I was asked for feedback concerning potential law enforcement reform legislation and specifically, on law enforcement reform as it relates to people with mental disabilities. Many years ago I testified before the National Council on Disability and focused almost entirely on the issue of law enforcement and people with psychiatric disabilities. Some of my testimony was quoted in the Council's report *From Privileges to Rights: People Labeled with Psychiatric Disabilities Speak for Themselves.* I've attached still-relevant excerpts from the report's chapter on criminal justice.

I believe involving law enforcement in welfare checks and mental health calls actually *increases* the likelihood of violence -- or of the resolution of complex social problems and conflicts through arbitrary detention. A recent statement from Compassion not Cops:

https://www.compassionnotcops.com/

"We are mental health and disability professionals, advocates, consumer/survivors, family members, people with disabilities, community members, and our organizations. We call for an end to police involvement with mental health response, including an end to 'wellness checks' and 'welfare checks' and an end to police response to mental health and suicide 911 calls.
Police have no role to play in mental health care. Sending police often makes situations worse and risks provoking violence, which disproportionately affects people of color and people with disabilities.
We join Black Lives Matter and call to invest in compassionate community based alternatives to mental health responses.
We ask concerned individuals and organizations to join this call and to use our collective voice to press for immediate policy change at the local, state, and federal levels."

I signed with a comment:

"In 1988 I was active in Project Release, one of the oldest mutual support and advocacy organizations in the mad civil rights movement. While providing peer support I witnessed a specially trained team of NYPD officers respond after being called by a neighbor when someone who was going through an extended, extreme psychological state had become very loud. By the time the police arrived at the apartment where she'd been for five days, she was lying quietly under a blanket —so quietly that the police asked us: 'Which one of you has the problem?' But in a few minutes they had escalated her, decided to remove her to a hospital, tasered a bystander and charged him with felony assault (the charges were later dropped and a civil suit settled). I remember shouting at the team, after they'd used the taser: 'This is *your* doing. You created this violence.'

I live in Vermont now. MacAdam Mason's deadly encounter with the Vermont State Police [https://vtdigger.org/2013/06/27/advocates-say-incremental-progress-on-taser-use-isnt-enough/] exemplifies how little has changed, and how much needs to change."

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During the years when we served on the Act 80 Advisory Committee -- an enactment in response to a use of lethal force by the Brattleboro Police Department -- I repeatedly attempted to get that committee to look at use of force. Participants from the law enforcement community were open to discussing de-escalation and training, but were unreceptive to outside questioning of law enforcement when it came to use of force -- let alone change in their use of force policies or practices. An enactment requiring such change should not rely on good faith compliance by law enforcement. It needs mechanisms for external monitoring and meaningful sanctions for failure to comply.

* There should be monitoring of law enforcement interaction with specific populations -- not only people of color, but also people with disabilities, homeless people, and incapacitated people -- and regular reporting on the results to the legislature
* There should be regular reporting to the legislature on use of force by law enforcement. This should include both aggregate data and copies of use of force reports. Subject to privacy exemptions these records should be posted or otherwise made available for public inspection without charge.
* If "active resistance" is the threshold for justifiable use of force, it needs a clear and narrowed definition.
* Vermont should follow Colorado's lead to the extent possible under Vermont's state constitution and eliminate qualified immunity. See further below.

* I believe Vermont is still an outlier -- one of four states -- in not requiring a license to be actively employed as a law enforcement officer. A license which can be suspended or revoked would be a key step toward accountability.

* Prohibit hog-tying and and set time limits on prone restraint

Years ago when he was known as Amy Beede, Amos Beede reported to me that he was hogtied by Vermont law enforcement. He didn’t give particulars (date or department) but I have no reason to doubt that it occurred. The practice, also called “suitcasing,” should be expressly prohibited. See “Controversial Police Restraint to Be Banned” at https://www.latimes.com/archives/la-xpm-1997-jul-04-me-9731-story.html#:~:text=According%20to%20numerous%20medical%20studies,weight%20of%20their%20own%20body.

Noting its prohibition in the Minneapolis Police Department’s use of force policy:

http://www2.minneapolismn.gov/police/policy/mpdpolicy_5-300_5-300

“d. **Do not** tie the feet of the subject directly to their hands behind their back. This is also known as a hogtie.”

Death by restraint occurs regularly in the parallel universe of human services. There are types of restraint considered high risk whose use by law enforcement should be restricted. From: “National Review of Restraint Related Deaths of Children and Adults with Disabilities: The Lethal Consequences of Restraint” by Equip for Equality, 2011:
“Of the 69 dangerous practices identified, 54% involved a person lying facedown in a prone position, which is associated with increased risk of asphyxia and aspiration;6 51% involved a person lying face-up in the supine position without the person’s head being elevated, which is associated with increased risk of asphyxia, fatal cardiac arrhythmia or respiratory arrest7 and 44% involved staff exerting pressure to the person’s neck or torso, creating a high risk of fatality.8”
…….
8: Ferleger, D., “Human Services Restraint: Reduce, Replace, or Relinquish?” Human Services Restraint (September 2007); O’Halloran, R., M.D., J. G. Frank, M.D., “Asphyxial Death During Prone Restraint Revisited: A Report of 21 Cases,” American Journal of Forensic Medicine and Pathology 21:1 (2000): 50.

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Noting that Vermont DMH’s Regulations Establishing Standards for Emergency Involuntary Procedures prohibit prone mechanical restraint:

https://mentalhealth.vermont.gov/sites/mhnew/files/documents/Rules/EIP_Rule_FINAL_2016.pdf

“d. Mechanical restraints shall not be used when the patient is in a prone position.”

Re: time limits on prone restraint, from the UK Parliament’s Joint Committee on Human Rights:

https://publications.parliament.uk/pa/jt200405/jtselect/jtrights/15/1511.htm

“Restraint in the prone position
246. Restraint in the prone position has been particularly controversial because of the dangers it carries to the patient, and it has been implicated in a number of deaths. At present there is no guidance on a maximum time for restraint in this position, in either police or Mental Health Act detention. The NICE guidance currently in draft form does not prescribe a time limit for prone restraint, but the Report into the Death of David Bennett, who died following prolonged prone restraint, recommended that detainees

should not be restrained in a prone position for longer than three minutes. The Rule 43 Report of the Inquest into the Death of Roger Sylvester also favoured a time limit following which a detainee held in prone restraint would have to be repositioned: "If a mandatory repositioning after 10 minutes was accepted as well as dangers inherent in repositioning after 10 minutes then this would encourage a focus upon obtaining the necessary medical assessment and intervention within that 10 minutes".[243] The report, although noting that there may be dangers involved in mandatory repositioning of a detainee at a fixed time limit, concluded that: "risks of any injury or harm as a result of repositioning are undesirable results which however avoid a worse one if an apparently mentally ill person dies suddenly during prolonged resistance against prone restraint".[244]

247. In our visits to secure hospitals, it was confirmed to us that staff did not observe any fixed limit, such as three or ten minutes, on the amount of time a patient could be restrained in the prone position, but that their training emphasised the risks of asphyxiation in this position, and the aim was to raise the patient as quickly as possible.

248. Reliance on prone restraint is a matter of concern for compliance with Article 2, given the known dangers of this position, evidenced by previous deaths. Whilst we appreciate that an inflexible time limit may cause difficulties in practice, we emphasise that Article 2 requires that patients and detainees should not be placed at risk by use of this position unless absolutely necessary to avert a greater risk to themselves or others, and that they should be restrained in this position for the shortest possible time necessary. **In our view use of the prone position, and in particular prolonged use, needs to be very closely justified against the circumstances of the case, and this should be reflected in guidance. There is a case for guidance prescribing time-limits for prone restraint, departure from which would have to be justified by individual circumstances. Equally importantly, those restraining a detainee should be capable of minimising the risks to him or her, through techniques to ensure, amongst other things, that airways are not blocked. They should be appropriately trained to do so."**

Third Report, 2004

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* Use of force should be required to be **proportionate**.
From the Law on Police Use of Force Worldwide Project, based on international human rights law, the 1979 Code of Conduct for Law Enforcement Officials, and the 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials:
https://www.policinglaw.info/international-standards#:~:text=The%20Principle%20of%20Proportionality,in%20the%20circumstances%20is%20unlawful.
....
"Force shall only be lawful if it is proportionate to the threat posed by a suspect and/or

the harm that a law enforcement official is seeking to avoid.
Disproportionate force that could be necessary in the circumstances is unlawful."
From the American Law Institute Principles of Law, Policing:
https://www.policingproject.org/ali-use-of-force
....

PROPORTIONAL USE OF FORCE

Officers should not use more force than is proportional to the legitimate law enforcement objective at stake. In furtherance of this objective:

(a) deadly force should not be used except in response to an immediate threat of serious physical harm or death to officers, or a significant threat of serious physical harm or death to others;

(b) non-deadly force should not be used if its impact is likely to be out of proportion to the threat of harm to officers or others or to the extent of property damage threatened. When non-deadly force is used to carry out a search or seizure (including an arrest or detention), such force only may be used as is proportionate to the threat posed in performing the search or seizure, and to the societal interest at stake in seeing that the search or seizure is performed.

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The continuum of force seems to have altered over the past 25 years or so -- going straight from verbal intervention to so-called less lethal and effectively eliminating an intermediate step: empty hand control. I think this trend, which is justified as reducing physical risk to officers, unacceptably increases the *public's* risk of physical harm. I think it's especially true for people with disabilities (or people in altered states) whose perception, cognition or emotional disturbance is a barrier to hearing, understanding or complying with an officer's commands.

I also want to flag something which is difficult to propose a remedy for but which is part of a dynamic that causes people with psychiatric histories to live in reasonable fear of law enforcement.

From: *How to prepare for an emergency* by the late D.J. Jaffe (a founder of the Treatment Advocacy Center) and formerly linked to NAMI-VT's website:
"While AMI/FAMI is not suggesting you do this, the fact is that some families have learned to 'turn over the furniture' before calling the police. Many police require individuals with neurobiological disorders to be imminently dangerous before treating the person against their will. If the police see furniture disturbed they will usually conclude that the person is imminently dangerous."

Although Vermont law recognizes that false information can be a factor in involuntary

hospitalization -- see 18 V.S.A. § 7104, Wrongful hospitalization or denial or rights; fraud; elopement -- there's a lack of effective deterrents. Law enforcement should act in the service of equal protection under the law, rather than treating people with actual or perceived mental disabilities as inherently suspect and uncorroborated hearsay about them as a sufficient basis for summary curtailment of liberty. Direct evidence, or at least meaningful investigation, should be required.

During the Act 80 training development I kept raising the issue of people with disabilities as witnesses or victims of crime. I don't think this aspect of interactions with law enforcement was ever addressed in the training. Seeing us only as suspects, problems or perpetrators, despite how disproportionately we tend to be *victims* of crime (see https://pubmed.ncbi.nlm.nih.gov/16061769/) indicates the bias and the culture that undermines both equal protection and responsible policing.

Further below is a statement issued by the National Association for Rights Protection and Advocacy on July 23, 2020. Please share it. I think it's important to note that substituting mental health professionals for law enforcement is not necessarily the solution.

The testimony/open letter submitted by VT Legal Aid (https://legislature.vermont.gov/Documents/2020/WorkGroups/House%20Judiciary/Bills/S.119/Public%20Hearing%20Written%20Testimony/W~Barbara%20Prine~S.124%20and%20S.119%20Public%20Hearing%20Written%20Testimony~8-16-2020.pdf) is reinforced by a study published last month in the Journal of Criminology and Public Policy. From *Effects of school resource officers on school crime and responses to school crime*:

"The study findings suggest that increasing SROs does not improve school safety and that by increasing exclusionary responses to school discipline incidents it increases the criminalization of school discipline. We recommend that educational decision-makers seeking to enhance school safety consider the many alternatives to programs that require regular police presence in schools."

Thanks for keeping me informed. Hope some of this is useful.

laura
https://www.cato.org/blog/colorado-passes-historic-bipartisan-policing-reforms-eliminate-qualified-immunity

Colorado Passes Historic, Bipartisan Policing Reforms To Eliminate Qualified Immunity

by Jay Schweikert

(excerpt)

Colorado, like most states, has a bill of rights that largely mirrors the federal Constitution (and in some ways is even more protective) so this means that SB-217 will cover things like excessive force claims, unlawful arrests, etc. And most importantly, SB-217 specifically provides that “qualified immunity is not a defense to liability pursuant to this section.” So, the law does not technically “eliminate qualified immunity,” insofar as we’re talking about the federal doctrine — if Coloradans bring Section 1983 claims in federal court, those claims will still be subject to qualified immunity. But the law *does* ensure, at least with respect to police officers, that Coloradans will have a robust alternative remedy to Section 1983 claims for violations of their constitutional rights.

Colorado is not the first state to enact a “state analogue” to Section 1983, but it *is* the first state to specifically negate the availability of qualified immunity as a defense through legislation. As it turns out, that clarification is crucial, because in nearly all of the other states that have passed similar laws, state courts have incorporated a similar or identical version of federal qualified immunity, even when the relevant statute says nothing about it. For example, a Massachusetts law provides that “[a]ny person whose exercise or enjoyment of … rights secured by the constitution or laws of the commonwealth, has been interfered with … may institute … a civil action for injunctive and other appropriate equitable relief … including the award of compensatory money damages.” But the Massachusetts Supreme Judicial Court has nevertheless held that the legislature “intended to adopt the standard of immunity for public officials developed under 42 U.S.C. § 1983.”

Thus, the proponents of SB-217 — in particular, the ACLU of Colorado — showed tremendous wisdom in recognizing that any civil rights legislation would need to specifically address and negate the defense of qualified immunity, lest the courts assume the doctrine was meant to apply. I was honored to have the opportunity to testify as a subject-matter expert on qualified immunity before the Colorado House Judiciary Committee on March 5, 2020, where I explained how qualified immunity has blunted both the deterrent and remedial effects of similar civil rights legislation.

Statement by The National Association for Rights Protection and Advocacy, 7/23/20

https://www.narpa.org/narpa-statement-on-police-july-2020/NARPA%20response%20to%20defund%20police%20%207-23.pdf

Police Should Not Respond to People in Emotional Distress/Crisis: The Urgent

Need for Non-Coercive Supports and Services

In the wake of nationwide protests in response to police killings of people of color, there have been calls from activists to defund the police. Many in the defund police movement have rightly called for an end to police involvement in calls related to people in emotional distress/mental health crisis and in doing so-called "wellness/welfare checks," situations which are clearly not appropriate for police intervention. Many have also called for passing the responsibility for handling emotional crises from police to the mental health system.

The National Association for Rights Protection and Advocacy (NARPA) strongly supports the call to end police involvement in calls related to emotional distress/mental health crises. We also strongly oppose passing this responsibility on to existing public mental health systems. While the call to replace cops with mental health clinicians may be well-meaning, many who support this action may not realize that the mental health system is a white-dominated, violent, coercive, and unaccountable structure that disproportionately harms people of color, rests on the threat of force, and is complicit with the carceral state and the prison industrial complex.

NARPA believes it is imperative to replace coercive responses with well-funded local systems of non-coercive, voluntary supports and services for people in emotional distress, especially peer support services and peer-run crisis alternatives. In addition, we call for community investment in the welfare of people, particularly marginalized groups, to ensure that everyone has access to the kind of essential human services that help protect people from the trauma that contributes to emotional distress, including health care, housing, education, and employment services that are anti-racist in perspective and practice.