



## SLIDE 12.1 TITLE SLIDE

### Legal and Policy Topics

**Time:** 90 minutes

**Slides:** 25

**Purpose:** This module will review federal and state laws, as well as agency policies and procedures, that guide the work of law enforcement. Laws and policies specific to disability rights is the focus here, with the Americans with Disabilities Act (ADA) serving as the foundation for discussion. The goals for this module include:

- Helping participants understand the rights of people with disabilities, including expectations of law enforcement to know and uphold disability rights;
- Emphasizing how officers' use of de-escalation techniques is required by law;
- Reviewing civil involuntary commitment laws and practices, to include discussion regarding the overlap of federal, state, and local rules guiding the removal of individuals from the community; and
- Providing guidance on the use of less restrictive alternatives before placing an individual in custody for evaluation/commitment.

**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 agency to assist with training, particularly an assistant prosecutor or assistant district attorney who handles civil commitment or mental health diversion cases.



### **Instructor cont.**

You may also consider including attorneys from your state’s protection and advocacy agency, as they practice under disability rights laws regularly 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/>.

### **Learning Objectives:**

After completing this module, participants should be able to:

1. Discuss the Americans with Disabilities Act (ADA) to include knowledge about the range of individuals identified for protection under this landmark legislation;
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 some slides 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 the scene, and the general public.



**Module Overview**



- Federal Laws
- State Laws
- Agency Policies and Procedures
- Key Takeaways

## SLIDE 12.2 MODULE OVERVIEW



**Trainer Note:** Use this slide to walk through the topics that will be addressed in this module. Use the content note below to support this discussion.



This module briefly discusses legal concepts, laws, and policies that can affect how officers interact with people with disabilities. It addresses some U.S. Constitutional requirements and obligations mandated by the Americans with Disabilities Act (ADA) and why it is important to consider all least restrictive means to address the needs of people with disabilities. **Least restrictive means** refers to the standard imposed by the courts when considering the validity of legislation that touches on individual freedoms. *Shelton v. Tucker*, 364 U.S. 479, 81 S. Ct. 247, 5 L. Ed. 2d 231 (1960).

This module provides the definition of disability as set forth in the ADA and discusses ways in which civil commitment statutes require law enforcement involvement and why—in keeping with the least restrictive means and maintaining people in the community—civil commitment should be considered an option of last resort.

### Sources:

Robert M. Bastress, Jr., 1974, “The Less Restrictive Alternative in Constitutional Adjudication: An Analysis, a Justification, and Some Criteria,” *Vanderbilt Law Review* 27(5): 971–1041.

*Shelton v. Tucker*, 364 U.S. 479, 81 S. Ct. 247 (1960), retrieved from <https://supreme.justia.com/cases/federal/us/364/479/>.



**Federal Laws**

- U.S. Constitution
- Defining Disability
- Disability Rights Laws

## SLIDE 12.3 FEDERAL LAWS



**Trainer Note:** Use this slide to transition to the discussion of federal laws. Inform participants that they will learn about some legal concepts under the United States Constitution that are relevant to the work of officers. They will also learn about federal disability rights laws that impose affirmative obligations on law enforcement agencies and officers who interact with people with disabilities.

**Relevant U.S. Constitutional Issues**

- Equal Protection
- Acting under “Color of law”
- Reasonableness



## SLIDE 12.4 RELEVANT U.S. CONSTITUTIONAL ISSUES



**Trainer Note:** Participants likely have been introduced to many of the Constitutional law concepts on this slide in previous training. Review these concepts as a refresher for officers, keeping in mind there may be special impacts on the interactions of officers with people with disabilities and those in crisis. Use the content note below to support this discussion.



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

- **Equal Protection:** The Constitution and Title VI of the Civil Rights Act prohibits 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:
  - Does it make officers more likely to use force (vs. de-escalation)?
  - Does it make officers more likely to take a person into custody (versus linking them with service providers)?

Does it make officers more likely to 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”:** refers to a person using or acting upon authority given to them by a local, state, or federal government agency. There are two federal statutes that 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. In order to protect against lawsuits brought under “color of law,” it is important that



officers know and act within their department's policies and procedures, as well as federal and state law and relevant case law. 42 U.S.C. § 1983 permits a person 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.
- **Reasonableness:** The standard for an officer's actions is that the decision to act must be objectively reasonable, given the totality of circumstances. In other words, would a reasonable officer in this position do the same thing? Whether a person has a disability can be an important factor in the totality of circumstances in:
  - Stops, searches, and seizures
  - Use of force and whether it is excessive

**EXAMPLE OF REASONABLENESS:** The Fourth Amendment of the U.S. Constitution protects people from being stopped by a law enforcement officer when they are in a public place without reasonable suspicion that criminal conduct has occurred.

Disability can come into play in this reasonableness standard when an officer is called to a scene where someone is reported to be speaking too loudly, is unintelligible, and/or is moving in a way people find eccentric or disturbing. This may only be a manifestation of their disability and not evidence of a crime. As such, without additional evidence or information on criminal conduct, a search and/or arrest may violate the Fourth Amendment.

In instances like this, officers should assess the situation, document what they see and hear, and use their skills and knowledge about a person with disabilities to de-escalate the incident.

Emphasize that the totality of the circumstances will be considered when determining reasonableness, so it is imperative that they document all information received as well as their own observations.

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



## 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**
- A **record** of such impairment, or
- Is **regarded as** having such an impairment

## SLIDE 12.5 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 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?

Participants have been exposed to the ADA’s definition of disability in previous modules (i.e., Perceptions and Attitudes on Behavioral Health and Disabilities, Intellectual and Developmental Disabilities). This slide should be used as a refresher of that knowledge.

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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. 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\\_ga.html](https://www.ada.gov/regs2016/adaaa_ga.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>.



## 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 12.6

## DISABILITY RIGHTS LAWS

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

- 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 a law enforcement agency does, and law enforcement officers working for that 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.”).

*Olmstead v. L.C.* – In June 1999, the Supreme Court decided *Olmstead v. L.C.* that ADA is violated by serving a person with a disability 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 Dept. 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”); *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 reasonably should 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.
- When the officer reaches the scene and the individual is exhibiting apparent signs of a disability, in appearance or behavior.
- When someone tells the officer that an individual has a disability.
- When the officer has prior knowledge of the individual and their disability.
- When the officer is called to execute a petition for involuntary commitment.
- When 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). School staff may tell an officer that a student is “in special education” or has an Individualized Education Program (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.



## 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

## SLIDE 12.7 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.

Using the content note below, review these potential types of disability discrimination, and ensure participants understand what each of these means. Provide examples or elicit examples from the class.



**Intentional discrimination** is deliberately treating one individual (or group) differently than another is treated, because of a characteristic of that individual (or group). An example might 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. Department 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 their 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 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).



**Wrongful arrest for disability-related behavior** – 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. See, e.g., *Lewis v. Truitt*, 960 F. Supp. 175, 179 (S.D. Ind. 1997) (denying officer’s motion for summary judgment; genuine issue of material fact existed as to whether officers arrested plaintiff for his disability when, after being informed that plaintiff was Deaf, officers arrested him for failing to comply with commands). Examples of behavior leading to an arrest that is related to disability and is not criminal include:

- 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.
- An officer arrests a person with cerebral palsy for DUI because the person walks with a stagger during a test for intoxication.
- An officer arrests a person with autism because they try to flee the scene while experiencing sensory overload from police car lights and sirens.
- An officer arrests a person with IDD when they become agitated when the officer asks them to leave a location where they allegedly trespassed.

**Failure to ensure effective communication** – The 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, people with mental health conditions, people with visual impairments, and people with 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 written notes, for example, and when should you end questioning and wait until you have provided 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.

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); 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>.

**Provide reasonable modifications** – 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 directed verdict for law enforcement officers after a person with diabetes sustained injuries when arrested by police during an insulin reaction); *Fera v. City of Albany*, 568 F. Supp. 2d 248, 259 (N.D.N.Y. 2008) (finding a triable issue on ADA claim regarding whether police officers knew about 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. 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 (9th 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 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 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 actually time for first responders to call a unit with special training, or call behavioral health mobile crisis workers, but they do not do it, 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 had 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.



## 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.

## SLIDE 12.8 WHAT TYPE OF DISCRIMINATION?



**Trainer Note:** Introduce 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 behaviors 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 implicates whether the information obtained from or through the family member is accurate, may put the individual at risk, or is being kept appropriately confidential. **Discrimination Type: Failure to Provide Effective Communication**



State Laws



State Disability Rights Laws

State Commitment Law

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## SLIDE 12.9 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 all or partially blank so that the trainers can add a 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 last 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 12.10 STATE DISABILITY RIGHTS LAWS

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**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 12.11**  
**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 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 12.12

## 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:** System issues 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.

Go over the two sentences to reinforce the use of lesser 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 lesser restrictive alternatives available.

While less restrictive alternatives are less invasive, less frightening, and protect individuals' rights, the greater 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 least restrictive alternatives prior to invoking the commitment law, the trainer should articulate where in the law this is written. If not in the law, 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 12.13

## ALTERNATIVES TO USING CIVIL INVOLUNTARY COMMITMENT LAW



**Trainer Note:** Review what the alternatives are for someone in a crisis that may be under the influence of substances, has IDD, and/or has 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 community resources 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 that can bring 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.



## Civil Involuntary Commitment Law



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

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## SLIDE 12.14 CIVIL INVOLUNTARY COMMITMENT LAW



**Trainer Note:** This is a placeholder in this guide for the local presenter's slides 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 understand the officer's "legal" familiarity with their state statute(s), since prior state civil law training may not have been as robustly covered as that of state criminal law. Some law enforcement officers have a cursory understanding of the elements of the law. It is important for the trainer to provide more detail about all elements and applications of the law.

## Individual Rights



*[placeholder for local presenter's slides regarding clients' rights for involuntary and voluntary hospital admission]*

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## SLIDE 12.15 INDIVIDUAL RIGHTS



**Trainer Note:** This is a placeholder in this guide for the local presenter's slides regarding individual's rights for involuntary and voluntary inpatient hospital admission. Review the individual's 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. Caution not to let a discussion take up a lot of time on this topic.



## Confidentiality and Privacy



- Variety of federal and state statutes and case law governing confidentiality
  - Unless 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 to providers and to 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

## SLIDE 12.16 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 that govern confidentiality and privacy are designed to protect the release of sensitive information without the person's consent. Also note there are some exceptions 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); 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 PHI 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 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 Pettila, 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)

## Who Initiates?



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

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## SLIDE 12.17 WHO INITIATES?



**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 law and then call law enforcement for 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

## 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)

Q&A

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## SLIDE 12.18 ASSESSMENT CONSIDERATIONS FOR MENTAL HEALTH CONDITION INDICATORS



**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 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 the 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, 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



**Report Writing**

*[placeholder for local presenter's slides regarding report writing – fill in with the form or categories in a report that the officer will complete]*

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## SLIDE 12.19 REPORT WRITING



**Trainer Note:** This is a blank slide for the trainer to develop for report writing. Fill this slide in 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. Officers are instructed 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.



## 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 12.20 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 may be 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 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 12.21

## 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 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 keep 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 a hospital or crisis center must follow 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 does not meet the criteria for involuntary commitment.



## Agency Policies and Procedures



Policies and procedures  
pertaining to people with  
disabilities

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## SLIDE 12.22 AGENCY POLICIES AND PROCEDURES



**Trainer Note:** This is a transition slide for reviewing Agency Policies and Procedures. The trainer will review policies and procedures relevant to crisis response, including interactions with individuals with behavioral health conditions and disabilities. **If the agency has a specific crisis response policy, including specific policies for responding to calls involving people with intellectual or developmental disabilities, people living with mental health conditions, or people living with substance use disorders, this also needs to be reviewed.**



## Agency Policies and Procedures



*[placeholder for site-specific information related to relevant agency policies and procedures as it pertains to people with disabilities]*

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### SLIDE 12.23

## AGENCY POLICIES AND PROCEDURES

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N

**Trainer Note:** This slide is left blank so that the trainer can develop slides to use in highlighting relevant agency policies and procedures, and any recent revisions to those policies that participants need to know about. If the agency has a specific crisis response policy, a slide should be created to review.

Trainers should create as many slides as needed to describe the policies and procedures that will be discussed. For classes with multiple agencies in attendance, consider breakout groups with agency-specific trainers.



## Key Takeaways



- There are a variety of laws that affect interactions with individuals experiencing a crisis
- Officers have responsibilities to ensure a person's rights are protected and to avoid discrimination based on 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
- 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 12.24 KEY TAKEAWAYS



**Trainer Note:** Review the key takeaway points on the slide as a wrap-up for this module.



**Module Wrap-Up**

**Questions?**

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## SLIDE 12.25 MODULE WRAP-UP



**Trainer Note:** Use this as an opportunity for participants to ask questions before moving on to the next module.

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