

STORAGE NAME: h1451z.lecp

DATE: June 21, 1999

****FINAL ACTION****

****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
LAW ENFORCEMENT AND CRIME PREVENTION
FINAL ANALYSIS**

BILL #: HB 1451(passed as SB 1866) (**Chapter 99-272, Laws of Florida**)

RELATING TO: Law Enforcement Protection Act

SPONSOR(S): Representative Johnson

COMPANION BILL(S): SB 1866 (compare)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) LAW ENFORCEMENT AND CRIME PREVENTION YEAS 8 NAYS 0
- (2) GOVERNMENTAL OPERATIONS YEAS 4 NAYS 0
- (3) CRIMINAL JUSTICE APPROPRIATIONS YEAS 9 NAYS 0
- (4)
- (5)

I. FINAL ACTION STATUS:

The House substituted SB 1866 for HB 1451. Senate Bill 1866 was approved by the Governor on June 08, 1999, and became Chapter 99-272, Laws of Florida.

II. SUMMARY:

House Bill 1451 amends s. 776.06, F.S., which deals with the use of deadly force by law enforcement and correctional officers. It provides that the discharge of a firearm loaded with "less lethal munitions," and discharged by a law enforcement or correctional officer acting within the scope of his or her duties shall not be considered use of deadly force. The bill defines "less lethal munitions" as "projectiles which are designed to stun, temporarily incapacitate, or cause temporary discomfort to a person without penetrating the person's body." The use of firearms in the context of "less lethal munitions" would include the use of rubber or plastic bullets and bean bag and disc projectiles, for example. Tear gas, night sticks, batons, and other intermediate weapons used by law enforcement officers are covered by other statutes. The bill limits both civil and criminal liability on the part of the officers when "less lethal munitions" are used.

The fiscal impact of HB 1451 will be insignificant.

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III. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Use of Deadly Force

At the present time the Florida Statutes make no distinction between types of ammunition used in firearms, with reference to the use of deadly force. If a firearm is used by a law enforcement officer, it is considered use of deadly force. Section 776.06, F.S., defines **deadly force** as force which is likely to cause death or great bodily harm, including but not limited to: (1) the firing of a firearm in the direction of the person to be arrested, even though no intent exists to kill or inflict great bodily harm; and (2) the firing of a firearm at a moving vehicle in which the person to be arrested is riding.

Use of force -- escapes. Section 776.07, F.S., addresses the use of force to prevent escapes. This section states:

A law enforcement officer or other person who has an arrested person in his or her custody is justified in the use of any force which he or she reasonably believes to be necessary to prevent the escape of the arrested person from custody, and

A correctional officer or other law enforcement officer is justified in the use of force, *including deadly force*, which he or she reasonably believes to be necessary to prevent the escape from a penal institution of a person whom the officer reasonably believes to be lawfully detained in such institution under sentence for an offense or awaiting trial or commitment for an offense.

Use of force -- arrests. Section 776.05, F.S., states that a law enforcement officer is justified in the use of *any* force, when:

The officer reasonably believes the force to be necessary for self-defense or defense of another from bodily harm when making the arrest, when necessarily committed in retaking escaped felons, or necessarily committed in arresting felons fleeing from justice.

However, the provision authorizing use of any force, when necessarily committed in arresting felons fleeing from justice, (s. 776.05(3), F.S.), is qualified. An officer may not use this provision as a defense in any civil action for damages brought for the wrongful use of deadly force, unless:

The use of deadly force was necessary to prevent the arrest from being defeated by such flight and, when feasible, some warning had been given, and:

the officer reasonably believes that the fleeing felon poses a threat of death or serious physical harm to the officer or other, or, the officer reasonably believes that the fleeing felon has committed a crime involving the infliction or threatened infliction of serious physical harm to another person.

The qualification in s. 776.05(3), F.S., is a codification of the United States Supreme Court's decision in *Tennessee v. Garner*, 471 U.S. 1 (1985). In *Garner*, the Court held that "the use of deadly force prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable" under the Fourth Amendment. In *Garner*, a Tennessee statute authorized the use of any force necessary to arrest a fleeing suspect. The officer used this statute to defend against a federal civil suit brought against him for shooting an unarmed, apparently non dangerous felon. The court found that the statute was unconstitutional as applied to these facts reasoning that the Fourth Amendment does not permit a police officer to seize "an unarmed, non dangerous suspect by shooting him dead." The Court stated, however, that where "the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force."

Firearm -- defined; less-lethal munition.

Although not defined in ch. 776, firearm is defined in ch. 790, relating to weapons and firearms. Subsection 970.001(6) F.S. provides as follows:

"Firearm" means any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearms is used in the commission of a crime.

Various law enforcement and correctional agencies have acquired new technology designed to stun or temporarily incapacitate a person without penetrating the person's body. This weaponry is particularly useful in tactical situations such as, a hostage taking or riot, where law enforcement may use non lethal weapons such as stun guns or tear gas. Since the firearm definition does not specify that the projectile must be lethal, such weapons might be deemed firearms although not designed to cause death or great bodily harm.

B. EFFECT OF PROPOSED CHANGES:

Under the proposed bill, the use of firearms loaded with munitions that meet the definition of "less than lethal" would not be considered use of deadly force. Law enforcement and correctional officers would not be subject to liability associated with deadly force when, in good faith, the officers use "less than lethal" munitions while in the course of duty.

This bill specifies that "deadly force" shall not include the discharge of a firearm, loaded with a "less-lethal munition," by a law enforcement officer or correctional officer during and within the scope of his or her official duties. The effect is to make express what is not currently stated in the deadly force definition.

The clarification provided in this bill is aimed at "less-lethal munition" discharged from a firearm, only. This leaves open the possibility, however unlikely, that a court might find that a "less-lethal" substance, e.g., "pepper spray" was likely to cause great bodily harm.

This bill defines "less-lethal munition" to mean "a projectile that is designed to stun, temporarily incapacitate, or cause temporary discomfort to a person without penetrating the person's body."

Finally, the bill creates an affirmative defense for a law enforcement officer or correctional officer in civil or criminal actions arising out of the use of any less-lethal munition in good faith during and within the scope of his or her official duties.

This bill takes effect on July 1, 1999.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

No agency or program is eliminated or reduced.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

The bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

The bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

s. 776.06 F.S.

E. SECTION-BY-SECTION ANALYSIS:

None.

IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

HB 1451 amends s. 776.06, F.S., thereby reducing the liability, this in turn, potentially reduces the number of lawsuits that will be filed against law enforcement and correctional officers.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

VI. COMMENTS:

On March 23, 1999, the Senate Committee on Criminal Justice adopted an amendment to SB 1866, which is comparable to HB 1451. The amendment removes language that would have given the employer of a law enforcement or correctional officer the ability to raise an affirmative defense in civil or criminal actions arising out of the use of any less-lethal munition in good faith during and within the scope of an officer's official duties. Thus, SB 1866 now provides the affirmative defense only for a law enforcement officer or correctional officer, but not for his or her employer.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VIII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND CRIME PREVENTION:

Prepared by:

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**FINAL ANALYSIS PREPARED BY THE COMMITTEE ON LAW ENFORCEMENT AND CRIME
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