



*Cite as: 2007 (4) AELE Mo. L. J. 101*  
Civil Liability Law Section – April, 2007

**Civil Liability for Use of Tasers, stunguns,  
and other electronic control devices**  
**Part II:**  
**Use Against Juveniles,  
and Inadequate Training Claims**

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In the first part of this series, we took a look at the question of possible civil liability for excessive force arising from the use of electronic control devices, particularly Tasers\*, by law enforcement agencies, focusing on Fourth Amendment claims. In this second article, cases involving use of such devices against juveniles are examined, along with claims of inadequate training.

Future articles will examine claims arising from their use in situations involving detainees, disabled or disturbed persons, and product liability claims, among other issues.

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**1. Use Against Juveniles**

Officers, in the course of their law enforcement duties, frequently encounter juvenile offenders or suspects. Such encounters may occur in schools, on school property, in homes, or in the community, and the juveniles may be resistant, drug or alcohol intoxicated, disturbed, or suicidal. In a good number of cases, when the use of force is called for to subdue a juvenile, officers have elected to use electronic control devices as an alternative to the use of lethal force which could cause serious bodily injury or the death of the juvenile. In a number of the cases discussed below, officers decided that the use of electronic control devices was a

superior choice, under the circumstances, to use of chemical agents, batons, or direct physical force.

Sometimes, as with adults, the mere threat of the use of an electronic control device may be sufficient to make a juvenile comply with the officer's lawful orders. In the case of [In re J.D.](#), 275 Ga. App. 147, 619 S.E.2d 818 (Ga. App. 2005), the officer threatened to use a Taser against a 17-year-old burglary suspect to compel him to come out of an attic where he had gone to attempt to evade arrest. The suspect did exit after being threatened with the possible use of the Taser. Similarly, in the case of [In Re Francisco B.](#), #F048025, 2005 WL 2856335 (Cal. App. 5th Dist. Nov. 1, 2005), an officer was able to gain compliance from a juvenile offender by pointing a Taser at him. Prior to that, the juvenile had been resisting school officials. (These are not civil lawsuits, but rather a juvenile delinquency adjudications, but are useful as an illustration of how useful electronic control devices can sometimes be with juveniles).

Is the use of a Taser a reasonable use of force to subdue a juvenile? In [RT v. Cincinnati Public Schools](#), #1:05CV605), 2006 U.S. Dist. Lexis 94004 2006 WL 3833519 (S.D. Ohio Dec. 29, 2006), a federal court found that it was, when used to subdue a kicking, screaming, biting, jerking, pushing female juvenile. In [RT](#), the juvenile minor and her mother sued her school, the school's principal, the City of Cincinnati, and a Cincinnati police officer, claiming that her rights were violated when the school reacted to her disorderly behavior by calling the police, and the responding officer used a Taser against her and placed her under arrest.

All claims except those against the City and officer were dismissed by the court. Finding that the officer acted reasonably, the court noted that "undisputed evidence" showed that the girl caused a disturbance at the school, and that once the officer arrived, she refused to comply with his repeated requests to get off the hallway floor and report to in-school suspension. When the officer tried to get her to move, she started kicking, screaming, jerking, biting, and pushing her body away from him. The officer gave her several warnings that he would use the Taser against her if she did not "calm down and quit fighting," and used it one time against her when she continued to resist.

Her only injury was a scratch to her right elbow from falling against a wall, and the officer decided to use the Taser, the court noted, because he thought it was the "most effective way" to end the minor's resistance without causing her physical injury. Given the minor's own admission that she resisted arrest, and that the officer warned her that the Taser would be used if she did not comply, the court concluded that the officer's actions were reasonable.

The city police department's Use of Force policy instructed the officer to "Use

the Taser to control actively resisting subjects, aggressive non-compliant subjects, or violent or potentially violent subjects.” The court found no basis for a claim against the city, particularly as it found no wrongdoing on the part of the officer.

Another federal court granted summary judgment to police officers confronted with a 14-year-old male suspect who was continuing to resist them even after he was handcuffed. [Johnson ex rel. Smith v. City of Lincoln Park](#), 434 F. Supp. 2d 467 (E.D. Mich. June 8, 2005). In Johnson, a 14 year-old boy who was a ninth grader at a high school had a history of disruptive and violent behavior throughout his educational career, and had been classified as “emotionally impaired” while in middle school, and was treated as a “special education” student in the high school, while “mainstreamed” in general education classes.

He brought a handheld Nintendo Gameboy video game to school, despite knowing that such devices were not allowed in the school, and subsequently refused to surrender it when a teacher demanded that he do so. He was sent to the assistant principal’s office, and, once there, still refused to surrender the device. The assistant principal ultimately summoned a liaison officer assigned to the high school by the police department to come to the office to assist him, as the child repeatedly “loudly” refused to comply. The youth repeatedly also loudly refused to comply with the officer’s demands that he surrender the game. The officer stated that he was going to search him, and assisted him in standing up, turned him around, and had the boy put his hands upon the office window wall.

Just when the officer was about to pat the minor down, he took a swing at the officer. The officer was able to block the swing, and took the youth to the ground, where he continued to struggle and kick. The boy also bit the officer twice—once on his left wrist and once on his left forearm, and three additional police officers were summoned, who managed to handcuff the boy. Once he was handcuffed, however, he again became violent and attempted to head butt an officer. His continued kicking and thrashing caused one of the officers to threaten to use a Taser on him.

The officer, after a warning, then used the Taser lightly on his lower back area. The officer stated that this was a stun setting and he merely wanted the boy to “get the feeling of it” with the hope that he would be calmed down. Because the boy had a jacket on and another shirt underneath, however, he allegedly had no reaction to the stun, but instead continued to struggle, thrash, and kick, so that a second application of the Taser was used on the boy’s bare skin on his lower torso which had become exposed when his shirt came loose from his pants as he struggled. After this, he stopped struggling.

The trial court rejected arguments that the boy’s constitutional rights were

violated by the officers' actions. The court noted that the boy, by his own admission, "suffered no injuries as a result of being tasered," and that his own description of the Taser was that "it tickled." His only "injury" from the whole incident was merely a rug burn from being taken to the floor. Under the circumstances of the case, the court commented, "it is simply impossible to say that the amount of force" employed by the officers was "unreasonable," instead, it was found to be reasonable under the Fourth Amendment. The court also rejected state law claims, including the argument that the officers' actions were somehow "outrageous."

Officers who used a Taser on a 14-year-old girl who was engaged in a fight on school property were found entitled to summary judgment on the basis of qualified immunity in [Maiorano ex rel. Maiorano v. Santiago](#), 2006 U.S. Dist. Lexis 52186, 2006 WL 2024951 (M.D. Fla. July 15, 2006). This case involved a fight at a high school shortly before noontime, when students were changing classes between periods, and a deputy sheriff heard students yelling "fight," "fight," as they ran across the courtyard. He observed two fights going on at the same time, with two pairs of girls fighting each other violently while at least 100 or more students gathered around to watch.

As the deputy went towards the fight, the crowd began to grow. The fighting students would not respond to his commands, and he was unable to pull them apart. At least one male student spectator was urging the fighting students to become more violent, yelling words like "kill her, kick her ass," and the deputy also stated later that he heard one of the girls engaged in the fight yell "I'm going to kill you, I'm going to kill you, I'm going to kick your ass." The deputy believed that the situation was "volatile and dangerous," and feared that if he did not quickly get it under control, even more violence could erupt.

He used his M26 Taser, a device on which he had received four hours of training. He later stated that he used this because he believed it to be a non-lethal device which could immediately subdue a subject with no real injury, and because he was concerned that, under these circumstances, the use of a chemical agent to stop the fight could cause "cross contamination" to other students, administrators, and himself. He also was concerned that the use of a baton might cause serious injuries to the fighting girls or surrounding students. Finally, he was also concerned that, because he wore a gun, one of the students might grab it, creating an even more violent situation.

He administered one "contact tase" of the M26 Taser to one of the girls as she was holding another girl's hair. When the second girl then lunged forward aggressively, he also administered one "touch tase" to her. He followed that with a "touch tase" to both of the other fighting girls, one of whom then disengaged,

but the second of which continued to fight, resulting in the need to use the Taser twice more on her before she stopped resisting. In a lawsuit brought over the incident, the federal trial court found that the use of the Taser was, indeed, “necessary” under the circumstances, because the fighting plaintiffs were a threat to each other and to others, and “created a chaotic, unruly situation” at the school.

Under these circumstances, the court concluded, it would have been reasonable to use the Taser even without a prior warning, making it unnecessary to resolve a dispute over whether or not the officer gave such a warning. “Although being struck by a Taser is an unpleasant experience,” the court commented, “the use of such force was reasonably proportionate to the need for force and did not inflict serious injury on either plaintiff.”

The court also found that the county sheriff’s office’s use of force policy had been carefully crafted to allow the use of the Taser only in certain circumstances, and that deputies were told not to use “any force” except in very limited circumstances, such as self-defense or overcoming physical resistance. This policy did not sanction the use of excessive force, and that deputies received continuous appropriate training. While the county sheriff’s office did receive 14 excessive force complaints involving Tasers and six officers who were disciplined for the excessive use of force over a five year period, the court found that this merely showed “random, single, and isolated acts,” and did not show a custom or policy of sanctioning excessive force, since such incidents were not persistent and widespread.

In a case involving a 16-year-old boy who exhibited suicidal behavior, an officer was granted summary judgment for using a Taser to place him under control. [N.A. ex rel. Ainsworth v. Inabinett](#), No. 2:05 CV 740, 2006 U.S. Dist. Lexis 68003, 2006 WL 2709850 (M.D. Ala. Sep. 20, 2006). This case involved the actions of a deputy sheriff summoned to the boy’s home by his mother, who reported his attempted suicide.

In upholding the use of both “minimal physical force” and Taser strikes applied by the deputy against the boy, the court found that these actions “fell well short of any constitutional violation.” The boy had a history of both suicidal behavior and actual attempts, as well as a history of mental illness, and, on the day of the incident, increasingly violent and threatening behavior. Additionally, the deputy had been warned by radio dispatchers that the boy had threatened to harm officers and should be considered dangerous.

While the deputy initially attempted to restrain the boy, if possible, without the use of force, the boy appeared to be “foaming at the mouth,” used profanity, and stated that officers were going to have to “choke him down,” because he was not

going anywhere. He also told the deputy, in response to a threat to use the Taser against him, that the deputy would not do so. The deputy was also concerned that three members of the boy's family behind him cut off his only line of retreat if that became necessary. The boy threatened to hit the deputy if he tried to move him, and the deputy ultimately used his Taser, with the support of a police chief who was also present.

The deputy, the court later found, used the Taser only once for a five-second discharge, and only as a "last resort," after which he was able to handcuff and subdue the boy. The youth did not receive any serious or permanent injuries as a result, and there was evidence that the level of force used actually "left no injuries" requiring anything other than a minor examination and "minimal treatment" in an emergency room. Citing the prior case law of [Draper v. Reynolds](#), 369 F.3d 1270 (11<sup>th</sup> Cir. 2004), discussed in more detail in the first article in this series, the court noted that, in the Eleventh Circuit, the use of a Taser is not alone evidence of excessive force. Summary judgment was therefore granted to the deputy sheriff.

## **2. Claims for Inadequate Training**

Plaintiffs will sometimes attempt to impose liability on a municipality with an argument that it has engaged in "inadequate training" of its officers in the use of electronic control devices, such as Tasers or stunguns.

In [Mateyko v. Felix](#), # 88-5986, 924 F.2d 824 (9<sup>th</sup> Cir. 1991), a federal appeals court rejected one such federal civil rights claim, while also upholding a jury award of damages on the basis of negligence in training. The case involved a Los Angeles police officer who initially stopped a man for crossing a street without stopping for a red light. The man resisted when the officer attempted to issue a citation, and the officer radioed for assistance. A second officer responded to the scene and used a Taser to subdue the offender, after which he was charged, and ultimately convicted of willfully and unlawfully resisting, delaying, and obstructing a police officer in the discharge of his duties.

Despite the conviction, the arrestee sued the city and both officers for alleged violation of his federal civil rights, claiming that unnecessary force had been used, as well as asserting state law claims for assault, battery, negligence, and emotional distress. The trial court granted a directed verdict for the city on the plaintiff's federal civil rights claims. A jury found for the defendants on all remaining claims except for the plaintiff's claim against the city for negligent infliction of emotional distress. While his damages on that claim were found to be \$492,000, he was also found to be 96% contributorily negligent, with the city only 4% at fault, resulting in an award of \$19,680.



The Plaintiff argued on appeal that the directed verdict on his claims against the city was improper, and that the city was responsible for failing to adequately train its officers. Federal civil rights liability for a municipality on the basis of inadequate training, according to [City of Canton v. Harris](#), No. 86-1088, 489 U.S. 378 (1989) can only be imposed “where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact.” The focus of the court’s scrutiny must be on the “adequacy of the training program in relation to the tasks the particular officers must perform.”

The plaintiff pointed to the testimony of one of the officers which stated that the officers in the department received approximately three to four hours of training in the use of the Taser, and that the officers did not have information concerning the Taser’s voltage or its precise effect on the human body. The appeals court ruled that no reasonable jury could come to the conclusion that such alleged inadequacies in training, without more, showed deliberate indifference to the rights of people with whom the police came into contact.

Instead, the court found, the failure to provide more extensive training could be, at most, negligence by the city in deciding the amount of time necessary for adequate training of the officers. There was no evidence that the city knew it was, by limiting the training to three to four hours, creating an unjustifiable risk to citizens and ignoring that known risk in the manner indicated by [City of Canton](#). The court was similarly unimpressed with the argument that it was deliberate indifference not to inform the officers of the exact voltage of the Taser.

In responding to a special verdict form, and questions from the court, the jury indicated that the officers had acted in good faith, but that the city, through negligence in training, had inflicted emotional distress upon the plaintiff. The basis of the jury’s award against the city, therefore, was negligence in training. The appeals court upheld this result, and also ruled that the plaintiff was not entitled to award of attorneys’ fees under [42 U.S.C. Sec. 1988](#), since he had not prevailed on any of his federal civil rights claims.

Clearly, the case is an indication that, while courts will not lightly impose federal civil rights liability on municipalities for “deliberate indifference” in training so long as good-faith efforts are made to train officers on the use of equipment issued—including electronic control devices, there is a definite need to think through what sort of training should be provided. Under state law, mere negligence in constructing training programs may be an adequate basis for liability, so police departments should carefully evaluate their training needs and construct programs designed to meet them.

Another case in which the plaintiff attempted to assert a claim for municipal liability on the basis of alleged inadequate training on the use of electronic control devices is [Magee v. City of Daphne](#), 2006 WL 3791971, 2006 U.S. Dist. Lexis 93183, Civil No. 05-0633-WS-M, (S.D. Ala. Dec. 20, 2006). In this case, the officers attempted to use a Taser to cause a non-cooperating domestic violence suspect to fall to the ground, to enable them to handcuff him without further incident. The officers stated that they acted to prevent a physical altercation between the suspect and themselves. In actuality, however, one Taser shot malfunctioned because one of the darts missed him, and the other shot failed because the suspect slammed the door of the residence immediately after being hit, severing the wires. The suspect was able to race out the back door to his home and hide in some nearby woods until the officers left.

He subsequently claimed that the officers used excessive force against him and that the employing city should be held liable on the basis of an unconstitutional policy and inadequate training. The court found that the use of the Tasers against the suspect was reasonable, since he was failing to cooperate after being told that he was under arrest for domestic violence. "What option other than physical force was there?," the court asked.

"The nature and severity of the force used was reasonably calculated to effect the arrest while minimizing risks of physical injury to the suspect or the officers."

As for the claims against the city, the court easily disposed of them also. Given that it had concluded, as a matter of law, that the use of the Tasers in these circumstances was reasonable, there could be no municipal liability on the basis of a supposedly unconstitutional policy sanctioning the officer's use of the Tasers.

The inadequate training claim was based on the fact that the only specific training on Tasers the two officers had received was in March of 2002, with no subsequent recertification prior to the November 2003 incident. The court rejected the inadequate training claim, since any supposed "deficiencies in the depth or breadth" of the officers' training had obviously not caused any excessive use of force or other violation of the plaintiff's rights.

### **3. Useful Resources and Policies**

While policies that departments adopt on the use of Tasers, stunguns, and other electronic control devices must be carefully tailored to comply with applicable federal, state, and local law, looking at policies developed and adopted by other departments, and by model policies presented by professional organizations and others concerned with law enforcement can be a useful part of the process of developing your own policies. This should be done, of course, in connection with



consultation with your department's legal counsel, as well as with management personnel aware of daily practical considerations. Click [here](#) to get to a menu of specimen policies adopted by a number of municipalities, as well as a model policy, and a number of useful resources and websites. This menu will remain on line, and items will be added to it from time to time.

\* **Nomenclature:** Various writers refer to the instrument as a CED or CEW (Conducted Energy Device or Weapon), or an ECD or ECW (Electronic Control Device or Weapon), or an EMD weapon (Electro-Muscular Disruption), or an electroshock weapon or stungun. Like Xerox ® and Kleenex ®, T.A.S.E.R. ® (Thomas A. Swift Electric Rifle) is now the popular name for all hand-held, electric-discharging muscle immobilizers, even though a single manufacturer, TASER International, dominates the world market [Nasdaq: TAsR]. For simplicity, AELE refers to all conducted energy weapons as "Tasers".

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### **AELE Monthly Law Journal**

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