

Do Police Officers Have a Legal Obligation to Use De-Escalation Tactics?

March 8, 2019 | [Michael Ranalli](#)

De-escalation tactics, an essential tool for patrol officers, are often portrayed as the singular answer to reducing [police use of force](#). Many critics have come to expect law enforcement to use de-escalation in nearly every encounter—assigning a simple solution to a complicated problem. But law enforcement encounters are not straightforward and are often particularly challenging when involving people with [mental health issues](#) or those who are otherwise emotionally disturbed.

Dr. Bill Lewinski of the [Force Science Institute](#) distinguishes between conflict communications and crisis communications. In general, conflict communications are used on criminal suspects, while crisis communications—tactics we associate with [de-escalation](#)—are used on noncriminal subjects, including persons in crisis.

As Dr. Lewinski notes, it's not that simple. The proper opportunity (limited risk to innocent people or officers) is necessary for de-escalation to be successful. De-escalation is particularly applicable to persons in crisis situations *with limited risk*. It should be noted a

person who is in a severe emotional crisis or state of “excited delirium” may not be able to comprehend or even hear attempts at de-escalation, which is based on a capacity for communication. Therefore, the situation could exceed the limited risk necessary for effective de-escalation.

The courts have a history, under *Graham*, of not requiring officers to use or even consider the least intrusive means available, if the force used was objectively reasonable.

So that brings us to the question: Do police officers have a *legal* obligation (putting aside the moral or practical aspects for now) to use de-escalation tactics in certain circumstances? The answer is, generally, no. But as with most things we do in law enforcement, it’s more complicated. Following are three court cases that may help officers understand when it would be appropriate to attempt de-escalation. These cases are presented for illustrative purposes only. You should check with your legal advisor regarding binding case law in your jurisdiction.

Roell v. Hamilton

Gary Roell suffered from chronic mental illness. Officers were called to his neighbor’s condo when Roell threw a flower pot through a window and threatened the neighbor. When deputies arrived, Roell was half-naked and appeared to be in a state of excited delirium. Holding a hose with a metal nozzle, he turned and charged toward the deputies. After Roell ignored repeated commands to stop, the deputies struggled with Roell, issuing several commands and warnings and firing their TASER devices. Eventually, they were able to get him handcuffed and in leg shackles (which they placed after Roell kicked a deputy in the groin). Roell went limp and began to snore, waking twice to struggle again. When deputies checked him, they found no pulse. He was pronounced dead shortly thereafter.

When Roell’s widow sued, the court found in favor of the officers, delivering a key ruling relating to the legal obligation for de-escalation: *Officers are not prohibited from using force on a person in crisis*. Specifically, the court noted, “No caselaw prohibits officers from using any physical force against a person first attempting alternative de-escalation techniques ... Resistance that was probably used by excited delirium does not preclude officers from using a reasonable amount of force to bring a person under control.”

In fact, the courts have a history, under *Graham v. Connor*, of not requiring officers to use or even consider the least intrusive means available, if the force used was objectively [reasonable](#). Put another way: Objective reasonableness does not require a culpable mental state from the person causing risk.

Doerle v. Rutherford

Officer Greg Rutherford was a member of a Special Incident Response Team called to Richard Doerle's house when Doerle began behaving erratically and aggressively and threatening suicide. Doerle was under the influence of alcohol and prescription medications. Officers had established a perimeter and Doerle was remaining within it. He had not threatened anyone or committed any crimes. Some 30 to 40 minutes after arriving on scene, Rutherford entered the perimeter to "reconnoiter closer to Deorle." Rutherford then shot Doerle with a less-lethal "beanbag round" as Doerle walked toward him, unarmed. Doerle suffered serious injuries and sued for excessive force.

The court agreed the force used was excessive and denied Rutherford qualified immunity. This ruling points to how courts will analyze the reasonableness of force used on a person in crisis. This is a second key legal issue when considering whether de-escalation should be attempted: *There is a difference between a criminal suspect and a person in crisis.* Courts do not provide a per se rule or formal definition of the two but they do acknowledge a distinction. The Doerle court noted, "Even when an emotionally disturbed person is inviting officers to use deadly force to subdue him, the governmental interest in using such force is diminished by the fact that the officers are confronted with a mentally ill individual, not a person who has committed a serious crime against others."

It's important to note this distinction only pertains to analysis of the reasonableness of the force used. When it is (or should be) apparent to the officers the individual involved is emotionally disturbed, this is a factor that must be considered when determining reasonableness. Officers must use this assessment of the individual's mental state to determine if de-escalation is appropriate. Even if de-escalation is not effective (the person is unable to comprehend or communicate), giving the person some time and space may be appropriate when they are not causing risk to anyone.

Glenn v. Washington County

Lukus Glenn's mother called 911 when the 18-year-old came home intoxicated and agitated, damaging household property and threatening suicide. She advised the dispatcher Lukus was holding a knife to his neck and threatening to kill himself if the cops came. A staging area was established nearby, but the first two deputies bypassed it, responding directly to the scene. The first deputy positioned himself about 8–12 feet from Lukus with his weapon drawn and pointed at Lukus. While Lukus stood with the knife to his neck, the deputy screamed at him to drop the knife or he would kill him. The second deputy arrived a minute later. He started behaving the same way as the first deputy.

An officer from a local agency arrived with a beanbag shotgun and the first deputy ordered him to "beanbag him." Lukus was struck by multiple beanbag rounds and attempted to retreat toward the house. The deputies had already determined that if Lukus went toward the

house—where the deputies had told the family to remain—they would shoot him. They fired 11 rounds at Lukus and he died on his grandmother’s porch.

The court denied summary judgment to the officers, finding the reasonableness of their actions was questionable. This brings us to our last key point regarding de-escalation and the law: *Officers should be careful to avoid inadvertently escalating the situation.* Although courts have ruled there is no obligation to protect an individual against private violence, including self-harm (see [DeShaney v. Winnebago County DSS](#)), if officers choose to act, they must be aware of the possible liability and risk of harm to the person and/or officers that may result.

In Sum

While the law does allow for the use of force on persons in crisis, and does not explicitly require the use of de-escalation, it does consider an individual’s mental state (as part of the *Graham v. Connor* factors test) to determine when use of force is [objectively reasonable](#).

Therefore, [de-escalation](#) should be used when appropriate *and* possible. It is critical to identify discretionary time, cause of risk, and who is at risk when determining the proper [plan of action](#).

The primary goal of police response in potentially violent situations is to do the right thing for the right reason—protect the person who needs assistance and protect the responding officers. Although we focused on legal obligation in this article, we must always remember that reduced liability is merely a benefit, not a primary motivator, in these situations.

For more about using de-escalation with persons in crisis, watch our on-demand webinar, [De-Escalation: When & How to Make It Work](#).



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