

Protecting Ohio's Families

A law enforcement guide

This publication provides a review of constitutional use-of-force standards, strategies to enhance de-escalation techniques, and ways to promote community-police relations.



Policing in the 21st Century

2016 Course Resource Guide



MIKE DEWINE
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About This Guide

This guide was developed as a supplemental resource for law enforcement officers who participated in the “Policing in the 21st Century” course offered by the Ohio Peace Officer Training Academy. This guide should not replace legal advice obtained for a specific situation. The Ohio Attorney General’s Office does not provide legal advice through its publications.

This course resource guide is current as of August 2016.



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Dear Law Enforcement Professional,

Thank you for your commitment to professional training and development.

The “Policing in the 21st Century” course offered by the Ohio Peace Officer Training Academy (OPOTA) that you recently completed was developed from recommendations made by the Attorney General’s Advisory Group on Law Enforcement.

Since those recommendations were set forth and folded into OPOTA’s curriculum, law enforcement professionals across the nation have encountered more intense scrutiny as well as more aggressive challenges than at any time in recent memory. The everyday demands placed on peace officers continue to evolve and expand, and OPOTA is providing you with the training and the tools you will need to meet them.

This resource guide is one of those tools: It supplements the “Policing in the 21st Century” course and focuses on the important topics of constitutional use of force, de-escalation with a focus on mental health, and community-police relations.

I am confident the information in this guide will be of great value as we pursue our mission to protect Ohio’s families.

Very respectfully yours,

Mike DeWine
Ohio Attorney General



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Officers,

Thank you for giving us this opportunity to support your service to Ohio citizens through our training. This course was designed to address a few of the most imperative policing topics leading the dialogue today: use of force standards, de-escalation with a focus on mental illness, and community-police relations.

Having knowledge of use of force standards and being able to apply it in high stress situations is imperative to your success. The first part of the course covers the foundations of these standards and includes case examples to help you work through your decision making.

De-escalation is one of the most important tools you will have to mitigate force in the majority of situations you will encounter. The second part of this course focuses on strategies for nonviolent or less violent conflict solution. We then explore more specific encounters with individuals in crisis.

The final section of the course looks at the importance of enhancing relationships with our communities. It focuses on ways to build police legitimacy and looks at examples of community-police programs from different law enforcement agencies.

In light of the recent unrest across the nation, being prepared, confident, and ready to answer your call to serve and protect the public is more important than ever before. There are high expectations on our profession that continue to rise. My goal is that this course, along with other courses we offer, will help you to fulfill your calling in the safest, healthiest, and most competent means possible.

Thank you for your service.

Stay safe,

Mary E. Davis
Executive Director, OPOTA

POLICING IN THE 21ST CENTURY

2016 COURSE RESOURCE GUIDE

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Chapter One: Constitutional Use of Force

CHAPTER SUMMARY:

This chapter will explain the legal standard for determining whether the use of force, including deadly force, against a citizen during an arrest or other seizure is constitutional. It will also discuss the landmark U.S. Supreme Court decisions that established the legal standards, as well as some examples from Ohio cases that apply the standards. A more detailed discussion of several Ohio cases involving the use of force by law enforcement officers is provided in the appendix at the end of this guide.

Use of Force During an Arrest or Other Seizure

The status of a person at the time an encounter with a law enforcement officer occurs (*i.e.*, whether the person is free, has been convicted of a crime and is serving a sentence, or some status in between), determines whether the Fourth Amendment (unreasonable searches and seizures), the Eighth Amendment (cruel and unusual punishment), or the 14th Amendment (equal protection) to the U.S. Constitution applies.¹ If force was used against a person during an arrest or another seizure, the claim of excessive force is analyzed under the Fourth Amendment.² If the person was a convicted prisoner when the force was applied, the claim is analyzed under the Eighth Amendment.³ If the Fourth and Eighth Amendments do not apply, the claim is analyzed under the 14th Amendment.⁴ A different legal standard is used depending upon which constitutional amendment applies.⁵

The Fourth Amendment to the U.S. Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

A seizure occurs when a person is arrested or otherwise detained by a law enforcement officer. Although an arrest constitutes a seizure, a seizure may also occur when an arrest is not made. The U.S. Supreme Court explained, “[w]hen an officer restrains the freedom of a person to walk away, he has seized that person.”⁶ However, a seizure could also occur “when there is a governmental termination of freedom of movement through means intentionally applied.”⁷ An investigatory stop is another example of a seizure.⁸

Excessive or unreasonable use of force by a law enforcement officer during a seizure against a person who is free constitutes an unreasonable seizure under the Fourth Amendment.⁹

What Constitutes a “Use of Force”?

- “Force” is “any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing.”¹⁰
- “Deadly force” is “any force that carries a substantial risk that it will proximately result in the death of any person.”¹¹

Case Study: *Graham v. Connor*, 490 U.S. 386 (1989)

Graham v. Connor is the landmark U.S. Supreme Court decision establishing the legal standard for determining whether a law enforcement officer’s use of force during a seizure is constitutional.¹² Dethorne Graham, a diabetic, asked his friend to drive him to a convenience store so he could purchase some orange juice to treat his insulin reaction.¹³ Graham entered the convenience store but quickly exited after realizing that the line of customers at the register was too long.¹⁴ He returned to his friend’s car, and the two began to drive to another friend’s house.

Upon seeing Graham’s hasty exit, Officer Connor, of the Charlotte, North Carolina Police Department, became suspicious that illegal activity had occurred in the store.¹⁵ He followed the car and eventually stopped it to investigate. The driver informed Officer Connor that Graham was having a “sugar reaction.”¹⁶ The officer told Graham and the driver to wait in the car. When the officer got back to his patrol car, he saw Graham get out of the car and run around it two times before sitting on the curb and losing consciousness.¹⁷

When other police officers arrived at the scene, one of them rolled Graham over and handcuffed him behind his back. Several officers carried Graham to the hood of the patrol car. When Graham asked that they check for a diabetic decal he carried in his wallet, one of the officers told him to “shut up” and pushed his face onto the car’s hood.¹⁸ Four officers then threw Graham into the back of the patrol car, ignoring the pleas of Graham’s friend that Graham was diabetic and needed to drink some juice.¹⁹

Officer Connor eventually learned that nothing had happened in the convenience store. The officers drove Graham home and released him. During the encounter, Graham broke his foot, cut his wrists, bruised his forehead, and injured his shoulder.²⁰

To determine whether the officers’ use of force against Graham was constitutional under the Fourth Amendment, the U.S. Supreme Court held that the standard is whether the force used was **objectively reasonable under the circumstances**.²¹ The case was remanded to the Court of Appeals to make that determination.

Legal Standard: Objective Reasonableness

To determine whether a law enforcement officer's use of force during an arrest or other seizure was constitutional, courts consider whether the force used was objectively reasonable.²² This determination is difficult to make as "[t]he test of reasonableness ... is not capable of precise definition or mechanical application."²³ The following factors are weighed in order to determine whether a use of force is objectively reasonable: "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**."²⁴ No single factor is determinative; instead, whether the force used by an officer is objectively reasonable is determined from the **totality of the circumstances**.²⁵

Courts recognize that "police officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving."²⁶ Therefore, the factors are weighed and the reasonableness of the use of force is judged "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight."²⁷ The courts look at the facts as known to the officer during the seizure and when the force was applied.²⁸

- Graham v. Connor Factors:**
- Severity of the Crime
 - Immediate Threat
 - Actively Resisting
 - Evading Arrest by Flight

The same legal standard is used to determine whether the Fourth Amendment was violated when deadly force was used against a person during an arrest or seizure.²⁹ The totality of the four *Graham* factors based on the circumstances as known to the officer when the deadly force was used determines whether the use of deadly force was objectively reasonable.

Factors That Are Irrelevant to Using Deadly Force

A suspect does not have to be armed to justify a reasonable use of deadly force.³⁰

CASE EXAMPLE:

During a traffic stop, an officer tried to arrest a subject for failing to comply with the officer's instructions. The subject was unaffected by the application of a Taser and the subject began punching one of the officers. A second officer approached the subject, and the subject punched him numerous times. The first officer fatally shot the subject. **The court held that the use of deadly force was reasonable.**

See *Davenport v. Causey*, 521 F.3d 544 (6th Cir. 2008) #1 in the appendix.

Generally, when assessing the amount of force to use, officers must take into account the compromised capacity of an unarmed detainee displaying passive resistance, if an officer has knowledge of the detainee's mental status.³¹

However, deadly force may be used against a mentally ill person if, based on the totality of the circumstances, the use of deadly force was objectively reasonable.³²

CASE EXAMPLE:

Officers were called to respond to a report of a man with a gun near two elementary schools. Based on the man's conduct upon the officers' arrival, he was suspected of being intoxicated or mentally ill, but the officers did not have actual knowledge of any mental disability. The man ignored the officers' instructions that he show his hands and get on the ground. Instead, he repeated the word "dynamite" and kept his hands around his waistband. Ultimately, the officers used a Taser on the man 12 times, and he died.

The court held that the use of force was reasonable and noted "[t]he officers' actions cannot be said to be unreasonable based upon the mental illness or perceived mental disturbance of Mr. Hughes, due to the fact that Mr. Hughes was known to be armed in a school zone with children present, that he consistently acted as if he was reaching for his waistband, that he attempted to flee the area, and also that he violently physically resisted arrest."

See *Sheffey v. City of Covington*, 564 F. App'x 783 (6th Cir. 2014) #2 in the appendix.

Factors From *Graham v. Connor* That Are Used to Determine Objective Reasonableness

1. Severity of the Crime

The first *Graham* factor considers the severity of the crime to which the officer is responding. There is no absolute test for determining the severity of a crime. However, the severity of the crime is related to the danger the alleged crime poses to the safety of others. Speeding and providing alcohol to a minor are examples of less severe crimes;³³ however, being pulled over for driving on a public street while intoxicated³⁴ or illegally carrying a loaded concealed weapon in the area of a school during school hours³⁵ are examples of more severe crimes.

In general, a more severe crime weighs in favor of finding the use of force reasonable. However, the other three *Graham* factors must also be weighed under the totality of the circumstances to ultimately determine that the use of force was reasonable.

2. Immediate Threat

The second *Graham* factor considers whether the subject poses an immediate threat. The immediacy of the threat is also measured by the totality of the circumstances. A subject does not have to shoot at or physically attack an officer for the subject to pose an immediate threat.

CASE EXAMPLE:

After a subject was arrested, handcuffed, and placed in an officer’s car, one officer noticed that he was pointing a small gun at the two officers with his finger on the trigger. The officers shot the subject 22 times.

The court held the use of force was reasonable and noted, “[t]he Fourth Amendment does not require police officers to wait until a suspect shoots to confirm that a serious threat of harm exists.”³⁶

See *Elliott v. Leavitt*, 99 F.3d 640 (4th Cir. 1996) #3 in the appendix.

Officers must react to the threat the subject poses and not just react to the subject’s actions. The officer/subject factors and pre-attack indicators are used to determine whether a subject poses an immediate threat. The physical characteristics of the subject in comparison to those of the officer and the factual circumstances of the encounter between the officer and the suspect are known as the officer/subject factors. The subject’s physical behaviors during the encounter are known as pre-attack indicators. Examples of officer/subject factors and pre-attack indicators are listed below.

Officer/Subject Factors	
<ul style="list-style-type: none">- Number of officers/subjects- Size- Age- Skill- Conditioning	<ul style="list-style-type: none">- Injury- Duration of action- Environmental factors- Known violent history- Pre-attack indicators
Pre-Attack Indicators	
<ul style="list-style-type: none">- Noncompliance with orders- Presence of a weapon- Trying to hide hands- Target glances- Clenching hands on body- Eye contact	<ul style="list-style-type: none">- Bladed/fighting stance- Flanking- Abnormal breathing- Posturing- Nervous movement- Body grooming

The level of threat posed by a subject is assessed by inferring the subject’s intention from the officer/subject factors and pre-attack indicators.

CASE EXAMPLE:

Two officers tried to arrest a man for speeding. The man resisted arrest, and one of the officers applied his Taser. The man was not affected by the Taser and began punching the officers. One of the officers shot the man. **The court held that, even if the facts as alleged by plaintiffs were true, the use of force was reasonable**, in part, because the man posed an immediate threat. The court noted the man's size (large), demeanor (angry), and behavior (punching with closed fists).

See *Davenport v. Causey*, 521 F.3d 544 (6th Cir. 2008) #1 in the appendix.

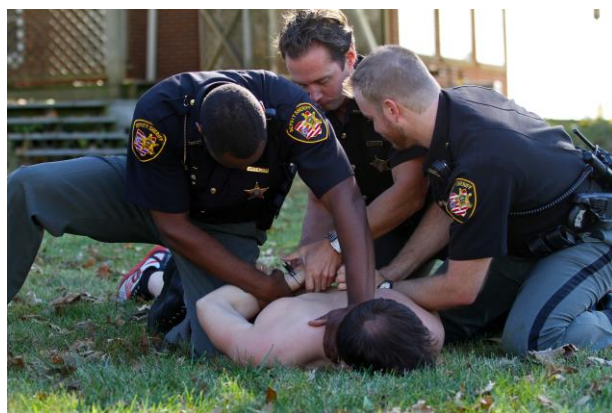
The amount of force used must correspond to the level of threat posed by the subject.³⁷

CASE EXAMPLE:

Officers were dispatched in response to a call about a person calling for help and a naked man in a residential area. When the officers arrived, the man was not making any verbal sense. When the officer tried to arrest him, the man started to run away. One officer tackled him and two other officers held him down by either lying on him or sitting on him. While the man was being held down, one officer kicked him twice in the side and struck him several times in the face, back, and ribs. Another officer punched him in the face twice, after the man bit the officer's hand.

The court held that a jury could find that the use of force was unreasonable based upon the facts alleged by the plaintiff. Although the man's behavior (he was intoxicated or mentally ill) may have justified some use of force, a jury could reasonably find that the amount used was unreasonable (he was naked, so it was clear that he was unarmed).

See *Martin v. City of Broadview Heights*, 712 F.3d 951 (6th Cir. 2013) #4 in the appendix.



In general, an immediate threat of harm weighs in favor of finding that the use of force is reasonable. However, that is only one factor in determining whether the use of force was reasonable and must be considered in light of the other three *Graham* factors.

3. Actively Resisting

The third *Graham* factor is whether the suspect was actively resisting. **Active resistance** occurs when a person makes a move to avoid physical control, or, as a passive resistor, presents a credible threat to an officer. Active resistance requires “**some outward manifestation** — either verbal or physical — on the part of the suspect, [suggesting] volitional and conscious defiance.”³⁸

CASE EXAMPLE:

Two officers tried to arrest a man for speeding. The man did not comply with the officer’s instructions to remain in his car. When the officer attempted to arrest the man, the man pushed the officer’s hand away. The officer deployed his Taser. The man was unaffected by the Taser, charged toward the officer, and punched him. **The court viewed the man’s actions as active resistance.**

See *Davenport v. Causey*, 521 F.3d 544 (6th Cir. 2008) #1 in the appendix.



Passive resistance occurs when a subject exhibits **no resistive movement** in response to verbal and other direction. A passive resistor fails to comply with an officer’s commands or directions without resistive movement. Examples of passive resistance are acting as “dead weight” or failing to do or refusing to do what an officer asks the subject to do.

CASE EXAMPLE:

A driver, who was suspected of being intoxicated, was approached by two officers and directed to get out of the car. The driver repeatedly muttered, "I'm fine," and did not move. After trying to remove the driver from the car, one officer used a Taser on the driver. It was later discovered that the driver was experiencing a hyperglycemic episode. **The court held that assuming the facts were as he recounted them, the driver was not actively resisting.** The driver "did not thrash about or attempt to accelerate the car to get away."³⁹ Moreover, "he was without reaction, exhibiting neither hostility nor belligerence."⁴⁰ Not complying with an officer's instructions, in and of itself, is not enough to conclude that a person is actively resisting.

See *Eldridge v. City of Warren*, 533 F. App'x 529 (6th Cir. 2013) #5 in the appendix.

Depending on the totality of the circumstances, a passive resistor may pose a credible threat to an officer by hiding hands and not responding to commands to make his or her hands visible.

CASE EXAMPLE:

Officers were called to respond to a report of a man with a gun near two elementary schools. Based on the man's conduct upon the officers' arrival, he was suspected of being intoxicated or mentally ill. The man ignored the officers' instructions that he show his hands and get on the ground. Instead, he repeated the word "dynamite" and kept his hands around his waistband. Ultimately, the officers used a Taser on the man 12 times, and he died. **The court held that the use of force was reasonable.**

See *Sheffey v. City of Covington*, 564 F. App'x 783 (6th Cir. 2014) #2 in the appendix.

A subject may actively resist and passively resist at different times during an encounter with an officer. The constitutionality of the use of force is determined based on the actions of the suspect when the force is applied. Thus, even if the suspect was actively resisting at the beginning of the encounter, what matters is whether the suspect was actively resisting when the force was applied.

CASE EXAMPLE:

An officer arrested a woman and, while escorting her to the car, she kicked him in the groin. After arriving at the station, the officer was trying to search her, but she refused to comply with the officer's commands. There was contradictory evidence about what she was doing to not comply. While officers stated that she was physically aggressive toward the searching officer, the woman's witness testified that she moved her feet together instead of apart as she was instructed. Eventually, the officer applied an arm-bar takedown, causing the woman to fall face first on the floor. Taking the facts in the light most favorable to the woman, and therefore, consistent with the version explained by the woman's witnesses, **the court held that a jury could find that the officer's application of an "arm-bar takedown" while she was handcuffed was unreasonable.** The court's conclusion was partly based on the fact that when the force was applied, any resistance the woman was engaging in was minimal.

See *Meirthew v. Amore*, 417 F. App'x 494 (6th Cir. 2011) #6 in the appendix.

In general, the use of force is more likely to be reasonable when the subject is actively resisting and less likely to be reasonable when the subject is passively resisting, but the other three *Graham* factors must also be considered in the totality of the circumstances.

CASE EXAMPLE:

A man was arrested for driving under the influence after he rear-ended another car. When the arresting officer told the man to put his hands behind his back, the man refused, stating that he could not because it was too painful to do so. The officer forcibly put the man's hands behind his back and handcuffed him. It was later discovered that the man's bicep tendon was torn. **The court held that, even though the man may have been passively resisting, based on other *Graham* factors, the use of force was reasonable.**

See *Marvin v. City of Taylor*, 509 F.3d 234 (6th Cir. 2007) #7 in the appendix.



4. Evading Arrest by Flight

The final *Graham* factor is whether the subject was trying to evade arrest by flight when the force was applied.

CASE EXAMPLE:

Officers were called in response to a woman who was intoxicated and hallucinating. When the officers tried to put handcuffs on her and escort her outside to wait for the ambulance that would take her to the hospital, she began twisting, turning away, and kicking at the officers. **The court viewed those actions as an attempt to evade** being taken to the hospital.

See *Standifer v. Lacon*, 587 F. App'x 919 (6th Cir. 2014) #8 in the appendix.



In general, the use of force is more likely to be reasonable when the subject is trying to evade arrest by flight, but the other three *Graham* factors must also be considered in the totality of the circumstances. Additional considerations must be taken into account when deadly force is used to prevent a suspect from escaping.

KEY POINTS:

- An officer may use reasonable force within the context of any lawful seizure.
- An officer may use force that is objectively reasonable based on the totality of the circumstances.
- An officer may proactively use force to respond to impending harm.
- An officer need not use the least intrusive or the minimal amount of force necessary.
- Agency policy violations alone cannot form the basis for criminal or civil liability related to the use of force.

Case Study: *Tennessee v. Garner*, 471 U.S. 1 (1985)

The landmark U.S. Supreme Court case establishing the legal standard for when deadly force may be used to stop a fleeing suspect is *Tennessee v. Garner*.⁴¹ In that case, two Memphis police officers responded to a call of a prowler in a house. When the officers arrived at the scene, a woman indicated that she heard breaking glass in the adjacent house. Officer Wright contacted the dispatcher and Officer Hymon went to the back of the house. Officer Hymon then heard a door slam and saw a person run across the yard to the base of a fence. The suspect, Edward Garner, began to climb the fence in defiance of Officer Hymon's declaration of "police, halt."⁴² Officer Hymon fatally shot Garner, even though the officer had not seen a weapon and "was 'reasonably sure' and 'figured' that Garner was unarmed."⁴³

When Officer Hymon shot Garner, a Tennessee statute provided "[i]f, after notice of the intention to arrest the defendant, he either flee[s] or forcibly resist[s], the officer may use all the necessary means to effect the arrest."⁴⁴ The U.S. Supreme Court held that the Tennessee statute was not necessarily unconstitutional as it was written. The statute could be unconstitutional, however, if it is followed in certain circumstances.

The court held, "[w]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others," the law enforcement officer may use deadly force to prevent the suspect's escape without violating the U.S. Constitution.⁴⁵ In the shooting of Garner, however, Officer Hymon did not have probable cause to believe that Garner posed a threat of serious physical harm to Officer Hymon or others, and therefore, the Tennessee statute as applied to Garner was unconstitutional.⁴⁶

Legal Standard: Using Deadly Force to Prevent Escape

Deadly force may be used to prevent a suspect from escaping if "it is **necessary to prevent the escape** and the officer has probable cause to believe that the **suspect poses a significant threat of death or serious physical injury** to the officer or others."⁴⁷ When possible, the officer should warn the subject of the potential use of deadly force.⁴⁸

A suspect may pose a significant threat of death or physical injury by threatening an officer with a weapon or when there is probable cause to believe that the suspect "has committed a crime involving the infliction or threatened infliction of serious physical harm."⁴⁹

The threat posed by the suspect must be immediate. The U.S. Supreme Court stated, "[w]here 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."⁵⁰ The **immediacy of the threat** is determined by considering:

- Is the officer reacting to the threat posed by the suspect?
- Is it likely that the suspect has a weapon and is capable of using it?
- What is the proximity of others?

- What is the officer's exposure (e.g., cover, physical barriers)?
- What actions did the subject take independent of weapons and likelihood of injury?

Factors That Are Irrelevant to Determining Whether Use of Force Was Reasonable

Factors irrelevant in determining whether an officer's use of force was reasonable are:

- Officer's intent or motivation.⁵¹ The reasonableness of the use of force is determined by examining the officer's actions, not the intent in taking those actions.
- Facts discovered after the event.
- Violation of agency policies. Whether an agency policy was violated is not part of the legal determination of whether the use of force was constitutional.⁵² However, the failure to follow agency policies may lead to administrative consequences.
- Officer's actions or conduct before the use of force.⁵³

KEY POINTS:

- Deadly force may be used when a suspect is escaping if "it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others."⁵⁴
- A suspect does not have to be armed to justify a reasonable use of deadly force. The totality of the circumstances known to the officer when the force was used determines reasonableness in a deadly-force situation.
- Although a suspect's known mental illness does not preclude the use of deadly force, the court will consider this as a factor in determining whether the use of force was reasonable.

Additional Resources

- Ohio Peace Officer Training Academy
 - eOPOTA courses are offered online and are accessible through the Ohio Law Enforcement Gateway at www.OHLEG.org. Relevant courses include:
 - Use of force, liability, and standards
 - Email OPOTA at AskOPOTA@OhioAttorneyGeneral.gov with questions about training and certifications.
- The Office of Community Oriented Policing Services (COPS Office) is part of the U.S. Department of Justice and is charged with advancing the practice of community policing at all levels of the country's law enforcement offices. The COPS Office website has links to additional resources regarding the constitutional use of force:
 - **Training webinars** regarding the constitutional use of force and other topics may be found at www.cops.usdoj.gov/training.
 - **Podcasts** called *The Beat* are released monthly by the COPS Office and may be found at www.cops.usdoj.gov/Default.asp?Item=2370.
 - **Written publications** on use of force from the COPS Office may be found at www.cops.usdoj.gov/COPSpublications.
- A more detailed discussion of the use of force legal standards may be found in "Police Use of Force: Rules, Remedies, and Reforms," by Richard M. Thompson II and published by the Congressional Research Service in 2015. The publication may be obtained from www.fas.org/sgp/crs/misc/R44256.pdf.
- *Critical Issues in Policing Series: Guiding Principles on Use of Force*, Police Executive Research Forum (March 2016).
- *Emerging Use of Force Issues, Balancing Public and Officer Safety*, Report from the International Association of Chiefs of Police/COPS Office, Use of Force Symposium (March 2012).

Chapter Two: De-Escalation With a Focus on Mental Health

CHAPTER SUMMARY:

This chapter will help you understand de-escalation, the nonconfrontational use of verbal skills and body language, to facilitate a successful outcome when interacting with individuals in crisis. It will also focus on various techniques and practical suggestions that you can use in encounters with individuals who have a compromised coping capacity, including the Engage, Assess, Resolve (EAR), Loss, and LAST Models.

De-escalation is to “decrease in extent, volume, or scope.”⁵⁵ De-escalation techniques are employed in every setting that involves conflict resolution to decrease the intensity of the conflict. De-escalation is widely talked about in social-work, health-care, and customer-service settings. When appropriate, de-escalation is also critical to effective law enforcement.

While the same underlying goal exists — to decrease the intensity of the conflict — using de-escalation in law enforcement is different than in other settings. For instance, social workers and health-care professionals typically deal with their clients in a safe and controlled environment. Police officers face situations that are more dynamic and that involve more variables, including open and dangerous settings and the possible presence of weapons. In addition, police officers often are called in when the efforts of social workers, health-care workers, and others who are trained in de-escalation have failed.

Understanding de-escalation as it relates to the work of law enforcement provides you with another tactical tool to use in community interactions. In the context of police work, de-escalation refers to the nonconfrontational use of verbal skills and body language to facilitate a successful outcome when interacting with individuals in the community.

De-escalation involves a way of talking to individuals that does not use “law enforcement verbal commands.” Avoiding authoritative and confrontational tones and body language provides an opportunity for officers to engage with subjects in a manner that is less threatening and may serve to decrease the intensity of the conflict.

The Benefits and Risks of De-Escalation

De-escalation has both benefits and risks inherent to the process. The benefits of de-escalation include:

- (1) **Increased officer safety** - De-escalation techniques should result in the use of less force, which reduces risk to the officers involved.
- (2) **Less chance of injury for suspects, victims, and bystanders** - By reducing or eliminating the use of force, or approaching it under improved conditions, there is a reduced chance that the people involved and those nearby will be injured.
- (3) **Increased opportunity for force to succeed** - De-escalation may provide additional time or opportunity to obtain backup or for officers at the scene to use force in a deliberate and tactical way so that it is more likely to be used successfully.

- (4) **Improved public relations** - Public perception of police encounters will be more positive when the use of force is reduced or eliminated where possible. De-escalation techniques allow you to show the public that you tried other efforts to control the situation before resorting to force. When necessary, being able to articulate the reasons for its use will also improve public perception.
- (5) **Possible decreased liability** - By reducing injury and improving public relations, the risk of liability will likely diminish.

The risks of de-escalation include:

- (1) **More time** - De-escalation can be a slow process requiring much attention and patience. The additional time required may also provide a window of opportunity for other complications.
- (2) **Manipulative suspects taking advantage** - Under certain conditions, manipulative suspects may use the time or circumstances of de-escalation to take advantage of an officer through delay or distraction.
- (3) **Decreased officer safety** - Because de-escalation requires the officer's full attention and nonconfrontational body language, the officer's safety can be compromised if the officer is not careful or if de-escalation techniques are used at an inappropriate time. Ideally, a cover officer will be at the scene to help maintain situational awareness. The presence of the cover officer affords the de-escalating officer the opportunity to focus on the nonconfrontational aspects of de-escalation. If working alone, officers using de-escalation are advised to keep their distance and consider reaching a compromise with a body language/fighting stance.

De-escalation is simply another tactical tool that an officer can rely on when interacting with individuals. Whether in a simple traffic stop or with an individual in crisis, de-escalation, like all other law enforcement tools, has its benefits and risks. Understanding these can aid an officer in determining whether de-escalation is appropriate in the circumstances.

KEY POINTS: Successful de-escalation may:

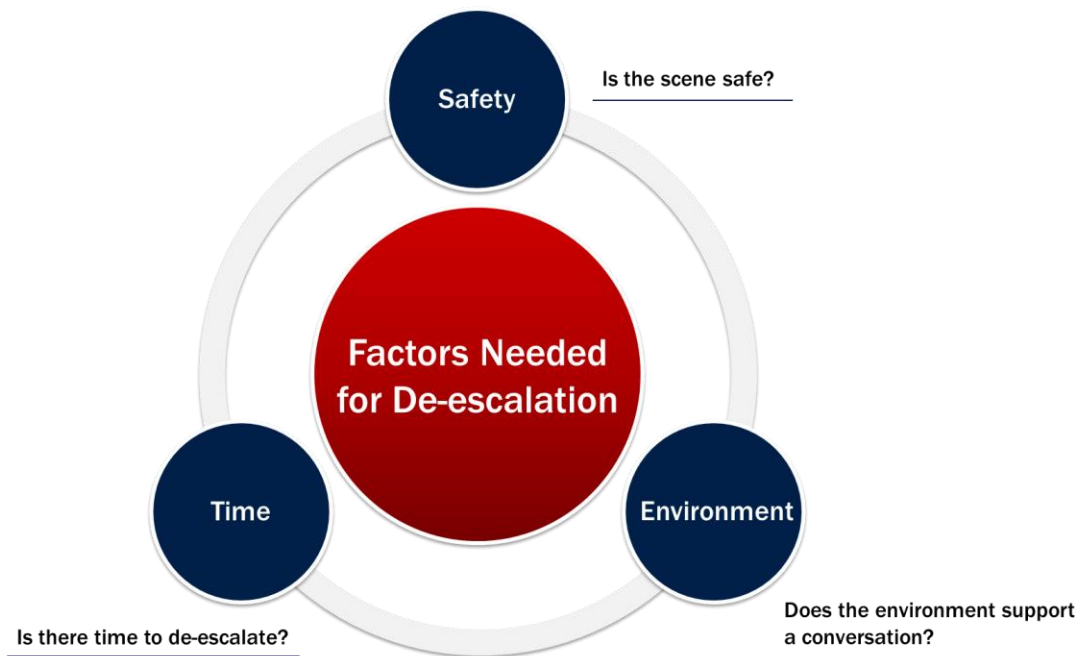
- Reduce the chance of injury to suspects, victims, and bystanders.
- Increase officer safety.
- Provide circumstances that will improve the success of using force.
- Improve public relations.
- Decrease liability.

Successful De-Escalation

Successful de-escalation may result in three opportunities for resolution. First, and most desirable, is that de-escalation may lead to voluntary compliance. De-escalation may result in delay. An officer who is alone may use de-escalation to delay the situation until more officers arrive to secure the scene or increase the opportunities for a successful outcome if force must be used. Delay may also provide an opportunity for emergency medical services to arrive or for other officers already on the scene to formulate a plan. Finally, de-escalation may be used to create a distraction.

Using de-escalation as a distraction may provide the other officers at the scene the opportunity to successfully take physical control over a subject using force. In all of these scenarios, de-escalation efforts would be considered successful.

Every encounter you face requires that you gain control of the situation. Depending on the circumstances, it may be appropriate to do so through de-escalation, using verbal commands, taking direct action, or some combination of the three. Deciding when to employ de-escalation techniques requires that the officer assess the situation and evaluate whether de-escalation is appropriate under the circumstances. In doing so, an officer must consider the following:



Determining when to employ de-escalation is a decision that the officer on the scene must make. Based on the circumstances that the officer observes at the time, he or she must evaluate whether de-escalation is appropriate in the moment. Articulating this decision can be critical, and, in addition, may be relevant in court or required by the agency's policies.

1. Safety

Assessing the safety of the scene is a determination that rests with the officer at the scene. The officer will take into account many factors, including the following:

- What is the behavior of the subject(s) at the encounter? Are there detectable pre-attack indicators?
- Does the distance between the officer and the subject(s) allow for nonconfrontational conversation without compromising safety?
- Does the subject have a weapon?
- Are any victims or bystanders at the scene?

- Does the officer have backup?
- Is the scene contained?

For a list of pre-attack indicators, refer to the “Use of Force” chapter on page 5.

2. Environment

The nature of the environment may dictate whether de-escalation is an option. Certain environments are not conducive to engaging in verbal communication. Environments that are loud or crowded will not likely support de-escalation. Likewise, aggravating circumstances, such as agitating crowds or individuals, adverse weather, or poor lighting may affect an officer’s assessment as to whether de-escalation is appropriate.

3. Time

De-escalation can be time consuming. The time de-escalation takes should not preclude its use, but it is a factor to consider.

De-escalation may create additional time for officers to respond appropriately. In the time used for de-escalation, the officer may delay the subject to allow for backup to arrive or may distract the subject so that he or she can be restrained. Likewise, the delay may allow the subject’s adrenaline level to lower and the subject may become more rational and composed.

On the other hand, time and inaction may empower the suspect, and the passing of time may allow emotional and physical fatigue to set in for the officers involved. Moreover, police resources are limited. The amount of time an officer can spend on a given situation and the number of officers involved can vary.



Left: De-escalation may be appropriate here because the man is seated, not touching the weapon, and there are no bystanders nearby who could interfere or be at risk. *Right:* De-escalation may not be effective here because the couple arguing may prevent officers from engaging in a nonconfrontational discussion and the inability to see the man’s hands presents a safety issue.

Confidence in Using De-Escalation Techniques

An officer who is confident in his or her ability to handle the situation if de-escalation fails may be more likely to try de-escalation. Training and practice in the use of de-escalation techniques under realistic conditions will improve an officer's effectiveness and confidence with respect to de-escalation.

Officers can successfully use de-escalation if they have the confidence to do so and if the safety, environment, and time permitted are conducive to using de-escalation. Measuring the success of de-escalation is also relative to the safety, environment, and time factors in any given situation, and outcomes will vary.

KEY POINTS: Successful de-escalation may lead to voluntary compliance, delay, or distraction. Safety, time, and environmental factors must be assessed before engaging in de-escalation techniques.

Active Listening

At the heart of the nonconfrontational verbal skills and body language used in de-escalation is active listening. *Active listening* is the process of concentrating to hear, acknowledge, and understand what a person is saying. It is an honest effort to empathize with speakers and to comprehend what they are communicating through their words, the emotion underlying their words, and their body language.

Through active listening, you may be able to achieve these four goals:



These goals are accomplished by providing the subject with the time and opportunity to vent, which could lower his or her emotional response and likely lead to a more open and rational dialogue. Rapport is established by increasing the subject's sense of safety and eliminating judgment.

These responses enable an officer to gain some insight into the situation and develop a plan for solving the problem.

Gathering information is critical in the assessment phase of de-escalation. Active listening will aid in gathering information by making the subject feel that they are safe from judgments and that an officer has yet to reach a conclusion on the situation.

Active listening involves more than just listening attentively. A number of skills can be used to maximize the impact of active listening, including:

- **Model and mirror** - Modeling a calm, composed demeanor will communicate to subjects that they are being heard. Model the kind of behavior and demeanor that will lead to a successful outcome by showing respect and self-control. Subjects often mirror the attitude and demeanor of the officer on the scene.

An officer should be aware of his or her body language, tone, word choice, and level of calmness. In addition, the officer should speak simply and move slowly and deliberately.

- **Open-ended questions** - Open-ended questions open the door for the subject to communicate and will provide an officer with information more valuable than what can be gleaned from a question that can be answered with a single word. Generally these questions start with “*who*,” “*what*,” or “*how*” or statements such as “*tell me more about*” An officer should avoid “*why*” questions as those can seem confrontational or filled with judgment.
- **Minimal encouragers** - Simple signals such as “*OK*,” “*I see*,” and “*hmm*” communicates to the speaker that an officer is listening and encourages the person to continue with the story. When using minimal encouragers, an officer should be careful not to overuse them. Overuse of encouragers can be distracting or leave the speaker feeling as if the officer is just biding time until he or she can talk.
- **Effective pauses** - Generally, people are uncomfortable with silence and will engage in dialogue to avoid it. Allowing pauses may create a space where a subject will feel compelled to talk.
- **Paraphrasing** - The officer, restating the speaker’s message in his or her own words, can test his or her understanding of the message and demonstrate to the speaker that he or she is engaged and trying to understand. Through paraphrasing, the officer may be able to successfully steer the conversation when the speaker goes off the topic. Further, paraphrasing provides an opportunity to show empathy and create rapport.



Left: Officers who demonstrate a composed demeanor can use the model and mirror technique to establish trust and calm the person in crisis. *Right:* Touching your hands to your chest says “I believe what I am saying.”

Using Active Listening With the Difficult Customer

Difficult customers come in many varieties. It may be someone who has frequent encounters with the law, someone who is combative or resistant to interaction, or someone who is accustomed to being a bully to get their way. Dealing with these individuals can be challenging, but under the right conditions, active listening can be beneficial.



“Difficult customers” may be in a “crisis,” unhappy because of police involvement, stewing because of an event that occurred before police arrived, or used to intimidating people to get their way.

Here are some tips for dealing with a difficult customer:

- **Acknowledge their frustration** - Let the person know that you have heard that they are angry or frustrated by the circumstances.

“I understand that you are frustrated.”

“I’d be upset if I were in your position.”

- **Apologize without accepting blame** - This demonstrates empathy and understanding.

"I am sorry that you are in this situation."

- **Do not argue** - Do not provide the subject with an opportunity to argue. Ignoring their efforts to engage you in argument is better than engaging in debate or trying to shut down their argument.

- **Give choices** - When your agency's policy allows you to do so, providing the subject with choices gives them some limited control over the situation. For instance, when issuing a speeding citation, mention that they have the option of paying the ticket or appearing in court to contest the ticket.

- **Distance yourself from the negative** - By reframing the situation in the larger context, the subject is less likely to blame you personally for the situation.

"I am just doing my job."

- **Personalize the positive** - If doing so is not contrary to your agency's policy, make the subject aware of the positive aspects of your encounter.

"The law requires you go to jail, but I will give your wallet and phone to your mom."

- **Do not answer abusive questions** - You will never be able to provide an answer that satisfies them. Like arguing, abusive questions are best ignored.

- **Answer all informative questions** - Provide good customer service by answering genuine questions, regardless of how rudely they are asked, that you are capable of answering. If the subject seems to be asking questions to create delay or harass you, it may be appropriate to defer answering them until a later time.

"I will answer all your questions soon, but first I need you to...."

- **Minimize** - Provide information about how the situation could be worse.

"We see way worse all the time."

"It's not like you hit someone."

- **Set limits** - When setting limits, make sure they are reasonable and necessary and also be prepared to follow up if the limit is violated. Do not use ultimatums.

"Right now, you're just getting a ticket. If you continue to get out of your car and act disorderly or cause a disturbance, I cannot guarantee that is all that will happen."

- **Rationalize** - This directs subjects' attention to making rational choices for their own good.

"I would feel angry about this too, but getting arrested is not going to help your cause."

- **Leave** - You do not need to have the last word. If the enforcement action is done, leave.

Active listening is the cornerstone of de-escalation. By focusing on the subject, listening to the speaker's words and tone, observing body language, and using the feedback tools discussed above, you will create empathy and rapport and greatly improve the effectiveness of de-escalation efforts.

KEY POINTS: Use active listening skills to hear, acknowledge, and understand what the person is saying. Benefits of active listening include:

- Lowering the person's emotional response by giving them the time and opportunity to vent.
- Encouraging behavior changes leading to a more open and rational dialogue.
- Establishing rapport by increasing their sense of safety.
- Gathering information and developing a plan for solving the problem.

Individuals with Mental-Health Concerns

Quite often, officers will encounter individuals who are experiencing a crisis. A crisis is a situation that a person perceives as presenting insurmountable obstacles to achieving desired goals or outcomes. Individuals in crisis may or may not have compromised coping capacity.

An individual's coping capacity may be temporarily compromised because of drug or alcohol use or developmental or mental health issues. An individual who is in crisis and suffering from a compromised coping capacity falls into a broad category that the Ohio Peace Officer Training Commission refers to as a "special needs population."

For members of the special needs population, typical command and control mechanisms may escalate the problem. A less authoritative, less commanding approach may be more effective with these individuals. Therefore, cautiously using de-escalation techniques can be helpful.

When interacting with individuals with a compromised coping capacity, bear in mind that the 6th Circuit Court of Appeals in *Griffith v. Coburn* has specifically held that **the diminished capacity of an unarmed detainee displaying passive resistance must be taken into account when assessing how much force to exert.**⁵⁶



In *Griffith v. Coburn*, law enforcement was contacted by Ethel Partee, the mother of Arthur Partee.⁵⁷ Ethel Partee reported to police that her son was acting strangely and requested their assistance in having him hospitalized.⁵⁸ The police informed Ms. Partee that her son could not be involuntarily committed because he did not appear to be a danger to himself or others. But the police offered to

arrest Arthur Partee on an outstanding traffic warrant for driving without a license, so that he could get the needed evaluation.⁵⁹

When the police arrived to arrest Partee, he was not cooperative, and an eventual struggle resulted in Partee being placed in a chokehold.⁶⁰ Ultimately, Arthur Partee died from “asphyxia associated with physical restraint.”⁶¹

In its evaluation of the reasonableness of the force used by the officers against Arthur Partee, the court stated:

There is one other relevant factor in this case: the record establishes that the officers who came to the Partee residence knew before their arrival that Arthur Partee was experiencing some sort of mental or emotional difficulty sufficient to cause his mother to seek help from the police department. In a recent Sixth Circuit case in which the first officer arriving on the scene was “informed ... that [the subject] was mentally ill, but ... not ... that [he] was nonverbal and nonresponsive,” *Champion v. Outlook Nashville Inc.*, 380 F.3d 893, 904 (6th Cir. 2004), we noted:

It cannot be forgotten that the police were confronting an individual whom they knew to be mentally ill or retarded, even though the Officers may not have known the full extent of [his] autism and his unresponsiveness. The diminished capacity of an unarmed detainee must be taken into account when assessing the amount of force exerted. See *Deorle v. Rutherford*, 272 F.3d 1272, 1283 (9th Cir. 2001) (“[W]here it is or should be apparent to the officers that the individual involved is emotionally disturbed, that is a factor that must be considered in determining ... the reasonableness of the force employed.”).⁶²

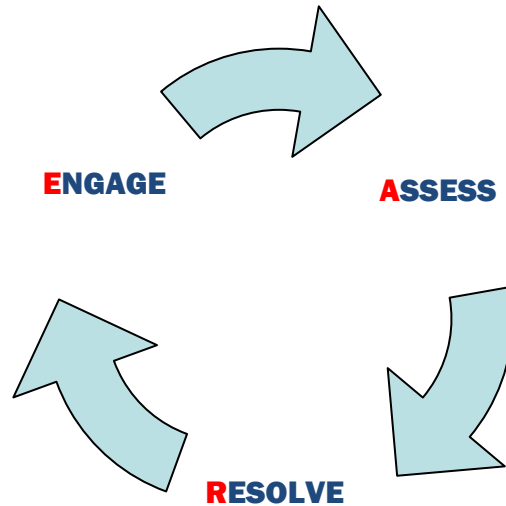
The court noted that the diminished capacity of an unarmed detainee displaying passive resistance must be “taken into account” when assessing the amount of force used. In other words, **if an officer has knowledge of a subject’s mental status, it is part of the totality of the circumstances that must be considered in addition to all of the other factors set forth in *Graham v. Conner*.**⁶³ As stated in *Graham v. Conner*, the “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the “20/20 vision of hindsight.”⁶⁴

Griffith v. Coburn emphasizes the importance of using de-escalation techniques when dealing with members of the special needs population if safety, environment, and time factors allow. Using de-escalation techniques may reduce the need for additional force and, if documented, can reduce liability.

There are several different techniques that officers can use when dealing with individuals with mental-health concerns. Each technique or model is designed toward a specific type of encounter. The most common models are the Engage, Assess, and Resolve (EAR) Model, the Loss Model, and the LAST Model.

The EAR Model: Engage, Assess, and Resolve

When engaging with the special needs population, the EAR Model is useful. Although these are actions that you use with nearly every encounter, this model helps to relate it to the special needs population. In the following, we will examine each step of the EAR Model in more detail.



1. ENGAGE

Approach the subject with a disarming introduction to make a connection with the subject. *“Hello. My name is Officer Smith. What is your name?” “What is going on today, Rob?”*

Focus on the subject’s physical health. *“Are you injured?”*

Use *“you”* statements to communicate your observations and identify underlying feelings. These statements also help to develop rapport by labeling emotions that the subject is feeling but may not have identified. Statements such as *“you seem stressed”* or *“you look hurt”* are free of judgment and are less likely to further irritate the subject.

Avoid *“you statements”* that are based on suppositions, opinions, or include an off-the-cuff diagnosis. Examples include, *“You are paranoid,” “You must be schizophrenic,”* or *“You’re being unreasonable.”*

Using *“I”* statements will continue to build the connection and personalize the encounter. Statements such as *“I want to help you”* or *“I want to understand what is happening here”* are disarming. *“I”* statements are also valuable for confronting the subject or setting limits. For instance, *“When you pace around and clench your fists, I feel like you are going to fight me.”* A statement like this not only serves to de-escalate but voices your observations and concerns to other officers on the scene.

2. ASSESS

Assessment is continual and ongoing. It may begin before you even get to the scene through information delivered by your agency or the dispatcher. You look for clues about the subject's medical history or medication use. You consider the history of past calls involving that individual or address. On the scene, you assess the situation by talking to bystanders, relatives, friends, or other witnesses.

3. RESOLVE

How will the encounter end? What does the situation warrant? Is the subject going to be arrested? Will you transport the individual to a hospital for treatment or an assessment? Will you simply leave? If you leave, is it appropriate to make a referral?

Deciding how to resolve the situation requires that you take into account the balance between the needs of the individual and the needs of society. Can the individual be left alone? Is it safe for that person and those around him or her? Are there options other than transport for getting the individual the help or supervision that is needed, such as bringing in a trusted family member or a counselor? You should also consider the policies and procedures of your agency and the jail or hospital that could potentially house the individual.

If an individual appears to pose a substantial risk to themselves or another or is unable to care for himself or herself, the Ohio Revised Code authorizes certain persons, including police officers, to take the person into custody and immediately transport him or her for emergency hospitalization.⁶⁵ ("Pink slip" is the common term for an Application for Emergency Admission, the paperwork used to detain an individual for emergency hospitalization.)

The individual must meet the definition of a "mentally ill person subject to court order" as set forth in ORC 5122.01, which states:

"Mentally ill person subject to court order" means a mentally ill person who, because of the person's illness:

- (1) Represents a substantial risk of physical harm to self as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm;
- (2) Represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior, evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm, or other evidence of present dangerousness;
- (3) Represents a substantial and immediate risk of serious physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the person's basic physical needs because of the person's mental illness and that appropriate provision for those needs cannot be made immediately available in the community; or
- (4) Would benefit from treatment for the person's mental illness and is in need of such treatment as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others or the person....⁶⁶

Forecasting

Once you decide how to resolve the issue, it is important to forecast your intentions to lower the subject's anxiety. You should give short and specific directions or commands that are framed as a "need." For instance, *"For both of our safety, I need to pat you down before you get into the cruiser. I need for you to stand with your hands on the wall. After that, I will walk you to the cruiser and drive you to the hospital."*

Forecasting can be very important. A subject's anxiety is likely to be high when you first make physical contact with him or her. A lot of fights start at this point or after the person is handcuffed and is being helped into the cruiser. Forecasting can help to lower the subject's anxiety at this critical time.

The Loss Model

The Loss Model helps officers recognize specific characteristics in four scenarios and provides general recommendations for dealing with individuals experiencing these types of crises.

1. Loss of Reality

Individuals experiencing a loss of reality may look frightened and confused. They do not seem connected to the here and now. They may be harboring false beliefs brought on by hallucinations or delusions. They may be exhibiting paranoia and showing self-neglect.

Help to ground the person by using a disarming introduction. Once you know his or her name, use it frequently. Cut through the fear and confusion by redirecting the person to reality as much as possible.

When dealing with people experiencing a loss of reality, such as those who are hearing voices or believing that they are being followed, it is important that you acknowledge what they are telling you or what you observe but without validating or denying their experience. For instance, *"I am not hearing voices right now, but I can understand how that would be frightening or confusing."*

Officers should be careful around people who are paranoid, especially those who have paranoia centered around the government. In these cases, officers may want to keep more distance and avoid circling behind the subject.

The LOSS Model

1. Loss of Reality
2. Loss of Control
3. Loss of Perspective
4. Loss of Hope

Loss of Reality Observable Characteristics

- Frightened
- Confused
- False Beliefs
- Paranoid
- Self-neglect

De-Escalation Goal

- Ground the person
- Cut through fear and confusion

2. Loss of Control

Individuals experiencing a loss of control are usually hostile and may be manipulative. They are likely to be impulsive, destructive, and confrontational.

The best approach is to let them vent. Through time and venting, they are likely to calm down and regain some composure. While you are doing this, remain calm and do not allow yourself to be frustrated or triggered by them.

Loss of Control Observable Characteristics

- Hostile
- Manipulative
- Impulsive
- Destructive
- Confrontational

De-Escalation Goal

- Let them vent
- Model and mirror
- Use empathy and patience

3. Loss of Perspective

Individuals experiencing a loss of perspective are overwhelmed by something that seems relatively insignificant to a third party. These individuals are anxious and restless. They may have rapid speech and grandiose ambitions.

These individuals will likely calm down if they are given the opportunity to vent. You can use active listening techniques to help calm them.

Loss of Perspective

Observable Characteristics

- Anxiety
- Restlessness
- Rapid speech
- Grandiose ambitions

De-Escalation Goal

- Let them vent to calm down
- Use active listening skills

4. Loss of Hope

These individuals are extremely sad and emotional. They likely feel helpless and are withdrawn. Sometimes people exhibiting these characteristics are suicidal.

Your objective with these individuals is to instill hope and help them to get professional help. Do not hesitate to ask them if they are thinking about killing themselves. If you think that the individual you are dealing with is exhibiting any signs of being suicidal, take appropriate action to get that person the appropriate help. The LAST Model, discussed below, will provide a framework for responding in such cases.

Loss of Hope

Observable Characteristics

- Sad
- Emotional
- Helplessness
- Withdrawn

De-Escalation Goal

- Instill some hope
- Seek professional help

The LAST Model

The LAST Model aids in assessing suicidal intent. From this, you can glean the information necessary to document the situation if you think that the individual requires emergency hospitalization. The LAST Model looks at the following factors:

- *Lethality* - Try to determine the deadliness of the method of suicide that they are contemplating.
- *Availability* - Find out if the person has access to the means of suicide. For instance, if the person is

The LAST Model

- **Lethality**
- **Availability**
- **Specificity**
- **Timing**

talking about using a gun, find out if he or she has access to a gun or can obtain one.

- **Specificity** - Consider how detailed the suicide plan is. Is the person specific as to how, when, and where?
- **Timing** - When is the person planning to do it?

Dealing with individuals with a compromised coping capacity can be challenging. In addition, controlling legal authority requires that the compromised capacity of an unarmed detainee displaying passive resistance must be taken into account when assessing the amount of force exerted. When engaging in de-escalation with this population, the basic skills of de-escalation may not be enough. The models reviewed in this chapter provide some additional tools to aid in a successful outcome.

KEY POINTS:

- The compromised capacity of an unarmed detainee displaying passive resistance must be taken into account when assessing the amount of force used.
- When engaging with the special needs population, use the Engage, Assess, Resolve (EAR) Model.
- The Loss Model helps officers to recognize specific characteristics in persons suffering from a loss of control, reality, perspective, or hope and provides general recommendations for dealing with these individuals.
- The LAST Model aids in assessing whether an individual has suicidal intent.

De-Escalation Pitfalls

The most important things to avoid when trying de-escalation are:

- **Compromising officer safety** - Do not prioritize de-escalation over officer safety. If you need to de-escalate with your gun or nonlethal weapons in your hand for safety, then do so.
- **Judging the subject** - De-escalation and expressing empathy with a subject is different than agreeing with or feeling sympathy for the subject.
- **Rushing** - De-escalation is a slow process. Time alone may help the subject to calm down and become more rational.
- **Giving advice or persuading too soon** - Trying to persuade the subject too soon or giving advice too soon will undermine your efforts.
- **Making it about the officer** - This can happen in an effort to relate to the subject. Avoid telling stories from your own experience.

Documenting De-Escalation

When de-escalation does not work, you should document it. If you initiated de-escalation tactics but stopped, document why. What made it unsafe or unproductive to continue? If you did not try de-escalation, document why it was not a good choice in the situation.

When documenting your efforts to de-escalate, remember to consider the elements of safety, environment, and time. How did factors related to these three elements affect your decision? If you changed course, why did you do so? What changed with regard to the safety, environment, or time parameters? Did the subject's reaction to using de-escalation impact your decision?

Documenting your efforts to de-escalate a situation or why de-escalation was not appropriate can go a long way toward showing your agency and the courts the reasonableness of your actions. This demonstrates how you "took into account" the subject's mental state as set forth in *Griffith v. Coburn*.

KEY POINTS:

- When using de-escalation tactics, officers should avoid compromising officer safety, judging the subject, rushing, giving advice too soon, and making it about the officer.
- Document de-escalation attempts in writing, including details about what went wrong to show your agency and the courts the reasonableness of your actions.

Additional Resources

- **Ohio Peace Officer Training Academy**
 - eOPOTA courses are offered online and are accessible through the Ohio Law Enforcement Gateway at www.OHLEG.org. Relevant courses include:
 - Crisis Conflict Management
 - De-Escalating Mental Health Crises
 - Autism and Other Developmental Disabilities
 - Law Enforcement Officer Response to People with Autism
 - Email OPOTA at AskOPOTA@OhioAttorneyGeneral.gov with questions about training and certifications.
- **CIT International**
 - CIT is an international nonprofit organization that, through outreach and education, promotes and supports collaborative efforts among law enforcement, mental-health providers, and individuals with mental illness and their families. For more information, visit www.citinternational.org.
- **National Alliance on Mental Illness (NAMI)**
 - NAMI is a national grassroots organization that advocates for individuals with mental illness. For more information, visit www.nami.org.
- **Mental Health America (MHA)**
 - This community-based nonprofit group provides advocacy, education, and research services related to mental health. For more information, visit www.mentalhealthamerica.net.
- **County Alcohol Drug and Mental Health Boards**
 - Availability of these services varies throughout the state. For a list of mental health providers by county, visit www.mha.ohio.gov.
- **Specialized Police Response Teams**
 - Some agencies have teams or officers who have received extensive training on dealing with those in crisis or with a compromised coping capacity. Familiarize yourself with the resources available at your agency.

- **Ohio Criminal Justice Coordinating Center of Excellence (CCoE)**
 - CCoE promotes jail diversion programs for individuals with mental illness. For more information, visit www.neomed.edu/academics/criminal-justice-coordinating-center-of-excellence.
- Thompson & Jenkins, *Verbal Judo: The Gentle Art of Persuasion* (2010).
- Van Blaricom, *Handling the Mentally Ill: There are No Shortcuts for Officers*, *POLICE Magazine* (March 01, 2000), available at www.policemag.com/channel/patrol/articles/2000/03/handling-the-mentally-ill-there-are-no-shortcuts-for-officers.aspx.

Chapter Three: Community-Police Relations: Building Trust

CHAPTER SUMMARY:

This chapter will discuss the dynamic relationship between police and their communities by examining the concepts of (1) police legitimacy, (2) procedural justice, and (3) bias. This chapter explores how these ideas relate to one another, explores the benefits of each, and provides tools and best practices to achieve police legitimacy through procedural justice tactics. It also examines how biases can affect law enforcement encounters with the public and identifies ways to overcome these biases to promote police legitimacy. Finally, it highlights examples of programs from law enforcement agencies that can serve as models.

Community-police relations are a topic of national interest in the wake of recent police-involved shootings throughout the country. The actions of police officers are much more heavily scrutinized today, especially through social media. At the same time, law enforcement is experiencing mounting pressure to engage more with communities on a social level, while ensuring the safety of the public and themselves.

Police Legitimacy

Law enforcement officers are responsible for enforcing the law. Effectively carrying out these law enforcement duties requires the public to accept and defer to appropriate use of police authority and willingly cooperate and provide information.⁶⁷ This is known as legitimacy. *Legitimacy* “reflects the belief that the police ought to be allowed to exercise their authority to maintain social order, manage conflicts, and solve problems in their communities.”⁶⁸

Legitimacy measures how much the public trusts and has confidence in the police, is willing to defer to the law and police authority, and believes that police actions are just and appropriate.⁶⁹ If the public has feelings of hostility and reluctance toward the police and perceives that law enforcement officers are not morally just, honest, competent, and worthy of trust, then the public will react negatively to police enforcement power.⁷⁰ This lack of police legitimacy causes tension between the police and the communities they serve. Therefore, success in policing depends on how the community views and reacts to law enforcement.⁷¹ Because of this, law enforcement leaders increasingly view police legitimacy as a necessary condition of success.⁷²

Three Judgments of Police Legitimacy

Police legitimacy relates to citizens’ judgments about the authority of law enforcement officers to decide how to enforce the law and maintain social order.⁷³ When police legitimacy exists, it is reflected in the following three judgments:⁷⁴

- Public trust and confidence that police are honest, trying to do their best, and trying to protect the community against violence and crime⁷⁵

- The public’s willingness to defer to the law and police authority⁷⁶
- The public’s belief that law enforcement actions are morally justified and appropriate based upon the circumstances⁷⁷

The Benefits of Police Legitimacy

Police legitimacy has many benefits. There is a correlation between those who obey the laws and those who view the police as legitimate.⁷⁸ Additionally, those who see the police as legitimate have an increased willingness to cooperate by reporting crimes and providing valuable information about known and suspected offenders.⁷⁹ Legitimacy has been linked to the ability of law enforcement to prevent crime and keep communities safe.⁸⁰ If public trust and confidence in the police is undermined, the ability of law enforcement to prevent crime will be weakened by lawsuits, declining willingness to obey the law, and withdrawal from existing partnerships.⁸¹

QUICK TIP:

Police legitimacy will encourage the public to:

- Become actively involved in community-police relations and partnerships.
- Obey the law.
- Cooperate by reporting crimes.
- Provide information about offender(s).
- Cooperate and defer in moments of crisis.

Overall, when people perceive the police as legitimate, they are more likely to have higher levels of satisfaction and confidence in the police, perceive the police as effective in crime-control efforts, and be more willing to assist the police.⁸² Police legitimacy engenders compliance, fosters cooperation, improves citizen satisfaction, and enables the police to maintain order and control crime.⁸³ Police legitimacy is not just an ideal; it is functionally important in improving public cooperation with police and increasing a citizen’s willingness to obey the law.⁸⁴

The Differences Between Legality and Legitimacy

While the concepts of “legality” and “legitimacy” are interrelated, they are not the same thing.⁸⁵ Police legitimacy involves more than simply being lawful. Police legitimacy lies within the perception of the public.⁸⁶ Keep in mind that **acting lawfully may still not achieve police legitimacy.**

<p><u>Legality is established by:</u></p> <ul style="list-style-type: none"> • Laws and rules. • Policies and procedures. • General orders. • Standard operating procedures. • The Constitution. • Case law. 	<p><u>Legitimacy is established by:</u></p> <ul style="list-style-type: none"> • Public perception.
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Some studies suggest that the public is not generally knowledgeable about the law and the legalities of police practices.⁸⁷ Instead, the public generally evaluates the “legality” of the police by reacting to how they and others are treated by the police rather than the actual legality of police practices.

One study on police legitimacy had participants watch videos of police-citizen interactions and rate those interactions.⁸⁸ This study found that people’s evaluations of whether the police violated the law are more strongly shaped by whether the police treated the citizen “fairly” than by whether the police action was legal. This suggests that people are more willing to defer to legitimate police actions when they believe that those actions seem reasonable and appropriate.⁸⁹

Law enforcement officers can act both lawfully and within agency policy, but legitimacy will only exist if the public is engaged and trusts the officer. Without police legitimacy, the public may not support or cooperate with officers when needed.

HYPOTHETICAL: Are your actions both lawful and legitimate?

You pull over a car for speeding and discover that the driver does not have a driver’s license.

Option 1: You tow the car without providing the driver with any details on how to regain possession of the car or why the car is being towed.

Ask yourself: Are your actions both lawful and legitimate?

No. While you may have acted lawfully, you will not have achieved police legitimacy. The driver will likely leave the encounter feeling confused and as if he or she has been treated unfairly or without respect. The interaction will not garner support and trust for police.

Option 2: You tow the car, explain to the driver why the car is being towed (for example, your jurisdiction requires the car to be towed), and you provide information on where the car is being taken and how to regain possession of the car.

Ask yourself: Are your actions both lawful and legitimate?

Yes. Even though the ultimate result is the same (you are still towing the car), you are more likely to have gained legitimacy because you treated the driver with respect and educated the driver on the process. Your actions promoted both transparency and legitimacy.

Research shows that the level of perceived legitimacy can be increased by explaining actions to the people who are directly involved.⁹⁰ Law enforcement officers can reduce conflict and promote legitimacy simply by explaining their actions to the public.⁹¹

Research also suggests that when a person is treated respectfully, it can have a greater effect on how that person views an encounter with the police than the actual outcome of the encounter.⁹² For instance, a motorist who receives a traffic citation and fine from a respectful officer may leave the encounter with a better impression of law enforcement than a motorist who receives only a warning from a rude or disrespectful officer.⁹³

SPOTLIGHT ON: Deputy Elton Simmons of the Los Angeles County Sheriff’s Office is a prime example of how to use the person-based approach to establish police legitimacy on a daily basis. A 2012 news report highlighted Deputy Simmons’ impressive record as a veteran traffic cop for more than 20 years. He had made more than 25,000 traffic stops, yet there was never a complaint filed against him. Instead, citizens often left the traffic stops feeling satisfied with the experience, despite having been issued citations.⁹⁴

Changing Public Perceptions From “That’s Not Fair” to “I Understand”⁹⁵

Police legitimacy can be generated, enhanced, and undermined through police encounters with the public. Because it can be both enhanced and undermined by encounters with the public, the level of legitimacy that a community has for its law enforcement is fluid. Constant work to maintain legitimacy is required. Unfortunately, no matter how much hard work is expended developing positive community relations, those positive relations can be undermined with just one negative police officer-community member interaction.

A good place to start establishing police legitimacy is to remember the elements of the law enforcement officer oath:

- Service
- Honor
- Protection
- Justice
- Integrity

“No one is compelled to choose the profession of police officer, but having chosen it, everyone is obligated to perform its duties and live up to the high standards of its requirements.” - *President Calvin Coolidge*

If these qualities form the backdrop for each citizen encounter, a positive relationship with the community is more likely and will promote police legitimacy with each law enforcement-community member interaction.

While law enforcement officers cannot control how the profession is portrayed publicly, officers have a responsibility to work toward establishing police legitimacy by building and strengthening relationships of trust and confidence within the communities served.

Using Social Media to Foster Legitimacy

About 2.3 billion people are using social media. Social media can have a big impact on how the public perceives law enforcement. It can also be a great tool for law enforcement to shape its image and connect with the public.

Live-streaming video apps are becoming increasingly popular. Cellphone apps, such as Periscope, which has 10 million users, and Facebook Live, which has 1.65 billion users, allow users to record events (e.g., police encounters) and broadcast the live video to followers.⁹⁶ Other apps and websites such as Snapchat, YouTube, and Instagram, allow users to upload videos and photographs almost instantly. Videos and photographs are being broadcast to followers throughout the state, country, and world. For example, the 2016 police shooting incident in Falcon Heights, Minnesota, was streamed live by the victim's girlfriend through Facebook Live.⁹⁷ Within one day, the video had been viewed almost 4 million times.⁹⁸

With an increase in (1) the number of police-encounter videos online and (2) organizations such as CopBlock and Communities United Against Police Brutality calling upon citizens to film all police encounters, law enforcement officers need to be prepared to be filmed and react appropriately.⁹⁹

In 2015, a Los Angeles woman recorded a video on her cellphone of police activity on her street. While she was filming, a deputy U.S. Marshal involved in the police encounter grabbed her cellphone out of her hand and smashed it on the sidewalk. A second neighbor filmed the marshal approaching the woman and smashing the cellphone. Because the deputy did not handle the situation appropriately, the woman filed a complaint with the local police department, the story received nationwide media attention, and the U.S. Marshals Service was reflected in a negative light. The video is still available on YouTube and has received more than 90,000 views.¹⁰⁰

In contrast, Officer Matthew Lyons of the Oceanside California Police Department set a good example of how a police officer should react to being filmed during an encounter with a citizen.¹⁰¹ In 2011, Lyons stopped to talk to a man who was open-carrying a weapon. The man recorded the entire encounter on his cellphone. Lyons immediately acknowledged that he was being filmed, assured the man that he was allowed to film the encounter, and even stated his name and badge number at the end of the encounter. The officer remained calm during the entire conversation and did not let the video recording impede his ability to perform his duties.¹⁰² The video, which sets a great example of community policing, received nationwide media attention and has received more than 19,000 views on YouTube.¹⁰³

QUICK TIP:

Social media can:

- Build an agency brand/ shape agency reputation.
- Provide important safety and emergency information to the public.
- Provide a forum for the public to engage, ask questions, and share information.

Law enforcement can also use social media as a positive tool to connect with communities and foster community-police relationships. Social media can serve to push information out to the public and also to pull information in from the community. A law enforcement agency can leverage social media to create a brand for the agency that will encourage the public to engage with the agency.¹⁰⁴ For example, agencies can create Facebook and Twitter accounts, post articles, press releases, videos, and pictures on the agency website, and provide fact sheets on crime data that will be of value and interest to the public.¹⁰⁵ Social media accounts are also a means to provide emergency information to the public, such as Amber Alerts, traffic alerts, descriptions of suspects, and active-shooter situations.¹⁰⁶

Engaging in social media also provides methods for the public to connect with the agency and offer information. Social media accounts provide a forum for community members to ask questions of the agency and share valuable information related to crimes or suspects, as many individuals may feel more comfortable reporting this type of information through social media.¹⁰⁷

Police agencies should carefully analyze the pros and cons of having a social media presence before signing up for accounts. Agencies need to have staff available to write the content and monitor accounts for public feedback, questions, and comments.¹⁰⁸ Keeping up with social media accounts can be an ongoing time commitment and failure to keep accounts updated and to respond to public inquiries could be seen as a lack of engagement and result in reduced police legitimacy. Therefore, a police agency should only engage in social media if the agency can successfully maintain its social media presence based on available resources.

KEY POINTS:

- Police legitimacy is the concept that the public will accept police authority when law enforcement is perceived as morally just, honest, competent, and worthy of trust.
- When police legitimacy exists, the public is more likely to:
 - Become actively involved in community-police relations and partnerships.
 - Obey the law.
 - Cooperate by reporting crimes.
 - Provide information about suspects.
 - Cooperate and defer in moments of crisis.
- To achieve legitimacy officers should:
 - Explain their actions and provide helpful information.
 - Be courteous and respectful.
 - Communicate more with the public in a variety of mediums.

Procedural Justice

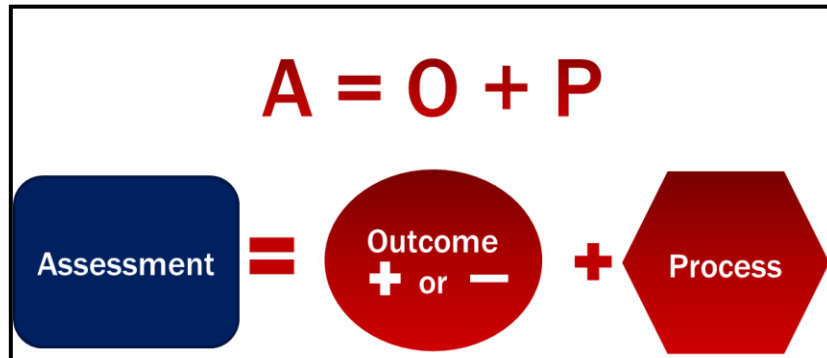
Procedural justice “refers to the idea of fairness in the processes that resolve disputes and allocate resources. It is not a practice, but a philosophy and a movement which promotes positive organizational change, upholds police legitimacy in the community, and enhances officer safety.”¹⁰⁹

“The goal is Legitimacy ... the tactic is Procedural Justice.” - *Tracy Meares, Yale Law School*

Studies suggest that “people react to legal authority primarily by judging how fairly officers exercise their authority, rather than in terms of the favorability/unfavorability of the outcomes they receive.”¹¹⁰ People want to know that officers are acting neutrally and that decisions made by an officer are being applied fairly. They want to be treated with respect and dignity.

QUICK TIP: Procedural justice begins at the agency level. Consider implementing a procedural justice training program, such as the Blue Courage program.

They want to be able to share their side of the story with the police. And they want officers to be sincere and caring about their needs and concerns. Citizens who have negative interactions with the police could have lasting negative perceptions of the police.¹¹¹ By using procedural justice tactics, police can turn negative interactions into positive interactions, building police legitimacy and community trust.



Procedural justice can have a positive impact on community-police relationships. If the public perceives police officers are acting fairly, the public will be more willing to cooperate with the police in the following ways:

- People will comply with the law.
- People will comply with law enforcement directives.
- Encounters will be less likely to escalate into violence.
- People will be more willing to call the police, report crimes, report accidents, report dangerous or suspicious activities, and provide the police with information.

Police legitimacy is not an ideal; it is functionally important to fostering public cooperation with the police and the public's willingness to obey the law.¹¹² There are **two prongs to using procedural justice to build legitimacy and community trust in policing:**

- **Person-based approach** - Focusing on face-to-face interactions between an officer and a community member.

SPOTLIGHT ON: Chicago Police Officer Alfred Williams Jr. personally returned a lost wallet to its owner rather than drop it in a lost-and-found box.¹¹³ The owner, a journalist, was happy to have his wallet returned, and more importantly, he was so impressed by Williams' actions that he wrote about the experience in his newspaper column.¹¹⁴ The owner wrote, "That small act of kindness might not seem like much. But let me assure you it's the good stuff that, little by little, can help heal the broken trust at the heart of a tumultuous relationship between cynical Chicagoans and the Chicago Police Department."¹¹⁵

- **Community-based approach** - Achieving police legitimacy throughout the entire community, and then throughout the entire society.¹¹⁶

SPOTLIGHT ON: The Toledo Police Department’s annual crime-prevention-day picnic draws hundreds of kids and youth groups. The community-outreach event gives kids the opportunity to have fun while interacting with police officers and learning about law enforcement. It also helps police officers build positive relationships in the community. The event includes lunch, face-painting, games, a talent show, and the distribution of crime-prevention bags.¹¹⁷

Police can get citizens to comply with the law through the power of influence or the power of control.¹¹⁸ Use of control involves force, threat of force, and causing others to see you as powerful. As a result of police use of control, community members “give in” or comply with that power. On the other hand, use of influence involves using procedural justice tactics to effectively work with community members, earn their respect, and make a positive difference in their lives. **Using influence, rather than control, gives community members the opportunity to voluntarily comply with the law.**¹¹⁹

<p><u>Power of Control:</u></p> <ul style="list-style-type: none"> • Uses coercion. • Uses threats. • Uses force. • Promotes perception of power. 	<p><u>Power of Influence:</u></p> <ul style="list-style-type: none"> • Uses principles to earn respect. • Makes a positive difference in people’s lives. • Works effectively with others.
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By successfully implementing the tactics of procedural justice, law enforcement officers can rely on the power of influence to build legitimacy and community trust.

Procedural Justice Tactics: The Four Principles

Law enforcement can implement procedural justice tactics to establish police legitimacy in the community. Procedural justice tactics can also help police counter implicit biases and are a means to building positive relationships with community members. There are four widely accepted principles of procedural justice:¹²⁰

The Four Principles of Procedural Justice:

1. Give others a voice.
2. Use neutrality in decision-making.
3. Treat everybody with respect.
4. Be trustworthy.

1. Give Others a Voice¹²¹

Allow community members to state their point of view or offer an explanation for their behavior. People often just want to be heard and want to share their side of the story. Allowing community members to tell their side of the story makes them feel like they are part of the process and that they have input into the decisions that are made about them. Even if their input does not affect the outcome, let citizens have the last word – the officer will have the last action.

QUICK TIP: Officers should practice transparency without feeling judged – provide badge numbers and supervisor contact information, if requested by a subject.

2. Use Neutrality in Decision-Making

The community wants evidence that law enforcement is acting in the following ways:

- Neutral¹²²
- Fair¹²³
- Consistent in decision-making for all persons, every time¹²⁵
- Without prejudice
- Transparent¹²⁴
- Respectful of rules and legal principles

SPOTLIGHT ON: The Dallas Police Department has implemented the following de-escalation and community-police tactics leading to more transparency and a decrease in excessive force complaints:

- Officers must participate in deadly force training every two months.
- Officers must wear body cameras.
- The department publishes facts about officer-involved shootings on its website, including the number of incidents, location, outcome, and names of the officers involved.¹²⁶

Community members are entitled to demand that law enforcement treat everyone fairly and equally. It is often helpful to share the rules and procedures that must be followed. If citizens understand why police take certain actions, they are more likely to believe the decision-making process was fair. When explaining laws or police actions to the public:

- Be truthful, use simple language, give a complete explanation, and check decision-making for implicit bias.
- Do not let ego get in the way of the duty to be neutral.¹²⁷

Implementing these practices will positively affect whether law enforcement appears neutral and, as a result, will help build police legitimacy.

3. Treat Everybody With Respect

Respect is an important piece of procedural justice. Respect is an active process of nonjudgmentally engaging people from all backgrounds. It values both you and those with whom you interact. People are driven by emotions, and they remember how incidents make them feel, not how they happened. Treating community members with respect and dignity will make them feel better about your interaction, even if the end result is negative for them.¹³¹

When community members believe that you are treating them respectfully and fairly, they view law enforcement as acting legitimately. As a result, the community gains trust and confidence in law enforcement.¹³²

4. Be Trustworthy

People react favorably when they believe you are sincerely trying to act in their best interests. They can tell when you are just going through the motions and are only pretending to care.¹³³

Officers should learn about the community they serve. Find out what languages are spoken in the area and determine whether there are language barriers that need to be addressed. Also, look for opportunities to interact with community members in nonconflict situations, such as stopping by area businesses. The goal is to be approachable, yet professional. In every encounter, try to communicate facts, objectives, and consequences.¹³⁴

Tips for treating others with respect and dignity:

- Make direct eye contact.
- Address people appropriately (use “sir” or “ma’am”).
- Give undivided attention.
- Be sensitive to cultural differences.¹²⁸
- Do not use inflammatory words or phrases.
- Thank them for their cooperation.¹²⁹
- Show sensitivity to their issue(s).
- Show concern for their well-being.
- Be empathetic to the situation.
- Treat others how you want to be treated.
- Do not take behavior personally.
- Give them the last word — you will have the last action.
- Control your emotions.
- Model respectful behavior and others will mirror it.¹³⁰

Law enforcement and the community must work together to build trust and strengthen those relationships.¹³⁶ When law enforcement officers better understand the community they work in, they can also help community members understand how they keep the community safe.¹³⁷ These types of interactions increase mutual understanding between the police and the community, building trust and respect, and strengthening community-police relationships.¹³⁸

QUICK TIP: To build trust:¹³⁵

- Actively listen to people.
- Consider both sides of the argument.
- Consider needs and concerns.
- Explain actions and decisions.

Barriers to Procedural Justice: Fixing Communication Issues in Cross-Cultural Situations

Law enforcement officers are often placed in situations where cross-cultural communication is necessary. Law enforcement officers must try to communicate with those who have limited English proficiency and who cannot read, speak, write, or understand English well, helping them understand the requirements of the law. Police agencies that receive federal assistance must have accommodations for people with limited English proficiency.¹³⁹

QUICK TIP: Beware of cross-cultural communication “traps”:

- Do not try to sound like “them.”
- Do not try to fit in.
- Do not work too hard to avoid offending.
- Do not label.
- Do not use derogatory terminology.

There are resources available to help police officers in cross-cultural situations. Talk to your agency about whether the following services might be useful in your jurisdiction:

- Interpreter services
- Language cards
- Bilingual officers
- Materials in other languages
- Smartphone apps for searching, translating, and interpreting

Not every situation will be ideal for using procedural justice tactics. In some situations, time and safety factors may prohibit the use of them. However, law enforcement must transition to peaceful actions as often as possible. Safety comes first, but once a scene or suspect is secured, procedural justice tactics with a focus on respect should be used. Remember, not every interaction is a battle.

QUICK TIP: Effectively employing procedural justice tactics requires you to:

- Stay in control of your emotions.
- Stay rested.
- Stay healthy.

KEY POINTS:

- The public judges police based on how fair they believe they were treated instead of the actual outcome.
- Procedural justice tactics should include both person-based and community-based approaches.
- Follow the four principles of procedural justice to build positive relationships with community members:
 - Give others a voice.
 - Use neutrality in decision-making.
 - Treat everybody with respect.
 - Be trustworthy.
- Identify resources to help police officers communicate and interact with individuals with limited English proficiency.

Perceptions, Prejudices, and Biases

To be effective in establishing and promoting police legitimacy, law enforcement officers must be aware of and understand diversity and how prejudices, biases, and personal experiences can affect encounters with the public. One of the fastest ways to destroy police legitimacy is through actual or perceived racism, discrimination, or bias. Because of this, officers must become self-aware of their perceptions, prejudices, and biases and work to overcome them.

Perceptions, prejudices, and biases can come from:

- Culture
- Race
- Ethnicity
- Gender
- Experiences¹⁴⁰

In-Groups and Out-Groups

Generally, humans tend to get along with, and migrate toward, individuals who share similar characteristics, customs, and beliefs. This process can lead to “in-groups” and “out-groups.”

In-Group Individuals with similar characteristics	Out-Group Individuals with different characteristics
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Humans have an automatic preference for in-groups and tend to be more comfortable with those people. People also tend to be more loyal to those in the same in-group and see them as more trustworthy. We are willing to take more time to get to know members of the in-group.¹⁴¹

However, when humans need a person from an out-group to accomplish a shared goal, they will get to know that person as an individual; this cooperation and opportunity to learn about one another builds new, larger in-groups.¹⁴²

The Connection of In-Groups and Out-Groups to Police Legitimacy

Some individuals connect with their in-groups so much that they begin to interpret external encounters, including police contacts, in terms of their group's societal position, rather than, or in addition to, the immediate circumstances of the individual encounter.

If the officer and the individual are clearly not in the same in-groups, it becomes easier to believe the contact was related to the group dynamic. Generally, the more different the citizen and the officer are from each other, the higher the odds are of disrespectful behavior toward the other party. Disrespectful behavior will undermine police legitimacy. Police legitimacy is quickly destroyed through racism, discrimination, and bias, whether that racism, discrimination, or bias actually exists or is merely perceived.

Bias

The components of bias:

- **Stereotypes** - Generalizations about the perceived "typical" characteristics of a given social category.¹⁴³
- **Prejudices** - How one feels about members of a given social category.¹⁴⁴
- **Discrimination** - How one acts toward members of a given social category.¹⁴⁵

Two Types of Bias

(1) **Explicit bias** - A conscious preference for or against a social category.¹⁴⁶

(2) **Implicit bias** - An unconscious preference for or against a social category.¹⁴⁷

Implicit biases do not necessarily align with explicit biases. They are largely hidden from you, but their effects are pervasive and powerful. Implicit biases are more difficult to understand because they are hidden from you. As a result, they may affect your efforts to use procedural justice tactics to promote police legitimacy.

Everyone is susceptible to implicit biases.¹⁴⁸ These biases are hidden in our subconscious and cause us to have feelings and attitudes about other people based on certain characteristics, like race, religion, gender, sexuality, disability, height, and weight.¹⁴⁹ While implicit biases can be problematic, they are also a tool our brains use to make quick decisions.

To understand how people rely on implicit biases to make quick decisions, it is important to understand how the brain processes information. The brain relies on two different systems to absorb and interpret information: System 1 (the automatic part of the brain) and System 2 (the deliberative part of the brain).¹⁵⁰

System 1, the automatic part of the brain, makes quick decisions and often develops and relies on implicit biases to do so.¹⁵¹ System 2, the deliberative part of the brain, is slower and takes time to make methodical, logical decisions.¹⁵²

System 1

System 1, or automatic thinking, is unconscious, effortless, automatic, very fast, and uses associative memory (which is the ability to learn and remember relationships between unrelated items such as “green means go”).

SYSTEM 1 EXERCISE – Try reading the following jumbled message:

Olny srmat poelpe can raed this. I cdnoulbt blveiee that I cluod aulacly uesdnatnrd what I was rdanieg and the phaonemneal pweor of the hmuan mind. Aoccdrnig to a rscheearch at Cmabride Uinervtisy, it deosn't mtttaer in waht odrer the ltteers in a wrod are, the olny iprmoatnt tnhigh is that the frist and lsat ltteer be in the rghit pclae. The rset can be a taotl mses and you can still raed it wouthit a porbelm. This is bcuseae the hmuan mnid deos not raed ervey lteter by istelef, but the wrod as a wlohe.

Because of the way your brain automatically recognizes the associations between letters, researchers have found that you only need the first and last letter of a word to be correct, and then you can read the entire statement.¹⁵³

System 1 automatic thinking is also the type of thinking you use as a protective mechanism. The brain takes about 200 milliseconds to determine whether something is threatening. Over time, associations about what is threatening or not threatening, good or bad, or appealing or not appealing, turn into impulse decisions and become strengthened through experiences that reinforce those associations.¹⁵⁴

System 2

System 2, or deliberative thinking, is conscious, effortful, controlled, and slow. It requires more effort, more attention, and more time to complete tasks in System 2 thinking.

SYSTEM 2 EXERCISE – The Stroop Test

First, say the following WORDS out loud:

blue

yellow

red

purple

black

Next, say the following COLORS out loud:



Now, say the following COLORS (not the words but the color of the word) out loud:

yellow blue orange black red green purple yellow red orange green black blue

It takes your brain longer to read the colors out loud when the words do not match the colors. Your System 1 brain processes each word quickly when they match, but when the colors and words do not match, your System 2 brain takes longer to figure out the mismatched color and say the color instead of the word. And if you do not slow down and complete the tasks, you make mistakes.¹⁵⁵

System 2 is the type of thinking police officers must use to overcome the impulsive, implicit biases that can be activated in System 1 thinking. By slowing down and engaging the intense focus mechanisms of the brain, officers can begin to break down and think through negative implicit biases.

Associations and Proof of Implicit Biases

The associations developed in System 1 automatic thinking can morph into implicit biases. These biases are a part of everyday life and can manifest themselves unexpectedly in the professional world. For example, implicit biases have been shown to impact the height of Fortune 500 CEOs. While the average height for males in the United States is 5 feet 9 inches, the average male CEO at Fortune 500 companies is 6 feet tall. Only 14.5 percent of all U.S. men are over 6 feet tall, but 58 percent of all Fortune 500 CEO's are over 6 feet tall. This data implies that there is an implicit bias toward taller males for the CEO position.¹⁵⁶

Implicit biases have also been shown to affect health care. Primary care physicians who exhibit little explicit bias against Latinos and African-Americans were revealed through testing to hold strong implicit biases against those two groups.¹⁵⁷

Further, black patients, more than white patients, rated physicians who revealed higher levels of implicit bias poorly in the areas of interpersonal treatment, communication, trust, and knowledge.¹⁵⁸

Studies also show that implicit biases affect the criminal justice profession.¹⁵⁹ For example, researchers have explored how implicit biases affect an officer's decision to use deadly force. One study put 50 patrol officers in computer simulated "shoot/don't shoot" scenarios. During the simulation, officers were shown pictures of faces with either a gun or a neutral object in various positions. If a suspect was pictured with a gun, officers were to "shoot." If the suspect was pictured with a neutral object (phone, wallet, etc.), the officers were not to shoot. The suspects pictured were white and black college-age males.¹⁶⁰

The study showed that initially some officers were more likely to mistakenly shoot unarmed black suspects than unarmed white suspects. However, the researchers found that after prolonged exposure to the program, the officers were able to eliminate this bias.¹⁶¹ This research suggests that proper training can help police officers overcome bias and increase accuracy in shooting decisions.¹⁶²

These studies help guide law enforcement on how to manage and respond to implicit biases. They demonstrate that persistent negative implicit biases are dangerous but also that training can mitigate those dangerous impacts.

Like all populations, police officers are susceptible to developing negative associations.¹⁶³ Officers are exposed to many personal and vicarious experiences that could result in negative associations that affect efforts to achieve police legitimacy. For example, officers assigned to work in high-crime neighborhoods may develop prejudices against the cultural groups within those communities.¹⁶⁴

Police deal with 3 to 6 percent of the population daily, those who typically commit crimes. Police rarely deal with the 94 to 97 percent of the population who are law-abiding. Because of these experiences, some officers develop an "us versus them" mentality. However, given time and training, police officers can engage System 2 thinking and learn how to deconstruct implicit biases that may lead to unnecessary negative interactions with the public.

QUICK TIP: A few things to keep in mind:

1. You can be implicitly biased even if you have diverse friends.
2. You can be implicitly biased against anyone.
3. It does not make you a "bad person" to have implicit biases.
4. Everybody has implicit biases – the issue is how we deal with them.

Overcoming Implicit Biases Through Training

Awareness and training are pivotal when it comes to mitigating the harmful effects of implicit bias. Proper training helps law enforcement quickly assess threats, make appropriate judgments based on circumstances, and respond appropriately.

Officers can take the Implicit Association Test offered by Project Implicit, a research program designed to educate the public about hidden biases and to collect data about the phenomenon.¹⁶⁶ The project uses an online test to help people become aware of their unconscious preferences and beliefs. Additionally, the Attorney General's Ohio Peace Officer Training Academy (OPOTA) offers free implicit bias awareness training to police officers. The Ohio Peace Officer Training Commission has developed a basic training curriculum to promote awareness of implicit biases and how they may affect decision-making. Further, the U.S. Department of Justice developed a curriculum to help recruits and patrol officers overcome implicit biases. It is available through private entities.¹⁶⁷

QUICK TIP: Overcoming biases takes **INTENTION, ATTENTION, and TIME.**¹⁶⁵

1. Have the willingness and **INTENTION** to overcome negative implicit biases.
2. Give **ATTENTION** to executing change.
3. Take the **TIME** to work on it.

Implicit Bias Tools:

1. Take the Implicit Association Tests offered by Project Implicit, available at www.implicit.harvard.edu/implicit.
2. Email AskOPOTA@OhioAttorneyGeneral.gov to schedule the OPOTA Judgmental Firearms Simulator training for your agency.
3. Schedule bias training through Fair & Impartial Policing at www.fairimpartialpolicing.com/training-programs. Some of the training programs were developed with U.S. Department of Justice, Office of Community Oriented Policing Services.

Implicit biases are normal human processing that occurs at an unconscious level. People naturally use implicit biases to form preferences and make decisions, such as whether they like the Cleveland Browns or the Cincinnati Bengals, or whether they want a cheeseburger or sushi for dinner. The good news is that unwanted implicit biases can be altered. Once people know of their implicit biases, they are able to control and reduce those biases.¹⁶⁸

Countering Implicit Biases on Your Own

Everyone relies on implicit biases, but many are unaware they have them.¹⁷⁰ As a law enforcement officer, it is even more important to be aware of your implicit biases and guard against their influence in decision-making. To counteract them, you must educate yourself about your own implicit biases. You must have a greater awareness of why you think about people the way you do and objectively review those biases.

You also need to be aware of when you are most susceptible to making decisions affected by implicit bias and guard against those moments. You are most susceptible to relying on implicit biases when:

- You have ambiguous or incomplete information.
- You are under time constraints.
- You have compromised control of your thoughts due to issues such as personal conflicts at home, insufficient rest, or poor nutrition.

Police officers are particularly susceptible to these situations, due to the nature of their work. Police work includes long hours under stressful conditions, and officers are not always able to care for themselves and their loved ones as they would like because of work conflicts. Officers must be aware of this reality and try to counter the negative effects from stress combined with implicit biases. Officers should focus on developing good habits during non-stressful situations. Officers can then rely on the habit of positive thinking during stressful situations. Change can only begin through self-awareness.

Humans naturally rely on implicit biases. Police officers are human and rely on implicit biases too. The good news is that implicit biases are malleable – they can be gradually unlearned and replaced with new mental associations.¹⁷¹ The key for law enforcement is to develop certain practices in their day-to-day activities to overcome those natural human tendencies and demonstrate to the public that their policing is fair and impartial.¹⁷² Overcoming implicit biases requires constant evolution. Be aware that you have biases and work to overcome them. Police officers must act legitimately and show legitimacy to the public. Without legitimacy, law enforcement officers will not have the community's trust.

A 10-Step Approach to Overcoming Biases¹⁶⁹

Follow these 10 steps to help overcome implicit biases that may affect decision-making in stressful situations:

1. Recognize stereotypes.
2. Label those stereotypes.
3. Figure out why you respond the way you do.
4. Think about how to avoid future biased responses.
5. Counter stereotypical imaging.
6. Develop new associations.
7. Find positive examples that challenge negative associations.
8. Do not rely on stereotypes to make decisions because they are not always true.
9. Meet others who are different than you and engage with them in a meaningful way.
10. Be empathetic and try to understand why people feel the way they do.

KEY POINTS:

- Prejudices and biases can destroy police legitimacy.
- Everyone has biases and people generally have an automatic preference toward people with similar characteristics.
- Self-awareness and training can help officers overcome implicit biases.

Community Relations: Examples from Law Enforcement Agencies

Law enforcement agencies are taking action to strengthen community relations in their jurisdictions. Agencies are forming special programs that focus on building trust and legitimacy in the communities they police. Below are examples of the innovative ways that police forces in the United States are building positive, cooperative relationships in their communities.

The Cincinnati Collaborative Agreement¹⁷³

The Cincinnati Collaborative Agreement was started in 2002 to reduce the friction that existed between some members of the community and the Cincinnati Police Department, as well as to foster a safer community where mutual trust and respect is enhanced among citizens and police. The goals of the collaborative were to:

- Connect police officers and community members as proactive partners in community problem-solving.
- Build relationships of respect, cooperation, and trust within and between police and communities.
- Improve education, oversight, monitoring, hiring practices, and accountability of the Cincinnati Police Department.
- Ensure fair, equitable, and courteous treatment for all.
- Create methods to increase the public's understanding of police policies and procedures and recognition of exceptional service to foster support for the police.

As part of the collaborative, the Community-Police Partnering Center was established to develop and implement strategies to reduce crime and disorder while facilitating positive engagement and increased trust between the police and neighborhoods. The city also established the Cincinnati Initiative to Reduce Violence, an evidence-based strategy centered on the partnership between the community, law enforcement, and social-service providers, working together to denounce violence in the city. Additionally, the department made police policies and crime statistics available and accessible to the public.

City of Cleveland¹⁷⁴

The city of Cleveland developed community-education programs with the Bureau of Community Policing's School Resources Unit. The purpose of these programs is to foster positive relations within the community; coordinate and administer education programs; and conduct training programs, interactive meetings, and informational classes. Cleveland has two types of programs: adult education and youth education.

The adult-education programs include:

- A Neighborhood Watch
- A Senior Power program
- Brown Bag Safety seminars
- An Auxiliary Police program
- A Citizen's Police Academy
- The Safe & Smart Program
- Police-community presentations

The youth-education programs include:

- Drug Abuse Resistance Education (D.A.R.E.)
- The Eddie Eagle Gun Safety program
- The Gang Resistance Education and Training (GREAT) program
- A seat belt safety/bicycle safety video
- The Law Enforcement Explorer Program
- A What to Do When You Are Stopped by the Police program
- The Child Accident Prevention Program (CAPP)

Dayton Community Police Council¹⁷⁵

The city of Dayton has established the Community Police Council, which serves the community by ensuring mutual responsibility for public safety and addressing resident concerns. The goal of the Community Police Council is to establish mutual respect and trust among residents and the police.

Lorain County Sheriff's Office Community Policing Program¹⁷⁶

The Lorain County Sheriff's Office created a Community Oriented Policing Program in 1996 to integrate the sheriff's office into the fabric of its community and encourage people to seek police counsel when problems arise. Each of the county's five districts has a deputy assigned as a community officer. Sub-stations in the districts provide the officers with a centrally located place to complete reports; meet with residents regarding complaints, investigations, and community programs; and allow the officers to work with citizens and township officials in identifying local problems of crime and disorder. Lorain County designed this program to build mutually beneficial ties between the community and the police, relying on cooperation and problem-solving to reduce and prevent crime.

Montgomery County Sheriff's Office Improving Modern Policing and Community Trust (IMPACT) Committee¹⁷⁷

The Montgomery County Sheriff's Office has created an initiative to improve relations between its deputies and the community. The IMPACT committee was established to provide an open dialogue on how to build relationships and a stronger community. The committee consists of community, business, and faith-based leaders, teachers, and law enforcement representatives. The committee meets monthly to discuss various issues, including improving community involvement and the recruitment of minority law enforcement officers. The Montgomery County Sheriff's Office offers a YouTube video explaining its outreach programs in minority communities.¹⁷⁸



The City of Oxford: Police Community Relations & Review Commission (PCRRRC)¹⁷⁹

The city of Oxford created PCRRRC to improve communication between the Oxford Police Department and the community, to increase police accountability and credibility with the public, and to create a fair and impartial complaint process. The commission advises the chief of police, city manager, civil service commission, and the city council about policies and procedures of the Oxford police, training of law enforcement, hiring procedures, and other matters relevant to safety and the protection of citizens. The commission is also charged with investigating citizen complaints about officer misconduct. The commission includes seven city residents appointed by city council for three-year terms. The city council is directed to appoint individuals who reflect community diversity.

Perry Township Community Oriented Policing (COP)¹⁸⁰

Perry Township created COP to establish a partnership between the police and the community. Together, they work to maintain the township as a nice place to live, raise a family, work, play, and attend school.

The COP program involves every officer in the Perry Township Police Department. Each is assigned to a specific neighborhood and works closely with residents and businesses to address complaints or concerns. Officers set up crime watch meetings twice a year to discuss home and safety tips, identity theft, crime trends, and any other topics of concern to residents or police.

Summit County Sheriff's Office: Senior Watch and "Shop with a Cop" ¹⁸¹

The Summit County Sheriff's Office has a saying, "make us proud today, go out and make a friend."¹⁸² They strive to proactively have a positive presence in the community through a variety of outreach programs. For example, through the Senior Watch Program,¹⁸³ deputies check on participating senior citizens, at least twice a month, to see whether they need assistance.

Through this program, a deputy was able to detect a gas leak and seek medical care for an elderly occupant who had been experiencing related headaches. This program also helps deputies build a rapport with seniors, which has made the seniors more likely to report crimes.



The sheriff’s office also hosts a “Shop with a Cop Program” for children in need around the holidays. The children are given the opportunity to go shopping for gifts with local law enforcement officers. The shopping trip provides the children with a positive and fun experience with officers.

The outreach programs provided through the Summit County Sheriff’s Office are highlighted in a YouTube video.¹⁸⁴

Chicago Alternative Policing Strategy (CAPS)¹⁸⁵

The Chicago Police Department created CAPS, which has been recognized as one of the most ambitious programs of its kind in the United States. CAPS bring the police, the community, and other city agencies together to identify and solve neighborhood crime problems. Problem-solving at the neighborhood level is supported by several strategies. Beat officers are given long-term assignments in neighborhoods, which allows them to develop relationships with residents and business owners. They also conduct regular community meetings that provide an opportunity for police officers, residents, and community stakeholders to exchange information, identify and prioritize problems, and begin developing solutions to those problems. In February 2016, a CAPS district office trained a neighborhood Parent Patrol on ways to work together to get children safely to and from school.¹⁸⁶

Grant Funding for Community-Police Relations Programs

On May 16, 2016, the Ohio Department of Public Safety, Office of Criminal Justice Services awarded \$400,000 in grants to 20 law enforcement agencies to strengthen community-police relations in Ohio.¹⁸⁷ The grants will support funding for community-policing initiatives, training, juvenile-mentoring programs, education and awareness tools, and evidence-based policing strategies.

The following agencies were awarded a Community-Police Grant:

- Akron Police Department
- Athens County Sheriff’s Office
- Carroll County Sheriff’s Office
- City of Cleveland, Division of Police
- City of Dayton Police Department
- City of Sidney
- Loveland Police Department
- Miami Township Police Department
- Medina Community Police Activities League
- Medina County Sheriff’s Office
- Medina County Township Police
- Mental Health America (Hamilton County)
- Montgomery County Sheriff’s Office
- The National Conference for Community and Justice (Dayton)
- Ohio State University Police
- Perkins Township Police Department
- Piqua Police Department
- Putnam County Sheriff’s Office
- Toledo Police Department
- Youngstown Police Department

Additional Resources

- Ohio Peace Officer Training Academy
 - eOPOTA courses are offered online and are accessible through the Ohio Law Enforcement Gateway at www.ohleg.org. Relevant courses include:
 - Procedural Justice and Police Legitimacy
 - Ethics and Professionalism
 - Career Survival: Positive Ways to be Successful
 - Career Survival: Professional Policing and the Public
 - Awareness of Cultural Diversity
 - Policing Culturally Diverse Communities
 - Email OPOTA at AskOPOTA@OhioAttorneyGeneral.gov with questions about training and certifications.
- Ohio Attorney General's Advisory Group on Law Enforcement Training Report, April 2015: www.ohioattorneygeneral.gov/PoliceTrainingReport.
- Blue Courage training program: www.bluecourage.com.
- U.S. Department of Justice, Community Oriented Policing Services: www.cops.usdoj.gov.
- Project Implicit: www.implicit.harvard.edu/implicit.
- *The President's Task Force on 21st Century Policing Implementation Guide*: www.cops.usdoj.gov/pdf/taskforce/Implementation_Guide.pdf.
- Understanding Implicit Bias, Kirwan Institute for the Study of Race and Ethnicity, The Ohio State University: www.kirwaninstitute.osu.edu/research/understanding-implicit-bias.
- Gold & Bradley, *The Case for Procedural Justice: Fairness as a Crime Prevention Tool*, 6 COPS (Sept. 2013), www.cops.usdoj.gov/html/dispatch/09-2013/fairness_as_a_crime_prevention_tool.asp.
- *Blindspot: Hidden Biases of Good People* (2013), by Mahzarin Banaji and Anthony Greenwald, closely examines implicit biases and how they impact our daily lives.
- *The Respect Effect: Using the Science of Neuroleadership to Inspire a More Loyal and Productive Workplace* (2013), by Paul Meshanko will enhance your understanding of why respect is such an important part of being a police officer.

- U.S. Department of Justice, Community Oriented Policing Services, Community Policing Defined, www.ric-zai-inc.com/Publications/cops-p157-pub.pdf.
- “Overcoming Language Barriers: Solutions for Law Enforcement,” www.lep.gov/resources/vera_translating_justice_final.pdf.
- U.S. Department of Homeland Security, “LEP Resource Guide for Law Enforcement,” www.dhs.gov/sites/default/files/publications/lep-resouce-guide-law-enforcement_0.pdf.
- U.S. Department of Justice, Bureau of Justice Assistance and Community Oriented Policing Services, *Resource Guide for Enhancing Community Relationships and Protecting Privacy and Constitutional Rights*, www.bja.gov/publications/commrelguide.pdf.

Appendix: Constitutional Use of Force Case Law Summaries

1. *Davenport v. Causey*, 521 F.3d 544 (6th Cir. 2008)

Facts - During a traffic stop for speeding, Davenport refused to return to his car in compliance with instructions from Officer Causey. When the officer tried to arrest Davenport, Davenport pushed the officer's hand away. Officer Causey used his Taser. Even though the prongs attached to Davenport, Davenport was not subdued, charged the officer, and began rolling up the slack in the Taser wires. When Officer Causey approached Davenport again, Davenport began punching him, which caused Officer Causey to drop the Taser and to fall to the ground. Officer Pugh (a second officer who was called as backup) approached Davenport. Davenport began punching Officer Pugh. After Davenport punched Officer Pugh three times, and was preparing to punch him a fourth time, Officer Causey shot Davenport.

Holding - **The court held that the use of deadly force was objectively reasonable and did not violate the Fourth Amendment.** Although the severity of the crime was not high because Davenport was stopped for speeding, Davenport posed a threat to the officers by punching them with closed fists and enough force to knock the officers down. Davenport was a large and strong man and was acting "irrationally angry."¹⁸⁸ Officer Causey believed that Officer Pugh was "in mortal danger."¹⁸⁹ When Officer Causey shot Davenport, he believed that if Davenport was not stopped, Davenport would seriously injure or kill Officer Pugh. Davenport was actively resisting by punching and was noncompliant with the officer's instructions.

The court also emphasized the importance of the short duration of the incident (just over one minute). The court stated, "[w]e must also add a measure of deference to Officer Causey's on-the-spot determination in a rapidly evolving situation about the level of force Mr. Davenport was using, and therefore the appropriate level of force with which to respond."¹⁹⁰

2. *Sheffey v. City of Covington*, 564 F. App'x 783 (6th Cir. 2014)

Facts - A 911 call reported that a man in the area of two elementary schools had put a gun and ammunition in his pockets. Officer Allen was the first to find the man, Hughes. He instructed Hughes to get on the ground. Hughes did not comply, shuffled his feet back and forth, moved his hands around his waist, and repeated the word "dynamite." Officer Allen suspected that Hughes was intoxicated or mentally disturbed. Three other officers and a sergeant arrived at the scene. Officer Allen began to approach Hughes, instructing him to show his hands. Hughes continued to react as he had before. The officers continued to approach Hughes, who then began to walk toward one of the officers or to flee. While trying to handcuff Hughes, three police officers used a Taser on him 12 times, eight of which occurred while he was on the ground but not yet handcuffed. None of the Taser applications seemed to have any effect on Hughes.

While the officers were struggling with Hughes, the man tried to bite the hand of one of the officers. After being subdued, Hughes initially seemed OK, but then showed signs of distress. He stopped breathing and died while being taken to the hospital.

Holding - The court held that, even after viewing the facts in favor of the plaintiff, the use of force (all 12 Taser applications) was objectively reasonable. Regarding the *Graham* factors, the court held the severity of the alleged crime of carrying a concealed weapon in violation of law was enhanced because the crime occurred in a school zone during the hours when children were in school. When the Tasers were used, Hughes posed an immediate threat to the officers due to his size (6 feet 6 inches tall and 410 pounds) and his actions (menacingly approaching an officer, actively resisting, and trying to flee).

The court rejected the plaintiff's argument that the reasonableness of the use of force must be examined in light of Hughes' mental illness. The court acknowledged that mental illness is a factor to consider, but it should be considered in the totality of the circumstances and "from the viewpoint of what the officers knew and could perceive at that time of the incident."¹⁹¹ The court stated, "[t]he officers' actions cannot be said to be unreasonable based upon the mental illness or perceived mental disturbance of Mr. Hughes, due to the fact that Mr. Hughes was known to be armed in a school zone with children present, that he consistently acted as if he was reaching for his waistband, that he attempted to flee the area, and also that he violently physically resisted arrest."¹⁹²

3. ***Elliott v. Leavitt*, 99 F.3d 640 (4th Cir. 1996)**

Facts - After failing several field sobriety tests, Officer Leavitt placed Elliott under arrest. Leavitt searched Elliott, handcuffed him, and placed him in the front passenger seat of the police car. While talking with Officer Cheney (an officer called as backup), Leavitt noticed a movement from Elliott. He realized that Elliott had his finger on the trigger of a small gun pointed at the officers. Leavitt yelled "gun" and ordered Elliott to drop it. Elliott did not, and the officers fired their guns 22 times. Elliott was killed.

Holding - The Court held that the use of force was objectively reasonable. The court stated, "[a] police officer may use deadly force when the officer has sound reason to believe that a suspect poses a threat of serious physical harm to the officer or others."¹⁹³ Here, the officers had sound reason to believe that Elliott posed a threat of serious harm. Elliott was intoxicated and pointed a gun at the officers, who were only a few feet away.

The court rejected the argument that the number of shots (22) alone determines reasonableness. Nothing indicated that the officers fired their guns mindlessly. "Both officers fired almost simultaneously; neither officer emptied his gun; and the evidence indicates that the shooting took place within a matter of seconds."¹⁹⁴

The court also rejected as irrelevant an argument that Leavitt's search of Elliott was cursory and could have been more thorough or that the officers could have reacted differently to seeing Elliott point the gun at them. Such considerations are contrary to the *Graham* standard. The reasonableness of the use of force must be determined based on what the officer knew when the force was applied. "The Fourth Amendment does not require police officers to wait until a suspect shoots to confirm that a serious threat of harm exists."¹⁹⁵

4. ***Martin v. City of Broadview Heights*, 712 F.3d 951 (6th Cir. 2013)**

Facts - Police officers were dispatched in response to a call that there was a person calling for help and a naked man in a residential area. When Officer Tieber arrived, Martin ran toward the officer and was speaking nonsensically. When he calmed down, he asked the officer for help and to arrest him. When Officer Tieber tried to arrest him, Martin ran away. Officer Tieber then tackled him, landing on Martin's back. Officer Semanco arrived and laid on top of Martin and Tieber. Officer Semanco twice kicked Martin's side with his knee. Martin bit Officer Tieber's knuckle, and Tieber punched Martin in the face twice. Officer Semanco struck Martin's face, back, and ribs at least five times. Officer Tieber wrapped his legs around Martin's hips and thighs and his arm around Martin's chin. As Officers Tieber and Semanco struggled to put Martin's arms behind his back, Officer Zimmerman arrived and sat on Martin's legs to prevent him from kicking. After Martin was handcuffed, Officer Zimmerman and Officer Tieber continued to hold Martin in a face-down position. The officers then heard a gurgling sound from Martin. When they turned him over, Martin was unresponsive. There was disputed medical evidence as to whether Martin died as a result of asphyxiation due to the officers' use of force.

Holding - **The court held that, based on the facts as alleged by the plaintiff, the officers' use of force may have been unreasonable and a violation of the Fourth Amendment.** Regarding the first *Graham* factor, the court found that the nature of the call (a man yelling for help and a naked man entering an apartment) may have reasonably induced an officer to believe that using some amount of force was necessary to apprehend a felony suspect. The court reasoned that Martin posed some threat to the officers but that the degree of threat did not justify the level of force used. Although Martin's behavior indicated he was on drugs or mentally unstable, it was clear that he was unarmed, because he was naked. The officers fell on top of Martin, struck his torso and face several times, restrained him by holding his hips, thighs, pelvis, and chin or neck. The officers continued to use force to keep Martin facedown even after Martin was subdued and handcuffed.

The court considered two points when Martin could have been seen as resisting or evading arrest. The first was when he first ran away from Officer Tieber. The second was when he struggled when the officers were on top of him. The court concluded that the actions of the officers at both points were unreasonable.

Officer Tieber did not have to tackle Martin. And Martin's resistance when the officers were on top of him was likely because he could not breathe.

The court held that "a jury could find that the officers' conduct was unreasonable. The officers used their weight to compress Martin, struck his head and body multiple times, restrained his neck or chin, and placed him in a torso lock. These tactics were not justified by Martin's possible crime, the threat he posed to anyone's safety, or his resistance."¹⁹⁶

5. ***Eldridge v. City of Warren, 533 F. App'x 529 (6th Cir. 2013)***

Facts - The police department received a call about erratic driving. When two officers arrived at the scene, a truck was stopped behind two barricades after running into them. The officers approached the driver, one on each side of the truck. The officers asked the driver what he was doing and instructed him to turn off the truck's ignition. The driver verbally responded, but his responses were not audible. He did not turn off the truck. Officer Moore reached into the truck and turned off the ignition. The officers instructed the driver to get out of the truck numerous times. The driver did not get out and repeatedly responded, "I'm fine." After continued directions to get out of the truck and threats from Officer Moore that he was going to use his Taser, Officer Moore and Officer Horlocker tried to pull the driver out of the truck. The driver indicated that he was trying to get out, but he was unable to complete his thought. After several more directions to get out of the truck, Officer Moore activated his Taser. The officers grabbed the driver and pinned him to the truck, while directing him to get on the ground and on his knees. The driver replied, "I'm trying" and lowered himself to his knees. Moore grabbed the driver and forced him to the ground, using his knee against the driver's neck. This caused the driver to hit his head on the pavement. Officer Horlocker handcuffed the driver. Once the driver was handcuffed, the officers found an insulin pump. The driver was diabetic and was having a hypoglycemic episode.

Holding - **The court held that the use of force may have been unreasonable.** The court noted that the crime was driving under the influence. Although that is a serious crime, it is not "categorically 'severe' or 'severe' on this particular occasion."¹⁹⁷ In addition, the driver did not pose an immediate threat to the officers or others at the time the Taser was used. Within 20 seconds of approaching the truck, Officer Moore had turned off the ignition. The driver would not be able to drive anywhere and was not verbally or physically threatening to the officers. Furthermore, the driver was not actively resisting. The court examined other cases in which active resistance was found and concluded that "noncompliance alone does not indicate active resistance; there must be something more," such as verbal hostility or physical defiance.¹⁹⁸ The court stated, "[i]n cases where we concluded that an officer's use of force was justifiable because it was in response to active resistance, some outward manifestation — either verbal or physical — on the part of the suspect had suggested volitional and conscious defiance, neither of which is present here."¹⁹⁹

6. ***Meirthew v. Amore*, 417 F. App'x 494 (6th Cir. 2011)**

Facts - Several officers entered Meirthew's home to execute a search warrant after several minors were seen drinking alcohol. Meirthew was intoxicated and was told to sit down. She ignored the instruction and began walking away. The officers forced her to the floor and handcuffed her. As she was being escorted to the police car, Meirthew kicked an officer in the groin. While she was being booked at the police station, Meirthew continued to act belligerently and was not compliant with the officer's instructions.

There was contradictory evidence about what she was doing to not comply while an officer was trying to search her. While officers stated that she was physically aggressive toward the searching officer, the woman's witness testified that she moved her feet together instead of apart as she was instructed. Eventually, the officer used an "arm-bar takedown" to force Meirthew to the floor while she was handcuffed. Her face hit the floor and she sustained six facial fractures, head lacerations, and a nosebleed.

Holding - **The court held that the use of force (the arm-bar takedown) may have been unreasonable and a violation of the Fourth Amendment.** The court evaluated the *Graham* factors by viewing the facts in a light most favorable to Meirthew. The court noted that it was not determining whether Meirthew's excessive force claim will be successful if, after the case is remanded and a jury trial conducted, the jury does not believe Meirthew's version of the facts.²⁰⁰ The court reviewed the *Graham* factors and found: (1) the "underlying crimes ... were not severe"; (2) "Meirthew did not pose an immediate threat at the police station"; and (3) "Meirthew was not attempting to resist or evade arrest by flight."²⁰¹

In concluding that Meirthew did not pose an immediate threat, the court examined several officer/subject factors — she was in handcuffs, not armed, and police officers surrounded her; she was not verbally or physically threatening; she was small (5 feet 4 inches tall and 123 pounds); and the officer was 5 feet 10 inches tall and 230 pounds. The court stated "the situation ... in the booking room was not a 'tense, uncertain, and rapidly evolving' situation requiring [the officer] to make 'split-second judgments.'"²⁰²

The court held "while Meirthew's noncompliance may have justified *some* physical response by [the officer], the *amount* of force utilized may have been unreasonable."²⁰³

7. ***Marvin v. City of Taylor*, 509 F.3d 234 (6th Cir. 2007)**

Facts - Marvin rear-ended a car driven by Cmdr. Helvey. When Helvey began talking to Marvin, Marvin admitted that he was intoxicated. After failing three field sobriety tests, another officer on the scene, Officer Minard, placed Marvin under arrest.

When Minard told Marvin to place his hands behind his back, Marvin stated that he could not put them behind his back because it was painful. Instead, he held his arms out in front of him. Officer Minard told him again to put his hands behind his back, and Marvin again explained that he could not. Officer Minard then forcefully put Marvin's hands behind his back and handcuffed him. Marvin alleged that the use of force in four additional incidents when he was taken to the police station was also unconstitutional: (1) when he was allegedly pushed down at the sally port when they arrived at the police station; (2) when the officer raised Martin's arms behind his back and over his head in the booking room; (3) when the officer pulled back on Marvin's arms and restrained him on the ground outside the cell; and (4) when the officer pushed Marvin's hands into the small of his back while unlocking the handcuffs so his blood could be drawn. It was later discovered that Marvin's right bicep tendon was torn.

Holding - The court held that, even if the facts that were not contradicted by the video were true, none of the incidents in which force was used was objectively unreasonable. Forcing his hands behind his back at the scene of the arrest was not unreasonable. The crime of drunk driving is severe and the other *Graham* factors supported the reasonableness of use of force. While Marvin was 78 years old, he was intoxicated, which created a volatile situation. Although Marvin may have been passively resisting by refusing to place his hands behind his back, forcibly handcuffing him behind his back was justified by his intoxication and general demeanor.

With respect to the allegation that the officers used excessive force when they pushed him down at the sally port, the video introduced into evidence did not clearly confirm Marvin's version of the events. Even if Marvin's version is believed, the video showed that the officers helped him up within 15 seconds of being on the ground. Thus, the court found that there was no Fourth Amendment violation in that incident.

Raising Martin's arms behind his back and over his head in the booking room was not unreasonable. The video directly contradicts Marvin's version of the events and indicates that the officers restrained Martin in that way after he tried to punch Officer Minard. There was no constitutional violation. Pulling back on Marvin's arms outside the cell also was not objectively unreasonable. Officer Shewchuk pulled back on Marvin's arms only after Marvin tried to kick Officer Minard.

Pushing Marvin's hands into the small of his back while unlocking the handcuffs so blood could be drawn was not objectively unreasonable. As soon as one of his hands became free, Marvin tried to punch Officer Minard in the face with the handcuffs still attached to his wrist. The court noted, "[c]onsidering Marvin's progressively combative nature — from resisting at the scene of the arrest, to trying to hit Officer Minard's hand in the booking room, to kicking at Officer Minard outside the cell, and to punching Officer Minard in the face at the clinic — it cannot be said that the

officers' attempt to remove Marvin's handcuffs at the clinic amounted to objectively unreasonable force in violation of the Fourth Amendment."²⁰⁴

8. ***Standifer v. Lacon*, 587 F. App'x 919 (6th Cir. 2014)**

Facts - Standifer's mother called 911 to get help for her daughter who was heavily intoxicated and hallucinating. Two officers arrived at Standifer's home. After observing Standifer, Officer Lacon had probable cause to believe that she needed to be taken to a hospital for psychiatric evaluation. Standifer refused to go to the hospital voluntarily, so Officer Lacon handcuffed her and escorted her outside to wait for an ambulance. While walking outside, Standifer was "screaming, jerking, pulling away and stutter stepping."²⁰⁵ At one point, she kicked Officer Lacon in the groin. Lacon's and Standifer's versions of what happened next differ. She claimed that after the kick, Lacon forced her to the ground. He claimed that she lost her balance after kicking him and fell to the ground. Standifer suffered a fractured neck as a result of her fall. Standifer alleged that Officer Lacon used excessive force when he handcuffed her, when the handcuffs were too tight, and when he pushed her to the ground.

Holding - **The court held that even if Standifer's version of the facts was accepted as true, none of the officer's actions violated the Fourth Amendment.** The court rejected Standifer's allegations that Officer Lacon used excessive force in handcuffing her. She posed a threat (hallucinating and intoxicated) and was actively resisting.

The court found that, even if Standifer was pushed to the ground by the officer, the *Graham* factors led to the conclusion that the use of force was objectively reasonable. The crimes alleged were assaulting a police officer and obstructing official business. The subject was an immediate threat to herself and the officers because she was hallucinating, intoxicated, and suicidal. Finally, she tried to escape by twisting, turning, and kicking.

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² *Id.* at 299.

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⁶ *Tennessee v. Garner*, 471 U.S. 1, 7 (1985).

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⁸ *Graham v. Connor*, 490 U.S. 386, 388 (1989).

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¹⁰ R.C. 2901.01(A)(1).

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¹⁴ *Id.* at 388-89.

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¹⁶ *Id.*

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¹⁹ *Id.*

²⁰ *Id.* at 390.

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²² *Id.*

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⁴² *Id.* at 4.

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⁴⁴ *Id.* at 4, quoting Tenn. Code Ann. 40-7-108 (1982).

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⁴⁶ *Id.* at 22.

⁴⁷ *Id.* at 3. In *Scott v. Harris*, 550 U.S. 372, 382 (2007), the U.S. Supreme Court explained that “*Garner* did not establish a magical on/off switch that triggers rigid preconditions whenever an officer’s actions constitute ‘deadly force.’ *Garner* was simply an application of the Fourth Amendment’s ‘reasonableness’ test to the use of

a particular type of force in a particular situation.” (Citation omitted.) The Court explained, “we must still slosh our way through the factbound morass of ‘reasonableness.’” *Id.* at 383. “[T]he nature and quality of the intrusion on the individual’s Fourth Amendment interests [must be balanced] against the importance of the governmental interests alleged to justify the intrusion” to determine whether a seizure is reasonable. *Id.*, quoting *United States v. Place*, 462 U.S. 696, 703 (1983).

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2016 Course Resource Guide

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