Civil Liability of Law Enforcement Officers Responding to Incidents Involving Mentally Ill Citizens

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Course Outline

I. Understanding the Challenges of Responding Incidents Involving Mentally Ill Citizens
   A. Statistics
   B. Roles of people with mental illness relating to law enforcement
      1. Offender
      2. Disorderly person
      3. Missing person
      4. Complaint
      5. Victim
      6. Person in need of care

II. Understanding the Law
    A. Governing law of Virginia
       1. Binding law
          a. U. S. Supreme Court
          b. U. S. District Court – 4th Circuit
          c. Virginia Supreme Court
          d. Virginia Court of Appeals
          e. Circuit Courts of Virginia
       2. Persuasive Law
          a. Cases governing other states
    B. Civil Liability
       1. 4th Amendment of the Constitution
          a. Right to be free from unreasonable seizure and discrimination
       2. 42 U.S.C §1983
          a. Civil Rights Act of 1871
          b. Civil action for deprivation of rights when a person is acting under the color of law
       3. American with Disabilities Act of 1990 (ADA)
          a. Reasonably accommodate for a disability
    C. Immunity
       1. Sovereign Immunity- Virginia Code Ann. § 15.2-1405
provides that the members of governing bodies of counties, cities, towns or political subdivisions are immune from suit for failing to exercise discretionary or governmental authority, except for gross negligence, intentional misconduct, or misappropriation of funds.

2. Qualified Immunity - Immunity of a municipality’s employees
      Government employee acting in good faith is immune from civil liability unless their conduct violates a clearly established statutory or constitutional. *Pinder v. Johnson*, 54 F.3d 1169, 1173 (4th Cir. 1995)

III. Legal Challenges and Terms
    A. Excessive Force
       1. Totality of the Circumstances
          a. Preshooting Conduct
          b. Hindsight
       2. Perspective of the Reasonable Officer
       3. Imminent Threat/Danger

IV. Cases to consider
    A. Binding Law
       2. *Austin v. Town of Blacksburg, VA*, 66 F. Supp. 2d 771. W.D. Va. (1998) – Officers found not liable for use of deadly force because they were acting in the scope of their discretionary authority and had probable cause to believe that they were in imminent danger.
       3. *Bates Ex Rel., Johns v. Chesterfeid County, VA*, 213 F. 3d 367 (4th Cir. 2000) – Officer not found to have exercised excessive force based on the principle of the “perspective of the reasonable officer at the scene.”
       4. *Clem v. Corbeau*, 284 F. 3d 543(4th Cir. 2002) – Officer was not afforded immunity for shooting non-violent, unarmed citizen neither suspected of a crime nor fleeing a crime scene.
       5. *Waller v. City of Danville, VA*, 212 Fed. Appx 162 (4th Cir. 2006)- Officer found not liable for fatal shooting because consulted with supervisors, called hostage negotiator, did not escalate tensions and waited two hours before entering.

    B. Persuasive Law
1. **Champion v. Outlook Nashville, Inc.**, 380 F. 3d 893 (6th Cir. 2004) – Officer found liable because the diminished capacity of an unarmed detainee was not taken into account when assessing the amount of force exerted.

2. **Gibson v. County of Washoe, NV**, 290 F 3d 1175 (9th Cir. 2002) – The County was not granted immunity for a policy which failed to protect constitutional right of suspect.

3. **Deorle v. Rutherford**, 272 F3d 1271 (9th Cir. 2001) – Officer found liable based on the Court stating that factor to consider in determining reasonable of force is “where it is or should be apparent that the individual is emotionally disturbed.”


V. **Training of Officers**

A. Legal requirement of specialized training regarding responding to incidents involving mental ill
   1. Municipality failure to train

B. Use of expert witnesses (former law enforcement officers) at trial

C. Departmental policies
   1. International Association of Chief of Police Model Policy on “Dealing with Mentally Ill”
   2. Public Agency Training Council Action Steps
   3. Public Agency Training Council Suggested Tactics