



ISSN 1935-0007

Cite as: 2015 (10) AELE Mo. L. J. 101
Civil Liability Law Section – October 2015

Police Accommodation of Mentally Impaired Persons Under the Americans with Disabilities Act (ADA)

Part One (Last Month)

- Introduction
- The ADA and Public Services
- U.S. Supreme Court Decision
- Basis for Liability under the ADA

Part Two (This Month)

- Use of Force
 - Deadly Force
 - Tasers
- Suicide
- Drug Use
- Mental Health Detentions
- Some Suggestions
- Resources and References

This is Part 2 of a two-part article. To read Part 1, click [here](#).

❖ Use of Force

One common context in which mentally impaired persons have asserted claims for disability discrimination against police has been the use of force against them. We will now examine some of these cases revolving around the use of deadly force or less lethal force, such as Tasers.

Deadly Force

Courts have generally held that the basic legal principles concerning the circumstances under which deadly force may constitutionally be used in defense of self or others still apply, regardless of whether or not the suspect on who the force is used is mentally impaired. An officer confronted by a mentally ill person armed with a deadly weapon may

use deadly force when believed necessary to defend his or her own life, the lives of fellow officers, or members of the public. At the same time, just as with any use of deadly force against anyone, officers must show that their actions were objectively reasonable under the circumstances.

This is illustrated by [*Roberts v. City of Omaha*](#), #12-3426, 723 F.3d 966 (8th Cir. 2013), in which officers arrived at a man's home after his mother called 911 to report that he was having a psychotic episode and had attacked a family member. The officers were told that he might have a knife or a screwdriver. He was uncooperative with orders to lie down. A struggle ensued, during which officers claimed that he reached under a pillow and pulled out a knife that he swung at an officer. An officer fired six shots from his gun, hitting him several times. In a lawsuit, the man denied attacking officers with a knife.

A federal appeals court found that the officers were entitled to qualified immunity on disability discrimination claims as there was no clearly established law that the officers had a duty to accommodate the arrestee's disability of schizophrenia while trying to secure him and take him into custody. The officer who fired the shots, however, was not entitled to qualified immunity, as there was a disputed issue of fact as to whether the arrestee at that time posed an objectively reasonable threat of violence towards the officers.

- When courts have found some possible duty to accommodate a mental disability in a case involving the use of deadly force, they have limited any such accommodation to what is reasonable and possible to do under the circumstances.

In [*Waller v. City of Danville Virginia*](#), #072099, 556 F.3d 171 (4th Cir. 2009), a federal appeals court rejected a claim that police officers failed to properly reasonably accommodate, under the Americans with Disabilities Act (ADA), a mentally ill man holding a woman hostage in his apartment. Even if there was such a duty of reasonable accommodation, which the court did not decide, the defendants would have satisfied it by their actions of seeking information which confirmed that the suspect had a mental illness, and calling in a hostage negotiator.

There was no evidence that they did anything to escalate the situation, and they tried to calm the situation down by trying to speak with the suspect, and even waited two hours before entering the apartment and shooting and killing the suspect, who came towards them swinging what appeared to be a scythe and brandishing what looked like a knife. The accommodations proposed by the plaintiffs, which included summoning a mental health professional and the suspect's family and administering medication, were not reasonable under the circumstances.

In [*Thao v. City of St. Paul*](#), #06-2339, 481 F.3d 565 (8th Cir. 2007), the estate of paranoid schizophrenic shot and killed by police who came to his house in response to a 911 call from his family requesting assistance failed to show that more adequate training as to how to respond to incidents involving mentally disturbed persons would have resulted in a different result. The court found that the officers did not create the dangerous situation.

See also [*Sanders v. City of Minneapolis, Minn.*](#), #06-1356, 474 F.3d 523 (8th Cir. 2007), in which a court found that an officer acted properly in shooting a man who ignored orders to show his hands, and instead backed his car into a security guard's vehicle, followed by accelerating down an alley towards other police officers in his path. The officer's actions were aimed at trying to prevent him from injuring the other officers, and were reasonable under the circumstances, even if the suspect was then experiencing a bipolar episode. Because of this, there was also no violation of the Americans with Disabilities Act (ADA).

Similarly, in [*Buchanan v. State of Maine*](#), #06-1466, 469 F.3d 158 (1st Cir. 2006), the court found that the shooting and killing of mentally ill man inside home, after he stabbed one of two deputies who came there to check on him, did not violate Title II of the Americans with Disabilities Act (ADA). The administrator of his estate failed to show that the decedent was denied governmental services "by reason" of his disability of mental illness. The officers were also entitled to qualified immunity for their entry into the home because they had a reasonable belief that their entry was lawful.

In [*Thompson v. Williamson County, Tenn.*](#), #99-5458, 219 F.3d 555 (6th Cir. 2000). an officer's shooting and killing of mentally disturbed man who came towards him armed with two machetes did not constitute disability discrimination; if the disturbed individual was "denied access to medical services," it was because of his violent, threatening behavior, not because he was mentally disabled.

In accord is [*Hainze v. Richards*](#), #99- 50222, 207 F. 3d 795 (5th Cir. 2000), finding that it was a disabled mentally disturbed man's own behavior in attempting to assault others with a knife at a convenience store, rather than a police officer's reaction in shooting him which resulted in his injuries; the police officer's use of deadly force under the circumstances was not disability discrimination.

Tasers

Increasing numbers of police officers are now equipped with Tasers and other less lethal weaponry. Accordingly, more claims of disability discrimination are starting to appear in the courts involving the use of Tasers against mentally impaired suspects.

One such case in which a court found that there was a duty to reasonably accommodate a mental disability is [*Taylor v. Schaffer*](#), #1:14-cv-123, 2015 U.S. Dist. Lexis 16119 (D. Vt.). In this case, state police received a report from a medical center that an unidentified man had called and stated that he wanted to slit his throat in the back yard. A reverse phone check identified the caller, who suffered from a seizure disorder due to a traumatic brain injury as well as several other diagnosed mental disorders. He had previously reported suicidal ideas to his case worker. Three state troopers were dispatched to the residence to do a welfare check on the man.

The woman who owned the home was asked to come home and she said no one should be in the house and that there were no guns there. When she arrived, she informed the troopers of the man's seizure the day before and said that he needed to be left alone. Later, a trooper saw the man walking out of some nearby woods, and approached him with a rifle aimed at him, asking him to show his hands and lie on the ground. While the man at first complied, he then stood up and asked the trooper "Why don't you just go ahead and shoot me?"

The trooper claimed that the man walked towards him, with one fist clinched and the other hand "flipping him off." The homeowner and her son claimed the man actually walked forward with his hands in the air. The trooper fired a Taser in the dart mode in his chest. He collapsed and was handcuffed, but the cuffs were removed shortly to perform CPR on him.

He died after being taken to a hospital. In addition to other claims, the plaintiff asserted a disability discrimination claim, arguing that the troopers failed to reasonably accommodate the decedent's disabling condition when they failed to leave the area and leave him alone as they had been requested to do.

The court found that the troopers knew of the decedent's disability and could have accommodated the request to leave him alone as he did not have a weapon and the perimeter was secured. There was therefore arguably no exigency to approach him. A request to dismiss the disability discrimination claims was therefore denied. Official capacity claims against the troopers as agents of the state of Vermont were rejected on the basis of Eleventh Amendment immunity.

- When the force of a Taser is clearly necessary to control a situation involving a mentally impaired suspect who poses a threat, it clearly can be used. Such use is not per se unreasonable.

In [*Gordon v. County of Onondaga*](#), #5:09-CV-1182, 2014 U.S. Dist. Lexis 160871 (N.D.N.Y.), a woman claimed that the use of a Taser to subdue her son during an arrest caused his death, that no effort was made to render first aid to her son for his injuries and that her son had suffered a gunshot wound years earlier and still had a bullet in his head on the night of the incident. On the Fourth Amendment excessive force claim, the court found

that the officer's use of his Taser was reasonable despite some factual disputes about the circumstances of the incident.

The plaintiff's only eyewitness gave a statement on the night of the incident indicating that the decedent had been yelling at the officer that "you ain't going to Tase me," and then continued yelling and "going crazy" walking towards the officer in a threatening manner until the officer fired the Taser in the dart mode when he got within three feet. This eyewitness later claimed that his first statement had been "inaccurate," but then admitted, in the same deposition, that the statement was in fact true, particularly "the most relevant" assertions.

Considering all the evidence, the court found that the decedent had evaded and resisted attempts to subdue him, and had been throwing objects and otherwise acting in a manner that an officer could reasonably interpret as being dangerous to officers or others. Further, the officer tried to resolve the situation peacefully before resorting to the Taser, even backing away at one point. He repeatedly warned the man that a Taser would be used if he did not stop advancing on the officer, but he failed to comply. The court also found that the plaintiff had cited no legal authority holding that the application of a Taser "against a physically or mentally disabled person is presumptively unreasonable or excessive."

In [*De Boise, Sr. v. St. Louis County, Missouri*](#), #13-2742, 760 F.3d 892 (8th Cir. 2014), the court also upheld the use of a Taser against an uncooperative, combative, mentally impaired man believed to be dangerous. In this case, a mentally ill delusional man left his house naked, beat houses in the area with a stick, returned home and told his mother that he was God and that she must worship him.

She went to a neighbor's home to call 911. When police arrived, she told them she was afraid her son was going to kill her. She also informed them that there was a gun in the house. The man briefly emerged from the house naked, claiming to be God, and went back inside, before again emerging.

He would not obey orders, initially lying down, but then rising to a standing position with clenched fists. A Taser was fired in the dart mode because of fear that the man would attack officers, and it was activated for six full five-second cycles and an additional two-second cycle. A second officer then also fired his Taser in the dart mode and activated it for four five-second cycles. The man continued to be combative and to ignore commands, kicking and otherwise resisting. He later went into cardiac arrest and died.

The trial court found that the officers' uses of their Tasers were reasonable under the circumstances, as the man was uncooperative, combative, and believed to be dangerous. The court also rejected a claim that the city was liable under the Americans with Disabilities Act (ADA) for failing to accommodate the man's mental impairment during

his arrest. A federal appeals court upheld the trial court's rulings, finding that even if the repeated use of the Taser was found to be excessive force, such rights were not clearly established on July 7, 2008, the date of the incident. The court noted that the decedent continued his violent and aggressive behavior at the time and was non-compliant. The officers were entitled to qualified immunity.

❖ Suicide

This publication has previously addressed the subject of police dealing with suicidal persons, including those suffering from a mental illness, in more detail in [Disturbed / Suicidal Persons -- Part One](#), 2012 (2) AELE Mo. L. J. 101, [Disturbed/Suicidal Persons -- Part Two](#), 2012 (3) AELE Mo. L. J. 101, and [Suicide By Cop](#), 2007 (8) AELE Mo. L.J. 101. That material will not be repeated here. Since the publication of those articles, however, there have been a number of significant court decisions on the topic, including the U.S. Supreme Court case of [City and County of San Francisco v. Sheehan](#), #13-1412, 135 S. Ct. 1765, 2015 U.S. Lexis 3200, discussed at length in [Part 1](#) of this article.

In instances where officers know that they are dealing with a suicidal situation involving a mentally impaired individual, care and communication can sometimes help prevent a tragic outcome. In [Weinmann v. McClone](#), #14-1794, 787 F.3d 444 (7th Cir. 2015), a married couple argued on their wedding anniversary. The husband then went to the garage, drank half of a bottle of vodka, and put a shotgun barrel in his mouth, although he was unable to pull the trigger. The wife called 911 and the deputy who responded shot the man four times. The suicidal man was injured, but survived. The deputy was not entitled to qualified immunity, as he kicked in the door within three minutes of arriving, and made no attempt to communicate with the man before entering, so he lacked a reasonable belief that the man posed a threat.

At the same time, when a suicidal person appears to present an imminent threat of serious bodily harm to an officer or a member of the public, it can be objectively reasonable for the officer to make a split second decision that force must be used, cutting short efforts at communication and accommodation. See [Partlow v. Stadler](#), #14-1281, 774 F.3d 497 (8th Cir. 2014). In this case, while riding home from a bar with his aunt and her boyfriend, a man talked about killing himself. When the car got to his apartment, he jumped out, ran inside, and locked the door. His aunt called 911 to report a possible suicide.

Multiple officers arrived, heard the apartment door crash open and observed the suicidal man holding a shotgun in one and with his aunt holding his other arm. They ordered him to drop the gun, and the aunt fell, freeing his other arm. The officers stated that the man chambered a round and aimed the gun at them before they fired, hitting him in the eye,

forearm, hands, groin, hip, and shin. A live round was found in the shotgun's chamber and the man was convicted of terrorizing.

The aunt claimed that her nephew had been putting the shotgun down when the officers opened fire on him. Reversing a trial court denial of qualified immunity to the officers on an excessive force claim, a federal appeals court reasoned that, while it was possible that the officers were mistaken about the man aiming the gun at them, their mistake was objectively reasonable under the circumstances.

❖ **Drug Use**

Mentally impaired persons may have had their conditions exacerbated by the use of intoxicants, illegal drugs, or abused prescription drugs, or, to the contrary, may be suffering various reactions, up to and including delusions and hallucinations because of failure to take prescribed medication needed to alleviate their condition. The more knowledge concerning this an officer can obtain from the subject's family, friends, neighbors, doctors, etc. the better they may be equipped to fashion tactics useful and appropriate to the situation.

However, officers are not health care professionals and should not be judged by those standards.

❖ **Mental Health Detentions**

Many jurisdictions have legal procedures which authorize the detention of persons believed to be suffering from mental disorders who do not voluntarily consent to evaluation and treatment, particularly when they pose a threat of harm to themselves or others. See Washington State Statute [RCW 71.05.150](#) or Missouri Revised Statutes [Sec. 632.305.1](#). Most such statutes provide a procedural mechanism to obtain a court order mandating temporary detention for a specified time for evaluation of the need for treatment.

In emergency circumstances involving a suspected threat of imminent harm absent the detention, however, statutes often authorize a mental health professional or a peace officer to act to immediately detain an individual. The Missouri statute, for example, provides:

A mental health coordinator may request a peace officer to take or a peace officer may take a person into custody for detention for evaluation and treatment for a period not to exceed ninety-six hours only when such mental health coordinator or peace officer has reasonable cause to believe that such person is suffering from a mental disorder and that the likelihood of serious harm by such person to himself or

others is imminent unless such person is immediately taken into custody. Upon arrival at the mental health facility, the peace officer or mental health coordinator who conveyed such person or caused him to be conveyed shall either present the application for detention for evaluation and treatment upon which the court has issued a finding of probable cause and the respondent was taken into custody or complete an application for initial detention for evaluation and treatment for a period not to exceed ninety-six hours which shall be based upon his own personal observations or investigations and shall contain the information required in subsection 1 of this section.

While it involved a physical rather than a mental impairment/disability, the court in [*Green v. City of N.Y.*](#), #04-1006, 465 F.3d 65 (2d Cir. 2006) ruled that transporting a man with ALS to a hospital against his will at a time when he was no longer in imminent danger, and despite his “non-verbal” protests, if true, could constitute disability discrimination and a violation of his Fourth Amendment rights.

Also see [*Bruce v. Guernsey*](#), #14-1352, 777 F.3d 872 (7th Cir. 2015), in which the court reasoned that a deputy’s alleged false statements may have prolonged the detention of a supposedly suicidal girl for evaluation and treatment that she may not have actually needed. In this case, a girl’s high school boyfriend told an employee at school that she had tried to kill herself. The employee called the police and an officer was sent to the home where the girl was staying, detaining her until a sheriff’s deputy arrived and took her, over her objections, to a hospital where she was subjected to a mental health examination.

The deputy allegedly falsely said that he had a copy of a prior physician’s medical examination, which had not actually taken place, and wrote that the boyfriend had personally told him about the alleged suicide attempt, a statement the boyfriend denied making. Both the officer and the deputy allegedly ignored statements by the girl’s father contradicting the suicide report, as well as the girl’s calm demeanor.

A federal appeals court upheld a ruling that the officer had probable cause for his actions, but reversed a grant of qualified immunity for the deputy, holding that if the facts were as claimed, he would have overstepped the boundaries of the Fourth Amendment by taking the girl to the hospital and then making false statements that caused her more prolonged detention.

❖ Some Suggestions

1. When it comes to the use of force, whether deadly or less lethal, officers must often base their decisions on a split-second judgment of what is necessary under the circumstances. Often, it may not be easy to quickly determine whether an individual

pointing a gun or holding a knife is mentally impaired or not, but the use of force will be objectively reasonable if it appears necessary to preserve life or prevents serious bodily injury to an officer or a member of the public.

2. In instances when officers have specific knowledge of an individual's mental impairment, there may be more of a basis to try to accommodate that condition. Such individuals may be easily upset. Attempts at communication, and if there is time, such as in the instance of mentally impaired individuals barricaded in an apartment without an imminent threat to others, the involvement of mental health professionals or other persons with specialized training as well as family members can be considered.
3. In incidents involving a mentally impaired suicidal individual, a central objective must be to attempt to preserve the life of the subject if that can be done while avoiding harm to others.
4. Training that assists officers in recognizing some of the common forms of mental impairment and understanding some of the ways in which such persons are likely to react can be beneficial.
5. Written policies and procedures should be developed on how to address issues concerning encounters with mentally impaired persons. [Responding to Persons With Mental Illness, Emotional Crisis or Physical Disabilities](#), Anne Arundel County Maryland Written Directive (May 1, 2012) lists some common topics that should be addressed:

III. PROCEDURES FOR PERSONS WITH MENTAL ILLNESSES

A. While many people with mental illnesses manage symptoms successfully with the use of medications, others who do not have access to mental health services, fail to take their medications, or do not recognize that they are ill, can experience psychiatric difficulties.

B. When anyone with a mental illness comes into contact with the Police Department, for whatever reason or circumstance, Department personnel must take extra caution to ensure that the person's rights are not violated and that he/she understands what is occurring. Some individuals may not have educational or communication comprehension levels sufficient to fully understand the basic Miranda rights. Simply reading the rights to someone with these types of disabilities and having the individual acknowledge that they understood may not be sufficient.

C. Officers and civilian employees must ensure that people with a mental illness receive the necessary assistance to access available services. This may require time and patience beyond what is normally provided.

D. People with a mental illness may also be suspects or arrestees and require detention, transport, and processing. Employees must familiarize themselves with the proper methods of transport, arrest, and detention to ensure officer safety while providing all reasonable support to an arrestee with a mental illness.

E. Officers and civilian employees must recognize that responses of people with certain mental illness may resemble those of people who have abused substances such as alcohol or drugs. Individuals may appear as though they are on a substance or intoxicated but rather have not taken their prescribed medication for their mental illness.

❖ Resources

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

- ADA.gov. U.S. Justice Department, Civil Rights Division website.
- [Americans with Disabilities Act](#). Wikipedia article.
- Disability.gov. U.S. Justice Department website.
- [Disability Discrimination](#). AELE Case Summaries.
- [Public Protection: Disturbed/Suicidal Persons](#). AELE Case Summaries.
- [Rehabilitation Act](#). Wikipedia article.
- [Resources on Civil Rights and the ADA](#). Bazelon Center for Mental Health Law.
- [Responding to Persons With Mental Illness, Emotional Crisis or Physical Disabilities](#), Anne Arundel County Maryland Written Directive (May 1, 2012).

❖ Prior Relevant Monthly Law Journal Articles

- [Disturbed/Suicidal Persons -- Part One](#), 2012 (2) AELE Mo. L. J. 101.
- [Disturbed/Suicidal Persons -- Part Two](#), 2012 (3) AELE Mo. L. J. 101.
- [Public Protection: Part Two – The Mentally Ill or Deranged](#), 2013 (6) AELE Mo. L. J. 101.

- [Police Accommodation of Mentally Impaired Persons Under the Americans with Disabilities Act \(Part One\)](#), 2015 (9) AELE Mo. L. J. 101.
- [Police Interactions with Deaf Persons](#), 2009 (3) AELE Mo. L. J. 101.
- [Police Interactions With Autistic Persons](#), 2009 (7) AELE Mo. L. J. 101.
- [Suicide By Cop](#), 2007 (8) AELE Mo. L.J. 101.

❖ References

1. [Encountering Mentally Ill People and Potential Liability under the Americans with Disabilities Act](#), by Michael J. Oh, Police Chief (July 2014).
2. [Legal Issues in Health Care: Mental Health](#), University of Tennessee Health Science Center (February 2008).
3. [Commonly Asked Questions about the Americans With Disabilities Act and Law Enforcement](#), U.S. Department of Justice, Civil Rights Division (April 4, 2006).
4. [The Americans With Disabilities Act and Criminal Justice: Mental Disabilities and Corrections](#), by Paula N. Rubin and Susan W. McCampbell, National Institute of Justice (July 1995).

AELE Monthly Law Journal

Bernard J. Farber
 Civil Liability Law Editor
 P.O. Box 75401
 Chicago, IL 60675-5401 USA
 E-mail: bernfarber@aele.org
 Tel. 1-800-763-2802

© 2015, by the AELE Law Enforcement Legal Center

Readers may download, store, print, copy or share this article,
 but it may not be republished for commercial purposes. Other
 web sites are welcome to link to this article.

- The purpose of this publication is to provide short articles to acquaint the reader with selected case law on a topic. Articles are typically six to ten pages long. Because of the brevity, the discussion cannot cover every aspect of a subject.
- The law sometimes differs between federal circuits, between states, and sometimes between appellate districts in the same state. AELE Law Journal articles should not be considered as “legal advice.” Lawyers often disagree as to the meaning of a case or its application to a set of facts.

[AELE Home Page](#) --- [Publications Menu](#) --- [Seminar Information](#)

This article appears in the [IACP Net](#) database.