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**Use of an Electronic Control Weapon
on a Person Suffering from
Delirium or Other Agitated Condition
Part 2**

Last Month

- Introduction
- What is “Excited Delirium”?
- Cases Involving Deaths
 - *Cases finding actual or potential liability*
 - *Cases finding no liability*

This Month:

- Cases Involving a Non-Fatal Injury
- Correctional Settings
- Some Suggestions
- Resources and References

This is a two-part article. To read Part 1, click [here](#).

❖ **Cases Involving Non-Fatal Injury**

There are also many cases in which the use of a Taser, whether in the dart mode or stun mode or both, against an individual suffering from delirium or some other agitated condition, may have resulted in non-fatal injuries and sometimes lawsuits seeking liability.

In [Goldsmith v. Snohomish County](#), #C07-0203, 558 F. Supp. 2d 1140, 2008 U.S. Dist. Lexis 11630 (W.D. Wash.), for instance, the plaintiff was entertaining a friend at his apartment, when he began to feel anxious and thought he was going to have a panic attack. The plaintiff went to the bathroom, apparently fell, and blood was coming out of his nose and mouth. Paramedics responded, but the plaintiff would not allow the medical team to touch him, and exhibited bizarre behavior.

Sheriff’s deputies were called and found the plaintiff screaming incoherently, profusely sweating, unresponsive, and his face was bloody. The plaintiff struggled and a deputy worried that he and the plaintiff could get hurt. The deputy fired his Taser in the dart mode,

striking the plaintiff in his abdomen. The Taser had little to no effect on the plaintiff, who immediately pulled the barbs out of his abdomen.

A Taser was again discharged, and the darts struck the plaintiff in the back. This time, the Taser was momentarily effective, but the plaintiff quickly resumed fighting the deputies. A Taser was used a third time, in the stun mode. It had no immediate effect, but the plaintiff soon ceased struggling, and it appeared he was no longer breathing.

The plaintiff apparently had suffered a heart attack. The medical team intubated the plaintiff, and his heart returned to beating spontaneously. He was then taken to the emergency room.

A suit was filed alleging federal civil rights violations and state tort law claims for negligence, assault and battery, outrage, negligent infliction of emotional distress, failure to train, supervise or instruct, false arrest, and false imprisonment. The judge concluded that the use of force by the deputies was objectively reasonable and therefore constitutional.

“The escalating use of force was proportional to and required by the situation facing the deputies. ... He was a large man covered in blood in a small bathroom, [and] was incoherent, sweaty, and violent.”

The court rejected the plaintiff’s contention that instead of deploying a Taser, the officers should have waited until there were at least four or five deputies on-scene to engage and rapidly overpower the plaintiff. “However, this Court may not use perfect hindsight to second-guess what the deputies could have done differently, even when considering alternative methods.”

The deputies’ use of force was objectively reasonable and constitutional. They were entitled to qualified immunity. The plaintiff also contended that the county was deliberately indifferent to his rights because a pattern of unconstitutional conduct towards persons suffering from excited delirium and positional asphyxia existed.

However, the county did train its officers regarding positional asphyxia and excited delirium, and the deputies at the scene had knowledge of that information. The county was granted summary judgment, along with the other defendants.

❖ **Correctional Settings**

Correctional personnel have occasion to confront persons suffering from delirium and other agitated states, often but not always in the context of incoming detainees and prisoners, and there have been lawsuits arising from the use of Tasers in an attempt to

control them. Such incidents have resulted in both fatal and non-fatal injuries and, in some instances, the payment of damages.

In one case that ultimately led to a multimillion dollar settlement, a man was arrested on a warrant for failure to appear and taken to the county jail. On intake, a history of alcohol withdrawal was noted and medical personnel made a notation indicating that a clinical evaluation concerning his possible need for safe detoxification from alcohol should be conducted, but it was not.

Later, in his cell, he exhibited symptoms of delirium tremens, hallucinations, severe anxiety, and disorientation.

When he made a mess in his cell, blocking a toilet and breaking a food tray, a deputy entered the cell alone, Taser in one hand and handcuffs in the other. As he was handcuffing the detainee, the man “tensed,” causing the deputy to push him to the back of the cell. The deputy claimed that the detainee turned and slowly began to walk towards him, whereupon the Taser was fired in the dart mode and used for two cycles or ten seconds, causing the detainee to run for the door, slip on the wet floor, and fall.

The deputy “pounced” on him and he and at least nine other deputies then allegedly severely beat, punched, kicked, stomped, and “brutalized” him. Tasers were used by various deputies during this for at least 27 more seconds in five separate sessions.

The detainee allegedly never struck or kicked any of the deputies and suffered anoxic brain damage, severe acidosis, several cardiac arrests, and respiratory failure, dying two days later. Despite a history of alcohol abuse, he was allegedly a healthy man of fifty.

An autopsy determined that he died from anoxic encephalopathy due to cardiac arrest following excessive physical exertion, multiple blunt injuries, and use of the Taser. The coroner’s investigator’s report found that the manner of death “could not be determined.”

The court allowed the filing of an amended complaint that named nine individual jail employees as defendants in addition to the county and sheriff as defendants, asserting claims for wrongful death, negligence, deliberate indifference to serious medical needs. [*M.H. v. County of Alameda*](#), #11-cv-02868, 2012 U.S. Dist. Lexis 168412 (N.D. Cal.).

Two defendants failed to reply to the plaintiffs’ response to a motion to dismiss and instead, the court found, filed a second unauthorized motion to dismiss while the first motion was pending. The court decided to rule on the second motion, however, as there was no prejudice to the plaintiff. Claims under state and federal law for allegedly failing to provide proper medical attention for the alcohol withdrawal were allowed to

continue. [*M.H. v. County of Alameda*](#), #11-cv-02868, 2013 U.S. Dist. Lexis 55902 (N.D. Cal.).

Corizon Health, a private medical firm which services more than 345,000 inmates in 27 states, along with the California county which operates the jail, reached a settlement in the lawsuit.

The decedent's family claimed that the firm's employees failed to properly diagnose the detainee, who was suffering from alcohol withdrawal (delirium tremens with hallucinations). The lawsuit further claimed that the detainee should have been hospitalized for the alcohol withdrawal. The defendants agreed to pay \$8.3 million to the family.

The private medical firm also agreed to stop using licensed vocational nurses to perform work intended for registered nurses, a practice that allegedly had saved the company 35% in labor costs. An unsupervised licensed vocational nurse, instead of an RN, did the medical screening of the decedent when he was placed in custody at the jail.

The county previously entered into a separate \$1 million settlement with one of the deceased detainee's minor children. [*Harrison v. Alameda County and Corizon Health Care, Inc.*](#), #3:11-cv-02868, U.S. Dist. Ct., (N.D. Cal. February 26, 2015). For more on the detailed facts of the case, see [*M.H. v. County of Alameda*](#), #3:11-cv-02868, 2014 U.S. Dist. Lexis 48592 (N.D. Cal.).

In another correctional case, a lawsuit was brought over the death of an arrestee being processed into a county jail who was subjected to multiple uses of a Taser in both dart mode and stun mode. The arrestee at least passively resisted by refusing to walk or support his own weight, and then attempted to run down a hallway, and it was disputed whether his resistance further escalated.

Once restrained, he was sent to a hospital for medical clearance before being admitted to the facility. At the hospital, he was breathing, but unresponsive, and died thirty hours later. The cause of death was determined to be complications from excited delirium.

State law claims of gross negligence and trespass by an officer survived summary judgment, while direct claims under the North Carolina state Constitution were ruled inapplicable in light of other state remedies.

Claims were also made against the county sheriff, in his official capacity, and the city, for failing to adequately train officers to handle mentally ill arrestees and in the proper use of Tasers, as well as in handling persons diagnosed with "excited delirium."

There was no evidence of inadequate training or that departmental norms deviated from policies prohibiting the use of a Taser on a handcuffed prisoner in the absence of assaultive behavior. Summary judgment was therefore granted to the sheriff and city. [Davidson v. City of Statesville](#), #5:10-cv-00182, 2012 U.S. Dist. Lexis 58303 (W.D.N.C.).

In another case involving a death, upon arrival at a jail, a detainee refused to cooperate and had to be pulled from the police vehicle. After his handcuffs were removed, he swung his arms, attempting to bite and kick officers, and successfully biting one of them.

The Taser was used in stun mode against the detainee's left leg, with no apparent effect. The detainee kicked an officer in the chin, and the Taser was used again in the stun mode on his lower back, and a third time to the back of his leg as the detainee continued to resist.

An officer subdued him by placing a knee in his back, and again handcuffed him. He vomited, became unresponsive, and stopped breathing. He died of cardiac arrest.

An autopsy determined that the cause of death was acute drug intoxication from ethanol and methamphetamines during a drug-induced delirium. He also had alcohol and marijuana in his system. A plaintiff's expert claimed that he may have died from compression of either his neck or back.

The trial court found that a federal civil rights wrongful death claim, as well as municipal liability inadequate training claims, were not supported by the evidence. Qualified immunity was available to the officer who used the Taser on the detainee, since it was used only after he had repeatedly attacked, bitten and resisted officers who were attempting to get him in the shower to wash off his pepper-sprayed face.

A medical expert for the plaintiff expressed the opinion that his cause of death was traumatic asphyxia due to compression of his neck and back while being restrained. A federal appeals court ruled that the defendant officers were entitled to qualified immunity when there was insufficient evidence to support the strangulation theory, since only the expert's conclusory opinion supported it.

That opinion was contradicted by other evidence, including the testimony of all the officers and two EMTs. [Burdine v. Sandusky County](#), #12-3672, 524 Fed. Appx. 164, 2013 U.S. App. Lexis 7691, 2013 Fed. App. 0376N (6th Cir.).

❖ Some Suggestions

As the cases clearly indicate, confronting individuals suffering from excited delirium or other agitated conditions is a serious problem. The following are some suggestions to consider.

1. Officers need to be exposed to training that discusses the problem from a variety of perspectives, taking into account the legal, medical, and practical aspects of the problem. While law enforcement and correctional officers are not medical personnel, and are not expected to attempt to “diagnose” an individual’s medical condition, they should at least be familiar with the signs of common symptoms, and be aware of the possibilities and their impact on effective techniques for attempting to subdue and restrain a subject.
2. Dispatchers, if at all possible, should be trained to recognize the indicators of excited delirium and to ask questions designed to elicit information that can help to recognize when it is present, with the hope that they can sometimes attempt to caution responding officers before they reach the scene of the problem.
3. Excited delirium is often a medical emergency as well as a law enforcement problem, and when appropriate, emergency medical personnel should be dispatched to the scene of an incident. This may not, of course, always be possible in every instance, both because of the speed at which such incidents suddenly develop and the availability of resources and other demands for such medical resources in a local area.
4. Tactically, persons suffering from excited delirium are often characterized by superhuman strength and imperviousness to pain. Pain based techniques therefore can be fairly ineffective. Whenever possible, it is best to try to have multiple officers dispatched to try to cope with the difficult situation.
5. Tasers can be a viable part of attempting to control persons suffering from excited delirium, but there are cautions about repeated multiple applications. Applications of the Taser in the dart mode optimally deployed (i.e., good contact with sufficient probe spread) may be effective in temporarily disabling a subject so that officers can restrain them with handcuffs or other devices, placing them under control and preventing them from hurting officers, EMTs, third parties, or themselves. The point of this is disablement and control, not the hope of gaining compliance.
6. Restraint techniques once control is accomplished must take care to avoid impairing the subject’s respiration, a frequent problem in such cases that have resulted in death.
7. Use of the Taser in the stun mode is largely a pain reliant technique and therefore is likely to be ineffective with individuals with excited delirium.
8. Once a subject suffering from excited delirium or a similar agitated state has been subdued and restrained, medical evaluation and attention should be provided.

❖ Resources

The following are some useful resources related to the subject of this article.

- AELE [listing of online articles and resources](#) about Electronic Control Weapons.
- American College of Emergency Physicians (ACEP) Passed Resolution on Excited Delirium - [Recognizing Excited Delirium Syndrome](#). (Oct. 5, 2009).
- [Electronic Control Weapons](#). AELE Case Summaries.
- [Glossary of Electronic Control Weapons terms](#).
- [Institute for Prevention of In-Custody Deaths website](#). IPICD offers a certification course for excited delirium instructors.
- Marathon County (WI) [Coordinated Plan for Excited Delirium Patients](#).
- Model Policy for Excited Delirium, by David Hatch, [Corrections Managers' Report](#), Volume XIII, No. 1, June/July 2007, Pgs. 7-9, 12 , ISSN 1083-3382.
- Portage County (WI) [Coordinated Plan for Excited Delirium Patients](#) (June 17, 2008). .
- [Report of the Panel of Mental Health and Medical Experts Review of Excited Delirium](#), Nova Scotia, Canada (June 30, 2009).
- TASER International product and information site, <http://www.taser.com/>

❖ Relevant Monthly Law Journal Articles

- [Civil Liability for Use of Tasers, stunguns, and other electronic control devices--Part I: 4th Amendment claims for excessive force](#), 2007 (3) AELE Mo. L.J. 101.
- [Civil Liability for Use of Tasers, stunguns, and other electronic control devices--Part II: Use against juveniles, and inadequate training claims](#), 2007 (4) AELE Mo. L.J. 101.
- [Civil Liability for Use of Tasers, stunguns, and other electronic control devices--Part III: Use Against Detainees and Disabled or Disturbed Persons](#), 2007 (5) AELE Mo. L.J. 101.

- [Electronic Control Devices: Liability and Training Aspects](#), by Edmund Zigmund, 2007 (5) AELE Mo. L.J. 501.
- [Taser® Electronic Control Devices \(ECDs\): An “Intermediate” Use of Force?](#), 2010 (2) AELE Mo. L. J. 101.
- [Second Circuit Panel Allows Stun Mode to Gain Compliance of Chained Protestors](#), 2011 (5) AELE Mo. L. J. 501.
- [Ninth Circuit finds that the use of a TASER® constituted excessive force: Two cases involved noncompliant subjects](#), 2011 (12) AELE Mo. L. J. 101
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- [The Use of Electronic Control Weapons Against Handcuffed or Restrained Persons - Part 1](#), 2012 (9) AELE Mo. L. J. 101
- [The Use of Electronic Control Weapons Against Handcuffed or Restrained Persons - Part 2](#), 2012 (10) AELE Mo. L. J. 101.
- [Pointing and Threatening to Use Electronic Control Weapons](#), 2013 (8) AELE Mo. L. J. 101.
- [Use of an Electronic Control Weapon on a Person Suffering from Delirium or Other Agitated Condition](#), Part 1, 2015 (3) AELE Mo. L. J. 101

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3. The Patient With Excited Delirium in the Emergency Department, by M.P. Wilson and G. M. Vilke, Chapter 17, Behavioral Emergencies for the Emergency Physician, edited by Leslie Zun (2013),
4. [Patient Presents with Excited Delirium Syndrome](#), by Dennis Edgerly, J. of Emer. Med. Services (Aug. 13, 2012).
5. [Excited Delirium](#), by Asia Takeuchi, Terence L. Ahern and Sean O. Henderson, 12 (1) Western J. of Emer. Med., 77-83 (Feb. 2011).
6. [Excited Delirium Strikes without Warning](#), by Keith Wesley, J. Emer. Med. Services (Feb. 1, 2011).

7. Excited Delirium, Restraints, and Unexpected Death: A Review of Pathogenesis, Otahbachi et al., 31 (2) Am. J. Forensic Med. Pathol. 107-12; [abstract](#) (Jun. 2010).
 8. Deaths in Custody: Are Some Due to Electronic Control Devices (Including Taser Devices) or Excited Delirium? By J. R. Jauchem, 17 (1) J. Forensic Leg. Med. 1-7; [abstract](#) (Jan. 2010). doi:10.1016/j.jflm.2008.05.011. PMID 20083043.
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 14. [Is Excited Delirium a Fake Condition Invented to Whitewash Abusive Force? A Critical Look at NPR's Recent Reports](#). Force Science News #67, Mar. 9, 2007.
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