



LAW ENFORCEMENT LEGAL UPDATE – 2018

A nationwide review
of police use of force
and related issues

BY STEVE LEONE AND DAVID SOUCY, GENESIS

The Genesis Public Entity Claim Unit monitors various law enforcement statistics including nationwide settlements and verdicts. Genesis also tracks related qualified immunity decisions, as well as other law enforcement trends.

In This Issue:

Police Fatal Shootings [Stats]	2
The Defense of Qualified Immunity	4
Examples of Settlements & Verdicts Involving Police Use of Force	5
In Summary – for Public Entities	8

The cases outlined in this publication are by no means all-inclusive and are intended to provide our clients with a representative sampling of case outcomes throughout the country. It's important to note that the final disposition of some of the verdicts may differ from the published news reports based on post-trial legal proceedings and/or subsequent negotiated settlements.

At year-end 2018, year over year, fatal police shootings remained relatively unchanged. Let's take a closer look at the numbers.

Police Fatal Shootings

998

people have been shot and killed by police in 2018.

987

people were shot and killed by police in 2017.

2018 vs 2017



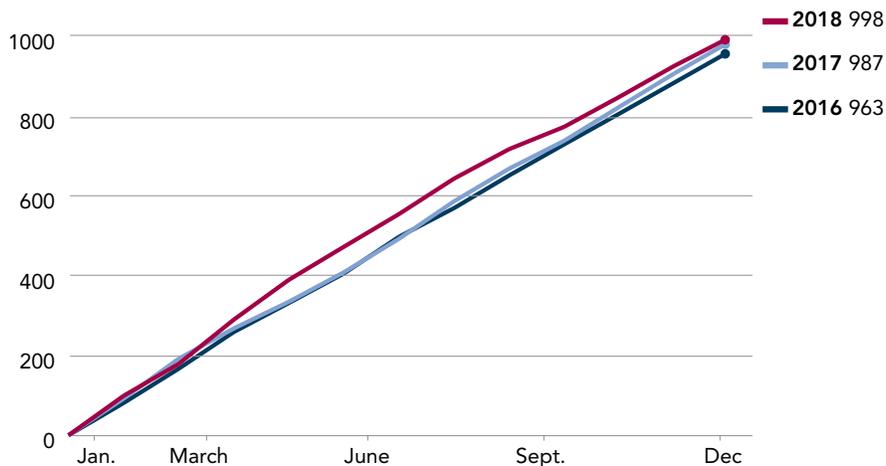
Mental illness played a role in almost 21% of the incidents.



Mental illness played a role in almost 24% of the incidents.

Number of People Fatally Shot by Police

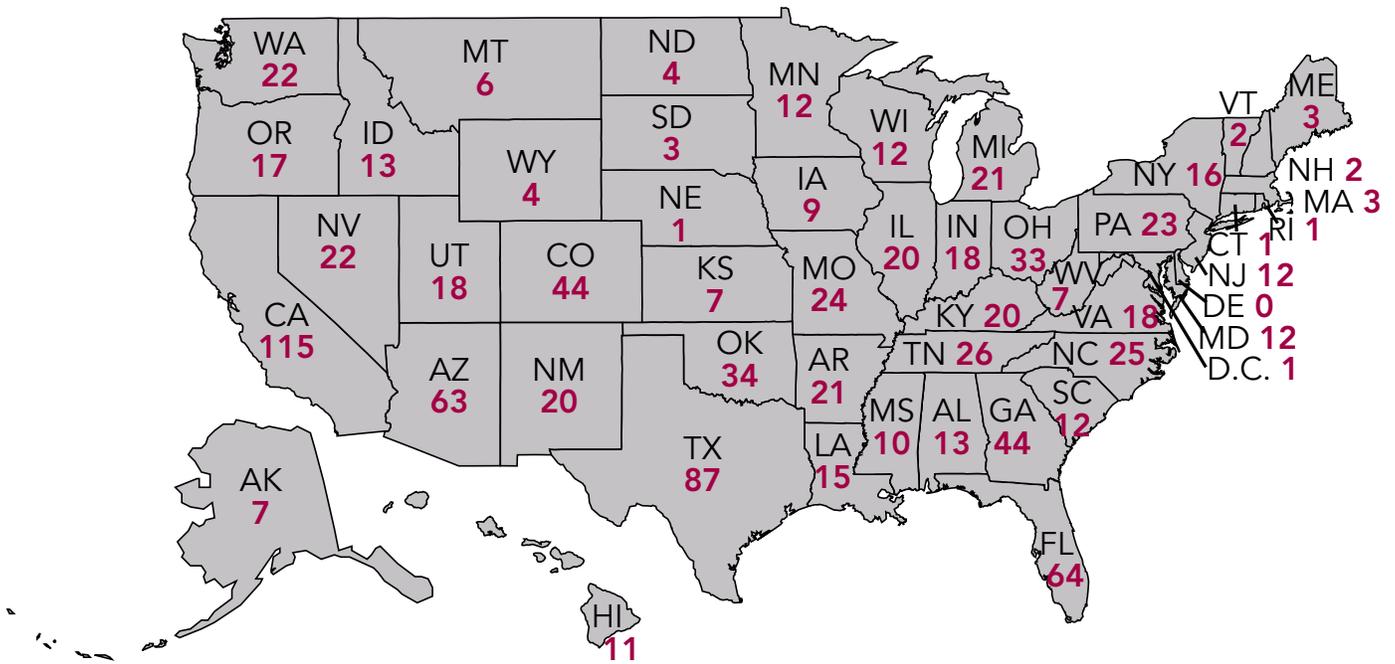
(last 3 years)



Source: The Washington Post, 3/20/19

Where did the 2018 deadly shootings take place?

Total number of shootings per state



Source: https://www.washingtonpost.com/graphics/2018/national/police-shootings-2018/?noredirect=on&utm_term=.ee6622b4cf9c

The Defense of Qualified Immunity

By Steve Leone and David Soucy, Genesis

In general, the doctrine of qualified immunity allows government officials to defend against civil rights lawsuits on the basis that the right they allegedly violated was not “clearly established” and thus a reasonable officer would not have known that his conduct violated the law.

Qualified immunity remains a hotly litigated issue in the civil rights arena. On the one hand, Appellate courts as well as the U.S. Supreme Court continue to provide decisions embracing the defense of qualified immunity. On other hand, in the wake of the Ferguson and Baltimore riots nearly five years ago, we continue to see an increasing trend of excessive force lawsuits. Despite robust qualified immunity defenses, some of those cases are heard by juries. A few recent trials highlight the variable outcomes.

First, we turn to a case directly from Ferguson itself, *Tracey White, et al., v. Thomas Jackson, et al.*, in which plaintiffs sought \$41.5 million alleging police used excessive force in their use of crowd-control measures in the 2014 Ferguson riots. In this case, the U.S. District Court granted summary judgment based on Qualified Immunity. That decision was subsequently overturned by the 8th U.S. Court of Appeals. In February 2019, a St. Louis federal jury found in favor of the police officers involved.¹

Another recent case from Baltimore, *Rhanda P. Doremeus (on behalf of the estate of Korryn Gaines), et al. v. Baltimore County Maryland, et al.*, involved a fatal police shooting as officers attempted to serve an arrest warrant. A motion for summary judgment based on qualified immunity was denied. A Baltimore City jury subsequently awarded \$37 million to the plaintiffs. However, in February 2019, a Baltimore judge set aside the jury verdict, granting judgment in favor of the police officers on qualified immunity grounds, and in the alternative granted the defendants’ motion for a new trial.²

This spectrum of recent jury verdicts highlights the need for careful consideration of liability in the often complex and evolving legal defenses in matters of alleged police misconduct. ■

Examples of Settlements & Verdicts Involving Police Use of Force

Reported in the media during 2018

December 2018

\$1.3M verdict

Loss Date: 6/20/15

Alfontish Cockerham v. City of Chicago, IL

A jury awarded \$1.3 million to family of man fatally shot by Chicago police for an alleged unjustified shooting. Surveillance video from nearby business provided by the family's attorneys shows Cockerham running before he was quickly felled by a gunshot from police. The video which is slightly blurred shows Cockerham running past the camera on a sidewalk before doubling back while an officer pursues him and then shoots. Cockerham, who was 23 at the time, died several days later from his gunshot wound. The Chicago police expressed disappointment in the verdict on the basis that it felt it's officer's actions were justified.³

September 2018

\$13M settlement

Loss Date: 5/24/13

Leonard Thomas v. City of Lakewood, WA

In the wake of a \$15.1 million jury verdict for a fatal police shooting, the City of Lakewood and its officers agreed to pay \$13 million to the family of 30-year-old Leonard Thomas. Thomas, an unarmed black man, was killed by a SWAT-team sniper as he clutched his 4-year-old son following a four-hour standoff. In the trial, a jury found that the city and its police had committed 14 separate civil rights violations the night Thomas was shot. The family testified that Thomas never displayed a firearm or actually threatened the police or his son (no guns were found in the house). As reported, the settlement came as the case was pending appeal with the 9th Circuit Court of Appeals.⁴

May 2018

\$6.5M settlement

Loss date: 2/8/15

Miles November v. Chesterfield County, VA

Police officers stopped November for erratic driving and when the officers approached his car, he sped away resulting in a high-speed pursuit. November eventually lost control of his vehicle and crashed. As officers extracted him from his car he became combative and was tased by an officer. Miles's clothes were soaked in gasoline and caught fire causing severe burns to 85% of his body resulting in 34 surgeries. November's lawyers sued the county and police, accusing the department of unconstitutionally misusing stun guns for years, citing a review of 135 police Taser shooting reports from 2012 to 2015. They also alleged that the involved officer was on disciplinary probation for misconduct and had returned to active duty just five weeks before the Taser shooting.⁵

April 2018

\$100K verdict

Loss date: 1/6/13

Estate of Spencer Mims v. City of Charlotte

City officers responded to the call from the decedent's father in reference to the domestic disturbance. Upon arrival, the officers encountered Mims on the front porch holding a box cutter to his throat. After several verbal commands directing Mims to drop the box cutter, an officer deployed his taser, which did not make proper contact. Mims then charged towards one of the officers with the box cutter, at which time the officer fired his service weapon striking Mims. He was transported to the medical center where he was later pronounced dead. The crux of the Estate's liability theory centered around the officers alleged lack of de-escalation techniques and failure to bring in a crisis intervention team. The defense argued that Mims was threatening to kill himself and others, which required lethal force. While the jury did find the officers negligent, they only awarded \$100,000 in damages.⁶



April 2018

\$1.5M settlement

Loss date: 9/30/16

Estate of Reginald Thomas Jr. v. City of Pasadena, CA

Six police officers responded to multiple 911 calls from “family members and others” at an apartment complex. Police arrived to find the 35-year-old father of eight outside the apartment door holding a fire extinguisher and a dagger under his arm. Authorities said that four children and Thomas’ girlfriend were inside, and before police arrived Thomas had sprayed the extinguisher inside the apartment. Police said Thomas appeared to be under the influence of drugs, while the family maintained that he had a history of mental illness. Thomas did not comply with orders to drop the knife and fire extinguisher, and slammed the apartment door on officers. The officers then tased and restrained him and following a struggle, he became unresponsive. “Expert investigators determined that Thomas’ death was not caused by the use of force by police in their efforts to restrain him, but rather by Thomas’ ingestion of lethal levels of illegal narcotics, including PCP and methamphetamine, which had caused his erratic behavior,” the city’s statement reads.⁷

April 2018

\$550K settlement

Loss date: 4/10/17

Nandi Cain v. Sacramento, CA

Sacramento agreed to reform its policing practices and pay Nandi Cain \$550,000 after an officer threw him to the ground over a jaywalking allegation last year and repeatedly punched him in the face, resulting in a broken nose and a concussion. The incident was captured on police dash cam video. The settlement in the civil rights lawsuit comes as the Sacramento Police Department has faced intense scrutiny and a series of protests after two officers fatally shot Stephon Clark, a 22-year-old unarmed black man, in his grandmother’s backyard on 3/18/18.⁸

March 2018

\$1.2M verdict

Loss date: 1/4/11

Derquann Wilson v. City of Chicago

Derquann Wilson alleged at trial that a Chicago police officer violated departmental rules by opening fire on a vehicle fleeing a minor traffic stop, then conspired with other officers to cover it up. Wilson, who was 15 at the time, testified he was sitting inside the car with his hands up when part of his left middle finger was shot off without warning seconds after the officer tapped on his window with his service weapon. He sustained a second wound to his back under his right shoulder, puncturing a lung. The officer testified that he only removed his Glock 22 when he heard the car’s engine rev. He said he identified himself as a police officer and ordered the driver to stop. Instead, the car sped toward him and the officer fired off one or two rounds as he back-pedaled to avoid being struck. He then saw the back-seat passenger holding a gun pointed at him and kept firing. No gun was ever recovered, but according to trial testimony, police found a small novelty lighter shaped like a tiny handgun. There was no video or other evidence to supplement the differing accounts. Plaintiff was seeking \$8 million in the lawsuit.⁹

March 2018

\$6M verdict

Loss date: 3/7/13

Jayson Oslund v. Sterling Correctional Facility (CO Dept of Corrections)

A federal jury in Denver awarded \$6 million to a 36-year-old convicted murderer confined to a wheelchair from a prison beating he said he suffered at the hands of a guard. This is reportedly the largest verdict rendered for a prison or jail inmate in Colorado. Oslund testified that the guard slammed his head into the floor of his cell during his second epileptic seizure of the day. Jurors determined that a correction officer beat Oslund “maliciously and sadistically” with the intent of hurting him. The guard testified that he was trying to get Oslund medical help. Oslund represented himself in the suit for more than two years until attorney Zach Warren in Denver joined him in July of 2017. The article states that the fact that this case made it this far is unprecedented, largely because cases involving inmates who represent themselves – called “pro se” – rarely reach a jury.¹⁰

March 2018

\$6M settlement

Loss date: 4/2015

Estate of Eric Harris v. Tulsa County, OK

Tulsa, OK agreed to a \$6 million settlement in a federal civil rights lawsuit filed by the family of an unarmed black man who was fatally shot by a white former sheriff's reserve deputy. The fatal shot by ex-volunteer deputy Robert Bates occurred during an illegal gun sales sting. Harris was already being restrained by deputies when Bates shot him. Part of the incident was captured on a camera mounted in a pair of a deputy's glasses. The 76-year-old Bates, who said he confused his stun gun with his handgun when he shot Harris was convicted of second-degree manslaughter. Consultants hired by the county issued a scathing 238-page report, which found that the sheriff's office suffered from a "system-wide failure of leadership and supervision" and said the agency had been in a "perceptible decline" for more than a decade. Shortcoming in its reserve deputy program were among the most visible signs of trouble within the agency.¹¹

March 2018

\$800K settlement

Loss date: 12/2016

Estate of Michael Tyler Jacques v. City of Bend, OR

City of Bend police officers Scott Schaier and Marc Tisher pulled the 31-year-old Jacques over on suspicion of drunk driving. An autopsy later found Jacques had a blood alcohol content three times the legal limit. Schaier and Tisher reported Jacques tried to escape in his mini-van, putting people at risk. Schaier fired five times, hitting Jacques in the head and shoulder. An Oregon Department of Justice investigation concluded that there was insufficient evidence to find either officer criminally liable.¹²

February 2018

\$1.25M settlement

Loss date: 1/27/2016

Estate of Janet Wilson v. City of Dearborn

Suit was filed on behalf of the deceased, Janet Wilson, following fatal police shooting in Dearborn, MI. News reports indicate that the involved Dearborn officer repeatedly shot Wilson while she was in her car on Michigan Avenue. Police were pursuing the 31-year-old after a dispute was reported nearby at Fairlane Mall. Wilson was survived by her mother and six siblings. No criminal charges were filed against the police. The Wayne County prosecutor, Kym Worthy said Wilson "exhibited erratic and aggressive behavior" at the mall and drove her car toward the officer. A state police spokesman, Lt. Mike Shaw, said Wilson was "armed with a 3-ton vehicle." Further details were not made available.¹³ ■

In Summary

Police use of force claims remain in focus for public entities and their police agencies. Public entities would be well served to continue to implement state-of-the-art training, particularly with respect to de-escalation techniques and encountering people with mental illness. We also suggest an ongoing review and updating of policies and procedures as necessary.

A good place to start would be to review the complete report and findings of **The President's Task Force On 21st Century Policing**, which was issued on May 2015. The Task Force was charged by President Obama in 2014 to *"Examine ways of fostering strong, collaborative relationships between local law enforcement and communities they protect and to make recommendations to the President on the ways policing practices can promote effective crime reduction while building public trust"*.

The report provides law enforcement agencies with guidance, through the following six pillars:

Pillar 1 - Building trust and legitimacy

Pillar 2 - Policy and oversight

Pillar 3 - Technology and social media

Pillar 4 - Community policing and crime reduction

Pillar 5 - Training and education

Pillar 6 - Officer wellness and safety

The complete report can be found here:

https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

Another good review of the Task Force findings can be found on the International Association of Chiefs of Police website:

<https://www.theiacp.org/sites/default/files/all/i-j/IACP%20GMU%20Evidence%20Assessment%20Report%20FINAL.pdf>. ■

MORE READING



For a review of the **2015-2017 police use of force**, read our October 2017 article here: genesisinsurance.com/insights/white-papers.html.

About the Authors



Steve Leone
Vice President
Genesis Claims Unit Manager
Tel. 203 328 6637
steve.leone@gumc.com

David Soucy
Vice President
Genesis Senior Claims Executive
Tel. 213 236 1732
david.soucy@gumc.com



Endnotes

- 1 Ferguson sources: Opinion, Memorandum and Order:
<https://bloximages.newyork1.vip.townnews.com/stltoday.com/content/tncms/assets/v3/editorial/9/9f/99f869c7-cb96-5b58-aabc-91b017e740f0/57f2a5905debf.pdf.pdf>
Jury Finds for St. Louis County Police in Case of Excessive Force During Ferguson Protests: <https://www.policemag.com/504414/jury-finds-for-st-louis-county-police-in-case-of-excessive-force-during-ferguson>
Federal jury finds for police in Ferguson protester's claims of excessive force: https://www.heraldmillmedia.com/news/nation/federal-jury-finds-for-police-in-ferguson-protester-s-claims/article_1b689160-a48b-536a-8c99-7620de4bc66d.html
Federal jury finds for St. Louis County police in Ferguson protester's claims of excessive force: https://www.stltoday.com/news/local/crime-and-courts/federal-jury-finds-for-st-louis-county-police-in-ferguson/article_8af2d0c9-5d10-5cc0-a222-9f77f00104f6.html
- 2 Gaines sources: See pdfs and news article: <https://www.cnn.com/2019/02/16/us/baltimore-judge-overturms-korryn-gaines-shooting-verdict/index.html>
- 3 https://urldefense.proofpoint.com/v2/url?u=https-3A__news360.com_article_481679893&d=DwlCAg&c=-_E_V9TPvnjAd14m09AIQ&r=eluZfQoaU64il__1xf5ttReadjeQo1zlk44gf7OjZdl&m=mo6vxPEbFo7NXSIfiTrc36pB1c9iw2QzA3_6fPc6tP4&s=-sigbWUR8uuNaGZARcrg2R0tMS01hWzQdRJOjmCZNKw&e=
- 4 <https://www.seattletimes.com/seattle-news/crime/scolding-defense-judge-upholds-15m-verdict-against-lakewood-police-in-killing-of-unarmed-black-man>
- 5 https://www.washingtonpost.com/local/police-stun-gun-lawsuit-settled-for-65-million-in-virginia/2018/05/25/1fa930a0-601c-11e8-b656236c6214ef01_story.html?noredirect=on&utm_term=.504a5da1e785
- 6 <http://www.charlotteobserver.com/news/local/article208465504.html>
- 7 <http://www.latimes.com/local/lanow/la-me-ln-reginald-thomas-settlement-20180401-story.html>
http://www.latimes.com/paid-posts/?prx_t=NHMDAzdUbAFH8QA&&ntv_oc=307&ntv_fr
<http://www.latimes.com/local/lanow/la-me-ln-pasadena-police-officers-reginald-thomas-20161010-snap-story.html>
<http://www.latimes.com/local/lanow/la-me-ln-use-of-force-death-pasadena-police-20160930-snap-story.html>
- 8 <http://www.latimes.com/local/lanow/la-me-sacramento-police-jaywalker-20180406-story.html>
- 9 <http://www.chicagotribune.com/news/local/breaking/ct-met-jury-verdict-in-cpd-shooting-20180216-story.html>
- 10 <https://www.denverpost.com/2018/03/09/jayson-oslund-settlement-prison-beating/>
- 11 <https://www.usnews.com/news/best-states/oklahoma/articles/2018-03-09/convicted-ex-oklahoma-deputy-asks-court-to-rehear-appeal>
- 12 <https://www.insurancejournal.com/news/west/2018/03/12/483000.htm>
- 13 <https://www.insurancejournal.com/news/midwest/2018/02/16/480973.htm>

GENESIS®

A Member of the Berkshire Hathaway Family of Companies

This information was compiled by Genesis Management and Insurance Services Corporation and is intended to provide background information to our clients, as well as to our professional staff. The information is not intended to be legal advice. It's time sensitive and may need to be revised and updated. You should consult with your own legal counsel before relying on it.

Genesis provides reinsurance solutions to its clients through General Reinsurance Corporation and insurance through Genesis Insurance Company, which is licensed in the District of Columbia, Puerto Rico and all states. Genesis Insurance Company has its principle place of business in Stamford, CT and operates under NAIC Number 0031-38962.