FAILURE ON THE FRONT LINE: HOW THE AMERICANS WITH DISABILITIES ACT SHOULD BE INTERPRETED TO BETTER PROTECT PERSONS IN MENTAL HEALTH CRISIS FROM FATAL POLICE SHOOTINGS

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ABSTRACT

This Note examines Title II of the Americans with Disabilities Act's ("Title II") effectiveness at protecting persons experiencing mental illness from being fatally shot by police officers. Since its adoption in the 1990s, federal courts have interpreted the Americans with Disabilities Act to provide varying levels of protection to persons experiencing mental illness. While some courts have interpreted Title II to require that police officers provide reasonable accommodations for an individual's mental illness when effectuating an arrest, others have held that any such accommodation would be unreasonable. Although they are not required to do so by any court, police departments throughout the United States have adopted programs such as the Crisis Intervention Team ("CIT") training model to train police officers on how to best respond during encounters with persons experiencing a mental illness or mental health crisis. Using data derived from the Washington Post's Fatal Force Database and a record of existing CIT training programs, this Note analyzes the effectiveness of Title II and the CIT model at protecting persons in mental health crisis from fatal police shootings. In particular, this Note explores whether the application of Title II to arrests alone, the widespread implementation of CIT programs alone, or the application of Title II to arrests in

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jurisdictions that implement CIT programs best protects persons in mental health crisis from fatal police shootings.

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INTRODUCTION

In 2008, Teresa Sheehan was living in a group home for persons experiencing mental illness in San Francisco.[1] Sheehan has a schizoaffective disorder and, at that time, her social worker had become concerned by reports that she had stopped taking her medication, stopped seeing her psychiatrist, and was "no longer changing her clothes or eating."[2] When the social worker arrived at Sheehan's apartment, he knocked on the door.[3] No one answered, so he used a key to enter.[4] Sheehan ordered the social worker to leave her apartment and threatened to kill him with a knife if he did not leave.[5] This interaction made the social worker concerned that Sheehan "posed a danger to others."[6] He called the police to provide assistance and asked that they transport Sheehan to a facility for evaluation.[7]

When the officers arrived, they knocked on the door and informed Sheehan that they were there to help her.[8] Again, Sheehan refused to answer the door, so the officers used the key, again, to enter the apartment.[9] She responded "violently" to the officers' entrance.[10] She grabbed a kitchen knife and approached the officers "yelling something along the lines of 'I am going to kill you. I don't need help. Get out.'"[11]

The officers then left the apartment and called for backup.[12] However, they reentered the apartment and attempted to subdue Sheehan before backup arrived.[13] When Sheehan refused to drop the knife, the officers sprayed her with pepper spray and shot her "five or

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1. Sheehan v. City & Cty. of S.F., No. C 09-03889 CRB, 2011 U.S. Dist. LEXIS 48825, at *2 (N.D. Cal. 2011), *aff'd in part and vacated in part*, 743 F.3d 1211 (9th Cir. 2014), *rev'd in part*, *and cert. dismissed in part as improvidently granted*, 135 S. Ct. 1765 (2015).
2. City & Cty. of S.F. v. Sheehan, 135 S. Ct. 1765, 1769 (2015).
3. *Id.*
4. *Id.*
5. *Sheehan*, 2011 U.S. Dist. LEXIS 48825, at *3.
6. Sheehan v. City & Cty. of S.F., 743 F.3d 1211, 1215 (9th Cir. 2014).
7. *Id*.
8. *Sheehan*, 135 S. Ct. at 1770.
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id*.
13. *Sheehan*, 135 S. Ct. at 1771.

six times."[14] At least one of these officers was specially trained on how best to respond to persons in mental health crisis.[15]

Sheehan survived her injuries and filed a lawsuit against the City of San Francisco.[16] She alleged that the city and its officers violated Title II of the Americans with Disabilities Act ("Title II" of the "ADA") "by arresting her in a manner that did not take into account her mental disability."[17] The United States District Court for the Northern District of California granted the defendants' motion for summary judgment on Sheehan's Title II claim.[18] It held that because the officers were attempting to "detain a violent, mentally disabled individual under exigent circumstances . . . [i]t would be unreasonable to ask officers, in such a situation, to first determine whether their actions would comply with the ADA before protecting themselves and others."[19]

On appeal, the Court of Appeals for the Ninth Circuit vacated the district court's grant of summary judgment on Sheehan's Title II claim.[20] The court found that because the officers were trained to respond to persons in mental health crisis and may have disregarded their training when reentering Sheehan's apartment, a reasonable jury could find that under Title II, the officers were required to use the de-escalation techniques they learned in their training.[21] The Ninth Circuit therefore reversed the district court's grant of summary judgment against Sheehan's Title II claim.[22]

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14. Sheehan v. City & Cty. of S.F., 743 F.3d 1211, 1216 (9th Cir. 2014). *See also* Nadja Popovich, *Police Shooting of Mentally Ill Woman Reaches US Supreme Court. Why Did It Happen at All?*, GUARDIAN (Mar. 23, 2015), https://www.theguardian.com/us-news/2015/mar/23/police-shooting-mentally-ill-teresa-sheehan-supreme-court [https://perma.cc/KGR6-VU4B] (detailing the police shooting of Teresa Sheehan).

15. *Sheehan*, 743 F. 3d at 1230–31.

16. Popovich, *supra* note 14. *See also* Sheehan v. City & Cty. of S.F., No. C 09-03889 CRB, 2011 U.S. Dist. LEXIS 48825, at *1 (N.D. Cal. 2011) (detailing the facts of Sheehan's injuries and lawsuit).

17. *Sheehan*, 2011 U.S. Dist. LEXIS 48825, at *30 (granting the defendant City of San Francisco's motion for summary judgment on the grounds that individuals cannot be held liable under Title II and cities cannot be held liable under Title II for the actions of their police officers prior to effectuating an arrest).

18. *Id.* at *32–33.

19. *Id.* at *32.

20. *Sheehan*, 743 F.3d at 1217.

21. *See id.* at 1216–17.

22. *Id.* at 1233.

This Note argues that the Americans with Disabilities Act ("ADA") would protect persons in mental health crisis from fatal encounters with police officers and better serve its stated purpose of "eliminat[ing] . . . discrimination against individuals with disabilities," if Title II of the Act were applied to arrests and interpreted to require police officers to undergo mental health training.[23]

Part I surveys the current relationship between police officers and persons experiencing mental illness. It discusses the Crisis Intervention Team ("CIT") training program and how this program has been adopted by some police departments to train officers on how best to respond to persons in mental health crisis. This part concludes by surveying the circuit split that has led to variance in the level of protection afforded to persons experiencing mental illness throughout the country under Title II.

Part II describes the author's methodology for testing three separate hypotheses on how to best protect persons in mental health crisis from fatal encounters with police officers. First, the author tested whether application of Title II to arrests protects persons in mental health crisis at the time of the police encounter from being fatally shot by police officers ("Hypothesis 1"). Second, the author tested whether persons in states with a high number of counties with CIT training programs have a decreased likelihood of being fatally shot by police officers ("Hypothesis 2"). Finally, the author tested whether persons 1) in jurisdictions that apply Title II to arrests and 2) in states with CIT training programs are less likely to be fatally shot by police officers ("Hypothesis 3"). Part II outlines the variables used to conduct each of these tests.

Part III argues that persons in mental health crisis are best protected from fatal police shootings when they are in 1) states with counties that have provided CIT training to police officers and 2) circuits where Title II has been held to apply to arrests. To reach this conclusion, this Note uses six separate regressions to test the three hypotheses; each regression will be discussed in greater detail in Part III.

This Note argues that persons experiencing mental illness would be best protected from fatal encounters with police officers if the reasonableness test under Title II was interpreted to require these officers to receive CIT training. In addition to reducing the rate of lethal force by police officers and the associated political and

23. 42 U.S.C. § 12101(b)(1) (2018).

professional costs of such force, requiring training under Title II would lead to a shift in institutional culture that would reshape the definition of police services and the understanding of what constitutes effective policing when responding to persons experiencing mental illness.

I. MENTAL ILLNESS IN THE UNITED STATES: TERMINOLOGY, TRAINING, AND TITLE II

Mental illness is a broad term encompassing mental, behavioral, or emotional disorders that "can vary in impact, ranging from no impairment to mild, moderate, and even severe impairment."[24] According to the National Institute of Mental Health's 2018 survey, nearly one in five adults in the United States (around 47.6 million people) had a mental illness within the past year.[25] Those experiencing severe impairment as a result of a mental illness are said to be experiencing a Serious Mental Illness ("SMI").[26] Individuals are experiencing an SMI when they are seriously impaired by a mental, behavioral, or emotional disorder that "substantially interfere[s] with or limit[s] one or more major life activities."[27] Roughly 11.4 million adults in the United States had an SMI in 2018.[28]

Despite the prevalence of mental illness among adults in the United States, access to mental health care fails to satisfy the need for these services.[29] Of the 47.6 million persons experiencing mental illness in 2018, only 43.3% (20.6 million) received mental health services.[30] While some individuals decide not to seek out mental health services, almost a quarter (22.3%) of adults experiencing mental illness report that they were unable to receive the mental health treatments that they needed.[31] Access to mental health treatment can be inhibited

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24. *Mental Illness*, NAT'L INST. OF MENTAL HEALTH (Feb. 2019), https://www.nimh.nih.gov/health/statistics/mental-illness.shtml [https://perma.cc/J9SS-ALR4].

25. RACHEL N. LIPARI ET AL., KEY SUBSTANCE USE AND MENTAL HEALTH INDICATORS IN THE UNITED STATES: RESULTS FROM THE 2018 NATIONAL SURVEY ON DRUG USE AND HEALTH 2 (2019).

26. *Id.*

27. *Id.* at 43.

28. *Id.*

29. *See Mental Health in America—Access to Care Data*, MENTAL HEALTH AM., http://www.mentalhealthamerica.net/issues/mental-health-america-access-care-data [https://perma.cc/KC22-FM33].

30. LIPARI ET AL., *supra* note 25, at 4.

31. *Mental Health in America—Access to Care Data*, *supra* note 29.

by a variety of factors including a lack of insurance coverage, an undersized mental health workforce, a lack of available treatment types, a disconnect between primary care systems and behavioral health systems, and a lack of funds to pay for treatments that are not covered by insurance.[32] Although the Patient Protection and Affordable Care Act had some success in expanding access to mental health care throughout the United States,[33] the number of adults who report that they are unable to receive necessary mental health treatments has not declined since 2011.[34]

Institutional shortcomings in treating individuals with mental illness can be traced beyond the more recent developments in the United States' health care system.[35] Since the shift toward deinstitutionalization in the 1950s, community mental health centers in the United States have lacked the adequate resources to serve their mentally ill constituents.[36] As community-based facilities failed to

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32. *Id.*

33. By considering mental illness an "essential health benefit" and prohibiting health insurers from denying coverage of preexisting conditions, the Patient Protection and Affordable Care Act has positively impacted mental health providers by reducing the number of people "showing up in the emergency room needing crisis treatment for mental health disorders" and increasing the number of persons in mental health crisis who are "coming in with coverage." Brianna Ehley, *Obamacare and Mental Health: An Unfinished Story*, POLITICO (July 13, 2016), https://www.politico.com/story/2016/07/obamacare-mental-health-225445 [https://perma.cc/MSV4-2EHV]. However, implementation of some of the Act's other mandates has been less successful. For example, enforcement of parity rules requiring that "behavioral health be treated like other diseases" and the mandatory inclusion of depression screenings in free preventive care have "ranged from weak to nonexistent." *Id.* More recently, the rollback of some of the Act's mandates under the Trump Administration might allow some health care providers to be exempt from providing "essential health benefits" like mental health care. Robert Pear, *New Trump Rule Rolls Back Protections of the Affordable Care Act*, N.Y. TIMES (June 19, 2018), https://www.nytimes.com/2018/06/19/us/politics/trump-affordable-care-act-health-insurance.html (on file with the *Columbia Human Rights Law Review*).

34. *Mental Health in America—Access to Care Data*, *supra* note 29 ("Almost a quarter (22.3%) of all adults with a mental illness reported that they were not able to receive the treatment they needed.").

35. *See generally* Leon Eisenberg & Laurence B. Guttmacher, *Were We All Asleep at the Switch? A Personal Reminiscence of Psychiatry from 1940 to 2010*, 122 ACTA PSYCHIATRICA SCANDINAVICA 89, 89 (2010) (surveying changes in the field of psychiatry between 1940 and 2010).

36. *See* Coy C. Morgan, Note, *Three Generations of Injustice are Enough: The Constitutional Implications Resulting from the Criminalization of the Mentally Ill*, 45 S. U. L. Rev. 29, 43 (2017) (describing how failure to fund the Community Mental

adequately replace psychiatric hospitals, the rate of homelessness in the United States began to rise dramatically,[37] and interactions between individuals experiencing mental illness and police officers became more common.[38] Ultimately, city and county jails began to see larger populations of individuals experiencing mental illness.[39] Today, persons experiencing mental illness remain undertreated and continue to "overwhelm the criminal justice system."[40] As a result, law enforcement officials frequently interact with persons experiencing mental illness.

A. Since the wave of deinstitutionalization in the 1950s, police officers have increasingly served as first responders to mental health crises.

Police officers today have become "'the first line of contact' for severely troubled people who once might have gone to a community clinic or mental health crisis center."[41] When individuals experiencing mental illness are in crisis, police officers have become the "new go-to people."[42] Frequently, "[p]arents [are] calling because their child has refused to take their medication."[43] In other cases, the police may be called when someone believes that an individual with mental illness

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Health Act in the 1960s began the deinstitutionalization movement and ultimately caused a shortage of available beds in mental health facilities).

37. *See id*. at 43.

38. Linda A. Teplin & Nancy S. Pruett, *Police as Street Corner Psychiatrist: Managing the Mentally Ill*, 15 INT'L J.L. & PSYCHIATRY 139, 154 (1992) ("In recent years, the police officer's role as street corner psychiatrist has expanded as a result of deinstitutionalization and other public policy modifications.").

39. E. FULLER TORREY ET AL., CRIMINALIZING THE SERIOUSLY MENTALLY ILL: THE ABUSE OF JAILS AS MENTAL HEALTH HOSPITALS, A JOINT REPORT OF THE NATIONAL ALLIANCE FOR THE MENTALLY ILL AND PUBLIC CITIZEN'S HEALTH RESEARCH GROUP 52 (National Alliance for the Mentally Ill et al. eds., 1992).

40. TREATMENT ADVOCACY CTR., OVERLOOKED IN THE UNDERCOUNTED: THE ROLE OF MENTAL ILLNESS IN FATAL LAW ENFORCEMENT ENCOUNTERS 1 (2015), http://www.treatmentadvocacycenter.org/storage/documents/overlooked-in-the-undercounted.pdf [https://perma.cc/D2R7-MFKQ].

41. Fernanda Santos & Erica Goode, *Police Confront Rising Number of Mentally Ill Suspects*, N.Y. TIMES (Apr. 1, 2014), https://www.nytimes.com/2014/04/02/us/police-shootings-of-mentally-ill-suspects-are-on-the-upswing. html (on file with the *Columbia Human Rights Law Review*).

42. *All Things Considered*: *When Cop Calls Involve the Mentally Ill, Training is Key* (June 14, 2014), https://www.npr.org/2014/06/14/322008371/when-cop-calls-involve-the-mentally-ill-training-is-key [http://perma.cc/449A-JRGH].

43. *Id.*

needs to be taken to a facility for evaluation or treatment, or even when someone observes erratic or threatening behavior in someone else.[44] Calls involving persons with mental illness account for roughly 10% of calls made to police departments.[45]

Interactions between police officers and individuals experiencing mental illness "are so common that police officers have been dubbed 'street corner psychiatrists.'"[46] However, many police officers are "unfamiliar with [the] particular symptoms, behavior, and demeanor" of individuals experiencing mental illness.[47] As a result, these interactions can escalate or unfold in ways that they may not have otherwise if the individual were not experiencing mental illness or if the officer had been trained to respond to persons experiencing mental illness.[48]

Frequently, a police officer's response to a mental health call is driven by a perception of the individual involved as dangerous.[49] While persons experiencing mental illness are more frequently perceived to be dangerous by police officers,[50] it is estimated that they are only

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44. Benjamin Mueller & Nate Schweber, *Police Fatally Shoot a Brooklyn Man, Saying They Thought He Had a Gun*, N.Y. TIMES, (Apr. 4, 2018), https://www.nytimes.com/2018/04/04/nyregion/police-shooting-brooklyn-crown-heights.html (on file with the *Columbia Human Rights Law Review*).

45. *All Things Considered*: *When Cop Calls Involve the Mentally Ill, Training is Key*, *supra* note 42.

46. Andrew C. Hanna, Note, *Municipal Liability and Police Training for Mental Illness Causes of Action and Feasible Solutions*, 14 IND. HEALTH L. REV. 221, 236–37 (2017) (quoting Teplin & Pruett, *supra* note 38).

47. *Id.* at 229.

48. *See, e.g.*, Harold Braswell, *Why Do Police Keep Seeing a Person's Disability as a Provocation?*, WASH. POST (Aug. 25, 2014), https://www.washingtonpost.com/posteverything/wp/2014/08/25/people-with-mental-disabilities-get-the-worst-and-least-recognized-treatment-from-police/ (on file with the *Columbia Human Rights Law Review*) (describing fatal police encounters between Ezell Ford and the LAPD, Kajieme Powell and St. Louis police officers, and Ethan Saylor and Maryland officers). In all three cases, the deceased committed a minor crime and resisted arrest. *Id*. This resistance to arrest was "largely a product of [the deceased's] disability, which made it impossible for him to fully understand and comply with police requests. Police officers overreacted, with fatal results." *Id*.

49. Anthony J. O'Brien & Katey Thom, *Police Use of TASER Devices in Mental Health Emergencies: A Review*, 37 INT'L J.L. & PSYCHIATRY 420, 422 (2014).

50. Bruce G. Link et al., *Public Conceptions of Mental Illness: Labels, Causes, Dangerousness, and Social Distance*, 89 AM. J. PUB. HEALTH 1328, 1332 (1999).

responsible for 4% of gun violence,[51] even though they constitute roughly 20% of the population.[52] In fact, most encounters between individuals experiencing mental illness and the police occur "with individuals suspected of committing low-level, misdemeanor crimes, or who are exhibiting nuisance behavior."[53] Because police officers are authorized to use force when they have probable cause to believe that a suspect poses "a threat of serious physical harm, either to the officer or to others," perceptions of persons experiencing mental illness as dangerous can have fatal consequences.[54]

In cases where persons experiencing mental illness are unable to comply with or respond unpredictably to an officer's commands, routine interactions involving low-level offenses can "quickly escalate to violence."[55] One study found that the risk of being "killed during a police incident is 16 times greater for individuals with untreated mental illness than for other civilians."[56] Another investigation in 2012 found that "about half of the estimated 375 to 500 people shot and killed by the police each year in this country are mentally ill."[57] In the first six months of 2015, of the 462 people killed by police, 124 were "in the throes of a mental or emotional crisis."[58] Over half of these shootings involved police departments that do not provide their officers with state-of-the-art training to respond to persons experiencing mental illness.[59] Most recently, of the 992 persons shot and killed by

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51. Santos & Goode, *supra* note 41 (quoting Emma E. McGinty, *Mental Illness and Gun Violence: Disrupting the Narrative*, 69 PSYCHIATRY ONLINE 842, 842 (2018)).

52. LIPARI ET AL., *supra* note 25, at 3–4.

53. Hanna, *supra* note 46 (quoting MELISSA REULAND ET AL., COUNCIL OF STATE GOVERNMENTS JUSTICE CENTER, LAW ENFORCEMENT RESPONSES TO PEOPLE WITH MENTAL ILLNESS: A GUIDE TO RESEARCH-INFORMED POLICY AND PRACTICE 5 (2009), https://csgjusticecenter.org/wp-content/uploads/2012/12/le-research.pdf [https://perma.cc/L228-DMVG]).

54. Tennessee v. Garner, 471 U.S. 1, 11 (1985).

55. Hanna, *supra* note 46 (quoting Liza Lucas, *Changing the Way Police Respond to Mental Illness*, CNN (Sept. 28, 2016), http://www.cnn.com/2015/07/06/health/police-mental-health-training/ [https://perma.cc/WGF7-Z2Q9]).

56. TREATMENT ADVOCACY CTR., *supra* note 40, at 1.

57. Braswell, *supra* note 48 (citing *Maine Police Deadly Force Series: Day 1*, PORTLAND PRESS HERALD, https://www.pressherald.com/interactive/maine_police_deadly_force_series_day_1/ [https://perma.cc/RH7V-AJWA]).

58. Hanna, *supra* note 46 (quoting Lowery et al., *infra* note 59).

59. Wesley Lowery et al., *Distraught People, Deadly Results*, WASH. POST (June 30, 2015), http://www.washingtonpost.com/sf/investigative/2015/06/30/

the police in 2018, 208 were in mental health crisis at the time they were killed.[60]

Given the frequency with which police officers encounter persons experiencing either a mental illness or a mental health crisis, police departments have increasingly recognized the importance of training their officers to recognize and respond to symptoms of mental illness in order to make their interactions with persons experiencing a mental illness or mental health crisis safer.

B. Because police officers frequently interact with persons experiencing mental illness in the line of duty, police departments have increasingly begun implementing CIT training programs.

In recent decades, police departments throughout the United States have recognized a need for specialized training on responding to mental health calls. In response, many have adopted the Memphis Crisis Intervention Team Model ("Memphis Model"). The Memphis Model originated in 1988, after a black man with a history of mental illness and substance abuse was fatally shot by a white Memphis police officer.[61] After the shooting, a task force comprising of law enforcement, mental health and addiction professionals, and mental health

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distraught-people-deadly-results/ (on file with the *Columbia Human Rights Law Review*).

60. *Fatal Force*, WASH. POST, (March 31, 2019), https://www.washingtonpost.com/graphics/2018/national/police-shootings-2018/ (on file with the *Columbia Human Rights Law Review*). *See generally infra* Part II (describing the author's methodology and alterations made to the database in order to conduct analysis for this Note).

61. Twenty-seven-year-old Joseph DeWayne Robinson was shot after the police were called to respond to a person cutting themselves with a butcher knife on September 24, 1987. Daniel Connolly, *Memphis Police Crisis Intervention Team Approaches 30 Years, But How Effective is It?*, COMMERCIAL APPEAL (Aug. 6, 2017), https://www.commercialappeal.com/story/news/crime/2017/08/06/memphis-police-mental-health-crisis-team-30-years/493740001/ (on file with the *Columbia Human Rights Law Review*). Responding officers alleged they shot Robinson after he approached them with the knife. *CIT History*, CIT INC., http://www.gocit.org/crisis-intervention-team-history.html [https://perma.cc/NCK2-ABTC]. *See generally* Amy C. Watson & Anjali J. Fulambarker, *The Crisis Intervention Team Model of Police Response to Mental Health Crises: A Primer for Mental Health Practitioners*, 8 BEST PRAC. MENTAL HEALTH, Dec. 2012, at 71 (describing the history of CIT training, challenges to the training's implementation, and variations that have been made to the training program).

advocates developed a model that aimed to "increase safety in encounters [between police officers and individuals experiencing mental illness], and when appropriate, to divert persons with mental illnesses from the criminal justice system to mental health treatment."[62] Since the development of this model in the late 1980s, CIT training programs, like the Memphis Model, have been implemented by more than 2,000 police departments in more than 40 states.[63] Of the 3,142 counties and county equivalents in the United States, at least 26% have implemented CIT training programs.[64] Today, the Memphis Model is considered the "gold standard" for effective CIT programming.[65]

The Memphis Model mandates 40 hours of specialized training "for a select group of officers that volunteer to become CIT officers."[66] During the training process, police officers are provided with "information on the signs and symptoms of mental illnesses, mental health treatment, co-occurring disorders, legal issues, and de-escalation techniques."[67] By providing officers with the tools to identify symptoms of mental illness, CIT training programs may also "sensitize officers to understand that noncompliance or resistance by a citizen is not reflective of a lack of respect for the police or predictive of violence, while also increasing empathy for persons suffering from mental illness and their caregivers."[68] Although the University of Memphis CIT Center provides a national curriculum, as well as policies and procedures for successful implementation of the Memphis Model, there

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62. Watson & Fulambarker, *supra* note 61, at 73.

63. *CIT History*, *supra* note 61.

64. The author independently generated this data using county totals from the U.S. Census Bureau's 2013–2017 American Community Survey Five-Year Estimates, U.S. CENSUS BUREAU, CB18-187, FIVE-YEAR TRENDS AVAILABLE FOR MEDIAN HOUSEHOLD INCOME, POVERTY RATES AND COMPUTER AND INTERNET USE (Dec. 6, 2018), https://www.census.gov/newsroom/press-releases/2018/2013-2017-acs-5year.html [https://perma.cc/T6AP-C7VR], and counts available from the University of Memphis CIT Center, *United States of America*, UNIVERSITY OF MEMPHIS CIT CENTER, http://cit.memphis.edu/citmap/index.php [https://perma.cc/48VR-LZHB].

65. *Mental Health First Aid or CIT: What Should Law Enforcement Do?*, CIT INT'L, https://www.mentalhealthfirstaid.org/cs/wp-content/uploads/2016/01/FINAL-MHFA-CIT-White-Paper-Annoucement.pdf [https://perma.cc/3SP5-NRWR].

66. Watson & Fulambarker, *supra* note 61, at 73.

67. *Id.*

68. Michael T. Rossler & William Terrill, *Mental Illness, Police Use of Force, and Citizen Injury*, 20 POLICE Q. 189, 206 (2017).

may be inconsistency in how police officers are CIT-trained at the municipal level.[69] Despite the prevalence of mental illness in the United States, and the increasing demand for training for police officers who come into contact with individuals experiencing mental illness, some municipalities do not have CIT training programs at all.[70] In some cases, "system- and policy-level obstacles" may inhibit the successful implementation of CIT training programs.[71] Even when the training portion of the CIT program has been successfully implemented, police departments may struggle to maintain training for police dispatchers, lack psychiatric facilities to assist officers, and face unique challenges in implementing the program in rural settings.[72]

CIT training programs sometimes face the challenges described above; however, they have generally been successful in reducing the use of force against individuals experiencing mental illness. In 2000, twelve years after the development of the Memphis Model, one study found an association between the implementation of CIT training programs in the city of Memphis and a decrease in the use of high-intensity police units like Special Weapons and Tactics ("SWAT") teams.[73] In a separate study, researchers found that CIT-trained police officers use less force in response to an increase in

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69. For example, the Portland Police Bureau's CIT program provides 40 hours of training during the police academy. 2017 Settlement Agreement Compliance Assessment at 44, United States v. City of Portland, No. 3:12-cv-02265-SI, 2013 U.S. Dist. LEXIS 188465, at *1 (D. Or. 2013). Officers can choose to take additional hours of training focused on crisis intervention and become Enhanced Crisis Intervention officers ("ECIT officers"). *Id.* However, the Portland Police Bureau does not comport with the Memphis Model because it does not have "specialized officer[s] respond to all pre-identified types of calls that involve a mental health component." *Id. See generally*, *Policies and Procedures*, UNIVERSITY OF MEMPHIS CIT CENTER, http://cit.memphis.edu/policies.php [https://perma.cc/Z9XK-FPF2] (providing online resources for implementing CIT-training programs within police departments).

70. *United States of America*, *supra* note 64 (counties with CIT programs are highlighted in blue on the map whereas those without CIT programs are in grey).

71. Michael T. Compton et al., *System- and Policy- Level Challenges to Full Implementation of the Crisis Intervention Team (CIT) Model*, 10 J. POLICE CRISIS NEGOT., no. 1–2, 2010, at 72–73.

72. *Id.*

73. Watson & Fulambarker, *supra* note 61 at 76 (citing Randolph Dupont & Sam Cochran, *Police Response to Mental Health Emergencies—Barriers to Change*, 28 J. AM. ACAD. PSYCHIATRY L., no. 3, 2000, at 338, 340).

subject resistance than police officers who are not CIT-trained.[74] In cases where police officers did use force, researchers found them to generally rely on low-lethality methods.[75] Overall, police officers reported that applying the skills they learned in CIT training reduces the risk of injury both to themselves and to the person experiencing mental illness.[76] Although CIT programs have been found to reduce the use of force and risk of injury during police encounters, implementation of these programs is not mandated by federal law.

C. Despite the ADA's aim to protect persons experiencing qualifying disabilities from discriminatory treatment, it does not adequately protect persons with mental illness from fatal police encounters.

Regardless of whether police departments implement CIT training programs, they can still be required to provide reasonable accommodations to persons experiencing mental illness under the ADA.[77] The ADA was passed in 1990 and aims to eliminate discrimination against individuals with disabilities by providing "clear, strong, [and] consistent . . . standards" that are federally enforceable.[78] It is divided into five distinct titles which provide protections for individuals with qualifying disabilities in their interactions with state and local governments, as well as private actors.[79] As defined by the ADA, a disability is a "physical or mental

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74. Jennifer Skeem & Lynne Bibeau, *How Does Violence Potential Relate to Crisis Intervention Team Responses to Emergencies?*, 59 PSYCHIATRIC SERVS. 201, 204 (2008) (finding that in high violence-risk encounters with persons experiencing mental illness, CIT-trained officers were found to use force only 15% of the time).

75. *Id.*

76. Sonya Hanafia et al., *Incorporating Crisis Intervention Team (CIT) Knowledge and Skills into the Daily Work of Police Officers: A Focus Group Study*, 44 COMMUNITY MENTAL HEALTH J. 427, 431 (2008).

77. See *infra* notes 87–92 and accompanying text.

78. 42 U.S.C. § 12101(b)(1)–(3) (2018).

79. Title I of the ADA, codified in 42 U.S.C. §§ 12111–12117 (2018), prohibits employers, employment agencies, or labor organizations from discriminating against individuals with qualifying disabilities. *See* 42 U.S.C. § 12112 (2018) ("No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment."). Title II of the ADA, codified in 42 U.S.C. §§ 12131–12165 (2018), prohibits state or local governments or governmental departments or agencies from excluding persons with qualifying disabilities from or denying them the benefits of "the services, programs, or

impairment that substantially limits one or more major life activities of [an] individual."[80] The Equal Employment Opportunity Commission ("EEOC") narrowed this definition by classifying any "mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities" as a physical or mental impairment.[81] Therefore, many persons experiencing mental illness have a qualifying disability under the ADA and are entitled to its protections.

Since its enactment, the ADA has made significant strides towards achieving its mission of "assur[ing] equality of opportunity, full participation, independent living, and economic self-sufficiency to persons with [qualifying] disabilities."[82] Although the literature is divided on how successful the ADA has been,[83] plaintiffs continue to rely on it to bring claims against discriminatory employers under Title I of the Act.[84] In recent years, the Civil Rights Division of the Department of Justice ("DOJ") has brought lawsuits against banks and hotels to challenge their compliance with public accommodations

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activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132 (2018). Title III of the ADA, codified in 42 U.S.C. §§ 12181–12189 (2018), prohibits discrimination "on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation." 42 U.S.C. § 12182 (2018). Title IV, codified in 47 U.S.C. § 225 (2018), requires telecommunications companies to provide accessible services to consumers with disabilities. 47 U.S.C. § 225 (2018). Lastly, Title V, codified in 42 U.S.C. §§ 12201–12213 (2018), discusses topics like the illegal use of drugs, attorney's fees, and alternative means of dispute resolution. 42 U.S.C. §§ 12201–12213 (2018).

80. 42 U.S.C. § 12102(1)(A) (2018).

81. 29 C.F.R. § 1630.2(h)(2) (2000).

82. *Sharing the Dream: Is the ADA Accommodating All?, Chapter 2: The Effects of the ADA*, U.S. COMM'N ON CIVIL RIGHTS, https://www.usccr.gov/pubs/ada/ch2.htm [https://perma.cc/X6EC-9JV7].

83. *See generally* Sharona Hoffman, *Settling the Matter: Does Title I of the ADA Work?*, 59 ALA. L. REV. 305, 343 (2008) (discussing growing frustration among scholars and advocates with the failure of the ADA to make workplaces more hospitable for persons with mental illness, but nonetheless concluding that ADA plaintiffs "do not fare poorly" with EEOC merit resolutions of their claims under Title I of the ADA).

84. *Id.* at 308, 343 (examining empirical legal studies on the effectiveness of Title I of the ADA at protecting persons with disabilities from discrimination and ultimately concluding that although over 90% of plaintiffs suing under Title I lose their cases, plaintiffs continue to rely on the Title for relief against their employers).

requirements under Title III of the ADA.[85] Plaintiffs have used Title II to require governmental organizations to reasonably accommodate their disabilities.[86]

As governmental organizations, law enforcement agencies are obligated under Title II to "make reasonable modifications" to their policies, practices and procedures in order to be accessible to individuals with disabilities.[87] This mandate gives rise to two different sets of protections and therefore allows plaintiffs to bring two different types of Title II claims.[88] First, plaintiffs may file a wrongful arrest claim if police officers "wrongly arrest someone with a disability because they misperceive the effects of that disability as criminal activity."[89] Cases wherein a deaf person is arrested for not following an officer's instructions tend to fall into this category.[90] Second, plaintiffs may file a reasonable accommodation claim. These claims assert that although the police properly investigated and arrested someone for a crime unrelated to their disability, they "fail[ed] to reasonably accommodate the person's disability in the course of the investigation or arrest, causing the person to suffer greater injury or indignity in that process than other arrestees."[91] Cases wherein a deaf person is not

85. U.S. Dep't of Just., Civil Rights Div., Disability Rights Accomplishments, *Expanding Opportunity in the Community for People with Disabilities*, ADA, https://www.ada.gov/disability-rights-accomplishments.htm [https://perma.cc/8PDB-T8W8].

86. *See, e.g.*, Henrietta D. v. Bloomberg, 331 F.3d 261, 291 (2d Cir. 2003) (granting injunctive relief to plaintiffs who alleged that state officials failed to accommodate them under Title II).

87. U.S. Dep't of Just., Civil Rights Div., Disability Rights Section, *Commonly Asked Questions About the Americans with Disabilities Act and Law Enforcement*, ADA (Apr. 4, 2006), https://www.ada.gov/q%26a_law.htm [https://perma.cc/U4PG-5NGJ] [hereinafter *DOJ ADA Commonly Asked Questions*].

88. Sheehan v. City & Cty. of S.F., 743 F.3d 1211, 1232 (9th Cir. 2014).

89. *Id.*

90. *See*, *e.g.*, Lewis v. Truitt, 960 F. Supp. 175, 179 (S.D. Ind. 1997) (denying the defendant-police officers' motion for summary judgment on the plaintiff's ADA claim on the grounds that a genuine issue of material fact existed as to whether the officers arrested the plaintiff for his disability when, after being informed that he was deaf, they arrested him for failing to comply with their commands).

91. *Sheehan*, 743 F.3d at 1232 (citing Waller ex rel. Estate of Hunt v. City of Danville, 556 F.3d 171, 175 (4th Cir. 2009); Gohier v. Enright, 186 F.3d 1216 (10th Cir. 1999)).

provided an interpreter during an investigation or arrest would fall into this category.[92]

Although the ADA mandates that government agencies must reasonably accommodate individuals with qualifying disabilities, in its application, the Act offers more protections for (and is therefore more likely to grant relief for injuries involving) qualifying physical disabilities than for mental disabilities. Persons with mental illness remain susceptible to discriminatory treatment, despite ADA protections, because they require more than "simple modifications, translators or physical assistance."[93] In some cases, persons experiencing mental illness neither know their rights nor know how to communicate their needs to police officers.[94] Additionally, officers will not always be able to identify persons experiencing mental illness; persons experiencing mental illness may either choose not to disclose, be unaware of, or otherwise be unable to articulate their illness. Consequently, persons with mental illness "present a particular challenge in the context of police encounters, where misunderstood, socially atypical behavior may result in a dangerous situation for both the officer and the individual."[95] To address these challenges, law enforcement agencies and policing organizations have made recommendations or created mental health training programs to help officers respond to persons experiencing mental illness.[96]

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92. *See, e.g.*, Williams v. City of New York, 121 F. Supp. 3d 354, 369 (S.D.N.Y. 2015) (dismissing the City's motion for summary judgment because the Court was unable to conclude that "as a matter of law, it was reasonable for police officers not to provide [the deaf] Plaintiff *any* accommodations before placing her under arrest").

93. David A. Maas, Short Essay, *Expecting the Unreasonable: Why a Specific Request Requirement for ADA Title II Discrimination Claims Fails to Protect Those Who Cannot Request Reasonable Accommodations*, 5 HARV. L. & POL'Y REV. 217, 226 (2011). *See also* Kelley B. Harrington, Note, *Policing Reasonable Accommodations for Individuals with Disabilities*, 50 U.C. DAVIS L. REV. 1361, 1376 (2017) (noting that "[a]lthough the ADA protections should apply with equal force to all, intuitively it is much easier for law enforcement to recognize and accommodate those with a physical disability, visual impairment, or hearing impairment than a mental or developmental disability").

94. Maas, *supra* note 93, at 226.

95. *Id.* at 224 (quoting Elizabeth Hervey Osborn, Comment and Case Note, *What Happened to "Paul's Law"?: Insights on Advocating for Better Training and Better Outcomes in Encounters Between Law Enforcement and Persons with Autism Spectrum Disorders*, 79 U. COLO. L. REV. 333, 334 (2008)).

96. *See supra* Part I.B. *See also Sheehan*, 743 F.3d at 1225 (describing testimony by the plaintiff's expert witness stating that officers in the county of San

The DOJ, for example, has offered some recommendations for how to accommodate persons experiencing mental illness during police encounters. The crux of the DOJ's recommendations is that police officers should be "trained to distinguish behaviors that pose a real risk from behaviors that do not, and to recognize when an individual, such as some-one who is . . . exhibiting signs of psychotic crisis, needs medical attention."[97] When police officers are aware that they are interacting with a person experiencing mental illness, the DOJ notes that it may be beneficial to check that the individual understands the officer's commands.[98] For example, when issuing *Miranda* warnings, police officers are advised to "ask the individual to repeat each phrase."[99] Despite the DOJ's emphasis on officer training when responding to persons experiencing mental illness or in mental health crisis, the DOJ has not established a national training program or national guidelines on providing reasonable accommodations to persons experiencing mental illness.[100] However, the DOJ has recognized that CIT training programs provide tools to respond to incidents involving persons experiencing mental health crisis.[101] In 2012, the DOJ mandated that the Portland Police Bureau adopt CIT training programs, as outlined in the Memphis Model,[102] to combat the use of excessive force against persons experiencing mental illness or in mental health crisis.[103]

Francisco are trained to speak slowly in order to de-escalate situations that they face when interacting with persons experiencing mental illness).

97. *DOJ ADA Commonly Asked Questions*, *supra* note 87.

98. *Id.*

99. *Id.*

100. *Cf. id*. (discussing the importance of training and awareness about the needs of persons experiencing mental illness, but failing to set standards or reference a national training program). *See also* Maas *supra* note 93, at 224 (addressing the lack of a federalized directive to train officers to respond to persons experiencing mental illness and proposing the consolidation and nationalization of these training programs).

101. Letter from Thomas E. Perez et al., to Sam Adams 19 (Sept. 12, 2012), https://www.portlandoregon.gov/police/article/469399 [https://perma.cc/PK7D-TSFQ].

102. *Compare id.* at 19–20 (mandating that the Portland Police Bureau create a specialized CIT team consisting of police officers who have "expressed a desire to specialize in crisis intervention"), *with* Watson & Fulambarker, *supra* note 61 and accompanying text (describing the Memphis Model's mandate of specialized training for police officers who have volunteered to become CIT officers).

103. Letter from Thomas E. Perez et al., to Sam Adams *supra* note 101.

1. Courts have not consistently interpreted Title II to require police departments to either provide CIT training to police officers or dispatch CIT trained officers to respond to mental health calls.

Notwithstanding the DOJ's recognition of the training's effectiveness, no federal court has held that Title II requires police departments to provide CIT or other mental health training to police officers.[104] In fact, some courts have held that Title II does not even require CIT-trained officers to be dispatched in response to mental health calls. For example, the United States District Court for the Northern District of Indiana rejected the argument for such a requirement in *Hamilton v. City of Fort Wayne*.[105] There, the plaintiff argued that Title II required CIT-trained officers to respond to the 911 call that she placed to request assistance with her mentally ill son.[106] The court held that because waiting for a CIT-trained officer "would potentially implicate other safety concerns that might have been avoided by the efforts of officers already on the scene . . . [the] overriding public safety concerns rendered the accommodation of prioritizing the arrival of a different officer unreasonable."[107] As evidenced by the *Hamilton* decision, even in counties that have employed CIT training for their officers, Title II of the ADA's reasonable accommodations provision does not require police departments to ensure that those specially-trained officers respond to mental health calls.

However, there is disagreement among the courts on this point. Unlike the United States District Court for the Northern District of Indiana, the United States District Court for the Eastern District of California in *Harper v. County of Merced* remained open to the possibility that police officers may be required, under Title II, to wait for specially trained officers to assist with mental health calls.[108] There, the plaintiff Harper escaped from a mental health facility and was

104. *See infra* Part I.C.2.

105. Hamilton v. City of Fort Wayne, 2017 U.S. Dist. LEXIS 187574 *17 (N.D. Ind. 2016).

106. *Id*. at *12. *See also* Hainze v. Richards, 207 F.3d at 795, 801 (5th Cir. 2000) (rejecting the plaintiff's claim based on the failure to train police officers under Title II).

107. *Hamilton*, 2017 U.S. Dist. LEXIS 187574, at *15–16.

108. Harper v. County of Merced, No. 1:18-cv-00562, 2018 U.S. Dist. LEXIS 191567, at *24 (E.D. Cal. 2018).

experiencing a "psychotic break."[109] Harper sued under Title II on the grounds that the arresting officers should have called a mental health specialist to "come to the scene and talk [him] down so that he could be taken into custody without having to harm him."[110] The County of Merced filed a motion to dismiss this claim.[111] The court found that waiting for a mental health specialist to assist the officers with taking Harper into custody was not an indisputably unreasonable accommodation as a matter of law and rejected the county's motion.[112] Furthermore, the court noted that the City of Merced failed to cite any "sufficiently analogous case holding [that] the circumstances pled here created an indisputable legal exigency that precluded *any* accommodation for the intervention of a mental health specialist during the pursuit and arrest of [the p]laintiff."[113] This holding suggests that police officers may be required, under Title II, to wait for backup officers who are trained in de-escalation techniques. As evidenced by *Hamilton* and *Harper*, despite the prominence of CIT and other mental health training programs, police departments may have no obligation under Title II to either provide CIT training or dispatch officers with CIT training to respond to mental health calls.

2. Despite the ADA's promise of protection, federal courts are currently divided on whether Title II applies to arrests.

Because Title II does not outline which government activities are covered by its mandates, the applicability of this Title remains open to interpretation by the courts. Notably, as a result of the exigencies inherent to effectuating an arrest, the circuits are currently split on whether Title II applies to arrests at all.

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109. *Id.* at *20.
110. *Id.* at *18.
111. *Id.* at *24.
112. *Id.* To support its denial of the City of Merced's motion to dismiss, the district court reviewed the facts provided in the complaint about the "nature of the exigency and safety concerns officers . . . faced in pursuing [the] plaintiff." *Harper*, 2018 U.S. Dist. LEXIS 191567, at *22. The court also considered what the officers knew about the plaintiff's mental state at the time, the number of bystanders potentially involved, how many officers were on scene, the type of perimeter set up to surround the plaintiff, and the nature of the danger to the officer or others caused by the plaintiff's escape. *Id.*
113. *Id.* at *23.

The Ninth Circuit in *Sheehan v. City and County of San Francisco* held that Title II applies to arrests.[114] As described above, in *Sheehan*, the respondent Teresa Sheehan was suffering from a schizoaffective disorder[115] when she had a near-fatal encounter with police officers.[116] In deciding the case, the Ninth Circuit joined "the majority of circuits to have addressed the question" in holding that Title II applies to arrests.[117] As the Ninth Circuit explained, under 42 U.S.C. § 12132, "the ADA applies broadly to police 'services, programs or activities.'. . . [and we] have interpreted these terms to encompass 'anything a public entity does.'"[118] Therefore, under the Ninth Circuit's analysis, because police departments are public entities, and because

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114. Sheehan v. City & Cty. of S.F., 743 F.3d 1211, 1231 (9th Cir. 2014).

115. City & Cty. of S.F. v. Sheehan, 135 S. Ct. 1765, 1769 (2015).

116. *Sheehan*, 743 F.3d at 1215. *See also supra* Introduction (describing Teresa Sheehan's encounter with police officers).

117. *Sheehan*, 743 F.3d at 1232. The First Circuit in *Gray v. Cummings* held that it was appropriate to assume in that case that Title II applies to "ad hoc police encounters . . . and that exigent circumstances may shed light on the reasonableness of an officer's actions." 917 F.3d 1, 17 (1st Cir. 2019). The Third Circuit in *Haberle v. Troxell* considered "whether the ADA applies when police officers make an arrest" and found that, "[a]lthough the question is debatable, we think the answer is generally yes." 885 F. 3d 171, 178 (3d Cir. 2018). *Id*. In *Waller ex rel. Estate of Hunt v. City of Danville*, the Fourth Circuit held that "exigency is one circumstance that bears materially on the inquiry into reasonableness under the ADA." 556 F.3d 171, 175 (4th Cir. 2009). The Fifth Circuit held that Title II does not apply to arrests. Hainze v. Richards, 207 F.3d 795, 801 (5th Cir. 2000). *See also infra* note 132 (quoting the holding of *Hainze*). The Sixth Circuit assumed arguendo that Title II applies to arrests in *Tucker v. Tennessee*, 539 F.3d 526, 534 (6th Cir. 2008) ("As an initial matter, the language of the statute does not specifically enumerate whether an 'arrest' is a 'service, program, or activity' contemplated by the ADA."), and stated that "even if the arrest were within the ambit of the ADA, the district court correctly found that the City Police did not intentionally discriminate against Blake or Odis Tucker because of the their [sic] disabilities in violation of the ADA." *Id.* at 536. In *Gorman v. Bartch*, the Eighth Circuit found that the plaintiff sufficiently "pass[ed] the threshold required to bring a case under the ADA" such that the defendant's motion for summary judgment was denied. 152 F.3d 907, 913 (8th Cir. 1998). In *Gohier v. Enright*, the Tenth Circuit held that "a broad rule categorically excluding arrests from the scope of Title II . . . is not the law." 186 F.3d 1216, 1221 (10th Cir. 1999). For a discussion of the Eleventh Circuit's approach to Title II, *see infra* text accompanying notes 126–130. The Second, Seventh, Tenth and D.C. Circuits have not addressed this question.

118. *Sheehan*, 743 F.3d at 1232 (quoting Barden v. City of Sacramento, 292 F.3d 1073, 1076 (9th Cir. 2002)).

arrests fall into the broad category of "services, programs or activities," Title II applies to arrests.[119]

In addition to holding that Title II applies to arrests, the Ninth Circuit in *Sheehan* also held that Title II only requires that police officers provide reasonable accommodations to a person's mental illness.[120] The court found that Sheehan's case posed the triable question of "whether the officers failed to reasonably accommodate Sheehan's disability when they [did not take] her mental illness into account or employ[] generally accepted police practices for peaceably resolving a confrontation with a person with mental illness."[121] Sheehan alleged that "generally accepted police practices" were not followed, including: training officers "not to unreasonably agitate or excite the person [experiencing mental illness], to contain the person, to respect the person's comfort zone, to use nonthreatening communications and to employ the passage of time to their advantage."[122] Sheehan argued that these training lapses constituted a failure to reasonably accommodate her qualifying disability under Title II.[123] The Ninth Circuit found Sheehan's arguments persuasive and allowed her to proceed with her Title II claim.[124]

However, like other circuits before it, the Ninth Circuit in *Sheehan* also held that "exigent circumstances" may "inform the reasonableness analysis under the ADA, just as they inform the distinct reasonableness analysis under the Fourth Amendment."[125] Thus, if accommodating a person's disability would not be reasonable given the presence of exigent circumstances, the officers are not required to do so under Title II.[126] For example, in *Bircoll v. Miami-*

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119. *Id.* at 1232. Although this case was later appealed to the Supreme Court, the Court dismissed the first question of whether Title II requires "law enforcement officers to provide accommodations to an armed, violent, and mentally ill suspect in the course of bringing the suspect into custody," on the grounds that the certiorari for the question was improvidently granted. *Sheehan*, 135 S. Ct. at 1771.

120. *Sheehan*, 743 F.3d at 1232.

121. *Id.* at 1217.

122. *Id.* at 1225.

123. *Id.* at 1217.

124. *Id.*

125. *Sheehan*, 743 F.3d at 1232.

126. *See, e.g.*, Bircoll v. Miami-Dade Cty., 480 F.3d 1072, 1086 (11th Cir. 2007) ("In sum, field sobriety tests in DUI arrests involve exigencies that necessitate prompt action for the protection of the public and make the provision of an oral interpreter to a driver who speaks English and can read lips per se not reasonable.").

Dade County, a deaf plaintiff sued Miami-Dade County, alleging that the county's officers violated Title II when they failed to modify their procedures and wait for an interpreter before conducting a field sobriety test, and denied him access to a telecommunication device for the deaf when he was in jail.[127] Finding against the plaintiff, the Eleventh Circuit noted that the presence of exigent circumstances is important to the court's determination of what, if any, accommodations are reasonable under Title II.[128] The court held that because drivers under the influence create exigent circumstances such that the "danger to human life is high," requiring a police officer to wait for an interpreter before performing a field sobriety test is "not a reasonable modification of police procedures."[129] Waiting for an interpreter was therefore not a reasonable accommodation under these circumstances.[130]

The Eleventh Circuit's approach in *Bircoll* is distinct from that of the Fifth Circuit. In *Bircoll*, the presence of exigent circumstances did not bar plaintiffs from obtaining relief under Title II.[131] Conversely, in *Hainze v. Richards*, the Fifth Circuit held that the presence of exigent circumstances makes Title II inapplicable to arrests.[132]

In *Hainze*, Hainze's aunt made a 911 call requesting that police officers transport her suicidal nephew to a hospital for mental health treatment.[133] She informed the dispatcher that Hainze was armed and had threatened to commit "suicide by cop."[134] Police officers later found Hainze in a convenience store parking lot holding a knife and speaking

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127. *Bircoll*, 480 F.3d at 1080.

128. *Id.* at 1072.

129. *Id.* at 1086.

130. *Id.*

131. *Id.* at 1085 (stating that when exigent circumstances exist in cases involving police conduct and Title II, "the question is not so much one of the applicability of the ADA because Title II prohibits discrimination by a public entity by reason of [a person's] disability."). The court explained that "[t]he exigent circumstances presented by criminal activity and the already onerous tasks of police on the scene go more to the reasonableness of the required ADA modification than whether the ADA applies in the first instance." *Id.*

132. The Fifth Circuit held in *Hainze v. Richards* that "Title II does not apply to an officer's on-the-street responses to reported disturbances or other 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." 207 F.3d 795, 801 (5th Cir. 2000).

133. *Id*. at 797.

134. *Id.*

to friends.[135] After being instructed to drop the knife and refusing to do so, Hainze began to approach the officers and was shot twice in the chest.[136] He survived and brought suit against the police.[137]

Rejecting Hainze's ADA claims, the court held that Title II does not apply to an officer's "on-the-street responses" to incidents before the officer has "secur[ed] the scene and ensure[ed that] there is no threat to human life."[138] The court reasoned that because the officers had yet to ensure their own safety or the safety of others present at the scene, requiring them to "hesitate to consider other possible actions" is not the "type of 'reasonable accommodation' required by Title II."[139] Per the Fifth Circuit's reasoning, the officers were under no obligation to accommodate Hainze's mental illness until the area was secured and there was no longer a threat to human life.[140] The Fifth Circuit thereby held that given the inherent exigencies present when effectuating Hainze's arrest, Title II did not apply.[141] Thus, persons experiencing mental illness who come into contact with police officers may be afforded fewer Title II protections in the Fifth Circuit than they are in the Ninth or Eleventh Circuit.

The Supreme Court had the opportunity to make Title II protections more uniform across the circuits when it heard *Sheehan* on appeal in 2015.[142] There, the Supreme Court sought to answer whether Title II "requires law enforcement officers to provide accommodations to an armed, violent, and mentally ill suspect in the course of bringing that suspect into custody."[143] Alluding to the dissimilarity between the Fifth and Ninth's Circuits interpretations of the scope of Title II, Justice Alito, writing for the majority, wrote that:

> [W]e understood this question to embody what appears to be the thrust of the argument that San Francisco made in the Ninth Circuit, namely that 'Title II *does not apply* to an officer's on-the-street responses to reported disturbances or other similar incidents, whether or not those calls involve subjects with mental

135. *Id.*
136. *Id.* at 801.
137. *Id.*
138. *Id.*
139. *Id.*
140. *Id.* at 801–02.
141. *Id*.
142. City & Cty. of S.F. v. Sheehan, 135 S. Ct. 1765, 1772 (2015).
143. *Id.*

> disabilities, prior to the officer's securing the scene and ensuring that there is no threat to human life.'[144]

Rather than addressing this question, the Supreme Court dismissed it as improvidently granted.[145] The Court did so because San Francisco, which had previously argued before the Ninth Circuit that Title II does not apply to arrests (per the Fifth Circuit's decision in *Hainze*), switched its position to arguing an affirmative defense[146] before the Supreme Court.[147] In the eyes of the Court, by raising an affirmative defense, San Francisco "argue[d] (or at least accept[ed]) that [Title II] applies to arrests" and thus the question of whether Title II applies to arrests did not receive the benefit of adversarial briefing.[148] Because the Supreme Court declined to resolve this question, the circuits remain split.

As it is currently interpreted by the federal courts, Title II of the ADA fails to provide uniform protections to persons experiencing mental illness. Since Title II has not been interpreted to require that police departments provide CIT training, implementing this program (if it is not otherwise mandated by state law) is a voluntary choice made by individual officers.[149] Although CIT programs have improved the safety of police officers' interactions with persons experiencing mental illness, police departments are not required to dispatch CIT-trained officers in response to mental health calls under Title II. Additionally,

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144. *Id.*

145. *Id*. at 1769.

146. In its reply brief at the certiorari stage of the case, San Francisco argued that the Court could resolve the question presented without a "fact-intensive 'reasonable accommodation' inquiry" because "the only question for this Court to resolve is whether any accommodation of an armed and violent individual is reasonable or required under Title II of the ADA." *Sheehan*, 135 S. Ct. at 1772. San Francisco relied on 28 C.F.R. § 35.139(a) to argue that regardless of whether Title II applies to arrests, Title II "does not require a public entity to permit an individual to participate in or benefit from the services, programs, or activities of that public entity when that individual poses a direct threat to the health or safety of others." *Id.* at 1773. Relying on 28 C.F.R. § 35.104, San Francisco argued that Sheehan was a direct threat because she posed a "significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services." *Id.* Thus, per San Francisco's argument before the Supreme Court, regardless of whether Title II applies to arrests, Sheehan did not qualify for an accommodation under the ADA because she posed a "direct threat." *Id.*

147. *Sheehan*, 135 S. Ct. at 1773.

148. *Id.* at 1773–74.

149. Watson & Fulambarker, *supra* note 61.

the unresolved circuit split has created a legal landscape wherein the presence of exigent circumstances during an arrest can have varying impacts on the reasonableness of an accommodation or whether accommodations are even required under Title II. Thus, for persons experiencing mental illness, Title II fails to meet the ADA's stated purpose of providing "clear, strong, consistent, and enforceable standards."[150]

II. METHODOLOGY

Given recent scholarship surrounding the Supreme Court's decision in *Sheehan*,[151] this Note tests the effectiveness of three separate hypotheses on decreasing the incidence of fatal police shootings of persons in mental health crisis. First, the author tested whether application of Title II to arrests reduces the risk that persons in mental health crisis during a police encounter will be fatally shot by police officers ("Hypothesis 1"). Second, the author tested whether persons in mental health crisis in states with CIT training programs in more than 23.44% of their counties have a decreased likelihood of being fatally shot by police officers ("Hypothesis 2").[152] Finally, the author tested whether persons in mental health crisis 1) in jurisdictions that apply Title II to arrests and 2) in states with CIT training programs have a lower risk of being fatally shot by police officers ("Hypothesis 3").

A. Data Sources

In 2015, the *Washington Post* began tracking fatal police shootings in the United States.[153] Shortly thereafter, the newspaper created a database that monitors and integrates local news reports, law enforcement websites, social media, and databases like *Killed by*

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150. 42 U.S.C. § 12101(b)(1)–(3) (2018).

151. *See, e.g.*, Hanna, *supra* note 46 (discussing *Sheehan* and mental health training for law enforcement); Harrington, *supra* note 93 (discussing *Sheehan* and reasonable accommodations).

152. The author selected 23.44% as the cutoff for Hypothesis 2 to distinguish states wherein the percentage of counties with CIT training programs is greater than the median of the distribution.

153. *Data-Police-Shootings*, WASH. POST, https://github.com/washingtonpost/data-police-shootings [https://perma.cc/TS6L-EZ9Y] [hereinafter *Data-Police-Shootings*]. The sample tested in this Note was gathered from the *Washington Post*'s Database on July 17, 2019.

Police[154] and *Fatal Encounters*[155] to track information about the victims of these fatal encounters.[156] The database contains information on each victim including, but not limited to: (a) the race of the deceased, (b) the age of the deceased, (c) the location of the shooting, (d) whether the person was armed or unarmed,[157] and (e) whether the person was in mental health crisis at the time of the shooting.[158]

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154. KILLED BY POLICE, http://killedbypolice.net [https://perma.cc/GAH7-JLGN].

155. FATAL ENCOUNTERS, https://www.fatalencounters.org [https://perma.cc/BPZ6-TQVJ].

156. *Data-Police-Shootings*, *supra* note 153. In the absence of a reliable government database on police shootings, databases like *Fatal Encounters* and the *Washington Post*'s database track fatal encounters between police officers and civilians. Joscha Legewie & Jeffrey Fagan, *Group Threat, Police Officer Diversity and the Deadly Use of Police Force*, (Columbia Pub. Law Research Paper No. 14-512) (2016). Whereas *Fatal Encounters* tracks all fatal police encounters, the *Washington Post*'s database only tracks fatal police shootings. *See generally* Demar F. Lewis IV et al., *Police Homicides Across the United States 2004-2017* (unpublished manuscript) (on file with the author) (describing the information tracked by *Fatal Encounters* and other similar databases but not the *Washington Post*). The author derived her sample from the *Washington Post*'s Database, rather than other similar crowd-sourced databases on fatal police shootings, because the *Washington Post* tracks whether the victim was experiencing a mental health crisis. *See infra* note 158 (describing the *Washington Post*'s efforts to track mental health factors in fatal police shootings).

157. When considering whether an individual was armed, the database presents three possible categories: armed, unarmed, and undetermined. Individuals in the armed category possessed one (or multiple) of the following weapons: a gun, toy weapon, nail gun, knife, shovel, hammer, hatchet, sword, machete, box cutter, metal object, metal pole, metal pipe, screwdriver, lawn mower blade, flagpole, cordless drill, taser, blunt object, sharp object, meat cleaver, carjack, chain, contractor's level, unknown weapon, stapler, crossbow, baseball bat, bean-bag gun, fireplace poker, straight edged razor, brick, hand torch, chainsaw, garden tool, scissors, flashlight, spear, pitchfork, rock, piece of wood, bayonet, glass shard, motorcycle, vehicle, pepper spray, rake, baton, pellet gun, BB gun, pick-axe, bow and arrow, crowbar, beer bottle, fireworks, pen, chainsaw, an incendiary device, an air conditioner, an axe, or explosives. Persons who claim to be armed are categorized as armed for the purposes of the database as well as this paper. *Data-Police-Shootings*, *supra* note 153.

158. *Id.* The *Washington Post*'s database classifies a person as exhibiting signs of mental illness if either the police officers called to the scene or the family members later describe the person as experiencing mental illness. Instances where a person is exhibiting signs of mental illness include, but are not limited to, instances where a person is suicidal, or when a person is in the midst of a manic-depressive episode. Telephone Interview with Wesley Lowery, National Correspondent, Washington Post (Apr. 18, 2019) (notes on file with the author). Because an individual's mental health status is generated via police or family

This Note's analysis focuses on the number of fatal police shootings of persons in mental health crisis in the United States between 2015 and 2018. The author used the *Washington Post*'s database as a sample of all persons who were shot and killed by police officers during this period.[159] Per the limits of the database, the sample used to calculate the statistics in this Note only contains shootings where a police officer, in the line of duty, shot and killed a civilian.[160] Deaths of persons in police custody, fatal shootings by off-duty police officers, and non-shooting deaths of civilians are excluded from the sample.[161] Consequently, this Note discusses the incidence of fatal police shootings of persons in mental health crisis within a sample of those fatally shot by police officers, not within a sample of all police encounters.

1. Missing Data

Everyone in the *Washington Post*'s database is listed by the state where they were shot and has a corresponding mental health code (indicating the presence or lack of a mental health crisis at the time of the shooting).[162] However, not everyone has a corresponding code for whether or not they were armed at the time of the shooting.[163] The 389 (9.8%) people in the *Washington Post*'s database that either had no recorded armed or unarmed status or were listed as having their armed or unarmed status "undetermined" were coded as "missing" and therefore removed from any regressions requiring a determined armed

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member reports, it is possible that an individual in the database's mental illness could go unreported. This sample therefore represents a conservative estimate of the number of persons in mental health crisis during a fatal encounter with the police.

159. *Data-Police-Shootings*, *supra* note 153. Because the sample used for this note was derived from a database containing all of the persons who were fatally shot by police officers, notable cases like Theresa Sheehan's, *see supra* Introduction, where she survived the encounter or Darcy Harper's, Harper v. County of Merced, No. 1:18-cv-00562, 2018 U.S. Dist. LEXIS 191567, at *24 (E.D. Cal. 2018), where he was not shot, but instead tased repeatedly would be excluded from this analysis.

160. Julie Tate et al., *How the Washington Post Is Examining Police Shootings in the United States*, WASH. POST (Jul. 7, 2016) https://www.washingtonpost.com/national/how-the-washington-post-is-examining-police-shootings-in-the-united-states/2016/07/07/d9c52238-43ad-11e6-8856-f26de2537a9d_story.html (on file with the *Columbia Human Rights Law Review*).

161. *Id.*

162. *Data-Police-Shootings*, *supra* note 153.

163. *Id.*

or unarmed status.[164] They were therefore omitted from R_2, R_3, R_4, R_5, and R_6.[165]

B. Variables and Measures

This Note's analysis relies on six distinct regressions (R_1, R_2, R_3, R_4, R_5, and R_6) to test three different hypotheses. Each of the six regressions was used to test the impact of each hypothesis on a different dependent variable.[166] To account for any differences in state-level policies and procedures, each regression was clustered by state. Because fatal shootings in the District of Columbia are contained in the sample, there were 51 total clusters in each regression. Additionally, the year of each shooting was included as a dummy variable in each regression to control for external factors that may cause year-to-year variation in the incidence of fatal police shootings.[167]

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164. This number was independently generated by the author using the *Washington Post*'s Database. *Id.*

165. The author acknowledges that removing almost 10% of the cases creates the potential for bias. *See generally* WENDY STAINTON-ROGERS ET AL., THE SAGE HANDBOOK OF QUALITATIVE RESEARCH IN PSYCHOLOGY 75–76 (Carla Willig & Wendy Stainton-Rogers eds., 2d ed. 2017) (describing the impact that listwise deletion, or removing cases with missing variables from a dataset, can have on regression estimates). It is therefore possible that there is an unknown factor that contributed to the shooting of these persons. *Id.*

166. Statistical analysis examines variables in order to test a hypothesis. The independent variable is the variable "being manipulated in an experiment in order to observe the effect on a dependent variable." *Types of Variables,* LAERD STATISTICS, https://statistics.laerd.com/statistical-guides/types-of-variable.php [https://perma.cc/EU3E-J559]. The dependent variable, therefore, is a variable dependent on the independent variable. *Id*. In other words, statistical analysis aims to measure the impact of the independent variable on the dependent variable. For example, if a scientist wanted to see "if the brightness of light has any effect on a moth being attracted to the light. The brightness of the light is controlled by the scientist." The brightness of the light, therefore, would be the independent variable. Conversely, how the moth reacted to the different light levels would be the dependent variable. Todd Helmenstine, *What Is the Difference Between Independent and Dependent Variables*, THOUGHT CO., https://www.thoughtco.com/independent-and-dependent-variables-differences-606115 [https://perma.cc/3978-H9EG].

167. In regression analysis, dummy variables are used to classify data into mutually exclusive categories. DAMODAR N. GUJARATI, BASIC ECONOMETRICS 298 (2003). In doing so, they account for factors that may lead to variation and should therefore be included among the explanatory variables in a regression. *Id*. at 297.

1. Independent Variables

The three hypotheses explored in this Note aim to test whether application of Title II to arrests (Hypothesis 1), implementation of CIT training programs in over 23.44% of a state's counties (Hypothesis 2), or applying Title II to arrests and implementing CIT training programs (Hypothesis 3) creates a statistically significant probability of decreasing the incidence of fatal police shootings of persons in mental health crisis. These three hypotheses were therefore used as independent variables. To observe potential interaction effects, all three were included as independent variables in each regression.

i. Measures Used to Test Hypothesis 1

Hypothesis 1 questions whether the application of Title II to arrests reduces the probability that persons in mental health crisis during their encounters with police will be fatally shot by police officers. Because applying Title II to arrests would require police officers to reasonably accommodate persons experiencing mental illness when arresting them, persons in mental health crisis should constitute a lower number of those fatally shot by police officers in jurisdictions that have applied Title II to arrests than they do in jurisdictions that have not.

To test this hypothesis, the author used Title II Status as an independent variable. This variable was generated using the location where each victim was shot, as listed in the *Washington Post*'s database.[168] The author then assigned each victim to their appropriate

168. The author noticed and corrected a series of errors in the *Washington Post*'s Database regarding the states wherein certain individuals in the database were shot. Jacob Alberthsen's (ID 4096) death was listed in the *Washington Post*'s Database as occurring in Oregon. Orem (the city where his death is recorded) is in Utah. The author's dataset was updated accordingly. Similarly, Ricardo Tenorio's (ID 1874) location of death is listed in the *Washington*'s *Post* Database as Memphis, Tennessee; his death actually occurred in West Memphis, Crittenden County, Arkansas and the author's dataset was updated accordingly. George Brown & Melissa Moon, *Man Who Tried to Run Over SCSO Deputy & Shot Dead in West Memphis*, WREG NEWS CHANNEL 3 (Sept. 9, 2016), https://wreg.com/2016/09/09/man-wanted-for-trying-to-run-over-scso-shot-dead-in-west-memphis/ [https://perma.cc/ZW66-NPTT]. The death of Quintin J. Horner (ID 3516) is recorded in the *Washington Post*'s Database as having taken place in Utica, Kentucky. News reports about the death of Quintin J. Horner in Utica, New York make no mention of a fatal police encounter in Kentucky on that date. *See Man Shot, Killed in Utica,* UTICA OBSERVER-DISPATCH (Mar. 12, 2018),

federal circuit and designated a code indicating whether or not the circuit has applied Title II to arrests.[169] This code ("Title II Status") was selected as the independent variable to test Hypothesis 1.

ii. Measures Used to Test Hypothesis 2

Scholars suggest that the presence of CIT training programs makes encounters safer for both police officers and persons experiencing mental illness.[170] Given the successes that CIT training programs have had at reducing the use of force by police officers against persons experiencing mental illness,[171] and at shifting officers from high-lethality to low-lethality methods of force when the use of force is required,[172] Hypothesis 2 suggests that high levels of implementation of CIT programs within a state would have a significant impact on decreasing the rate of fatal shootings of persons in mental health crisis. Thus, Hypothesis 2 tests whether fewer persons in mental health crisis are killed in states wherein a high percentage of the state's counties have CIT training programs.

Using data provided by the University of Memphis CIT Center, the author was able to calculate the percentage of counties in each state that have existing CIT training programs (see Appendix 1).[173]

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https://www.uticaod.com/news/20180321/man-shot-killed-in-utica [https://perma.cc/V6UX-NVEB]. However, *Fatal Encounters* lists Reuben Ruffin Jr.'s (Fatal Encounters ID 23941) death as occurring in Utica, Kentucky. The author's database has replaced Horner's details with Ruffin's as Ruffin's details are listed in Fatal Encounters.

169. *See* cases cited *supra* note 117. Circuits that have yet to determine whether Title II applies to arrests are considered circuits wherein Title II has not been interpreted to apply to arrests. Because the Sixth Circuit has consistently assumed that Title II applies to arrests, it was considered a circuit where Title II applies to arrests for this analysis. *See, e.g.,* Tucker v. Tennessee, 539 F.3d 526, 534 (6th Cir. 2008) (as an initial matter, the language of the statute does not specifically enumerate whether an "arrest" is a service within the definition of the statute).

170. Hanafia et al., *supra* note 76.

171. Skeem & Bibeau, *supra* note 74.

172. *Id.*

173. *See United States of America, supra* note 64. The author was informed on June 30, 2019 that the graphic contained on their website is outdated and is not currently a reliable account of the number of CIT Programs in the United States. Email from Randolph Dupont, Instructor, University of Memphis CIT Center, to author (June 30, 2019 16:33 EST) (on file with author). The counts on the website that the author used underrepresent the current number of CIT programs. *Id*. The representative from the University of Memphis CIT Center that the author spoke with was unaware of a more reliable source for the data. *Id*. The counts used in this

States with CIT training programs in at least 23.44% (the distribution's median) of their counties constituted states with a high percentage of CIT training programs.[174] Therefore, whether at least 23.44% of a state's counties have CIT training programs ("CIT Exposure") was selected as the independent variable to test Hypothesis 2.

iii. Measures Used to Test Hypothesis 3.

Finally, Hypothesis 3 questions whether presence in 1) states with CIT training programs and 2) jurisdictions that apply Title II to arrests predicts that a lower number of persons in mental health crisis will be fatally shot by police officers than they would be in states that have one or the other. Because the ADA and CIT training programs aim to protect persons experiencing mental illness, this hypothesis suggests that states in jurisdictions that have applied Title II to arrests and have counties with CIT training programs will have fewer persons in mental health crisis that are fatally shot by police officers.

To test this hypothesis, the author multiplied a state's Title II status by the percentage of that state's counties with CIT training programs to generate the state's "Training & Title II Status." Training & Title II Status was used as the independent variable to test Hypothesis 3.

2. Dependent Variables

To generate dependent variables, the author sorted the individuals contained in the sample described above into six categories. These categories are based on whether the individual was in mental health crisis ("Mental Health Status" or "MH Only Status"), armed ("Armed Status" or "Armed Only Status"), both ("Both"), or neither ("Neither") when they were shot. Each dependent variable represents the number of individuals in the relevant category. The number of shootings per category per state is detailed in Appendix 2 and Appendix 3.

Mental Health Status represents the total number of persons in the sample who were in mental health crisis when they were shot.

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paper therefore represent a conservative estimate of the number of counties with CIT programs in a given state.

174. *See supra* note 152.

Thus, persons with an undetermined armed status, if they were in mental health crisis, are included in this number.[175] To test the overall impact of each hypothesis on the number of fatal shootings of persons in mental health crisis, the author selected whether the person was in mental health crisis during their interaction with the police as the dependent variable for R_1.

Because many circuits limit the applicability of Title II to arrests by considering exigent circumstances when evaluating the reasonableness of an accommodation, the author separately tested the impact of each hypothesis on persons who were unarmed and in mental health crisis when they were shot, and persons that were armed and in mental health crisis when they were shot. MH Only Status therefore represents the total number of persons in the sample who were unarmed and in mental health crisis when they were shot. It was selected as the dependent variable for R_2. Conversely, the Both category represents the total number of persons in the sample who were both armed and in mental health crisis when they were shot. Both was selected as the dependent variable for R_3.

To compare the impacts of Title II Status, CIT Exposure, and Training & Title II Status on persons in mental health crisis to other populations, the author also tested these three variables' impacts on armed persons generally, armed persons who were not in mental health crisis, and persons that were neither armed nor in mental health crisis. Armed Status represents the total number of persons in the sample that were armed when they were shot, including persons who were also in mental health crisis. Conversely, Armed Only Status represents the total number of persons in the sample who were armed and were not in mental health crisis when they were shot. Armed Status was selected as the dependent variable for R_4 while Armed Only Status was selected as the dependent variable for R_5. Neither represents the total number of persons in the sample who were neither armed nor in mental health crisis when they were shot. Neither was selected as the dependent variable for R_6.

Because each dependent variable represents the total number of persons in each state fatally shot by police within each category, the variables have significant right skews and outliers.[176] To make the

175. *See supra* Part II.A.1.

176. *See generally* KENNETH BENOIT, LINEAR REGRESSION MODELS WITH LOGARITHMIC TRANSFORMATIONS 2 (2011) (describing how logarithmically transformed variables can be used to make highly skewed distributions appear more normal).

distribution appear more normal, prior to each regression each dependent variable was transformed using the following formula:

$$\ln\left([Dependent\ Variable] + .01\right)$$

This formula prevented zeros from becoming negative values, yet allowed non-zero values to remain as close to zero as possible. Tables describing each dependent variable before and after transformation are available in Appendix 4.

III. RESULTS

The *Washington Post*'s database recorded 3,933 fatal police shootings in the United States between 2015 and 2018.[177] The number of shootings per year did not drastically change between 2015 and 2018.[178] Of the 3,933 shootings recorded by the *Washington Post* for this period, 949 (24.13%) of the people fatally shot by police officers were in mental health crisis at the time.[179] The remaining 2,984 people (75.87%) were not reported to be in mental health crisis when they were shot.[180]

As described in Table 1 below, many of the persons in mental health crisis at the time of the shooting were armed. However, of the 949 persons in mental health crisis when they were shot, 52 (5.48%) were unarmed.[181] Unarmed persons represented 7.0% of the 2,984 persons who were not in mental health crisis when they were shot.[182]

177. *Data-Police-Shootings*, *supra* note 153.

178. *See infra* Table 1 (describing the number of persons in mental health crisis when they were shot divided into armed and unarmed categories). The numbers contained in Table 1 were independently generated by the author using the *Washington Post*'s Database.

179. *Id.*. S*ee also Data-Police-Shootings*, *supra* note 153 (providing the data interpreted and summarized in Table 1).

180. *See infra* Table 1. *See also Data-Police-Shootings*, *supra* note 153 (providing the data interpreted and summarized in Table 1).

181. *See infra* Table 1. *See also Data-Police-Shootings*, *supra* note 153 (providing the data interpreted and summarized in Table 1).

182. *See infra* Table 1. *See also Data-Police-Shootings*, *supra* note 153 (providing the data interpreted and summarized in Table 1).

Table 1: Number of persons in mental health crisis at the time of the shooting categorized by Armed and Unarmed Status.*

Year	Persons Not in Mental Health Crisis		Total Persons Not in Mental Health Crisis	Persons in Mental Health Crisis		Total Persons in Mental Health Crisis	Grand Total
	Armed	Unarmed		Armed	Unarmed		
2015	591	73	664	226	21	247	911
2016	563	43	606	225	8	233	839
2017	594	57	651	212	12	224	875
2018	675	36	711	197	11	208	919
Grand Total (2015–2018)	2423	209	2632	860	52	912	3544

*Of the 3,933 persons in the *Washington Post*'s database, 389 of them were listed as either "Undetermined" or their Armed Status was left blank. They were excluded from this table.

A. Compared to Title II Status and CIT Exposure, Training & Title II Status has the most statistically significant impact on persons in mental health crisis (R_1).

R_1 tested the impact that a jurisdiction's Title II Status, CIT Exposure, and Training & Title II Status have on the number of persons fatally shot by police officers when they are in mental health crisis. Because some police departments could be held liable for failing to provide reasonable accommodations during arrests under Title II,[183] departments have an incentive to adopt policies and procedures that accommodate persons experiencing mental illness. Since police officers in circuits that have applied Title II to arrests are required to make

183. *See, e.g.*, Sheehan v. City & Cty. of S.F., 743 F.3d at 1211, 1233 (9th Cir. 2014) (reversing the district court's decision to grant summary judgment to the defendant-city on the grounds that a reasonable jury could find that the city was liable for failing to accommodate Sheehan's disability when the officers reentered Sheehan's apartment and used deadly force instead of waiting for backup that could have employed less confrontational tactics).

reasonable accommodations for persons experiencing mental illness when effectuating those arrests, the number of persons in mental health crisis that are fatally shot by police officers should decrease when Title II has been applied to arrests. Thus, a jurisdiction's Title II Status is expected to have a significant impact on the incidence of fatal shootings of persons in mental health crisis. Similarly, Hypothesis 2 questions whether a high level of CIT Exposure within a state predicts a lower incidence of fatal shootings of persons in mental health crisis. Hypothesis 3 questions whether the application of Title II to arrests and the implementation of CIT training programs results in a lower number of fatal shootings of persons in mental health crisis.

The data provided by the *Washington Post*'s database demonstrates that the application of Title II to arrests alone has no statistically significant impact on the number of fatal shootings of persons in mental health crisis during their encounters with police officers. As described in Table 2 below, when a jurisdiction's Title II Status is input into a regression as the dependent variable and a person's Mental Health Status is input as the independent variable, the regression returns a coefficient of 1.004[184] and a p-value[185] of 0.161.[186] Thus, Title II Status has no statistically significant impact on

184. Regression coefficients measure the association between two variables. LEE EPSTEIN & ANDREW D. MARTIN, AN INTRODUCTION TO EMPIRICAL LEGAL RESEARCH 191 (2014). Negative coefficients suggest a negative relationship, and positive coefficients suggest a positive relationship between the dependent and independent variables. *Id*. The statistical significance of any coefficient, as measured by the p-value described *infra* note 185, determines the likelihood that the association would be observed by chance.

185. The author used p-values to test the effect of various independent variables on the relevant dependent variable for each hypothesis. In statistics, p-values represent the probability that a random sample would resemble the tested population if the null hypothesis were true. *Id*. at 296. The null hypothesis is the hypothesis that the test is aiming to disprove. *Id*. For example, R_1 tests whether a circuit's Title II status (the independent variable) has an impact on the incidence of fatal shootings of persons in mental health crisis (the dependent variable). The null hypothesis for this test is that a circuit's Title II status has no impact on the incidence of fatal shootings of persons in mental health crisis. For example, p-value of 0.05 represents a 5% probability that the null hypothesis is true, and the hypothesis being tested (the alternative hypothesis) is instead false. P-VALUES, STATSDIRECT, https://www.statsdirect.com/help/Default.htm#basics/p_values.htm [https://perma.cc/AT3C-DBME]. Most authors use a p-value of less than 0.05 as an indicator that a result is statistically significant; in other words, that the result has a less than one-in-twenty chance of being wrong.

186. The author generated the regressions described in this Note using a series of code input into the Stata Statistics/Data Analysis software. The source

the likelihood that persons in mental health crisis will be fatally shot by police officers when they are in jurisdictions that apply Title II to arrests.

Similarly, a high level of CIT Exposure has no statistically significant impact on the likelihood that a person in mental health crisis will be fatally shot by police officers. Although CIT Exposure generated a lower p-value (0.100) than Title II Status, it nonetheless fails to fall below the 0.05 threshold[187] for a statistically significant result.

Unlike Title II Status and CIT Exposure, Training & Title II Status has a statistically significant impact on the likelihood that persons in mental health crisis will be fatally shot by police officers. As described in Table 2 below, when Training & Title II Status is input into a regression as the independent variable and Mental Health Status is input as the dependent variable, the regression generates a coefficient of -3.117 and a p-value of 0.048.[188] This suggests that the application of Title II to arrests and the implementation of CIT training programs will lead to a statistically significant decrease in the likelihood that persons in mental health crisis will be fatally shot by police officers.[189]

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data adapted from the *Washington Post* Fatal Shooting Database, see *supra* Part II.A. The code used to conduct these regressions is on file with the author.

187. *See supra* notes 184–185.

188. *See infra* Table 2. *See also Data-Police-Shootings*, *supra* note 153 (providing the data interpreted and summarized in Table 2).

189. *See infra* Table 2. *See also Data-Police-Shootings*, *supra* note 153 (providing the data interpreted and summarized in Table 2).

Table 2: The relationship between Title II Status, CIT Exposure, Training & Title II Status, and the number of persons fatally shot by police officers while in mental health crisis (R_1).

Mental Health Status	*Coef.*	*Std. Err.*	*p-value*
Title II Status	1.004	0.705	0.161
CIT Exposure	-0.903	0.539	0.100
Training & Title II Status	-3.117	1.535	0.048*
Intercept	0.718	0.443	0.111

* = $p \leq 0.05$; ** = $p \leq 0.01$; *** = $p \leq 0.001$
N= 201; Std. Error adjusted for 51 state Clusters

B. CIT Exposure has a statistically significant impact on the incidence of fatal shootings of unarmed persons in mental health crisis (R_2).

R_2 tested the impact of a jurisdiction's Title II Status, CIT Exposure, and Training & Title II Status on the number of unarmed persons in mental health crisis when they were fatally shot by police officers. The majority of circuits that have applied Title II to arrests have held that the presence of exigent circumstances, like the presence of a weapon, can make an accommodation unreasonable.[190] Thus, since R_2 tested MH Only Status as the dependent variable, this regression was expected to demonstrate that Title II Status leads to a decrease in the likelihood that unarmed persons in mental health crisis will be fatally shot by police officers.[191] CIT Exposure is expected to have a similar effect because CIT-trained officers have an increased awareness of how to de-escalate situations and rely on non-lethal methods to detain persons experiencing mental illness.[192] Theoretically then, as a combination of the above variables, Training & Title II Status should also decrease the likelihood that unarmed persons in mental health crisis will be fatally shot by police officers.

190. *See supra* text accompanying notes 117, 132
191. *See supra* text accompanying notes 117, 132.
192. *See supra* text accompanying notes 74, 76.

Contrary to this theoretical assumption, as evidenced by Table 3 below, only CIT Exposure decreases the likelihood that unarmed persons in mental health crisis will be fatally shot by police officers. When input into R_2, CIT Exposure returned a coefficient of -0.889 and a p-value of 0.026.[193] This suggests that states with high CIT Exposure can be expected to have fewer fatal police shootings of unarmed persons in mental health crisis than states with low CIT Exposure.[194] This conclusion aligns with existing scholarship describing CIT training programs' success at making interactions between persons experiencing mental illness and police officers safer.[195]

Table 3: The relationship between Title II Status, CIT Exposure, Training & Title II Status, and the number of unarmed persons fatally shot by police officers while in mental health crisis (R_2).

Mental Health Only Status	*Coef.*	*Std. Err.*	*p-value*
Title II Status	0.495	0.506	0.333
CIT Exposure	-0.889	0.387	0.026*
Training & Title II Status	-1.693	1.153	0.148
Intercept	-3.006	0.458	<0.001***

* = $p \leq 0.05$; ** = $p \leq 0.01$; *** = $p \leq 0.001$

N= 201; Std. Error adjusted for 51 state Clusters

C. Training & Title II Status has a highly statistically significant impact on armed persons in mental health crisis (R_3).

R_3 tested whether the likelihood that a person in mental health crisis will be fatally shot by police officers decreases as a result of a jurisdiction's Title II Status, CIT Exposure, or Training & Title II

193. *See infra* Table 3. *See also Data-Police-Shootings*, *supra* note 153 (providing the data interpreted and summarized in Table 3).

194. *See supra* notes 184–185.

195. *See supra* Part I.B.

Status. Title II only requires that government entities provide "reasonable accommodations;" persons for whom accommodations would be unreasonable are not entitled to them.[196] Because the majority of circuits that have applied Title II to arrests have held that the presence of exigent circumstances, like the presence of a weapon, can make an accommodation unreasonable, armed persons in mental health crisis are unlikely to receive the benefits of Title II.[197] Thus, Title II Status is not expected to decrease the likelihood that an armed person in mental health crisis will be fatally shot by police officers.

As expected, Table 4 below demonstrates that a circuit's application of Title II to arrests does not have a statistically significant impact on the number of armed persons shot and killed by police officers.[198] CIT Exposure similarly did not have a statistically significant impact.[199] However, Training & Title II Status generated a coefficient of -3.823 and a p-value of 0.027 when input into R_3.[200] This is a statistically significant result.[201] It suggests that, together, implementation of CIT training programs and application of Title II to arrests lead to a statistically significant decrease in the incidence of fatal shootings of armed persons in mental health crisis.

196. *See supra* text accompanying notes 120–141.

197. *See supra* text accompanying notes 120–141.

198. *See infra* Table 4. *See also Data-Police-Shootings*, *supra* note 153 (providing the data interpreted and summarized in Table 4).

199. *See infra* Table 4. *See also Data-Police-Shootings*, *supra* note 153 (providing the data interpreted and summarized in Table 4); *supra* notes 184–185 (describing the 0.05 threshold for a statistically significant p-value).

200. *See infra* Table 4. *See also Data-Police-Shootings*, *supra* note 153 (providing the data interpreted and summarized in Table 4).

201. *See supra* notes 184–185.

Table 4: The relationship between Title II Status, CIT Exposure, Training & Title II Status, and the number of armed persons fatally shot by police officers while in mental health crisis (R_3).

Both Status	*Coef.*	*Std. Err.*	*p-value*
Title II Status	1.061	0.718	0.146
CIT Exposure	-0.879	0.533	0.106
Training & Title II Status	-3.823	1.681	0.027*
Intercept	0.605	0.425	0.161

* = $p \leq 0.05$; ** = $p \leq 0.01$; *** = $p \leq 0.001$

N= 201; Std. Error adjusted for 51 state Clusters

D. CIT Exposure and Training & Title II Status are statistically significant predictors of a decrease in the incidence of fatal police shootings of armed persons (R_4).

Although CIT training programs and the ADA are aimed at protecting persons experiencing mental illness, CIT Exposure and Training & Title II Status also appear to decrease fatal police shootings of armed persons. When a state's CIT Exposure was input into R_4, the regression returned a p-value of 0.017.[202] Similarly, when Training & Title II status was input into R_4 it returned a p-value of 0.006.[203] Both of these p-values are statistically significant because they fall below the 0.05 threshold.[204] Title II Status alone, however, has no statistically significant impact.[205]

Fully explaining this result is beyond the scope of this Note. However, it is possible that police officers who are trained on de-

202. *See infra* Table 5. *See also Data-Police-Shootings*, *supra* note 153 (providing the data interpreted and summarized in Table 5).

203. *See infra* Table 5. *See also Data-Police-Shootings*, *supra* note 153 (providing the data interpreted and summarized in Table 5).

204. *See supra* notes 184–185.

205. *See infra* Table 5. *See also Data-Police-Shootings*, *supra* note 153 (providing the data interpreted and summarized in Table 5).

escalation techniques and the use of low lethality methods apply their training in interactions that may not involve persons in mental health crisis, thereby explaining the decrease in the incidence of fatal police shootings of armed persons in states with high CIT Exposure. It is also possible that the limit placed on the application of Title II to arrests when exigent circumstances are present[206] explains Title II Status's lack of a statistically significant impact on the incidence of fatal police shootings of armed persons.

Table 5: The relationship between Title II Status, CIT Exposure, Training & Title II Status, and the number of Armed Persons fatally shot by police officers (R_4).

Armed Status	*Coef.*	*Std. Err.*	*p-value*
Title II Status	0.810	0.473	0.093
CIT Exposure	-0.883	0.339	0.017*
Training & Title II Status	-2.362	0.824	0.006**
Intercept	2.589	0.238	<0.001***

* = $p \leq 0.05$; ** = $p \leq 0.01$; *** = $p \leq 0.001$

N= 201; Std. Error adjusted for 51 state Clusters

E. Neither Title II Status, CIT Exposure, nor Training and Title II Status has a statistically significant impact on the incidence of fatal police shootings of persons who are armed but not in mental health crisis (R_5).

As evidenced by Table 6 below, the application of Title II to arrests, a high level of CIT Exposure, and the implementation of CIT training programs in states within jurisdictions that have applied Title II to arrests have no statistically significant impact on the rate at which armed persons who are not in mental health crisis are fatally

206. *See supra* text accompanying notes 125–141.

shot by police officers.[207] This result is unsurprising because Title II and CIT training programs were intended to protect persons with qualifying disabilities from discriminatory treatment by government entities[208]—not persons possessing weapons.

Table 6: The relationship between Title II Status, CIT Exposure, Training & Title II Status, and the number of armed persons who were not in mental health crisis when they were fatally shot by police officers (R_5).

Armed Only Status	*Coef.*	*Std. Err.*	*p-value*
Title II Status	0.477	0.662	0.475
CIT Exposure	-0.751	0.386	0.058
Training & Title II Status	-1.614	1.080	0.141
Intercept	2.146	0.363	<0.001

* = $p \leq 0.05$; ** = $p \leq 0.01$; *** = $p \leq 0.001$

N= 201; Std. Error adjusted for 51 state Clusters

F. Training & Title II Status has a statistically significant impact on fatal police shootings of unarmed persons who are not in mental health crisis (R_6).

R_6 suggests that the application of Title II to arrests and the implementation of CIT training programs have a statistically significant impact on the incidence of fatal police shootings of unarmed persons not in mental health crisis.[209] Again, fully exploring the factors that may contribute to this result are beyond the scope of this Note. However, it is possible that by training officers on how to respond to persons in mental health crisis and requiring that officers provide

207. *See infra* Table 6. *See also Data-Police-Shootings*, *supra* note 153 (providing the data interpreted and summarized in Table 6); *supra* notes 184–185 (describing the 0.05 threshold for a statistically significant p-value).

208. *See supra* Part I.B–C.

209. *See infra* Table 7. *See also Data-Police-Shootings*, *supra* note 153 (providing the data interpreted and summarized in Table 7); *supra* notes 184–185 (describing the 0.05 threshold for a statistically significant p-value).

reasonable accommodations in the absence of exigent circumstances like a weapon, unarmed persons are less likely to be fatally shot and killed by police officers.

Table 7: The relationship between Title II Status, CIT Exposure, Training & Title II Status, and the number of unarmed persons who were not in mental health crisis when they were fatally shot by police officers (R_6).

Neither Status	*Coef.*	*Std. Err.*	*p-value*
Title II Status	2.023	0.700	0.006*
CIT Exposure	-0.959	0.558	0.092
Training & Title II Status	-5.045	1.257	<0.001***
Intercept	-1.293	0.563	0.026*

* = $p \leq 0.05$; ** = $p \leq 0.01$; *** = $p \leq 0.001$
N= 201; Std. Error adjusted for 51 state Clusters

These results suggest that Title II Status and CIT Exposure alone do not lead to a statistically significant decrease in the likelihood that persons in mental health crisis will be shot and killed by police officers. Independently, these variables are therefore unable to protect persons in mental health crisis from these fatal encounters. However, Training & Title II status does lead to a statistically significant decrease in the likelihood that persons in mental health crisis will be shot and killed by police officers.

IV. PROPOSED SOLUTION

A. The lack of statistical significance of Title II Status and CIT Exposure on the incidence of fatal shootings of persons in mental health crisis suggests that applying Title II to arrests and increasing the number of CIT programs in a state alone are an insufficient means of protecting persons

in mental health crisis; additional reforms are likely needed to reduce the incidence of these shootings.

The above results suggest that Title II Status and CIT Exposure alone do not lead to a statistically significant decrease in the likelihood that persons in mental health crisis will be shot and killed by police officers. Although armed persons experiencing mental illness are often not eligible for accommodations under the reasonableness inquiry,[210] courts have not disqualified armed persons experiencing mental illness from receiving accommodations in all cases. In some cases, depending on the jury's determination of what was reasonable in a particular situation, plaintiffs may still be entitled to accommodations (and therefore, relief under Title II), even if they were armed during the encounter with police officers.[211] Thus, there is room for interpretations of Title II to adopt a broader understanding of what accommodations can be considered reasonable.

The Ninth Circuit adopted one such approach in *Sheehan*.[212] There, the court held that the reasonableness of accommodating a person's mental illness often depends on the presence of exigent circumstances (like whether the person was armed during the encounter).[213] As the Ninth Circuit described in *Sheehan*, although Sheehan was armed when the police officers arrived, because the officers were aware of her mental illness, "a reasonable jury nevertheless could find that the situation had been defused sufficiently, following the initial retreat from Sheehan's room, to afford the officers an opportunity to wait for backup and to employ less confrontational tactics, including the accommodations Sheehan asserts were necessary."[214] The Ninth Circuit's approach incentivizes cities to adopt policies or procedures that reasonably accommodate the mental illnesses of armed suspects, despite any inherent dangers posed by these individuals.

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210. *See supra* text and accompanying notes 125–141.

211. *See, e.g.*, Sheehan v. City & Cty. of S.F., 743 F.3d 1211, 1217 (9th Cir. 2014) (vacating the district court's decision to grant summary judgment to the defendant-city on the grounds that a reasonable jury could find the city liable for failing to accommodate Sheehan's disability when the officers reentered Sheehan's apartment and used deadly force instead of waiting for backup that could have employed less confrontational tactics).

212. *Id.*

213. *Id.*

214. *Id.* at 1233.

Similarly, although CIT training programs increase the safety of persons experiencing mental illness,[215] states with high CIT Exposure do not have a decreased likelihood that persons in mental health crisis will be fatally shot by police officers.[216] This may be explained, at least in part, because a state having high CIT Exposure does not necessarily mean that the state has a high number of CIT-trained officers.[217] As a result, the first officers to arrive and respond to a particular situation may not have undergone training on either the signs of mental illness or how to appropriately de-escalate a situation.[218] Untrained officers may mistakenly perceive a suspect's lack of a response to their commands to be non-compliance when in reality, the suspect may be exhibiting signs of a mental illness or a mental health crisis.[219] In some cases, this miscalculation can have fatal consequences.[220]

One of the largest pitfalls of the CIT training program is the lack of adaptation of the program's design process. Because CIT training programs are based on a standard model, some jurisdictions adopting the standard CIT model may "struggle with the program design process" and with the uncertainty of "tailor[ing] models from other jurisdictions to their own distinct problems and circumstances."[221] For example, if a police department in the Ninth Circuit were to adopt a CIT model developed by a police department in the Fifth Circuit, the model may not include resources or curriculums on the types of accommodations an officer can make when responding to an individual in mental health crisis given the two circuits' differing interpretations of Title II.

The Council on State Governance and DOJ's Bureau of Justice Assistance have recently developed a Police-Mental Health

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215. See *supra* Part I.B.

216. See *supra* Part III.A.

217. Watson & Fulambarker, *supra* note 61 at 74 (noting that a "key component of the Memphis CIT model is that officers volunteer to become CIT officers and that only a portion of the force is CIT trained," and that "trained officers] may have a particular disposition for and interest in handling mental health calls . . . [which] better prepares them to use CIT training to become effective in responding to mental health crisis calls").

218. *See supra* note 211 and accompanying text.

219. Rossler & Terrill, *supra* note 68.

220. *See* Braswell, *supra* note 48.

221. *Law Enforcement Mental Health Learning Sites*, CSG JUSTICE CENTER, https://csgjusticecenter.org/law-enforcement/projects/mental-health-learning-sites/ [https://perma.cc/T7BD-WSY8].

Collaboration model ("PMHC Model") that aims to improve on some of the shortcomings that arise from the adoption of a boiler plate CIT model.[222] This model is currently being tested in thirteen different police departments.[223] It is comprised of ten key elements that improve on some of the notable shortcomings of the CIT model.

First and foremost, the PMHC Model centers around "collaborative planning and implementation," which unites organizations and individuals representing a "wide range of disciplines and perspectives and with a strong interest in improving law enforcement encounters with people with mental illnesses."[224] The program brings together stakeholders like police departments, mental health service providers, and community members to collaborate on creating and implementing a plan to successfully improve interactions between police officers and persons experiencing mental illness.[225] Under the PMHC Model, a "coordination group should oversee officer training, measure the program's progress toward achieving stated goals, and resolve ongoing challenges to program effectiveness."[226]

Second, in the PMHC Model, the coordination group is also responsible for the program's design.[227] By bringing together community stakeholders to develop a training program, the PMHC Model is responsive to the "root causes of the problems that are impeding improved responses to people with mental illnesses and makes the most of available resources."[228] Because a person's right to be made whole under Title II turns largely on the reasonableness of a proposed accommodation to their disability, the PMHC Model surpasses the CIT model in its consideration of the unique needs and

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222. *Id.*

223. *Id.* (listing selected departments as "Arlington (MA) Police Department, Gallia, Jackson, Meigs Counties (OH) Sheriffs' Offices, Houston (TX) Police Department, Los Angeles (CA) Police Department, Madison County (TN) Sheriff's Office, Madison (WI) Police Department, Portland (ME) Police Department, Salt Lake City (UT) Police Department, Tucson (AZ) Police Department, and University of Florida Police Department").

224. *Collaborative Planning and Implementation*, POLICE-MENTAL HEALTH COLLABORATION, https://pmhctoolkit.bja.gov/learning/essential-elements/collaborative-planning-and-implementation [https://perma.cc/897J-5UNK].

225. *Id.*

226. *Id.*

227. *Program Design*, POLICE-MENTAL HEALTH COLLABORATION, https://pmhctoolkit.bja.gov/learning/essential-elements/program-design [https://perma.cc/UE5E-LMSX].

228. *Id.*

capabilities of individual police departments.[229] Additionally, responses that take into consideration the unique needs of a community will allow police departments to determine "whether some or all officers should be trained to stabilize and de-escalate situations involving people with mental illnesses in immediate response to the call for service."[230] This type of consideration is especially important in cases like *Harper*, where the Court has to determine whether waiting for a mental health specialist (when the responding officer lacked mental health training) is a reasonable accommodation under the circumstances.[231] The committee could also find ways to ensure that police departments have enough personnel coverage to ensure that there are limited wait times for trained officers or that trained officers are dispatched with responding officers.

The third element of the proposed PMHC Model focuses on providing specialized training to "[a]ll law enforcement personnel who respond to incidents in which an individual's mental illness appears to be a factor" so that they will be able to "prepare for these encounters."[232] Unlike the CIT model, which largely provides training to a set of officers who volunteer to receive such training, the PMHC Model would require training of police officers, dispatchers, call takers, and "other individuals in a support role."[233] In each case, the training would be tailored to the needs of the individual's job.[234]

The fourth element of the PMHC Model focuses specifically on creating protocols for dispatchers and call takers.[235] By providing training and specific protocols to dispatchers and call takers, police officers are less likely to be surprised by unexpected threats. If dispatchers and call takers collect pertinent information, responding officers can strategize about how to best secure the scene prior to their

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229. *Id*.

230. *Id*.

231. *See* Harper v. Cty. of Merced, 2018 U.S. Dist. LEXIS 191567, at *15–16, *18–19. (E.D. Cal. 2018).

232. *Specialized Training*, POLICE-MENTAL HEALTH COLLABORATION, https://pmhctoolkit.bja.gov/learning/essential-elements/specialized-training [https://perma.cc/9YZG-7HF7].

233. *See id.*

234. *Id.*

235. *Call Taker and Dispatcher Protocols*, POLICE-MENTAL HEALTH COLLABORATION, https://pmhctoolkit.bja.gov/learning/essential-elements/call-taker-and-dispatcher-protocols [https://perma.cc/8FAP-EMZH].

arrival; this could mitigate some of the concerns described in *Hainze*.[236] The PMHC Model also proposes (although these elements are outside the scope of this Note) strategies for: stabilization, observation and disposition;[237] transportation and custodial transfer;[238] information exchange and confidentiality;[239] treatment, supports, and services;[240] organizational support;[241] and program evaluation and sustainability.[242]

Unlike the current CIT Model, the PMHC Model focuses on developing solutions that are tailored to the community's resources and needs; it provides a forum for developing reasonable solutions to discrimination against persons experiencing mental illness in a given community.[243] Thus, a more flexible training model may see a more significant impact on the incidence of fatal shootings of persons in mental health crisis.

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236. *See* Hainze v. Richards, 207 F.3d 795, 801–02 (5th Cir. 2000) (holding that the plaintiff was not entitled to Title II protections because the officers had not yet "secur[ed] the scene and ensur[ed] that there [was] no threat to human life").

237. *Stabilization, Observation, and Disposition*, POLICE-MENTAL HEALTH COLLABORATION, https://pmhctoolkit.bja.gov/learning/essential-elements/stabilization-observation-and-disposition [https://perma.cc/N7SK-5FUU].

238. *Transportation and Custodial Transfer*, POLICE-MENTAL HEALTH COLLABORATION, https://pmhctoolkit.bja.gov/learning/essential-elements/transportation-and-custodial-transfer [https://perma.cc/BT92-C36V].

239. *Information Exchange and Confidentiality*, POLICE-MENTAL HEALTH COLLABORATION, https://pmhctoolkit.bja.gov/learning/essential-elements/information-exchange-and-confidentiality [https://perma.cc/T6KU-KWAA].

240. *Treatment Supports and Services*, POLICE-MENTAL HEALTH COLLABORATION, https://pmhctoolkit.bja.gov/learning/essential-elements/treatment-supports-and-services [https://perma.cc/77HG-YAYZ].

241. *Organizational Support*, POLICE-MENTAL HEALTH COLLABORATION, https://pmhctoolkit.bja.gov/learning/essential-elements/organizational-support [https://perma.cc/GL9A-KMX3].

242. *Program Evaluation and Sustainability*, POLICE-MENTAL HEALTH COLLABORATION, https://pmhctoolkit.bja.gov/learning/essential-elements/program-evaluation-and-sustainability [https://perma.cc/CN4F-AM5D].

243. *See Program Design*, *supra* note 227.

B. Training police officers to respond to persons experiencing mental illness or in mental health crisis should be considered a "reasonable accommodation" because applying Title II to arrests and implementing CIT training programs would better protect persons in mental health crisis from fatal police shootings.

Without the backing of the legal system, even the most well-designed program for training officers on how to best respond to persons in mental health crisis may not protect persons experiencing mental illness from unnecessary uses of police force. Although Title II does not currently require police departments to provide CIT or mental health training to their officers, interpreting Title II to require such training would best serve the ADA's purpose of protecting persons experiencing mental illness from discrimination. This could be done by either Congress or the courts: either Congress could amend Title II, or courts could reinterpret Title II to require CIT training.

Hypothesis 3 aimed to test the effectiveness of the application of Title II and the presence of CIT training at reducing the incidence of fatal shootings of persons in mental health crisis by police officers. The regressions used to test this hypothesis confirm that application of Title II along with implementation of CIT training programs has a statistically significant impact on decreasing the rate of fatal shootings of persons in mental health crisis.[244] As described in Table 2 above, unlike Title II Status and CIT Exposure alone, Training & Title II Status has a statistically significant impact on reducing the likelihood that persons in mental health crisis will be fatally shot by police officers.[245] Additionally, CIT Exposure has the only statistically significant impact on protecting unarmed persons in mental health crisis.[246] Because the incidence of fatal shootings of persons in mental health crisis is likely to decrease as CIT Exposure increases, requiring training in all of a state's counties is expected to have a significant impact on reducing these shootings. This analysis therefore suggests that persons in mental health crisis are safest in jurisdictions that apply Title II to arrests and in states that widely implement CIT training programs. Thus, if Title II were interpreted to require CIT training programs in order to reasonably accommodate persons experiencing mental illness, persons in mental health crisis would be best protected from uses of fatal force by police officers.

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244. *See supra* Part III.A–C.
245. *See supra* Table 2.
246. *See supra* Table 3.

CONCLUSION

This Note aimed to test the effectiveness of 1) application of Title II to arrests, 2) widespread implementation of CIT training programs, and 3) implementation of CIT training programs in jurisdictions that apply Title II to arrests. Application of Title II to arrests does not independently reduce the incidence of fatal police shootings of persons in mental health crisis. However, widespread implementation of CIT training programs combined with the application of Title II to arrests predicts a statistically significant reduction in these fatal shootings. Therefore, this Note argues that Title II would protect persons experiencing mental illness better if it is interpreted to require police departments to train their officers under the CIT or PMHC Model.

Although changes to the legal landscape proposed by this Note contradict some existing precedent,[247] these changes align more closely with the purposes of the ADA. As described in its purpose statement, the ADA aims to provide a clear national mandate for the elimination of discrimination against persons with disabilities and hopes to provide "clear, strong, consistent, [and] enforceable standards addressing discrimination against individuals with disabilities."[248] Unfortunately, for persons experiencing mental illness who are in mental health crisis during an encounter with police officers, the ADA fails to achieve these purposes.

The current circuit split that characterizes the applicability of Title II to arrests and the reasonable accommodations standard make the standards described in Title II both inconsistent and only quasi-enforceable. These inconsistencies leave persons experiencing mental illness especially vulnerable to fatal encounters with police officers. Because applying Title II to arrests and a prevalence of CIT training programs together have a highly significant impact on the incidence of fatal shootings of persons in mental health crisis, courts should interpret Title II to apply to arrests and to require training of officers on how to interact with persons experiencing mental illness. Although it is equally important that officers utilize such training, requiring training is an important step to reducing the incidence of fatal police

247. *See, e.g.*, Hainze v. Richards, 207 F.3d at 801 (holding that Title II does not apply to in-the-field investigations prior to securing the scene and therefore rejecting the plaintiff's claim under Title II that police officers failed to reasonably accommodate his mental illness).

248. 42 U.S.C. § 12101(b)(1)–(2) (2018).

shootings and serving one of the populations that the ADA was designed to protect.

Appendix 1: Percentage of Counties in Each State that Have Existing CIT Training Programs

State	Counties with CIT Training Programs	Total Number of Counties	Percentage of Counties with CIT Training Programs
ALABAMA	0	67	0.00%
ALASKA	2	29	6.90%
ARIZONA*	4	15	26.67%
ARKANSAS	0	75	0.00%
CALIFORNIA*	24	58	41.38%
COLORADO	15	64	23.44%
CONNECTICUT*	5	8	62.50%
DELAWARE*	1	3	33.33%
FLORIDA*	45	67	67.16%
GEORGIA*	45	159	28.30%
HAWAII	1	5	20.00%
IDAHO*	13	44	29.55%
ILLINOIS*	49	102	48.04%
INDIANA*	25	92	27.17%
IOWA	6	99	6.06%
KANSAS	11	105	10.48%
KENTUCKY*	72	120	60.00%
LOUISIANA*	30	64	46.88%
MAINE*	16	16	100.00%
MARYLAND*	9	24	37.50%
MASSACHUSETTS*	4	14	28.57%
MICHIGAN	2	83	2.41%
MINNESOTA*	24	87	27.59%
MISSISSIPPI	4	82	4.88%

MISSOURI	9	115	7.83%
MONTANA	3	56	5.36%
NEBRASKA	4	93	4.30%
NEVADA	2	17	11.76%
NEW HAMPSHIRE*	3	10	30.00%
NEW JERSEY*	11	21	52.38%
NEW MEXICO	3	33	9.09%
NEW YORK	4	62	6.45%
NORTH CAROLINA*	81	100	81.00%
NORTH DAKOTA	3	53	5.66%
OHIO*	87	88	98.86%
OKLAHOMA	8	77	10.39%
OREGON*	14	36	38.89%
PENNSYLVANIA	15	67	22.39%
RHODE ISLAND	0	5	0.00%
SOUTH CAROLINA	2	46	4.35%
SOUTH DAKOTA	3	66	4.55%
TENNESSEE	18	95	18.95%
TEXAS	9	254	3.54%
UTAH*	21	29	72.41%
VERMONT	1	14	7.14%
VIRGINIA*	52	133	39.10%
WASHINGTON*	12	39	30.77%
WEST VIRGINIA	0	55	0.00%
WISCONSIN*	30	72	41.67%
WYOMING	4	23	17.39%
DISTRICT OF COLUMBIA*	1	1	100.00%

* States with CIT programs in more than 23.44% (the median percentage of this distribution) of their counties.

Appendix 2: Total Number of Shootings in the Sample Representing Each Dependent Variable (by State)

State	Persons in Mental Health Crisis	Unarmed Persons in Mental Health Crisis	Armed Persons in Mental Health Crisis	Armed Persons	Armed Persons Not in Mental Health Crisis	Unarmed Persons Not in Mental Health Crisis	Persons with an Unknown Armed Status	Total
ALABAMA	17	1	15	64	49	3	12	80
ALASKA	4	0	4	23	19	2	1	26
ARIZONA	39	3	36	167	131	10	18	198
ARKANSAS	7	0	7	49	42	1	4	54
CALIFORNIA	148	11	127	488	361	34	70	603
COLORADO	18	0	16	113	97	5	17	135
CONNECTICUT	3	0	3	11	8	0	2	13
DELAWARE	2	0	2	7	5	0	3	10
FLORIDA	76	5	68	198	130	17	23	243
GEORGIA	31	2	28	104	76	10	12	128
HAWAII	6	0	6	18	12	0	4	22
IDAHO	4	0	4	30	26	1	1	32
ILLINOIS	15	1	14	74	60	3	9	87
INDIANA	17	0	16	60	44	5	5	70
IOWA	5	0	5	19	14	2	3	24
KANSAS	10	1	7	29	22	3	5	38

KENTUCKY	6	0	6	62	56	2	7	71
LOUISIANA	18	2	15	60	45	5	13	80
MAINE	2	0	2	14	12	1	1	16
MARYLAND	14	5	9	37	28	1	8	51
MASSACHUSETTS	10	0	9	23	14	1	3	27
MICHIGAN	20	2	17	54	37	4	3	63
MINNESOTA	16	1	15	40	25	4	2	47
MISSISSIPPI	3	0	3	32	29	6	5	43
MISSOURI	17	0	16	84	68	5	8	97
MONTANA	3	0	3	18	15	0	3	21
NEBRASKA	3	0	3	12	9	2	2	16
NEVADA	22	0	22	61	39	2	8	71
NEW HAMPSHIRE	5	0	5	9	4	0	1	10
NEW JERSEY	11	1	10	41	31	1	8	51
NEW MEXICO	16	0	15	65	50	5	12	82
NEW YORK	29	1	28	62	34	2	2	67
NORTH CAROLINA	25	0	24	92	68	2	8	102
NORTH DAKOTA	1	0	1	5	4	2	2	9
OHIO	31	5	25	99	74	7	10	121
OKLAHOMA	27	1	26	97	71	10	9	117

OREGON	20	1	18	50	32	2	5	58
PENNSYLVANIA	22	0	22	71	49	9	6	86
RHODE ISLAND	0	0	0	3	3	0	1	4
SOUTH CAROLINA	14	0	13	51	38	2	7	60
SOUTH DAKOTA	5	0	5	12	7	1	0	13
TENNESSEE	26	0	25	82	57	3	9	94
TEXAS	68	4	61	283	222	20	29	336
UTAH	14	0	13	39	26	1	4	44
VERMONT	3	0	3	5	2	1	0	6
VIRGINIA	23	0	23	65	42	8	3	76
WASHINGTON	37	3	32	87	55	0	12	102
WEST VIRGINIA	10	0	9	34	25	0	6	40
WISCONSIN	20	0	20	59	39	4	1	64
WYOMING	4	1	3	10	7	0	2	13
DISTRICT OF COLUMBIA	2	1	1	11	10	0	0	12

State	Persons in Mental Health Crisis	Unarmed Persons in Mental Health Crisis	Armed Persons in Mental Health Crisis	Armed Persons	Armed Persons Not in Mental Health Crisis	Unarmed Persons Not in Mental Health Crisis	Persons with an Unknown Armed Status
ALABAMA	21.25%	1.25%	18.75%	80.00%	61.25%	3.75%	15.00%
ALASKA	15.38%	0.00%	15.38%	88.46%	73.08%	7.69%	3.85%
ARIZONA	19.70%	1.52%	18.18%	84.34%	66.16%	5.05%	9.09%
ARKANSAS	12.96%	0.00%	12.96%	90.74%	77.78%	1.85%	7.41%
CALIFORNIA	24.54%	1.82%	21.06%	80.93%	59.87%	5.64%	11.61%
COLORADO	13.33%	0.00%	11.85%	83.70%	71.85%	3.70%	12.59%
CONNECTICUT	23.08%	0.00%	23.08%	84.62%	61.54%	0.00%	15.38%
DELAWARE	20.00%	0.00%	20.00%	70.00%	50.00%	0.00%	30.00%
FLORIDA	31.28%	2.06%	27.98%	81.48%	53.50%	7.00%	9.47%
GEORGIA	24.22%	1.56%	21.88%	81.25%	59.38%	7.81%	9.38%
HAWAII	27.27%	0.00%	27.27%	81.82%	54.55%	0.00%	18.18%
IDAHO	12.50%	0.00%	12.50%	93.75%	81.25%	3.13%	3.13%
ILLINOIS	17.24%	1.15%	16.09%	85.06%	68.97%	3.45%	10.34%
INDIANA	24.29%	0.00%	22.86%	85.71%	62.86%	7.14%	7.14%

IOWA	20.83%	0.00%	20.83%	79.17%	58.33%	8.33%	12.50%
KANSAS	26.32%	2.63%	18.42%	76.32%	57.89%	7.89%	13.16%
KENTUCKY	8.45%	0.00%	8.45%	87.32%	78.87%	2.82%	9.86%
LOUISIANA	22.50%	2.50%	18.75%	75.00%	56.25%	6.25%	16.25%
MAINE	12.50%	0.00%	12.50%	87.50%	75.00%	6.25%	6.25%
MARYLAND	27.45%	9.80%	17.65%	72.55%	54.90%	1.96%	15.69%
MASSACHUSETTS	37.04%	0.00%	33.33%	85.19%	51.85%	3.70%	11.11%
MICHIGAN	31.75%	3.17%	26.98%	85.71%	58.73%	6.35%	4.76%
MINNESOTA	34.04%	2.13%	31.91%	85.11%	53.19%	8.51%	4.26%
MISSISSIPPI	6.98%	0.00%	6.98%	74.42%	67.44%	13.95%	11.63%
MISSOURI	17.53%	0.00%	16.49%	86.60%	70.10%	5.15%	8.25%
MONTANA	14.29%	0.00%	14.29%	85.71%	71.43%	0.00%	14.29%
NEBRASKA	18.75%	0.00%	18.75%	75.00%	56.25%	12.50%	12.50%
NEVADA	30.99%	0.00%	30.99%	85.92%	54.93%	2.82%	11.27%
NEW HAMPSHIRE	50.00%	0.00%	50.00%	90.00%	40.00%	0.00%	10.00%
NEW JERSEY	21.57%	1.96%	19.61%	80.39%	60.78%	1.96%	15.69%
NEW MEXICO	19.51%	0.00%	18.29%	79.27%	60.98%	6.10%	14.63%
NEW YORK	43.28%	1.49%	41.79%	92.54%	50.75%	2.99%	2.99%
NORTH CAROLINA	24.51%	0.00%	23.53%	90.20%	66.67%	1.96%	7.84%
NORTH DAKOTA	11.11%	0.00%	11.11%	55.56%	44.44%	22.22%	22.22%

OHIO	25.62%	4.13%	20.66%	81.82%	61.16%	5.79%	8.26%
OKLAHOMA	23.08%	0.85%	22.22%	82.91%	60.68%	8.55%	7.69%
OREGON	34.48%	1.72%	31.03%	86.21%	55.17%	3.45%	8.62%
PENNSYLVANIA	25.58%	0.00%	25.58%	82.56%	56.98%	10.47%	6.98%
RHODE ISLAND	0.00%	0.00%	0.00%	75.00%	75.00%	0.00%	25.00%
SOUTH CAROLINA	23.33%	0.00%	21.67%	85.00%	63.33%	3.33%	11.67%
SOUTH DAKOTA	38.46%	0.00%	38.46%	92.31%	53.85%	7.69%	0.00%
TENNESSEE	27.66%	0.00%	26.60%	87.23%	60.64%	3.19%	9.57%
TEXAS	20.24%	1.19%	18.15%	84.23%	66.07%	5.95%	8.63%
UTAH	31.82%	0.00%	29.55%	88.64%	59.09%	2.27%	9.09%
VERMONT	50.00%	0.00%	50.00%	83.33%	33.33%	16.67%	0.00%
VIRGINIA	30.26%	0.00%	30.26%	85.53%	55.26%	10.53%	3.95%
WASHINGTON	36.27%	2.94%	31.37%	85.29%	53.92%	0.00%	11.76%
WEST VIRGINIA	25.00%	0.00%	22.50%	85.00%	62.50%	0.00%	15.00%
WISCONSIN	31.25%	0.00%	31.25%	92.19%	60.94%	6.25%	1.56%
WYOMING	30.77%	7.69%	23.08%	76.92%	53.85%	0.00%	15.38%
DISTRICT OF COLUMBIA	16.67%	8.33%	8.33%	91.67%	83.33%	0.00%	0.00%

Distributions of Mental Health Status (Used as the dependent variable in R_1)

Variable	Obs.	Mean	Std. Dev	Min.	Max
Mental Health Status	202	4.698	6.339	0	51
ln (*Mental Health Status* + 0.01)	202	0.412	2.258	-4.605	3.932

Distributions of Mental Health Only Status (Used as the dependent variable in R_2)

Variable	Obs.	Mean	Std. Dev	Min.	Max
Mental Health Only Status	202	0.257	0.728	0	7
ln (*Mental Health Only Status* + 0.01)	202	-3.761	1.858	-4.605	1.947

Distributions of Both Status (Used as the dependent variable in R_3)

Variable	Obs.	Mean	Std. Dev	Min.	Max
Both Status	202	4.257	5.540	0	38
ln (*Both Status* + 0.01)	202	0.293	2.280	-4.605	3.638

Distributions of Armed Status (Used as the dependent variable in R_4)

Variable	Obs.	Mean	Std. Dev	Min.	Max
Armed Status	202	16.252	20.299	0	149
ln (*Armed Status* + 0.01)	202	2.183	1.353	-4.605	5.004

Distributions of Armed Only Status (Used as the dependent variable in R_5)

Variable	Obs.	Mean	Std. Dev	Min.	Max
Armed Only Status	202	11.995	15.294	0	111
ln (*Armed Only Status* + 0.01)	202	1.768	1.639	-4.605	4.710

Distributions of Neither Status (Used as the dependent variable in R_6)

Variable	Obs.	Mean	Std. Dev	Min.	Max
Neither Status	202	1.035	1.757	0	15
ln (*Neither Status* + 0.01)	202	-2.117	2.606	-4.605	2.709