ADA AND LAW ENFORCEMENT

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DISCLAIMER

- Although this presentation discusses legal concepts and the application of the law to various factual situations, the presentation and the discussion **does not** constitute legal advice.
- Specific legal advice should be sought from your City Attorney's Office, County Counsel's Office or retained special counsel.
- Always consider the specific law that is applicable in your jurisdiction.
- Please let me know if you have any questions.

INTRODUCTION

- What is the ADA?
- Does the ADA apply to policing?
- Areas of Concern.
- How can departments protect themselves from liability?

WHAT IS THE ADA?

- The Americans with Disabilities Act (ADA) became law in 1990. The ADA is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public.
- The purpose of the law is to make sure that people with disabilities have the same rights and opportunities as everyone else.
- The ADA gives civil rights protections to individuals with disabilities. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services, and telecommunications.

WHAT IS THE ADA?

- Title II of the ADA prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities.
- It applies to all state and local governments, their departments and agencies, and any other instrumentalities or special purpose districts of state or local governments.
- It clarifies the requirements of section 504 of the Rehabilitation Act of 1973, as amended, for public transportation systems that receive federal financial assistance, and extends coverage to all public entities that provide public transportation, whether or not they receive federal financial assistance.

TITLE II: STATE AND LOCAL GOVERNMENT PUBLIC ENTITY - WHO IS COVERED?

- Regardless of the public entity's size, they include, but are not limited to:
- State and local agencies
- State and local courts
- State police, local police and sheriffs
- State and local prisons and jails
- Public medical or health care facilities and clinics
- Public mental health facilities and clinics

WHO IS AN "INDIVIDUAL WITH A DISABILITY?"

- An individual meets the Americans with Disabilities with Act definition act of "disability" that would qualify them for reasonable accommodations if they have "**a physical or mental impairment that substantially limits one or more major life activities** (sometimes referred to in the regulations as an "actual disability")."

WHO IS DISABLED?

- According to an annual study by the University of New Hampshire:
- 12.8% of the total population have a disability
- 20.1% of the population in West Virginia have a disability
- 35.2% of people over 65 have a disability

HOW DOES THE ADA APPLY TO POLICING?

- Law enforcement officers must respond to and interact with everyone, and that includes people with disabilities.
- Officers may need to communicate with a suspect or witness who is deaf, arrest and transport an individual who uses a wheelchair, respond to an individual experiencing a psychiatric crisis, or assist a crime victim with an intellectual disability.
- While there is no specific requirement in the ADA or its regulations for law enforcement officers to be trained on disability issues, it's certainly a good practice that can help ensure compliance and reduce risks for both officers and citizens.

PENNSYLVANIA DOC V. YESKEY (1998) 524 U.S. 206

- Yeskey was sentenced to 18 to 36 months in a Pennsylvania correctional facility, but was recommended for placement in a Motivational Boot Camp for first-time offenders, the successful completion of which would have led to his parole in just six months.
- When he was refused admission because of his medical history of hypertension, he sued petitioners, Pennsylvania's Department of Corrections and several officials, alleging that the exclusion violated the Americans with Disabilities Act of 1990 (ADA), Title II of which prohibits a "public entity" from discriminating against a "qualified individual with a disability" on account of that disability.

PENNSYLVANIA DOC V. YESKEY (1998) 524 U.S. 206

- The District Court dismissed for failure to state a claim, holding the ADA inapplicable to state prison inmates, but the Third Circuit reversed.
- State prisons fall squarely within Title II's statutory definition of "public entity," which includes "any … instrumentality of a State … or local government." §12131(1)(B).
- There is no ambiguous exception that renders the coverage uncertain. The State's attempts to derive an intent not to cover prisons from the statutory references to the "benefits" of programs and to "qualified individual" are rejected; some prison programs, such as this one, have benefits and are restricted to qualified inmates.

SHEEHAN V. CITY AND COUNTY OF SAN FRANCISCO (2015)

(2015) 135 S.CT. 1765

- Sheehan lived in a group home for individuals with mental illness. After Sheehan began acting erratically and threatened to kill her social worker, the City and County of San Francisco (San Francisco) dispatched police officers Reynolds and Holder to help escort Sheehan to a facility for temporary evaluation and treatment.
- When the officers first entered Sheehan's room, she grabbed a knife and threatened to kill them. They retreated and closed the door. Concerned about what Sheehan might do behind the closed door, and without considering if they could accommodate her disability, the officers reentered her room. Sheehan, knife in hand, again confronted them. After pepper spray proved ineffective, the officers shot Sheehan multiple times.

SHEEHAN V. CITY AND COUNTY OF SAN FRANCISCO (2015)

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- Sheehan later sued petitioner San Francisco for, among other things, violating Title II of the Americans with Disabilities Act of 1990(ADA) by arresting her without accommodating her disability. She also sued petitioners Reynolds and Holder in their personal capacities under claiming that they violated her Fourth Amendment rights.
- The District Court granted summary judgment because it concluded that officers making an arrest are not required to determine whether their actions would comply with the ADA before protecting themselves and others, and also that Reynolds and Holder did not violate the Constitution. Vacating in part, the Ninth Circuit held that the ADA applied and that a jury must decide whether San Francisco should have accommodated Sheehan.

SHEEHAN V. CITY AND COUNTY OF SAN FRANCISCO (2015)

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- Our decision **not** to decide whether the ADA applies to arrests is reinforced by the parties' failure to address a related question: whether a public entity can be liable for damages under Title II for an arrest made by its police officers.
- Only public entities are subject to Title II, *e.g.*, Pennsylvania DOC v. Yeskey, 524 U.S. 206 (1998), and the parties agree that such an entity can be held vicariously liable for money damages for the purposeful or deliberately indifferent conduct of its employees. **But we have never decided whether that is correct, and we decline to do so here, in the absence of adversarial briefing.**

VOS V. CITY OF NEWPORT BEACH (2018) 892 F.3D 1024

- On May 29, 2014, officers of the City of Newport Beach Police Department fatally shot Gerritt Vos ("Vos").
- The police responded to a call about a man behaving erratically and brandishing a pair of scissors at a 7-Eleven. The shooting happened while the police were deciding how to handle the situation, and Vos unexpectedly charged the doorway of the store with what appeared to be a weapon raised above his head.
- Vos's parents filed this action against the officers and the City, raising claims under federal and state law.

VOS V. CITY OF NEWPORT BEACH (2018) 892 F.3D 1024

- To state a claim under Title II of the ADA, a plaintiff generally must show: (1) [ ]he is an individual with a disability; (2) [ ]he is otherwise qualified to participate in or receive the benefit of a public entity's services, programs or activities; (3) [ ]he was either excluded from participation in or denied the benefits of the public entity's services, programs or activities or was otherwise discriminated against by the public entity; and (4) such exclusion, denial of benefits or discrimination was by reason of h[is] disability.

VOS V. CITY OF NEWPORT BEACH (2018) 892 F.3D 1024

- [T]he officers here had the time and the opportunity to assess the situation and potentially employ the accommodations identified by the Parents, including de-escalation, communication, or specialized help. While the defendants rely on the officers' pre-shooting conduct to argue they accommodated Vos to the extent required by the law, those facts arguably show further accommodation was possible. Id. at 1037

KING V. HENDRICKS COUNTY (2020) 954 F.3D 981

- Bradley King, who suffered from paranoid schizophrenia, was killed by a police officer on November 29, 2016, during an encounter at his home. Two Hendricks County reserve deputies went to the Kings' family home to perform a "welfare check" after Bradley called 9-1-1 and requested help. Matters then spun horribly out of control, though what precisely happened is disputed, aside from the fact that Bradley wound up dead. The only living eyewitnesses are the officers involved.
- Matthew King, Bradley's father, filed suit. The district court granted summary judgment to all defendants on the federal claims. The court concluded that there was no genuine dispute of material fact for trial; that Hays's actions did not violate Bradley's rights under the Fourth Amendment; and that the institutional defendants did not violate the ADA and Rehabilitation Act. King appealed the district court's judgment on the federal claims, and we now affirm.

KING V. HENDRICKS COUNTY (2020) 954 F.3D 981

- The deputies testified that upon their arrival, Bradley came out of the house, walked toward them, and pulled a ten-inch knife out of his shorts pocket. Deputies Hays and Thomas backpedaled, drew their service firearms, and yelled at Bradley to stop and drop the knife.
- Bradley disregarded their commands and kept moving forward. Then, with the knife in his left hand, left arm raised in front of him so that the blade was pointing toward the officers, he started running at Hays. When Bradley was about eight feet away, Hays fired one shot. It proved to be fatal.
- A large knife, which Bradley's father identified as one from the Kings' kitchen, was recovered from the ground near Bradley's left hand. An examination of the knife did not reveal any latent fingerprints.

KING V. HENDRICKS COUNTY (2020) 954 F.3D 981

- Plaintiff disputes the deputies' account. He asserts that Bradley was never violent, even when suffering a psychotic episode, and would not have charged at the police with a knife. He urges that circumstantial evidence, including but not limited to the bullet trajectory, the lack of fingerprints on the knife, and the fact that Bradley was right-handed and thus probably would not have held the knife in his left hand, substantially undermines the deputies' account.

KING V. HENDRICKS COUNTY (2020) 954 F.3D 981

- Other circuits have concluded that "the level of force that is constitutionally permissible in dealing with a mentally ill person," such as Bradley, " 'differs both in degree and in kind from the use of force that would be justified against a person who has committed a crime or who poses a threat to the community.' "
- "Consequently, a subject's mental illness is a factor that a police officer must take into account in determining what degree of force, if any, is appropriate."

KING V. HENDRICKS COUNTY (2020) 954 F.3D 981

- We agree with our colleagues that officers often should approach persons known or suspected to have a mental-health problem differently from the way they handle those whom they suspect of criminal activity.
- The critical consideration is whether a targeted person poses an immediate threat to the officers or others.
- The exigent circumstances presented by criminal activity and the already onerous tasks of police on the scene go more to the reasonableness of the requested ADA modification than whether the ADA applies in the first instance.

KING V. HENDRICKS COUNTY (2020) 954 F.3D 981

- We have been given no reason to believe that Hays's response would have been different had someone not suffering from a mental illness done the same thing, and King does not propose anything that Hays should have done differently to accommodate Bradley's mental illness.

KING V. HENDRICKS COUNTY (2020) 954 F.3D 981

- Bradley's death at the hands of police officers whom he called for help when he was suffering a mental-health crisis is undoubtedly heartbreaking for his family, as well as a sobering reminder about the difficulties of dealing with the mentally ill. Nonetheless, the record before us does not indicate that Hays was deliberately indifferent to Bradley's disability or that Hendricks County was deliberately indifferent to the needs of community members suffering from mental illness and failed adequately to train officers in how to handle such persons. Finally, there is no evidence that but for alleged discrimination on the basis of his disability, Bradley would still be alive.

COMMON CAUSES OF CONCERN

- People in mental health crisis
- Visually impaired people
- People with mobility issues
- People with cognitive disabilities
- People with unseen disabilities
- Deaf/Hard of Hearing people

AREAS FOR COMPLIANCE

- Receiving citizen complaints
- Interrogating witnesses
- Arresting, booking and holding suspects
- 911 calls
- Providing emergency medical services
- Providing medical care to inmates
- Use of Force/De-escalation

LESSONS LEARNED

- A policy is only as effective as the training as to the substance and requirements of that policy. If training is weak, unfocused or non-existent, then the policy will not be followed. Training must cover the full range of tasks which officers are expected to perform.

LESSONS LEARNED

- There is no factor more important to the avoidance of liability and the upgrading of the agency's professional performance and attainment of its standards than the quality of supervision.
- Accountability, accountability, accountability!
- Get out ahead of the scrutiny that will be coming from state and federal officials.
- Consider the scrutiny as an opportunity to improve the quality of service in your jurisdiction.

LESSONS LEARNED

- Prevention is the key to success
  - Independent, regular audits of performance and services provided to qualifying persons underADA.
  - All analysis of operation should be undertaken under the Attorney Work Product and Attorney-Client Privileges.
  - Monitor issues and address them early.
  - Coordination among all stakeholders
    - Coordination between facilities.
  - Learn from experience (mistakes) of others.
  - Settlement is always cheaper than litigation

WHAT CAN DEPARTMENTS DO TO REDUCE LIABILITY?

- Training, Training, Training.
  - Conduct real world practical training
- Regular audits of ADA compliance
- Partner with various ADA advocacy groups.
- Monitor agencies for new tools and techniques for dealing with qualified people under ADA.

QUESTIONS?

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