TASC Training & Advocacy Support Center

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Q&A

Reasonable Accommodations during Police Interactions

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Q: We are evaluating the merits of an ADA Title II discrimination case arising from a police officer's failure to reasonably accommodate our client's disabilities during the arrest process. After *Sheehan v. San Francisco*, how have courts applied the ADA in the context of arrests? What are the challenges associated with proving discrimination in this context?

A: No circuit court has found that police interactions are categorically exempt from the requirements of the ADA, but those that have applied the ADA to police interactions continue to disagree on what standards to use. P&As should first consider whether the threshold requirements for an ADA reasonable accommodation claim are met, and then evaluate the facts in light of circuit precedent. Establishing that the police officer knew of the need for an accommodation, and that the accommodation was reasonable, given potentially exigent circumstances, are among the challenges P&As can anticipate when litigating these cases.

I. Introduction

In *City and County of San Francisco v. Sheehan*,[1] the Supreme Court granted certiorari to consider whether and to what extent Title II of the ADA applies to interactions between persons with disabilities and the police, such as when officers respond to calls to assist people experiencing a mental health crisis. After San Francisco changed its legal position in its brief on the merits, however, the Court dismissed as improvidently granted the question of the ADA's

[1] 570 U.S. 600, 135 S.Ct. 1765 (2015).

applicability in such circumstances.[2] In the years since the Supreme Court declined to resolve the question,[3] lower courts have handled the issue in different ways.

The discussion below examines the legal standards used in various circuits to evaluate a plaintiff's factual allegations and common challenges to prevailing in cases involving police interactions with persons with disabilities.

II. General Requirements

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."[4] While a police department is clearly a "public entity,"[5] the question of whether an arrest is a service or activity of a public entity is more difficult.[6] Thus, a plaintiff should consider whether pleading that he or she was "subjected to discrimination" by the public entity is a better option to demonstrate a violation of the ADA.

Courts have recognized two types of discrimination claims in the arrest context: 1) wrongful arrest, where police incorrectly arrest a person with a disability because they "misperceive[] the effects of that disability as criminal activity"; [7] and 2) failure to provide reasonable accommodation, where police do not accommodate someone's disability in the course of an arrest.[8] Discrimination claims under the reasonable accommodation theory are more common.

The courts of appeals have addressed how the ADA applies to police interactions in different ways. The Second, Third, Fourth, Fifth, Eighth, Ninth, Tenth, and Eleventh Circuits have all found that, in general, that the ADA applies to arrests and other police interactions with people with disabilities, but are divided on the extent of the coverage.[9] The First, Sixth, and Seventh Circuits

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[2] *Id*., 135 S.Ct. at 1774.

[3] In 2018, the Supreme Court had another opportunity to address the issue but declined to do so. *See Vos v. City of Newport Beach*, 892 F.3d 1024, 1037 (9th Cir. 2018), *cert. denied*, 139 S.Ct. 2613 (2019).

[4] 42 U.S.C. § 12132.

[5] 42 U.S.C. § 12131(1)(B) (defining "public entity" in part as "any department, agency, special purpose district, or other instrumentality of a State or States or local government"). *See Gorman v. Bartch*, 152 F.3d 907, 912 (8th Cir. 1998) ("A local police department falls 'squarely within the statutory definition of public entity'…." (quoting *Penn. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 210 (1998)).

[6] *See Haberle v. Troxell*, 885 F.3d 170, 180 (3d Cir. 2018) ("[C]ourts across the country are divided on whether police fieldwork and arrests can rightly be called 'services, programs, or activities of a public entity….'").

[7] *Sheehan v. San Francisco*, 743 F.3d 1211, 1232 (9th Cir. 2014); *Waller ex rel. Estate of Hunt v. City of Danville*, 556 F.3d 171, 174 (4th Cir. 2009); *Gohier v. Enright,* 186 F.3d 1216, 1220 (10th Cir. 1999).

[8] *Gohier v. Enright*, 186 F.3d at 1220-1221.

[9] *Anthony v. City of New York*, 339 F.3d 129, 141 (2d Cir. 2003) ("If… the seizure and hospitalization were motivated by the officers' discrimination against individuals with disabilities, [Plaintiff] would presumably have a claim that she was 'subjected to discrimination' by a public entity in violation of Title II."); *Haberle v. Troxell*, 885 F.3d at 178 ("[I]n general, the ADA applies to arrest situations…."); *Seremeth v. Bd. of Cnty. Comm'rs Frederick Cnty.*, 673 F.3d 333, 338 (4th Cir. 2012) ("[I]n light of *Yeskey*'s expansive interpretation, the ADA applies to police interrogations…."); *Hainze v. Richards,* 207 F.3d 795, 801 (5th Cir. 2000) (holding that Title II does not apply until police officers "secur[e] the scene" and "ensur[e] that there is no threat to human life"); *Roberts v. City of Omaha*, 723 F.3d 966, 973 (8th Cir.

have declined to decide whether the ADA applies to arrests.[10] The D.C. Circuit has not had an opportunity to address this issue.

In the reasonable accommodation context, the claim is usually framed as a failure to provide modifications, adopt policies and procedures, or adequately train police officers to safely interact with people with mental illness, and particularly those experiencing crisis.[11] Courts have generally examined, first, whether the defendants knew of a plaintiff's need for an accommodation, and, second, whether the accommodations would have been reasonable under the circumstances. To meet the first test, showing that the officer knew of a plaintiff's disability is not enough.[12] Unless the need for an accommodation is "open, obvious, and apparent," the burden falls on the plaintiff to request a specific accommodation.[13] To satisfy the second test, considerations relevant to the issue of reasonableness may include the nature and history of a person's mental illness; the officer's knowledge of the individual's disability; the physical setting and conditions giving rise to the incident; and the presence, degree, and immediacy of danger to the person with a disability, the officers, or the general public. As discussed below, exigent circumstances are particularly salient to the reasonableness analysis.[14]

2013) ("[T]he ADA and the Rehabilitation Act apply to law enforcement officers taking disabled suspects into custody."); *Sheehan,* 743 F.3d at 1232 ("The ADA… applies to arrests…."); *Gohier,* 186 F.3d at 1221 (noting that the law does not provide for a categorical rule excluding arrests from Title II's reach); *Bircoll v. Miami-Dade Cnty.*, 480 F.3d 1072, 1085 (11th Cir. 2007) (stating that there is no question as to Title II's applicability to the police encounter at hand because Title II prohibits public entities from discriminating based on disability regardless of when the discriminatory treatment occurred).

[10] *Gray v. Cummings*, 917 F.3d 1, 16 (1st Cir. 2019) (The services, programs, and activities of a municipal police department are generally subject to the provisions of Title II of the ADA but the court is "reluctant to plunge headlong into [the] murky waters" of deciding whether Title II applies "to ad hoc police encounters with members of the public during investigations and arrests," and instead decides that "[f]or present purposes, it is sufficient… to assume… that Title II of the ADA applies to ad hoc police encounters…."); *Beans v. City of Massillon*, 706 Fed. App'x 295, 300 n. 4 (6th Cir. 2017) ("We have never determined whether Title II applies to arrests*. See Everson v. Leis*, 412 Fed. App'x 771, 775 (6th Cir. 2011) ('[W]e affirm the grant of summary judgment in favor of defendants without deciding whether Title II applies to arrests.')."); *King v. Hendricks Cnty. Comm'rs*, 954 F.3d 981, 988-89 (7th Cir. 2020) ("Whether Title II applies to law enforcement investigations and arrests, and if so to what extent, is an open question in this circuit," so "[l]ike the First Circuit in *Gray*, we may assume without deciding that Title II applies to the officers' interaction with [Plaintiff].").

[11] *See*, *e.g., Sheehan*, 743 F.3d at 1232 (claiming "the officers failed to reasonably accommodate [the plaintiff's] disability by forcing their way back into her room without taking her mental illness into account and without employing tactics that would have been likely to resolve the situation without injury to herself or others"); *Waller*, 556 F.3d at 173 (c
laiming that the city was guilty of "failing to properly train officers in dealing with the disabled"); *Gray*, 917 F.3d at 15. *See also* Carly A. Myers, Note, *Police Violence Against People with Mental Disabilities: The Immutable Duty Under the ADA to Reasonably Accommodate During Arrest*, 70 VAND. L. REV. 1393, 1410 (2017) (noting that a claim under the accommodation theory is typically characterized as a failure to make reasonable modifications to policies and practices).

[12] *See J.H. v. Bernalillo Cnty*., 806 F.3d 1255, 1261 (10th Cir. 2015) (warning against "conflat[ing] [knowledge of] a disability with a need for accommodation"); *Windham v. Harris Cnty.,* 875 F.3d 229, 236 (5th Cir. 2017) ("Mere knowledge of the disability is not enough; the service provider must also have understood 'the limitations [the plaintiff] experienced ... *as a result* of that disability." *Taylor v. Principal Fin. Grp., Inc.*, 93 F.3d 155, 164 (5th Cir. 1996) (emphasis added)….").

[13] *Windham*, 875 F.3d at 237. *See also J.V. v. Albuquerque Pub. Schs.*, 813 F.3d 1289, 1299 (10th Cir. 2016).

[14] *Sheehan*, 743 F.3d at 1232; *Waller*, 556 F.3d at 175; *Bircoll*, 480 F.3d at 1085.

III. Challenges for the Plaintiff

A person with a disability faces several challenges in bringing a claim alleging an ADA violation based on the failure of the police to provide reasonable accommodations.[15] First, plaintiffs often struggle to prove that the officers knew of the need for an accommodation. As noted above, it is not enough to show that the officer knew that the person had a disability – the officer must also have known about the resulting limitations and need for accommodations.[16] An officer "knows" about a person's need for an accommodation either because the person requested an accommodation, or because the need for an accommodation is "open, obvious, and apparent."[17] Given the fear and vulnerability that people with disabilities may feel in interactions with the police, however, being comfortable enough to ask for an accommodation may be unlikely.[18]

Second, the circuit courts that have evaluated the ADA's applicability to arrests place a significant emphasis on exigent circumstances in the analysis, including granting police officers flexibility in protecting public safety.[19] Evaluating exigent circumstances that could

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[15] Length limitations prevent a detailed discussion related to damages, but generally in order to recover damages in a Title II claim, a plaintiff must prove intentional discrimination by the defendant. *See Gray*, 917 F.3d at 17; *Anthony*, 339 F.3d at 141; *Haberle*, 885 F.3d at 181; *Delano-Pyle v. Victoria Cnty.*, 302 F.3d 567, 574 (5th Cir. 2002); *Tucker v. Tennessee*, 539 F.3d 526, 532 (6th Cir. 2008); *King v. Hendricks Cnty. Comm'rs*, 954 F.3d 981, 989 (7th Cir. 2020); *J.V.*, 813 F.3d at 1298; *McCullum v. Orlando Reg'l Healthcare Sys., Inc.*, 768 F.3d 1135, 1146-47 (11th Cir. 2014). The First, Third, and Tenth Circuits use a deliberate indifference standard, requiring at a minimum that the plaintiff show that the defendant had "knowledge that a harm to a federally protected right [wa]s substantially likely, and… fail[ed] to act upon that ... likelihood." *J.V.,* 813 F.3d at 1298 (quoting *Duvall v. County of Kitsap,* 260 F.3d 124, 1139 (9th Cir. 2001)). The Second Circuit requires evidence that the officer was "motivated by discriminatory animus or ill will based on the plaintiff's disability." *Garcia v. S.U.N.Y. Health Sciences Ctr. of Brooklyn*, 280 F.3d 98, 111 (2d Cir. 2001). The Fifth Circuit rejected the deliberate indifference standard, but has analyzed intentional discrimination through a similar framework, i.e., whether the officer knew of the plaintiff's need for an accommodation and failed to provide it. *Delano-Pyle v. Victoria Cnty*., 302 F.3d at 575.

[16] *Windham*, 875 F.3d at 236-37 ("Mere knowledge of the disability is not enough; the service provider must also have understood 'the limitations [the plaintiff] experienced ... *as a result* of that disability." *Taylor*, 93 F.3d at 164 (emphasis added)…. Otherwise, it would be impossible for the provider to ascertain whether an accommodation is needed at all, much less identify an accommodation that would be reasonable under the circumstances."); *J.H.*, 806 F.3d at 1261 (Do not "conflate[] [knowledge of] a disability with a need for accommodation.").

[17] *Windham*, 875 F.3d at 237 ("When a plaintiff fails to request an accommodation … he can prevail only by showing that 'the disability, resulting limitation, and necessary reasonable accommodation' were 'open, obvious, and apparent' to the entity's relevant agents.") (quoting *Taylor*, 93 F.3d at 164); *J.V.*, 813 F.3d at 1299 ("[A] public entity is on notice that an individual needs an accommodation when it knows that an individual requires one, either because that need is obvious or because the individual requests an accommodation.") (quoting *Robertson v. Las Animas Cty. Sheriff's Dep't,* 500 F.3d 1185, 1197-98 (10th Cir. 2007)).

[18] *See* Johann Brink, et al., *A Study of How People with Mental Illness Perceive & Interact with the Police*, Mental Health Commission of Canada (2011), *available at* https://www.mentalhealthcommission.ca/sites/default/files/Law_How_People_with_Mental_Illness_Perceive_Interact_Police_Study_ENG_1_0_1.pdf (participants in a U.S. study who used community mental health services and reported an interaction with police in the last year "expressed feeling vulnerable and fearful of police.").

[19] *Sheehan*, 743 F.3d at 1232; *Waller,* 556 F.3d at 175; *Bircoll*, 480 F.3d at 1085; Hainze, 207 F.3d at 799.

threaten life or safety[20] is critical in determining the reasonableness of a proposed accommodation. The Fifth Circuit, for example, categorically exempts the requirement to provide reasonable accommodations in exigent situations.[21] The Sixth Circuit and two district courts in the Tenth Circuit have shown an inclination to follow this standard.[22] The Fourth, Ninth, and Eleventh Circuits use a totality-of-the-circumstances approach in determining whether accommodations would be reasonable, considering exigent circumstances that may be present as one factor among many rather than finding them to be a prohibitive bar to liability.[23]

Third, it can be challenging to show that the officer's actions – such as the arrest, seizure, or use of force – were related to the plaintiff's disability and not to dangerous or unlawful behavior. This issue has often arisen in the context of claims of discrimination under the wrongful arrest theory, where a plaintiff must prove the arrest was without probable cause and based on the plaintiff's disability rather than criminal conduct.[24]

IV. Conclusion

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[20] *See* Robyn Levin, Note, *Responsiveness to Difference: ADA Accommodations in the Course of an Arrest*, 69 STAN. L. REV. 269, 282, 285 (2017) (indicating that courts adjudicating reasonable accommodation claims must consider whether the exigent circumstances made the requested accommodation unreasonable). An exigent circumstance is defined as (1) "[a] situation that demands unusual or immediate action and that may allow people to circumvent usual procedures," or (2) "[a] situation in which a police officer must take immediate action to effectively make an arrest, search, or seizure for which probable cause exists," and "[e]xigent circumstances may exist if . . . a person's life or safety is threatened." Black's Law Dictionary (11th ed. 2019). *See also* Myers, *supra* note 11, at 1413 (defining exigent circumstances as circumstances that are present where a person's unlawful activity causes a perceived danger to a police officer or the public at large).

[21] *Hainze,* 207 F.3d at 801 ("To require the officers to factor in whether their actions are going to comply with the ADA, in the presence of exigent circumstances and prior to securing the safety of themselves, other officers, and any nearby civilians, would pose an unnecessary risk to innocents.").

[22] The Sixth Circuit, while declining to decide on the applicability of the ADA to arrests, noted that "[w]here… officers are presented with exigent or unexpected circumstances, it would be unreasonable to require certain accommodations be made in light of the overriding public safety concerns" because the public "rel[ies] on and expect[s] law enforcement officers to respond fluidly to changing situations and individuals they encounter." *Tucker*, 539 F.3d at 536. Similarly, in the Tenth Circuit, the exigent circumstances consideration "remains an open question," but two district courts in the circuit have adopted the approach used in the Fifth and Sixth Circuits. *Martinez v. Salazar*, 2017 WL 3601232, at *5 (D.N.M. Jan. 9, 2017). *See Sudac v. Hoang*, 378 F. Supp. 2d 1298, 1306 (D. Kansas 2005); *Clark v. Colbert*, 2017 WL 3081753, at *6 (E.D. Okla. July 18, 2017).

[23] *Seremeth*, 673 F.3d at 339 ("[W]hile there is no separate exigent-circumstances inquiry, the consideration of exigent circumstances is included in the determination of the reasonableness of the accommodation."); *Sheehan,* 743 F.3d at 1232 ("[W]e agree with the Eleventh and Fourth Circuits that exigent circumstances inform the reasonableness analysis under the ADA, just as they inform the distinct reasonableness analysis under the Fourth Amendment."); *Bircoll*, 480 F.3d at 1085 ("The exigent circumstances… go more to the reasonableness of the requested ADA modification than whether the ADA applies in the first instance.").

[24] *J.H.*, 806 F.3d at 1260 (10th Cir. 2015) (Officer "arrested [plaintiff] based on suspicion that she had committed a crime, not based on her disability…."); *Lewis v. Truitt*, 960 F. Supp. 175, 178 (S.D. Ind. 1997) (allowing a wrongful arrest claim to proceed because the actions precipitating the arrest were in fact lawful; *Jackson v. Town of Sanford*, Civ. No. 94–12–P–H, 1994 WL 589617, at *1 (D. Me. Sept. 23, 1994) (court allowed ADA claim of a man who had suffered a stroke and was arrested for suspicion of driving while intoxicated).

A P&A considering an ADA Title II claim based on a client's interactions with the police should do a careful legal analysis of the prevailing circuit law as well as a thorough factual investigation. In determining whether and how to bring such a claim, it is important to know to what extent the police involved knew about the disability status of the potential plaintiff as well as the extent to which arguably exigent circumstances existed. In addition, information about local police practices, training, and data regarding prior police encounters also will likely prove useful in evaluating the merits of such a claim.