MENTAL HEALTH TASK FORCE – EXECUTIVE SUMMARY

A Right Response: Law Enforcement Encounters with People in a Mental Health Crisis

INTRODUCTION AND BACKGROUND

It does not require one to do much research on the internet to quickly realize that law enforcement encounters with persons in a mental health crisis or having a perceived behavioral problem can quickly escalate into a use of force incident. A two year compilation of police shootings by the Washington Post found that a quarter of police involved shootings involved a person in a reported mental health crisis (December 2016, Washington Post). Additional studies throughout the country clearly show that in many states, a high percentage of police shootings involved a mental health aspect, and in many of those cases, the subject with the mental health disorder was killed (see *References*).

The United States Department of Justice (USDOJ) notes the following in their *2016 Guide to Critical Issues in Policing*, "Persons who have a mental illness, are under the influence of drugs or alcohol, or have disorders such as autism can present police officers with difficult challenges. In some cases, a person may brandish a weapon or otherwise appear to pose a threat to the public, to the police, or to himself or herself. The threat may be a real one, or the situation may be less dangerous than it appears. These situations often are complicated when, because of their conditions, persons cannot understand an officer's questions or orders or cannot communicate effectively with the officer."

The United States Appellate Courts have continued to weigh in on law enforcement interactions involving police encounters with persons suffering from a mental health crisis or behavioral problems. These Court rulings have inevitably been driven from use of force encounters. The Courts unquestioningly are advising law enforcement to review and revise use of force policy specific to these types of encounters. The 4th, 5th, 9th, and 10th Circuit Courts have all made rulings in recent years finding that law enforcement essentially needs to slow down, take into consideration a person's mental state, and attempt to de-escalate situations before "forcing" an encounter. ***Sheehan v. City & Cnty. of San Francisco***, 743 F.3d 1211 (9th Cir. 2014); ***Deorle v. Rutherford,*** 272 F.3d 1272 (2001). The 9th Circuit Court has found that a Law Enforcement Officer may be held liable for "intentionally or recklessly provoke[ing] a violent confrontation" despite his otherwise defensive use of deadly force. ***Glenn v. Washington County***, 673 F3d 864 (9th Cir. 2011).

Law enforcement leaders in our state, as well as across the nation, have to navigate this difficult topic, make good sound policy and response decisions for their personnel, the communities they serve, and continue to engage their personnel and communities in conversations around police encounters involving persons in a mental health or behavioral crisis.

In October of 2015, a presentation to the joint memberships of the Oregon Association of Chiefs of Police (OACP) and the Oregon State Sheriffs' Association (OSSA) centered on case law specific to the 9th Circuit Court of Appeals and use of force in the State of Oregon. Upon conclusion of the training it was evident that several Oregon law enforcement leaders were unfamiliar with the latest case law regarding use of force encounters with persons in crisis. It was apparent that there likely was a disconnect between law enforcement use of force training at the agency level compared to what was being taught at the Oregon Public Safety Academy (Department of Public Safety Standards and Training). This disconnect was again in reference to case law specific to the 9th Circuit Court of Appeals.

Furthermore, two additional incidents had come to light that continued to push these issues to the forefront of law enforcement in the State of Oregon. A 2013 Federal lawsuit, *Harrigan v Marion County*, *Oregon*, had a nexus context of violating the plaintiffs rights specific to the American with Disabilities Act (ADA) and unlawful use of force based on the argument that the plaintiff's disability was not taken into consideration prior to the use of force. The second incident related to a City of Eugene, Oregon incident where a veteran with mental health issues was shot and killed by police (Babbs).

DEVELOPING THE TASK FORCE

Both OACP and OSSA agreed to form a Mental Health Task Force consisting of law enforcement, the Department of Public Safety Standards and Training (DPSST) (Oregon Public Safety Academy), local non-profits, mental health professionals, Oregon Health Authority (OHA), 9-1-1 Dispatch, Fire Services, and emergency medical technicians. The purpose of this task force was to provide recommendations around the following: (1) Policy Framework (best practices) regarding police encounters with persons experiencing a mental health crisis; (2) Training at the individual agency level and Department of Public Safety Standards and Training (DPSST), including terminology associated with police encounters of persons in a mental health crisis; (3) Review of DPSST's Mental Health and Disabilities training and identifying recommended components for inclusion in the training component of Crisis Intervention Team (CIT) programs throughout the state.

The first meeting of the Joint Oregon Association of Chiefs of Police and Oregon State Sheriff's Association Mental Health Task Force was in January of 2016. The meeting was led by joint chairs, Woodburn PD Chief Jim Ferraris and Marion County Undersheriff Troy Clausen Two sub-

committees, formed to oversee the overall joint process, were led by City of Eugene Police Chief Pete Kerns, City of Salem Police Chief Gerald Moore, Gilliam County Sheriff Gary Bettencourt and Linn County Sheriff Bruce Riley. Over the course of a year the Joint Task Force met four times and each sub-committee held meetings of their own. The Joint Task Force, its members, and recommendations came to an end in February of 2017. The body of their work is contained in this document. Many hours of conversations, case studies, and work went into producing this document and its recommendations. The Task Force met the goals that had been established around policy framework, training, and defining Crisis Intervention Team training (CIT) within the State of Oregon. Recommendations in each area are backed up with subsequent data, best practices from other states and nations, and from the Federal government.

These recommendations do not come lightly and are made with the intention of keeping Oregon at the forefront of our approach to this difficult topic. As mentioned above, the goal of this task force was to assist our law enforcement leaders navigate this difficult topic, make good sound policy and response decisions for their personnel and communities, and to continue to engage their communities in conversations around police encounters involving persons in a mental health or behavioral crisis.

We would like to sincerely thank the members of the Joint OACP/OSSA Mental Health Task Force. Their dedication to this profession and our communities' health was undeniable. Every person associated with this Task Force was set on helping to develop sound recommendations, practice, and training components. We could not have done this work without them. Furthermore, the assistance of the Department of Public Safety Standards and Training was invaluable, specifically, that of Director Eriks Gabliks and the support services provided by Executive Assistant Theresa Janda.

FINDINGS and RECOMMENDATIONS

POLICY FRAMEWORK

Sub-Committee Co-Chairs: Chief Jerry Moore, Salem Police Department
Sheriff Bruce Riley, Linn County Sheriff's Office

The goal of the Policy Framework subcommittee was to establish recommended parameters for which Oregon policing agencies could potentially adopt into their existing policies around encounters with persons in a mental health or behavioral crisis. The policy framework recommendations as outlined in the *"Law Enforcement Response to Individuals in Behavioral Crisis: A Framework Detailing Options/Recommendations to Law Enforcement Officers Responding to Calls Involving Individuals in Behavioral Crisis,"* are presented in the following fashion:

I.) Purpose of the Framework Recommendations: The intent of these recommendations are to provide all peace officers with resources to deal with subjects who are in behavioral crisis. This includes people exhibiting signs of mental illness, as well as people suffering from substances abuse and personal crisis.

Peace officers within the purview of the United States 9th Circuit Court of Appeals are instructed to consider the potential of a mental crisis that a person may be experiencing during all encounters. This includes the decision to use force if necessary during the contact. De-escalation of these incidents should always be the goal of Oregon peace officers. This expectation does not ask the peace officer to attempt to de-escalate when faced with an imminent safety risk that requires an immediate response.

II.) Definitions: Having a common understanding amongst Oregon law enforcement in policy/protocol terminology both in training and in practical practice brings a better opportunity for understanding how to de-escalate incidents involving law enforcement and persons experiencing a behavioral crisis.

III.) Response Alternatives: Recommendations for communities and law enforcement to have alternatives to arrest and jail. Many of these incidents can be resolved in a manner that does not require charging an individual in a mental health crisis with a crime. The ability to have community partnerships and resources cannot be overstated. Peace officers need viable alternatives to incarceration for many of these contacts. Furthermore, for individuals who are only a danger to themselves and no one else, what alternatives are available to peace officers when making decisions on the scene to not-engage, engage, or disengage with a person in crisis.

Many Oregon law enforcement agencies are developing internal "Response Considerations" for individuals who may be barricaded and suicidal based on case law around exigency. It is the recommendation of this Task Force that Oregon law enforcement agencies have an understanding of the risk associated with Not-Engaging, Engaging, or Disengagement during a behavioral crisis incident (see below in policy framework recommendations). These "Response Considerations" should be based on sound case law review, officer safety considerations, the sanctity of human life, and risk management.

Twenty-four/seven, 365-day Psychiatric Crisis Facilities that are available within Oregon have shown to be extremely successful in helping communities and local law enforcement when dealing with these difficult situations. In addition, the advent of Mobile Crisis Response Teams (police and mental health workers responding to in-progress calls together) has shown to be very effective in the communities they are operating. As an example, Marion County Mobile Crisis units responded to over 500 in progress active mental health calls in 2017 which resulted in only 19 custody arrests and only two (2) uses of force. The Task Force strongly advocates for additional Psychiatric Crisis Centers to be created within the State of Oregon, especially in rural areas where services are limited. The Oregon Health Authority, Oregon National Alliance on Mental Illness (NAMI), Greater Oregon Behavioral Health, Inc. (GOBHI), League of Oregon Cities, and the Association of Oregon Counties would be recommended partners to have at the table to discuss long term strategies for crisis services in Oregon communities. Furthermore, we strongly advocate for additional Mobile Crisis Teams within the state.

TRAINING

Sub-committee Co-Chairs: Chief Pete Kerns, Eugene Police Department

Sheriff Gary Bettencourt, Gilliam County Sheriff's Office

The goal of the training sub-committee was to establish recommendations to the Department of Public Safety Standards and Training on the amount of training hours for basic police recruits during the 16-week Basic Police Academy. The Training Sub-Committee would recommend to the work group that DPSST provide a structured twenty-five (25) hours of dedicated training hours around mental health issues, including response scenarios.

The Basic Police Mental Health Series would consist of: Introduction of the topic (8 hrs.); Scenarios (4 hrs); Legal Considerations (2 hrs.); De-escalation (3 hrs); Veteran Awareness (4 hrs); Scenarios (4 hrs). The National Alliance of Mental Illness's (NAMI) "In Our Own Voice" would also be an optional training for Basic Students while attending DPSST. This is a 2-hour

presentation from community members who suffer from a mental illness condition and are successfully dealing with the diagnosis.

The Training Sub-Committee indicated the proposed curriculum would allow students to be introduced to the concepts and issues they will face on a professional level and then progress through the series in the classroom and in live scenarios that will focus on de-escalation. In addition, information on substance abuse and trauma informed care will also be provided.

On a state-wide level, the Task Force has recommended to DPSST to add a requirement that of the 84 hours of required law enforcement maintenance training to be completed within a 3-year window, 3 hours of training specific to "dealing" with persons in crisis be mandatory for Oregon law enforcement officers. This will be a discussion between DPSST and the Oregon Association of Chiefs of Police and the Oregon State Sheriffs' Office to finalize.

Public Safety agencies across the state of Oregon should also strongly consider implementing the following training strategies for skills based scenario training as well as common approaches to problem solving for their personnel in the field. Both the Boyd Model, commonly referred to as the OODA loop (The OODA loop is an important concept in litigation, business, law enforcement, and military strategy. According to the Boyd Model, decision-making occurs in a recurring cycle of observe-orient-decide-act) and the National Decision Model, a risk assessment framework, or decision making process, that is used by police forces across the country. It provides five different stages that officers can follow when making any type of decision. Both models are referenced below.

CRISIS INTERVENTION TEAMS/TRAINING:

Sub-committee Co-Chairs: Kevin Rau and Linda Maddy, DPSST

Carol Speed, Greater Oregon Behavioral Health, Inc

The Mental Health Task Force in support of DPSST and the newly formed Crisis Intervention Team Center of Excellence (CITCOE) recommends the following for Oregon law enforcement:

Support of the core elements training curriculum designed by CITCOE and adapted from the "Memphis Model" and Crisis Intervention Team (CIT) training throughout the country. CITCOE and the Task Force both agree that developing a core curriculum for Oregon law enforcement agencies who wish to provide the 40 hour CIT intensive training class only strengthens our understanding, approach, and response to persons in a mental health or behavioral crisis incident. What the Task Force and CITCOE hope to prevent are Oregon law enforcement

agencies providing training either locally or regionally and calling it CIT training when the class is less than 40 hours.

CITCOE presented their 40-hour curriculum to the Task Force. We strongly recommend that Oregon law enforcement leaders and both OACP and OSSA support a mandatory definition that Crisis Intervention Team training in Oregon should include the curriculum elements defined by CITCOE.

As an alternative to the 40 hour CIT training classes, Oregon law enforcement agencies could provide training such as Mental Health First Aid for Public Safety (MHFAPS) created by the National Council for Behavioral Health. MHFAPS is an eight-hour codified, evidence based best practice, training curriculum specifically modified to address the law enforcement population and provide a general awareness of mental health issues. It offers information and skills to support someone in a mental health crisis or who is developing a mental health problem. It should be noted that MHFAPS is not a replacement for the "gold standard" of a 40 hour CIT training class and should not be referenced as CIT training.

CITCOE also wanted local law enforcement leaders to under that DPSST does not conduct Crisis Intervention Team training. Rather, DPSST provides training on mental illness and communication as well as response considerations when an officer encounters a person experiencing a mental health crisis. The Basic Police curriculum does not contain all the key components of a CIT curriculum as many of these are driven by community partnerships with mental health provides which vary county by county. Because each Basic Police class is comprised of officers from urban, rural and frontier areas (each having their own resources and challenges), it is problematic to try to include those components in the Basic Police Academy context.

Additional Recommended Readings:

Included in this report are recommended readings and articles for law enforcement leaders and agencies to consider as they look to implement policies and practices regarding law enforcement contacts with people in a mental health or behavioral crisis. The Task Force would strongly recommend reading the Police Executive Research Forums (PERF) work on *Use of Force: Taking Policing to a Higher Standard* and the Bureau of Justice Affairs, *Police-Mental Health Collaboration programs checklists.*

Launching the Data-Driven Justice Initiative: Disrupting the Cycle of Incarceration:

Every year, more than 11 million people move through America's 3,100 local jails, many on low-level, non-violent misdemeanors, costing local governments approximately $22 billion a year. In local jails, 64 percent of people suffer from mental illness, 68 percent have a substance abuse disorder, and 44 percent suffer from chronic health problems. Communities across the country have recognized that a relatively small number of these highly-vulnerable people cycle repeatedly not just through local jails, but also hospital emergency rooms, shelters, and other public systems, receiving fragmented and uncoordinated care at great cost to American taxpayers, with poor outcomes. (White House Briefing Room, 30 June, 2016: https://obamawhitehouse.archives.gov/the-press-office/2016/06/30/fact-sheet-launching-data-driven-justice-initiative-disrupting-cycle). (DOJ and National Association of Counties).

Stepping Up Initiative:

The National Association of Counties (NACo), the Council of State Governments (CSG) Justice Center, and the American Psychiatric Association (APA) Foundation have come together to lead a national initiative to help advance counties' efforts to reduce the number of adults with mental illnesses and co-occurring substance use disorders in jails. With support from the U.S. Justice Department's Bureau of Justice Assistance and other sponsors, the initiative will build on the many innovative and proven practices being implemented across the country.

Stepping Up urges county leaders to pass a resolution and convene teams of agency decision makers and diverse stakeholders to develop a six-step action plan to reduce the number of people with mental illnesses in jails (http://www.naco.org/resources/programs-and-services/stepping-initiative).

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Guide to Critical Issues in Policing, (2016, Jan. 29) *Community Relations Services Toolkit for Policing* United States Department of Justice. https://www.justice.gov/crs/file/836416/download

Examples and Resources to Support Criminal Justice Entities in Compliance with Title II of the Americans with Disabilities Act (2017, Jan.) United States Department of Justice, Civil Rights Division. https://www.ada.gov/cjta.html

Harrigan v. Marion County et al, No. 6:2011cv06174 (2013) District of Oregon, US Federal District Court.

Brian Babb's Final Hour; Deconstructing the Eugene police response that ended in the death of a wounded veteran with PTSD (2015, Aug 9) *The Eugene Register Guard.* http://cloud.registerguard.com/brian-babbs-final-hour/

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Additional Resources/References:

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Public Safety Mental Health Task Force

Jim Ferraris	Chief of Police – City of Woodburn	Co-Chair
Troy Clausen	Undersheriff – Marion County	Co-Chair
Todd Anderson	Training Division Director – DPSST	
Lorraine Anglemier	Legal Services Coordinator – DPSST	
Gary Bettencourt	Sheriff – Gilliam County	
John Bishop	Executive Director – Oregon State Sheriff's Association	
John Black	Lieutenant – Washington County Sheriff's Office	
Chris Bouneff	Executive Director - NAMI Oregon	
Kevin Campbell	Executive Director – Oregon Association of Chiefs of Police	
Brian Carrara	Oregon Fire Chiefs Association – EMS Section	
Wendy Chavez	Oregon Health Authority	
Jim Davis	Fire Chief - Canby Fire District #62	
Robert Day	Assistant Chief – City of Portland Police Bureau	
Lee Dobrowolski	Chief of Police – City of Hillsboro	
Karl Durr	Deputy Chief – City of Eugene Police Department	
Brian Dwiggins	Clackamas County Mental Health	
Craig Flierl	Lieutenant – Oregon State Police	
Eriks Gabliks	Director - DPSST	
Eric Hlad	Commander – Marion County Sheriff's Office	
Nick Hunter	Crisis Response Team – Marion County Sheriff's Office	
Don Johnson	Chief of Police – City of Lake Oswego	
Kelly Jones	Mental Health Response Team – Washington County Sheriff's Office	
Bob Joondeph	Executive Director - Disability Rights Oregon	
Ryan Keck	Supervisor – Center for Policing Excellence - DPSST	
Pete Kerns	Chief of Police – City of Eugene	
David Kammerman	Sr. Trooper - Oregon State Police – Training Division	
Tad Larson	Mental Health Response Coordinator – Marion County Sheriff's Office	
Linda Maddy	Mental Health Training Program Coordinator - DPSST	
Carolyn Mason	Lieutenant – City of Eugene Police Department	
Holly Mathews	Mental Health Response Team - City of Eugene Police	
Steve Mawdsley	Mental Health Response Team – Portland Police Bureau	
Ken Montoya	Legal Counsel – Marion County Sheriff's Office	
Jerry Moore	Chief of Police – City of Salem	
Ryan Nelson	Crisis Response Team – City of Eugene	
Mike Niblock	Fire Chief – City of Salem	
Lisa Peetz	Oregon Health Authority	
Rock Rakosi	Chief of Police – City of Myrtle Point	
Kevin Rau	Mental Health Training Program Coordinator - DPSST	

Bruce Riley	Sheriff – Linn County
Stuart Roberts	Chief of Police – City of Pendleton
Ben Sorenson	Operations Manager AMR-NW
Carol Speed	Greater Oregon Behavioral Health Inc. (GOHBI)
Lisa St. Helen	Operations Manager – City of Portland Bureau of Emergency Communications
April Stream	Frontier 9-1-1 Communications
Scott Willadsen	Survival Skills Program Coordinator - DPSST
Nicole Wrigley	Crisis Response Team – Portland Police Bureau
Jim Yon	Undersheriff – Linn County Sheriff's Office