

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Education Committee

BILL: SB 554

INTRODUCER: Senator Siplin

SUBJECT: Use of Tasers

DATE: January 6, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	Matthews	ED	Pre-meeting
2.			HE	
3.			CJ	
4.				
5.				
6.				

I. Summary:

The bill prohibits the use of a Taser stun gun or a similar conductive-energy device on an individual whom the user knows, or should have known, to be 16 years of age or younger. The prohibition applies to any user of a conductive-energy device, including a law enforcement officer.

Use of a conductive energy device on a person 16 years old or younger would be a first-degree misdemeanor punishable by a term of imprisonment not exceeding 1 year or a fine not exceeding \$1,000.

This bill creates one unnumbered section of law.

II. Present Situation:

Definition and Description of the Dart-firing Stun Gun

Section 790.001(15), F.S., defines the “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.”

Section 790.053, F.S., specifically authorizes the open carrying of both chemical spray and stun guns, for purposes of lawful self-defense. Likewise, under s. 790.01, F.S., if the chemical spray or stun gun is carried for lawful self-defense purposes, it may be carried in a concealed manner. Under s. 790.054, F.S., it is a third degree felony to use chemical spray or a stun gun against a

law enforcement officer engaged in the performance of his or her duties. Use of these devices during the commission of any criminal offense is subject to prosecution under specific statutory prohibitions against such use or display, or even simple possession of certain weapons by convicted felons under ss. 790.07, 790.10, 790.23, and 790.235, F.S.

The dart-firing stun gun is referred to by many names, including “electro-muscular disruption technology,” “electronic control weapons” or “electronic control devices” (hereinafter referred to as ECDs). There are several manufacturers of these and similar devices. Among the manufacturers are Stinger Systems, Inc., Law Enforcement Associates, and Taser International.

The TASER, the brand name of the ECD manufactured by Taser International, has dominated the market, certainly among the law enforcement community. A TASER is a hand-held device that looks very much like a semi-automatic handgun. It delivers an electric shock via two darts that remain tethered to the hand-held unit after firing. The darts generally imbed in the skin of the subject, although the device also delivers the electrical current through clothing. The device can also be used in “touch stun” mode, without firing the darts.¹

Taser International reports that their TASER is currently in use by over 7,000 of the 18,000 law enforcement agencies in the United States. It reports more than 140,000 TASERS in use by law enforcement officers and an additional 100,000 units are owned by citizens worldwide.² Because the TASER is in such wide use, most of the research conducted in the scientific and medical communities has focused on the TASER.

TASER has manufactured a number of models, including the M-18 and X26-C models which are available to civilian markets. The M-26 and X-26 are only available to law enforcement agencies and the military. TASER provides an instruction video and a training session with a law enforcement officer on use of the devices it manufactures. The suggested training for law enforcement officers is 4 hours. TASER provides training upon request, for law enforcement instructors, for a fee. The TASER models available to the general public have 15 foot tethers. The models available to law enforcement have a 21, 25, or 35 foot range, depending on the model.

Government Regulation of Electronic Control Devices (ECDs)

Because the ECD uses compressed nitrogen, rather than gunpowder to fire the darts, it does not fall under the regulation of the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives. There is no federal or state criminal background check and no 3-day waiting period, as is required for the purchase of a firearm.³

Taser International sells its TASER model ECD through its website. It requires certain personal identity information of its direct customers and requests that the retail dealers collect the same information. The company provides assistance in running criminal histories through CheckPoint, an online database. The device emits tiny pieces of paper imprinted with the cartridge serial

¹ Senate Interim Project Report 2006-110--Dart-Firing Stun Guns. The Florida Senate. 2005.

² *Ibid.*

³ *Ibid.*

number when it is fired. This feature may assist in identifying the ECD user in unlawful use circumstances.⁴

Use of Force by Law Enforcement Officers

The general rules of law that guide the proper use of force under particular factual situations that law enforcement officers face are articulated in *Graham v. Connor*, 490 U.S. 386, 396-397, 109 S.Ct. 1865, 1871-1872, 104 L.Ed.2d 443 (1989):

“Determining whether the force used to a particular seizure is ‘reasonable’ under the Fourth Amendment requires a careful balancing of ‘the nature and quality of the intrusion on the individual’s Fourth Amendment interests’ against the countervailing governmental interests at stake. (citation omitted) Our Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it. (citation omitted) Because ‘[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application,’ (citation omitted) however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. See *Tennessee v. Garner*, 471 U.S., at 8-9, 105 S.Ct., at 1699-1700 (the question is ‘whether the totality of the circumstances justifie[s] a particular sort of ... seizure’).

The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. (citation omitted)... With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: ‘Not every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers,’ (citation omitted) violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments--in circumstances that are tense, uncertain, and rapidly evolving--about the amount of force that is necessary in a particular situation.”

Basic Law Enforcement Training – Response to Resistance Matrix

Law enforcement “Use of Force” is taught in the Basic Recruit training program for all certified law enforcement candidates in Florida. It is also referred to as “Response to Resistance” or “Defensive Tactics” training. The introduction of the training module in the Instructor’s Manual states: “The curriculum teaches recruits to select and properly execute appropriate techniques when facing various situations that make these techniques reasonable and necessary.”⁵ In this context, the concept of force includes everything from verbal communication to deadly force.

⁴ *Ibid.*

⁵ *Response to Resistance Matrix*, Basic Recruit Curriculum, Module 5, Unit 1, Lesson 1, Florida Department of Law Enforcement Instructor’s Manual. 2005.

The Response to Resistance Matrix is the “professional standard for response to subject resistance by criminal justice officers in Florida.”⁶ It focuses on the actions and resistance of a subject. The matrix teaches 6 levels of resistance and 6 corresponding levels of response to that resistance as guides for officers to apply in real life situations.

It is neither necessary, nor advisable, under some circumstances for an officer to begin an interaction with a citizen at the lowest level response matrix. Nor is it necessary or advisable, sometimes, to move up the response matrix progressively. Some circumstances may require jumping from level to level, up or down, skipping some levels altogether, depending upon the actions of the citizen and the totality of the circumstances.

The matrix is set forth below:

RECOMMENDED RESPONSE TO RESISTANCE MATRIX												
RESISTANCE LEVELS	6	Aggravated Physical	✓	✓		✓	✓	✓	✓	✓	✓	✓
	5	Aggressive Physical	✓	✓	✓	✓	✓	✓	✓	✓	✓	
	4	Active Physical	✓	✓	✓	✓	✓	✓	✓	✓		
	3	Passive Physical	✓	✓	✓	✓	✓	✓				
	2	Verbal	✓	✓	✓	✓	✓					
	1	Presence	✓	✓	✓	✓	✓					
			Arrival	Interview Stance	Dialogue	Verbal Direction	Touch	Restraint Devices	Transporters	Take Downs	Pain Compliance	Counter Moves

The focus of the discussion with regard to the use of force and ECDs has mostly centered on the questions of whether departmental policy should incorporate the ECD into the Use of Force Matrix, and, if so, at what Resistance/Response Level.

The consensus among law enforcement agencies in Florida seems to be that the deployment of the ECD should fall at Level 3 or Level 4, or somewhere in between.⁷

Resistance Level 3 (Passive Physical) is defined in the Basic Recruit curriculum as: “A subject refuses to comply or respond physically...makes no attempt to physically defeat your actions but forces you to use physical maneuvers to establish control.”⁸

Response Level 3 (Physical Control) includes five classifications of physical control. These are:

- Restraint Devices – mechanical tools or nylon restraints that restrict a subject’s movement.
- Transporters – physical techniques used to control and/or move a subject, with minimum effort, from point A to point B.
- Takedowns – techniques that redirect a subject to get on the ground and take a position that limits resistance and facilitates application of restraint device.
- Pain Compliance – infliction of controlled pain to specific points of the body to force compliance.
- Countermoves – impede a subject’s movement toward the officer or another person. Examples include striking, kicking, blocking, distracting, dodging, weaving, redirecting, and avoiding.⁹

Resistance Level 4 (Active Physical) is where a subject makes physically evasive movements to prevent the officer from taking control. He or she may brace or tense themselves, try to push or pull away, take a fighting stance, not allow the officer to approach, or run away.¹⁰

The corresponding Response Level (Intermediate Weapons) provides for the use of impact weapons like the baton to gain control by pain compliance at a higher level of risk for injury to the subject than a Level 3 Response calls for. For instance at Level 3, the pain compliance technique used is more likely to be something like pressure applied to the subject’s pressure points. At Response Level 4, the officer may be justified in striking the subject in the thigh with the baton, or using chemical agents such as “pepper spray.”¹¹

The matrix provides guidance to the officer, but it is stressed in the Basic Recruit classes that the “totality of the circumstances” must be assessed, sometimes in a split-second, in the decision to use force. These factors include the physical characteristics of the subject, seriousness of the

⁷ Senate Interim Project Report 2006-110--Dart-Firing Stun Guns. The Florida Senate. 2005.

⁸ Response to Resistance Matrix, Basic Recruit Curriculum, Module 5, Unit 1, Lesson 1, Florida Department of Law Enforcement Instructor’s Manual, 2005.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

crime, environment, number of subjects, availability of weapons, history of violence, citizen bystanders who may be in harm's way, legal requirements, and agency policy.¹²

Law Enforcement Use of ECDs Guns

As of June 28, 2005, 240 law enforcement agencies within the state had ECDs in use. "Best Practices" policies are continuing to evolve in agencies that currently have ECD-use policies in place. For instance, in the Orange County Sheriff's Office, the level of resistance corresponding to the response of ECD use was raised from Level 3 (passive physical) to Level 4 (active physical).¹³

Issues Concerning the Use of ECDs by Law Enforcement Officers

The use of dart-firing stun guns has been a topic of much debate in recent months in the media, among law enforcement officers and administrators, and within the scientific and medical professions. Citizens in communities where the devices are deployed by their local law enforcement have voiced concerns and have been provided a forum, in many instances, within which to discuss those concerns with law enforcement. In communities throughout the state, local law enforcement has sought input from the local citizens, in grand jury recommendations, town meetings, commissions, and special study or advisory groups.

The recent controversy over the ECDs has centered around two primary questions:

1. Under what circumstances should law enforcement use the ECD; and
2. What risk factors are involved in its use?

The consideration of one question is by necessity interwoven with discussion of the other. Do the risks to a suspect who is "tased" outweigh the benefits of fewer hand-to-hand combat events to law enforcement officers? Is use of the ECD more or less likely to cause permanent or serious bodily harm than a police baton? What about a service revolver compared to an ECD?

The recent use of a TASER on a 6-year-old public school student in Miami-Dade County gained national attention. In that incident, a law-enforcement officer responding to a 911 call found that the student had cut himself with glass from a broken picture frame and was threatening to cut himself again or to cut other individuals present. After consulting with a supervisor, the officer used a TASER to subdue the student.

There have been reports of people who have died after being subjected to the effects of an ECD. In many cases, other factors were found to have contributed to the death. In fact, a medical examiner has directly attributed the cause of death to the application of an ECD in only one case.¹⁴

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Senate Interim Project Report 2006-110--Dart-Firing Stun Guns. The Florida Senate. 2005.

III. Effect of Proposed Changes:

The bill prohibits the use of a TASER stun gun or a similar conductive-energy device on an individual whom the person knows, or should have known, to be 16 years of age or younger. The prohibition applies to the use of a conductive-energy device by anyone, including a law enforcement officer.

Use of a conductive energy device on a person 16 years old or younger would be a first-degree misdemeanor punishable by a term of imprisonment not exceeding 1 year or a fine not exceeding \$1,000.

There may be several concerns with implementation of the bill. It may be potentially problematic for a law enforcement officer to know the age of an individual who is acting in a manner that requires the use of force. It could be difficult for a person defending himself or herself against an attacker to know whether the attacker was 16 years old or younger.

The bill would take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals who use a conductive energy device for self-defense would be prohibited from using the device on a person 16 years old or younger.

An individual who used a conductive energy device on a person 16 year old or younger would be subject to a prison term not to exceed 1 year or a fine not to exceed \$1,000.

C. Government Sector Impact:

Law enforcement departments whose officers carry TASERs or similar ECDs would have to revise their policies and procedures to implement the requirements of the bill.

A law enforcement officer who used a conductive energy device on a person 16 year old or younger would be subject to a prison term not to exceed 1 year or a fine not to exceed \$1,000.

Law enforcement officers would be required to investigate the possible misdemeanor use of an ECD by an individual.

VI. Technical Deficiencies:

None.

VII. Related Issues:

CS/SB 214 (2006) sets forth the circumstances under which a law enforcement, correctional, or correctional probation officer may use a dart-firing stun gun. Under the provisions of the bill, the decision to use a dart-firing stun gun “must involve an arrest or custodial situation during which the person who is the subject of the arrest or custody escalates resistance to the officer from passive physical resistance to active physical resistance” and the person either “has the apparent ability to physically threaten the officer or others, or is preparing or attempting to flee or escape.”

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
