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Mid-Atlantic ADA Center

ADA and Law Enforcement
There's more to it than ramps

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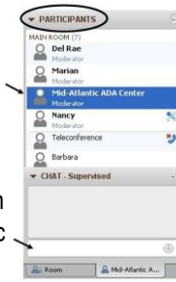

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ADA and Law Enforcement
There's more to it than ramps

Presented by:

Mid-Atlantic ada Center

Today's presenter:

Michael Sullivan

ADA and Law Enforcement
There's more to it than ramps

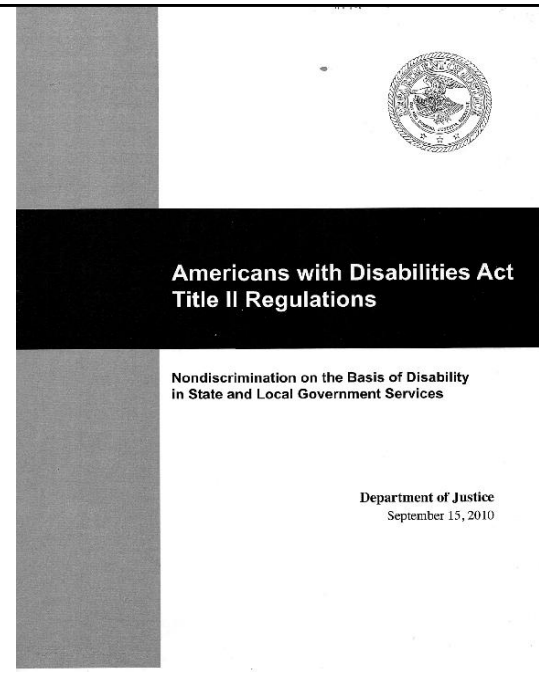
Michael Sullivan

Michael Sullivan ADA Consulting

Titles I, II, III

Title II applies to state and local government activities

- **Program access**
- **Accessible facilities**
- **Corrections**
- **Policy Modification**



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Definition of Qualified Individual

§35.104 Title II ADA, Definitions

Qualified Individual with a disability means

- **with or without reasonable modifications** to rules, policies, or practices, removal of architectural, communications or transportation barriers,
- or the provision of auxiliary aids and services,
- **Meets the essential eligibility requirements** for the receipt of services or participation in programs or activities….

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General prohibitions against discrimination

§35.150 Title II ADA

No qualified individual with a disability shall, on the *basis of disability*, be excluded form participation in or be *denied the benefits* of the *services, programs, or activities* of a public entity or be subjected to discrimination by any public entity.

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Program Accessibility Discrimination Prohibited

§35.149 Title II ADA

…no qualified individual with disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, 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 public entity.

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Definition of Disability

§35.104 Title II ADA, Definitions

- physical or mental impairment that substantially limits one or more major life activities
- a record of such an impairment or
- being regarded as having such an impairment

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United States Supreme Court

Pennsylvania Dept. of Corrections v. Yeskey

524 U.S. 206 (1998)

- ADA applies to **state prisons and local jails**.
- Yeskey (with hypertension) had been denied a benefit (admission to boot camp, which could lead to early release).
- Involuntary nature of confinement doesn't mean prisoner isn't a "qualified individual with a disability."

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Seremeth v. Board of County Commissioners

4th Circuit, March 12, 2012

FACTS

1. Deputies called to home re domestic violence
2. Knew man was deaf and cuffed behind back
3. Interviewed kids without an interpreter
4. Officer learning ASL called to assist
5. Father, reading lips, helped interpret
6. No merit to call, left after 75 minutes

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Seremeth v. Board of County Commissioners

Court says

- ADA applies to on-scene questioning
- Applying Yeskey's expansive interpretation applies to questioning and obtaining information

BUT…

- Exigencies – domestic violence response
- Didn't have to wait for interpreter to perform duty and attempt questioning
- Reasonable to call trainee and try to use father

"Reluctant to question snap judgments when reasonable officer would fear for the safety of self/others"

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Bahl v. County of Ramsey and City of St. Paul

8th Circuit October 9, 2012

- **Alleged failure to provide interpreter**

1. Traffic stop for red light violation
2. Statement of Charges: typed statement by Watch Commander
3. Post-Arrest interview at County Jail

Summary judgment for City on 1 and 2

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Bahl v. County of Ramsey and City of St. Paul

continued

- Question whether ***City terminated interview rather than provide interpreter***
- Must show, ***"undue financial and administrative burdens"***
- ***Cost of interpreter*** more than benefit received by Bahl is not sufficient reason to reject aid

- **County Jail**
  - Provide ***interpreter*** or other aids within ***one hour of custody***
  - ***Same ability to communicate*** with people outside as other detainees
  - Provide ***videophones, text-only cell phone and TTY for inmates***

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Portland Police Bureau

Violent Crime Control and Law Enforcement Act of 1994

FINDINGS Letter September 2012

Engaged in a pattern or practice of unnecessary or unreasonable force against people with actual or perceived mental illness.

August 2014 Court approves police reform agreement covering:

- Policy
- Use of force data collection
- Training
- Supervisory oversight
- Community based mental health services
- CIT
- Independent Compliance Officer and Community Liaison
- Community Oversight Advisory Board (CAOB)
- Quarterly Reports

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USDOJ Settlement Agreement Arapahoe SO and Englewood PD

- Detailed settlement agreement
- Use of pictograms to ask if person wants an interpreter
- Have policies when to provide interpreter
- Provide text telephones and volume control telephones
- Stock and provide hearing aid and cochlear implant batteries

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Sign Language Interpreter?

TTY

Access for Hearing Loss

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The Estate of Robert Ethan Saylor et al. V. Regal Cinemas, Inc. et al.

Civil Action No. WMN-13-3089
US District Court, D. Maryland
October 16, 2014

Discussion by the court:

1. Frederick County Sheriff's Office General Order , "Investigation of Persons with Mental Illness," …appropriate response when dealing with person with mental illness…
2. “Obtaining relevant information from family members, friends, others at the scene who know the individual and his/her history.”
3. "[o]nce sufficient information has been collected about the nature of the situation, and the situation has been stabilized, there are a range of options…”
4. The court: “Thus, should these guidelines be considered relevant to individuals with developmental disabilities,… were not trained to follow or simply failed to follow these guidelines in dealing with Mr. Saylor .”

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Sheehan v. City and County of San Francisco

9th Circuit No. 11-16401 D.C. No. 3:09-cv-03889-CRB

- Police called by social worker to take Sheehan for involuntary psych evaluation (5150 W&I, CA).
- Residents of program evacuated by social worker.
- Police arrive, Sheehan threatens them with a knife and retreats to room.
- Police call for back-up but decide to force entry. Sheehan charges officers. They shoot

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Sheehan v. City and County of San Francisco

9th Circuit No. 11-16401 D.C. No. 3:09-cv-03889-CRB

9th Circuit held:

- Title II **applies to arrests** and **on the facts presented in this case,**
- **Triable issue whether:**
  - ***failed to reasonably accommodate the plaintiff's disability*** when they forced their way back into her room
  - ***without taking her mental illness into account*** or ***employing generally accepted police practices*** for peaceably resolving a confrontation with a person with mental illness

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Other Corrections Cases

- **Pennsylvania State Prison Cression**: (USDoJ findings letter)
  - Routinely locked inmates with serious mental illness in cells 22-23 hours
  - In Some cases for months and years
  - Inmates denied basic necessities
  - Deemed to be harsh and punitive conditions

- **Oregon Dept. of Corrections**
  - Plaintiff Baldwin denied interpreter for doctor, religious services, AA meetings and a GED program
  - Settlement terms ordered sign language interpreters for orientation, medical exams, counseling and other interactions of life

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Other Corrections Cases continued

Castle v. Eurofresh, Inc., Arizona Department of Corrections **No. 11-17947**
Sept 24, 2013

- Failure to Accommodate Castle in work program with higher pay.
- Eurofresh not in an employment relationship, not recipient of federal funds.
- Arizona Department of Corrections is liable for disability discrimination committed by a contractor.
- Remained

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Questions?

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Specific ADA Impacts on Law Enforcement …*EVERYTHING*

- Stations, jails, prisons, juvenile holding, temporary/court holding cells
- Permits, licenses, policy modifications
- Community meetings and education efforts, SAFE, neighborhood watch
- Event Planning: festivals, street fairs, parades, demonstrations
- Emergency planning
- Operations: 9-1-1, calls for service, initial responses, investigations, arrest, transportation and booking
- Training

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Programs, Activities, and Services

Citizens Academy
" Ride alongs"
"tweet alongs"
D.A.R.E.
S.A.F.E.
Jail visitation
Tip Lines
"John" Schools
Traffic Schools
Victim Witness Programs
Fingerprinting
Web-based police reports
Web-based newsletters

Access to recreational programs
Accessible bathing facilities
Visitation, telephone calls
Appropriate housing classification
Education programs
Disciplinary/Rule violation hearings
Early release programs
Transportation
Library access
Group Sessions
Emergency Shelter Operations
Post arrest accommodations
Work release programs/Diversion programs

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We don't *enforce* the ADA, we *comply*…

Programs, Activities, and Services

- Policy modifications
  - Cite don't cite: "Segway"…Transit malls, sidewalks
  - Signing of Citation
  - Service Animals-Comfort Animals: Policy v. penal code, "fake" animals
- Parade routes: displaced disabled parking, blocked sidewalks, street festivals, barricade placement, altered path of travel
- Auxiliary aids, alternate format police reports, enlarging documents, assistive listening devices, sign language interpreters, braille, text to 9-1-1
- Interview witnesses and/or victims in accessible locations or "familiar location."

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Detention and Correctional Facilities

Title II Prohibits Discrimination

- Qualified inmates/detainees not excluded from participation due to lack of physical access
- Housed in most integrated setting appropriate, "Unless it is appropriate to make an exception"

Section 35.152 Jails, detention and correctional facilities and community correctional facilities.

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Detention and Correctional Facilities

Discrimination Prohibited cont.

Inmates:

- Shall not be placed in **inappropriate security classification** because of no accessible cell
- Shall not be placed in the **medical facility** unless receiving care or treatment
- Shall not be placed in facility that does not offer the **same programs** as the facilities where they would otherwise be housed
- Shall **not be deprived visitation** by transfer to a distant facility where they would not be otherwise housed

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Detention and Correctional Facilities

USDOJ 2010 ADA Standards for Accessible Design

New construction or alterations:

- Cells 3%, but no fewer than one
- In each classification level
- Substitute cells **"may satisfy"** obligation by providing mobility features if:
    - Located in same prison
    - Integrated with other cells to maximum extent feasible
    - Equal physical access to programs, services, etc.
    - "Technically infeasible" to locate to another prison within system

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Federal law *mandates* accommodation

Reasonable Accommodation Examples

- Providing documents by email
- Enlarging form on the copier…130% or 18 point
- Reading or filling out a form
- Clipboard as alternate writing surface
- Meet in the "lobby"
- Notation in the incident report regarding follow up contact
    - Time of day
    - Location to meet
    - Use door bell to activate flashing light
    - No scented products

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A B C D E F G

H I J K L M N O

P Q R S T U V

W X Y Z

YES NO

0 1 2 3 4 5 6 7 8 9 10

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Barriers to Preventing or Stopping Abuse

- Cultural attitudes: people with disabilities are often marginalized, infantilized, or "invisible"
- Embarrassment or shame
- Concern about not being believed
- Support providers are not available
- Lack of accessible resources
- Physical, cognitive, attitudinal, programmatic challenges
- Don't know who to call

National Professional Training Conference on Responding to Crime Victims with Disabilities

Oregon Health & Science University, Mary Oschwald, Beckie Child, Laurie Powers, et al. Portland State University September 30 – October 2 2009

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Barriers to Preventing or Stopping Abuse cont

- Systems (legal, medical, advocacy, etc.) do not always have necessary policies and trained personnel
- Lack of coordinated response
- Fear of losing independence…being institutionalized
- Fear of losing custody of children
- Abusive person is a family member who provides assistance or support
- Fear of backlash
- Fear of consequences of calling police or mandatory reporting
- Isolation

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Awareness v. Sensitivity

It's Civil Rights…It's about everybody!

- **"I'm sensitive and I feel bad,"** can I go now?

- **Medical Model v. People Model**
  - don't diagnose…focus on behavior
  - Disability-based behavior
  - hidden disability

- **Possible training material pitfalls:**
  - reinforce stereotypes or outdated
  - not specific to Law Enforcement
  - Training without policy

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Officer Safety

- Existing tactics…modification
- False sense of security
- No “boiler plate” approach
- Safety zone…reach ranges
- Mobility devices

  -Canes, Crutches, Wheelchairs, Scooters, Walkers

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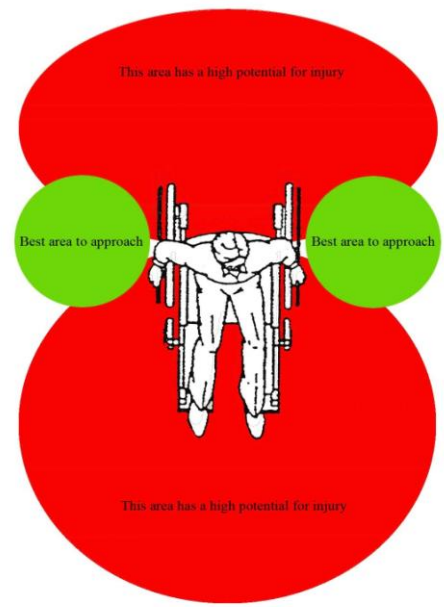
Build on existing knowledge…

Wheelchair Approach

✓ Same as a traffic stop

✓ Searches, wheelchairs, canes, crutches, bags, etc.

✓ Acknowledge the contact will take more time



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Training Considerations

- **Identify who are people with disabilities**--how they come to law enforcement attention
- **Describe what people with disabilities want the police to know**
- **Inform disability community** --about law enforcement procedures

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More Training Considerations

- **Miranda Concerns**
  - knowing, intelligent, and voluntary waiver of rights
- **Disability-specific issues…**
  - CP (cerebral palsy) misunderstood as drunk?
  - Can a blind person be a witness?
  - Information/resources available 24-7?
  - Intellectual age vs. physical age
  - Slow down interviews…It takes time!
  - **Listen**

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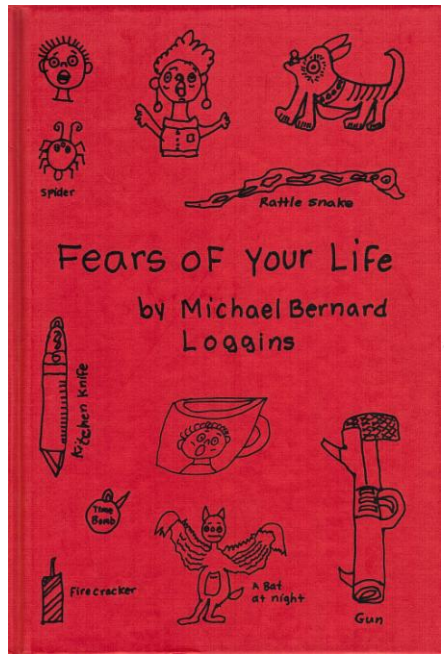

4. Fear of Monsters being under my bed. Fear of intruders coming into the house to steal things and hurt us all.

5. Fear of going to jail as being Punish for doing something very wrong and have to stay in for a long time.

24. Fear of getting run over by a car when not Paying attention.

25. Fear of being caught by being with the Person that steals.

26. Fear of Bees.

51. Fear of Sexually Abused.

64. Fear of Pirates.

74. Fear of Police.

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Deaf and Hard of Hearing… Effective Communication

Must take appropriate steps to ensure communications with individuals with disabilities are as effective as communications with others.

- "Primary Consideration"
- Use of notes--Written statements in non-standard English, e.g. *"Husband me mad need place sleep"*
- Fear of the Police, Handcuffing
- Interrogations vs. Interviews
  - Miranda
  - Train the interpreters
  - Delay in interpreting
  - Misreading body language

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Working with a Sign Language Interpreter

"Qualified interpreter means an interpreter who … is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary."

- Length and importance of communication … Interrogation, Interview, Miranda
- Brief the Interpreter
- Do not speak privately to the interpreter in line of sight of the Deaf person
- Speak at normal pace

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Working with a Sign Language Interpreter

- The interpreter may ask questions for clarification
- Lag time
- Nodding does not necessarily mean understanding or agreement
- Videotape interrogations and interviews whenever possible
- Non-standard sign language
- Provide a clear view of the interpreter
- Speak to the Deaf person…not to the interpreter

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WARNING

DO NOT RELY ON FAMILY MEMBERS OR FRIENDS OF THE PERSON TO COMMUNICATE

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ACLU Know Your Rights

https://www.aclu.org/know-your-deaf-rights-what-do-when-dealing-police

Marlee Matlin On Deaf And Police Interaction

The ACLU has teamed up with Academy Award-winning actress Marlee Matlin, who is deaf and the wife of a police officer, and advocacy group Helping Educate to Advance the Rights of the Deaf (HEARD) on an American Sign Language video to ensure deaf people know their rights when interacting with law enforcement.

Privacy statement. This embed will serve content from youtube.com.

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A Few Policy Examples

- Service Animal Procedure
- Obtaining Auxiliary Aids
- Accessible meeting policy
- How to obtain ASL Interpreters
- Transportation of Prisoners with a Disability
- Multiple Chemical Sensitivity—Environmental Illness
- Vehicle code enforcement, ex. sidewalk violations, disabled placard
- Prescription drug use by detainees
- Segways…OPDMD (other power driven mobility devices)
- Use of TTY/Booking Procedures
- Jail/Prison: housing, accessible cells, access to programs, classification, medical care
- Security screening
- Crowd control barricade placement

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Contact information

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Questions?

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