Liability for Police Encounters with Citizens with Physical and Mental Disabilities

Presentation for AGRIP

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Agenda

- Americans with Disabilities Acts Overview
- Emergency Response & Crime Victims
- Custody & Arrests: Emerging Area of Risk
- Practical Policy Takeaways

What is the Americans with Disabilities Act?

Civil rights statute prohibiting discrimination based on disability
What is the Americans with Disabilities Act?

“no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefit of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

What is the Americans with Disabilities Act?

Disability: “a physical or mental impairment that substantially limits a major life activity”

What is the Americans with Disabilities Act?

“benefit of the services, programs, or activities of a public entity” all activities of State and local governments, regardless of whether these entities receive Federal financial assistance
So, tell me again, what is the ADA?

A local government must provide reasonable accommodations to protect individuals with disabilities from discrimination on the basis of disability in services provided to the community.

ADA affects ALL law enforcement activity

- Receiving citizen complaints
- 911
- Emergency medical services
- Interrogating witnesses
- Arresting, booking & holding suspects
- Enforcement of laws

ADA implicates ALL disabilities

- Physical disability
- Intellectual disabilities
- Low vision/blind
- Diabetics
- Deaf
- Neurological conditions
- Taking medication for a medical condition (e.g., epilepsy/diabetes)
911/Emergency Services

- Operation 911 centers
- Precautions when providing emergency services to disabled persons

Crime Victims

- People with disabilities are more than twice as likely as people without disabilities to be the victims of violent crimes.
- Nearly a quarter of violent crime victims with disabilities believed they were targeted due to their disability.

![Graph showing rates of victimization with and without disabilities](image)
Custody & Arrests

- Excessive Force Litigation
- Current Training for Excessive Force
- ADA applies to arrests
- Consider impact on training program

Case Study: Graham v. Connor (1989)

- Basic Facts: Type 1 diabetic rushed to get orange juice; police suspicious
- Decided before ADA
- Reasonableness standard: (1) severity of crime, (2) threat to safety, (3) actively resisting/evading.
- No liability; no 20/20 hindsight

Officer Subject Control Training

- Minimal force vs. reasonable force
- Very little attention to communication stills
- Insufficient effort on reports

- Basic Facts: Type 2 diabetic drank an orange juice at the cash registered; fired for violating company policy
- Decided under ADA
- Employment policy must bend to ADA
- Common sense becomes the rule


- Basic Facts: Mentally-ill resident of group home acted erratically and threatened social worker; police shot her amid struggle
- Litigated under 1983 and ADA/504
- ADA applies in some way. But is unsettled.

Case Study: Vos v. Newport Beach (2018)

- Basic Facts: Mentally-ill customer at convenience store confronted customers and police
- Litigated under 1983 and ADA/504
- Excessive forced used
- BUT: ADA applies. Officers failed to accommodate.
Practical Take Away Points

• Excessive force cases are different than they were 30 years ago, especially when they involved mentally disabled persons.
• Training on Graham alone may be outdated
• Newport Beach + Dollar General show that police have less latitude
• ADA & Section 1983; no qualified immunity

Practical Take Away Points

• Reassess training

• Closely monitor ADA/Section 1983 claims

Questions?
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