HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 303 CS Dart-Firing Stun Guns
SPONSOR(S): Kravitz
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 214, SB 560

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	7 Y, 1 N, w/CS	Cunningham	Kramer
2) Justice Appropriations Committee			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

Approximately 230 law enforcement agencies in Florida have authorized their officers to use dart-firing stun guns. Although many of these agencies have developed policies and procedures regarding training and use of the devices, there is no state law requiring that officers receive such training. This bill would require the Criminal Justice Standards and Training Commission, housed within the Florida Department of Law Enforcement, to establish standards for instructing law enforcement, correctional, and correctional probation officers in the use of dart-firing stun guns, and incorporate dart-firing stun gun training into the Basic Recruit Training Programs for each discipline. This bill sets forth the circumstances under which a law enforcement, correctional, or correctional probation officer may use a dart-firing stun gun. This bill also defines the term "dart-firing stun gun" and conforms other current statutory provisions to that definition.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – This bill will require the Criminal Justice Standards and Training Commission to establish standards for instructing law enforcement, correctional, and correctional probation officers in the use of dart-firing stun guns.

Maintain Public Security – This bill requires that law enforcement, correctional, and correctional probation officers receive a minimum of 4 hours training in the use of dart-firing stun guns as part of their respective Basic Recruit Training Programs.

B. EFFECT OF PROPOSED CHANGES:

In recent years, there has been a growing interest in the use of less-than-lethal weapons by law enforcement agencies. One such weapon, the stun gun, is a hand-held weapon that delivers an electric shock, effectively incapacitating an individual. One of the most widely-used types of stun gun is the type that fires electrodes that are tethered to the device.[1] These "dart-firing" devices are currently in use by over 7,000 of the 18,000 law enforcement agencies in the United States.[2] This widespread use of dart-firing stun guns by law enforcement has drawn attention to the training officers receive in using the devices (or lack thereof), as well as whether the devices are being used properly in the field.[3]

Definitions

Section 790.001(15), F.S., defines "remote stun gun" as "any nonlethal device with a tethered range not to exceed 16 feet and which shall utilize an identification and tracking system which, upon use, disperses coded material traceable to the purchaser through records kept by the manufacturer on all remote stun guns and all individual cartridges sold which information shall be made available to any law enforcement agency upon request."[4] Section 790.001(14), F.S., defines "electric weapon or device" as "any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury."[5] The term "dart-firing stun gun" is not currently defined in the Florida Statutes.

Currently, Florida law authorizes the open carrying of remote stun guns and other nonlethal electric weapons or devices which do not fire a dart or projectile and are designed solely for defensive purposes.[6] If carried for lawful self-defense purposes, the above weapons may be carried in a concealed manner.[7]

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[1] A number of new types of stun gun are being developed including stun guns that administer the electric shock through a stream of liquid, through a laser, and through rubber bullet-type projectiles. http://en.wikipedia.org/wiki/Taser.

[2] *Use of Tasers by Selected law Enforcement Agencies*, Report to the Chairman, Subcommittee on National Security, Emerging Threats and International Relations, Committee on Government Reform, House of Representatives, May, 2005.

[3] *See, e.g., Police Taser 6-Year-Old*, Fox News, November 12, 2004; *Police, Principal Defend Officer's Use Of Taser On 15-Year-Old* Girl, wftv.com, June 2, 2005; *Man Dies After Police Use Taser Gun To Subdue Him*, nbc6.net, June 29, 2005; *Florida Family Sues Sheriff Over Inmate Death, Claims Taser Used*, Associated Press, October 7, 2005.

[4] In addition to firing tethered probes, remote stun guns may be used in a "touch stun" mode, where the probes are not launched, but rather, the device itself actually makes contact with the subject being stunned. This "touch stun" application was the sole method of delivering the electrical current in "electric weapons," the precursor to remote stun guns.

[5] It should be noted that by statutory definition, "remote stun guns" and "electronic weapons" would not be considered firearms. A firearm is a firearm because it expels a projectile "by the action of an explosive." s. 790.001(6), F.S. The most widely-distributed modern models of remote stun guns use nitrogen cartridges to launch the tethered probes. (*Electronic Control Weapons, Concepts and Issues Paper;* IACP National Law Enforcement Policy Center; 1996, rev. Jan. 2005.)

[6] s. 790.053, F.S.

[7] s. 790.01, F.S.

This bill deletes the term "remote stun gun" and its definition contained in s. 790.001, F.S., and creates the definition of the term "dart-firing stun gun." "Dart-firing stun gun" is defined as "any device having one or more tethered darts that are capable of delivering an electrical current." Other statutory references to "remote stun gun" are amended by this bill to become "dart-firing stun gun."

Training:

In Florida, the Criminal Justice Standards and Training Commission (CJSTC), housed within the Florida Department of Law Enforcement, establishes uniform minimum standards for the employment and training of full-time, part-time, and auxiliary law enforcement, correctional, and correctional probation officers.[8] Every prospective law enforcement officer (LEO), correctional officer (CO), and correctional probation officer (CPO) must successfully complete a CJSTC-developed Basic Recruit Training Program in order to receive their certification. At this time, the CJSTC does not include training in the use of dart-firing stun guns in the curricula for the LEO, CO, or CPO Basic Recruit Training Programs. In addition, Florida law does not require that LEOs, COs, CPOs receive any type of training in the use of dart-firing stun guns. Instead, the majority of agencies who authorize their officers to carry dart-firing stun guns have developed specific policies regarding their use, or have incorporated such training into their existing policies.

This bill requires the CJSTC to establish standards for instructing LEOs, COs, and CPOs in the use of dart-firing stun guns and to incorporate such training into the Basic Recruit Training Programs.[9] The dart-firing stun gun training portion of the Basic Recruit Training Program must include instruction on the effects the device has on persons, and must last a minimum of 4 hours. After completing the Basic Recruit Training Program, LEOs, COs, and CPOs who have been authorized by their agency to use a dart-firing stun gun must complete a 1-hour annual training course on the use of dart-firing stun guns.

Use of Force:

Currently, Florida Statutes do not specify the circumstances under which any tool of police enforcement can legally be used. The responsibility to "establish uniform minimum training standards for the training of officers in the various criminal justice disciplines" has been statutorily assigned to the CJSTC.[10] As stated above, the CJSTC currently does not include instruction in the use of dart-firing stun guns in its curricula for the Basic Recruit Training Programs for LEOs, COs, and CPOs. However, included in all three of these programs is instruction on the "Use of Force Resistance Matrix." The matrix outlines six levels of resistance and six corresponding levels of response and is used as a guide for officers to apply in real life situations. It appears that Florida law enforcement agencies that use dart-firing stun guns teach their officers to deploy the weapon between Resistance Level 3 and Resistance Level 4 of the Matrix.[11]

This bill specifies that an LEO, CO, or CPO's decision to use a dart-firing stun gun must involve an arrest or custodial situation during which the subject of the arrest or custodial situation escalates resistance to the officer from passive physical to active physical resistance and:

- has the apparent ability to physically threaten the office or others; or
- is preparing or attempting to flee.

This language would appear to place the use of dart-firing stun guns within Level 4 of the Use of Force Resistance Matrix.

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[8] http://www.fdle.state.fl.us/cjst/commission/index.html

[9] The definitions of "law enforcement officer," "correctional officer," and "correctional probation officer," found in s. 943.10, F.S., will apply to these terms as used in the bill.

[10] s. 943.12(5), F.S.

[11] Resistance Level 3 (Passive Physical), is defined as "a subject refuses to comply with or respond physically…makes no attempt to physically defeat your actions but forces you to use physical maneuvers to establish control." Resistance Level 4 (Active Physical) is where a subject makes physically evasive movements to prevent an officer from taking control (e.g. bracing or tensing themselves, pushing or pulling away, taking a fighting stance, not allowing the officer to approach, or running away). *Response to Resistance Matrix*, Basic Recruit Curriculum, Module 5, Unit 1, Lesson 1, Florida Department of Law Enforcement Instructor's Manual, 2005.

C. SECTION DIRECTORY:

Section 1. Amends s. 790.001(15), F.S., deleting the term "remote stun gun" and creating the definition of the term "dart-firing stun gun."

Section 2. Amends s. 790.01, F.S., changing references to "remote stun gun" to "dart-firing stun gun" in relation to carrying concealed weapons.

Section 3. Amends s. 790.053, F.S, changing references to "remote stun gun" to "dart-firing stun gun" in relation to the open carrying of weapons.

Section 4. Amends s. 790.054, F.S., changing references to "remote stun gun" to "dart-firing stun gun" in relation to the penalties for using such a device against an on-duty law enforcement officer.

Section 5. Creates s. 943.1717, F.S., providing that an LEO, CO, or CPO's decision to use a dart-firing stun gun must involve an arrest or custodial situation where the person subject to the arrest or custody escalates resistance to active physical resistance and either has the apparent ability to physically threaten the officer or others or is preparing or attempting to flee or escape; requiring the CJSTC to establish standards for instructing LEOs, COs, and CPOs in the use of dart-firing stun guns and the effects of stun guns on persons; requiring that basic skills courses for LEOs, COs, and CPOs include a minimum of four hours instruction on the use of dart-firing stun guns; requiring LEOs, COs, and CPOs who have been authorized by their agency to use a dart-firing stun gun to complete a 1-hour annual training course on the use of dart-firing stun guns.

Section 6. This act takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Manufacturers and retailers of dart-firing stun guns may benefit in that dart-firing stun guns will be needed for training purposes.

D. FISCAL COMMENTS:

The Basic Recruit Training Program for LEOs consists of 672 hours of training, while COs and CPOs must undergo 532 and 424 hours of training, respectively.[12] The Florida Department of Law Enforcement's (FDLE) analysis of this bill states that the bill's 4-hour dart-firing stun gun training requirement will have a negligible fiscal impact because the additional hours can be included among the flexible hours currently available in the Basic Recruit Training Programs. However, further discussion with various FDLE representatives revealed that there is a possibility that the 4 hours may have to be added to the current hourly requirements for all three disciplines (i.e. 676 hours of training for LEOs, 536 for COs, and 426 for CPOs). If this occurred, the fiscal impact on both the state and local level could be significant.

While some agencies require prospective employees to pay their own tuition to a Basic Recruit Training Program, other agencies elect to pay their students' tuition and salaries while enrolled.[13] Thus, if the 4-hours of training required by the bill is in addition to the current hourly requirements, agencies that pay their students' tuition and salaries will be paying for an additional 4 hours worth of tuition/work-time. It is also a possibility that tuition rates for Basic Recruit Training Programs may increase if 4 hours is added to the total hourly curriculum. Additionally, both state and local law enforcement agencies will incur costs related to hiring instructors and purchasing equipment for the 4-hour dart-firing stun gun training, regardless of whether the 4 hours is added to or included within the current hourly training requirements.

It appears that the costs relating to the *annual* training of officers will be the responsibility of individual agencies rather than FDLE.[14]

It is unclear from the bill's provisions whether currently certified officers would be required to complete the 4 hours of dart-firing stun gun training, the one hour of annual training, or both. If currently certified LEOs, Cos, and CPOs, are required to undergo the four hours of training, the fiscal impact could be significant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

[12] Rule 11B-35.002, F.A.C.

[13] The Florida Department of Corrections pays for its prospective COs and CPOs to attend their Basic Recruit Training Programs. The Department also pays its recruits a trainee salary while enrolled. The Department estimates that if the 4-hours of training required by this bill has is added to the current hourly requirements, it will cost more than $500,000. This figure does not include the cost of equipment necessary for the training.

[14] FDLE states that the annual one-hour dart-firing stun gun training requirement is not a mandate on the CJSTC or the Criminal Justice Professionalism Program (housed within FDLE and responsible for maintaining documentation on required continued education for criminal justice officers). Thus, the continuing education requirement has no impact on FDLE.

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not specify whether the 4 hours of training would be included in the current hourly training requirements for LEOs (672), COs (532), and CPOs (424) or whether the 4 hours would be in addition to those training requirements.

It is unclear from the bill's provisions whether currently certified officers would be required to complete the 4 hours of dart-firing stun gun training, the one hour of annual training, or both.

The bill provides that COs and CPOs must undergo a minimum of 4-hours training in the use of dart-firing stun guns as part of their respective Basic Recruit Training Programs. The Department of Corrections reports that they do not use "dart-firing stun guns" and have no plans to use such devices in the future.[15] The Florida Highway Patrol and the Department of Transportation (Motor Carrier Compliance) have also reported that their agencies do not use dart-firing stun guns.

The bill provides that an LEO, CO, or CPO's decision to use a dart-firing stun gun must involve an arrest or custodial situation where the person subject to the arrest or custody escalates resistance to the officer from "passive physical resistance" to "active physical resistance." The above-quoted terms are not defined in the bill or otherwise in statute.

As noted above, there are many different types of stun guns (touch guns, some that fire probes, etc…), and different types (guns that deliver the shock through a stream of water or via laser) are being developed. This bill specifically addresses the use of "dart-firing stun guns," thus excluding from its provisions any other type of stun gun that an LEO, CO, or CPO may carry.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 11, 2006, the Criminal Justice Committee adopted a strike-all amendment and reported the bill favorably with Committee Substitute. The strike-all amendment addressed some of the issues raised in the original bill analysis. Specifically, the amendment:

- Defined the term "dart-firing stun gun" and conformed other current statutory provisions to that definition.
- Broadened the required officer training of the potential effects of dart-firing stun guns so that it is not limited to people who are under the influence of drug or alcohol.
- Eliminates the annual training requirement for officers who are not authorized by their agency to use dart-firing stun guns.

[15] The Department reports that although they currently use hand-held electronic immobilization devices (EIDs), such devices are not considered "dart-firing" and would not fall under the purview of the bill.