

## 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

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>7 Y, 1 N, w/CS</u>	<u>Cunningham</u>	<u>Kramer</u>
2) <u>Criminal Justice Appropriations Committee</u>	<u>4 Y, 0 N</u>	<u>Burns</u>	<u>DeBeaugrine</u>
3) <u>Justice Council</u>	<u>10 Y, 0 N, w/CS</u>	<u>Cunningham</u>	<u>De La Paz</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### 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 Law Enforcement Basic Recruit Training Program. 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 authorizes the open and concealed carrying of dart-firing stun guns for purposes of self defense.

## 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 officers in the use of dart-firing stun guns.

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

#### 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.<sup>1</sup> These “dart-firing” devices are currently in use by over 7,000 of the 18,000 law enforcement agencies in the United States.<sup>2</sup> 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.<sup>3</sup>

##### 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.”<sup>4</sup> 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.”<sup>5</sup> 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.<sup>6</sup> If carried for lawful self-defense purposes, the above weapons may be carried in a concealed manner.<sup>7</sup>

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

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<sup>1</sup> 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>.

<sup>2</sup> *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.

<sup>3</sup> See, e.g., *Police Taser 6-Year-Old*, Fox News, November 12, 2004; *Police, Principal Defendant'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.

<sup>4</sup> 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.

<sup>5</sup> 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.)

<sup>6</sup> s. 790.053, F.S.

<sup>7</sup> s. 790.01, F.S.

one or more darts that are capable of delivering an electrical current.” This bill conforms statutes relating to the open and concealed carrying of weapons other statutory references, which will authorize the open and concealed carrying of dart-firing stun guns for purposes of self defense.

### 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.<sup>8</sup> 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 in the use of dart-firing stun guns and to incorporate such training into the LEO Basic Recruit Training Program.<sup>9</sup> 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. LEOs, COs, and CPOs whose agencies have authorized them to use dart-firing stun guns but who have not received dart-firing stun gun training must complete either the 4-hour CJSTC-established training or equivalent training prior to being issued a device. Additionally, 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.<sup>10</sup> 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.<sup>11</sup>

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 officer or others; or
- is preparing or attempting to flee.

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<sup>8</sup> <http://www.fdle.state.fl.us/cjst/commission/index.html>

<sup>9</sup> The definition of “law enforcement officer,” found in s. 943.10, F.S., will apply to this term as used in the bill.

<sup>10</sup> s. 943.12(5), F.S.

<sup>11</sup> 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.

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

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 include a minimum of four hours instruction on the use of dart-firing stun guns; requiring LEOs, COs, and CPOs whose agencies have authorized them to use dart-firing stun guns but who have not received dart-firing stun gun training to complete either the 4-hour CJSTC-established training or equivalent training prior to being issued a device; 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.<sup>12</sup> 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 FDLE Basic Recruit Training Program.

Other agencies could incur increased costs if the academies that provide their training choose not to include the dart-firing stun gun training within the current curriculum but choose to add the additional 4 hours to existing requirements. While this has the potential to produce a significant impact, FDLE staff believe that most agencies that allow officers to use stun guns already provide training.

**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:**

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 or whether the 4 hours would be in addition to those training requirements.

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.

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<sup>12</sup> Rule 11B-35.002, F.A.C.

#### **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.

On April 4, 2006, the Justice Council adopted two amendments to the bill and reported the bill favorably with Committee Substitute. The first amendment deletes the requirement that the CJSTC include 4 hours of dart-firing stun gun training in the CO and CPO Basic Recruit Programs, and requires LEOs, COs, and CPOs, whose agencies have authorized them to use dart-firing stun guns but who have not received dart-firing stun gun training to complete either the 4-hour CJSTC-established training or equivalent training prior to being issued a dart-firing stun gun. The second amendment revises the definition of "dart-firing stun gun" by removing the requirements that the darts be tethered.