



# The Florida Senate

*Interim Project Report 2007-109*

*October 2006*

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Committee on Criminal Justice

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## USE OF STUN GUNS

### SUMMARY

This interim project is an extension of a stun gun review conducted last year by specifically focusing on the use of stun guns on children in elementary schools. Last year's study reviewed when it is appropriate for law enforcement officers to use stun guns, whether there are physical effects of the device beyond the momentary incapacitation it produces, and whether stun guns can be linked to deaths.

To determine whether stun guns are carried or used at elementary schools and whether or not there have been incidents of the use of a stun gun within the last three school years, staff conducted a statewide survey of all the school superintendents in the state. With a 78% response rate, results from the survey were partially inconclusive and conclusive. It was found that stun guns are not purposefully carried on school grounds but are part of a law enforcement officer's regular equipment and are hence on school grounds regularly. When asked about a procedure or mechanism for reporting stun gun usage, all respondents indicated that there was no such reporting procedure. Despite the absence of a reporting procedure, all but one respondent indicated that there were no incidents of elementary school-aged children being stunned in the last three years. The one incident reported occurred in Miami-Dade County on October 20, 2004. The child involved was a 6-year old first grader and the particular circumstances surrounding the incident are reported in detail in the body of the report.

In addition to the survey, staff concluded that definitive studies on the effects of stun guns on children are non-existent. However, in addition to the studies reviewed and reported on last year, staff was able to identify multiple studies that are currently underway on the effects of stun guns, many funded by the National Institute of Justice.

Staff concluded this review by recommending that the Legislature refrain from further restricting the

parameters under which a law enforcement officer deploys a stun gun. In addition, because of the rarity of stun gun incidents on children, staff recommended that the Legislature not impose a reporting requirement on the school districts. Given the low incident rate of children being tased, the statistical value of a routine statewide report would be minimal.

### BACKGROUND

During the 2006 Interim, the staff of the Senate Committee on Criminal Justice conducted a study and reported on several issues of concern to the members and the citizens of Florida with regard to the use of "stun guns" by law enforcement officers.<sup>1</sup>

The Committee Report addressed matters such as:

- when it is appropriate or advisable for law enforcement officers to use the device;
- what are the potential physical effects of the device, beyond the momentary incapacitation it produces;
- can the dart-firing stun gun be linked, directly or indirectly, to the in-custody deaths of people who have been stunned; and
- what, if any, law enforcement training curriculum modifications should be made as new information about the devices becomes available.

The Committee Report did not focus on the use of stun guns on children. Such incidents are infrequent, and, at the time of the 2006 Report, policy makers as well as the citizens of Florida were quite concerned about adults who were dying, often in law enforcement custody, after being "tased."

During floor debate on Senate Bill 214, a 2006 bill that set forth the legislative policy on stun gun use as well as provided law enforcement stun gun training standards, questions arose and several Senators voiced

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<sup>1</sup> Interim Project Report 2006-110.

concerns about the use of stun guns on elementary school-age children.

At that time, there was discussion on whether the use of stun guns on children should be reported. Questions on what possible medical effects may occur and whether there has been a scientific study were also raised.

This Interim Project Report will address those issues and questions. However, for adequate background on the issue at hand – the use of stun guns on elementary school children – it is necessary to review some of the previously reported findings.

### **Stun Gun Design, Technology, Distribution**

The dart-firing stun gun is referred to by many names, including “electro-muscular disruption technology,” “electronic control weapons” or “electronic control devices.” 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 stun gun 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, where the probes are not launched, but rather, the device itself actually makes contact with the subject being stunned. The devices 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.

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. In October 2004, the Department of Homeland Security’s Transportation Security Administration approved an airline’s request that specially trained flight attendants be able to use the device on passenger flights. *Taser Weapons, Use of Tasers by Selected Law Enforcement Agencies*, United States Government Accountability Office Report, May 2005.

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.

As of May 2005, Taser International reported that their TASER was in use by over 7,000 of the 18,000 law enforcement agencies in the United States. It reported more than 140,000 TASERS in use by law enforcement officers and an additional 100,000 units were owned by citizens worldwide. *Taser Weapons, Use of Tasers by Selected Law Enforcement Agencies*, United States Government Accountability Office Report, May 2005. Because the TASER is in such wide use, most of the research conducted in the scientific and medical communities has focused on the TASER.

### ***The Reasonableness Standard on Use of Force***

The Fourth Amendment jurisprudence with regard to the reasonable use of force by law enforcement officers in (search and) seizure situations is articulated by the U.S. Supreme Court in *Graham v. Connor*, 490 U.S. 386, 109 S.Ct. 1865 (1989). In the opinion, the Court recognized that “reasonableness” is a fluid concept, that must be judged given the background of the totality of the circumstances. The Court stated: “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.”<sup>2</sup>

The Eleventh Circuit Court has interpreted the *Graham* case as requiring a balance of three factors in determining if the force applied in a given situation is “reasonable”:

- the need for the application of the force;
- the relationship between the need and amount of force used; and
- the extent of injury inflicted.

*Draper v. Reynolds*, 369 F.3d 1270, 1277-78 (11th Cir. 2004).

Clearly, each factual situation is unique, and as such, this area of the law does not lend itself to a “bright line rule” designating one use of a stun gun under particular circumstances as appropriate in all similar circumstances. The analysis of each situation must take into account the totality of the circumstances.

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<sup>2</sup> *Id.* at 396-397.

### *Use of Force Training*

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.”<sup>3</sup> In this context, the concept of force includes everything from verbal communication to deadly force.

The curriculum focuses on 6 levels of resistance and 6 corresponding levels of response to that resistance as guides for officers to apply in real life situations.

Passive Physical Resistance (Level 3) 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.”<sup>4</sup>

Physical Control, the Response to Passive Physical Resistance, 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.<sup>5</sup>

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<sup>3</sup> *Response to Resistance Matrix*, Basic Recruit Curriculum, Module 5, Unit 1, Lesson 1, Florida Department of Law Enforcement Instructor’s Manual, 2005.

<sup>4</sup> *Id.*

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

Active Physical Resistance (Level 4) 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.<sup>6</sup>

The corresponding Response to Active Physical Resistance, 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 Response to Passive Physical Resistance calls for. For instance, the Response to Passive Physical Resistance may include a pain compliance technique like pressure applied to the subject’s pressure points. In response to Active Physical Resistance, however, the officer may be justified in striking the subject in the thigh with the baton, or using chemical agents such as “pepper spray.”<sup>7</sup>

The curriculum 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 crime, environment, number of subjects, availability of weapons, history of violence, citizen by-standers who may be in harm’s way, legal requirements, and agency policy.<sup>8</sup>

Each officer-citizen encounter is unique. In the end, law enforcement officers are called upon to make lightning-quick decisions based on their training and judgment under the unique circumstances. Whether the citizen involved in the encounter is an adult or a child is one of the many circumstances that must be considered by officers equipped with stun guns.

### *Development of Stun Gun Policies*

As of June 28, 2005, 240 law enforcement agencies within the state had stun guns in use. “Best Practices” policies were being adopted or at least discussed by these agencies. For instance, in the Orange County Sheriff’s Office, the level of resistance corresponding to the response of stun gun use was raised from Passive Physical to Active Physical.

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

A “Taser Advisory Group” was formed to assist the FDLE Professionalism Program in creating a presentation on stun guns for the High Liability Trainers’ Conference at the end of August 2005. Over a three-day period in May 2005, detailed discussions of the Advisory Group included topics such as training, deployment criteria, legal issues, equipment maintenance, and use reporting. The group included officers and legal staff from agencies throughout the state who discussed the stun gun-related issues, and prepared the presentation, which included a Model Policy.

On the topic of deployment, the Model Policy stated, in part:

“No policy or guideline can anticipate every situation that officers might face, but in general terms, the following deployment procedures are established.

An officer’s decision to deploy the (stun gun) shall involve an arrest or custodial situation wherein the subject is at a minimum exhibiting active physical resistance or is escalating resistance from passive physical resistance towards active physical resistance.

An officer’s response to a subject’s resistance should always include consideration of subject/officer factors such as age, size, weight, physical condition and/or the subject’s apparent ability to physically challenge the officer or do harm to himself or others, balanced against the seriousness of the incident.”<sup>9</sup>

Comparing the Model Policy with the language of Chapter 2006-298, Laws of Florida, set forth in full below, one difference should be noted. The new law requires that a subject “*escalate resistance ...from passive physical resistance to active physical resistance...*”,<sup>10</sup> whereas the Model Policy would have only required that the subject “*is escalating resistance from passive physical resistance towards active physical resistance.*”<sup>11</sup> The statute is somewhat more restrictive in that it actually requires *escalation to active physical resistance* before the deployment of the stun gun by a law enforcement officer.

<sup>9</sup> Florida Taser Advisory Group Electronic Control Device Sample Policy, Summer 2005.

<sup>10</sup> Ch. 2006-298, L.O.F.

<sup>11</sup> Florida Taser Advisory Group Electronic Control Device Sample Policy, Summer 2005.

### ***Lethality, Risk Reduction***

Studies have demonstrated that in those cases where officers could justify using deadly force -- their firearms -- but choose to use a stun gun instead, citizen lives are saved or at least less endangered than they otherwise would be.

A 1987 study examined 218 emergency room patients who had been “tased” by police, compared to 22 patients who had been shot with .38 caliber handguns by police. The mortality rate for tased patients was 1.4 percent, and for gunshot victims it was 50 percent. All three of the tased patients who died had high levels of PCP in their systems. One had a previous history of heart trouble – this particular patient went into respiratory arrest followed by cardiac arrest 25 minutes after being tased. The other two patients went into cardiac arrest 5 and 15 minutes after being tased. The coroner reported all three deaths as due to PCP toxicity with no signs of myocardial damage, airway obstruction, or other pathology.<sup>12</sup>

The British Columbia Office of the Police Complaint Commissioner undertook a comprehensive review of stun gun-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 citizen-law enforcement officer 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

<sup>12</sup> See the January 1987 study entitled, “Electronic Gun (Taser) Injuries,” published in the *Annals of Emergency Medicine*; Ordog, et.al.

displayed but not used; the study examined 870 deployments during which one death occurred.<sup>13</sup>

Accounts of deaths following the application of stun guns 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.

According to a 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."<sup>14</sup>

### **Chapter 2006-298, Laws of Florida**

During the 2006 Legislative Session, Senate Bill 214 was filed, passed, and became law on June 26, 2006.<sup>15</sup>

#### ***Statutory Stun Gun Definition***

This new stun gun law revised the previously existing definition of "stun gun" found in s. 790.001, F.S.,<sup>16</sup> in view of the likelihood of future advances in the technology behind the weapon. Specifically, "remote" stun gun was amended to read "dart-firing" stun gun, which now means: "any device having one or more

darts that are capable of delivering an electrical current."<sup>17</sup>

The new definition of dart-firing stun gun deleted reference to the 16 foot tethers that are a product-specific characteristic, and reference to the identification and tracking system, that is a manufacturer-specific (TASER International) feature of its version of the product.

#### ***Legislative Policy on Use and Training***

The new law on stun guns also set forth the legislative policy on two of the topics studied in Interim Project Report 2006-110. The law specified when it is appropriate or advisable for law enforcement officers to use the device and what level of training should occur before a law enforcement officer is issued a stun gun by his or her agency.

*Appropriate Use of Stun Guns.* – Newly created s. 943.1717, F.S. (Chapter 2006-298, L.O.F.) states:

943.1717 Use of dart-firing stun guns.—

(1) A decision by a law enforcement officer, correctional officer, or correctional probation officer to use a dart-firing stun gun must involve an arrest or a 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:

- (a) Has the apparent ability to physically threaten the officer or others;
- or
- (b) Is preparing or attempting to flee or escape.

This policy statement took into consideration the interwoven factors of the risk of injury to the subject being "stunned," risk of injury to the law enforcement officer, and the appropriateness of the use of the stun gun as opposed to other methods of force available to the officer.

*Officer Training.* -- The Criminal Justice Standards and Training Commission is required to establish instructional standards for training law enforcement, correctional, and correctional probation officers in the use of stun guns. The training must, under the new law, include training on the possible effects a stun gun may have on subjects who are "tased." After completion of the initial four-hour training, those officers who have

<sup>13</sup> *Taser Technology Review Final Report*, Office of the Police Complaint Commissioner, OPCC File No. 2474, June 14, 2005, pg. 26.

<sup>14</sup> *Efficacy and Safety of Electrical Stun Devices*, Potomac Institute for Policy Studies March 29, 2005.

<sup>15</sup> Ch. 2006-298, L.O.F.

<sup>16</sup> Prior to the passage of Ch. 2006-298, L.O.F., s. 790.001(15), F.S., defined 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." s. 790.001(15), F.S.

<sup>17</sup> s. 790.001(15), F.S.; Ch. 2006-298, s. 1, L.O.F.

been issued stun guns by their agencies must annually complete one hour of training.<sup>18</sup>

## METHODOLOGY

With the assistance of the Legislative Committee on Intergovernmental Relations (LCIR), a survey was sent to every school superintendent in the state. The responses were compiled by LCIR and forwarded to committee staff. Additionally, staff researched scientific and medical websites for studies involving the potential or actual effects of stun guns on children. Also, recent news accounts of stun gun use were reviewed for information pertinent to this report.

## FINDINGS

### *Stun Guns on Elementary School Campuses - Survey Results*

Of the 67 surveys sent out to county school superintendents, 52 were responded to, for a 78% response rate. Among the questions asked and answered were the following:

- whether stun guns are carried or used on elementary school campuses in the county
- whether there have been incidents of the use of a stun gun on an elementary school student within the previous three school years and, if so,
  - what were the circumstances
  - the name of the agency involved and the officer's name, if known
  - the age and grade level of the child
  - whether any injuries resulted
  - whether any type of legal action resulted from the incident
  - whether and to whom the incident was reported, and
  - whether there is a policy or procedure in place regarding reporting stun gun use.

The question regarding whether stun guns are carried on elementary school campuses generated some confusion among the survey responders. It appears that stun guns are not carried "purposely" on elementary school campuses, but rather may be a part of a law enforcement officer's regular equipment, and that officer "just happens to be on campus" (for instance, responding to a call). Only one response indicated that the county-wide School Resource Officer carries a stun gun, but it is noted that he would only use it at the high school in case of extreme emergency.

No responding school jurisdiction has a policy or procedure in place for reporting the use of stun guns.

### *One Incident Reported in Survey*

Within the previous three school years, there was one reported incident of the use of a stun gun on an elementary school-age child, on campus. That incident occurred in Miami-Dade County on October 20, 2004. The child involved was a 6-year old first grader at the time. The Miami-Dade Police Department and Miami Dade Schools Police Department incident reports indicate the following scenario reportedly took place:

The Miami-Dade Police Department (Officers Abbott and Rivera) responded to a 911 (emergency) call for assistance at the Kelsey L. Pharr Elementary School and were directed to the principal's office upon arrival. Officer Staten from the Miami-Dade Schools Police Department arrived sometime thereafter.

In the principal's office, Officers Abbott and Rivera found the child "backed into a corner with a piece of glass in his left hand, which (sic) he had broken a picture frame in the office with his fist. He had self-inflicted wounds under his right eye and was bleeding from his right hand which he (sic) puncture himself with the glass."<sup>19</sup>

Both officers told the child to put the glass down. Officer Abbott attempted to calm him. She then slid a trash can over to him and tried to get him to throw the glass away. He refused and "clutched on to the glass tighter in his left hand."<sup>20</sup>

Officer Rivera contacted Sergeant Laurent to advise the superior officer of the situation and the officers' assessment that the child may have to be "tased." Sergeant Laurent authorized the use of the stun gun if the child continued to refuse to let go of the glass.

The child was told several more times to put the glass down and he "continued to hold on tighter to the piece of glass."<sup>21</sup> Officer Abbott then took out her stun gun and activated it, striking the child in the mid-abdomen. The child was examined and "cleared" by Miami Fire Rescue, under the direction of Lt. Gustin. He was then transported, under the Baker Act,<sup>22</sup> to the Jackson

<sup>19</sup> Miami-Dade Police Agency Report #558638-C

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Under s. 394.463, F.S., a person may be taken into custody by a law enforcement officer and transported to the nearest "receiving facility," if the person appears to

<sup>18</sup> Ch. 2006-298, Section 5, L.O.F.

Memorial Hospital Crisis Unit. The child's grandmother was notified of the situation by Officer Rivera.

There is civil litigation pending in this matter, consequently staff encountered reluctance on the part of the witnesses and participants in the incident to comment beyond the facts as set forth in the law enforcement reports.

### ***High School Student Stun Gun Case Dismissed***

In July 2006, the federal trial court for the Middle District of Florida found in favor of the defendants (the deputy who deployed his stun gun and the Sheriff) in a civil case brought by two young ladies – high school students – who were “tased” on campus. The testimony showed that the two students, along with two other students, were involved in a fight at the time the deputy used his stun gun to stop the fight and restore order to the campus.

Among other specific rulings, the court dismissed the plaintiff's argument that the Sheriff's policy on the use of stun guns by his department sanctioned the use of force because the policy “lacks direction because it does not mention taking the age of a suspect into consideration before using the taser.” The court noted that, contrary to the plaintiff's argument, the Use of Force Policy “provides that size, age, and weight of the subject are factors that a deputy should consider when making a use of force decision.”<sup>23</sup>

### ***Scientific/Medical Studies***

Scientific and medical studies or reports on the topic of the effects of stun gun use on children were not located or identified as part of this study. This is understandable, given that the overwhelming majority of people who have been “tased” are actually the law enforcement officers who are being trained to carry and use the device or adult citizens involved in police encounters which escalate to the point where a stun gun is deployed. The use of stun guns on children is extremely rare, and their use on elementary school-age children, even more rare.

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meet the criteria for an involuntary examination. One of the criteria is that there is reason to believe that the person has a mental illness, *and* because of that the person is unable to decide for himself whether an examination to determine if there is a mental illness is necessary, *and* there is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or others in the near future, as evidenced by recent behavior.

<sup>23</sup> *Maiorano v. Santiago*, 2006 WL 2024951 (M.D.Fla.).

Because of the apparent lack of scientific or medical information regarding stun guns and children, staff contacted the Senior Program Manager in Less-Lethal Technologies at the National Institute of Justice. The NIJ funds studies related to stun guns, and has commissioned several studies that are on-going or just completed. The NIJ staff is not aware of any pending or completed studies involving the effects of stun guns on children, either NIJ-funded or otherwise, in the medical or scientific community.

There was a study reported in the *Pacing and Clinical Electrophysiology Journal* in January 2005 that simulated the application of the electrical energy discharge of the TASER Model X26 (using a custom device built for the experiments) in an effort to determine the threshold at which ventricular fibrillation occurs in pigs. The smallest pig weighed 66 pounds. The study found that “the minimum discharge that would cause fibrillation was approximately 15 times the charge of the standard pulse when used on the smallest pig.”<sup>24</sup> It should be noted that some of the authors of the article reporting the findings were representatives of TASER International.

The National Institute of Justice has funded a study that was scheduled to end in July 2006, in which researchers would attempt to determine safety margins related to cardiac fibrillation and stun gun use. The report of the study had not been published as of this writing. Presumably the study will be conducted in such a way that may validate the PACE study.

### ***General Considerations***

The Florida PTA issued a Position Statement in 2005 with regard to stun guns. The Statement advocated that the Florida Legislature:

- authorize an independent study on the effects of stun guns on the human body, especially children, persons with disabilities and other vulnerabilities;
- provide a mechanism for training of law enforcement officers based on research; and
- set clearly defined guidelines on the use of Taser guns/stun devices as means of necessary force and that the use of Taser guns/stun devices be permissible only in instances where lethal force would otherwise be necessary.

The newly-created s. 943.1717, F.S., addressed all but the independent study on the effects of stun guns. It is

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<sup>24</sup> *Cardiac Safety of Neuromuscular Incapacitating Defensive Devices*, PACE, Vol. 28, January 2005, Supplement 1; McDaniel, et al.

at least arguable that the Legislature's authorization and funding of such a study could be said to be no less "independent" than studies authorized by other agencies, businesses, or institutions. As of this writing, the NIJ alone has funded and authorized at least 10 studies or reports that are currently underway. This is just one agency among many entities that are examining the use of stun guns.

The Advocacy Institute for Children has raised an issue about the effects of stun guns on children with "hidden" health conditions. There can be no doubt that unforeseeable risks – beyond the reasonably observable age, size, weight, and health conditions – exist in both the child and adult populations. For example, seizure disorders, pulmonary conditions, and heart anomalies are not likely known to a law enforcement officer who is involved in an encounter with a citizen which could lead to the use of his or her stun gun. Any risk of injury or death to a particular citizen – including children – falls squarely within the "totality of the circumstances" considered by law enforcement officers and the courts as part of the "reasonableness standard" applied in use of force situations. The expectation that a law enforcement officer somehow be aware of risks that are neither observable nor foreseen is likely not "reasonable" under the Fourth Amendment analysis.

#### ***Legislative Policy in New Law Should Protect Children***

As previously noted, law enforcement officers are now governed by s. 943.1717, F.S., in their deployment of stun guns. The statute requires that the subject offer "active physical resistance." According to the Response to Resistance Matrix officer training, this means that 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. At this level of resistance, the officer is generally justified in using a baton, stun gun, or chemical agent to gain control. In addition, however, the statute requires that the subject *has the apparent physical ability to threaten the officer or others* or is preparing or attempting to flee or escape.

The statute spells out the parameters under which a law enforcement officer is justified in using his or her stun gun. The statutory parameters are tied to responses to resistance that are second-nature to law enforcement officers because of the training they receive as recruits. It incorporates additional training requirements that familiarize officers with the potential effects of the devices upon subjects who are "tased." Although age, weight, and other specific characteristics are not articulated within the statute itself, those factors are taken into account in the "apparent physical ability" language of the statute, as well as the "totality of the circumstances" analysis required of officers by the Fourth Amendment.

It is certainly arguable that the six year old child who was "tased" in Miami-Dade county two years ago, might be "tased" today. This is the reality of law enforcement officer-citizen encounters. However, the Legislature needs to decide to what extent should the state scrutinize the judgment calls of law enforcement when those rare instances of tasing occur.

### **RECOMMENDATIONS**

It is certainly within the Legislature's prerogative to further define and restrict the parameters under which a law enforcement officer may deploy his or her stun gun. However, it is suggested that the limitations set forth in training, legal precedent, and the newly-created s. 943.1717, F.S., as well as public scrutiny, constitute sufficient restraints and reminders that officers should exercise the best of judgment before deploying a stun gun on a child. Therefore, no additional statutory changes are recommended.

It is also suggested that the occurrence of children in elementary schools being "tased" is so rare that requiring the local school districts to report the incidents to a designated agency would neither be a cumbersome task nor have a fiscal impact. However, neither would the report(s) result in any statistically significant data, given the recent history of a single incident within the last three school-years. Therefore, staff recommends against requiring school districts to report incidents of tasing to a designated agency.