



## SLIDE 1 TITLE SLIDE

### LEGAL AND POLICY TOPICS, PART 1: Expanded CRIT Content

**Time:** 100 minutes

**Slides:** 35

**Purpose:** This module provides additional instruction on various federal and state laws and agency policies and procedures on disability rights. It builds upon the information presented within *CRIT Module 12. Legal and Policy Topics*.

**Instructor:**

It is recommended that this module be co-taught by a law enforcement instructor with experience in crisis response and a local attorney with knowledge and understanding of federal, state, and local disability rights laws. The attorney instructor should be a seasoned trainer of law enforcement who can engage officers in understanding the rights and responsibilities of officers and the individuals they serve under these laws. You may consider including an attorney from your jurisdiction's prosecuting attorney to assist with training, particularly an assistant prosecutor or assistant district attorney who handles civil commitment or mental health diversion cases, or a public defender or private defense attorney who specializes in representing clients with behavioral health conditions and/or developmental disabilities. You may also consider including attorneys from your state's protection and advocacy agency, as they regularly practice under disability rights laws and should be able to communicate relevant concepts. Protection and advocacy agencies work at the state level to protect individuals with disabilities by empowering them and advocating on their behalf. To find the protection and advocacy agency in your state, see <https://www.ndrn.org/about/ndrn-member-agencies/>. You can also consider reaching out to your regional ADA Center who often has attorneys or staff who train specifically about the ADA.



## Learning Objectives:

After completing Part 1 of this module, participants should be able to:

1. Define disability and describe which community members may fall under the legal definition of disability;
2. Describe federal and state laws that affect their interactions with persons with disabilities and those experiencing a crisis, including those perceived to have a disability;
3. Summarize legal obligations when working with persons with disabilities and those experiencing a crisis; and
4. Explain the standards for their state's civil commitment, the responsibilities of law enforcement agencies in the commitment determination process (based upon state and local laws), and when civil commitment may be an appropriate response.

## Activities:

This module employs lecture, question-and-answer, and discussion components to help participants understand and apply relevant legal principles.

## Additional Materials:

None



**Trainer Note:** Pacing is important in this module. As you will see, the content notes for the discussion of federal and state law include several legal concepts trainers may wish to impart to participants. However, it is also important that there is adequate time for active learning through questions and discussion. To help with this, trainer notes for each slide will offer one or two key learning points.

Be on the lookout for “system issues” about law enforcement practices and policies that participants may want to discuss, but that may take up more time than this module can accommodate. Instructors could consider the use of a “Parking Lot”—that is, a visual representation of issues mentioned (e.g., written on a whiteboard, written on a flip chart)—to capture ideas that could be discussed later in the training or flag potential follow-up opportunities for the most appropriate person to address at a later time.

Whenever possible, trainers should acknowledge and celebrate that trainees have committed to take this training course and to be problem-solvers during calls for service involving reports of people in crisis. Acknowledge that public safety is the first priority: Officers can and should be leaders in their agencies to champion policies and practices that aim to protect people with disabilities and those in crisis, the officers themselves, others on scene, and the general public.



## Legal and Policy Topics



### Part 1: Federal and State Law

### Part 2: Agency Policies and Procedures

### Part 3: Legal Considerations in Practice



## SLIDE 2 LEGAL AND POLICY TOPICS



**Trainer Note:** Explain that this module will be divided into three parts. Parts 1 and 2 will provide an overview of the legal landscape in which officers will be operating. In Part 3, officers will have the opportunity to practice applying various laws and policies to scenarios based on real-life cases and/or guidance materials from the Department of Justice. Emphasize that the module covers existing law and that it is important for officers to understand how they can avoid potential liability while serving their community.

This module will review federal and state law and agency policies and procedures that affect interactions between officers and people with disabilities and those in crisis. Officers will have opportunities to discuss factual scenarios that will give them the chance to apply their knowledge of laws and legal concepts.

**NOTE:** Trainers have three hours to present this module. Time should be used as follows, with breaks allocated as needed/appropriate:

- Part 1: Federal and State Law: 100 minutes
- Part 2: Agency Policies and Procedures: 30 minutes
- Part 3: Legal Considerations in Practice: 50 minutes

## Module Overview – Part 1



- The Legal Landscape
- Defining Disability
- U.S. Constitution
- Disability Rights Laws
- State Commitment Laws
- Strategies for Avoiding Liability
- Key Takeaways



## SLIDE 3 MODULE OVERVIEW – PART 1

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**Trainer Note:** Use this slide to walk through topics that will be addressed in Part 1 of the module.

- As discussed above, we will be talking about federal, state, and local laws that affect interactions between officers and individuals with disabilities and those in crisis.
- We will discuss what disability means.
- We will review some legal concepts under the United States Constitution that are relevant to the work of officers.
- We will also look at federal and state disability rights laws that impose affirmative obligations on law enforcement agencies and officers who interact with people with disabilities.
- We will discuss some strategies for how to avoid agency or personal liability for violating any of these laws, and then review key takeaways.

Part 1 of this module should take no more than 100 minutes, with 50 minutes for discussion of federal laws and 50 minutes for discussion of state laws.



## SLIDE 4 WHICH LAW WINS



**Trainer Note:** This slide introduces the concept that the following types of laws can affect how officers interact with people with disabilities and those in crisis:

- United States Constitution
- Federal statutes, including federal disability rights laws
- State constitution (of the state where this law enforcement agency is located)
- State and local statutes and regulations
- Agency policies and procedures

The text of these laws is interpreted in case law decisions, such as *Miranda v. Arizona*.

This slide also provides a graphical way to introduce the concept of supremacy—that is, that certain types of laws will “win” when they come into conflict with other laws. The Constitution always wins, followed by federal laws, followed by state laws, then by agency policies and procedures. There are some exceptions to this general rule, but these fall outside the scope of this curriculum.

The following content note provides additional detail, but the points above about types of laws and supremacy are the key points to make here.



**Content Note:** The United States Constitution is the supreme law of the land. Every other law of any kind must be consistent with, and must not violate, the United States Constitution. The Constitution always wins.

After the Constitution comes federal statutes and federal case law: these laws must be consistent with, and must not violate, the United States Constitution. However, any state



constitution or state statute must be consistent with, and must not violate, a federal statute. For example, later in this module, we will talk about the Americans with Disabilities Act (ADA), a federal statute that protects the civil rights of people with disabilities. A state's involuntary commitment law must be consistent with, and must not violate, the ADA.

After federal laws come state constitutions, state statutes, and state case law. State statutes and case law must not violate the state's constitution, and all of these must not violate the United States Constitution or federal laws. Some cities and towns have their own local ordinances, but they must be consistent with, and must not violate, the United States Constitution or any other federal or state law.

Law enforcement policies and procedures are not necessarily law, but they do apply to everything that a law enforcement officer does. Law enforcement policies and procedures must also be consistent with, and must not violate, the United States Constitution or any other federal, state, or local law.

## Defining Disability



Under the Americans with Disabilities Act (ADA), a person has a **disability** when they:

- Have a **physical or mental impairment** that **substantially limits** one or more **major life activities**.
- Have a **record** of such impairment.
- Are **regarded as** having such an impairment.



## SLIDE 5 DEFINING DISABILITY

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**Trainer Note:** Discuss the definition of disability using the content below as a reference. It is key to define the following bolded terms: What is a “physical or mental impairment”? What is a “major life activity”? What does it mean to “substantially limit” a major life activity?

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**Content Note:** The ADA defines disability to be any condition that substantially limits one or more major life activities. Major life activities include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Major life activities also include the operation of major bodily functions like the immune system, digestive system, bowels, bladder, neurological functioning, brain functioning, respiratory system, circulatory (blood) system, and reproductive functions. These activities are grouped together into the term, Activities of Daily Living (ADL).

If a major life activity is “substantially limited,” it is limited compared to how most people without disabilities perform the activity. Further, it is important to note that the positive effects of things like medication or hearing aids (but not ordinary eyeglasses or contact lenses) are not to be considered in determining whether someone has a disability or not. Finally, if the impairment is episodic (like many cases of epilepsy) or in remission (like cancer for some people) it is considered a disability if it substantially limits a major life activity when it is active.

Under the ADA, you can also have a disability if you have a record of having a disability (in the past)—such as having a history of mental illness, substance use, alcoholism, heart disease, or cancer—but do not currently have one.



You can also have a disability if people regard you, or treat you, as having a disability, whether or not you actually have one. For example, if an individual has an impairment that does not substantially limit major life activities (e.g., mild diabetes controlled by medication) or has no impairment but is rumored to have one that substantially limits major life activities (due to their appearance, behavior, or relationships with others), that individual is considered to have a disability and is protected under the ADA if they are excluded from participating in activities or are denied the benefits of a service or program because of the inaccurate belief that they have a disability. This theory, which is similar to that in cases of racial or gender discrimination, was articulated by the Supreme Court as follows: “[S]ociety’s accumulated myths and fears about disability and diseases are as handicapping as are the physical limitations that flow from actual impairment.” (*School Bd. of Nassau Cty. v. Arline*, 480 U.S. 273, 284 [1987].)

**NOTE:** Although current illegal drug use is not protected as a disability by the ADA, people who used illegal drugs in the past and are currently in recovery are protected.

Sources:

Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*, retrieved from <https://www.ada.gov/pubs/adastatute08.pdf>.

U.S. Department of Justice, 1993, *The Americans with Disabilities Act Title II Technical Assistance Manual*, Washington, DC: U.S. Department of Justice, retrieved from <https://www.ada.gov/taman2.html>.

U.S. Department of Justice, 2016, *Questions and Answers About the Department of Justice’s Final Rule Implementing the ADA Amendments Act of 2008*, Washington, DC: U.S. Department of Justice, retrieved from [https://www.ada.gov/regs2016/adaaa\\_qa.html](https://www.ada.gov/regs2016/adaaa_qa.html).

U.S. Department of Justice, 2017, *Examples and Resources to Support Criminal Justice Entities in Compliance with Title II of the Americans with Disabilities Act*, Washington, DC: U.S. Department of Justice, retrieved from <https://www.ada.gov/cjta.html>.



## U.S. Constitution

- Unreasonable stops/arrests
- Use of force
- Equal protection
- “Color of law”



## SLIDE 6

## U.S. CONSTITUTION

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**Trainer Note:** Participants likely have been introduced to many of the Constitutional law concepts on this slide in previous trainings. They are discussed here as a refresher and because there may be special impacts on the interactions of officers with people with disabilities and those in crisis.

### Key Learning Points:

- The standard for whether a stop, seizure, or use of force complies with the Constitution is whether it was objectively reasonable: Would a reasonable officer in the officer’s position have made the stop or used similar force?
- When determining whether the officer’s conduct is objectively reasonable, such that a stop, seizure, arrest, or use of force is constitutional, an important factor to consider is whether a person has a disability that may affect their behavior.

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**Content Note:** The U.S. Constitution affects how officers conduct themselves in the following ways, among others:

- **Unreasonable Stops and Seizures:** The Fourth Amendment to the Constitution protects individuals from unreasonable seizures “when they step from their houses onto the public sidewalks.” (*Delaware v. Prouse*, 440 U.S. 648, 663 [1979].) Stops made without reasonable suspicion of criminal conduct, or arrests without probable cause of criminal conduct, violate the Fourth Amendment. This could include stops or arrests of people with disabilities for acting in ways that others find unusual or disturbing. An officer could be called to a scene where someone is speaking loudly or unintelligibly or moving in a way that others find odd or disturbing. This may be a manifestation of a disability, and may cause concern, but without additional grounds, is there probable cause to arrest for disorderly conduct or disturbing the peace?



It should be noted, however, that actions like seizures that are taken with objectively reasonable, good faith reliance on a warrant comply with the Constitution, even if the warrant is subsequently found to be defective. (*United States v. Leon*, 468 U.S. 897 [1984].)

- **Excessive Force:** The Fourth Amendment also governs claims of excessive force during the stop, search, or arrest of a person. The standard for whether use of force is excessive is whether it would have seemed objectively reasonable to an officer on the scene. If the individual in question has a disability and is behaving in ways that are related to their disability, this may impact whether use of force is objectively reasonable—for example, whether the individual actually posed an immediate threat to themselves, the officer, or others, or whether the individual was actually resisting arrest or attempting to evade arrest by flight.

Courts have generally held that officers who encounter an individual who is acting in ways that are obviously related to a disability must de-escalate the situation and use less force. (See, e.g., *Estate of Armstrong ex rel. v. Vill. Of Pinehurst*, 810 F.3d 892, 900 (4<sup>th</sup> Cir. 2016) (citing *Martin v. City of Broadview Heights*, 712 F.3d 951, 962 (6<sup>th</sup> Cir. 2013), where, under the Fourth Amendment, “officers who encounter an unnamed and minimally threatening individual who is “exhibit[ing] conspicuous signs that he [i]s mentally unstable” must “de-escalate the situation and adjust the application of force downward.”)

- This can be the case even when the person is explicitly or even implicitly inviting the officer to use force against them (e.g., “suicide by cop”). The government’s interest in using force is diminished when that person has not committed a serious crime, is a person with a disability, and is engaging in disability-related behaviors. (See, e.g., *Vos v. City of Newport Beach*, 892 F.3d 1024, 1031-34 [9<sup>th</sup> Cir. 2019], where officers knew a person with a possible weapon was “mentally unstable [and] acting out,” genuine issue of material fact whether the government’s interest in using deadly force was diminished; see also, *Deorle v. Rutherford*, 272 F.3d 1272, 1283 [9<sup>th</sup> Cir. 2001], “Even when an emotionally disturbed person is acting out and inviting others to use force against him, the government’s interest in using such force is diminished by the fact that the officers are confronted not with a person who has committed a serious crime, but with a mentally ill individual.”)
- Using a taser to subdue an individual is considered a serious use of force and could be viewed as excessive when used to subdue a person with a disability. (See *Armstrong*, 810 F.3d at 900, “Deploying a taser is a serious use of force.”;

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see also, U.S. Department of Justice, Investigation of the Baltimore City Police Department 81 [Aug. 10, 2016], “[W]e found that BPD officers often resort too quickly to using force against individuals with mental health disabilities or in crisis. We found that on too many occasions, the officers’ unreasonable use of force involved use of tasers in drive-stun mode.”)

- However, officers should not rely solely on the observations of callers/witnesses who may report a crisis or suspicious incident. Many people in society don’t know what a crisis situation looks like or what mental health conditions look like and may make assumptions that an individual’s behavior is criminal. Although the law gives an officer the ability to use a totality of the circumstances test in determining whether any use of force is objectively reasonable, it is ultimately incumbent upon the responding officer(s) to articulate everything to justify their responses. Officers should make sure to conduct due diligence and make their own observations (and record everything) regarding whether an individual’s behavior may be related to a disability.

The Constitutional prohibition against excessive force applies not only to stops and arrests, but also to transport and custody. Courts ask whether the force used inflicted unnecessary and wanton pain and suffering. This may apply to when an officer transports a person for evaluation for involuntary commitment. Courts may also consider whether a person’s disability could increase the harm if excessive force is employed. (See, e.g., *Deorle*, 272 F.3d at 1284-85, which holds that, in cases involving a person with mental disability, “[l]ess than deadly force that may lead to serious injury may be used only when a strong governmental interest warrants its use, and in such circumstances should be preceded by a warning whenever possible . . . . [This] shooting violated Deorle’s right to be free from unreasonable seizures.”)

- **Equal Protection:** The Constitution and Title VI of the Civil Rights Act also prohibit discrimination based on race or ethnicity in stops, searches, arrests, custody, and transport. For our purposes today, officers must consider whether racial or ethnic bias affects their interactions with people with disabilities or those in crisis who are also members of a particular racial or ethnic group. Specifically, does bias make officers more likely to:
  - Use force (vs. de-escalation)?
  - Take a person into custody (versus linking them with service providers)?
  - Execute a petition for involuntary commitment (versus trying to de-escalate the situation and encourage the person to seek treatment or services voluntarily)?



- **“Color of Law:”** Two federal statutes permit persons who believe that law enforcement officers, acting under “color of law,” violated their rights under the U.S. Constitution or other federal statutes like the ADA or Title VI. 42 U.S.C. § 1983, to file a civil lawsuit to vindicate their rights. 18 U.S.C. § 242 permits criminal prosecutions for violations of the U.S. Constitution (or other federal statutes). Individuals who prevail in such lawsuits may obtain monetary damages, attorneys’ fees, and other remedies.
  - Attorneys’ fees could be more substantial than monetary damages, which is another incentive for officers to comply with applicable law and agency policies.

For more background on these and other Constitutional law concepts, see Barry T. Meek, *Crisis Intervention Team (CIT) Training: Legal Authority, Liability, and Use of Force* (Oct. 4, 2010), <http://www.cit.memphis.edu/modules/Law%20Enforcement/instructor/VA%20-%20Thomas%20Jefferson%20-%20Legal%20Authority,%20Liability,%20and%20Use%20of%20Force.pdf>.

## Disability Rights Laws



- Title II of Americans with Disabilities Act (ADA): Requires officers to make reasonable accommodations for people with disabilities
  - *Olmstead v. L.C.* – Case law
- Section 504 of the Rehabilitation Act
- Apply to everything officers do:
  - Stops
  - Searches
  - Arrests
  - Transports



## SLIDE 7 DISABILITY RIGHTS LAWS

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**Trainer Note:** Discuss the content on this slide using the notes below as a reference.

### Key Points:

- The ADA and Section 504 protect people with disabilities from discrimination on the basis of disability.
- Disability discrimination can take many forms.
- The ADA and Section 504 apply to everything that law enforcement agencies and law enforcement officers working for an agency do, including stops, searches, arrests, custody, and transport.

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**Content Note:** People with disabilities are primarily protected by two federal civil rights laws, the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act.

**Title II of the ADA** prohibits disability discrimination by state and local government agencies, including law enforcement agencies. (42 U.S.C. § 12132, “[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”)

In June 1999, the Supreme Court decided in *Olmstead v. L.C.* that the ADA is violated when a person with a disability is provided services in an institution when they could be served in the community. People with disabilities are living in the community, in the least restrictive settings, such as supported apartments, group homes, or independently. This case law can help explain to officers why people with disabilities live in communities rather than institutions.



**Section 504 of the Rehabilitation Act** prohibits disability discrimination by federal actors, including federal law enforcement agencies and officers, as well as recipients of federal funding, including grants to law enforcement agencies by the U.S. Department of Justice. (29 U.S.C. § 794(a), “No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . .”)

Courts have held that these laws apply to anything that a public agency or federal funding recipient does. (See, e.g., *Pennsylvania Dep’t of Corr. v. Yeskey*, 524 U.S. 206, 209 [1998].) This includes all the activities of law enforcement officers: stops, searches, arrests, use of force, transport, and detention. (See, e.g., *Seremeth v. Board of Cty. Comm’rs*, 673 F.3d 333, 338 ([4<sup>th</sup> Cir. 2012], ADA applicable to seizure and interrogation of Deaf individual; *Gorman v. Bartch*, 152 F.3d 907, 913 [8<sup>th</sup> Cir. 1998], ADA is “applicab[le] to transportation of arrestees”); and *cf. Haberle v. Troxell*, 885 F.3d 170, 181 [3d Cir. 2018], “No court of appeals has held that the ADA does not apply at all [to arrests].”)

**IMPORTANT:** Note that it is the law enforcement agency that is responsible for compliance with the ADA and Section 504. Individual officers may not be held responsible for violations of these laws. However, the same conduct that violates the ADA may also violate the U.S. Constitution or other laws, and individual officers may be held responsible for violating those laws.

The ADA and Section 504 apply when officers know, or should reasonably know, that an individual has a disability, including when:

- A call to 911 from a family member or friend indicates that an individual has a disability, and the 911 dispatcher relays that information to the responding officer.
- The officer reaches the scene and the individual is exhibiting apparent signs of a disability, in appearance or behavior.
- Someone tells the officer that an individual has a disability.
- The officer has prior knowledge of the individual and their disability.
- The officer is called to execute a petition for involuntary commitment.
- Responding to a call from a school setting and the officer is informed that the student has an Individualized Education Program (IEP) or is “in special education.”



As discussed earlier, the definition of “disability” in the ADA and Section 504 is broad. To avoid liability for violating these laws, in most situations in which an officer is dispatched, the officer should generally assume that the individual in question has a disability.

Note that other federal laws also protect certain groups of people with disabilities. For example, officers may be called to resolve situations in public schools involving students with disabilities who are protected by the Individuals with Disabilities Education Act (IDEA), where school staff may tell an officer that a student is “in special education” or has an IEP. Although the law enforcement agency would almost certainly not be responsible for protecting the student’s rights under the IDEA, any child who receives special education services is protected under the ADA and Section 504 of the Rehabilitation Act.

## Rights and Responsibilities



- People with disabilities (or perceived disabilities) have rights.
- Officers have the responsibility to ensure these rights are protected.
  - If an officer fails to meet that responsibility, this can lead to **discrimination**.



## SLIDE 8 RIGHTS AND RESPONSIBILITIES

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**Trainer Note:** The image of a coin is a visual representation of what the ADA and Section 504 should mean for officers who interact with people with disabilities. On one side, individuals with disabilities have civil rights under these laws. On the other side, officers are responsible for ensuring that these rights are protected. If an officer fails to meet this responsibility, this can lead to discrimination.





## Potential Types of Disability Discrimination



1. Overt/intentional discrimination/deliberate indifference
2. Wrongful arrest for disability-related behavior
3. Failure to ensure effective communication
4. Failure to reasonably modify practices, policies, and procedures
5. Disparate impact



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## SLIDE 9 POTENTIAL TYPES OF DISABILITY DISCRIMINATION



**Trainer Note:** This slide provides an overview of the theories, or potential types of discrimination that have been recognized by courts and by the U.S. Department of Justice (DOJ). The DOJ is responsible for issuing regulations that enforce the ADA and Section 504, including as applied to the conduct of law enforcement agencies and other justice entities like state and local courts and corrections agencies. The following slides will address each of these types of discrimination.

### Example 1: Intentional Discrimination/ Deliberate Indifference



**Purposely treating a person differently because of their disability, leading to harm.**

Example: An officer who grew up with a brother with an opioid addiction is assigned to an overnight shift patrolling a downtown area where people who use drugs are known to congregate. Every night she sees a group of men in front of a liquor store; one of them always seems "high." After a week on patrol, she arrests the man, not because he was doing anything wrong, but because she thinks he needs treatment. She does not arrest any of the other men in the group.



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## SLIDE 10

### EXAMPLE 1: INTENTIONAL DISCRIMINATION/ DELIBERATE INDIFFERENCE



**Trainer Note:** The following slides present vignettes as examples of the types of discrimination focused on in this section of the module. The trainer should provide a brief overview of that type of discrimination and read through each vignette.

Participants may want to “conduct an autopsy” of the facts presented in these slides, but time constraints will not permit in-depth discussion of the vignettes. Time permitting, ask participants why they think the vignette exemplifies that type of discrimination. There will be opportunities later in the module for a more thorough discussion of scenarios that should prompt discussion about how officers can take steps to avoid discrimination.

It is important to note how intentional discrimination works but also that there is no intent requirement for discrimination under the ADA. It doesn’t matter whether you intend to discriminate or not, only that the discrimination occurs. Emphasize the “deliberate indifference” standard here; if the officer is deliberately indifferent to the harms caused by their conduct during an interaction with a person with a disability, the agency may be liable for violating the ADA and Section 504—and may be liable for paying monetary damages to the person.



**Content Note:** Intentional discrimination is deliberately treating one individual (or group) differently than another, because of a perceived characteristic of that individual (or group). An example would be paying women less than men for doing the same job. Our civil rights laws protect people from being treated differently, in whole or in part, because of certain characteristics, including race, ethnicity, national origin, language, religion, sex, gender identity, and sexual orientation. (Cf. U.S. Dep’t of Justice, Civil Rights Division, Title VI Legal Manual 50 [Feb. 2021].) The ADA and Section 504 protect people with disabilities from being treated differently because of those disabilities. This could mean being



excluded from participating in a service or activity of a public agency because of a disability or being treated differently by that agency because of a disability.

The example on the slide illustrates the latter theory, being treated differently. Here, the officer arrested one of the men in the group in front of the liquor store, because he seemed “high,” and she thought that he needed treatment. Note that the officer does not seem to have any hostility or negative feelings against the individual because of his disability. Here the officer may have genuinely wanted to help the man, but she treated him differently because she thought he needed treatment for a substance use disorder. In what other ways could the officer have proceeded that would not include arrest?

The ADA and Section 504 do not have an intent requirement; you can violate these laws without intending to discriminate. Courts have held that acting with deliberate indifference to whether what you are doing harms someone constitutes intentional discrimination. To show deliberate indifference, a plaintiff must allege an officer knew that a federally protected right is substantially likely to be violated and that the officer acted or failed to act despite that knowledge. (See, e.g., *Haberle v. Troxell*, 885 F.3d 171, 180 [3d Cir. 2018].)

- For example, in one case, a Deaf woman returned home to her apartment and found her boyfriend lying unresponsive on the couch. She called 911 and asked for police to come with a sign language interpreter. Two officers arrived but did not bring the requested interpreter. They interviewed the woman using written notes and then gave her a note indicating that they would need to search her bedroom. She did not understand. Eventually, she contacted the apartment manager, who was able to sign a few words. She consented to the search but was very upset about what happened. The court held that the police department may have been deliberately indifferent to whether its failure to provide an interpreter violated the woman’s rights under the ADA. (See *Salinas v. City of New Braunfels*, 557 F.Supp.2d 777 [W.D. Tex. 2008].)
- Sending the wrong responder to a 911 call, when the call is about an individual with a disability, may be deliberately indifferent to the individual’s rights under the ADA. In *Harper v. City of Merced*, No. 1:18-cv-00562-LJO-SKO, 2018 U.S. Dist. LEXIS 191567 (E.D. Cal. Nov. 8, 2018), a man living with schizophrenia and bipolar disorder began experiencing symptoms of depression and suicidality. He agreed to go with his sister to a mental health facility; later he was placed on a “mental health hold.” After experiencing a psychotic break early the next morning, he fled the hospital on foot. A police officer was dispatched to the scene and chased the man, while other officers



secured the perimeter of the area. The officer tased the man three times and executed two “knee strikes” on the man before subduing him. The officer then arrested the man; later, the man was placed in a cell with another inmate who raped him. Charges against the man were later dropped. In its ruling on the case, the court held that it may have been deliberate indifference to the man’s rights under the ADA for the city not to send a trained crisis worker to de-escalate the situation instead of a law enforcement officer. (See also *Haberle*, 885 F.3d at 181-82, where the plaintiff was permitted to amend their complaint to allege deliberate indifference, by alleging a pattern of past injuries to others that would put that law enforcement agency on notice that its crisis response policies and procedures should comply with the ADA.)

Although proving an intent to discriminate is not required to prove a violation of the ADA and Section 504, courts have held that plaintiffs must show at least that the defendant was deliberately indifferent to the harm the conduct of its officers caused the plaintiff in order for the plaintiff to receive monetary damages against the law enforcement agency. (See, e.g., *Haberle*, 885 F.3d at 181; *Liese v. Indian River Cty. Hosp. Dist.*, 701 F.3d 334, 348 [11<sup>th</sup> Cir. 2012]; *Meagley v. City of Little Rock*, 639 F.3d 384, 389 [8<sup>th</sup> Cir. 2011]; *Duvall v. County of Kitsap*, 260 F.3d 1124, 1138 [9<sup>th</sup> Cir. 2001]; and *Powers v. MJBG Acquisition Corp.*, 184 F.3d 1147, 1153 [10<sup>th</sup> Cir. 1999].)

## Example 2: Wrongful Arrest



### Perceiving disability-related behaviors and characteristics as criminal.

Example: An officer on patrol observes a young man in a park. The man is repeatedly bringing a piece of string to his face. The officer stops and asks the young man what he's doing. The man replies that he's "stimming." The officer believes the man is referring to drug use and tries to take the young man into custody. A family member intervenes and tells the officer the young man has autism, but the officer proceeds to make the arrest.



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## SLIDE 11

## EXAMPLE 2: WRONGFUL ARREST



**Trainer Note:** Emphasize that law enforcement agencies may be held liable for situations where officers arrest people with disabilities for behavior that does not violate a criminal statute, but that is related to their disability. There are examples of other wrongful arrest situations below that you may discuss.

Note that participants may understand the concept of “illegal arrest” from past trainings. There may be state false arrest laws for which officers may be individually liable, but only the law enforcement agency is liable for wrongful arrest violations of the ADA and Section 504.



**Content Note:** Courts have been receptive to arguments that law enforcement agencies violate the ADA when officers arrest individuals with disabilities for conduct related to the person's disability that does not violate a criminal statute. (See, e.g., *Lewis v. Truitt*, 960 F. Supp. 175, 179 [S.D. Ind. 1997], where the motion for summary judgment was denied because a genuine issue of material fact existed as to whether officers arrested the plaintiff for his disability when, after being informed that the plaintiff was deaf, officers arrested him for failing to comply with commands.) This slide describes a situation in which the arrest of the man with autism was for behavior related to his disability that was not criminal.

The previous slide, about the arrest of someone who seemed “high” but whose behavior was not violating the law may also be an example of a wrongful arrest. Other examples include instances where an officer arrests:

- A Deaf person who does not respond to the officer's direction to stand still for a search, or the officer misinterprets their movements as resistance.
- A person with cerebral palsy for DUI because the person walks with a stagger during a test for intoxication.



- A person with autism because they try to flee the scene while experiencing sensory overload from police car lights and sirens.
- A person with a developmental disability who becomes agitated when the officer asks them to leave a location where they are allegedly trespassing.

### Example 3: Failure to Ensure Effective Communication



**Not ensuring that communication is as effective as communication with those without disabilities.**

Example: A mother calls police to report that her autistic son is "tearing up the house." The son is nonverbal and prefers to type messages on his phone to communicate. When the police arrive, the mother is cleaning up broken dishes while her son is sitting on the couch playing a video game. The police handcuff the son and do not let him use his phone to answer their questions.



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## SLIDE 12

### EXAMPLE 3: FAILURE TO ENSURE EFFECTIVE COMMUNICATION

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**Trainer Note:** Emphasize the following:

- Effective communication is required under the ADA and Section 504.
- In taking steps to ensure that communication is effective, in most circumstances, the officer must ask for and respect the individual's preference on how to communicate, and not impose their own preferences.
- Communication issues will come up regularly in crisis service calls, and officers should understand how individuals with intellectual and developmental disabilities (IDD), mental health conditions, and substance use disorders prefer to communicate.

Please use examples to illustrate key learning points.

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**Content Note:** DOJ's regulations enforcing Title II of the ADA require state and local governments, including law enforcement agencies, to provide communication aids and services needed to communicate effectively with people whose disabilities impair how they communicate, except when a particular aid or service would create an undue burden or a fundamental change in the nature of the law enforcement services being provided. People with different types of disabilities may be protected under these rules, including Deaf or hard-of-hearing people, but also people with IDD, mental health conditions, visual impairments, and other impairments that affect how they communicate.

It is important to understand that a law enforcement officer must give primary consideration to providing the aid or service requested by the person with the disability. If the person requests a sign language interpreter, the law enforcement agency must provide it, unless it would be an undue burden or would fundamentally change the nature of the activity. This comes up in the



context of stops and arrests: When is it okay to try to communicate through writing notes, for example, and when should you end questioning and wait until you have procured an interpreter? Generally, if the conversation is relatively complex, such as an interview with a person suspected of a crime or witness, a qualified interpreter (not a family member or friend) is needed to ensure effective communication.

Under the ADA and Section 504, law enforcement agencies do not have to provide personally prescribed devices, such as hearing aids, to a person with a disability. However, officers should permit a person to use their personal devices to communicate, as in the example on the slide.

The DOJ has issued helpful guidance specifically for law enforcement agencies and officers on how to communicate effectively with people with communication-related disabilities. See U.S. Department of Justice, *Commonly Asked Questions About the Americans with Disabilities Act and Law Enforcement* (2006) [hereinafter *Commonly Asked Questions*], [https://www.ada.gov/q&a\\_law.htm](https://www.ada.gov/q&a_law.htm); and U.S. Department of Justice, *Communicating with People Who Are Deaf or Hard of Hearing: ADA Guide for Law Enforcement Officers* (2006), <https://www.ada.gov/lawenfcomm.htm>.



#### Example 4: Failure to Provide Reasonable Modifications



Modifying policies, practices, and procedures when necessary to avoid discrimination.

Example: An officer takes two young people into custody after witnessing them breaking a store window. After asking a few questions, the officer suspects that one of them may have an intellectual disability. The officer doesn't change how he gives the person the *Miranda* warning. The person keeps repeating that they don't understand the information but signs the form anyway.



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## SLIDE 13

### EXAMPLE 4: FAILURE TO PROVIDE REASONABLE MODIFICATIONS

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**Trainer Note:** Be sure to emphasize that:

- The de-escalation techniques that participants are learning in other modules are reasonable modifications of standard agency policies and procedures that are required under the ADA and Section 504.
- It may also be a reasonable modification for the officer to seek assistance from disability service providers, including behavioral health crisis workers.

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**Content Note:** Under the ADA and Section 504, there is an affirmative duty to make reasonable modifications to a law enforcement agency's programs, activities, policies, practices, and procedures, when necessary, to avoid discrimination, unless doing so would fundamentally change the program or activity in question and/or compromise safety. This is different from a duty not to treat someone differently because of their disability—this is an affirmative duty to change what you do so that a person with a disability is treated fairly and equally. It is not a “special right”—it is an “equal right.” In other words, accommodations even the playing field, rather than giving an advantage over others.

Courts, and the U.S. Department of Justice, have identified the following examples of reasonable modifications:

- Law enforcement agencies purchase lift-equipped vans for transporting persons with mobility impairments. (See *Gorman*, 152 F.3d at 913.)
- A police department mandates the use of a breathalyzer test to determine whether a person is intoxicated, rather than asking individuals with disabilities affecting how they move to walk a straight line. (See *Commonly Asked Questions*, supra.)



- The department trains officers to avoid physically restraining individuals with diabetes during an insulin reaction, or individuals with epilepsy during a seizure. (See, e.g., *Graham v. Connor*, 490 U.S. 386, 388-89 [1989]) vacating a directed verdict for law enforcement officers after a person with diabetes sustained injuries when arrested by police during an insulin reaction; and *Fera v. City of Albany*, 568 F. Supp. 2d 248, 259 [N.D.N.Y. 2008] finding that there was a triable issue on an ADA claim regarding whether police officers knew about the plaintiff’s epilepsy and impending seizure when they put her in the back of a van after arresting her.)
- A law enforcement agency trains officers and dispatchers on how to recognize when behavior may be related to disability, and what to do when the officer recognizes this. (See *Commonly Asked Questions*, supra.)
- An officer uses de-escalation strategies during interactions with people with disabilities in crisis. (See, e.g., *Sheehan v. City & Cty. Of S.F.*, 743 F.3d 1211, 1216-17 [9<sup>th</sup> Cir. 2014], rev’d in part and cert. dismissed in part as improvidently granted, 135 S. Ct. 1765 [2015].)
- Officers collaborate with experts, including mobile crisis teams or trained clinicians working with police in a co-responder model, when called to a scene where a person with a disability appears to be in crisis. (See, e.g., *Harper v. County of Merced*, No. 1:18-cv-00562, 2018 U.S. Dist. LEXIS 191567, at \*23 [E.D. Cal. 2018].)

For people with IDD and/or mental health conditions, including those persons in crisis, officers have an affirmative duty to modify their standard practices and procedures to avoid harming the person. Research shows that following standard practices and procedures, including using physical restraint or force, can render encounters with people with disabilities (especially people with mental health conditions and/or substance use disorders) more dangerous to both the individual and the officer. Reasonable accommodations like de-escalation techniques and consultation with experts—including friends and family who know the individual—keep everyone at the scene safer.

Not every accommodation is reasonable, some that may not be deemed reasonable include:

- When the cost is prohibitive: Some modifications may be too costly; if so, the agency does not have to provide them.
- When the person with a disability is a “direct” threat: The ADA and Section 504 do not require a law enforcement agency to modify policies, practices, and procedures when a

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person is a “direct threat.” A direct threat is a significant risk to the health or safety of others that cannot be eliminated by a modification to the policy, practice, or procedure. Like the test for whether force is excessive, whether someone is a direct threat is an objective test. Factors to consider include the nature, duration, and severity of the risk, the probability that the potential injury will actually occur, and whether making a reasonable modification or providing communication aids and services will ameliorate the risk.

- When there is an emergency: In an emergency, where time is of the essence, some modifications may not be required. However, courts have held that exigent circumstances are narrowly interpreted, especially if officers could have safely attempted de-escalation and slowing down the scene but they proceeded to use force instead. (See, e.g., *Brunette v. City of Burlington*, Case No. 2:15-cv-00061, 2018 U.S. Dist. LEXIS 148141, at \*\*97-103 [D. Ver. Aug. 30, 2018].)

The DOJ has said that even where there is an emergency and/or the person with a disability may meet the objective standard for being a “direct threat,” that threat can be ameliorated in some circumstances, such as:

- If there is time for first responders to call a unit with special training, or call behavioral health mobile crisis workers, but they do not do so, or they do not wait for specially trained individuals to arrive and respond.
- If taking time to de-escalate the situation means that the emergency has dissipated, use of force is not warranted.
- If the individual with a disability is brandishing a weapon when the officer arrived, but no longer has access to it, lethal use of force is not warranted.

The example in the slide is based on DOJ guidance materials. For further information, see U.S. Department of Justice, *Examples and Resources to Support Criminal Justice Entities in Compliance with Title II of the Americans with Disabilities Act* (2017); and U.S. Department of Justice, *Commonly Asked Questions About the ADA and Law Enforcement* (2006), [https://www.ada.gov/q&a\\_law.htm](https://www.ada.gov/q&a_law.htm).

### Example 5: Disparate Impact



A policy or procedure that appears neutral on its face, yet disproportionately impacts individuals with disabilities.

Example: A police department analyzes its policies, practices, and procedures for interactions with people with serious mental illness (SMI). It determines that people with SMI make up 5% of the population in the jurisdiction, but people with SMI make up 25% of persons arrested by police officers.



## SLIDE 14

### EXAMPLE 5: DISPARATE IMPACT



**Trainer Note:** Disparate impact is generally a system issue; however, it is important to mention that statistical evidence may show that facially neutral law enforcement policies and procedures may have a disparate impact on people with disabilities.

The trainer should not spend too much time on this issue. Again, time constraints will not permit an “autopsy” of this issue.

The trainer can help participants understand that training and specialized first responder teams are among the ways that enforcement agencies, including this one, are addressing and attempting to reduce this disparity—and, indeed, all varieties of discrimination discussed in this part of the module. Take this opportunity to acknowledge that participants in this training are here because they want to solve these problems, and this training will help them be leaders in their agency.



**Content Note:** At times, a seemingly neutral policy or practice can have the unintended consequence of harming people with disabilities. In these instances, the ADA and Section 504 permit the filing of a discrimination claim.

The ADA and Section 504 prohibit facially neutral policies, practices, and procedures if they have a disparate impact on people with disabilities in their application. See 28 C.F.R. § 35.130(b)(3)(i), which states that a public agency “may not . . . utilize criteria or methods of discrimination . . . [t]hat have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability”. See also 28 C.F.R. § 35.130 (b)(8), which states that a public agency “shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability . . . from fully and equally enjoying any service, program, or activity.”) Where a facially neutral policy, practice, or procedure negatively impacts people with disabilities compared to people without disabilities (i.e., that people with disabilities are harmed in greater numbers than their presence in the overall population indicate they should be), this may be systemic disability discrimination.

## What Type of Discrimination?



- 1) Officer arrests someone on suspicion of intoxication, but the person is not intoxicated. They have a disability that affects their movement and speech.
- 2) Officer speaks to a person's family member instead of the person with a disability directly, because the person uses their iPad to communicate.
- 3) During booking, officer takes a cane from an individual who needs that assistive device, following the agency's standard operating procedure.



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## SLIDE 15

## WHAT TYPE OF DISCRIMINATION?



**Trainer Note:** After the previous slides introduced the types of discrimination that are actionable under the ADA and Section 504, the questions in this slide give the trainer a chance to gauge the participants' understanding of these types of

discrimination. For each example on the slide, the trainer can ask the participants: What type of discrimination is this? If a respondent answers correctly, ask how they knew the answer. If a respondent answers incorrectly, ask the group why the answer is incorrect and/or briefly revisit the appropriate material. **It's important to note that, in the field, officers may make a mistake and discriminate. When this happens, officers should work to correct this as soon as possible. However, a mistake is not a shield against potential liability.**

- **Example 1:** The person spoke and moved in ways that might seem like intoxication but were actually conduct related to the person's disability. People with IDD and people with cerebral palsy are among people with disabilities who may speak and move in ways that resemble intoxication but are not. **Discrimination Type: Wrongful Arrest**
- **Example 2:** The person prefers communicating with their iPad, but the officer does not honor this preference, instead speaking with the person's family member. Not only does this violate the requirement to communicate effectively using the method of communication that the person with a disability prefers, it also potentially impacts the accuracy of the information obtained from or through the family member, may put the individual at risk, or indicates that the information obtained is not being kept appropriately confidential. **Discrimination Type: Failure to Provide Effective Communication**
- **Example 3:** The officer should have modified the agency's standard operating procedure by permitting the individual with a mobility disability to keep using their cane. In almost all cases, permitting the standard use of a cane to assist with mobility would be a reasonable modification of agency procedures. **Discrimination Type: Failure to Make Reasonable Modification**



## SLIDE 16 STATE LAWS



**Trainer Note:** This slide introduces the next segment of the module, which focuses on state laws that regulate the conduct of law enforcement agencies and officers. Some slides are left partially or completely blank, so that the trainers can add discussion of concepts that appear in the laws of their specific state or locality.

Most of the discussion in this section focuses on concepts related to compliance with state involuntary commitment laws, including identifying less restrictive alternatives to commitment. Note, however, that the federal disability rights laws discussed in the previous section also apply to how officers execute involuntary commitment petitions.

## State Disability Rights Laws



*[insert your state's disability rights laws  
that are relevant for law enforcement]*



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## SLIDE 17 STATE DISABILITY RIGHTS LAWS



**Trainer Note:** Discuss your state's disability rights laws that are relevant for law enforcement. Most, if not all, states have disability rights laws that provide civil rights protections to people with disabilities. Many of these laws are co-extensive with the ADA and Section 504, but some may contain additional or different protections. Participants should have some knowledge of where the ADA and Section 504 are the foundation of disability rights protections in their state and where their state disability rights laws may provide greater protection. State laws may be tailored to address community concerns to provide greater protection to disability populations.



## SLIDE 18 CIVIL INVOLUNTARY COMMITMENT LAW



**Trainer Note:** This is a transition slide from the discussion on state disability rights laws.



## Commitment as a Last Resort



The civil commitment law is a **LAST RESORT** for resolution of a mental health crisis.

Using the least restrictive alternatives, when possible, is less invasive, protects the individual's rights, and increases the possibility of successful outcomes.



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## SLIDE 19

## COMMITMENT AS A LAST RESORT



**Trainer Note:** As the trainer, you must decide what is relevant from your state law and/or agency policies. This and the following slides represent key information that should be covered. Build the slides with information that is important for officers to know and understand as it pertains to their job when responding to mental health crisis events. Use the terminology consistent with your state's civil involuntary commitment law, such as protective custody.

**NOTE:** Systemic and other issues may arise during this segment. Be cognizant of time and have a strategy to address how these issues and questions will be handled later if time does not permit during this module.

Let the class participants know that before going into the specific elements of the Civil Involuntary Commitment Law, you want to first discuss alternatives to using that law, as it should be the action of last resort.

Review the two sentences on the slide to reinforce the use of less restrictive alternatives when responding to mental health crisis events. The civil involuntary commitment law can be used by officers; however, it should only be used for those who clearly meet the criteria for commitment (legal elements) and when there are no other appropriate, less restrictive alternatives available.

While less restrictive alternatives are less invasive, less frightening, and better protect individuals' rights, the reason to make civil involuntary commitment a last resort is that it can result in a total loss of liberty without the person ever having committed a crime. After being committed, the person may be kept for far longer than anticipated if they meet the state's criteria for commitment.



If the law references employing less restrictive alternatives prior to invoking the commitment law, the trainer should articulate where in the law this is written. If not established in state commitment laws, the trainer will want to reference federal and state disability rights laws.



### Alternatives to Using the Civil Involuntary Commitment Law



- Other crisis response resources – mobile crisis teams, crisis lines
- Community resources – case management, outpatient services, peer support
- Consult with family and friends for resources
- Voluntary admission
- Other state statutes for substance use, IDD, dementia



## SLIDE 20

# ALTERNATIVES TO USING THE CIVIL INVOLUNTARY COMMITMENT LAW



**Trainer Note:** Review what the alternatives are for someone in a crisis that may be under the influence of substances, have IDD, and/or have dementia. Remember that commitment should be considered an option of last resort. Officers should work closely with their community resources to identify potential services and supports and know when and how to make such referrals.

Briefly discuss other crisis response interventions with participants such as a community's mobile crisis teams or crisis call lines. If the community has other types of crisis response, please indicate those.

Explore the community resources that officers can refer or transport people to. This is a good place to emphasize what they learned earlier in the training or will learn about the various community resources available to them and how to connect with them.

Often family and friends can be helpful in identifying resources to use during a crisis or are willing to take care of the person until they can get them to community-based services and support.

Lastly, encourage the person to go to, or have the family take the person voluntarily to, the hospital or crisis center. If there is no one who can take the person voluntarily to the hospital or crisis center, the officer may transport the person voluntarily to the hospital or crisis center, if agency policy allows.

Be prepared to make note of alternative state statutes for substance use, IDD, and dementia, as needed. Do not spend time teaching on other statutes as the focus of this section is on the state commitment law and time could be an issue.

## Voluntary Admission Process



- Who can apply for voluntary admission
  - Adults
  - Parent/guardian of minors
- Role of law enforcement to take someone voluntarily to hospital or crisis center
- Agency policy and procedure related to transportation
- Paperwork required by law enforcement if transporting someone voluntarily to a hospital or crisis center



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## SLIDE 21

## VOLUNTARY ADMISSION PROCESS




**Trainer Note:** Review with the officers the voluntary admission process. Build this slide to be in accordance with your state law. In most cases, the law will outline who can apply for voluntary admission (i.e., adults and parents/guardians of minors), length of stay, discharge process, etc. Discuss the role of law enforcement in providing transportation to the hospital or crisis center, according to law and agency policy and procedures. Discuss any required paperwork or other processes that would involve law enforcement.


The officers in the class may present various examples of their experiences with encouraging voluntary admission for services.

### Assessment Considerations for Mental Health Condition Indicators

- Verbal indicators
  - What the person is saying and how they are saying it
- Behavioral indicators
  - Observation of abnormal behavior
  - Body language
- Environmental indicators
  - Observation about the person's environment that may indicate a mental health condition or another condition
- No one indicator by itself meets the legal element of the law (totality of circumstances)



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## SLIDE 22

# ASSESSMENT CONSIDERATIONS FOR MENTAL HEALTH CONDITION INDICATORS

**T N** **Trainer Note:** All state involuntary commitment laws begin with a determination that the person has or appears to have a mental illness or mental health condition that is affecting their functioning. The purpose of this slide is to review with the officers the various behaviors and characteristics they may observe that are indicators that the person may have a mental health condition. This type of non-clinical assessment also helps the officer determine that there is no mental health condition present but there may be another condition or disability that they will need to address, or whether there is a co-occurring condition. The information the officer gathers is used in the report or form designated for initiating an involuntary examination process. It is a finding the officer must make to satisfy the law and effectuate the involuntary commitment.

The trainer should understand that the officers have already been presented with training specific to “indicators” that are often associated with mental health conditions. The trainer should refer to what the officers have already learned. The awareness of certain “indicators” (behavioral and/or mental and/or intellectual and/or physical) prompts the officer’s inquiry to ensure that standards and outcomes are consistent with legal requirements and responsibilities.

Present this slide as supportive information to help law enforcement officers identify indicators of the presence of a possible mental health condition (supporting the officer’s belief that the person has a mental health condition) as well as other factors that align with the legal elements for commitment.



For each category on the slide, **ask the officers to identify indicators of the presence of mental health conditions they might observe.**



Reference the content below as needed and as time permits. It is important to reinforce that no one indicator will be sufficient to meet the legal requirements for commitment. Remind officers to look at the totality of the circumstances as an objectively reasonable officer. Officers must also remember their own responsibility to de-escalate the situation, which may also mean a person will no longer meet criteria for commitment.



#### **Content Note:**

##### **Verbal indicators include:**

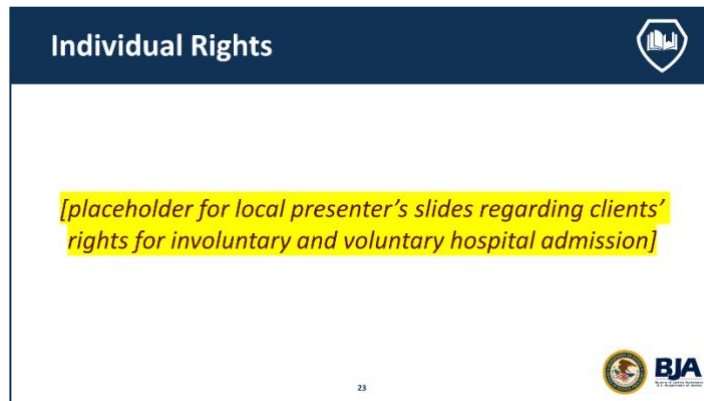
- Tone of voice (e.g., flat, excited, soft, loud)
- Choice of words—do they make sense in the context of the situation?
- Is what they are saying based in reality?
- How fast or slow are they talking?
- Tangential phrases
- Difficulty finding words (not due to a language barrier)
- Expressing suicidal ideation, intent, and/or plan

##### **Behavioral indicators include:**

- Body language (e.g., odd gait, standing too close, exaggerated use of body when talking, unusual movements)
- Expressions such as fear, sadness, depression, irritability, anger, elevated mood, lack of expression, inappropriate expression
- Difficulty processing information, slow to respond
- Distractibility
- Confusion or disorientation
- Restlessness
- Pacing
- Appearance (e.g., unusual clothing for the weather, withdrawn, poor hygiene, and/or disheveled)

##### **Environmental indicators include:**

- The condition of their environment
- Evidence of self-neglect
- Evidence of substance use



## SLIDE 23

### INDIVIDUAL RIGHTS



**Trainer Note:** This is a placeholder for the local presenter's slides regarding individual rights for involuntary and voluntary inpatient hospital admission. Review the individual rights for your state. They may be expressly stated in the state's involuntary commitment statute, or they may have been articulated through case law. Explain that although a person may be experiencing a mental health crisis, they still have rights that must be respected and enforced by the officers and the mental health facility in question.

Officers may have questions regarding a person losing their right to possess a firearm if they are taken in under the involuntary commitment law. If this comes up, as a trainer, be prepared to have answers about this or know where to direct the officers to obtain this information, including their agency policies, applicable Federal Law (18 U.S.C. § 922[d]), and applicable state law. Avoid letting a discussion take up too much time on this topic.

## Confidentiality and Privacy



- There are a variety of federal and state statutes and case law governing confidentiality.
  - Unless the person, guardian, guardian advocate, or surrogate/proxy waives by express and informed consent, confidentiality shall be upheld.
- Officers are generally not bound by confidentiality laws.
  - Can share information with providers and family members.
- Family members can provide information to the mental health provider, even if the mental health provider cannot release information or discuss the person's treatment without express and informed consent.



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## SLIDE 24 CONFIDENTIALITY AND PRIVACY



**Trainer Note:** This is a placeholder slide for the trainer. The trainer will need to list the various federal and state statutes that govern confidentiality and privacy. Some state statutes provide additional or different protections than do federal laws protecting individuals from involuntary disclosure of confidential personal information. Let the officer know that these laws governing confidentiality and privacy are designed to protect the release of sensitive information without the person's consent. Also note that there are some exceptions regarding when information can be released by the mental health system, including when an individual provides informed consent to the disclosure. Additional slides can be created to cover this material.

Below are some examples of what could or should be covered:

- State law
- Information pertaining to substance use
- HIPAA
- Communicable diseases
- Abuse reporting
- Foreign nationals

See, e.g., Office for Civil Rights (OCR), October 19, 2022 [Last Reviewed], *Summary of the HIPAA Privacy Rule*, U.S. Department of Health & Human Services (HHS), <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html>; HHS, *Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule: A Guide for Law Enforcement*, n.d., [https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/understanding/special/emergency/final\\_hipaa\\_guide\\_law\\_enforcement.pdf](https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/understanding/special/emergency/final_hipaa_guide_law_enforcement.pdf); and Substance Abuse and Mental Health Services Administration (SAMHSA), June 17, 2022 [Last Updated], *Substance Abuse Confidentiality*





*Regulations*, <https://www.samhsa.gov/about-us/who-we-are/laws-regulations/confidentiality-regulations-faqs>.

Because law enforcement officials are neither covered entities nor federally assisted substance abuse programs, they generally are not bound by either HIPAA or 42 CFR Part 2 when asked to provide protected health information to others. For example, when an officer learns about an individual's mental health condition from a family member or from a person on the scene, HIPAA does not apply. The officer can then provide that information to a mental health professional, if warranted. There is an important exception to the general rule: If the officer received the information under a specific provision of HIPAA (for example, the officer received health information through a court order from a covered entity), then "redisclosure" or sharing may be limited (in this example, by a protective order issued by the court). A similar restriction may apply if the officer received the information under a specific provision of state law.

See John Petrila, and Hallie Fader-Towe, 2010, *Information Sharing in Criminal Justice-Mental Health Collaborations: Working with HIPAA and Other Privacy Laws*, New York, NY: Council of State Governments Justice Center, [https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/CSG\\_CJMH\\_Info\\_Sharing.pdf](https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/CSG_CJMH_Info_Sharing.pdf) (Attn: pgs. 5–7).

## Civil Involuntary Commitment Law



*[placeholder for local presenter's slides regarding state and local laws for civil involuntary commitment]*



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## SLIDE 25

## CIVIL INVOLUNTARY COMMITMENT LAW




**Trainer Note:** This slide is a placeholder for the local presenter's slide(s) regarding state and local laws for civil involuntary commitment. The trainer may need to add additional slides that reference other state statutes that offer definitions or clarification of terminology. The trainer should put the language of the law on the slide and walk through it, including the various legal elements.

The trainer needs to have an understanding of the officer's "legal" familiarity with their state statute(s), since prior state civil law training may not have been as robust as that of state criminal law. Some law enforcement officers have a cursory understanding of the elements of the law. It is incumbent on the trainer to provide more detail about all elements and applications of the law.

**NOTE:** The trainer should cover aspects of civil involuntary commitment laws that involve law enforcement, such as contacting mental health screeners, transporting individuals to the hospital, and differences for adults and juveniles.

**Who Initiates?**

*Who can initiate an involuntary commitment process according to state law?*



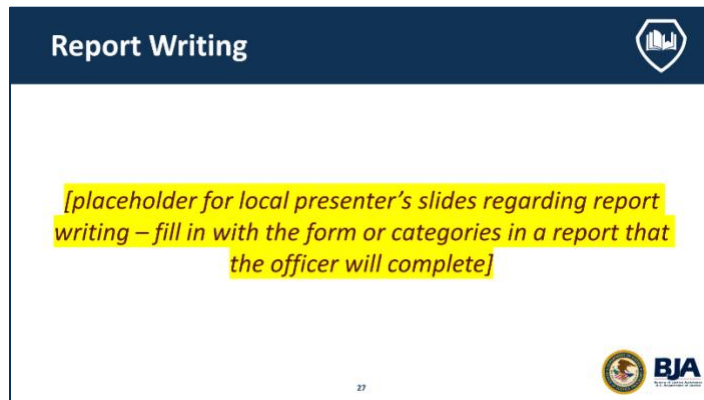
## SLIDE 26

### WHO INITIATES?

**T N** **Trainer Note:** The trainer should review who is authorized to initiate the petition for evaluation for civil involuntary commitment. Discuss the various roles and how these may interface with law enforcement (e.g., a mental health professional may have to initiate the involuntary commitment process and then call law enforcement for the transport to the hospital or crisis center).

Examples of who can initiate (this will vary from state to state):

- Law enforcement
- Mental health professional (various licensing requirements will vary by state)
- Licensed physician
- “Ex parte” order – judge or magistrate



## SLIDE 27

### REPORT WRITING



**Trainer Note:** This is a blank slide for the trainer to develop for report writing. Complete this slide with the form or categories in a report that the officer will complete.


The trainer should review the report or form that an officer is required to complete when planning to take a person into protective custody for an involuntary examination. **This is not meant to re-teach the law but to ensure the officer understands how to articulate the elements they observe.** The trainer should walk through each element to ensure the officers understand the type of information they should include. Instruct the officers that their report should be based on facts and observations of behaviors or characteristics indicative of a mental health condition. Some state laws allow officers to use information from credible witnesses; follow state law and guidelines on this.

**NOTE:** Be sure to emphasize that, if an officer is concerned that providing a reasonable accommodation would violate their agency policy, they should contact a supervisor immediately and document the situation and resolution in their report.

**Transportation and Other Law Enforcement Requirements/Considerations**

*[placeholder for local presenter's slides according to statute, policy, and/or contract agreements between agencies]*

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## SLIDE 28

### TRANSPORTATION AND OTHER LAW ENFORCEMENT REQUIREMENTS/ CONSIDERATIONS



**Trainer Note:** The trainer will need to populate this slide with the relevant issues related to transportation responsibilities for the officers. It is likely information around this subject will generate several questions from the officers. Trainers should have specific state statutes available in order to answer any questions. Listen to concerns and help attendees come up with solutions and resources.

Below are some examples that may be covered in state law that are worth addressing:

- Why law enforcement?
- Which law enforcement agency?
- Statute, policy, and/or contract agreements
- Role of EMS in providing transportation
- Which facility to transport to?
- Medical clearance at the facility?
- Jail versus receiving facility
- Right to individual dignity
  - Handcuffs and restraints

If other transportation issues or policies come up that are not related to legal considerations participants should know, the trainer needs to indicate that these should be addressed in another training or may be covered in the Agency Policies and Procedures section of this module.

## Civil Involuntary Commitment Process



*[placeholder for local presenter's slides of a brief outline of the process from the time an officer drops the person off for an evaluation to discharge, including due process considerations and individual rights]*



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## SLIDE 29 CIVIL INVOLUNTARY COMMITMENT PROCESS



**Trainer Note:** Create a brief outline or graphic on this slide of the process from the time an officer drops a person off for an evaluation through to discharge, including due process considerations and individual rights.

In most communities, officers are only familiar with the beginning process of the civil involuntary commitment law. In most states, the civil involuntary commitment process has multiple levels or stages. The trainer should limit this narrative to a working outline as though the officer is advising family members and/or the person who might be subject to this process. This will help families who may have questions about the process.

Understanding what happens after the officer brings a person in for the involuntary examination helps the officer understand there are legal standards that a hospital or crisis center must follow in order to protect a person's rights to due process and for receiving treatment in the least restrictive environment. This may help officers understand why a person may be released shortly after arriving at the facility if the person stabilizes and no longer meets the criteria for involuntary commitment.

As noted above, participants should understand that individuals who are placed in custody under involuntary commitment may lose their liberty for a number of days, weeks, months, or even years. These individual freedoms are sacred and closely guarded within our legal system. As such, officers should always consider whether less restrictive methods may be available that would prevent the need for involuntary commitment. Use of de-escalation techniques will often ameliorate a situation such that the standard is not met. At that point, the officer would work to link to services and supports as appropriate.

## Important Reminders



- The civil involuntary commitment law can be used by officers to take a person into custody for a mental health evaluation.
- It should be used as a **last resort**.
- Officers should explore less restrictive interventions appropriate to the person's needs.
  - Including de-escalation and/or engagement with community resources to resolve on-scene.
- When in doubt, seek guidance from a supervisor.



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## SLIDE 30

## IMPORTANT REMINDERS



**Trainer Note:** Emphasize that using the civil involuntary commitment law is a last resort and briefly cover the other reminders on the slide.

## Officer Liability



- Assault and battery
- False arrest
- Intentional infliction of emotional distress



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## SLIDE 31 OFFICER LIABILITY



**Trainer Note:** This should be a review of concepts covered in past training, but it may be helpful to note that there are state tort claims that may be additional bases for officer or agency liability. Provide examples as needed to help illustrate the material.



**Content Note:** State civil tort laws, which are intended to prevent personal injuries by making compensatory damages awards available for conduct that injures another, apply to the conduct of law enforcement officers. Conduct that violates the United States Constitution and federal disability rights laws like the ADA and Section 504 may also violate a state's tort laws and provide another basis of liability (different from criminal liability) in civil cases against law enforcement agencies or individual officers. The following describes relevant tort laws generally, but participants should learn about the laws in their state:

- **Assault and Battery:** An arrest that uses excessive force may be considered assault and battery for which the law enforcement agency or individual officer may be liable; any unwanted touching, or threat of unwanted touching, that is not justified by the situation may be an illegal civil assault or battery.
- **False Arrest:** As with the wrongful arrest claim under the ADA and Section 504, arresting a person with a disability for conduct that does not reasonably appear to violate a criminal law may be a false arrest for which the law enforcement agency or individual officer may be liable. Generally, a police officer does not commit a false arrest if they act in good faith and with probable cause, that is, if they believe in good faith that the arrest was lawful and that the arrest was reasonable.





- **Intentional Infliction of Emotional Distress (IIED):** Generally, a law enforcement agency or individual officer is liable for violating an IIED statute when the officer's conduct was intentional and/or reckless, outrageous, or intolerable, and results in severe emotional distress.

Plaintiffs with disabilities who bring claims of violations of the United States Constitution, the ADA, and Section 504 often also bring one or more of these state tort claims, depending on the facts of the case. For more information, see Barry T. Meek, *Crisis Intervention Team (CIT) Training: Legal Authority, Liability, and Use of Force* (Oct. 4, 2010), <http://www.cit.memphis.edu/modules/Law%20Enforcement/instructor/VA%20-%20Thomas%20Jefferson%20-%20Legal%20Authority,%20Liability,%20and%20Use%20of%20Force.pdf>.

Constitutional torts are those actions committed by government agents that violate a right guaranteed by the U.S. Constitution. For example, arresting someone without probable cause would be a false arrest under state law, and would also violate the Fourth Amendment prohibition against unreasonable seizures. Using force where it's unwarranted would be considered battery under state law, as well as excessive force under the Fourth Amendment.

Officers can assert one kind of defense against state law claims for negligent or intentional torts but have to assert a completely different defense against federal claims for constitutional torts.

See <https://www.fletc.gov/audio/officer-liability-state-law-torts-and-ftca-mp3>.

## Strategies for Avoiding Liability



- Assume disability.
- Ensure effective communication and make reasonable modifications.
  - De-escalation
- Seek guidance from a person's family/friends and/or community resources.
- Consult a supervisor for assistance.
- Document, document, document.
- Become familiar with local disability resources.



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## SLIDE 32 STRATEGIES FOR AVOIDING LIABILITY



**Trainer Note:** Discuss and emphasize strategies to avoid liability using the content below as a reference. This should be a review of concepts that have already been introduced in this module.



**Content Note:** There are various strategies that can help officers avoid potential liability in their interactions with those with disabilities or those experiencing a crisis:

- **Broad definition of “disability”:** The definition of “disability” under the ADA, Section 504, and equivalent state disability rights laws is broad. Many calls to which officers will respond involve people experiencing behavioral health crises, or other behaviors that are disturbing or alarming to others. Participants should be aware that any of the individuals with whom they interact may have a disability that is protected under these laws. Officers have a duty and should be vigilant about knowing disability rights laws because circumstances such as those discussed in this training will be common in their engagements with the public.
- **Use accessible means of communication:** Officers should take steps to ensure that they are effectively communicating with individuals with disabilities, which may mean using alternative methods to communicate like sign language interpreters or communication through cards or pictures.
- **Slow down:** As participants have learned in this training, it is generally best to slow things down at the scene, including by speaking slowly and clearly to improve understanding.
- **De-escalate:** Absent any exigent circumstances or risk of harm to an officer or the public, officers should employ de-escalation strategies from other modules of this training, including approaching the individual in question without lights and sirens,



controlling the scene and bystanders, moving slowly and deliberately, and avoiding agitation, threats, or other practices that may escalate the situation. Another example is letting someone smoke a cigarette during the interaction, even if agency policy directs officers to make sure that people they encounter have “empty hands.”

- **Only use reasonable force (after attempting de-escalation):** The officer should only use force when there is an objective and immediate risk of serious harm to self or others.
- **Gather information from all sources:** It is important for the officer to gather information that will help them understand the individual with a disability to whom they have been asked to respond. This means contacting the individual’s family members, friends, or provider staff (including peer workers) who know the individual. It may also mean consulting with behavioral health professionals, such as mobile crisis teams, or crisis workers who work with co-responder teams.
- **When in doubt, consult others:** When the officer has questions or doubts about how to proceed, contact a supervisor for assistance. The supervisor should be able to assign or consult with others with more specialized knowledge about how to work with individuals with the type of disability in question.
- **Wait for backup:** If the officer calls for backup, wait for backup to arrive before proceeding to secure the area, if possible.
- **Document everything, then de-brief:** The officer should meticulously document everything that may help the agency understand what happened and the officer’s response. The incident report should be over-inclusive, not under-inclusive. Analyzing each call is important so that the agency can understand where it needs to make changes to its policies, procedures, and training programs. When in doubt, write it down.
- **Become familiar with local disability resources:** Officers should familiarize themselves with disability resources in their community, including chapters of The Arc, the National Alliance on Mental Illness (NAMI), or other local organizations that may be able to assist or direct officers to appropriate resources.
  - For additional information on where to find developmental disability services and supports, see the Academic Training Initiative’s *Law Enforcement Response to People with Developmental Disabilities: Steps for Deflection or Pre-Arrest Diversion*, [https://www.informedpoliceresponses.com/files/ugd/e7007a\\_2d186ab816cb488698043a19a0c40af9.pdf](https://www.informedpoliceresponses.com/files/ugd/e7007a_2d186ab816cb488698043a19a0c40af9.pdf).
  - Also, see NAMI’s *Divert to What? Community Services That Enhance Diversion*, <https://www.nami.org/Support-Education/Publications-Reports/Public-Policy-Reports/Divert-to-What-Community-Services-that-Enhance-Diversion/DiverttoWhat.pdf>.

## Key Takeaways

- There are a variety of laws that affect interactions with individuals experiencing a crisis.
- Many people experiencing a crisis qualify as a person with a disability.
- Officers have responsibilities to ensure a person's rights are protected and to avoid discrimination on the basis of disability.
- Civil commitment is a last-resort option and should only be used if there are no less restrictive alternatives appropriate to the person's needs.
- When in doubt, seek guidance from a supervisor.
- There are many strategies to help an officer avoid potential liability, including de-escalation and documentation.



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## SLIDE 33 KEY TAKEAWAYS



**Trainer Note:** Before moving to Part 2 of the module, repeat these key takeaways from Part 1. This is also a good time to answer any questions participants may have, but keep an eye on the clock. There will be opportunities for more in-depth discussion later in the module.

### Practical Tips



- Assume disability.
- Don't discriminate, de-escalate.
- Prioritize safety for all.
- Utilize community resources/try to resolve on scene.
- Document, document, document.

QUICK TIPS




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## SLIDE 34 PRACTICAL TIPS

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**Trainer Note:** Walk through the practical tips that an officer can take to ensure a safe and effective interaction.





## Module Wrap-Up



# Questions?



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## SLIDE 35 MODULE WRAP-UP/Q&A



**Trainer Note:** Use this as an opportunity for participants to ask questions before moving on to Parts 2–3.