

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

LAURIE PEABODY, : Case No. 2:10-cv-1078  
c/o Gerhardstein & Branch :  
432 Walnut Street, Suite 400 : Judge  
Cincinnati, OH 45202, :  
*Individually and as guardian of* :  
*Matthew Thomas Hook,* :  
: :  
and : CIVIL COMPLAINT AND JURY  
: DEMAND  
THOMAS HOOK, :  
c/o Gerhardstein & Branch :  
432 Walnut Street, Suite 400 :  
Cincinnati, OH 45202, :  
: :  
and :  
: :  
C.H.<sup>1</sup> :  
c/o Gerhardstein & Branch :  
432 Walnut Street, Suite 400 :  
Cincinnati, OH 45202, :  
*A minor, by and through her mother* :  
*and next friend, S.R.,* :  
: :  
Plaintiffs, :  
v. :  
: :  
PERRY TOWNSHIP, OHIO AND :  
THE PERRY TOWNSHIP BOARD :  
OF TRUSTEES :  
7125 Sawmill Road :  
Dublin, OH 43016, :  
: :  
and :  
: :  
SHAWN BEAN :  
Perry Township Police Department :  
7125 Sawmill Road :  
Dublin, OH 43016, :  
*Individually and in his Official Capacity* :

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<sup>1</sup> The minor plaintiff and her mother are identified only by initials to protect their privacy. Counsel will share their identities pursuant to any appropriate protective order.



Police Department to insure that tasers are only deployed consistent with constitutional limits on use of force.

## **II. PARTIES**

4. Plaintiff Matthew Thomas Hook is and was at all relevant times a resident of the State of Ohio and this judicial district. Due to brain injuries he has been declared incompetent by the Probate Court of Franklin County (*In re Matthew Thomas Hook*, Case No. 543455). His mother, Laurie Peabody, has been appointed as his guardian. He brings this action through his guardian, Laurie Peabody.
5. Laurie Peabody is and was at all relevant times a resident of the State of Ohio and of this judicial district. She brings this action individually as the mother and as guardian of Matthew Thomas Hook, who is her adult incompetent son.
6. Plaintiff Thomas Hook is a resident of the State of Ohio and of this judicial district. He is the father of Matthew Hook.
7. Plaintiff C.H. is and was at all relevant times a resident of the State of Ohio and of this judicial district. She is the minor child of Matthew Hook and brings this action through her mother and best friend, S.R.
8. Perry Township Ohio is a unit of local government organized under the laws of the State of Ohio and is sued through the Perry Township Board of Trustees who are named only in their official capacity pursuant to O.R.C. § 503.01. Defendant Perry Township is a “person” under 42 U.S.C. § 1983 and at all times relevant to this case acted under color of law.
9. Defendant Shawn Bean was at all times relevant to this action a police officer employed by Perry Township. Defendant is a “person” under 42 U.S.C. § 1983 and at all times relevant to this case acted under color of law. He is both sued in his individual and official capacity.

### **III. FACTS**

#### **A. Matthew Thomas Hook**

10. Matthew Thomas Hook was a former high school athlete. He is “Dad” to a two-year-old daughter, C.M.

11. During C.M.’s first year of life Matthew was a primary caregiver to his daughter, living with her and her mother and providing for her daily needs. His goal has been to provide a life full of opportunity for his daughter.

12. Matthew Hook has struggled with drug addiction for several years. He has been through rehabilitation programs and, like many addicts, relapsed from time to time after treatment.

13. Matthew’s parents, Laurie Peabody and Thomas Hook, have been as supportive as possible through Matthew’s struggle with addiction.

14. Matthew would occasionally steal property in order to secure funds and buy drugs. He admitted his guilt and served his sentence. He was not violent and never carried a weapon.

15. Thomas Hook is Matthew’s father. A former addict himself, Thomas assisted his son as best he could and was confident that with repeated treatment efforts and family support his son would also become sober and drug free.

#### **B. Deadly Force Used to Arrest Matthew Hook for Property Crimes**

16. At approximately 11:00 a.m. on August 8, 2010, Perry Township Police officers were notified that an individual driving a white Ford Explorer was wanted for a theft crime and was thought to be in Perry Township.

17. Mr. Hook was driving a white Ford Explorer that was spotted by Perry Township police officer, Sergeant Ed Kontul, shortly thereafter.

18. Sergeant Kontul activated his lights and siren to stop Mr. Hook.

19. Mr. Hook led Sergeant Kontul on a short chase ending in a nearby parking lot.
20. Another Perry Township police officer, Officer Shawn Bean, observed Mr. Hook entering the parking lot and pulling his vehicle to the rear of a Dick's Sporting Goods store.
21. The back side of the Dick's Sporting Goods store is near a loading dock and is enclosed by an 8' fence.
22. When Officer Bean arrived at Mr. Hook's position, Mr. Hook was out of his vehicle and trying to flee on foot.
23. Mr. Hook then stepped up on the hood of the Explorer to help him scale the fence.
24. Officer Bean was out of his vehicle and running toward Mr. Hook at this time.
25. At no time had Mr. Hook made any threatening gestures, possessed or displayed a weapon, or posed any physical threat in any manner to Officer Bean or any other person.
26. Despite the fact that he was unarmed and posed no reasonable threat to the officer or the public, Officer Bean stopped Mr. Hook by deploying his taser device in "probe mode" when Mr. Hook was at the top of this eight-foot-tall section of fence.
27. "Probe mode" is a function of the taser device whereby two barbs are deployed from a distance of up to 25 feet and a continuous electric shock is administered to the suspect through the barbs.
28. The taser worked as intended. The electrical shock paralyzed Mr. Hook's muscles. Unable to control his movements, Mr. Hook plummeted, head-first, to the other side of the fence.
29. Mr. Hook suffered severe brain injuries as a result of this fall.
30. Immediately after the incident, Officer Bean remarked to other officers that arrived on the scene that he was not sure if Mr. Hook was "going to make it."

31. Immediately after the incident, Officer Bean explained what happened to another officer by stating: “When I tased him, of course he locked up, and he just fell ... forward, instead of falling straight down or back.”
32. This incident was captured on Officer Bean’s cruiser cam video. The relevant portion of that cruiser cam video is attached to this complaint.
33. The Perry Township Police Department policies define deadly force as “any force that carries a substantial risk that it will proximately result in . . . serious physical harm,” which specifically includes “any physical harm which carries a substantial risk of death,” “any physical harm which involves some permanent incapacity, whether partial or total or which involves some temporary, substantial incapacity,” and “any physical harm which involves some permanent disfigurement, or which involves some temporary, serious disfigurement.”
34. At no time was Mr. Hook accused of or suspected of a serious crime that merited use of deadly force. Nor did he act at any time in a manner that merited the use of deadly force.

**C. Policies, Customs, and Culpable Conduct**

35. At all times relevant to this action Defendant Bean acted negligently, recklessly, wantonly, willfully, knowingly, intentionally and with deliberate indifference to the safety of Matthew Thomas Hook.
36. The use of force by Defendant Bean on August 8, 2010, violated clearly established law.
37. At the time of this use of force, the Perry Township Police Department Use of Force Policy and related training materials authorized use of the taser to stop persons fleeing even though the persons are suspected only of nonviolent property crimes. This policy and training by the Defendant Perry Township violated clearly established law which required an officer choosing to use force to balance the government interest in seizing a nonviolent, unarmed

person fleeing from arrest for a property crime against the intrusion on the citizen, including the likelihood of serious injury to the citizen.

38. At the time of the use of force in this case, Taser International, the company that manufactures the taser, had issued a product warning, known to all users, including Defendants, indicating that the device can cause “death or serious injury” if used on an individual standing on an elevated surface.
39. Law enforcement agencies and other organizations in the United States and elsewhere who have studied tasers have recommended that the device not be used against nonviolent persons suspected of minor crimes who are on elevated surfaces. Defendants have ignored these findings and recommendations.
40. A subsequent use of force investigation by Perry Township Police Department found that Officer Bean’s use of force was proper despite the fact that Mr. Hook was a nonviolent, unarmed individual wanted only for a property crime.
41. Defendant Perry Township’s policies, customs, and practices regarding the deployment of tasers against nonviolent persons suspected only of property crimes was a moving force behind the excessive force used on Mr. Hook by Defendant Bean in this case.
42. Defendant Perry Township’s failure to train and supervise its officers regarding the proper deployment of tasers against nonviolent persons suspected only of property crimes was a moving force behind the excessive force used on Mr. Hook by Defendant Bean in this case. The taser training and supervision was deliberately indifferent to the safety needs of citizens that the Perry Township police would likely encounter, such as Matthew Thomas Hook who was suspected only of a nonviolent property crime.

43. Subsequent to the tasing that severely injured Mr. Hook, Defendant Perry Township ratified Officer Bean's use of force and concluded incorrectly that Defendant Bean had acted reasonably in this case. In ratifying the conduct of Defendant Bean, Perry Township acted consistently with its policies, customs, and usages with respect to taser deployment.

**D. Harm to Matthew Hook and His Family**

44. Mr. Hook suffered serious and permanent brain damage that has required multiple surgeries and, as of the filing of this complaint, Mr. Hook remains incompetent, severely disabled and hospitalized. The use of force by Officer Bean caused severe pain, physical injuries, humiliation, embarrassment and emotional distress. Defendants' actions described above directly and proximately caused these injuries to Mr. Hook.

45. Plaintiffs Laurie Peabody, Thomas Hook, and C.M. have suffered a loss of services, society, companionship, affection, comfort, love, guidance, solace, and counsel due to the injury Officer Bean inflicted on Mr. Hook. Parents Laurie Peabody and Thomas Hook have attended to their son's needs at his bedside since he became hospitalized and are doing everything they can possibly do to help their son recover his physical and mental functions. These losses to the parents and daughter are the direct and proximate result of Defendants' actions.

**IV. FIRST CAUSE OF ACTION – CLAIM FOR EXCESSIVE FORCE (42 U.S.C. §1983)**

46. Defendants have, under color of law, deprived Matthew Hook of rights, privileges, and immunities secured to him by the United States Constitution including the prohibition on unreasonable searches and seizures contained in the Fourth Amendment to the United States Constitution.

**V. SECOND CAUSE OF ACTION – ASSAULT AND BATTERY**

47. The Defendants intentionally and maliciously applied and threatened to apply unlawful and unnecessary force against the Matthew Hook.

**VI. THIRD CAUSE OF ACTION – LOSS OF CONSORTIUM**

48. As a proximate result of the wrongful acts of the Defendants, Plaintiffs Laurie Peabody, Thomas Hook and C.M. have suffered, and will continue to suffer in the future, loss of consortium, including the loss of services, society, companionship, affection, comfort, love, guidance, solace, and counsel.

**VII. JURY DEMAND**

49. Plaintiffs request a jury trial on all claims triable to a jury.

**VIII. PRAYER FOR RELIEF**

WHEREFORE, plaintiffs request that this Court award them:

- A. Compensatory damages in an amount to be shown at trial;
- B. Punitive damages against Defendant Bean only in an amount to be shown at trial (no punitive damages are sought against Perry Township);
- C. Costs incurred in this action and reasonable attorney fees under 42 U.S.C. §1988;
- D. Prejudgment interest; and
- E. Such other and further relief as this Court may deem just and proper.

Respectfully submitted,

/s/ Alphonse A. Gerhardstein  
Alphonse A. Gerhardstein (0032053)  
Trial Attorney for Plaintiffs  
Jennifer L. Branch (0038893)  
Attorney for Plaintiffs  
Gerhardstein & Branch Co. LPA  
432 Walnut Street, Suite 400

William W. Lamkin  
Tim Van Eman  
Lamkin, Van Eman, Trimble, Beals &  
Dougherty, LLC  
Attorney for Plaintiffs  
Suite 200  
500 South Front Street

Cincinnati, Ohio 45202  
Tel (513) 621-9100  
Fax (513) 345-5543  
[agerhardstein@gbfirm.com](mailto:agerhardstein@gbfirm.com)  
[jbranch@gbfirm.com](mailto:jbranch@gbfirm.com)

Columbus, OH 43215  
Tel (614) 224-8187  
Fax (614) 224-4943

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Laurie Peabody, Thomas Hook, C.H.

(b) County of Residence of First Listed Plaintiff Hamilton  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Alphonse A. Gerhardstein 432 Walnut Street, Suite 400  
Gerhardstein & Branch Cincinnati, OH 45202 (513) 621-9100

**DEFENDANTS**

Perry Township, Ohio, Perry Township Board of Trustees,  
Shawn Bean

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
		IMMIGRATION		
		<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions		

**V. ORIGIN**

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. §1983

Brief description of cause: Deprivation of rights in violation of the 4th Amendment

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ \_\_\_\_\_ CHECK YES only if demanded in complaint: JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE

11/29/10

SIGNATURE OF ATTORNEY OF RECORD

*a a Gerhardstein*

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_