

*Human Rights
Framework
Regarding Austin
Police Department
Mental Health-
Related Shootings*

*University of Texas School of
Law Human Rights Clinic
and the Austin Community
Law Center*



HUMAN RIGHTS CLINIC
THE UNIVERSITY of TEXAS SCHOOL of LAW



**AUSTIN
COMMUNITY
LAW CENTER**

Table of Contents

Forward 3

Summary..... 4

A Note on Methodology..... 5

Background 7

Defining Disability 7

History of De-Institutionalization 7

What’s Happening in Austin? 9

APD must limit the use of lethal force to strict instances of necessity in order to respect the right to life 10

APD is obligated to protect persons with psychosocial disabilities’ right to life..... 11

The proportionality and necessity of the use of force must be considered when it may affect the right to life 12

APD should make accommodations to improve their interactions with those experiencing mental illness 14

United States law requires accommodations for those with mental health issues, but the federal appellate districts are split on the applicability to police interactions..... 15

Other accommodations may be made through specialized police training on de-escalation and mental health, as observed in peer cities 17

Austin’s use of a Crisis Intervention Team partially aligns with the “Memphis Model,” but is not incorporating all best practices for training 17

APD has an obligation to sufficiently train all officers – not just the CIT officers – to react appropriately to people with psychosocial disabilities. 18

Peer Cities have found additional ways to improve interactions between police and people with psychosocial disabilities in addition to the CIT 19

APD must ensure proper investigation and remedies are implemented when mental health-related shootings take place 21

Recommendations..... 22

To the Austin Police Department:..... 22

To the City of Austin: 23

This report does not represent the official position of the School of Law or the University of Texas, and the views presented here reflect only the opinions of the individual authors and of the Human Rights Clinic.

Forward

September 24, 2019

In September 2018, the City of Austin’s Auditor released a report titled “APD’s Response to Mental Health-Related Incidents,” which found that of the 15 largest U.S. cities, Austin had the highest per capita rate of people killed by police responding to mental health calls. This human rights report was written in response to the Auditor’s report.

Subsequently, on January 31, 2019, the Austin City Council executed a contract with the Meadow Mental Health Policy Institute to conduct a study into APD responses to mental health incidents, which culminated in the May 15, 2019 “Recommendations for First Responder Mental Health Calls for Service.” Later, in September 2019, when the City Council finalized its 2019-2020 budget, it approved funding consistent with the Meadow report’s recommendations to create new training for 911 call takers; clinicians at 911 call centers; and community health paramedics to engage in follow up visits after mental health calls.

We sincerely hope the City Council’s new initiatives reduce instances of excessive and lethal force during mental health calls, but the proof of the pudding will be in the tasting. This report explains that the rate with which people are injured and killed because friends and family have sought help for someone during a mental health crisis is a human rights catastrophe. They deserve better.

Brian McGiverin

Brian McGiverin
Austin Community Law Center

Summary

At least a quarter of people shot and killed in the United States in 2018 were exhibiting symptoms of mental illness at the time of their death.¹ Of the top 15 most populated U.S. cities, Austin has the unhappy distinction of having the highest per capita rate of such deaths.² In fact, “a third of the 24 people killed in Austin police shootings from 2010 through 2016 had confirmed mental health conditions,”³ a rate higher than the national average.⁴ In many instances, the victim was allegedly “behav[ing] erratically or threateningly,” and police escalated the situation.⁵

In comparison with peer cities, Austin falls short of properly training its police force in crisis intervention and de-escalation.⁶ Families and friends often call upon the police in times of crisis, without realizing there’s no guarantee a police officer will have the necessary training to respond appropriately in such a situation.

A 2016 report from the Inter-American Commission on Human Rights argues that when dealing with people with psychosocial disabilities,

¹ *Fatal Force*, *The Washington Post*, https://www.washingtonpost.com/graphics/2018/national/police-shootings-2018/?utm_term=.7f155657588a (last updated Jan 25, 2019).

² CITY OF AUSTIN, OFFICE OF THE CITY AUDITOR, AUDIT REPORT: APD RESPONSE TO MENTAL HEALTH-RELATED INCIDENTS (Sept. 2018), at 7.

³ “Psychosocial disability” is the term used by many international human rights bodies, including the United Nations Convention on the Rights of Persons with Disabilities, to describe what is more commonly and often pejoratively referred to as a “mental health condition” or mental illness.” Implementation Manual for the United Nations Convention on the Rights of Persons with Disabilities, 2008.

⁴ Mark Wilson, *Mental health calls, some fatal, a growing challenge for Austin police*, STATESMAN, Jul. 9, 2018.

⁵ POLICE EXECUTIVE RESEARCH FORUM, *Guiding Principles on Use of Force* in CRITICAL ISSUES IN POLICING SERIES (March 2016), at 5.

⁶ See generally CITY OF AUSTIN, *supra*, note 2 (finding that APD falls behind peer cities in implementation of appropriate training techniques and other responses to incidents involving mental illness).

[a]bsent adequate training, police officers [...] rely on negative stereotypes to guide their interactions. Studies have found that “the two most common misperceptions held by the police about persons with mental illnesses are that they are all incapable of reasoning and are violent.” Training is needed to combat these and other stereotypes.⁷

This human rights framework report is a response to the September 2018 *Audit Report: APD’s Response to Mental Health-Related Incidents* by Austin’s Office of the City Auditor (hereinafter, “the Audit”). Our framework seeks to illuminate the human rights violations described in documented interactions between Austin Police Department (APD) officers and people with psychosocial disabilities, and to provide recommendations for how to better align these practices with human rights standards..

A Note on Methodology

The research for the framework comes from a range of sources. The Audit is the foundation for this report.⁸ Its objective was “to determine if the Austin Police Department is effectively receiving and responding to incidents involving people with mental health or other specialized needs.”⁹ Using the “Memphis Model” best practices as a benchmark for comparison, the Audit found that “some, but not all, APD practices align with the ‘Memphis Model’ [...] As a result, people in Austin experiencing a mental health crisis may be at higher risk of having a negative police interaction.”¹⁰ This framework analyzes how such shortcomings are treated under international human rights law and makes recommendations for improvement.

⁷ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, *Excessive Use of Force by the Police against Black Americans in the United States*, Feb. 12, 2016.

⁸ *Supra*, note 2.

⁹ *Id.*

¹⁰ *Id.*

The Audit’s core findings focused on three areas: training, receiving and responding to calls from the public, and tracking and reviewing mental health-related incidents. The Audit found that APD training is inadequate for de-escalating and mental health crises.¹¹ In responding to mental health calls, APD is not utilizing appropriate resources.¹² In tracking and reviewing incidents, APD does not follow best practice guidelines to improve future outcomes.¹³

In providing a broad and thorough human rights framework, we relied on the concept of the *corpus juris* of international human rights, as explained by the Inter-American Court of Human Rights (IACtHR)¹⁴ :

The *corpus juris* of international human rights law comprises a set of international instruments of varied content and juridical effects (treaties, conventions, resolutions and declarations). Its dynamic evolution has had a positive impact on international law in affirming and building up the latter’s faculty for regulating relations between States and the human beings within their respective jurisdictions.¹⁵

As a result, this framework uses a variety of such treaties, conventions, resolutions, and declarations in combination with domestic law and sources such as court rulings; reports by the

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴The Inter-American Court of Human Rights (IACtHR), which has been in operation since 1979, is the judicial organ of the Inter-American Human Rights System, which is responsible for monitoring, promoting human rights in the 35 member states of the Organization of American States (OAS). Although the United States is a member of OAS, it has not accepted IACtHR’s jurisdiction. “Inter-American International Justice Resource Center, <https://ijrcenter.org/regional/inter-american-system/>

¹⁵ I/A Court H.R., The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 115.

UN Special Rapporteurs on the right to health, on the right to life, and on extrajudicial, summary, or arbitrary executions; and concluding observations to States¹⁶ to analyze human rights standards.

Background

Defining Disability

According to the Convention on the Rights of Persons with Disabilities (CRPD):

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.¹⁷

For the purposes of this framework, disability will most often refer to the mental impairment of mental illness.

History of De-Institutionalization

The trend of closing psychiatric hospitals, and integrating people with psychosocial disabilities into public life rather than locking them away, has been referred to over the past half-century as “deinstitutionalization,”¹⁸ the intent of which was in line with the human rights obligations inherent in the right to health.¹⁹ But while this was meant to make to improve lives by

¹⁶ Concluding Observations are assessments of the success of a State in implementing human rights treaties. OFFICE OF THE HIGH COMMISSIONER, UNITED NATIONS HUMAN RIGHTS, *Concluding Observations*. The Concluding Observations referred to in this framework are those of the Committee on the Rights of Persons with Disabilities regarding various States’ control of the interaction between law enforcement and persons with disabilities.

¹⁷Convention on the Rights of Persons with Disabilities, art. 1.

¹⁸ DORIS A. FULLER ET AL., *OVERLOOKED IN THE UNDERCOUNTED: THE ROLE OF MENTAL ILLNESS IN FATAL LAW ENFORCEMENT ENCOUNTERS* (Dec. 2015), at 5.

¹⁹ U.N. Special Rapporteur, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, U.N. Doc. A/HRC/35/21 (March 28, 2017), at 8 (providing that the right of those experiencing mental illness have a right to integration inherent in the right to health).

replacing the hospitals with community-based services, the U.S. government's failure to provide adequate community resources has left those with unaddressed psychosocial disabilities "in bus stations, in libraries, on the streets, in emergency rooms," which increases the frequency with which they come into contact with police.²⁰

Texas played a large role in pushing for mental health reform at the beginning of deinstitutionalization.²¹ While Texas was once a leader in mental health reform, today Texas ranks 47th out of the 50 states in providing mental health services and continues to cut the budget for services each year.²² Last year, APD Chief Brian Manley said "getting more mental health professionals engaged with individuals in crisis is a priority for the department. But more money isn't available to expand programs or initiatives that Austin police already have."²³

The Inter-American Court has shown an interest in ensuring proper access to healthcare, "especially for individuals with mental illness," and in addressing "deficits in [state parties'] mental health care system[s]."²⁴ The drive toward a "well-funded, community-based mental health system that would be fair to patients and provide significant benefits to the state as a whole," which was once a core concern for Texas, has fallen to the side as structural and budget problems have arisen, leading to an array of problems resulting from a lack of community mental health services, including a lack of "appropriate care and shelter" for those with psychosocial disabilities, increased

²⁰ FULLER, *supra*, note 11, at 5.

²¹ Todd Richardson, *Beyond Deinstitutionalization: The Fragmentation of Texas's Mental Health Reform Movement*, 1945-1984, Dec. 2015.

²² *Id.*

²³ *Supra*, note 4.

²⁴ *Ximenes Lopes v. Brazil*, Inter-Am. Ct. H.R. (2006).

homelessness among people with psychosocial disabilities, and the increased interactions between the police and persons with psychosocial disabilities the audit considers.²⁵

What's Happening in Austin?

In Austin, APD recorded at least 8 incidents between 2010 to 2016 where an officer shot and killed a person experiencing a mental health-related crisis.²⁶ “Austin police tallied an additional 20 shootings in which an officer shot the person but they survived.”²⁷ While official department numbers are not available for 2017 and 2018, the *Washington Post* reported at least 4 such incidents ending in death during those two years.²⁸ APD’s failure to consistently report such incidents by APD is one of the factors considered in this framework and suggests these numbers may be underestimating the problem.²⁹

Less than a month into 2019, 27-year-old Paul Andrew Cantu, who had a history of medical problems, was shot and killed by APD officers.³⁰ While APD statements suggest officers attempted to de-escalation the situation and ultimately shot him out of necessity, Cantu’s family disagrees.³¹ The family contends that police knew about Cantu’s medical history and did not act appropriately.³² Cantu’s story is all too common.³³

²⁵ *Supra*, note 27; *Supra*, note 2; Daniel Yohanna, *Deinstitutionalization of People with Mental Illness: Causes and Consequences*, AMA JOURNAL OF ETHICS, Oct. 2013.

²⁶ *Supra*, note 5.

²⁷ *Id.*

²⁸ *Fatal Force*, *supra*, note 1.

²⁹ *Supra*, note 2.

³⁰ *Fatal Force*, *supra*, note 1.

³¹ *Id.*

³² *Id.*

³³ *Fatal Force*, *supra*, note 1.

Officers' failure to use de-escalation techniques is recorded in incident reports involving mental health-related police shootings in Austin and was a major finding of shortcoming in training in the Audit. The Audit concluded these tragedies were due to shortcomings in training and mental health partnerships as well as a lack of alternative methods of dealing with mental health-related calls.³⁴ This framework concurs with these findings and uses the information provided to assess how the shortcomings violate international human rights standards.

APD must limit the use of lethal force to strict instances of necessity in order to respect the right to life

The Inter-American Court of Human Rights has established that the State has an obligation to adapt its domestic legislation “to ensure that its security forces, which are entitled to use legitimate force, respect the right to life of those who are under its jurisdiction.” The Court has observed that “[w]hen the right to life is not respected, all the other rights are meaningless.”³⁵ International human rights standards are particularly focused on instances in which police and other security forces violate this right, finding that “[t]he deprivation of life by the authorities of the State is a matter of the utmost gravity’ and that states must take measures to prevent arbitrary killing by their own security forces.”³⁶

³⁴ *Supra*, note 2; Fatal Force, *supra*, note 1.

³⁵ *Gómez-Paquiyaury Brothers v. Peru*, Merits, Reparations and Costs, Inter-Am. Ct. H.R., July 8, 2004.

³⁶ AMNESTY INTERNATIONAL, *Deadly Force: Police Use of Lethal Force in the United States* (2015), at 13.

The Convention on the Rights of Persons with Disabilities³⁷ recognizes that people with psychosocial disabilities have a right to life for equal to those without disabilities.³⁸ While the United States is not a party to the Convention, it is bound by the International Covenant on Civil and Political Rights (ICCPR),³⁹ which states that all “persons are equal before the law and are entitled without any discrimination to the equal protection of the law.”⁴⁰ Consequently, the Austin Police Department must protect the lives of all people equally and afford them the same right to life whether they have psychosocial disabilities or not.

APD is obligated to protect persons with psychosocial disabilities’ right to life

The Inter-American Court stated in *Gómez-Paquiyaqui Brothers v. Peru*:

Compliance with Article 4 of the American Convention [right to life] – in conjunction with Article 1(1) of this same Convention [duty to respect and protect rights] – not only requires that a person not be deprived arbitrarily of his or her life but also that the States adopt all the appropriate measures to protect and preserve the right to life, creating a positive obligation.⁴¹

Furthermore, although deprivation of life may “be authorized by domestic law” it may “still be arbitrary,” especially when domestic law is not congruent with human rights standards.⁴² The State

³⁷ The Convention on the Rights of Persons with Disabilities was adopted on December 13, 2006. It “adopts a broad categorization of persons with disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms” and “clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced.” Convention on the Rights of Persons with Disabilities.

³⁸ Convention on the Rights of Persons with Disabilities art. 10.

³⁹ The International Covenant on Civil and Political Rights is an International Human Rights treaty and was adopted on December 16, 1966 and ratified by the US on June 8, 1992. International Covenant on Civil and Political Rights.

⁴⁰ *Id.*

⁴¹ *Supra*, note 43.

⁴² International Convention on Civil and Political Rights art. 6, general comment no. 36.

must actively take steps – in response to the positive obligation – to ensure police use of force is restrained in accordance with protecting of the right to life.⁴³ Police officers must be supported by a departmental structure that prepares them to react proportionately to the mental health-related incidents they encounter.

The European Court of Human Rights⁴⁴ and the international community have recognized that the right to life is a “basic value of democratic societies.”⁴⁵ Furthermore, the European Court has determined “States should not only refrain from the intentional and unlawful taking of life, but also take appropriate steps to safeguard the lives of those within their jurisdiction,” finding the existence of a positive obligation, just as the Inter-American Court has.⁴⁶

The proportionality and necessity of the use of force must be considered when it may affect the right to life

Under international human rights standards, police must only use force that is necessary to achieve a legitimate objective and proportionate to the threat posed. In *Corumbiara v. Brazil*, the Inter-American Commission on Human Rights⁴⁷ held that

The legitimate use of force implies, among other factors, that it be both necessary and proportionate to the situation’ – this standard essentially asks that the police

⁴³ *Id.*

⁴⁴ The European Court of Human Rights is a regional human rights judicial body that began operating in 1959. It delivers judgments regarding alleged violations of the European Convention on Human Rights. Eur. Ct. of Human Rights.

⁴⁵ *Makaratzis v. Greece*, Eur. Ct. H.R., Application no. 50385/99 (Dec. 20, 2004).

⁴⁶ *See L.C.B. v. The United Kingdom*, Eur. Ct. H.R., Application no. 14/1997/798/1001 (June 9, 1998); *Osman v. The United Kingdom*, Eur. Ct. H.R., Application no. 87/1997/871/1083 (Oct. 28, 1998).

⁴⁷ The Inter-American Commission on Human Rights is comprised of seven members, each elected by the member states of the American region. The Commission’s role is to address the current human rights conditions and various violations which occur in the member states. Inter-Am. Comm. on Human Rights.

make an ‘effort to reduce to a minimum any personal injury and loss of human lives.’”⁴⁸

Similarly, in *Leydi Dayan v Colombia*, the Commission held that “the resort to any force must be made only when strictly necessary in relation to the immediate threat posed.”⁴⁹ When officers employ lethal force, including firearms, it is considered proportionate only if exercised to save “life or limb.”⁵⁰ Using lethal force for any other purpose than preventing death or serious bodily harm is excessive.

The Commission’s decision in *Michael Gayle v. Jamaica* shows that under international human rights law, disproportionate use of force within the context of police interactions with defenseless people with psychosocial disabilities could be considered to be Cruel, Inhuman, Degrading Treatment (CIDT).⁵¹ In this case, Jamaica acknowledged that “Mr. Gayle died as a result of the actions of the joint security forces, who used excessive force that went well beyond the scope of legitimate conduct of State agents.”⁵² Disproportionate force can be defined as “force in excess of what a police officer reasonably believes is necessary.”⁵³ The Commission held that while lawful use of force by police officers does not constitute torture or CIDT, excessive and unlawful use of force by police officers may.⁵⁴ The United Nations (UN) Committee Against

⁴⁸ *Corumbiara v. Brazil*, Merits, Inter-Am. Ct. H.R., March 11, 2004.

⁴⁹ *Leydi Dayan v. Colombia*, Merits, Inter-Am. Ct. H.R., July 23, 2008.

⁵⁰ *Id.*

⁵¹ *Gayle v Jamaica*, Inter-Am. Ct. H.R., Oct. 24, 2005; Committee of the Rights of Persons with Disabilities art. 15

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

Torture (CAT Committee)⁵⁵ has repeatedly stated that “the right to be free from torture and CIDT carries with it non-derogable state obligations to prevent, punish, and redress violations of this right.”⁵⁶

In the case of APD mental health-related shootings, under these standards APD officers may only use force that is necessary and proportionate to a legitimate goal, and only after all other “non-violent means” have been attempted, such as de-escalation techniques.⁵⁷ Further, the alternative measures must not only be tried but exhausted to the point of being “ineffective or without any promise of achieving the intended result,” which would suggest a more thorough attempt at de-escalation is necessary.⁵⁸

APD should make accommodations to improve their interactions with those experiencing mental illness

States violate of the right against discrimination enshrined in human rights law when they fail to make reasonable accommodations for people with disabilities.⁵⁹ This duty applies not only an accommodation a person has requested, but also “in situations where a potential duty bearer should have realized that the person in question had a disability that might require accommodations

⁵⁵ The Committee Against Torture (CAT) is a body of ten independent experts that monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by its State parties. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is an international human rights treaty which was ratified by the US in October 1994. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁵⁶ *Reproductive Rights Violations as Torture and Cruel, Inhuman, or Degrading Treatment or Punishment: A Critical Human Rights Analysis*, CENTER FOR REPRODUCTIVE RIGHTS (2010).

⁵⁷ *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, UNITED NATIONS (1990).

⁵⁸ *Id.*

⁵⁹ Committee on the Rights of Persons with Disabilities, General comment No. 6 (2018) on equality and non-discrimination

to address barriers to exercising rights” such as in the case of a police officer interacting with someone experiencing mental illness.⁶⁰ Comments on the Right to Life in the ICCPR contend that “[p]ersons with disabilities, including psychosocial and intellectual disabilities, are entitled to specific measures of protection” and that such measures “shall include the provision of reasonable accommodation when necessary to ensure the right to life [including] specific measures designed to prevent unwarranted use of force by law enforcement agents against persons with disabilities.”⁶¹

United States law requires accommodations for those with mental health issues, but the federal appellate districts are split on the applicability to police interactions

The scope the of the U.S. Americans with Disabilities Act (ADA) during law enforcement encounters is incongruent with the requirements of international human rights.⁶² The ADA was enacted “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”⁶³ On its face, Title II of the ADA, which provides “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity”⁶⁴ should apply to a person’s interaction with the police.⁶⁵ However, Austin is located within the federal Fifth Circuit, which has held:

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

⁶⁰ Committee on the Rights of Persons with Disabilities art. 4.

⁶¹ International Convention on Civil and Political Rights.

⁶² 42 U.S.C. § 12101 et seq.

⁶³ *Gray v. Cummings*, No. 18-1303 (1st Cir. 2019).

⁶⁴ 42 U.S.C. § 12101 et seq.

⁶⁵ *See Van Velzor v. City of Burleson*, 43 F. Supp. 3d 746, 754 (N.D. Tex. 2014) (collecting cases stating the ADA covers all activities by government).

with mental disabilities, prior to the officer's securing the scene and ensuring that there is no threat to human life.⁶⁶

But the Fifth Circuit's position is contrary many other circuit courts, which have held "that Title II applies without exception to ad hoc police encounters."⁶⁷ Until the Supreme Court resolves this circuit split, Austin remains subject to the Fifth Circuit's ruling.

In jurisdictions where appellate courts apply Title II to ad hoc police encounters, there are two ways in which the police may violate Title II when making an arrest. One example is when "police wrongly arrested someone with a disability because they misperceived the effects of that disability as a criminal activity."⁶⁸ The other occurs when police "properly investigated and arrested a person with a disability for a crime unrelated to that disability, but they failed to reasonably accommodate the person's disability in the course of investigation or arrest, causing the person to suffer greater injury or indignity in that process than other arrestees."⁶⁹ In the case of APD interactions with people with psychosocial disabilities, the second violation is the more likely, especially when giving credence to the Inter-American Court's holding that "[t]hose with mental illness are more vulnerable than others due to their psychological and emotional state" and that states must respond accordingly to this increased vulnerability with accommodations.⁷⁰

The fact that people with psychosocial disabilities are being shot and killed at a disproportionate rate compared with those without such disabilities suggests these persons are also

⁶⁶ *Hainze v. Richards*, 207 F. 3d 795, 801 (5th Cir. 2000).

⁶⁷ *Gray v. Cummings* 917 F. 3d 1, 16 (1st Cir 2019)

⁶⁸ *Id.* at 15. Consider, for instance, a person arrested for public intoxication or DWI while experiencing a diabetic emergency.

⁶⁹ *Id.*

⁷⁰ *Supra*, note 30.

experiencing greater injury than other arrestees, likely due to a lack of proper accommodation for their disabilities.

Other accommodations may be made through specialized police training on de-escalation and mental health, as observed in peer cities

Law enforcement should take proactive steps to ensure it is complying with international law's direction to accommodate and not discriminate against those with psychosocial disabilities. Peer cities have explored specific -- the City of Austin's Audit contrasts APDs practices with six different cities: Dallas, Houston, San Antonio, Philadelphia, Phoenix, and Seattle. Procedures that these cities' police departments actively use, and which APD does not, include refresher courses, incident reviews, self-registry systems, and co-response programs. APD's failure to implement similar practices is a cause for concern. As noted by the Audit: "Absent adequate training, police officers are often unable to recognize signs and symptoms of mental illnesses, and when they do, they rely on negative stereotypes to guide their interactions."⁷¹

Austin's use of a Crisis Intervention Team partially aligns with the "Memphis Model," but is not incorporating all best practices for training

The Audit refers to best practices used in Memphis, Dallas, and Seattle as benchmarks for progressive peer cities contrasted. The "Memphis Model" is considered the best example of training.⁷² The Audit utilized the Memphis Model to assess current APD training standards.⁷³

⁷¹ *Supra*, note 2.

⁷² *Id.*; "The Memphis Crisis Intervention Team (CIT) is an innovative police-based first responder program that has become nationally known as the 'Memphis Model' of pre-arrest jail diversion for those in a mental illness crisis. This program provides law enforcement-based crisis intervention training for helping those individuals with mental illness. Involvement in CIT is voluntary and based in the patrol division of the police department. In addition, CIT works in partnership with those in mental health care to provide a system of services that is friendly to the individuals with mental illness, family members, and the police officers." *CIT Center*, UNIVERSITY OF MEMPHIS.

⁷³ *Id.*

Austin employs a Crisis Intervention Team (CIT) based upon the Memphis Model which is meant to “improve the safety of the person in crisis and the officer” and to “redirect the person with mental illness from the judicial system to the health care system.”⁷⁴

While Austin current training meets the basic requirements for the CIT under the Memphis Model (such as a minimum hours requirement) other key components (such as refresher courses, visits to mental health facilities, and de-escalation training for all officers) are not in place.⁷⁵ The CIT Program is also meant to “provide all patrol officers with training on identifying and responding to mental health-related calls for service.”⁷⁶ However, the Audit noted de-escalation and mental health-specific training for this program falls short of the program’s goal when compared with successful programs nationally.

APD has an obligation to sufficiently train all officers – not just the CIT officers – to react appropriately to people with psychosocial disabilities.

Under international human rights standards, States are required to provide necessary training to law enforcement officers to “raise awareness among rights holders and build the capacity of duty bearers.”⁷⁷ In its 2017 consideration of the report of Montenegro, the Committee on the Rights of Persons with Disabilities made the recommendation that:

the State Party... [should] train relevant professionals, particularly law enforcement personnel and members of the judiciary, on the Convention and on how to adequately handle complaints of discrimination based on disability.⁷⁸

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Committee on the Rights of Persons with Disabilities art. 9.

⁷⁸ Committee on the Rights of Persons with Disabilities.

APD has said it will add ten hours of de-escalation training to its curriculum, but it unclear whether this has been completed at this time.⁷⁹ Further, there has been no response from APD on adhering to the other standards, such as refresher courses and other mental-health specific training (such as visiting mental health facilities). The failure to implement these practices means APD’s training does not meet the high standards of international human rights law for police and other authorities, which requires awareness raising among those authorities and that measures be taken to specifically adopt training sufficient to ensure the equal treatment of people with disabilities.⁸⁰

Peer Cities have found additional ways to improve interactions between police and people with psychosocial disabilities in addition to the CIT

The CRPD, in its 2017 report to Armenia, urged the State to “take measures necessary to ensure the full and equal involvement of persons with disabilities, through their representative organizations, in the process of decision-making for and drafting of all disability-related legislation, policies strategies and action plans.”⁸¹ Although APD involves mental health clinicians in its Mental Health Officer (MHO) training by having them lead certain sessions, “the MHO training [curriculum] does not include visits to mental health facilities or direct interaction with people experiencing mental illness.”⁸² Furthermore, this specific training for MHOs is not included in CIT training or general officer training, leaving most officers without proper strategies to deal with people with psychosocial disabilities.

⁷⁹ *Supra*, note 2.

⁸⁰ Committee on the Rights of Persons with Disabilities, comment 6.

⁸¹ Committee on the Rights of Persons with Disabilities.

⁸² *Supra*, note 2, at 8

In Dallas, de-escalation and mental health training in line with the Memphis Model has led to a major decline in excessive force complaints and instances of police shootings.⁸³ The Dallas Police Department has received praise in particular for its RIGHT (Rapid Integrated Group Healthcare Team) Care program, which was introduced last year.⁸⁴ Under the program, if a dispatcher notices someone may need mental health-related assistance, that officer can call on the RIGHT Care team for backup. When that happens, three people will arrive to a call — a police officer, a paramedic, and a mental health clinician. The team also has clinicians at 911 Call Centers to handle mental health emergencies.

Seattle – the leading city in observing the Memphis Model – has gone even further to train police interactions involving those with psychosocial disabilities.⁸⁵ The newly passed “Initiative 940 requires de-escalation and mental health training for all officers, not just those specializing in crisis situations.⁸⁶ I-940 aligns with other human rights guidelines as well, requiring additional proof that deadly force was necessary, the administration of first aid, and an independent investigation of all incidents that involve deadly force.⁸⁷

Finally, many peer cities are exploring alternatives to involving police in mental health-related calls. Houston, San Antonio, and Dallas are all using diversion programs to divert calls identified as non-violent, mental health-related situations to mental health professionals instead of

⁸³ Naomi Martin, *Dallas Police excessive-force complaints drop dramatically*, DALLAS NEWS, Nov. 2015.

⁸⁴ Samantha J. Gross, *Senator praises Dallas mental health crisis response program*, THE DALLAS MORNING NEWS, July 29, 2018.

⁸⁵ *Supra*, note 2; Steve Miletich, *Initiative 940, modifying law regulating police use of deadly force, passes with strong support*, THE SEATTLE TIMES, Nov. 6, 2018.

⁸⁶ Miletich, *supra*, note 114.

⁸⁷ *Id.*

police.⁸⁸ Houston is considered a leader in this area, where “police have employed a Crisis Call Diversion Program that is designed to put mental health counselors alongside call takers and dispatchers to talk through issues and de-escalate calls.”⁸⁹ The Audit found that not only does APD have no such program in place, but APD also fails to provide officers responding to calls with relevant information regarding a caller’s background in general, which could include essential information if the caller is known to have a psychosocial disability.⁹⁰

APD must ensure proper investigation and remedies are implemented when mental health-related shootings take place

The Audit noted that APD does not consistently track and review its response to interactions with people with psychosocial disabilities in order to evaluate outcomes or make improvements its training program.⁹¹ Without proper investigation into police incidents involving people with psychosocial disabilities, APD cannot effectively identify and address its underlying structural defects.

Lack of transparency may also negatively impact the public’s trust: “As public servants, police should be fully accountable to the communities they serve.”⁹² Accountability is key in advancing human rights standards. As recognized by the Audit:

Tracking and evaluating complete and accurate information could provide insight into what is or is not working and whether APD should adjust policies or training, reassign or reorganize resources, or take other appropriate action.⁹³

⁸⁸ *Supra*, note 2.

⁸⁹ *Supra*, note 3.

⁹⁰ *Supra*, note 2.

⁹¹ *Id.*, at 15

⁹² Rebecca Neusteter, *Police Accountability*, VERA INSTITUTE OF JUSTICE.

⁹³ *Supra*, note 2, at 15.

Yet, it should be noted that independent evaluation must be incorporated to ensure that all information gathered is impartial and free of implicit bias. “Police accountability cannot be entirely left in the hands of departments themselves.”⁹⁴

Recommendations

In addition to and in combination with the recommendations in the Audit regarding the formulation of a stakeholders group and changes to the CIT program, this framework recommends the following:

To the Austin Police Department:

- The department needs to clearly state its commitment to minimizing the use of lethal force by police. Under international human rights standards, use of force is only permitted when less restrictive measures have been tried and exhausted.⁹⁵
- Training should be adopted to ensure officers make meaningful attempts at de-escalation. This training should include exposure to and awareness raising of people with psychosocial disabilities. Refresher courses should be offered in line with the Memphis Model.
- Officers who do not comply with use of force policies should face disciplinary sanctions including “referral to criminal prosecution where appropriate.”⁹⁶
- Consideration should be given to incentivizing officers to adhere to new guidelines and training on use of force with people with psychosocial disabilities, “including recognition and merit awards, for avoiding unnecessary or excessive force.”⁹⁷
- There should be internal and external reviews of any instance of use of force involving a person with psychosocial disabilities to determine whether the use of force was appropriate and proportionate. International standards require regular

⁹⁴ Olugbenga Ajilore, *How Civilian Review Boards Can Further Police Accountability and Improve Community Relations*, June 25, 2018.

⁹⁵ *Callous and Cruel*, HUMAN RIGHTS WATCH, May 12, 2015.

⁹⁶ *Id.*

⁹⁷ *Id.*

investigation and reporting of these instances,⁹⁸ but current data shows no such reporting by APD.

- In considering suitable training programs and practices, APD should collaborate with external mental health organizations, and current partnership with mental health providers should be improved and utilized more frequently.

To the City of Austin:

- Ordinances should be updated to provide for remedies for victims of mental health-related police shootings and to ensure stricter guidelines for when such use of force is acceptable.
- Consideration should be given to integrating information systems with call-taking to ensure officers responding to a call for assistance are fully informed before interactions take place.⁹⁹
- Alternatives to police dispatch through call-diversion should be implemented in line with peer city approaches.¹⁰⁰
- Improvements must be made in community services for those with psychosocial disabilities in Austin. Treating the untreated and providing alternatives to police involvement will keep many from ever reaching a situation where the police must be involved.¹⁰¹

⁹⁸ Committee on the Rights of Persons with Disabilities; *supra*, note 2.

⁹⁹ *See Supra*, note 2.

¹⁰⁰ *Id.*

¹⁰¹ *Supra*, note 24.