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# Police Interactions with Individuals with Developmental Disabilities: Use of Force, Training, and Implicit Bias

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# I. Introduction

How the police interact with minority communities has become a topic of concern and wide debate in American media today. Incidents of extreme use of force by police officers, especially concerning those that end in an unarmed civilian fatality, have been regarded with high levels of scrutiny about police training, standards, and everyday conduct. However, many of the cases that have appeared in the news as exceptionally appalling are those that involve individuals who have intellectual or developmental disabilities (I/DD). In 2013, Robert “Ethan” Saylor, a 26-year-old man with Down syndrome, died of asphyxiation after being restrained by off-duty deputies; the theater manager had called security after noticing Ethan was re-entering the theater without paying. His death generated public outrage citing claims of gross negligence, with U.S. District Judge William M. Nickerson writing in his 54-page ruling that, “a man died over the cost of a movie ticket” (Hermann, 2014). Although the death was ruled a homicide, a grand jury failed to indict the deputies. In another well-publicized case, police shot a transgender man with Asperger’s syndrome to death while he was experiencing a mental health crisis. Kayden Clarke’s mother believes police overreacted and improperly handled her son’s case, while officers say they felt their lives were threatened and were not informed or aware that they were interacting with a person with Asperger’s or any mental problems (Ellis, 2015).

Regardless of the unique nature of each situation, these cases are not anomalies; according to various analyses, approximately twenty-five percent of people fatally shot by the police have had a mental disorder (Goode, 2016). In light of this, The Atlantic stresses:

While specific details vary by case, the common threads that link these stories together are often disconcerting. Law enforcement officials expect and demand compliance, but when they don’t recognize a person’s disability in the course of an interaction the consequences can be tragic. Misconceptions or assumptions can lead to overreactions that culminate in unnecessary arrest, use of pepper spray, or individuals being tasered, or even death (Perry and Carter-Long, 2016).

Even though these circumstances are concerning, databases specifically regarding police interactions with individuals with disabilities are nearly nonexistent. The databases that are currently in circulation often conflate or confuse terms that describe a variety of distinct disabilities, including mental illnesses, developmental disabilities, physical impairments, and other mental health concerns. While all of these populations are important and require special attention, it does a disservice to the community of individuals who are intellectually or developmentally disabled and may require unique accommodations; the recent uptick in focus on mental illness and policing, while valuable, is not sufficient support for the particular needs of the I/DD community. Conflating all disabilities together can make it more difficult for the media, the police, and the general public to become aware of the specific nuances that accompany people with I/DD. As Perry notes, their stories must be understood, “as clearly as possible [to] help pave the pathway towards a more inclusive society” (2016).

## A. Objectives and Methodology

Charting Perry's pathway towards inclusivity is a multistep process that involves inspecting police interactions with the I/DD community before, during, and after legal structures are involved. This paper aims to look critically at instances of police use of force in Los Angeles, California involving individuals with mental health disabilities in 2015 and what police training currently exists concerning interactions with this population. A specific focus on databases concerning individuals with I/DD would have been the most useful source, but no database of that nature currently exists—all either address all disabilities (both mental and physical) or just mental illness. Furthermore, required and optional training opportunities will be discussed and compared between different highlighted California police departments. However, as foundationally essential as training on the books is, it is also important to gather the opinions of individual officers who are out in the field, serving their communities and interacting with this population regularly. Two officers in particular, Officer Aaron Lowe of the Los Angeles Police Department and Officer Brian Lee of the East Palo Alto Police Department, were thoroughly interviewed concerning this topic. Their perspectives are included to frame the discussion about how they perceived their police academy training and how it has manifested itself out in their communities every day. Suggestions for improvements to California training, elective programming, and increased community involvement will also be considered for the future, hopefully setting a precedent for other states to follow. Lastly, the concept of implicit bias will be discussed in relation to its popular association with race and how that definition could be expanded to include disability as well. Ultimately, this report seeks to identify and analyze the various facets of police interactions with people with I/DD in order to better serve and protect all parties involved.

## II. Defining Intellectual and Developmental Disabilities: the Courts and the Streets

Before any database analysis can be conducted, a definition of who qualifies as an individual with I/DD for courts and police departments must be established. Both legal entities may encounter difficulty choosing just one comprehensive definition for intellectual and developmental disabilities. The federal definition of a developmental disability<sup>1</sup> is a, “severe, chronic disability of an individual 5 years of age or older” that is likely to continue indefinitely and is, “attributable to a mental or physical impairment,” among other criteria (Tarjan Center at UCLA, 2016).<sup>2</sup> However, the definition for recognizing people with I/DD for police officers can

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<sup>1</sup> This originates from the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1994.

<sup>2</sup> The definition also includes the manifestation of the disability before the individual attains age 22 and results in substantial functional limitations in major life activities such as self-care, receptive and expressive language, and learning. The disability also reflects the individual's need for, “a combination and sequence of special, interdisciplinary, or generic services, supports, or other assistance” (Tarjan Center at UCLA, 2016). More descriptions of the specific qualifications may be found on the Tarjan Center website.

vary depending on the state and the sources utilized by local departments. While the Developmental Disabilities Assistance definition is present in most state trainings, police officers must also receive instruction on how to identify individuals with I/DD from personal and situational context clues. A Texas curriculum guide for law enforcement trainers, for example, asks officers to look for any “awkwardness of movement or poor motor coordination,” the appropriateness of the clothing of the individual, and if the person becomes easily frustrated, among other indicators (Louis and Resendiz, 1997). Evidently, these are difficult criteria to consider—especially in a crisis situation—as they require shallow judgment of the individual, prolonged examination of the external situation, and critical communication with the suspect, who may or may not exhibit some of these features regardless of a disability.

As other states mirror the (suggested) curriculum provided in Texas, it becomes evident that utilizing official definitions for I/DD is more easily understood on paper in a courtroom or in training than it is out in the field. First and foremost, it is an officer’s job to assess the risk to public safety in any given situation, and the situational clues to I/DD may not be immediately apparent. However, that does not mean police officers are exempt from the responsibility to accommodate every individual’s needs, and not just those who may be more cognitively able than others. A closer look at cases of police use of force involving individuals with I/DD will illuminate how current databases are utilizing ambiguous terminology and/or neglecting any categorization of I/DD at all, making research about the I/DD community and police interactions particularly challenging.

## A. Definitional Problems and Limitations

As will become quickly apparent, certain databases, training modules, and even interviews with police officers reveals a tendency to either focus overwhelmingly on mental illness or to avoid specification by only using the generic term “mental health disability.” This does a disservice to everyone, including police departments, community members, advocates, and academics that are attempting to study this topic in depth. A few databases exist that include more general terminology, but this report calls attention to the lack of a separate category for individuals with developmental disabilities within these databases.

Notably, the conflation of mental illness and I/DD can negatively affect an officer’s (and the public’s) perception of an individual with I/DD. Heightened media attention concerning the dangers of individuals with mental illnesses, especially in recent mass shootings, may be inadvertently affecting perceptions of people with developmental disabilities, even though symptoms and responses can vary dramatically. It is therefore important to encourage differentiation between mental illness and I/DD in order to relieve undue negative stigma on the I/DD community.

However, there are also concerns about the recognition of I/DD in a person’s interaction with a police officer, especially in the moments of a mental health crisis. Especially in cases where a weapon is present, the time frame for an officer to respond may only be a few seconds. Thus it is

important to remember that not all officers in use of force cases are provided with the necessary contextual information to understand a mental health crisis is occurring and respond accordingly. Without direct information from an informed witness or dispatch, the officer may not know if the individual in question has a mental illness, a developmental disability, or a general mental health issue that is not defined by the prior two terms.

Lastly, there is also the potential that legitimate conflation between varying terminology may occur; a person with I/DD, for example, may develop a mental illness or physical disability in their lifetime, presenting perplexing issues for desired specifications in future databases. A substance abuse issue and/or homelessness may additionally accompany any of these conditions, consequently presenting a variety of further obstacles to the safety of all parties involved. As statistical information is provided in the next section, it is interesting to consider what factors are being prioritized in data collections, which ones are being muted, and how overlapping conditions could be addressed in future databases.

### **III. Databases**

Databases concerning police officer use of force are infrequently produced, with their creation and visibility highly dependent on county preferences, public desire for information, and independent oversight—or lack thereof. As mainstream media begins to pressure departments to publish their use of force statistics in relation to racial inequities in police contact, additional attention should be brought to the reporting of incidents with individuals with I/DD.

With definitional limitations in mind, the following section discusses the current state of databases concerning police use of force and suggests important changes for conducting this work in the future. Los Angeles is chosen as a specific area of focus in California, due largely in part to recent media attention about their use of force in relation to individuals with mental disabilities. While news media appropriately took note of the disproportionate contact this population has had with the police, there is much more work to be done to move beyond the general blanket term of “disability” and create databases with definitional specification and categorization of people with I/DD.

#### **A. I/DD Population Vulnerabilities**

Individuals with developmental disabilities are members of a vulnerable population which is more likely to be arrested, convicted, sentenced to prison, and victimized in prison (Davis, 2009). The frequency of police interaction, response of an individual to an authority figure, and feasibility of communication during a crisis situation may all be affected if the person has an I/DD. For example, “Many individuals unintentionally give misunderstood responses to officers, which increase their vulnerability to arrest, incarceration and possibly execution, even if they committed no crime” (Perske, 2003). Other individuals, such as those with Autism Spectrum Disorder, could have challenging behaviors that could attract police attention, such as

aggression, strong emotions, or problems understanding other people’s perspectives (Sarris, 2014). On the other hand, people with a developmental disability may also be highly functional—including having full time jobs, drivers licenses, and their own home—but may still be more vulnerable in a situation involving police contact than someone who does not have an I/DD. While each case will clearly be unique in nature, it is worth emphasizing the significant vulnerability in this population and how that may manifest itself in use of force statistics.

## B. Use of Force

No national database currently exists for police use of force. This includes officer-involved shootings or incidents in which police use excessive force. Furthermore, The National Institute of Justice reports that no single, universally agreed-upon definition of use of force exists, although The International Association of Chiefs of Police describes use of force as the “amount of effort required by police to compel compliance by an unwilling subject” (2015). Lack of universal guidance about use of force practices can lead to unequal distribution of force, variances in police actions deemed appropriate, and inconsistencies in how incidents are ultimately reported. This is discouraging not just for efforts for national accountability, but for those who wish to dissect databases further to grasp specific statistics on police interaction with individuals with I/DD. Moreover, the most recent documents and databases about use of force are decades old, highlighting a dearth of any national or statewide reviews of police use of force with the general population.

## C. Los Angeles

The city of Los Angeles has been featured in media headlines since early 2016 with the release of new reports and investigations into rates of officer prosecutions. Increased attention to the city’s use of force policies and statistics are beginning to shed light on patterns, areas of concern, and incremental improvements, although there is still much more to be done moving forward.

### *(1) Los Angeles Police Department Use of Force Report 2015*

According to Chief of Police Charlie Beck, the Executive Summary Report released by the Los Angeles Police Department was created to, “offer a framework for the Police Commission, the department, and the public to talk about how Los Angeles police use force” (2015). The department’s Use of Force Review Division, an internal investigative unit that reports to the Chief of Staff, drafted the report. Notable statistics in the summary include that only .13% of the 1.5 million contacts Los Angeles police had with the public resulted in any type of use of force.<sup>3</sup> However, there was a 300% increase in suspects perceived to have mental illness compared to 2014, and, “about a quarter of the nearly 1,900 less-serious uses of force...involved someone the officer believed was mentally ill” (Mather and Queally, 2016).

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<sup>3</sup> This includes arrests and responses to 9-1-1 calls.

Nevertheless, amidst all of the media focus given to Los Angeles' strides to address their uses of force and training policies, no attention was given to individuals with disabilities apart from the mention of mental illness. It is not clear whether the Division incorrectly placed individuals with I/DD into the label of mental illness, or if the presence of I/DD was not considered as a factor at all. Regardless, it is imperative that the Use of Force Review Division considers examining past and future instances of use of force with a new awareness brought to I/DD. While it is also recommended that an independent source should conduct this research, the Division already operates in an environment that makes this additional undertaking more feasible and accessible.

## ***(2) Prosecution of Officers***

It should also be noted that the general region of Southern California has come under fire for a shockingly low number of officer prosecutions. Specifically, of the 2,000 suspects shot by police officers in Southern California since 2004,<sup>4</sup> only one officer was prosecuted—and then later acquitted (Dolan, 2016). An investigation of these numbers reveals a larger discussion around the concept of “lawful but awful” uses of (usually fatal) force. Under the ruling of the Supreme Court's *Graham v. Connor* (1989), an officer's use of force is deemed legal if their perception of danger can be considered “objectively reasonable,” even if later revealed that their perception was incorrect (Wogan, 2016). This is particularly tragic for individuals with mental health disabilities who have been injured or killed by officers in a manner deemed unacceptable by a certain entity, which then decides to pursue charges against the officer. While cases are indisputably unique, it can be difficult to prosecute an officer as long as they state that they believed a threat was present during the time of the incident. Courts in California have ruled that the criminal justice system should be “highly deferential” to the judgments made by officers, especially given the split-second nature of their duties, but this provides a difficult obstacle for families attempting to pursue legal action against an officer (Dolan, 2016). Future work could explore how the presence of body cameras, for example, could affect future rulings concerning “awful but lawful” uses of force. This is significant if contextual evidence is presented in the footage (audio and/or visual feedback) of a mental health disability prior to the use of force, challenging the lawfulness of the officer's response.

## ***(3) Future Work***

The surge in focus on departmental use of force statistics and policies should be embraced and expanded upon while there is still national attention on the issue. An implementation of Los Angeles' Use of Force Review Division in other major cities would encourage departmental accountability and foster community discourse, benefitting both officers and residents. As Los Angeles looks to begin compiling their 2016 data, however, it is crucial that presence of an I/DD

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<sup>4</sup> This statistic is pulled from six counties in Southern California: Los Angeles, Orange, San Diego, Riverside, San Bernardino, and Imperial (Dolan, 2016).



is considered as a category or sub-category for use of force incidents. Specifically, this ideal data addition would mirror how officer-involved shootings with a person with a mental illness are currently recorded for the Los Angeles Police Department Executive Summary Report. All of these incidents would then be placed under the broad category of “disability,” where each appropriate case would be classified under the specific labels of mental illness, I/DD, or any other indicators of a general mental health condition as necessary.

Another recommendation is to develop an external review board that creates annual reports detailing police use of force incidents on either a citywide or statewide level. Categories within the produced database should have separate distinctions between mental illness and I/DD when possible, and an indication should be made if the mental health disability was recognized during the interaction or if it was only identified after. This annual report could serve as a tool for statewide and national comparisons, detailing where police departments are succeeding and where they need to focus future efforts for improvement. Recommendations in this annual report could also be provided as guidelines for updates to police training, which is provided by the Peace Officer Standards and Training (POST) Commission. This independent annual report could encourage departments to learn from their mistakes, utilize newly collected data, and push officers to remain accountable and just. The Toronto police board has already started to address this need, and it recently announced plans to create an, “external mental health advisory committee comprised of mental health experts and hospital leaders to assess the Toronto police force and its board on dealing with people experiencing mental illness,” including training policies and use of force options (Gillis, 2016). However, the Toronto board should look beyond just mental illness and also consider addressing individuals with I/DD in these annual committee assessments. While it may take a few years to evaluate the success of the Toronto board, this new committee could serve as a model for external review practices in the United States that concern use of force incidents and individuals with mental health disabilities.

On a smaller scale, future work should also include countywide quantitative and qualitative analyses of all police use of force incidents. Whether a small team or an appointed independent division produces the research, every case of use of force within a given time period should be investigated individually. *The Washington Post* has recently been praised for beginning to document cases of fatal use of force in 2015 and 2016 and providing distinctions for cases that involved a person with a suspected mental illness. Their work could benefit from including specifications of individuals with I/DD as well. Additionally, the National Center on Criminal Justice and Disability has considered requesting police departments to include the category of people with disabilities into police department’s use of force policies, as they currently do with pregnant women. Regardless of the team compiling the data, it would be valuable to inspect cases to see if a developmental disability was present, how it was reported in the police report, and what (if any) trends are apparent. A developmental disability should be defined in accordance with the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1994, as previously discussed. This may include individuals with cerebral palsy, Down

syndrome, and those on the autism spectrum, among others. Mental illness should be separately defined as a disorder that may affect one’s mood, thinking, and behavior, and may be acquired at any point during one’s lifetime (Mayo Clinic, 2015). A mental health disability should be considered as a general definitional term for a variety of physical and/or mental disabilities, but should not be utilized when identification of a specific disability is possible.

## **IV. Police Training**

This report looks primarily at California for police training practices, regulations, and officer experiences while out in the field. While it is important to recognize large variances in training requirements between states, policies are simply too state- and county-specific across the United States to address all at once. Therefore, California will fulfill the scope of this report with a specific focus on the communities and police departments of Los Angeles and East Palo Alto.

### **A. California Officer Mental Health/Disability Training Requirements**

It should be noted that no national standardized training exists for police officers in the United States. In 1959, California became the first state to develop a POST Commission, which still serves to create and provide standardized police training for recruits and current officers. Every other state has since employed some variation of POST, with notable differences in structure, organization of authority, and scope of responsibilities for trainers and recruits. While participation with POST is voluntary, the California Legislature mandates a minimum requirement for hiring officers, which includes the basic training curriculum provided by POST.

All California police officers are required to complete a two-part training process: one regular basic course (“the academy”<sup>5</sup>) for about six months followed by a probationary year of field training. While 664 hours is the minimum requirement for the academy training, many departments such as the Los Angeles Police Department require upwards of 800 hours in training. The California Highway Patrol requires about 1200 hours in order to include specialized instruction on vehicular conduct, first aid response, and racial profiling. However, of the hundreds of hours spent during academy training, a total of six hours are spent on disability and mental health-related training. Disability Rights California details the specific training requirements:

Learning Domain 37: Individuals with Disabilities is the segment of academy training focused on police officers’ interactions with people with disabilities. These six hours of instruction (less than ten percent of academy training hours) cover a wide spectrum of disability-related topics, including understanding and identifying

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<sup>5</sup> “Local police and sheriff’s departments develop their own academies, tailored to meet the unique needs of their communities” (Lew et al., 2014). The minimum basic curriculum is provided by POST.

various types of disabilities (developmental, physical and psychiatric) and reviewing state and federal disability laws and individuals rights protections. Also included in the six hours is instruction on interacting with people with mental health disabilities and the involuntary commitment process. Aside from Learning Domain 37, there is no requirement in California law or by POST that officers receive any additional or periodic refresher training in interacting with individuals with a mental health disability (Lew et al., 2014).

As of August 1, 2015, the training and testing specifications for Learning Domain 37 are required to recognize indicators specifically associated with the following developmental disabilities: epilepsy, autism, and cerebral palsy (POST). A fourth indicator of a developmental disability is listed under the term “mental retardation,” even though President Obama signed legislation in 2010 (Rosa’s Law) that required the federal government to gradually replace the term “mental retardation” with “intellectual disability” in various areas of government (Diament, 2010). An update for POST’s terminological choices may be in order in the near future.

Officer Aaron Lowe of the Los Angeles Police Department described his experience with the disability-specific academy training as a mix of teaching, exams, and scenario work. He named the scenario simulations as most helpful aspect of learning to interact with the disabled population while responding to a call, although he recognized that nothing compares to handling real cases out in the field. He speculated that they encounter a mentally affected individual at least once a day, although from an officer’s perspective that can include someone who is mentally ill, reacting to drugs, attempting to commit suicide, and/or developmentally disabled, among other potential reasons.

However, many advocates, experts, and officers are unsatisfied with the basic training concerning mental health. There has been a call from a departmental level to increase POST’s focus on disability-specific training, crisis intervention and de-escalation:

POST’s basic academy training curriculum on mental health disability should be revised. The current amount of time to train on mental health issues is too limited. Further, the training is just a catchall without any specific training regarding actually interacting with people with mental illnesses or other disabilities (e.g., autism). If they don’t capture officers during academy training—the foundation—it makes it even more difficult later on.”

–Detective Charles Dempsey, Los Angeles Police Department, Mental Evaluation Unit (Lew et al., 2014).

Detective Dempsey’s request for revision highlights the need to better train and equip officers in distinguishing between individuals who may have varying cognitive deficiencies. The minimal, “catchall” training does a disservice to everyone involved, and could increase the likelihood of incidents involving use of force, even if the situations may not necessitate it.

But people should not be fooled by the perceived simplicity of an increase in training hours says Robert Stresak, Executive Director of POST since 2012.<sup>6</sup> He warned against a mandated expansion, saying that, “standardized training does not guarantee standardized performance, and more training does not necessarily or automatically reduce the incident rate.” He mentioned Senate Bills 11 and 29<sup>7</sup> as positive steps for the mental health community, but expressed concern that concrete curriculum was not effectively attached to the proposed increase, and that just increasing training hours will not necessarily rectify the issue at hand. It is now up to the directors and experts at POST to develop effective increases in mental health-related training for both new recruits and current officers. While these new mandates may place additional strain on smaller departments with tight budgets, the payoff may ultimately be worth it for both police officers and the communities they serve.

### ***(1) The Crisis Intervention Team***

Local California law enforcement may also have a Crisis Intervention Team (CIT), which is defined by POST as, “a community partnership that addresses the needs of mental health consumers who enter the judicial system.” Officers may become members of their department’s CIT after completing a certification program of about 32-40 consecutive hours. Not every California department has a CIT unit, however, as it is created as necessary to address the specific needs of a department’s community. The Los Angeles Police Department, for example, assessed and discontinued their CIT program in 2003, opting for another division in its place. Departments such as the East Palo Alto Police Department still employ a CIT unit, however, to which Officer Brian Lee is a member. He recounts the training as separated into individual sections, each targeting interactions with individuals who have a specific mental illness, disability, and/or adverse reaction to drugs.

The CIT generally seeks to train officers in specific problem-solving and de-escalation skills when encountering this population, defined under the blanket term of mental health. The training focuses on developing specific crisis-intervention tactics interspersed with enhanced knowledge of general mental health-related topics, cultural sensitivity, and reduced stigma and assumptions (POST). An eventual goal of all California police departments may include incorporating CIT training into the general academy curriculum. While crisis-intervention specialists are valued members of a department, an individual with any disability or mental illness should receive

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<sup>6</sup> Stresak has been an employee of POST since 1999 and was a Los Angeles Police Department officer for 27 years prior to his time at POST.

<sup>7</sup> “SB 11 and 29 increase the amount of specialized training officers will receive, better equipping them to help people with mental illnesses and avoid injuries. These bills are essential in a day and age where officers are now the first responders for incidents involving untreated mental illness...Another positive effect we’ll see from these bills are reductions in use-of-force litigation and lower workers compensation liability costs for police and sheriff’s departments.” (California State Senate Majority Caucus, 2015). Both bills are in response to increased public concern over interactions between police and individuals with mental illnesses or developmental disabilities.

equitable care regardless of the officer responding. This heightened requirement could have the potential to increase safety for both individuals experiencing a crisis and responding officers.

## ***(2) Mental Evaluation Units***

Although not all departments create a CIT for their community, they may employ other specialized programs in its place. As previously mentioned, the Los Angeles Police Department decided to discontinue its CIT division, but they address the needs of the Los Angeles community with a robust Mental Evaluation Unit (MEU) instead. The MEU was established in the 1980's and has trained about 1,000 of its own officers and almost 130 outside agencies around the world.<sup>8</sup> Of the 25,000 calls to the Los Angeles Police Department every year, more than 14,000 of those are verified crisis calls in which the MEU may be employed (Stephens, 2015). The Unit seeks to assist those in crisis by linking them to a variety of services, some of which may negate the presence of a police officer and allow the police to respond to the most serious of crisis situations.

Detective Charles Dempsey of the Los Angeles Police Department, who earlier criticized POST's lack of thorough disability training curriculum, also estimated that the MEU serves a population of about two million people at a time in the city of Los Angeles. California Healthline quotes him stating that, "...there's not another law enforcement entity that dedicates so many people solely to mental health response. We're managing mental illness. Remember it's not a crime to be mentally ill" (Stephens, 2015).

## ***(3) Other Training Opportunities and Limitations***

Beyond entities such as the CIT and the MEU, other training and learning opportunities exist for officers in California seeking to engage with and further assist this population. Officer Lee mentioned a program that involves police officers visiting jails and talking with individuals with mental illnesses who have had multiple contacts with law enforcement. The inmates with a mental disability speak to the officers, giving them their advice about best practices for approaching their population in various situations while speaking from personal experience. While the program seemed promising as a great way to personally connect officers and one of the populations they serve, it appeared to be targeted primarily at inmates who identify as mentally ill as opposed to developmentally disabled. As is the general trend with this line of research, it appears that developmental disability has been left either unrecognized and/or conflated under mental illness, which is itself a separate entity with potential intersections. Although both populations should be acknowledged and assisted as much as possible, it does a

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<sup>8</sup> This includes agencies and departments in California, Texas, Virginia, New York, Canada, Ireland and Australia (Stephens, 2015).

disservice to the I/DD community when they are shadowed by mental illness and not given specific accommodations and programs that may differ from other disabilities.

In response to the lack of focus on I/DD-specific needs, cultural sensitivity, and programming, local law enforcement could craft a new program for the I/DD community in a similar fashion to Officer Lee's aforementioned prison initiative. The program could enlist the support of I/DD-specific inmates, community members, and relatives to give guidance on how to cater to the individual needs of this population, how to differentiate them from people with mental illnesses, and how to better facilitate communication and positivity between the I/DD community and police officers.

## **B. Police Perspectives on Training and Implementation**

As significant as training opportunities and programming concerning I/DD are, it is crucial to discern how police officers are utilizing and interpreting their academy experience when they are out in the field responding to calls. Officer Lowe, who became a police officer in 2012, works within thirteen square miles of South Los Angeles, an area known for daily violent occurrences and communities of lower socioeconomic status (Banks, 2014). As he noted earlier about interacting frequently with someone with a mental illness or developmental disability, a common radio call he receives is an individual who is mentally unstable and running in and out of traffic on Los Angeles roads. His task includes conversing with the individual and establishing a dialogue in order to assess the situation and restore a safe environment for everyone. This necessity for de-escalation tactics and establishing methods of effective communication applies to most, if not all, interactions police will have with the disabled community, especially in crisis situations. Both Officer Lee and Officer Lowe mentioned either an arrest or a 5150 hold as the most common response to people with a mental illness or I/DD, and the processes and repercussions of each are worthy of mention.

### ***(1) Dialogue and Handcuffing***

At the end of 2015, The Los Angeles Police Department received citywide training provided by the Mental Evaluation Unit and the deputy chief. In this training, officers were reminded of specific de-escalation and problem-solving tactics for interactions with individuals with mental illness and developmental disabilities. This training emphasized, among other themes, the importance of establishing a rapport with the individual in question as soon as possible in order to decide the appropriate next steps. Revealing questions may include if the person is currently taking their medication, if any drugs have been used, and if a witness/family member (if one is present) knows of any preexisting conditions that may further inform the responder.

Also included in the training update was a discussion about the viability of handcuffing an individual in crisis, if possible. Officers are given discretionary power to de-escalate a dangerous

situation and/or a mental health crisis by essentially incapacitating the individual as quickly as possible and reducing chance of injury to themselves or others. Officer Lowe credits the increased use of discretionary handcuffing as an effective means by which the Los Angeles Police Department has reduced their use-of-force incident rate. However, this emphasis on increased handcuffing should be closely scrutinized; while more efficient and convenient for an officer, handcuffing also has the potential to aggravate the distress of the individual, especially if they have an I/DD. The constrained placement of one's hands behind their back in the midst of a mental health episode may actually work counteractively, triggering or escalating the crisis further.

## ***(2) Welfare and Institutions Code 5150***

Both Officer Lee and Officer Lowe identified the decision to enact a 5150 hold as one of their main options for responding to an individual in crisis who may have a suspected mental health disability. The Welfare and Institution Code 5150 can be employed when a person is a danger to others, to him or herself, or is gravely disabled.<sup>9 10</sup> Upon probable cause, a police officer, along with certain other designated mental health professionals, may take an individual into custody. That individual is brought to a psychiatric hospital where they may be held for a period of up to 72 hours for, “assessment, evaluation, and crisis intervention, or placement for evaluation and treatment in a facility designated by the county for evaluation and treatment and approved by the State Department of Health Care Services” (wic: 5150). By the end of the 72 hours, an individual will be released, voluntarily signed in as a patient, or put on a 14-day involuntary hold, called “certification for intensive treatment” (Thomas, 2001).

Both officers indicated that their job as a first responder is to assess the given situation and determine whether or not a 5150 should be exercised. As with an arrest, establishing a dialogue between the responder and the individual in crisis can be useful for deciding whether or not a 5150 is appropriate; responses received may help discern whether a 5150 or an arrest is deemed acceptable. While either an arrest or a 5150 hold are the main means by which officers say they typically respond to a crisis situation involving a person with a mental health disability, issues arise when neither of those are an appropriate response.

## **C. Improvements for Police Officers**

A key question departments should continually ask themselves is how they can enhance their training, their field conduct, and their connection to the communities they serve every day. Listed are requested improvements from both officers and community members concerning changes that can be enacted by police departments and mental health officials.

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<sup>9</sup> wic: 5150

<sup>10</sup> Grave disability is defined as, “a condition in which a person, as a result of a mental disorder, is unable to provide for his or her basic personal needs for food, clothing or shelter.”

## ***(1) Increased Disability Training***

As previously noted, there is a need for an increase in training hours specifically concerning disabled populations. In line with Mr. Stresak's concerns, however, these hours need to be substantive and informative—an arbitrary increase in hours without concrete updates in content simply wastes taxpayer money and the strained time and resources of a police department. In POST's process of improving their disability content, more attention should be given to the definitional and procedural differences between a mental illness, a developmental disability, and the compounding label of general mental health. The term "mental retardation" in POST's most recent Learning Domain 37 is also overdue for a terminological update. The phrases developmental disability, intellectual disability, and/or cognitive disability are all more appropriately suited for officer training than the outdated usage of "mental retardation." This update may also remove any negative stigma associated with the old term and provide a more appropriate recognition of and response to individuals experiencing a mental health complication.

Furthermore, departments within cities known for bigger populations of people with disabilities should be required to participate in an annual disability-specific refresher course. This program would revisit and/or update departments on new effective methods of de-escalation and problem solving (depending on the individual case and their unique needs), up-to-date definitions and terminology, and cultural sensitivity training. This program could also serve as a forum for officers to communicate their frustrations, hopes, and wishes in order to improve their future interactions with these communities.

## ***(2) Crafting Informed Incident Reports***

When responding to a call, Mr. Stresak strictly defined the limitations of an officer's role, stating, "We can not and will not train officers to diagnose... we will train them to recognize behavioral indicators of harm and respond accordingly." This serves as an important reminder for some advocates who may over-assume the responsibilities of a police officer. In a crisis situation, an officer prioritizes the restoration of safety for everyone involved, using context clues to discern any anomalous circumstances, and to de-escalate the situation as effectively and efficiently as possible. While they may quickly recognize that an individual is experiencing some kind of mental health crisis, specifications may be hazy until after the episode has occurred.

With that being said, this does not preclude an officer's duty (and legal requirement) to assess the mental health condition and needs of an individual as soon as the threat to general safety is removed. This duty is extended into the incident reports that they create after the fact. In their incident reports, police should describe the situation they encountered; what information they were provided with beforehand via their communications division (dispatch); what de-escalation tactics they employed; and if they were provided with any contextual signs (from a family member, a caretaker, a bystander, or the individual themselves) to help clue in the officers as to



the special needs of the individual. If it is not readily apparent at the time of crisis, an officer can craft their report afterwards by gathering information from family, friends, mental health experts, and doctors in order to discern what kind of disability the individual may have.

In the future, departments should encourage (or require) officers who interact with someone in a mental health crisis to distinguish, when possible, between a person with a mental illness and a developmental disability. This distinction will encourage officers to lessen their reliance on the general term “mental disability” and encourage definitional specification for different populations within the large community of people with various disabilities. As a result, future studies in this field will hopefully have access to databases that distinguish between mental illnesses and I/DD, providing clear avenues for identification and analysis about how police are interacting with certain communities.

### ***(3) More Options for Officers***

Officer Lee expressed frustration over the lack of options officers have to help individuals with either mental illnesses or developmental disabilities that come into contact with law enforcement. He asked, “If I can’t place them under arrest and I can’t put them on a 5150 hold, where can I bring them so that they’re not just out on the streets a few hours later?” In order to address this inability to provide assistance, Officer Lee requested that departments begin crafting a simple pamphlet of step-by-step instructions about where to place an individual with an evident mental health disability when neither an arrest nor a 5150 are appropriate. If a family member or caretaker were not present to take the individual with them, a list of care homes for veterans, the mentally ill, people with general disabilities, etc. would be a valuable resource, according to Officer Lee. This pamphlet he is proposing would also save taxpayer dollars, encourage community safety, and more efficiently utilize department resources.

### ***(4) Community Involvement and Reduced Gun Use***

Police officers also stand to benefit from becoming more involved within the communities they patrol. The more an officer knows about the people they are serving, the better they can respond to calls, such as ones involving a mental health crisis. This is particularly important for individuals with I/DD who could interact with a police officer in various capacities. This effort by officers for increased community involvement may aid in building trust, mutual respect, and informed decision-making, therefore cultivating a healthier relationship between all parties involved. Patti Saylor, the mother of the man with Down syndrome who suffocated to death while handcuffed, articulated this sentiment at a Senate Judiciary Committee hearing:

When you know someone with a disability and have a relationship with that person, it changes your whole being and perspective. At the local level, we have a real opportunity to build relationships with our local law enforcement and public sector officials, the ones that are on the frontlines serving our communities...Local

disability advocacy organizations and providers should build lasting relationships with their local law enforcement and public sector officials. It doesn't take an act of Congress, federal or state mandate, or even money to make you realize that relationships are everything (Perry and Carter-Long, 2014).

Another means of positively interacting with a department's community is reducing general reliance on guns. This is applicable for any police interaction, but is especially relevant for people with an I/DD who may not know how to properly interact with an officer or may respond inappropriately to an officer's commands. A department may benefit from rethinking their strategies for responding to situations that do not involve guns in the first place. A recent Op Ed in the New York Times stated that, "...the use of force must be proportional to the threat. Officers should focus on calming volatile situations. They must intervene if they see colleagues using excessive force" (Wexler and Thompson, 2016). While there are instances where gun use is deemed justified, it is important to emphasize de-escalation tactics whenever possible. Especially for an individual with an I/DD, the presence of a gun may work counteractively and escalate a crisis. It is a worthy topic for departments to consider in the future, especially as they debate the optimal methods for interacting with individuals with cognitive disabilities.

#### ***(5) Examining the Role of Communications Divisions (Dispatch)***

In conversations with both Officer Lee and Officer Lowe, it became increasingly apparent how dependent officers are on their communications divisions. While much of the attention is generally placed on responding police officers, especially in unfortunate use-of-force situations, officers get all of their initial information from their department's dispatch centers. In essence, dispatch is providing information and potential context clues about the situation before the police even arrive on the scene. This is of particular interest for this research, since discerning whether or not someone has a mental illness or developmental disability can be a very communicative and contextual process that an officer has to attempt in potentially challenging circumstances. It may be useful to look to dispatch practices and training to observe how employees are taught to interact (over the phone) with people who may be experiencing a mental health crisis or witnesses calling in the situation. The Oakland Fire Department shows promise with a 9-1-1 Disaster Registry, which is a, "voluntary, confidential and secure database of frail senior citizens and persons with disabilities," as a way to, "identify people who may require special assistance in the event of a disaster" (City of Oakland Fire Department). This is an encouraging step for providing mental health accommodations for community members, but it does not replace the need for dispatch centers that are trained to handle calls concerning an individual with a cognitive disability. Knowing the right questions to ask the caller, especially in the case of a known or suspected disability, may aid officers in gathering contextual information about the situation before they even arrive, ultimately making the situation safer for everyone involved.

### **D. Improvements within the Community**

While there are evidently multiple opportunities for law enforcement to improve how they approach people with I/DD before, during, and after contact with officers, there is only so much the police can do from their end. The community and its residents also have a responsibility to provide the means necessary to accommodate and support individuals with cognitive disabilities.

### ***(1) Attitudes***

One of the most desired yet complex community transformations, at least from the perspectives of Officers Lee and Lowe, involves changing the negative stigma surrounding police officers. If and when police departments declare their commitment to improving their disability-specific training and conduct, the community could also benefit from encouraging a more positive image of police officers. This supportive shift in attitude would create dual benefits, fostering a more positive and communicative relationship between communities and their local law enforcement. This opens up opportunities for increased dialogue, empathy, and understanding between all parties, improving relationships and decreasing chances of use-of-force incidents with mental crises due to situational unfamiliarity. This transformation requires the willingness of the community met with the substantive and enduring commitment of their local law enforcement to protect everyone, especially vulnerable populations.

### ***(2) Resources Development***

Beyond attitudes, there are concrete actions to be taken by cities and local communities in order to improve conditions for their disabled population, especially for the individuals who do not have someone looking after them. Officer Lee expressed disappointment in the availability and conditions of East Palo Alto's care homes for individuals who are homeless and/or cognitively impaired. While some residential care homes are successful, Officer Lee revealed his frustration with the many unlicensed and therefore unregulated complexes for people with "special needs," which do not adequately look after or care for its inhabitants. He also said that the social workers assigned to many of these cases are overcommitted and cannot sufficiently aid their clients, further demonstrating the lack of assistance available to this vulnerable population. If an officer determines neither a 5150 hold nor an arrest is an appropriate measure, and the individual is not under the legal custody of a family member or caretaker, there should exist multiple (licensed) facilities where they could be placed and cared for. Otherwise, many of these people will end up back out on the streets, perpetuating an endless cycle that police are unable to interrupt.

This population, whether they are homeless or living with a legal guardian, could also benefit immensely from increased government funding for program and health care development. More effective, evidenced-based programming could increase community-police contact and provide a new kind of training for both parties. For example, a program could involve individuals with

I/DD (and their families, if applicable) and officers meeting regularly to discuss how police are taught to communicate with people with mental health disabilities, how interactions have occurred in the past, and how they can be improved in the future to maintain the safety of everyone involved. Many opportunities exist for programs like these, but the current dearth of funding and advocacy is halting the possibility of affecting meaningful change for this population. It is crucial to examine state and national priorities, evaluating how, “America must turn the page on its over-dependence on the criminal justice system. In order to break arrest cycles and end inappropriate criminalization of people with mental illness we must support community-based behavioral health care” (Lerner-Wren, 2015). While Lerner-Wren referred specifically to mental illness in his writing, the sentiment extends seamlessly to the I/DD (and the general mental health) community as well. Without community and government efforts aimed at improving conditions for this vulnerable population, substantive change, regardless of ameliorated police conduct, will be unreasonably difficult.

## E. Recommended National and International Models

The above tasks offered as methods of improvement may seem much easier in theory than in practice, and rightfully so. However, departments and communities can look at national and international proposals and practices to better relations between individuals with disabilities and police officers and subsequently combat unnecessary use of force incidents.

President Obama’s Task Force on 21<sup>st</sup> Century Policing provides an exhaustive list of recommendations for how police officers can, “promote effective crime reduction while building public trust” (U.S. Department of Justice, 2015). In reference to disability-specific police training, the Task Force advocates for mandatory CIT training through POST for both basic recruit and in-service officer training, which will include the, “instruction in disease of addiction, implicit bias and cultural responsiveness, policing in a democratic society, procedural justice, and effective social interaction and tactical skills” (U.S. Department of Justice, 2015). In addition to the recommended training requirement, the Task Force recommended the implementation of, “nonpunitive peer review of critical incidents separate from criminal and administrative investigations,” with specific mention of incidents involving vulnerable arrestees with mental disabilities (U.S. Department of Justice, 2015).

While encouraging, the recommendations provided by the Task Force will mean little without concrete implementation. In 2014, Maryland showed promise by becoming the first state to mandate training sessions for all law enforcement officers about people with I/DD led partly by disabled people (Dishneau, 2014). Instead of just training officers how to interact with people with developmental disabilities through courses and exams, Maryland implemented the concept of people with I/DD as teachers and resources for rising officers.

Additionally, increasing the use of body cameras across the country for police departments has shown a dramatic reduction in use of force incidents. A study found that the likelihood of force being used was roughly doubled when body cameras were not employed (Ariel et al, 2015). Rialto, California, for example, has seen a 60 percent drop in use of force incidents after body camera implementation, but not all cities yield the same results (Winkley, 2015).<sup>11</sup> This camera implementation, which is slow and costly for many departments, may be promising for providing first-hand accounts of the scene as opposed to police and eyewitness testimony, but they should not be seen as an end-all solution. In addition to body camera use, many states, including New York, are crafting new tracking systems for documenting various instances of force (Baker and Goodman, 2015). It is imperative, however, that these improvements be accompanied by guidelines for documenting and identifying, if possible, individuals with specific mental health disabilities. Future research in this field would benefit immensely from that kind of new data borne out of these force-tracking systems.

Lastly, American police officers traveled outside of the country to Scotland in order to observe different methods of avoiding use of force incidents. In Scotland, 98 percent of officers do not carry a gun—a stark contrast to most American officers—and must subsequently rely solely on de-escalation tactics to maintain public safety (Baker, 2015). The Scottish officers emphasized their focus on community-based policing, understanding when retreat is possible and appropriate, and the utmost importance of survival for all persons involved. While some of the American officials rightly pointed out the cultural differences (including police stigma, access to guns, and population size) that may allow Scottish officers to have such low incidents of use of force, it was another opportunity for American police departments to critically examine their value systems and acceptable practices.

## **V. Implicit Bias**

As briefly mentioned in the Task Force’s recommendations, training in implicit bias has become a new focus for police departments as they look to modify old training standards. The concept, in turn, has frequently captured headlines and scholarly articles within the past year. Notable politicians and academics, including Attorney General of California Kamala Harris, former Attorney General of the U.S. Eric Holder, and Stanford University social psychologist Jennifer Eberhardt, have advocated for the implementation of this training. The term “implicit bias” refers to the unconscious beliefs—both negative and positive—that we hold about people based on certain races, genders, socioeconomic statuses, cognitive and physical abilities, etc. It should not be confused with conscious discrimination against others.

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<sup>11</sup> A report concerning the San Diego Police Department’s first year using body cameras concluded that San Diego police officers outfitted with body cameras received fewer complaints from the public but also used more force (Winkley, 2015).

## A. Race and Implicit Bias

In light of media and public attention on instances of police brutality with minority communities, the concept of implicit bias training has been almost entirely focused on racial biases and how training for officers can address this constructively. POST's Learning Domain 42 is about cultural diversity and discrimination training, with a required five hours dedicated to the concept of racial profiling. However, recent efforts have advocated replacing the term racial profiling with implicit bias instead, offering a more constructive rather than instructive means of addressing a controversial topic. POST's Mr. Stresak said that they are already implementing components of implicit bias training under a different name, beginning an arduous process of change for officer training. While this modification may take many years due to the pervasive use of the phrase racial profiling in legal and political realms, encouraging discussion around this topic is a step in the right direction, pressuring police departments to address how implicit biases may play out in how they interact with their communities.

## B. Extending the Concept to Disability

While a separate training module concerning implicit bias sounds promising, significant opportunities will be missed if the training addresses only racial biases. To this point, academics have argued that, "implicit bias against people with disabilities is one of the strongest types of implicit bias in our society" (Larson, 2008). A study referenced in the same article points to how children were the most biased against other children, "representing the intellectual and intellectual/physical disability conditions," pointing to the particular prominence of bias against those with I/DD (Nowicki, 2006). As with racial implicit biases, it is important to consider how our natural biases towards certain individuals could affect how police think about and respond to people with various disabilities. The implications of these biases are enormous, especially for law enforcement, and it is therefore crucial to include disability as POST and individual departments craft their implicit bias training. As with racial biases, however, these training improvements are not meant to shame people for their unconsciously held beliefs about others. Instead, this training could help officers become aware of what and how they think about the individuals they interact with, encouraging critical reflection and more thoughtful policing.

## VI. Conclusion

Amidst heightened media, political, and scholarly attention to police and mental health disabilities, there is ample opportunity to incorporate I/DD-specific training and categorization. It is up to the various organizations creating databases, conducting research, and drafting new training policies to integrate the presence of I/DD into each entity whenever possible. Otherwise, we run the risk of conflating developmental disability into mental illness, doing a disservice to

those individuals and those attempting to study how police interact with people with differing disabilities. By addressing current databases, training standards, and changes to be considered in the future, we can encourage police accountability, public safety, and community engagement, especially for vulnerable populations. The recommendations for improvement provided in each section would benefit all parties involved, although they would be bolstered by stronger policies with teeth that legally induce compliance and protection for suspects with I/DD who were subject to unlawful use of force by an officer. It is imperative that these issues are considered for law enforcement across the country, and that resources are (re)allocated accordingly; it is not acceptable for police departments to fail to provide for this demographic simply because of financial limitations or a lack of time to train officers. While we have made great strides over the past few years to address these concerns, there remains a considerable amount of work to be done in order to ensure the protection of all human beings who interact with police officers, regardless of their cognitive abilities.

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