

## RISK MANAGEMENT BULLETIN

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No. 118

June 2009

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### POTENTIAL FOR AN ARREST TO LEAD TO POLICE LIABILITY UNDER THE AMERICANS WITH DISABILITIES ACT

#### *Introduction*

A rapidly emerging area of police liability is Title II of the Americans With Disabilities Act (“the ADA”). Title II of the ADA provides 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.” 42 U.S.C. § 12132. “Discrimination” under the statute includes “not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability . . . .” *Id.* § 12112(b). Title II applies to law enforcement agencies because they are deemed to be programs of state or local governments. The ADA affects all of the core activities of law enforcement agencies, including, but certainly not limited to, arresting, booking, and holding suspects. Since a number of federal courts, including the United States Court of Appeals for the Fourth Circuit, have now established the parameters of police liability under Title II, it is the purpose of this Bulletin to assist law enforcement personnel and agencies to understand their potential exposure.

#### *Title II Claims in the Context of Arrests*

In the context of arrests, courts have recognized two types of Title II claims: (1) wrongful arrest, where police arrest a suspect based upon actions that later turn out to be caused by his or her disability; (2) failure to make a reasonable accommodation during an arrest, where police properly arrest a suspect but fail to reasonably accommodate an individual’s disability during the investigation or arrest, causing the arrestee to suffer greater injury or indignity than other arrestees. An example of the former would be an officer’s mistaking a driver’s symptoms of stroke for operating a vehicle under the influence and arresting the driver on that basis.<sup>1</sup> An example of the latter would be an injury sustained by a lawfully arrested paraplegic in a police van not equipped with wheelchair restraints.<sup>2</sup> Recognizing the difficulty of imposing the burden of ADA compliance on officers responding to rapidly evolving encounters, at least one federal appeals court has fashioned an “exigent circumstances” exception to Title II, holding that “Title

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<sup>1</sup> *Buchanan v. Maine*, 417 F. Supp 2d 45 (D. Maine 2006)

<sup>2</sup> *Gorman v. Barch*, 152 F.3d 907 (8<sup>th</sup> Cir. 1998)

#### *Sponsoring Organizations*



II does not apply to an officer's on-the-street responses to reported disturbances or similar incidents, whether or not those calls involve subjects with mental disabilities, prior to the officer's securing the scene and ensuring that there is no threat to human life."<sup>3</sup> Our federal appeals court, the Fourth Circuit, however, has yet to decide whether such an "exigent circumstances" exception to the ADA exists. Instead, it has elected only to factor "exigency" as one circumstance to consider in determining whether an officer's response was "reasonable" under the ADA.<sup>4</sup> In other words, "[a]ccommodations that might be expected when time is of no matter become unreasonable to expect when time is of the essence."<sup>5</sup> The court used this approach in *Waller v. City of Danville, Virginia* to determine that officers' actions in response to what they perceived to be a potentially violent hostage situation involving a mentally disturbed suspect were not unreasonable under the ADA. Their actions included speaking with their supervisors and with persons close to the situation, calling in a hostage negotiator, and waiting more than two hours before forcibly entering the suspect's apartment.

### ***Title II Claims Based Upon a Failure to Train***

Claims filed in Maryland and across the country continue to allege that law enforcement agencies have failed to train their officers on Title II, specifically in how to interact with individuals with disabilities. In the *City of Danville* case discussed above, the Fourth Circuit Court of Appeals did not reach the issue of whether Title II of the ADA supports a claim for failure to train. Consequently, plaintiffs will likely continue to press such claims mindful of the fact that the validity of such claims has been recognized in other jurisdictions.

### ***Conclusion***

As pointed out by Martha S. Stonebrook in her article, "Title II of the Americans With Disabilities Act: The Potential for Police Liability and Ways to Avoid It," *The Police Chief*, May 2009, "[t]he regulations interpreting Title II of the ADA state that a [law enforcement agency] shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of a disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." This emphasis on training from the Department of Justice can be seen as a harbinger of the liability landscape. Consequently, law enforcement agencies would be well advised to take proactive measures to establish their commitment to complying with the ADA before they wind up on the wrong end of a lawsuit. Agencies should review current policies concerning officer interaction with disabled persons and update and expand them if necessary.

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

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

<sup>5</sup> *Id.*

Training curricula should also be updated to include training on Title II. Agencies should remember that the Department of Justice has resources available to assist you, including the materials it offers at its website: [www.ada.gov/policeinfo.htm](http://www.ada.gov/policeinfo.htm) Especially helpful is the video, "Police Response to People With Disabilities, Eight-Part Series." This series is designed for use in roll-call training and addresses law enforcement situations involving people who have mobility disabilities, mental illnesses, mental retardation, epilepsy or seizure disorders, speech disabilities, deafness or hard of hearing, and blindness or low vision.

If you have questions concerning this issue, please contact John Breads, Director of Legal Services at [JBreads@lgit.org](mailto:JBreads@lgit.org) or telephone 1-800-673-8231.

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