will pose challenges for local government attorneys.

The prosecution rests, your honor… ML



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