

MEMBER WINNER ARTICLE

Crisis Intervention Team Training: A valuable tool for municipal risk management?

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What can local government attorneys do to protect their municipalities from liability?

In August and September of 2014, the Naperville Police Department Major Crimes Unit handled four separate cases involving suspects with severe mental health issues. One of these subjects filed hundreds of false police reports indicating she was the victim of a stalker. The second subject made overt and specific threats stating he would kill his neighbors and police officers. The third offender battered a neighbor, stabbed a police officer, and threatened to kill several other neighbors and law enforcement officers. The fourth of these subjects stabbed her husband in the neck with a pair of scissors. The officers that responded to and investigated each of these cases were “armed” with Crisis Intervention Training (CIT); they employed specific de-escalation efforts and quickly and effectively diffused these violent situations ensuring their own safety and the safety of Naperville residents.

These cases are not isolated incidents of police interactions with those with mental illness; instead, these are more often common occurrences that don’t always end as peacefully. Local municipal attorneys can start the dialogue with their respective police departments to assess what crisis intervention training has occurred and what is needed. Police officers are usually the first responders to incidents involving individuals with mental illness; as such, it is critically important that officers are properly trained to reduce or all together avoid the number of cases that result in municipalities becoming embroiled in litigation.

What is Crisis Intervention Team (CIT) training and why is it needed?

CIT training began in Memphis, TN in 1988 in response to public outcry when Joseph Robinson, a severally mentally ill person, was shot repeatedly and ultimately killed by police.¹ CIT is considered a collaborative approach; its main goal is to help officers identify and deal with persons who have mental illness.² The essential parts of a CIT training program stress officer safety and the safety of those that have mental illness while finding solutions that employ de-escalation and community policing.³

There are many reasons why CIT training is needed and should be implemented. CIT training gives officers additional tools in their toolbox to handle fast-paced situations that evolve quickly. “Research has shown a reduction in officer bias towards individuals with mental health disabilities after receiving CIT training, and CIT trained officers were less likely to resort to use of force than non-CIT officers.”⁴ Amy Watson, an associate professor in social work at the University of Illinois at Chicago, has observed much success while analyzing Chicago's CIT programs. “CIT-trained officers seem to have an idea of wanting to take time and wait it out to see

¹ http://cit.memphis.edu/information_files/CIT_Brief_Overview_Presentation_Slides.pdf (7)

² Michael Compton, *The Crisis Intervention Team (CIT) Model of Collaboration Between Law Enforcement and Mental Health* 17 (Nova Science Publishers, Inc., 2011).

³ The University of Memphis: School of Urban Affairs and Public Policy, Department of Criminal Justice CIT Center, *Crisis Intervention Team Core Elements*, at 3 (2006), http://www.cit.memphis.edu/information_files/CoreElements.pdf

⁴ Pamela Lew, *An Ounce of Prevention: Law Enforcement Training and Mental Health Crisis Intervention*, (2014)

if they can get the person to calm down," Watson said. "Non-CIT-trained officers seem to have that point where 'It's on.' Sometimes, (police) walk into a situation and the gun [is] already pointed, and they have few options at [that] point. But sometimes things escalate very quickly," Watson said. "CIT takes a step back and gets the person to calm down. CIT officers are better prepared to work through that and come to some kind of solution."⁵

Why should municipal attorneys urge their police departments to participate in CIT training?

CIT training is important for many reasons. First, law enforcement agencies are already continually striving to increase their officers' training to handle anything that may arise on scene; this should include preparedness for a crisis-based situation. CIT training provides a foundation for assisting those with a mental illness. Second, it improves safety for officers and for citizens, as it provides a platform that will help officers be more effective when dealing with suspects, detainees, witnesses, and other citizens with a mental illness or impairment. Third, CIT training can decrease risks of injury to officers and citizens, and reduce department received complaints and litigation based on violations of the Constitution, particularly centered upon the Fourth and Fourteen Amendments. CIT training is a valuable tool in risk management. Finally, the training is worth the time and cost. The training itself is rather inexpensive,⁶ and if done rotationally, a segment of the police department can be trained without affecting staffing. Participation in this training is imperative. With persistent media focus on mental health, especially as it centers upon police and citizen encounters, CIT is likely to remain at the forefront for a long time.

Does CIT training exist and how can municipalities access it?

On January 1, 2016, the state legislature recognized the importance of crisis intervention team training when it codified the CIT training statute mandating the creation of a standardized program and required the Illinois Law Enforcement Training and Standards Board (ILETSB) to carry out this training.⁷ Since 2003, the ILETSB has provided state-certified crisis intervention team training to law enforcement officers in Illinois. As of mid-2017, the ILETSB, using this specialized program, has certified over 5,700 officers in Illinois from more than 350 agencies.⁸ The 40-hour training educates police officers on mental health conditions and medications, and introduces police to mental health resources in the local community. "Traditional training teaches police to control situations by demanding compliance, and the unpredictable nature of a person with a psychiatric disability can be misinterpreted as a threat and quickly escalate to violence. CIT training is meant to prevent that."⁹

Additionally, Illinois requires officers to undergo in-service training every year throughout their careers.¹⁰ This training can consist of general training hours or specific training subjects, like use of force, search and seizure,

⁵ Liza Lucas, Special to CNN, *Changing the Way Police Respond to Mental Illness*, (July 2015), <http://www.cnn.com/2015/07/06/health/police-mental-health-training/index.html>

⁶ Email Interview with Commander Kathy Anderson, Naperville Police Department (Nov. 29, 2017) (The training may be obtained through a grant where the cost incurred is only for mileage and meals, but note that grant based programs are only for sworn law enforcement. If the department pays for it, non-sworn and sworn may attend and get certified. It is important to remember non-sworn personnel play a big role in working with our sworn officers. In 2016, the Naperville Police Department partnered with the Aurora Police Department to host a joint CIT training. Each department spent \$7,500.00. For a total of \$15,000.00, for a 40-hour class, each department trained and certified 15 persons, sworn and non-sworn).

⁷ 50 ILCS 705/10.17. Crisis intervention team training. The Illinois Law Enforcement Training and Standards Board shall develop and approve a standard curriculum for a certified training program in crisis intervention addressing specialized policing responses to people with mental illnesses. The Board shall conduct Crisis Intervention Team (CIT) training programs that train officers to identify signs and symptoms of mental illness, to de-escalate situations involving individuals who appear to have a mental illness, and connect that person in crisis to treatment.

(Source: P.A. 99-261, eff. 1-1-16.)

⁸ <http://www.ptb.illinois.gov/training/crisis-intervention-team-cit/>

⁹ See Lucas, *supra* note 5.

¹⁰ <http://www.ptb.illinois.gov/media/1296/board-approved-mandates.pdf>

or crisis intervention training.¹¹ Local government attorneys should urge their police departments to include a CIT block with scenario-based role playing within the annual in-service training or to require it through departmental policy. While this may add to department costs or loss of man-hours, the cost of the actual mental health training is low compared to the cost of potential litigation.

Consequences for not training: municipal liability under 42 U.S.C. §1983

In June of 2015, The Washington Post released data from January through June of 2015 which shows that of the 462 people killed by police, 124 of the individuals were "in the throes of emotional or mental crisis. . . . The vast majority were armed, but in most cases, the police officers who shot them were not responding to reports of a crime," the Washington Post reported. "More often, the police officers were called by relatives, neighbors or other bystanders worried that a mentally fragile person was behaving erratically, reports show."¹²

In order for a municipality to be liable under §1983, the harm that has resulted must stem from an official policy, ordinance, law, or decision.¹³ Plaintiffs can also sue under the "failure to train" theory.¹⁴ As the court-decision pendulum swings from side to side, it is of utmost importance that municipal attorneys constantly update and present their police departments with relevant case law on this topic.

Municipal liability was first highlighted in the case of City of Canton v. Harris.¹⁵ Here, the United States Supreme Court decided that municipalities may be held liable for failing to properly train officers where those failures represent a deliberate indifference to known or obvious consequences.¹⁶ Harris sued claiming that her rights were violated under the Due Process Clause of the Fourteenth Amendment because the police department failed to train its officers to provide adequate first-aid.¹⁷ The Court reviewed whether the training program and procedures followed by the city were adequate, if the city exercised deliberate indifference to the rights of others in adopting the training procedures, and if the plaintiff's injuries or violations were caused as a result of the inadequacy of the training program or policy.¹⁸ The Court found "in resolving the issue of a city's liability, the focus must be on adequacy of the training program in relation to the tasks the particular officers must perform."¹⁹ In other words, if officers fail to receive requisite training, then the lack of that training could result in the violation of an individual's constitutional rights; and as such, the municipality is deemed to have been deliberately indifferent and liable.

Many years after this case was decided, the same theory of recovery is now used to sue departments and their chiefs specifically for failure to adequately train their officers. Importantly, it was explained in Canton, "[i]f a program does not prevent constitutional violations, the continued adherence to the program that has failed to prevent tortious conduct by employees may establish conscious disregard – i.e., the "deliberate indifference" necessary to trigger liability. It could be that the police, in exercising their discretion, so often violate constitutional rights that the need for further training must have been plainly obvious to the city policymakers, who, nevertheless, are 'deliberately indifferent' to the need."²⁰

¹¹ *Id.*

¹² Wesley Lowery, *Distraught People, Deadly Results*, The Washington Post (June 30, 2015), <http://www.washingtonpost.com/sf/investigative/2015/06/30/distraught-people-deadly-results/>

¹³ See *Monell v. Department of Social Services of N.Y.*, 436 U.S. 694 (1978).

¹⁴ See *Connick v. Thompson*, 563 U.S. 61 (2011).

¹⁵ 489 U.S. 378 (1989)

¹⁶ *Id.* at 388.

¹⁷ *Id.* at 381.

¹⁸ *Id.* at 390.

¹⁹ *Id.*

²⁰ Canton, 489 U.S. at 390, n.10.

After Canton, courts have systematically recognized the value of training officers to deal with those having a mental impairment or illness. In Palmquist v. Selvik,²¹ the court applied the standards set forth in Canton. Local law enforcement responded to a call that a man was behaving erratically in public. Upon arrival, police found a man screaming incoherently while brandishing two weapons. When police attempted to approach him, he swung both weapons; police eventually shot and killed the man.²² The estate sued the village for failure to properly train the officer on how to handle persons behaving abnormally. After trial, the jury held the village liable under the deliberate indifference standard set forth in Canton.²³ The village appealed requesting judgment in its favor as a matter of law; the court ruled in the village's favor. The court found the village officers did receive some training on abnormal behaviors and there was insufficient evidence to show that this training was deficient.²⁴

In Wilson v. City of Chicago,²⁵ the U.S. Court of Appeals for the Seventh Circuit affirmed summary judgment for a municipality on a claim of failure to train its officers on how to handle encounters with people suffering from mental illness under 42 U.S.C. §1983. In this case, the plaintiff's son barricaded himself in his bedroom and refused to come out. Plaintiff called 911 indicating that her son was mentally ill and she feared for his safety. After officers could not persuade the barricaded subject to come out, they pushed the bedroom door open, where the subject was found in the corner holding a knife. After several taser fires, an officer fired his gun, killing the plaintiff's son.²⁶ Besides the basic training received by this particular officer, he had also attended over forty-five hours of training in dealing with variant behavior, crisis intervention, and barricade incidents. The court found the defendants presented sufficient evidence that they provided specific training regarding problems that mentally ill face. The plaintiff was unable to provide evidence that the training program was so inadequate as to "result in a deliberate indifference to the rights of persons with whom the police come into contact."²⁷

A recent example of a failure to train claim where a municipality was held liable arose from Valle v. City of Houston,²⁸ a case wherein Valle's parents sued the City of Houston for failing to train its officers in CIT training when dealing with their son who suffered from mental health illness. In this case, Valle had barricaded himself in his parents' home, when non-CIT trained officers arrived, they entered the home without permission and shot and killed Valle after Valle came towards the officers with a hammer. The parents claimed the City's training was inadequate because the City chose not to implement mandatory CIT training. The Court relied upon Valles' expert witness and found that there was a substantial likelihood that their son would have survived had it been the officers who had entered the home were the best trained, best equipped to deal with any type of situation, especially one where the individual had mental health illness.

While the "deliberate indifference" standard may be a difficult threshold to reach, is it worth the risk not to insist upon thorough, mandatory crisis intervention team training? The answer is no. These cases teach us that if municipalities get involved early on to implement CIT training at their respective police departments, they are more likely to have a police force that is ready to tackle the difficulties that arise from handling mental illness on scene.

Take Away

CIT programs and de-escalation training improve the likelihood of peaceful interactions with those with mental illness. "CIT saves lives," wrote NAMI Policy Director Ron Honberg and NAMI CIT Program Manager Laura Usher in testimony submitted to a U.S. Senate Judiciary subcommittee hearing on 'Law Enforcement

²¹ 111 F.3d 1332 (7th Cir. 1997)

²² *Id.* at 1335.

²³ *Id.* at 1337.

²⁴ *Id.* at 1345.

²⁵ 758 F.3d 875 (2014)

²⁶ *Id.*

²⁷ *Id.* at 878.

²⁸ 613 F. 3d 536, 540 (5th Cir. 2010)

Responses to Disabled Americans.’ “Police are often the first responders when a person is in psychiatric distress. Every community owes it to them to provide the knowledge and training to handle mental health crisis situations safely and compassionately. At the same time, people living with mental illness, through no fault of their own, deserve to be helped through appropriate understanding and de-escalation tactics.”²⁹

Local government attorneys and municipalities need to be aware of the potential liability they face by not providing their officers with sufficient CIT training. The top priority of every municipality is the health, safety, and welfare of its citizens. CIT training advances this goal. If cost is an issue, larger municipalities can hold CIT training and invite smaller police departments to participate; together the goal can be achieved. The risk of liability is too high to not get on board with CIT training. There is plenty of data on the need for such training; as such, courts will carefully review training records and perhaps even hold municipalities accountable for failing to adequately train their law enforcement officers. The “fail to train” causes of action will be more easily recognized and will grow in prevalence. If municipalities invest now in making sure their law enforcement officials are properly trained in recognizing and dealing with individuals who have mental health issues, then municipalities may not have to bear the high cost of liability.

²⁹<https://www.nami.org/Press-Media/Press-Releases/2014/NAMI-Calls-on-Congress-to-Promote-Nationwide-Expan>

