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Civil Liability for Detention for Mental Health Evaluation or Commitment

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❖ **Introduction**

In addition to carrying out arrests of individuals suspected of criminal conduct, police officers may be called on to detain mentally ill persons for purposes of mental health evaluation or commitment. The following article takes a brief look at the issue of what constitutional legal standard is required for such detention, as well as examining some cases in which courts have found detentions for this purpose justified or unjustified in the context of civil lawsuits. This is followed by a discussion of some cases in which even if the detention itself was justified, the manner in which it was carried out arguably violated someone's rights, whether by use of unnecessary force, violation of privacy rights, or the conveying of false information to third parties. This is followed by a listing of useful and relevant resources and references.

❖ **Legal Standard: Probable Cause**

In order for officers to take an individual into custody for mental health evaluation, absent other explicit authority such as a court order or state mandated procedure pursuant to a statute (or criminal conduct), they generally must have arguable probable cause to believe that the individual poses a threat to himself/herself or others.

In *Fisher v. Harden*, #02-3996, 398 F.3d 837 (6th Cir. 2005), the court very explicitly held that probable cause, rather than reasonable suspicion, was required to make a mental health seizure of an individual during an investigation of a report that he was suicidal. In this case a federal appeals court overturned summary judgment in a lawsuit against a police officer claiming unreasonable seizure, finding that the plaintiff arrestee set forth allegations which, if true, showed that the arrest was made without the probable cause that is required in order to make a mental health seizure.

The plaintiff, a 77-year-old retired farmer, had gone out one afternoon to shoot groundhogs, which he routinely did in an effort to help protect his neighbors' crops in the rural farming area. He was dressed in bib overalls, according to the court's decision, and had taken with him a folding chair, a rifle, and a tripod to help him aim the rifle and hold it steady. He positioned himself, sitting in the folding chair, upon an elevated railroad grade on one of his neighbor's property.

Someone passing by noticed him off in the distance sitting on railroad tracks, and phoned the county sheriff's department, incorrectly reporting that a possibly suicidal man had his feet tied to the railroad tracks. Two deputies, who are husband and wife, were dispatched, and from 250 yards away used their vehicle's microphone and speaker system to arouse his attention and instruct him to come towards them.

When the deputies noticed, as the man walked towards them, that he had a rifle slung over his shoulder, they drew their firearms, crouched behind their open cruiser doors, and ordered him to lay down the rifle. He complied, and then complied with further instructions to lay down his folding chair and tripod.

When he reached them, they ordered him, at gunpoint, to lay face down on the roadway, and handcuffed him behind his back. He immediately went into cardiac arrest. He was subsequently taken to a hospital for emergency care, and survived, but suffered permanent disability as a result of the incident.

On his civil rights lawsuit claiming that the officers violated his constitutional rights against unreasonable search and seizure without probable cause, the trial court determined that the officers were entitled to qualified immunity, and also found that there were no grounds for a claim against the sheriff for failure to adequately train and supervise his deputies.

The appeals court rejected the argument that the officers only needed reasonable suspicion that the plaintiff was suicidal to support a mental health seizure, finding that probable cause is required to support a mental health seizure.

The trial court had ruled that the officers did not arrest the plaintiff but rather restrained him as part of an investigative stop. The trial court also found that when probable cause is lacking, officers may, on the basis of an articulable and reasonable suspicion that a man might harm himself or others, make such an investigative stop for mental health purposes. The federal appeals court disagreed. It found that the plaintiff was seized, and that the defendant deputies conceded that they were not responding to a report of criminal activity, and never suspected the plaintiff had engaged in or was about to engage in any crime.

“Absent suspected criminal activity, in this circuit a law enforcement official may not physically restrain an individual merely to assess his mental health. Rather, we have established that in the context of a mental health seizure an officer must have probable cause to believe that the person seized poses a danger to himself or others. [...] A showing of probable cause in the mental health seizure context requires only a “probability or substantial chance” of dangerous behavior, not an actual showing of such behavior. Just as actual innocence will not render invalid an arrest that is properly based upon probable cause that criminal activity was occurring, a mental health seizure can rest upon probable cause even when the person seized does not actually suffer from a dangerous mental condition.”

In this case, the deputies were unable to demonstrate that they had probable cause to believe that the plaintiff was a danger to himself or others. When they arrived, his response to their request that he walk towards them showed that he was not “tied” to the railroad tracks as had been reported, which alone would have caused a reasonable officer to question the veracity of the reported attempted suicide. The plaintiff complied with the officers’ orders to put down his rifle, and he proceeded towards them in a normal manner for an individual of his age.

“Even after Fisher arrived at the road and it became apparent that he was a man of his later years and dressed in hunting attire, the officers still did not make any inquiry of him, his purpose for being there, or the activity in which he was seemingly engaged at the time of their arrival. Instead, with their firearms continually trained upon him, they ordered Fisher to get face-down on the roadway and handcuffed him behind his back.”

Given that the plaintiff did nothing suspicious or threatening, and did nothing to make them afraid, there were “simply no facts” from which a reasonable officer could have found that the plaintiff posed a danger to himself or others at the time he was seized. Accordingly, viewing the facts in the light most favorable to the plaintiff, a Fourth Amendment violation would be established.

The appeals court also found that the force used by the deputies elevated their seizure of the plaintiff from a mere investigatory stop to an arrest, and that the deputies alleged actions violated clearly established law, so that they were not entitled to qualified immunity. The appeals court, however, found no adequate indications of inadequate training of the deputies on the part of the county sheriff, and therefore upheld the dismissal of claims against him.

Other federal circuit courts of appeal that have examined this issue have similarly held that probable cause is the correct standard. See, e.g., [Sullivan v. County of Hunt, Tex.](#), #03-41165, 106 Fed. Appx. 2152004 U.S. App. Lexis 15126, 2004 WL 1636919 (5th Cir.) (citing [Anthony v. City of New York](#), #01-7978, 339 F.3d129, 137 (2d Cir. 2003), a mental health seizure case in which the Second Circuit granted qualified immunity under the probable cause standard); [Bailey v. Kennedy](#), #02-1761, 349 F.3d 731 (4th Cir. 2003) (officers must have probable cause to seize for emergency mental evaluation); [Glass v. Mayas](#), #92-7673, 984 F.2d 55 (2d Cir. 1993) (requiring probable cause for involuntary hospitalization); [Sherman v. Four County Counseling Ctr.](#), #92-1671, 987 F.2d 397 (7th Cir. 1993) (requiring probable cause to detain for psychiatric evaluation); [Gooden v. Howard County Md.](#), #89-2470, 954 F.2d 960 (4th Cir. 1992) (finding that it is clearly established that officers need probable cause for mental health seizure); [Harris v. Pirch](#), #81-1724, 677 F.2d 681 (8th Cir. 1982) (requiring good faith and probable cause for emergency commitment); [In re Barnard](#), #71-1977, 455 F.2d 1370 (D.C. Cir. 1971) (requiring probable cause to detain person believed to be mentally ill and dangerous).

❖ Justified Detention

In many cases, courts applying this standard have found officers' actions justified in detaining individuals believed to be a threat to themselves or others in order to facilitate mental health evaluation or commitment. In [Palter v. City of Garden Grove](#), #05-56322, 237 Fed.Appx. 170, 2007 U.S. App. Lexis 13848 (9th Cir.), for example, when the officer had reason to believe, at the time he detained a man for psychiatric evaluation, that he had talked about killing himself, had access to a gun, was about to be served with a divorce act, had pain medication, was under a therapist's care, and was thought to have been going to leave a "goodbye" note at his daughter's house, his actions were justified. The officer was not required to believe the detainee's statements contradicting information supplied to the officer by his friend.

Similarly, officers who were aware that a man had made threats to "blow out his brain" with a gun and expressed threats of physical violence towards others did not violate his Fourth Amendment rights or Missouri state law in placing him on a 96-hour psychiatric

hold at a hospital. The detainee also failed to show that the officers used excessive force in restraining him, as he himself admitted that he resisted them when they attempted to take him into custody, requiring them to restrain him through force and handcuff him.

Additionally, his restraint only caused minor cuts and abrasions. [*Lacy v. City of Bolivar, Missouri*](#), #04-2702, 416 F.3d 723 (8th Cir. 2005).

In [*Must v. West Hills Police Dept.*](#), #03-4491, 126 Fed. Appx. 539, 2005 U.S. App. Lexis 4504 (3rd Cir. 2005), officers did not violate any clearly established constitutional rights by transporting a man, who had engaged in “strange behavior,” attempting to enter parked vehicles, and running onto porches in the neighborhood, to a hospital for a psychiatric examination without his consent.

Similarly, N.Y. officers did not violate man’s due process rights by handcuffing him and taking him to a psychiatric hospital for evaluation on the basis of information obtained from his wife that he was a schizophrenic who was not taking his medication and was hearing voices. [*Mawhirt v. Ahmed*](#), #96-cv-04773, 86 F. Supp. 2d 81 (E.D.N.Y. 2000).

Just as officers may, at times, have arguable probable cause to arrest someone for a crime who ultimately turns out to be innocent, they may be mistaken, but justified, in detaining someone for mental health evaluation. Removing a woman from her home and forcibly taking her to a hospital for emergency psychiatric evaluation could be viewed by reasonable officers as “not only reasonable but prudent” when they had reason to believe she might be suicidal, even if they were mistaken. [*S.P. v. City of Takoma Park, Maryland*](#), #97-1218, 134 F.3d 260 (4th Cir. 1998).

Officer had probable cause to take a depressed man into protective custody based on his consumption of alcohol, number of pills which appeared to be missing from his medication, and his phone call to psychologist; the use of pepper spray to restrain man and take him to hospital was reasonable when officer had reason to believe man might be attempting suicide. [*Monday v. Oullette*](#), #95-2363, 118 F.3d 1099 (6th Cir. 1997).

In [*Radcliff v. County of Harrison*](#), #31S01-9402-CV-110, 627 N.E.2d 1305 (Ind 1994), the court found that a sheriff and a deputy were immune from liability for taking a woman into custody, pursuant to a judge’s order to confine her as “mentally ill” and in need of restraint, despite the fact that she was taken to jail rather than to a mental health center because the mental health center had no space available.

A police officer did not act unreasonably in detaining a man and taking him to a state hospital for mental evaluation after he pointed a finger in the officer’s face during a conversation about his claim that government officials had been harassing him. At the hospital, he was diagnosed with “psychotic disorder--not otherwise specified.” His

statements indicated that he would follow police and try to “get to the bottom” of the purported attacks on him showed that there was a substantial risk that he would engage in dangerous and irrational behavior and that he was mentally ill. Nothing that the officer did was “shocking” to the conscience or violated his rights. The plaintiff also did not produce any evidence that the officer gave false information about him to hospital personnel. [*Simon v. Cook*](#), #06-6514, 261 Fed. Appx. 873. 2008 U.S. App. Lexis 2381 (6th Cir.).

❖ Unjustified Detention

When probable cause to believe that a person is a danger to themselves or others is not present, a detention for mental health evaluation or commitment will not be justified by the courts and may lead to civil liability.

In [*Meyer v. Board of County Commissioners of Harper County, Oklahoma*](#), #04-6106, 482 F.3d 1232 (10th Cir. 2007), for example, a federal appeals court reinstated a lawsuit by woman who claimed that when she tried to report her boyfriend’s assault to deputies after she broke up with him, they would not allow her to file a complaint, and that they subsequently took her to a psychiatric center for commitment, which occurred because they lied about her actions. Her boyfriend was a town employee, and allegedly a personal friend of a number of the deputies.

The appeals court found that the trial court improperly disregarded evidence which was sufficient to have allowed a jury to find that one or more of the deputies lied to get her committed, and that the plaintiff presented enough evidence that the deputies acted to have her committed in retaliation for her trying to file a complaint.

Similarly, in [*Goines v. Valley Cmty. Servs. Bd.*](#), #15-1589, 822 F.3d 159 (4th Cir. 2016), when a man reported to police that there was some problem with his cable television reception, he was trying to report that he thought a neighbor had wired in to his service to steal cable television, but the officers, believing that he was saying someone was “controlling his television” took him for a mental health evaluation and after the evaluation, he was detained for six days as a possible threats to others. The plaintiff stated a viable claim that the officers lacked probable cause to initially detain him.

While he did quote from an incident report prepared by the officers afterwards, his claim was based not on hearsay contained in the report, but on his statement that he had no mental illness and that the officers lacked probable cause to detain him based on the alleged facts of the incident. Claims against the mental health evaluator and her employee were properly dismissed as their screening report did provide a basis for further detention.

❖ Method of Detention

Whether or not detention itself is justified, the method by which it is carried out must be appropriate, or liability may be an issue, as illustrated by the following cases.

In [*May v. City of Nahunta, Georgia*](#), #15-11749, 2016 U.S. App. Lexis 20501 (11th Cir.), a woman fell into a deep sleep after a taxing few days taking care of her Alzheimer-stricken mother. Family members were unable to rouse her and EMTs arrived, waking her up with an ammonia capsule. She declined being taken to a hospital. In the interim, an officer received a call from 911 requesting assistance at the residence. When he arrived, one of the EMTs told him that the woman had “been a little combative to herself,” was upset, and had been “scruffing and hitting herself in the head.” He talked to a hospital where she had previously been diagnosed as suffering from caregiver breakdown and Pick’s disease, which can involve headaches and seizures. He decided to seize the woman in her bedroom and take her to the hospital for a psychological evaluation.

A federal appeals court held that the officer had arguable probable cause to seize the woman as a possible danger to herself, rejecting her unlawful seizure and false imprisonment claims. Further proceedings were ordered, however, on whether the officer’s conduct during the seizure was done in an extraordinary manner unusually harmful to plaintiff’s privacy interests, such as refusing to leave her alone while she removed her nightgown and put on other clothing, which he directed her to do, forcing her to disrobe, which implicated her right to privacy and personal security. He failed to summon an available female EMT or female relative for that purpose, and there was also testimony that he attempted to pull her nightgown from her shoulder, and “used the threat of deadly force to compel her to remove her shorts, in order to first put on undergarments, by patting his gun after she initially refused.” If true, the appeals court said, this violated her clearly established rights.”

The amount of force used in carrying out the detention can be an issue, even when the detention itself is justified. In [*Samuelson v. City of New Ulm*](#), #04-3332, 455 F.3d 871 (8th Cir. 2006), a homeowner in New Ulm, Minnesota called the police to report what he believed were intruders breaking into his garage. He went outside, where police officers arriving on the scene mistakenly took him for an intruder, and apprehended him. Because of his behavior at the time, the officers transported him to a medical facility, where a doctor placed him on a 72-hour hold for evaluation. He sued the city and the individual officers, claiming that these actions constituted excessive force and unreasonable seizure.

The trial court granted summary judgment for the individual defendants on the basis of qualified immunity. A federal appeals court reversed in part, finding that the plaintiff’s version of events, if true, was sufficient for a rational jury to conclude that the officers had

acted maliciously in the use of force against him, but also ruled that the officers acted reasonably under their “community care-taking function” in taking him to the hospital for evaluation.

The plaintiff contended that he told an officer who arrived on the scene that he owned the garage, and that he lived in the house. Despite this, he claimed, an officer got on top of him, and punched him in the ribs, head, and neck, and then other officers “piled on.” He further asserted that when he asked, “What did I do? I am the landowner,” that an officer responded, “You know what you did. And you keep it up and you are really going to get a beating.” The plaintiff further claimed that he did not retaliate against the officers or attempt to escape from them.

The officers allegedly only asked for his name after he was handcuffed. He claimed that an officer grabbed him by his pinky fingers at least twice, bringing him to his knees, pushing him to the ground, and picking him up again. He also claimed that officers squeezed the handcuffs, causing pain in his wrists. He stated that he was the one who called, and at that time, an officer took his wallet and examined his driver’s license.

They placed him in a police car, searched the garage, and found no sign of a break-in or any intruders. One of the officers decided to take him to a medical center based on his demeanor. He allegedly arrived at the hospital in a state of severe shock, and a doctor who examined him stated that “his mind would all of a sudden not track. He would be saying one thing, and then he would forget,” and that “he does not make any sense.” The doctor signed a written application for a 72-hour hold and stated that the plaintiff’s fast heart rate and abnormal potassium and creatinine levels were most likely due to high stress levels.

The plaintiff claimed that the experience caused him various physical and mental injuries and difficulties.

The appeals court, viewing the evidence in the light most favorable to the plaintiff, found that his version of events would show that he was compliant with the officers’ requests and did not resist them, but that they allegedly used force against him which would raise a genuine issue of fact as to whether they used excessive force both in restraining him and after he was restrained. The appeals court also disagreed with a finding by the trial court that the plaintiff’s injuries were minimal, given that there was medical evidence showing a shoulder injury serious enough to require surgery, along with continuing shoulder pain a year after the incident.

The right not to be subjected to such force when not resisting arrest, the appeals court stated, was clearly established, so that qualified immunity for the officers was improper, given a disputed issue of fact about whether the plaintiff resisted at all.

The appeals court rejected, however, the claim that the officers violated his constitutional rights by transporting him to the hospital against his will where he was placed on 72-hour psychiatric hold. It agreed with the officers that they acted reasonably under their “community care-taking function.” The plaintiff, the court noted, was not speaking in a coherent manner even during the 911 call. The officers also believed that he was hallucinating because, although he had reported intruders, the garage was secure and the officers uncovered no traces of a burglary. Additionally, there was a strong odor of varnish in the garage, and he stated that he had varnished some furniture earlier. He also allegedly asked an officer why the wheels were turning on a stationary police car. Under these circumstances, taking him to a hospital for observation was not objectively unreasonable.

In *Bruce v. Guernsey*, #14-1352, 777 F.3d 872 (7th Cir. 2015), a girl’s high school boyfriend told an employee at school that she had tried to kill herself. The employee called the police and an officer was sent to the home where the girl was staying, detaining her until a sheriff’s deputy arrived and took her, over her objections, to a hospital where she was subjected to a mental health examination.

The deputy allegedly falsely said that he had a copy of a prior physician’s medical examination, which had not actually taken place, and wrote that the boyfriend had personally told him about the alleged suicide attempt, a statement the boyfriend denied making. Both the officer and the deputy allegedly ignored statements by the girl’s father contradicting the suicide report, as well as the girl’s calm demeanor.

A federal appeals court upheld a ruling that the officer had probable cause for his actions, but reversed a grant of qualified immunity for the deputy, holding that if the facts were as claimed, he would have overstepped the boundaries of the Fourth Amendment by taking the girl to the hospital and then making false statements that caused her more prolonged detention.

❖ Resources

The following are some useful resources related to the subject of this article.

- [False Arrest/Imprisonment: Mental Illness Commitment](#). AELE Case Summaries.
- [False Arrest/Imprisonment: Unlawful Detention](#). AELE Case Summaries.
- [Responding to Persons with Mental Illness or in Crisis](#), by Lisa Judge, presentation at the IACP Legal Officers' Section, Chicago, Illinois (October, 2015)

❖ Prior Relevant Monthly Law Journal Articles

- [Disturbed/Suicidal Persons -- Part One](#), 2012 (2) AELE Mo. L. J. 101.

- [Disturbed/Suicidal Persons -- Part Two](#), 2012 (3) AELE Mo. L. J. 101.
- [Public Protection: Part Two – The Mentally Ill or Deranged](#), 2013 (6) AELE Mo. L. J. 101.
- [Police Interactions With Autistic Persons](#), 2009 (7) AELE Mo. L. J. 101.
- [Police Accommodation of Mentally Impaired Persons Under the Americans with Disabilities Act \(Part One\)](#), 2015 (9) AELE Mo. L. J. 101.
- [Police Accommodation of Mentally Impaired Persons Under the Americans with Disabilities Act \(Part Two\)](#), 2015 (10) AELE Mo. L. J. 101.
- [Mental Health Care of Prisoners](#), 2009 (11) AELE Mo. L. J. 301.

❖ **References:** (*Chronological*)

1. [The Importance of Mental Health Training in Law Enforcement](#), by Nicholas Wilcox, FBI Law Enforcement Bulletin (July 2015).
2. [Statewide Law Enforcement/Mental Health Efforts: Strategies to Support and Sustain Local Initiatives](#), Council of State Governments Justice Center (January 8, 2013).
3. [Improving Responses to People with Mental Illnesses: Tailoring Law Enforcement Initiatives to Individual Jurisdictions](#), BJA-Sponsored, March 2010, NCJ 229713. (68 pages).
4. [Keeping the Peace: Police Discretion and the Mentally Ill](#), by Linda A. Teplin, National Institute of Justice Journal (July 2000)

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