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## To Protect and Serve: Training Law Enforcement with the ADA in Mind

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## Part I: Introduction

Every year in America, a countless number of individuals with disabilities are harmed at the hands of police officers.<sup>1</sup> It is estimated that individuals with disabilities make up one-third to half of all people killed by law enforcement officers.<sup>2</sup> Many more individuals with disabilities experience non-lethal violence and abuse at the hands of law enforcement.<sup>3</sup> For the most part, law enforcement officers are not harming these individuals because of malice, but out of a lack of understanding of an individual with a disability, particularly those with an Intellectual or Developmental Disability (“I/DD”).

Americans with disabilities are entitled to certain protections under the Americans with Disabilities Act (“ADA”).<sup>4</sup> Title II of the ADA applies to arrests and on-street encounters.<sup>5</sup> As individuals with disabilities remain, or move back into, the general community and area, at times without supervision or guardianship, the possibility of interaction with law enforcement increases.<sup>6</sup> According to law enforcement experts, it is crucial that officers evaluate precisely the cognitive, physical, or mental health problems a suspect might be facing.<sup>7</sup> In police training

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<sup>1</sup> Currently, there is no mechanism in place that requires law enforcement agencies to aggregate or collect data on violent incidents between police officers and disabled people, thus it is difficult to estimate precisely how often police use force against disabled individuals. David M. Perry, PhD & Lawrence Carter Long, *The Ruderman White Paper on Media Coverage of Law Enforcement Use of Force and Disability*, 2, (2016), [https://rudermanfoundation.org/wp-content/uploads/2017/08/MediaStudy-PoliceDisability\\_final-final.pdf](https://rudermanfoundation.org/wp-content/uploads/2017/08/MediaStudy-PoliceDisability_final-final.pdf).

<sup>2</sup> *Id.* at 7. These statistics come from the Ruderman Foundation, which acquired its statistics from the 2014 figures of the National Institute on Mental Health. Since it is difficult to acquire this data, these statistics rely generally on individuals with a disability as a whole, and not just individuals with intellectual and developmental disabilities. Therefore, it is likely that individuals with intellectual and developmental disabilities make up only a portion of these numbers.

<sup>3</sup> *Id.* at 4.

<sup>4</sup> See generally Prohibition Against Discrimination, 42 U.S.C. § 12132 (2018).

<sup>5</sup> *Gohier v. Enright*, 186 F.3d 1216, 1221 (10th Cir. 1999).

<sup>6</sup> *Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety: Hearing before the Subcommittee on the Judiciary*, 113th Congress 443 (2014) (statement of The Arc of New Jersey, New Brunswick, New Jersey).

<sup>7</sup> Marti Hause & Ari Melber, *Half of People Killed by Police Have a Disability: Report*, NBC NEWS (Mar 15, 2016, 9:13 PM), <https://www.nbcnews.com/news/us-news/half-people-killed-police-suffer-mental-disability-report-n538371>.

programs nationwide, officers spend – on average – 168 hours training on the use of force, weapons and defensive tactics.<sup>8</sup> This compares to only 10 hours of training on mental health.<sup>9</sup> No data are apparently gathered on the amount of hours typically spent on I/DD training.<sup>10</sup> Although using force to obtain compliance is an option in traditional policing, it can be counterproductive if the officers are unaware of a suspect’s health or cognitive abilities.<sup>11</sup>

The real life implications of law enforcement officers being inadequately trained in identifying and evaluating the cognitive and/or mental health of a suspect can be serious. For example, in a case out of the 5th Circuit, Mr. Hainze was shot by police officers after they responded to a call made by his aunt requesting that the police transport him for mental health treatment.<sup>12</sup> The police were advised of Hainze’s history of mental illness and knew he was carrying a knife.<sup>13</sup> Upon the officer’s arrival, Hainze began walking toward the deputies and ignored their instructions to stop.<sup>14</sup> When Hainze reached a distance of four to six feet from the officer, the officer fired two shots of rapid succession into Hainze’s chest.<sup>15</sup> Fortunately, he survived.<sup>16</sup>

This comment will discuss the seriousness of law enforcement officers being inadequately trained to evaluate and comprehend individuals with disabilities and show why law enforcement needs to adopt certain measures in order to better adhere to the ADA. Part II will

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<sup>8</sup> Meg Anderson, *How One Mother's Battle Is Changing Police Training On Disabilities*, NPR, (April 13, 2019, 5:00 AM), <https://www.npr.org/2019/04/13/705887493/how-one-mothers-battle-is-changing-police-training-on-disabilities>.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Marti Hause & Ari Melber, *supra* note 7.

<sup>12</sup> *Hainze v. Richards*, 207 F.3d 795, 797 (5th Cir. 2000).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 797.

<sup>16</sup> *Id.*

provide a detailed background on the I/DD population, discuss Title II of the ADA in more detail, and explain how the courts typically apply Title II to arrests and on-street encounters. Lastly, Part II will further discuss why the law enforcement modifications are necessary. Part III will discuss the various modifications that can be made by law enforcement agencies and the reasonableness of these various modifications.

## Part II: The I/DD Population, the ADA, and Arrests in Motion

### A. Intellectual and Development Disabilities

61 million American adults have some sort of disability.<sup>17</sup> Of that, seven to eight million American adults have an I/DD.<sup>18</sup> A developmental disability is a severe, chronic disability that can be cognitive, physical, or both, and are likely to be lifelong.<sup>19</sup>

Some disabilities are characterized by physical impairments, such as cerebral palsy, while others may include cognitive conditions, such as Down Syndrome.<sup>20</sup> Intellectual disabilities, the most common type of developmental disability, are characterized by certain limitations in mental functioning, as well as other skills, such as communicating, taking care of oneself, and social skills and arises before the age of twenty-two.<sup>21</sup>

In a more narrow focus, the Diagnostic and Statistical Manual of Mental Disorders (DMS-5), the handbook used by health care professionals as the authoritative guide to the diagnosis of mental disorders, classifies intellectual disabilities as an impaired mental ability impacting

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<sup>17</sup> *Disability and Health*, CENTER FOR DISEASE CONTROL AND PREVENTION, (last reviewed June 20, 2020), <https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html>.

<sup>18</sup> *Intellectual/Developmental Disability (IDD) Fact Sheet*, EMPOWER, (last reviewed June 20, 2020), <https://empower-wny.org/wp-content/uploads/2016/08/Fact-Sheet-final3.pdf>.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

adaptive functioning in conceptual, social, and practical domains.<sup>22</sup> Seventy-five to ninety percent of those with a severe intellectual impairment are not readily recognized by outward appearance.<sup>23</sup> This might make it difficult for officers to tell the difference between non-compliance and an inability to understand.<sup>24</sup>

Working with individuals with an I/DD can be complex and challenging, even for those who have been trained.<sup>25</sup> Police often encounter this population in high stress situations with little to no training.<sup>26</sup> In addition to the difficulties of officers in recognizing the inability to understand and comply, individuals with an I/DD have an increased vulnerability in interactions with law enforcement due to heightened suggestibility, gullibility, and a desire to please.<sup>27</sup> Those with an I/DD may also have a skewed worldview.<sup>28</sup> Individuals with this type of disability may have both long-term and short-term impaired memory, making it hard to remember times and details that feel unimportant to them.<sup>29</sup> Therefore, their understanding of what happened may not coincide with the scene or incident that an officer observes or is aware of.<sup>30</sup>

Impaired cognitive ability, underdeveloped coping mechanisms and impulse control, and limitations in logical thinking affect an individual with disabilities' ability to interact

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<sup>22</sup> *Clinical Characteristics of Intellectual Disabilities*, NCBI, (Last visited June 20, 2020), <https://www.ncbi.nlm.nih.gov/books/NBK332877/>.

<sup>23</sup> *Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety: Hearing before the Subcommittee on the Judiciary*, 113th Congress 430 (2014) (statement of The Arc of The United States, Washington, DC).

<sup>24</sup> See Anderson, *supra* note 8.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety: Hearing before the Subcommittee on the Judiciary*, 113th Congress 430 (2014) (statement of The Arc of The United States, Washington, DC).

<sup>28</sup> *Id.* at 444.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

successfully with members of the criminal justice system as a whole.<sup>31</sup> Miranda warnings further purport to be a challenge.<sup>32</sup> Miranda warnings, a specific set of warnings regarding constitutional rights that must be read to an individual who is in police custody and subject to interrogation, are meant to protect a citizen from overzealous police action.<sup>33</sup> It is challenging for someone to understand the warning and exercise their rights to remain silent and access legal counsel when their language skills and abstract thinking are impaired.<sup>34</sup>

Police interactions with individuals with a disability has an increased likelihood compared to those of the general population, due to certain characteristics of the disabilities, especially those characterized as I/DD.<sup>35</sup> Due to this increased likelihood of contact between individuals with disabilities and police officers, Title II is integral in protecting individuals with disabilities.

#### B. Title II of the ADA and Its Inclusiveness of the I/DD Population

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<sup>31</sup> *Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety: Hearing before the Subcommittee on the Judiciary*, 113th Congress 443 (2014) (statement of The Arc of The United States, Washington, DC). Although this is beyond the scope of this comment, it is used to point out the necessity to be able to accommodate I/DD individuals throughout their interaction with the criminal justice system and express the challenges they may face after the on-street encounter.

<sup>32</sup> *Id.* I/DD make it difficult for a person to comprehend the seriousness of the Miranda Warnings.

<sup>33</sup> Bethel Erastus-Obilo, EVERYTHING YOU NEED TO KNOW ABOUT MIRANDA RIGHTS AND WARNINGS 8 (BrainMass, Inc. 2012).

<sup>34</sup> *Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety: Hearing before the Subcommittee on the Judiciary*, 113th Congress 443 (2014) (statement of The Arc of The United States, Washington, DC).

<sup>35</sup> *Id.*

The heart of the ADA’s non-discrimination mandate is that, “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”<sup>36</sup>

Congress wanted to provide clear and consistent standards that addressed discrimination of individuals with disabilities.<sup>37</sup> Several congressional findings supported the passage of the act. First, Congress found that while physical or mental disabilities in no way diminish a person’s right to participate fully in all aspects of society, many individuals with a disability have been precluded from doing so on the basis of discrimination.<sup>38</sup> Society has tended to isolate those with disabilities and, while there have been some improvements, it continues to be a serious problem.<sup>39</sup> Discrimination against those with disabilities still exists in critical areas such as employment, education, public accommodations, and access to public services.<sup>40</sup> Additionally, individuals with disabilities continually encounter discrimination, including outright exclusion, effects of social barriers, and failures to make modifications to existing facilities and practices.<sup>41</sup>

In order for a plaintiff to recover on a violation of Title II of the ADA, the plaintiff must establish, “(1) that [s]he is a qualified individual with a disability; (2) that [s]he was either excluded from participation in or denied benefits of some public entity’s services, programs, or

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<sup>36</sup> 42 U.S.C. § 12132.

<sup>37</sup> 42 U.S.C. § 12101(b)(2).

<sup>38</sup> 42 U.S.C. § 12101(a)(1).

<sup>39</sup> 42 U.S.C. § 12101(a)(2).

<sup>40</sup> 42 U.S.C. § 12101(a)(3).

<sup>41</sup> 42 U.S.C. § 12101(a)(5). This comment mostly focuses on discrimination by failing to modify existing practices on behalf of law enforcement.

activities or was otherwise discriminated against; and (3) that such exclusion, denial of benefits or discrimination was by reason of the plaintiff's disability."<sup>42</sup>

For purposes of this statute, the definition of disability is read broadly to include, "a physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment . . . ."<sup>43</sup> A major life activity can include, but is not limited to: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.<sup>44</sup> In order for an individual to be regarded as having an impairment under the disability definition, the individual must establish that he or she has been subjected to an action prohibited under this act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.<sup>45</sup>

Title II of the ADA extends the nondiscrimination mandate to public entities, which are, "any State or local government and any department, agency, special purpose district, or other instrumentality of a State or States or local government."<sup>46</sup> In 1999, 10th Circuit clarified that the broad rule from the district court excluding arrests from Title II is not the law, setting the floor for the analyses that followed.<sup>47</sup>

Additionally, there is a direct threat exception to the application of Title II to interactions with the police. The term direct threat refers to the significant risk to the health or safety of

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<sup>42</sup> *Gray v. Cummings*, 917 F.3d 1, 15 (1st Cir. 2019).

<sup>43</sup> 42 U.S.C. § 12102(4)(A); 42 U.S.C. § 12102(1).

<sup>44</sup> 42 U.S.C. § 12102(2)(A).

<sup>45</sup> 42 U.S.C. § 12102(3)(A).

<sup>46</sup> 42 U.S.C. § 12132(1)(A) & (B).

<sup>47</sup> *Gohier v. Enright*, 186 F.3d 1216, 1221 (10th Cir. 1999).

others that cannot be eliminated by a modification of policies or an accommodation with auxiliary aids and services.<sup>48</sup> Unlike Title I and Title III, Title II does not have an explicit direct threat exception.<sup>49</sup> However, this does not exclude the direct threat exception, as the Department of Justice’s regulation interpretations align Title II with Titles I and III in this respect.<sup>50</sup> The direct threat exception requires an individualized analysis.<sup>51</sup> The Code of Federal Regulations (C.F.R.) requires,

a public entity must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.<sup>52</sup>

### C. How the Courts have Address the Application of Title II

#### i. Two Types of Violations

Circuit courts have outlined two main theories of violations that can be potentially committed by an officer.<sup>53</sup> The first arises under the wrongful arrest theory.<sup>54</sup> This occurs when the police wrongly arrest someone with a disability because they misperceive the effects of that

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<sup>48</sup> Public Accommodations and Services Operated by Private Entities, 42 U.S.C. § 12182(3) (2018).

<sup>49</sup> Prohibitions of Discrimination by Public Accommodations, 42 U.S.C. § 12182(3): “Nothing in this title shall require an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others.” *Id.*

<sup>50</sup> Shanna Rifkin, 66 DUKE L.J. 913, 933 (2017); 28 C.F.R. § 35.139.

<sup>51</sup> Nondiscrimination on the Basis of Disability in State and Local Government Services, 28 C.F.R. § 35.139(b) (2016). “In determining whether an individual poses a direct threat to the health or safety of others, a public entity must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.” *Id.*

<sup>52</sup> 28 C.F.R. § 35.139(b) (2018).

<sup>53</sup> *Gohier v. Enright*, 186 F.3d 1216, 1221 (10th Cir. 1999).

<sup>54</sup> *Id.*

disability as criminal activity.<sup>55</sup> A plaintiff may recover under Title II the ADA if the plaintiff can show that they are disabled, the defendant knew or should have known the plaintiff was disabled, and the defendant arrested the plaintiff because of legal conducted related to the disability.<sup>56</sup>

The second, and more common violation, arises under the reasonable accommodation theory.<sup>57</sup> Under this type of violation, while the police properly investigated and arrested a person with a disability for a crime unrelated to that disability, they failed to reasonably accommodate the person's disability in the course of investigation, arrest or on-street encounter, causing the person to suffer greater injury or indignity in that process than other arrestees.<sup>58</sup> It is important to note, however, that individuals that have an I/DD commit crimes for various reasons other than criminal intent, including a lack of knowledge or cognitive ability.<sup>59</sup>

An example of this type of violation is illustrated in a case out of the 3rd Circuit, where the plaintiff alleged that the town had violated the ADA by failing to modify their policies, practices and procedures to ensure that individuals with disabilities would have their needs met.<sup>60</sup> Timothy Nixon suffered from a variety of mental health problems, including depression.<sup>61</sup> Timothy Nixon, after stealing a firearm, told his partner that he was going to commit suicide.<sup>62</sup>

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<sup>55</sup> *Id.*

<sup>56</sup> *Lewis v. Truitt*, 960 F. Supp. 175, 178 (S.D. Ind. 1997).

<sup>57</sup> *Gohier* 186 F.3d at 1220.

<sup>58</sup> *Id.* at 1220-21. Most of the situations in this comment focus on recovery under the wrongful arrest theory. For example, Mr. Bircoll suffered an indignity in being arrested when he could not understand the field sobriety instructions and Mr. Hainze suffered physical harm when the officers shot him because of his mental disability and failing to de-escalate the situation.

<sup>59</sup> *Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety: Hearing before the Subcommittee on the Judiciary*, 113th Congress 443 (2014) (statement of The Arc of New Jersey, New Brunswick, New Jersey).

<sup>60</sup> *Haberle v. Troxell*, 885 F.3d 171, 174 (3d Cir. 2018).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

Officers obtained a warrant for Nixon’s arrest and proceeded to his location.<sup>63</sup> Some officers suggested setting up a perimeter and calling the Pennsylvania State Police crisis negotiators.<sup>64</sup> Other officers did not wait for trained crisis professionals, but instead knocked on the door of the apartment and announced their presence.<sup>65</sup> Nixon immediately shot himself.<sup>66</sup> The case brought by Nixon’s partner did not succeed on other grounds<sup>67</sup>, but this is an example, a very serious example, of the police failing to make reasonable accommodations during an arrest.

## ii. Application of Title II to On-Street Encounters and Arrests by the Circuit Courts

The Circuit Courts who have been presented with this issue have similar underpinnings in their holdings, but vary slightly in the exact application. The similar underpinning is that no circuit has ever held that Title II does not apply to on-street encounters and arrests.<sup>68</sup> The 10th Circuit in *Gohier v. Enright* clarified that the broad rule from the district court excluding arrests from Title II is not the law.<sup>69</sup> Since then, Circuits have come up with their own interpretations. The 5th Circuit has held that Title II does not apply to on-street responses, whether or not they involve subjects with mental disabilities, prior to officer’s securing the scene and ensuring that there is no threat to human life.<sup>70</sup> The 5th Circuit was presented with a case where officers shot a man with depression after he refused to listen to their instructions.<sup>71</sup>

Other Courts have taken a different approach than the 5th Circuit. The 11th Circuit has held that the exigent circumstances surrounding the encounter, including the criminal activity

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<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Haberle v. Troxell*, 885 F.3d 171, 174 (3d Cir. 2018).

<sup>67</sup> *Id.* at 183.

<sup>68</sup> *Id.* at 181.

<sup>69</sup> *Gohier*, 186 F.3d at 1221.

<sup>70</sup> *Hainze v. Richards*, 207 F.3d 795, 801 (5th Cir. 2000).

<sup>71</sup> *Id.* at 797.

and the tasks of the officers on scene, lend themselves to the analysis of the reasonableness of the modifications.<sup>72</sup> The 11th Circuit also noted that the ADA's reasonableness modification principle does not require the public entity to employ any and all means to make aids and services accessible, but only to make reasonable modifications that would not fundamentally alter the nature of the service or activity or impose an undue burden.<sup>73</sup> Other Circuits have taken a similar approach<sup>74</sup>, including the 4th Circuit. The 4th Circuit held that exigency is just one circumstance that is material to the reasonable accommodation analysis.<sup>75</sup> The facts that the 4th Circuit was presented with are similar to the facts of the 5th Circuit, in that the police shot a mentally ill man.<sup>76</sup> However, the victim did not survive here.<sup>77</sup> Additionally, the 9th Circuit in *Sheehan v. City & County of San Francisco* also held that Title II applies to arrests, but exigent circumstances inform the reasonableness analysis.<sup>78</sup> A pattern emerges, as officers in this case also shot and nearly killed a mentally ill woman.<sup>79</sup>

One year after the 9th Circuit handed down their decision in *Sheehan*, the Supreme Court granted certiorari.<sup>80</sup> The Supreme Court, however, declined to answer the question, ruling it was granted improvidently.<sup>81</sup> Justice Scalia's dissenting opinion states that the Court was correct to dismiss the actions because the petitioner's briefs did not focus on the question.<sup>82</sup>

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<sup>72</sup> *Bircoll v. Miami-Dade Cty.*, 480 F.3d 1072, 1085 (11th Cir. 2007).

<sup>73</sup> *Id.* at 1082.

<sup>74</sup> Most recently, the 1st Circuit was presented with this question, however, it choose not to answer it. In dicta, it said that, for present purposes, it would assume that the ADA applies to ad hoc police encounters and exigent circumstances may be used to shed light on the reasonableness of the officer's actions. *Gray v. Cummings*, 917 F.3d 1, 16-18 (1st Cir. 2019). Officers in this case tased a woman in a full blown panic. *Id.* at 6-7.

<sup>75</sup> *Waller v. City of Danville*, 556 F.3d 171, 175 (4th Cir. 2009).

<sup>76</sup> *Id.* at 172-173

<sup>77</sup> *Id.* at 173.

<sup>78</sup> *Sheehan v. City & Cty. of San Francisco*, 743 F.3d 1211, 1232 (9th Cir. 2014).

<sup>79</sup> *Id.* at 1215.

<sup>80</sup> *City & Cty. of San Francisco v. Sheehan*, 135 S. Ct. 1765, 1769 (2015).

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 1778 (Scalia, J., dissenting).

#### D. Public Perception of the Interactions Between Police and Individuals with Disabilities

Law enforcement related deaths often draw widespread media attention, but the media often ignores the disability part of the story.<sup>83</sup> A study was performed on the police interactions with individuals with disabilities in the media, in which the Ruderman Foundation made the following conclusions.<sup>84</sup> They studied eight cases of police violence against individuals with disabilities.<sup>85</sup> Their findings reflect that medical conditions or mental illnesses are used to attribute cause of the victim's death.<sup>86</sup> This shift of attribution from the actors to the subjects of police conduct may mask negative implications of violent interactions between people with disabilities and police. It may be that reporting of incidents transparently, with the effects of poorly-managed interactions with people with disabilities, could play a role in advancing the goals of reducing the incidence of injury and death, and of holding accountable police forces poorly prepared to interact with a segment of their constituencies.

#### E. The Necessity of Law Enforcement Training in Reasonable Accommodations

A common motto of police departments is "To Protect & Serve."<sup>87</sup> Their job to protect and serve sometimes is, but should never be, in conflict with the rights of individuals with disabilities. As explained above, police interactions with individuals with disabilities often turn awry, most likely due to the lack of training police officers receive on how to recognize characteristics of a disability. Officers might often confuse the danger of criminality with the conduct of individuals with disabilities. Additionally, officers might not know or understand

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<sup>83</sup> Perry and Long, *supra* note 1.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *The Origin of the LAPD Motto*, LOS ANGELES POLICE DEPARTMENT, (Last visited June 20, 2020), [http://www.lapdonline.org/history\\_of\\_the\\_lapd/content\\_basic\\_view/1128](http://www.lapdonline.org/history_of_the_lapd/content_basic_view/1128).

how to respond without the use of force technique, which could lead to disastrous results, like what happened to Mr. Nixon in Pennsylvania.<sup>88</sup>

The ADA was meant to protect individuals with disabilities.<sup>89</sup> Police officers need to be trained to be able to recognize when criminal activity or resistance may actually be a disability, in order to protect from a wrongful arrest violation. Reasonable modifications are required to be made by police officers under the ADA, and training law enforcement officers would enable them to provide these modifications. Modifications made to the training regiments and policies of law enforcement agencies have a trickledown effect, in that the officer then can better accommodate an individual with a disability in the midst of an on-street encounter or arrest. Additionally, these modifications are reasonable. They have been utilized previously. They have been successful.

### Part III: What are the Modifications and Why are they Reasonable?

Recently, there have been many calls for change in the realm of police interactions with individuals with disabilities.<sup>90</sup> There have been calls to make trainings that are currently available to officers mandatory, instead of optional.<sup>91</sup> Optional trainings are not reaching all of the members of law enforcement who may find themselves in the position of needing that very training.<sup>92</sup> Specific organizations, especially those that deal with the I/DD population, have suggested this very option. The Family Resource, Information, and Education Network for Down Syndrome (FRIENDS) in Maryland suggested that disability training be made mandatory

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<sup>88</sup> See *Haberle v. Troxell*, 885 F.3d 171, 174 (3d Cir. 2018).

<sup>89</sup> 42 U.S.C. § 12101(b)(1).

<sup>90</sup> *Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety: Hearing before the Subcommittee on the Judiciary*, 113th Congress 443 (2014) (statement of Family Resource, Information and Education Network for Down Syndrome (FRIENDS), Frederick County, Maryland).

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

for all law enforcement, which should include de-escalation training and require a crisis intervention team (CIT) in all jurisdictions, state and federal agencies alike.<sup>93</sup> Those who have been harmed by a violation of Title II, and their families, are working hard to change the way law enforcement is trained.<sup>94</sup> They feel families like theirs have a unique perspective and need to teach law enforcement, as well as hold them accountable.<sup>95</sup> They are not alone in that feeling.

When agencies have to modify their practices, policies, or trainings, there are often challenges and implications that arise, sometimes negative implications. However, when dealing with this issue, that is not the case. There are specific instances where these trainings and modifications have been voluntarily implemented across the United States and the effects have been positive, further evidence of their reasonableness.

#### A. What are the Modifications?

##### 1. Crisis Intervention Team (CIT)

###### i. Background Information about CITs

Disability sensitivity training is needed by everyone, not just first responders.<sup>96</sup> However, the police have become the main responders to their emergencies<sup>97</sup>, and therefore, the police need to be adequately trained. The police need to be trained, especially because the language in the C.F.R. requires them to make an assessment based on their judgement, which relies on, among other things, current medical knowledge or the best available objective

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<sup>93</sup> *Id.* at 197.

<sup>94</sup> Anderson, *supra* note 8.

<sup>95</sup> *Id.* This comment focuses the issue in a similar way by suggesting that they be held more accountable, and therefore training them in a way that protects the disabled.

<sup>96</sup> *Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety: Hearing before the Subcommittee on the Judiciary, 113th Congress 106 (2014)* (statement of Autism Up, Rochester, New York).

<sup>97</sup> Perry & Long, *supra* note 1 at 21.

evidence.<sup>98</sup> If police officers are more adequately trained to recognize certain activities as being those associated with a disability, they will be better able to make an accurate assessment to determine if there is a direct threat. Many times officers think that a person is not complying, when they do not comprehend that the individual does not understand what they are asking of them.<sup>99</sup>

Several areas across the United States have implemented and utilized CITs. Appleton, Wisconsin<sup>100</sup>, the County of Maui, Hawaii<sup>101</sup>, Memphis, Tennessee<sup>102</sup>, and many counties in Florida<sup>103</sup> are a few of the places in our country that have implemented a version of a CIT. Memphis was the pioneer in implementing the program and has a proposed model that is easy to replicate by other law enforcement agencies.<sup>104</sup> They describe it as considerably more than law enforcement training, but a broad-reaching program that relies on strong community partnerships and a vibrant crisis system that understands the needs of law enforcement as well.<sup>105</sup>

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<sup>98</sup> “In determining whether an individual poses a direct threat to the health or safety of others, a public entity must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence....” 28 C.F.R. § 35.139.

<sup>99</sup> See Anderson, note 8.

<sup>100</sup> *Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety: Hearing before the Subcommittee on the Judiciary*, 113th Congress 96 (2014) (statement of the Appleton Police Department Crisis Intervention Team, Appleton, Wisconsin).

<sup>101</sup> *Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety: Hearing before the Subcommittee on the Judiciary*, 113th Congress 289 (2014) (statement of the County of Maui Crisis Intervention Team, Wailuku, Hawaii).

<sup>102</sup> *Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety: Hearing before the Subcommittee on the Judiciary*, 113th Congress 139 (2014) (statement of the Crisis Intervention Team International, Memphis, Tennessee).

<sup>103</sup> *Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety: Hearing before the Subcommittee on the Judiciary*, 113th Congress 189 (2014) (statement of the Florida Crisis Intervention Team Coalition).

<sup>104</sup> *Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety: Hearing before the Subcommittee on the Judiciary*, 113th Congress 141 (2014) (statement of the Crisis Intervention Team International, Memphis, Tennessee).

<sup>105</sup> *Id.*

The first leg of the program is police training.<sup>106</sup> It is the most visible piece, and suggests that the goal of law enforcement agencies should be to have 20-25% of their patrol officers CIT trained.<sup>107</sup> The second leg, community collaboration, stresses that it is vitally important that integral community partners are identified and utilized by the CIT.<sup>108</sup> The third leg is a vibrant and accessible crisis system.<sup>109</sup> This is considered the most meaningful leg, as it is necessary to accomplish real outcomes.<sup>110</sup> The fourth leg, behavioral health staff training, is critical in fostering positive working relationships between law enforcement and the mental health community.<sup>111</sup> Lastly, there needs to be family/consumer/advocate collaboration and education.<sup>112</sup> It is often the forgotten leg, but when both parties in the interaction are more informed and willing to respect each other's perspective, the opportunity for mutual beneficial results increases.<sup>113</sup> While CITs have a heavier focus on mental illness crises, criminologists and psychologists believe that the same techniques that CITs use for mental illness also work with the I/DD population.<sup>114</sup>

When Memphis started this new program and created it as a model for other police departments, Memphis was clear to highlight that CIT training is not meant to replace their

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<sup>106</sup> *Id.* at 142

<sup>107</sup> *Id.* It is recommended that 20-25% of the police department is CIT trained to have a large enough sum, however, the more police officers that have basic training and CIT training, the more officers are going to be able to recognize certain characteristics that are associated with a disability. Further, see below the complement to the CIT program.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety: Hearing before the Subcommittee on the Judiciary, 113th Congress 142 (2014)* (statement of the Crisis Intervention Team International, Memphis, Tennessee).

<sup>111</sup> *Id.* at 143.

<sup>112</sup> *Id.* at 144.

<sup>113</sup> *Id.*

<sup>114</sup> *Md.'s New Mandatory Police Training Program To Be Led By The Disabled*, CBS BALTIMORE, (May 22, 2014), <https://baltimore.cbslocal.com/2014/05/22/md-s-new-mandatory-police-training-program-to-be-led-by-the-disabled/>.

training as an officer, as they are always an officer first.<sup>115</sup> It is meant to be a supplement for officers to be able to better assist those who may be in crisis.<sup>116</sup> This comment does not suggest that police officers should put aside that, by training, they are police officers, but it suggests that the abilities of an officer need to be expanded to encompass training that is inclusive to all the members of the communities they serve.

ii. Past Successes of CIT

As mentioned above, this program has been successful, and therefore, is proof that the implications for law enforcement as a result of the proposed training modifications are not unreasonable. It has been successful in many areas of the country, from the southeast to the northwest and places in between. Therefore, other police departments are likely to have similar successful results if implemented. Since the inception of a CIT in Appleton, Wisconsin, there have been many benefits.<sup>117</sup> First, there is a reduced risk of injury to mental health patients, the public, and the officers.<sup>118</sup> This is the greatest benefit, considering this was the concern of the 5th Circuit.<sup>119</sup> There has also been a reduction of repeat calls.<sup>120</sup> Further, there has been an improved relationship between area providers and law enforcement, as well as increased involvement of the consumer's family and friends.<sup>121</sup> The representative from the Appleton

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<sup>115</sup> *Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety: Hearing before the Subcommittee on the Judiciary*, 113th Congress 139 (2014) (statement of the Crisis Intervention Team International, Memphis, Tennessee).

<sup>116</sup> *Id.*

<sup>117</sup> *Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety: Hearing before the Subcommittee on the Judiciary*, 113th Congress 96 (2014) (statement of the Appleton Police Department Crisis Intervention Team, Appleton, Wisconsin).

<sup>118</sup> *Id.*

<sup>119</sup> *Hainze*, 207 F.3d at 801.

<sup>120</sup> *Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety: Hearing before the Subcommittee on the Judiciary*, 113th Congress 96 (2014) (statement of the Appleton Police Department Crisis Intervention Team, Appleton, Wisconsin).

<sup>121</sup> *Id.*

Police Department feels that CIT should be recognized as a best practice nationwide by all law enforcement agencies.<sup>122</sup>

Forty of the 67 counties in Florida have a CIT and more than 18,000 officers are now trained.<sup>123</sup> The Florida Crisis Intervention Team Coalition has reported multiple benefits.<sup>124</sup> They include increased officer safety, reduced officer injuries, reduced citizen injuries, and reduced unnecessary arrests for use of force.<sup>125</sup> They also report a decline in the dispatch of the SWAT and hostage teams.<sup>126</sup> The representative from the Florida coalition concludes that CIT has been a very effective program for Florida.<sup>127</sup> These benefits help show that the modifications are reasonable.

## 2. State Legislation

States have taken an initiative of their own to protect individuals with disabilities in order to prevent violations under the reasonable accommodation theory. Maryland was the first state to enact a law that requires police to partake in disability sensitivity training.<sup>128</sup> When implementing this law, the state hoped that it would make the world safer for everyone.<sup>129</sup> The training encourages officers to focus on public safety and health.<sup>130</sup> The Maryland law states

The Commission has the following powers and duties: to require, for entrance-level police training and, as determined by the Commission, for in-service level training conducted by the State and

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<sup>122</sup> *Id.* at 97.

<sup>123</sup> *Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety: Hearing before the Subcommittee on the Judiciary*, 113th Congress 191 (2014) (statement of the Florida Crisis Intervention Team Coalition).

<sup>124</sup> *Id.* at 190.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Disability Training for Police Now Mandatory in Maryland*, ROLLING WITHOUT LIMITS, (Feb. 11, 2016), <https://www.transfermaster.com/blog/view-post/Disability-Training-for-Police-Now-Mandatory-in-Maryland-1>.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

each county and municipal police training school, that the curriculum and minimum courses of study include, consistent with established law enforcement standards and federal and State constitutional provisions: training regarding individuals with physical, intellectual, developmental, and psychiatric disabilities.<sup>131</sup>

Maryland is not the only state to enact a law like this. Pennsylvania followed suit in 2015 by amending their regulations to read,

The powers and duties of the commission shall be as follows: To provide training for police officers with respect to: (i) Recognition of mental illness, intellectual disabilities and autism. (ii) Proper techniques to interact with and de-escalate individuals engaging in behavior indicative of mental illness, intellectual disability or autism. (iii) Instruction on services available to individuals with mental illness, intellectual disabilities or autism.<sup>132</sup>

This requirement spells out more in terms of what they are requiring and would be a good model for other states to follow. The representative who endorsed the bill wanted police to know what to look for and how to handle a person's disability so that it does not unnecessarily result in a violent altercation or an unnecessary arrest.<sup>133</sup> This is surely reasonable.

### 3. Training All Officers to Understand I/DD

Some states have adopted mandatory training requirements.<sup>134</sup> However, in states in which this has not been done, state and local law enforcement agencies can engage in training on their own. These types of programs can be particularly helpful when used in conjunction with a CIT. For example, it might be important for all officers to be trained, so they know when a

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<sup>131</sup> Md. Code Ann., Pub. Safety § 3-207 (16)(iv).

<sup>132</sup> 53 Pa. Cons. Stat. § 2164 (2019).

<sup>133</sup> Joe Smydo, *Becoming aware of mental illness: Pa. law requires training for police, judges*, PITTSBURG POST-GAZETTE, (July 21, 2015), <https://www.post-gazette.com/news/health/2015/07/21/Becoming-aware-of-mental-illness-Law-requires-training-for-police-judges/stories/201507210005>.

<sup>134</sup> See Md. Code Ann., Pub. Safety § 3-207 (16)(iv); 53 Pa. Cons. Stat. § 2164 (2019).

situation calls for the deployment of the CIT or not, or so a responding officer knows how to handle and de-escalate the situation until specialists arrive.

Police training in this area is constantly changing and evolving. There are many different programs that law enforcement agencies can use to train their police officers. When talking about police trainings and the I/DD population, one thing that seems to be of consensus is the need for officers to learn de-escalation techniques.<sup>135</sup>

After Maryland passed a law requiring training, the state also created a unique program to begin training its officers through actual interactions with individuals that themselves have an I/DD.<sup>136</sup> When officers meet with individuals with disabilities, such as those that assist with the training, they are better able to assess their needs in the time of emergency situations.<sup>137</sup> This method of training goes beyond the training of CIT to turn law enforcement officers into agents of inclusion.<sup>138</sup> At the time this law was enacted in Maryland, three Maryland counties already offered CIT training,<sup>139</sup> but basic disability awareness training like this would expand on and complement the CIT teams and would be another valuable options for states or localities to implement. As recently as 2018, Prince George Community College starting utilizing this technique.<sup>140</sup> The program hired ten I/DD individuals, trained them, and employed them in training officers.<sup>141</sup> The scenes are unscripted – improv – to help the scenes feel more real.<sup>142</sup>

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<sup>135</sup> *Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety: Hearing before the Subcommittee on the Judiciary*, 113th Congress 189 (2014) (statement of the Florida Crisis Intervention Team Coalition). Studies showed a slight increased in an officer's perception of verbal de-escalation. *Id.* at 190. E-escalation is preferred over the normal method for police, which is to take control of situations.

<sup>136</sup> *Md.'s New Mandatory Police Training Program To Be Led By The Disabled*, *supra* note 116.

<sup>137</sup> *Disability Training for Police Now Mandatory in Maryland*, *supra* note 130.

<sup>138</sup> *Md.'s New Mandatory Police Training Program To Be Led By The Disabled*, *supra* note 116.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

The state of Maryland feels that this program is best practices, mostly because it includes the individuals with disabilities themselves.<sup>143</sup>

Likewise, Niagara University has a First Responders Disability Awareness Training, which it proclaims to be the nation’s premier training program and resource for first responders.<sup>144</sup> It partners with first responder organizations, some including, the Buffalo, New York Police Department and the New York State Troopers.<sup>145</sup> It offers a wide variety of training programs to law enforcement, but also to other first responders and families of individuals with disabilities.<sup>146</sup> These training options are not an unreasonable modification to police practices, and in turn will equip officers to better modify their practices on the street. The FBI Field Office in Buffalo participated in a training and wrote a letter in return, stating, “Your training was well received by the entire staff, but in particular, it greatly assists with the law enforcement officer’s ability to become more sensitive and more aware of the needs of the people that we serve.”<sup>147</sup>

Most recently, The Office of Community Oriented Policing Services (“COPS Office”) within the Department of Justice announced in May of 2019 that it is partnering with the Arc’s National Center on Criminal Justice and Disability (“NCCJD”).<sup>148</sup> The partnership has multiple goals, including informing law enforcement about the I/DD population, providing resources and tools to increase knowledge and skills in interactions with the I/DD community, and helping

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<sup>143</sup> *Id.*

<sup>144</sup> *First Responder Disability Awareness Training*, NIAGARA UNIVERSITY, (last reviewed June 20, 2020), <https://frdat.niagara.edu/>.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> Letter from Federal Bureau of Investigation, Buffalo Field Office, to David Whalen, Project Director, Disability Awareness Training (Dec. 11, 2015) (on file at <https://frdat.niagara.edu/assets/Uploads/FBI-thank-you.pdf>).

<sup>148</sup> *Advancing Public Safety for Officers and Individuals with Intellectual and Developmental Disabilities*, COPS OFFICE OF THE DEPARTMENT OF JUSTICE, (May 2019), [https://cops.usdoj.gov/html/dispatch/05-2019/intel\\_disability.html](https://cops.usdoj.gov/html/dispatch/05-2019/intel_disability.html).

build relationships between law enforcement and the I/DD community.<sup>149</sup> Currently, the partnership is developing a series of podcasts, articles for law enforcement, and a five-part video training series that can be used as roll-call trainings and as a supplement for in-service trainings.<sup>150</sup> Another part of the education will be speaking at national and international law enforcement conferences and meetings.<sup>151</sup> Webinars and round-table discussions are also in the works.<sup>152</sup> The website for the partnership states that this training will help officers be in compliance with disability rights laws.<sup>153</sup>

Additionally, the Arc, on a local and national level, on its own is taking action to help protect those that their organization serves. Local Arc offices are doing their part to help stop negative interactions between police and their clients. The Arc of NJ produced a video specifically for those in law enforcement.<sup>154</sup> It is particularly geared toward helping officers de-escalate first responder scenarios.<sup>155</sup> The NCCJD also has a program called Pathways to Justice.<sup>156</sup> It is a comprehensive and community based program designed to improve access to justice for individuals with disabilities with a multi-step process.<sup>157</sup> The first step is providing support in creating a Disability Response Team (“DRT”), which is a local, multi-disciplinary team that brings together key actors in both the disability and criminal justice communities.<sup>158</sup> In the second step, the NCCJD works closely with the DRT to provide a full-day, in-person training

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<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Advancing Public Safety for Officers and Individuals with Intellectual and Developmental Disabilities*, *supra* note 150.

<sup>155</sup> *Id.*

<sup>156</sup> *Pathways to Justice*, THE ARC, (last reviewed on June 20, 2020), <https://thearc.org/our-initiatives/criminal-justice/pathway-justice/>.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

for law enforcement, as well as victim service providers and legal professionals.<sup>159</sup> The main focus of the training is how to identify, interact with, and accommodate people with I/DD and other disabilities.<sup>160</sup>

To date, the NCCJD has reached 1,500 stakeholders in over a dozen states.<sup>161</sup> However, this is not enough. According to the NCCJD, after the training, criminal justice professionals better understand disabilities and their legal obligation to the disability community and can more effectively identify and communicate with the I/DD population, and provide appropriate accommodations and support to them.<sup>162</sup>

#### 4. Potential Implications that Law Enforcement Agencies May Face

The above discussion describes how the interpretation of Title II in the law enforcement context and modifications in light thereof will benefit individuals with disabilities. However, there are two sides of every coin and there are naturally going to be effects that law enforcement agencies feel as well. Upon review and reflection, it is clear that these modifications are not unduly burdensome, and can even be beneficial, to law enforcement and are also reasonable accommodations to make that would not substantially affect the way they do their job.

One thing that is on the forefront of people's mind when it comes to discussions about trainings is the funding for those trainings. Training officers can be effective and also makes economic sense.<sup>163</sup> The implementation of practices and trainings that dually increase safety and

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<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Pathways to Justice*, THE ARC, (last reviewed on June 20, 2020), <https://thearc.org/our-initiatives/criminal-justice/pathway-justice/>.

<sup>163</sup> *Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety: Hearing before the Subcommittee on the Judiciary*, 113th Congress 197 (2014) (statement of Family Resource, Information and Education Network for Down Syndrome (FRIENDS), Frederick County, Maryland).

decrease expense is immensely valuable.<sup>164</sup> As a result of the benefits imposed by these programs, there is likely a reduction in need for medical treatment which can lead to a reduction of insurance claims.<sup>165</sup> If law enforcement agencies were to create a CIT, it would not require that every member of the force be trained, as they recommend 20-25% of every police force be trained.<sup>166</sup> This would not require the cost to have every member of the department trained, if expense is an issue for a certain police department. Additionally, there are benefits for both parties involved in instituting a CIT. CITs have been reported to lower the number of citizen injuries and number of unnecessary arrests, which are benefits conferred upon the I/DD population.<sup>167</sup> However, the Florida Crisis Team Coalition has reported multiple benefits to law enforcement. They include increased officer safety and reduced officer injuries.<sup>168</sup> They also report a decline in the dispatch of the SWAT and hostage team.<sup>169</sup> Although the reasons for instituting a CIT are compelling in terms of the individuals with disabilities' rights, there are increased benefits for law enforcement personnel as well. Additionally, the benefits multiple when implementing any combination of CIT and basic disability awareness training.

The various training programs sub-implications do not pose an undue burden on law enforcement. One of the many benefits of the program being rolled out soon by the COPS office in conjunction with Arc is that the trainings are online. The partnership is developing podcasts, articles and a video training series that are intended to use as roll-call trainings and as

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<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety: Hearing before the Subcommittee on the Judiciary, 113th Congress 191 (2014) (statement of the Crisis Intervention Team International, Memphis, Tennessee).*

<sup>167</sup> *Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety: Hearing before the Subcommittee on the Judiciary, 113th Congress 191 (2014) (statement of the Florida Crisis Intervention Team Coalition).*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

supplements to in-service trainings.<sup>170</sup> Online component training may be valuable to law enforcement because it is sensitive to the time of law enforcement officers while still being very effective. These are just some of the ways that effective training might be provided to all law enforcement officers. But no matter which method or program a state or locality chooses, it is necessary training to better protect and serve the I/DD community.

#### B. Are these Modifications Reasonable?

These modifications are reasonable for multiple reasons. First, several agencies are trying to make these trainings accessible<sup>171</sup>, so they are not hard for law enforcement to find a program that suits their department. Additionally, law enforcement agencies from the east coast to the west coast have implemented various types of trainings and programs to be able to better understand individuals with disabilities, and they have been successful.<sup>172</sup> Further, there are positive effects in both the individuals with disabilities community and the law enforcement community. Therefore, the modifications law enforcement agencies are urged to make are reasonable.

### Part IV: Conclusion

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<sup>170</sup> *Advancing Public Safety for Officers and Individuals with Intellectual and Developmental Disabilities*, *supra* note 150.

<sup>171</sup> See *First Responder Disability Awareness Training*, NIAGARA UNIVERSITY, (last reviewed June 20, 2020), <https://frdat.niagara.edu/>; *Advancing Public Safety for Officers and Individuals with Intellectual and Developmental Disabilities*, COPS OFFICE OF THE DEPARTMENT OF JUSTICE, (May 2019), [https://cops.usdoj.gov/html/dispatch/05-2019/intel\\_disability.html](https://cops.usdoj.gov/html/dispatch/05-2019/intel_disability.html); *Pathways to Justice*, THE ARC, (last reviewed on June 20, 2020), <https://thearc.org/our-initiatives/criminal-justice/pathway-justice/>.

<sup>172</sup> See *Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety: Hearing before the Subcommittee on the Judiciary*, 113th Congress 191 (2014) (statement of the Florida Crisis Intervention Team Coalition); *Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety: Hearing before the Subcommittee on the Judiciary*, 113th Congress 289 (2014) (statement of the County of Maui Crisis Intervention Team, Wailuku, Hawaii).

Title II of the ADA is supposed to protect this vulnerable class of people, even in some circumstances by the very people who are supposed to protect them. However, as illustrated throughout above, sometimes police interactions with individuals with disabilities can turn dangerous, and even fatal. Courts all over this country have been presented with this issue when individuals with disabilities are not accommodated or are wrongfully arrested. This is a serious problem that plagues our country, which most people may not even realize. What more people may not also realize is that the reason these incidents occur is because of simple misunderstanding, as an individual with disabilities presents different needs than an individual without disabilities. However, the best solution would be to never have the courts be presented with a case of wrongful arrest or reasonable accommodation again. There are modifications that can be made to police practices and training regimens to help avoid this. These modifications, when implemented by different agencies and states, have been successful. These modifications should be implemented by all law enforcement agencies to continue to protect and serve individuals with disabilities under Title II of the Americans with Disabilities Act.