

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 1322

INTRODUCER: Criminal Justice Committee and Senator Deutch

SUBJECT: Dart-firing Stun Gun

DATE: April 1, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.			JU	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The Committee Substitute for Senate Bill 1322 amends the statute that applies to the use of deadly force by law enforcement officers by including dart-firing stun guns within the category of “less-lethal munition.” It appears that this amendment is intended to have the effect of giving immunity to an officer in a civil or criminal action if the stun gun was used in good faith and within the scope of the officer’s official duties.

This bill substantially amends section 776.06 of the Florida Statutes.

II. Present Situation:

Dart-firing Stun Gun

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.

The company that has dominated the market, certainly among the law enforcement community, is Taser International, based in Scottsdale, Arizona. The TASER, the brand name of the ECD

manufactured by Taser International, 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. The high-voltage, low-power current produces involuntary muscle contractions that generally render a person incapacitated for a period of time.

The TASER models available to the general public have 15 foot tethers. The models available to law enforcement have up to a 35 foot range, depending on the model. The devices also contain a data port that records information about the number of times, and for what duration, a device was fired. This has been useful in the law enforcement community as it enhances investigations of alleged misuse of the devices.

Law Enforcement Training, Use of Dart-firing Stun Gun

Law enforcement and correctional officers in Florida receive extensive training in the use of ECDs. Section 943.1717, F.S., requires the Criminal Justice Standards and Training Commission to establish standards for training officers in the use of dart-firing stun guns. It further requires that the instructional standards must include the potential effect of the application of a dart-firing stun gun on persons. The basic-skills course for law enforcement officer certification must include at least 4 hours’ training on the use of the device. An officer who has not received the training as part of the basic-skills course must complete the 4-hour dart firing stun gun training, or an equivalent training course provided by the officer’s employing or appointing agency, in accordance with the Criminal Justice Standards and Training Commission standards. Subsequently, officers who are authorized by their agencies to use the device must complete an annual training course on their use. The course must be a minimum of one hour in duration.

Section 943.1717, F.S., also sets forth the parameters within which a law enforcement, correctional, or correctional probation officer may lawfully utilize a dart-firing stun gun. Under the provisions of the statute, 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.”

This language appears to place the use of the dart-firing stun gun within Level 4 of the Response to Resistance Matrix¹, as well as taking into account some of the “judgment-call” factors such as the potential physical threat to the officer and others, and the fact that the subject is “preparing” to flee or escape.

¹ 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. In this context, the concept of force includes everything from verbal communication to deadly force. The Response to Resistance Matrix is the “professional standard for response to subject resistance by criminal justice officers in Florida.” It focuses, not on subject, but on their actions and resistance. 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. (*Response to Resistance Matrix, Basic Recruit Curriculum*, Florida Department of Law Enforcement Instructor’s Manual, 2005.)

Reductions in Officer and Citizen Injuries Follow Agency Deployment of Stun Guns

It has been well documented that the law enforcement agencies that have ECDs on their “tool belts” have experienced dramatic reductions in injuries, to both officers and citizens, in situations where the encounter escalates to a confrontational one. (*see* The Florida Senate, Interim Project Report 2006-110, pgs. 5-6, September 2005.)

The British Columbia Office of the Police Complaint Commissioner undertook a comprehensive review of ECD-related issues. In the final report, a research project collaborated on by the Orange County Sheriff’s Office and Florida Gulf Coast University was reviewed. The research found that many lower lethality options have a high potential for causing injury and do not necessarily put an end to the confrontation. Some of the reported facts include:

- Lower lethality munitions (ex: bean bag rounds, rubber bullets) produced injuries in 80 percent of the instances of deployment – usually bruises or abrasions; in 373 deployments, 8 deaths occurred;
- Conventional impact weapons (batons) produced blunt trauma injury; they had a very high potential for escalation of subject resistance if they were not immediately effective;
- Chemical agents (O.C. or “pepper spray”) have a very low associated injury rate;
- Conventional defensive tactics (hand-to-hand techniques used to subdue subjects) were ineffective 29 percent of the time and resulted in the largest number of subject and officer injuries; and
- The TASER had the highest level of de-escalation and provided a substantial deterrent effect when displayed but not used; the study examined 870 deployments during which one death occurred.

(*Taser Technology Review Final Report*, Office of the Police Complaint Commissioner, OPCC File No. 2474, June 14, 2005, pg. 26.)

Death Following Exposure to Dart-firing Stun Guns

Accounts of deaths following the application of ECDs seem to indicate that at least one of three variables are present in the vast majority of cases: multiple applications of the device, heart-damaging drugs including cocaine and methamphetamine are in the subject’s system, and/or the subject is in a state of excited delirium.

Excited delirium syndrome is seen by law enforcement officers where subjects seem to possess super-human strength and appear to be completely out of control. Pain compliance control responses seem to have little or no effect on the subject. Often they are naked, in a frenzy, “in their own world,” and potentially or actually dangerous to themselves, other citizens, and the officers who are dispatched to control the subject and the situation. According to a recent Potomac Institute report, in the state of excited delirium, subjects theoretically “out-run their aerobic reserve and expire, either through fibrillation or otherwise. A key point should be made here: excited delirium syndrome implies mortality caused by multiple factors over-driving the cardiovascular-pulmonary system, and not heart failure produced through electrical surge (from a stun device) applied to or conducted to the heart.” (*Efficacy and Safety of Electrical Stun Devices*, Potomac Institute for Policy Studies March 29, 2005.)

Recent Studies

The National Institute of Justice released an interim report of its recent study entitled *Study of Deaths Following Electro Muscular Disruption*, in June of 2008. The full report is expected sometime this year. The panel that conducted the study reviewed the available, peer-reviewed research literature and information concerning the use of ECDs in the field. The pertinent findings as reported in the interim report are as follows:

- There is no conclusive research, within the current state of on-going research, that indicates a high risk of serious injury or death from the direct effects of ECDs.
- There is currently no medical evidence that ECDs, when deployed reasonably, pose a significant risk for producing abnormal heart rhythm in normal, healthy adults.
- When a person exhibits excited delirium and he or she requires subdual, current research suggests that ECD use is not a life-threatening stressor beyond the generalized stress of the state of excited delirium or appropriate subdual.
- There is no medical evidence that ECD exposure has an effect on body temperature, which, in cases of excited delirium, is the primary mechanism of death.
- Preliminary review of deaths following ECD exposure indicates that many are associated with continuous or repeated discharge of the device.
- The medical risks associated with repeated or continuous exposure to the ECD are unknown.
- The role of the ECD in causing death in cases of repeated or continuous exposure to the ECD is unclear.

The panel also concluded that agencies need to create and follow policies on the use of the device. It also suggested that certain medical protocol may be beneficial in cases involving the subdual of people suffering from excited delirium. The report specifically mentions the apparent success of the Dade County protocol where emergency medical responders provide sedation and reduction in body temperature using chilled intravenous fluids. (*Deaths Following Electro Muscular Disruption*, National Institute of Justice, <http://www.ncjrs.gov/pdffiles1/nij/222981.pdf>)

Legal Aspects of Deadly Force

Law Enforcement and Correctional officers enjoy what is known as “qualified immunity” which generally shields them from lawsuits and liability in cases of injury or death in cases where they are acting in the line of duty. However, qualified immunity may be lost if an officer violates a person’s constitutional rights.

The general rule is that government officials performing discretionary functions are protected by qualified immunity unless a reasonable person would have known that the conduct in question violated clearly established law.² With regard to the use of ECDs, the complaint is usually based upon a Fourth Amendment “use of excessive force” claim. The issue as to whether the officer who used the ECD used excessive force would turn on if the plaintiff can show that the officer acted in violation of the clearly established law.

Current Law

Section 776.05, F.S., provides guidance for law enforcement officers in the use of force in making arrests. It states that an officer is justified in the use of any force:

² *Harlow v. Fitzgerald*, 457 U.S. 800, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982)

1. Which the officer believes is necessary to defend himself, herself, or another from bodily harm while making the arrest;
2. When necessarily committed in the retaking of escaped felons; or
3. When necessarily committed in arresting felons fleeing from justice.

In the case of making the arrest of a fleeing felon, however, the statute specifically states that a defense to a civil action brought for the wrongful use of *deadly force* does not exist unless the use of deadly force was necessary to effect the arrest, and when feasible, some warning had been given, and:

- a. The officer reasonably believes that the fleeing felon poses a threat of death or serious physical harm to the officer or others; or
- b. The officer reasonably believes that the fleeing felon has committed serious physical harm or threatened serious physical harm to another.

The term “deadly force” is defined in s. 776.06, F.S., as “force that is likely to cause death or great bodily harm.” Subsection (2) specifically excludes the use of “less-lethal munition” fired from an officer’s firearm from the general definition of deadly force. Less-lethal munition is defined as “a projectile that is designed to stun, temporarily incapacitate, or cause temporary discomfort to a person without penetrating the person’s body.” Although it is not specified as such, less-lethal munition that can be fired from a firearm generally consists of “bullets” made of rubber or a similar material.

Section 776.06, F.S., also specifically provides civil and criminal immunity for an officer who uses “less-lethal munition” in good faith during and within the scope of his or her official duties.

III. Effect of Proposed Changes:

The Committee Substitute for Senate Bill 1322 adds “dart-firing stun gun” to the definition of “less-lethal munition” in s. 776.06(2)(a), F.S. This would effectively create civil and criminal immunity for officers who use the device in good faith during and within the scope of his or her duties.

Other Potential Implications:

Additionally, the bill would appear to settle, by statute, any factual dispute that may arise in the course of litigation involving the dart-firing stun gun as to its potential lethality, at least in Florida. This is because the device is “declared” to be “less-lethal munition” and *outside* the definition of *deadly force*.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By providing immunity for law enforcement and correctional officers in any action arising out of the use of a dart-firing stun gun, so long as he or she is acting in good faith and within the scope of the officer's duties, some citizen lawsuits for wrongful death or injury or excessive force may be thwarted.

C. Government Sector Impact:

The law enforcement and correctional officers who benefit from the immunity from civil suit or criminal prosecution, so long as the dart-firing stun gun is used while in the scope of his or her official duties and the officer is acting in good faith, may avoid time consuming and costly litigation by the passage and enactment of the bill.

VI. Technical Deficiencies:

It is suggested that defining a stun gun in s. 776.06, F.S., as "less-lethal munition" might be confusing since the sentence above the stun gun reference describes Less-lethal munition as something that is "*loadable*" into an officer's firearm. Perhaps clarity and the intent of the bill could be achieved by relocating the term "dart-firing stun gun" to line 15 of the bill so it would read: "The term "deadly force" does not include the use of a dart-firing stun gun or discharge of a firearm by a law enforcement officer or."

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on April 1, 2009:

Line 19 of the bill was amended to read "dart-firing stun gun and any other projectile that is designed to"

B. Amendments:

None.

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