



Is It Ever Legal to Use Force on Someone Who Hasn't Committed a Crime?

From uncooperative mentally ill subjects to out-of-control medical calls, is it ever legal for law enforcement officers to use force on non-criminals?

Presented by
Savage Training Group

Law enforcement officers often encounter situations in which they may need to use force against individuals who have not committed a crime. These situations can be particularly complex, as officers must balance their desire to protect individuals and maintain public safety all while trying to adhere to legal standards that are often murky at best. This bulletin aims to clarify the legal framework for using force in non-criminal situations and provide guidance based on relevant case law.

Common Scenarios for Use of Force on Non-Suspects

Mental Health Holds

Officers may need to take an uncooperative individual into custody for a mental health evaluation or involuntary hold. These situations often involve individuals who are not suspected of committing a crime but pose potential risks to themselves or others. The use of force may be necessary to ensure the individual's safety and that of those around them.

Responding to Suicidal, Armed, and Barricaded Individuals

In circumstances where officers respond to an individual who is suicidal and armed, or barricaded inside a location, the use of force

may be required to resolve the situation safely, even though the individual has not committed a criminal act. The threat to public and officer safety often justifies intervention in these cases.

Assisting EMS Personnel

Officers may be called upon to assist Emergency Medical Services (EMS) personnel in cases where a patient is uncooperative, possibly under the influence, or resistant to receiving medical care. The need to control the individual to allow EMS to safely treat and transport the person can involve the use of force.

The Legal Analysis of a Police Officer's Use of Force

In the United States, the legality of using force by law enforcement officers is primarily guided by two key Supreme Court cases: *Graham v. Connor* (1989) and *Tennessee v. Garner* (1985). These rulings set forth the framework for evaluating the reasonableness of force in any situation, including scenarios where a crime has not been committed.

Graham v. Connor (1989)

This case established the principle that the use of force must be evaluated based on the *reasonableness* of the officer's actions under the Fourth Amendment. The Court determined that the application of force must be "objectively reasonable" considering the totality of circumstances, including:

1. **Severity of the crime:** the seriousness of the issue at hand.
2. **Immediate threat:** whether the individual poses an immediate danger to officers or others.
3. **Resisting arrest or attempting to flee:** whether the individual is actively resisting or trying to escape.

Tennessee v. Garner (1985)

This case further refined the law governing the use of deadly force, specifically when a suspect does not pose a deadly threat. The ruling stated that deadly force is only permissible when an officer has probable cause to believe that the individual poses a serious threat of harm to the officer or others. This case also emphasized that force used must be proportionate to the threat presented.

Legal Analysis in Non-Criminal Situations

In non-criminal situations, such as mental health interventions or assisting EMS, the courts still apply the principles established in *Graham* and *Garner*, with some adjustments. For example, in cases where the individual is not suspected of committing a crime, courts often focus more heavily on the *immediate threat to safety* and the *necessity of action*.

Under certain circumstances, law enforcement officers are engaged in what is known as “community caretaking,” a role separate

from traditional law enforcement duties. This includes ensuring the safety of individuals who are not committing a crime but may pose a risk to themselves or others. In these cases, while the individual may not be suspected of a crime, the officer’s duty to protect and preserve life often justifies the use of force.

Several court decisions provide insight into how force is evaluated when there is no criminal conduct. What follows are quotes and summaries from relevant cases.

Summary

As you will read in the cases cited below, police officers may lawfully use force against individuals who have not committed a crime, but only when the circumstances justify it and the level of force applied is reasonable. Courts consistently emphasize that the guiding principle is objective reasonableness under the Fourth Amendment. This means the scope and nature of the force must be objectively reasonable given the need for that force, taking into account other factors such as the immediacy of any threat, the risk of harm to the person or others, and whether alternative options were available.

One complication in these situations is that the first *Graham* factor, the “severity of the crime,” does not fit neatly into the analysis because the individual has not committed a crime. Courts have clarified that when officers act in a community caretaking capacity, this factor should be modified to focus instead on the

seriousness of the situation that gave rise to the officer’s intervention. In other words, rather than asking about the severity of a crime, the inquiry turns to the urgency and gravity of the circumstances the officer confronted, such as a life-threatening medical emergency, a suicidal individual, or an unfolding public safety crisis. This shift ensures that the analysis of reasonableness reflects the actual context of the officer’s actions, while still applying the overarching constitutional requirement that force be objectively reasonable in light of the totality of the circumstances.

Ultimately, the legality of force in non-criminal situations turns not on whether the individual committed an offense, but on whether the officer’s response was reasonable given the facts at hand. The question courts will always ask is whether the officer’s actions balanced the government’s interest in safety with the individual’s right to be free from excessive force.

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4th Circuit

Estate of Ronald Armstrong v. The Village of Pinehurst, No. 15-1191 (4th Cir. 2016) (taser on a mentally ill person who later died)

"A taser, like "a gun, a baton, ... or other weapon," ..., is expected to inflict pain or injury when deployed. It, therefore, may only be deployed when a police officer is confronted with an

exigency that creates an immediate safety risk and that is reasonably likely to be cured by using the taser. The subject of a seizure does not create such a risk simply because he is doing something that can be characterized as resistance – even when that resistance includes physically preventing an officer's manipulations of his body."

6th Circuit

Estate of Corey Hill v. Miracle (6th Cir. 2017)

Police used a Taser to subdue a combative diabetic so that paramedics could administer live saving care.

"no appellate court has previously provided any guidance on how to assess objective reasonableness in the present atypical situation of a medical emergency."

"applying the Graham factors to the situation that Miracle faced is equivalent to a baseball player entering the batter's box with two strikes already against him. In other words, because Hill had not committed a crime and was not resisting arrest, two of the three Graham factors automatically weighed against Miracle. The key problem is that the district court tried to apply the Graham factors to a completely different factual situation—a medical emergency—where there was no crime, no resisting of arrest, and no direct threat to the law-enforcement officer.

"Rather than continuing to struggle with this dilemma (how to evaluate the use of force on a person who hasn't committed a crime), we suggest that a more tailored set of factors be considered in the medical-emergency context, always aimed towards the ultimate goal of determining "whether the officers' actions are objectively reasonable in light of the facts and circumstances confronting them." See *Graham*, 490 U.S. at 397 (internal quotation

marks omitted). Where a situation does not fit within the Graham test because the person in question has not committed a crime, is not resisting arrest, and is not directly threatening the officer, the court should ask:

1. Was the person experiencing a medical emergency that rendered him incapable of making a rational decision under circumstances that posed an immediate threat of serious harm to himself or others?
2. Was some degree of force reasonably necessary to ameliorate the immediate threat?
3. Was the force used more than reasonably necessary under the circumstances (i.e., was it excessive)? If the answers to the first two questions are "yes," and the answer to the third question is "no," then the officer is entitled to qualified immunity."

See also:

Roell v. Hamilton County

Caie v. West Bloomfield Township

Gaddis v. Redford Township, and City of Dearborn Heights, 364 F.3d 763 (6th Cir. 2004)

7th Circuit

Turner v. City of Champaign, No. 19-3446 (7th Cir. 2020)

8th Circuit

Ludwig v. Anderson, 54 F.3d 465, 470 (8th Cir. 1995)

9th Circuit

9th Circuit Civil Jury Instructions 9.25

"The first *Graham* factor, the "severity of the crime at issue," should be modified as appropriate when officers are acting in a "community caretaking capacity" rather than to counter crime. *Ames v. King County*, 846 F.3d 340, 349 (9th Cir. 2017). In such circumstances, "the better analytical approach" focuses the inquiry on the seriousness of the situation that gives rise to the community-caretaking function. *See id.* Also, with respect to the severity-of-the-crime *Graham* factor, the factor slightly weighs in favor of defendant officers who used force when the plaintiff was not involved in a crime but nevertheless had information useful to address an unfolding emergency of a threatened school shooting. *Bernal v. Sacramento Cnty. Sheriff's Dep't*, 73 F.4th 678, 694 (9th Cir. 2023) (citing *Ames*, 846 F.3d at 349). In *Sabbe v. Washington County Board of Commissioners*, 84 F.4th 807, 819-25 (9th Cir. 2023), the Ninth Circuit applied the *Graham* factors to law enforcement's use of an armored personnel carrier, which weighs several times as much as a typical police cruiser, to collide with a suspect's pickup in the hope of stopping it. "Because a reasonable jury could decide that Sabbe did not pose an imminent threat to the officers or to others at that point, and that the balance of the other factors also favors Plaintiff, a jury could decide that the second PIT maneuver constituted the use of excessive force within the meaning of the Fourth Amendment." *Sabbe*, 84 F.4th at 825..

See also Hyer v. City and County of Honolulu, 118 F.4th 1044, 1061 (9th Cir. 2024) (in assessing the severity of the crime at issue—which is the first of the three primary *Graham* factors for determining the strength of the government's interests—the courts look at whether the circumstances of the case warrant the conclusion that the suspect was a particularly dangerous criminal or that his offense was especially egregious, which may entail consideration of, first, the time that had elapsed between the alleged crimes, and second, the fact that the crimes were not the reason the police initially sought to apprehend the suspect)."

Scott v. Smith (9th Cir. 2024)

"We hold that Smith and Huntsman were not justified in using deadly force against Scott, a mentally ill person who was not suspected of committing a crime and presented little or no danger. *See Garner*, 471 U.S. at 8, 11 ("Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so."). Indeed, there are genuine issues of fact regarding whether any force was necessary. *See, e.g., Young v. County of Los Angeles*, 655 F.3d 1156, 1166 (9th Cir. 2011) (officer was not justified in use of "significant force" against a nonviolent individual suspected of a misdemeanor). The balance of interests here is similar to *Drummond*, where officers also used significant or deadly force on a mentally ill

individual to detain him for a mental health hold. Drummond, 343 F.3d at 1059. Like Drummond, an officer pressed his “weight against [Scott’s] torso and neck, crushing him against the ground.” Id. And despite his pleas, and a lack of any apparent danger, they continued to detain him. Id. at 1059–60. There, as here, “grievous injury does not serve [the] objective” of taking an individual into “custody to prevent injury to himself” when he is not suspected of any crime. Id. at 1059. Viewing the facts in the light most favorable to Plaintiffs, a reasonable jury could thus find that the officers’ use of severe or deadly force was constitutionally excessive.”

Derole v. Rutherford (9th Cir, 2001)

“The problems posed by, and thus the tactics to be employed against, an unarmed, emotionally distraught individual who is creating a disturbance or resisting arrest are ordinarily different from those involved in law enforcement efforts to subdue an armed and dangerous criminal who has recently committed a serious offense.”

“In the case of mentally unbalanced persons, the use of officers and others trained in the art of counseling is ordinarily advisable and may provide the best means of ending the crisis. Even if an emotionally disturbed individual is ‘acting out’ and inviting officers to use deadly force to subdue him, the government interest in using such force is limited “by the fact that the officers are confronted, not with a person who has committed a serious crime against others, but with a mentally ill individual.”

“a simple statement by an officer that he fears for his safety, or the safety of others is not enough; there must be objective factors to justify such a concern.”

Regarding the use of bean bag less lethal rounds - “the cloth-cased shot constitutes force which carries a significant risk of serious injury, and, thus, is not to be deployed lightly. To put it in terms of the test we apply: it is to be used only when a strong governmental interest

compels the employment of so high a degree of force.”

Drummond v. City of Anaheim (9th Cir. 2003)

“some force was surely justified in restraining Drummond so that he could not injure either himself or the arresting officers, “but noting that only a “minimal amount . . . was warranted”

Jackson v. Dutra (9th Cir. 2023)

This case stems from an incident in Sparks, Nevada. The court ruled, *“Police officers are permitted to use force both to effectuate an arrest and in their community caretaking capacity to address an ongoing emergency.” ...their actions must meet the overarching standards of reasonableness.* Watch this YouTube video showing the 9th Circuit judges discussing the issue of using force on someone who hasn’t committed a crime: <https://www.youtube.com/watch?v=gG3CH0lsKqc>

Glenn v Washington County (9th Cir, 2011)

Officers “need not avail themselves of the least intrusive means of responding to an exigent situation; they need only act within that range of conduct we identify as reasonable.” Henrich, 39 F.3d at 915. However, “police are ‘required to consider[w]hat other tactics if any were available,’ “and if there were “clear, reasonable and less intrusive alternatives” to the force employed, that “militate[s] against finding [the] use of force reasonable.”

Ames v. King County, Washington (9th Cir. 2017)

This case involved an adult son who lived with his mother, Tonja Ames. Ames’ son was overdosing on narcotics. When the officers arrived, she was upset that police officers were sent to her house along with EMS. She delayed EMS in their ability to provide medical aid to her son who was clearly incoherent. Officers used force to stop her.

The Court said,

- *“Proper application of the (Graham) test ‘requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight.’”*
- *“The government interest in subduing Ames here was substantial. The first Graham factor speaks of the ‘severity of the crime at issue,’ but we think the district court applied this factor too narrowly when it focused on Ames’s misdemeanor obstruction of Deputy Volpe rather than the nature of the ongoing emergency exacerbated by Ames’s resistance. Deputy Volpe was acting in her community caretaking capacity, ‘totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute,’ when she responded to the 911 call for help.”*
- *“Thus, we believe the better analytical approach here under the first Graham factor should be to focus our inquiry not on Ames’s misdemeanor crime of obstruction but instead on the serious — indeed, life-threatening — situation that was unfolding at the time. Ames was prolonging a dire medical emergency through her disregard of Deputy Volpe’s lawful commands, and her actions risked severe consequences. Because the gravity of Deputy Volpe’s community caretaking responsibilities under these circumstances must be factored into the analysis, we conclude that the first Graham factor weighs in Deputy Volpe’s favor.”*
- *“Deputy Volpe’s use of force while discharging her community caretaking function was objectively reasonable in light of the unfolding emergency with which she was faced.”*

Sandoval v. City of National City (February 1, 2023; Southern District of California)

The Americans with Disabilities Act applies to arrests in the 9th Circuit.

“A viable ADA claim may be brought where although police properly investigate and arrest a person with a disability for a crime unrelated to that disability, they fail to reasonably accommodate the person’s disability in the course of investigation or arrest, causing the person to suffer greater injury or indignity in that process other than arrestees.”

“Therefore, if an officer fails to reasonably accommodate the disability, without taking his or her mental illness into account and without employing tactics that would have been likely to resolve the situation without injury to himself/herself or others, a violation of the ADA may be asserted.”

Narciso v. County of San Diego (2020, California District Court)

If a mental health disorder or diminished capacity is suspected, the government interest is diminished.

“Although the Ninth Circuit has refused to create two tracks of excessive force analyses—one for the mentally ill and one for serious criminals—the court has repeatedly emphasized that a suspect’s evident mental illness typically diminishes the government’s interest in using significant force, given that swift force employed against an emotionally distraught individual often serves only to exacerbate, rather than defuse, a potentially dangerous situation.”

California Penal Code 835a(c)(2)

“Officers shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury

to the peace officer or to another person."

Can body weight be considered deadly force?

Yes. "Our precedent establishes that the use of

bodyweight compression on a prone individual can cause compression asphyxia." *Scott v Smith* (9th Cir, 2024) quoting *Drummond v. City of Anaheim*, (9th Cir. 2003)

10th Circuit

Aldaba v. Pickens, 844 F.3d 870 (10th Cir. 2016) (tasing a medical patient who later died)

District Court of Nevada

Herrera v. Las Vegas Metropolitan Police Department, 298 F.Supp 2d 1043 (Dist. Nevada 2004) (parents report adult son is suicidal and

armed with a knife, officers enter and shoot him with less lethal rounds and pepper spray, suspect attacks and is shot dead)

Additional Training Articles

Use of Force and Mental Illness – Policy Development for No Win Situations, DLG Learning Center
<https://dlglearningcenter.com/use-of-force-and-mental-illness-policy-development-for-no-win-situations/>

Mental Illness Response – The Need to Follow Policy and Training, DLG Learning Center
<https://dlglearningcenter.com/mental-illness-response-the-need-to-follow-policy-and-training/>

Police use of force, CEWs, and the mentally ill, Police1
<https://www.police1.com/investigations/articles/police-use-of-force-cews-and-the-mentally-ill-GQNa3SyyFgJgo4xn/>

Use of Force in Dealing with the Mentally Ill and Emotionally Disturbed, Legal and Liability Risk Management Institute
https://www.llrmi.com/articles/legal_update/uof_mentallyill/

Court approves officers' use of force to restrain a possibly mentally ill subject who died during the struggle, Police1
<https://www.police1.com/use-of-force/articles/court-approves-officers-use-of-force-to-restrain-a-possibly-mentally-ill-subject-who-died-during-the-struggle-uLhtoCHAxuwThNER/>

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Now that you understand this legal concept, what should be your next step?

It's time to get training that can help you apply this concept in the field,
under stress when it matters most.

At the Savage Training Group, we help law enforcement officers and supervisors like you,
navigate the complex realities of modern police work. We offer several training courses
that help you master the latest laws, modern tactics, and how to make sound
tactical decisions in a crisis.

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help make you the squared-away officer your peers look to in stressful situations and
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Command of High-Risk Critical Incidents

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Response to the Non-Criminal Barricade



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