



ISSN 1935-0007

*Cite as:* 2012 (2) AELE Mo. L. J. 101

Civil Liability Law Section – February 2012

## **Disturbed/Suicidal Persons -- Part One**

### *Contents - Part One*

- **Introduction**
- **When can force be used?**
- **Self-defense**
- **Defense of others**

### *Contents - Part Two (next month)*

- **After resistance ceases**
- **Restraining the disturbed or suicidal person**
- **Some suggestions**
- **Resources and References**

### ❖ **Introduction**

- This is the beginning of a two-part article

In addition to responding to reports of crimes and patrolling or investigating to try to detect and prevent crimes in progress, police officers frequently are called upon to respond to situations involving suicidal or otherwise disturbed persons. Being suicidal is a mental health problem and social issue, and not itself a crime. At the same time, suicidal or otherwise disturbed persons frequently do engage in conduct which constitutes a crime.

Police confronting a disturbed or suicidal person face a number of dilemmas. Under what circumstances can they use force to subdue or restrain the individual? How much force, if any, is justified? At what point should the use of force end? What tactics are best to accomplish the goals of protecting the public, protecting the disturbed or suicidal person, and protecting the officers involved? Can officers be held liable for failure to prevent a “successful” suicide?

A good number of court decisions have grappled with these questions. Many individual situations may have some unique characteristics. Yet there are also a number of threads in common in many of the cases which present some general lessons to guide planning and training for officer response to the disturbed or suicidal individual.

This article briefly examines some of these cases, and then attempts to list some suggestions based on the case law. A list of useful resources and references is presented at the end. An [earlier article](#) in this publication addressed the very specific circumstance of “suicide by cop,” cases in which a suicidal person is attempting to provoke the officer to kill them as a means of taking their own life, so that discussion won’t be repeated here. Finally, this article does not address how to respond to a terrorist who plans a suicidal bomb attack.

### ❖ When can force be used?

Police in [Glenn v. Washington County](#), #10-35636, 661 F.3d 460 (9th Cir. 2011), responded to a 911 call concerning an intoxicated teenager threatening to kill himself with a pocket knife. He ignored their orders to drop the knife, instead holding it to his throat. The officers used a beanbag shot gun to subdue and disarm him. When he stepped away, and moved towards his parents’ house, they shot and killed him.

A federal appeals court ruled that the use of the beanbag shotgun may have been excessive, noting that the officers had the option of using the less extreme force of a Taser, but did not do so.

The court then made a thought-provoking comment. It noted that prior case law did not specifically identify as a relevant factor in justifying the use of force “whether the suspect poses a threat to *himself*, [but] we assume that the officers could have used some reasonable level of force to try to prevent” the teenager from taking a suicidal act.

“But we are aware of no published cases holding it reasonable to use a *significant* amount of force to try to stop someone from attempting suicide. Indeed, it would be odd to permit officers to use force capable of causing serious injury or death in an effort to prevent the possibility that an individual might attempt to harm only himself. We do not rule out that in some circumstances some force might be

warranted to prevent suicide, but in cases like this one the ‘solution’ could be worse than the problem.”

The subsequent gunfire may also have been excessive. Summary judgment for the defendants was reversed, and further proceedings were ordered on the excessive force claims.

Similarly, in [\*Buchanan v. City of Milwaukee\*](#), #02-C-0486, 290 F. Supp. 2d 954 (E.D. Wis. 2003), the court ruled that an officer was not entitled to qualified immunity on a claim that he shot a mentally ill man in the stomach as he pointed a butcher knife towards himself with suicidal intentions, as deadly force is only permissible when a suspect poses an imminent threat to an officer or to others. The alleged conduct of shooting the suspect in the stomach as he turned the knife against himself, if true, violated clearly established constitutional rights which a reasonable officer would have known of.

When, then, can “significant” levels of force or even deadly force be utilized in connection with an encounter with a suicidal or otherwise disturbed person? Two relatively clear circumstances justifying the use of such force are when the officers act in self-defense, and when they act in defense of others, such as the suicidal person’s family members, neighbors, hostages, or other members of the public.

### ❖ Self-defense

Officers clearly have a right to defend themselves with reasonably necessary force from attacks by disturbed or suicidal persons, including the use of deadly force when the suspect appears to pose an imminent threat of death or serious bodily harm to an officer.

In [\*Kesinger v. Conner\*](#), #03-13883, 381 F.3d 1243 (11th Cir. 2004), for example, a police officer who shot and killed suicidal man who attempted to stand in front of moving traffic on a highway, and told him that “I am Jesus Christ [...] I am going to die and so are you!” and then attacked him, was entitled to qualified immunity from liability, as he acted in reasonable self-defense.

Likewise, in [\*Isom v. Town of Warren\*](#), #03-1765, 360 F.3d 7 (1st Cir. 2004), the court ruled that officers acted reasonably in using pepper spray in an attempt to subdue an emotionally disturbed suicidal man who was armed with an axe and had previously taken

hostages, and in shooting and killing him when he responded to the pepper spray by lifting the axe and running towards them.

### ❖ Defense of others

Officers may use reasonable force against disturbed or suicidal person in defense of others, including their fellow officers and members of the public.

No “rational juror,” a federal appeals court ruled in [\*Untalan v. City of Lorain\*](#), #04-4489, 430 F.3d 312 (6th Cir. 2005), could find that a police officer violated a schizophrenic suspect’s rights by shooting and killing him seconds after he stabbed another officer with a butcher knife.

The appeals court found that the shooting officer lawfully seized the suspect with gunfire under the totality of the circumstances because he posed an immediate threat to others in the area and was actively resisting attempts to restrain him.

Assuming that the suspect lost control of the butcher knife just before being shot, the amount of time between the loss of such control and shooting could not have been more than a few seconds and could have been as little as a split-second.

Under these circumstances, the court would not “pass judgment” on the officer’s action using “20/20 hindsight.” The officer could have been acting on the perception that the suspect still had the knife, and was actively resisting, and was therefore entitled to qualified immunity.

The court in [\*Summerland v. County of Livingston\*](#), #06-1975, 2007 U.S. App. Lexis 21045 (Unpub. 6th Cir.), ruled that deputies did not act unreasonably in shooting and killing a mentally disturbed man who had placed a large sign in his front yard that said, “no police you be shot.”

The suspect came out of his mobile home holding something the officers believed to be a handgun and took a kneeling stance that was believed to be a shooting position, pointing it in the direction of an officer. The suspect responded to commands to drop the object by yelling, “Shoot me. Shoot me.” The suspect was subsequently shot and killed as he was charging towards the officers.

Force may be used to prevent an unstable individual from engaging in conduct that could pose a serious risk of harm to others. The officer need not, in some circumstances, wait until the suspect is pointing the gun at another person or just about to run someone down with a vehicle. In [\*Long v. Slaton\*](#), #06-14439, 508 F.3d 576 (11th Cir. 2007), an Alabama deputy sheriff was found to have acted reasonably in shooting and killing a mentally unstable man who took possession of a marked sheriff's cruiser when he was informed that he was going to be arrested, and began backing away.

The deputy who shot him warned that he would be shot if he did not stop his escape. The decedent could have used the car to injure or kill someone, especially since it cloaked him with the "apparent authority" of a police officer.

When suicidal or disturbed persons have actually harmed others, or have essentially taken hostages or barricaded themselves in with others, officers can reasonably treat this as an emergency situation in which a variety of tactics and levels of force may be necessary.

This is illustrated by [\*Ewolski v. City of Brunswick\*](#), #00-3066, 287 F.3d 492 (6th Cir. 2002), holding that a city and its officers were not liable for the deaths of deranged husband and his son, which arose from a two-day armed standoff with police and ended in a murder-suicide. Exigent circumstances supported a warrantless entry into the home based on the wife and son being held by the man in the home. The use of force, including tear gas, a battering ram and incendiary devices was reasonable, rather than excessive, under the circumstances.

The officers were faced with a situation in which they had "limited" choices among necessarily risky alternative tactics for attempting to rescue the family. The police chief's decision to initiate a rescue with "suboptimal equipment," instead of waiting for thermal imaging technology, which might have improved the chances for a successful assault on the home was, at worst, negligence, not deliberate recklessness, and could not be the basis for a substantive due process claim that police actions increased the risk to the family by launching an "ineffective" assault on the home.

Officers in [\*Bell v. Irwin\*](#), #02-2262, 321 F.3d 637 (7th Cir. 2003), cert. denied, [\*Bell v. Irwin\*](#), 2003 U.S. Lexis 5597 (2003), the court stated, were properly granted summary judgment in lawsuit brought by a suicidal man armed with knives who threatened his wife and then officers, and then was subdued by shooting him with "beanbag" rounds.

The officers' use of force was objectively reasonable under the circumstances, and the appeals court expressed agreement with trial judge that the plaintiff should have "thanked" rather than sued the officers.

The appeals court noted that it was "easy in retrospect to say that officers should have waited, or should have used some other maneuver," but that the law on use of force does not require second-guessing "if a reasonable officer making decisions under uncertainty and the press of time would have perceived a need to act." The risks of intervention, "unfortunately realized when one round hit" the plaintiff in the head, "still seem less than the risks of doing nothing."

---

### **AELE Monthly Law Journal**

Bernard J. Farber  
Civil Liability Law Editor  
P.O. Box 75401  
Chicago, IL 60675-5401 USA  
E-mail: [bernfarber@aele.org](mailto:bernfarber@aele.org)  
Tel. 1-800-763-2802

© 2012, by the AELE Law Enforcement Legal Center  
**Readers may download, store, print, copy or share this article,  
but it may not be republished for commercial purposes. Other  
web sites are welcome to link to this article.**

---

- The purpose of this publication is to provide short articles to acquaint the reader with selected case law on a topic. Articles are typically six to ten pages long. Because of the brevity, the discussion cannot cover every aspect of a subject.
- The law sometimes differs between federal circuits, between states, and sometimes between appellate districts in the same state. AELE Law Journal articles should not be considered as "legal advice." Lawyers often disagree as to the meaning of a case or its application to a set of facts.

---

[AELE Home Page](#) --- [Publications Menu](#) --- [Seminar Information](#)