



OCTOBER 2016

North Carolina Jail Administrators' Association

President's Message

It is with great honor and pleasure that I welcome you to the North Carolina Jail Administrators Association. I take this opportunity to say that I humbly represent and serve our great association as your President. I do not take this responsibility lightly nor for granted. It is my sincere desire to serve our membership and the communities we serve in a professional, progressive and passionate manner. Our association is deserving of leadership that leads with vision, steadfastness, the ability to adapt and most of all, a deep desire to serve, again I am thankful.

We have just concluded another successful conference. For those of you that attended I hope you acquired some information that will be valuable to yourself and your agency. I also trust that the training offered was beneficial training that you can apply in your work setting. It is my goal to continue to find training that will keep advancing the detention profession. I would like to take the time to thank a few groups of individuals that help make the conference a success. First, I would like to thank the members of the Board of Directors for your hard work behind the scenes before and during the event. You ladies and gentleman are top notch. I would like to also thank the vendors. Without your continued support, our conference would not be what it is. Lastly, I would like to thank each of you that attended this year. You are the real reason that we are able to have a successful conference each year. Each of you came eager to gain as much knowledge as you could and it shows by the continual advancements of the detention profession, throughout our state. I have one request of you and that is that you pass along the information learned to your comrades because knowledge shared helps with our progress.



President
Durwin Briscoe

Finally, as you reflect on your daily concerns, let's keep our brothers and sisters in the middle and eastern part of the state, who have been affected by hurricane Matthew in our thoughts and prayers. I have been in communications with (either by email or phone) some of the administrators and they have been dealing with a lot of issues as a result of the storm. Let's pray that God continues to sustain and hold them as they try to get things back to normal operations.

God Bless You and Stay Safe

Durwin J. Briscoe
President, NCJAA

Jail Symposium
March 29 - 31, 2017
Details Coming Soon!

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Tasers In The Jail

Many view Tasers and other similar electronic control devices as a helpful way for detention officers to apply non-lethal force to maintain security and good order in the jail. Used properly, they give officers a way to avoid hands-on engagement that could further escalate an incident and cause more serious injury to officer and inmate alike. The mere presence of a device can deescalate a situation and provide a deterrent to disorderly conduct.

The devices are not, however, without controversy. First, not everyone agrees that they are truly non-lethal, as there have been deaths associated with Taser use—nationally and in North Carolina. *See, e.g., Armstrong v. Village of Pinehurst*, 810 F.3d 892 (4th Cir. 2016). Some view them as excessively painful to point that they violate the Constitution’s ban on cruel and unusual punishment. Others view them as incompatible with a custodial setting, where other means exist to control inmate behavior.

As with any use of force against an inmate, electronic control devices are governed by constitutional limitations. The exact nature of those limits depends on the type of inmate in question—pretrial or sentenced. If the inmate is a pretrial detainee, the force is analyzed under the Fourteenth Amendment under a standard recently spelled out by the Supreme Court in *Kingsley v. Hendrickson*, 135 S. Ct. 2466 (2015). To prevail on an excessive force claim, a pretrial inmate must establish that the force was objectively unreasonable. For sentenced inmates, excessive force claims are—for now, at least—evaluated under the Eighth Amendment’s prohibition on cruel and unusual punishment. As stated by the Supreme Court in *Hudson v. McMillian*, 503 U.S. 1 (1992), force violates the Eighth Amendment when it is used “maliciously and sadistically to cause harm,” rather than in a good faith effort to maintain or restore order.

As you can imagine, there are countless court cases—many of them federal civil rights lawsuits—applying that analysis to incidents involving Tasers and similar electronic devices. In general, courts have said that Tasers may be used to quell disorder and compel obedience, but never merely to punish an inmate.

Two recent cases from North Carolina demonstrate how Taser use can lead to litigation and, potentially, liability for jail staff. In one case the court deemed officers’ use of the device proper; in the other, most of the lawsuit was dismissed on technical grounds. A review of the legal analysis in each case offers helpful guidance to jail administrators looking to develop a proper policy for use of electronic control devices. (Both cases involve preliminary motions handled in federal district court. They are considered here solely for their educational value. The School of Government of course makes no comment on any subsequent litigation, settlement negotiations, or employment actions taken as a result of these incidents.)

The first case is *Ellenburg v. Henderson County Jail*. No. 1:14-cv-290-FDW, 2016 WL 1354980 (W.D.N.C. Apr. 5, 2016). The relevant facts of *Ellenburg* are as follows. After an officer opened inmates’ cell doors to let them get their food, one inmate ran into another inmate’s cell and began to punch him. An officer quickly responded, yelling at the inmates to stop fighting. When they didn’t stop, the officer discharged his Taser from eight feet away. The Taser prongs hit the inmate who had been the initial victim of the other inmate’s assault. The inmates stopped fighting, both were handcuffed, and the inmate who was attacked and then tased was examined by medical staff.

The inmate filed a federal civil rights lawsuit alleging excessive force by the officer who tased him. Because the inmate in question was a pretrial detainee, the judge walked through a set of legal factors set out in *Kingsley*: (1) the relationship between the need for the force and the amount of force used; (2) the extent of the inmate’s injury; (3) the effort the officer made to temper or limit the force; (4) the severity of the security problem at issue; (5) the threat reasonably perceived by the officer; and (6) whether the inmate was actively resisting.

Applying those factors, the federal judge hearing the case concluded that the force used was not excessive. The judge said there was a close relationship between the need for force and the amount of force used. A fight between inmates is, unquestionably, a serious security risk, and the officer was correct to respond. Several facts stand out as particularly important in the court’s analysis of the reasonableness of the officer’s response.

- The officer attempted a verbal warning before discharging the Taser, telling the inmates to stop fighting.
- The officer used the Taser only once.
- The force ended as soon as the fighting stopped.
- No other force (pepper spray, batons, or fists) was applied in addition to the Taser.
- The inmate’s injuries from the Taser were minimal.

Tasers In The Jail (Cont.)

In light of these facts, the court dismissed the inmate's case against the officer.

Compare the facts of *Ellenburg* with another recent case, *Reed v. Jones*, No. 1:12-CV-456, 2015 WL 4460322 (M.D.N.C. July 21, 2015). *Reed* involved a state prison inmate who was temporarily returned to the county jail on a writ to face felony charges. The inmate had a history of violence: he was being held in the state prison system's high security maximum control unit, and his pending felony charges in the county stemmed from an earlier assault on detention staff.

While in a holding cell in full restraints (double handcuffs and ankle shackles), the inmate put foam lunch boxes in the toilet, causing it to overflow. According to the facts set out by the court, a detention officer responded to the incident by tasing the inmate without warning, causing him to fall to the floor. He was then tased again and pepper-sprayed in the face at close range. The inmate lost consciousness. When he regained consciousness, the state correctional officers who brought him to the county denied his request to be decontaminated, put him in the transportation vehicle, and drove him four hours back to the prison facility at which he was housed. During the drive he complained of chest pain, breathing trouble, and eye pain. A nurse examined him when he returned to the prison.

The inmate filed an excessive force claim against the officer who tased him, as well as other claims against the officer and other bystanders for their deliberate indifference to his serious medical needs in the wake of the incident.

The court did not reach the merits of the inmate's claim against the county detention officers. Instead, it dismissed the inmate's lawsuit because he failed to exhaust his administrative remedies. He never filed a grievance under the jail's "Inmate Grievance System," and there was no record that he had tried to do so and been denied. Because he failed to exhaust his administrative remedies, his claims against the county were barred by the federal Prison Litigation Reform Act (PLRA).

Had the inmate gone through the grievance process, his case would surely have been a closer one than *Ellenburg*. The actual facts are of course a matter of dispute (the court is required to take the inmate's version as true at this preliminary stage), but if they turned out to be correct, many of the factors that weighed in the officer's favor in *Ellenburg* clearly would have been absent in *Reed*.

- The inmate initiated the incident by flooding his cell, but it was not an immediate security emergency like a fight.
- The inmate was alone in his cell, shackled.
- The officer did not give a warning.
- The officer used the Taser twice.
- The Taser use was followed with pepper spray.
- The inmate was rendered unconscious.
- The inmate did not receive immediate medical attention and was not allowed an opportunity to decontaminate.

Those facts, if true, could eventually have allowed the inmate to prevail.

Obviously no definitive lessons can be drawn from only two cases, but *Ellenburg* and *Reed* highlight recurring issues that jails that use Tasers should consider addressing in their policies on use of force. In particular, a requirement for officers to give a warning before using the device, and for assessing the results of a first use (and obtaining necessary medical care) before any subsequent deployment. Administrators may also wish to consider whether or in what limited circumstances it is ever appropriate to use a Taser or similar device on an inmate who is already otherwise restrained or in isolation.

Not addressed in *Ellenburg* and *Reed*, but certainly an issue in countless cases nationally, are the categories of inmates on whom Tasers should never be knowingly used, including pregnant women, children, elderly inmates, intoxicated inmates, and those with known heart and respiratory issues.

It is impossible for policy to anticipate every fact pattern, but it is helpful to think in advance about common scenarios where the devices should and should not be used, and to address them in policy and training.

James M. Markham
Associate Professor of Public Law and Government
UNC School of Government

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SAVE THE DATES!

JAIL SYMPOSIUM

MARCH 29 - 31, 2017

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OPEN TO JAIL ADMINISTRATORS,
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ANNUAL CONFERENCE

SEPTEMBER 25-28, 2017

EMBASSY SUITES, GREENSBORO, NC

PLEASE VISIT OUR WEBSITE AT WWW.NCJAA.ORG AND CHECK OUT YOUR PAGE IN THE NC DETENTION AND FACILITY DIRECTORY AND RESOURCE GUIDE. PLEASE EMAIL ANY CHANGES TO ELAINE@EXECMAN.NET OR FAX TO 919-878-7413.

Richard Frye Scholarship

This year's recipients of the Richard Frye Scholarship are Mary Sheffield and Lauren Mahoney.

This scholarship is named after the late Sheriff Richard Frye of Alamance County who was instrumental in establishing the NCJAA. It is a great honor for someone to be awarded this scholarship!



Lauren Mahoney, daughter of Sheriff David Mahoney of Transylvania County, is a junior at Gardner-Webb University. She is majoring in Sociology and minoring in Criminal Justice.

Pictured Left:
Lauren Mahoney



Mary Sheffield is with the Moore County Detention Center. She has been accepted to Columbia Southern University where she will be studying for her associates in science in Criminal Justice. She plans to do this online.

Pictured Above: Major Andy Conway (Left), Mary Sheffield (Center) and Lt. Bill Flint (Right)

NCJAA Jail Administrator of the Year Award



Chief Deputy Brad Stanley (Left), Major Robert Slater (Center),
Sheriff W.T. Schatzman (Right)

The NCJAA Jail Administrator of the Year Award was presented to Major Robert Slater of the Forsyth County Sheriff's Office.

This award recognizes a jail administrator who has made outstanding contributions to the operation of his Detention Facility and Sheriff's Office, has demonstrated exceptional meritorious service, and has contributed to the betterment of the NC Jail Administrators Association.

Congratulations, Major Slater!

NCJAA Lifetime Member

The NCJAA is proud to announce Mr. Litchard Hurley of Southern Health Partners as its newest Lifetime Member of the association. Mr. Hurley was recognized during the 2016 Annual Fall Conference held in Greensboro, NC on September 26-29, 2016.

Mr. Hurley has worked with Southern Health Partners since 2006 after retiring as Sheriff of Randolph County, North Carolina. Mr. Hurley began his law enforcement career in 1976 as a patrolman for the Asheboro Police Department. He then went on to serve as a deputy for the Randolph County Sheriff's office reaching the position of Lieutenant Investigator and Supervisor. In 1989 Mr. Hurley was elected Sheriff of Randolph County and held the office for 17 years.

Congratulations to Litchard Hurley for becoming NCJAA's newest lifetime member!



50 Years and Still Going!

Two of Eastern N.C. Jail Administrators have more than 50 years in our business!

Major Milton Drew of the Northampton County Detention Center started with the NC DOC in 1962. Major Drew spent 33 years with the NC DOC. After retiring from the DOC, Major Drew was hired by the Northampton County Sheriff to run the jail. Major Drew has been the Jail Administrator for the past 21 years and shows no signs of slowing up.

Mr. J.J. Hayes, Jail Administrator for Granville County, started his career in 1964. Working his way up to superintendent, he logged 33 years with the NC DOC. In 1997, he was appointed Administrator for the Granville County jail. Nineteen years later, he remains in that position.

H.T. Leary

Jail Inspections

The Jail Inspection Unit is emphasizing two issues during inspections. They are confinement reports and facility capacities.

Confinement reports: As per 10A NCAC 14J .1101, facilities are required to send confinement reports to the Section by the 10th day of the following month. Inspectors are checking confinement reports and if there are missing reports, inspectors are instructed to inquire if the facility has sent their reports. If the facility can produce verification that they have been sent or can provide the missing report to the inspectors, no citation will be noted on the inspection report. Confinement reports can be sent by email to kristi.dunn@dhhs.nc.gov.

Facility Capacities: We are attempting to verify the capacities of all 113 facilities in the State. Inspectors should be counting cells during the inspection and bringing that information to Raleigh each Monday. Some facilities have been counting holding cells toward their capacities. Holding cells should not be counted when calculating capacities. If you have any questions you can contact your inspector or Chris Wood for assistance.

What Is A Jail Officer? ~ Author Unknown

A Jail Officer is a composite of what all people are, a mingling saint and sinner, dust and deity.

A Jail Officer, of all people is at once the most needed and the most unwanted.

A Jail Officer is a strangely nameless creature who is “Sir or Mam” to their face and “Fuzz” behind their back.

A Jail Officer must be such a diplomat that they can settle differences between individuals so that each will think they won.

But ... If the Jail Officer is neat, they are conceited; if they are careless, they are a bum. If they are pleasant, they are timid; if they are not, they are grouchy.

A Jail Officer must make instant decisions that would require months for a lawyer.

A Jail Officer must know everything – and not tell. They must know where all the sin is – and not partake.

The Jail Officer must, using only his or her senses, describe an incident, any weapons or contraband involved – and tell who is responsible.

But, if a Jail Officer catches criminal activity, they are lucky; if they don't they are a dunce.

If a Jail Officer gets promoted, they have political pull; if they don't they are a dullard.

The Jail Officer must be a minister, social worker, a diplomat, a tough person and a gentle person. And, of course, they'll have to be a *genius* ... For they'll have to feed a family on a Jail Officer's salary.

**NEXT NEWSLETTER
DEADLINE:
FEBRUARY 1, 2017**

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