

# Law Enforcement's Response to Mentally Ill Persons

Martin J. Mayer, General Counsel, California Police Chiefs' Association



International Association of Chiefs' of Police Annual Conference  
San Diego, California – September 30, 2012

## Legal Issues of Concern

First responders actions, without any advanced knowledge of a person's mental illness. Primary responsibility is still to respond to the incident. Percent of contacts involving mental illness is still relatively low – how does the officer know of the problem?

- Increased risk of harm to officers by persons with mental illness.
- Duty to “protect” the suspect from harm at the hands of law enforcement – percent of persons with mental illness harmed by law enforcement is greater than those without such illness.
- Concerns regarding “suicide by cop” when confronting an individual with a mental illness.

## Examples of Specific Incidents

**Spokane, WA** (2012) – Following the death of a mentally ill man, Otto Zehm, in 2006, the family settled a civil lawsuit against the City and nine police officers. The settlement calls for: (1) \$1.67 million; (2) an apology, two young women erroneously accused him of stealing money from a nearby ATM machine; (3) a recommendation to name a permanent structure in a city park in honor of Zehm; (4) crisis intervention training for all Spokane police officers who have not received it; and (5) \$50,000 for a consultant to advise the city about updates to its use-of-force policy.

**Brooklyn, NY** (2012) – Following the death of a 30-year-old mentally ill woman, Shereese Francis, a lawsuit has been filed against the City of New York and four officers, claiming the woman's death may have been due to excessive force. The suit said Francis's family had contacted an ambulance, not police, because she was acting “irrationally.” The lawsuit charges that the officers knew she required medical attention but instead “treated her like a criminal suspect, improperly handcuffed her face-down on the bed, and beat her after she was already

restrained.” The family’s attorney claimed that police received inadequate training to deal with the mentally ill.

**Fullerton, CA** (2011) – Use of force against a mentally ill homeless man, 36 year old Kelly Thomas, resulted in: (1) major protests in the City; (2) recall of three members of the City Council; (3) resignation of chief of police; (4) indictment of two officers, one for Murder in the 2nd degree, and one for Involuntary Manslaughter; (5) change in policy – chief now to be appointed by, and directly accountable to, the City Council, not the City Manager; (6) settlement in the amount of \$1,000,000 with the mother of Thomas and a pending, multi-million dollar lawsuit filed by his father.

**Portland, OR** (2010) – Following the death of a mentally ill man in police custody, (1) the city agreed to pay \$1.6 million to settle a lawsuit; (2) Portland Mayor Sam Adams fired the city's police chief stating that the factors that went into his decision were "cumulative."

- It was announced on September 15, 2012, that, the use of deadly force during the past three years, involving ten mentally ill persons, has resulted in:
  - (1) investigation by the federal Department of Justice; [DoJ [Press Release #12-1111](#)]
  - (2) finding that the Portland Police Bureau “engaged in an unconstitutional pattern or practice of excessive force against people with mental illness;” [[DoJ Findings](#)]
  - (3) implementation of a consent decree which calls for, among other things, new training for officers in dealing with mentally ill persons, and working closely with social services agencies;
  - (4) settlements and/or judgments in the millions of dollars arising out these incidents.

**San Jose, CA** (2001) - Following a disturbance at a McDonald’s restaurant, and response by eight officers, a jury found that police officers were partly responsible for the death of a mentally ill man who died as he resisted arrest. Counsel for his widow argued that the officers ignored their training in handling the disturbed man, Kim Smith, 45, who police say weighed more than 300 pounds. The jury awarded \$1 million against the city.

### **Ways to Manage the Risks**

- Crisis intervention training (presentation by psychologist, Herbert Gupton, Ph.D.) for law enforcement officers.
- Use of video training, at roll call briefings, regarding responding to situations involving persons with various types of disabilities.

- Availability of mental health officers who can respond to a scene, when time and circumstances allow for such a response.
  - Specific training of supervisors regarding officers' response to situations involving persons with mental illness and policy requiring supervisory involvement at the scene of such incidents, when possible.
  - Training of officers regarding the different reactions of person with mental retardation, as opposed to mental illness.
- 

© Copyright, 2012 by the author and AELE. This document may be reproduced for non-commercial educational purposes.