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**House Judiciary Committee  
Subcommittee on Crime and Corrections  
Public Hearing  
The Penn Stater Conference Center Hotel  
Forum Room G  
State College, Pennsylvania  
Wednesday, September 1, 1999**

**TESTIMONY OF STEPHEN A. ZAPPALA, JR.,  
DISTRICT ATTORNEY OF ALLEGHENY COUNTY**

Based on an internal request, my office had previously examined the law as it applies to private possession and use of stun guns. The conclusion reached was that at present, there is no meaningful regulation of these devices. Nevertheless, although these and similar weapons are generally marketed as defensive weapons, there is a substantial potential for their use and abuse as offensive weapons. Indeed, recently in Allegheny County an individual using a stun gun committed a robbery of a bank employee who was loading an ATM. The robber, who could not be identified because the victim was immobilized by the stun gun, made off with more than \$60,000 in cash.

Consequently, I believe there is a definite need to develop a legislative response to ensure that these devices are properly regulated within this Commonwealth. I have examined the proposed amendments to the Crimes Code that are the subject of this hearing. I fully endorse these proposals with respect to regulating the use and possession of electric or electronic incapacitation devices, particularly criminalizing acts where such devices are not used for personal protection or self-defense.

Because there is currently no regulation of these devices, the extent of the problem is not readily discerned. Indeed, as with the example described above, most of the available information on the criminal use of stun guns is anecdotal. However, in my experience, there exists significant anecdotal evidence sufficient to support the need for some regulation of these devices. The most significant case that has come to the attention of my office which involved the misuse of a stun gun occurred during a vicious and violent assault on a female victim initiated by two actors, the first a female the second a male. In the midst of a confrontation initiated by the female actor, her male companion interceded into the fray by retrieving a stun gun from his car and using it to subdue the victim whenever she attempted to resist her assailant. Each time the victim was immobilized by the stun gun, the female actor continued her violent assault upon the victim. Each time the victim attempted to rise, either to defend herself or flee, the male actor used the stun gun to knock the victim back to the ground, whereupon the female actor's assault would resume. As a direct result of the use of the stun gun during this incident –which rendered the victim unable to defend herself or escape her attackers– the victim suffered injuries of such significance that charges of Aggravated Assault were appropriately filed against both actors.

However, no other charges were filed by police to address the offensive and improper use of the stun gun by these assailants.

There have been other situations where stun guns have become part of a criminal scenario by being used to threaten, intimidate or immobilize victims in Assault, Domestic Violence and Robbery cases. As well, police officers executing arrest and search warrants have noted the presence of stun guns either on the person at the time of arrest or at locations where drugs or other contraband have been recovered. However, again, without specific legislation to cover these scenarios, police can only temporarily seize and secure these items to ensure their immediate safety and are unable to pursue more specific criminal charges based on the misuse of these devices. The current condition thus not only presents an immediate threat to the police officers involved, but also allows these potentially offensive weapons to remain in the community for misuse in the future.

Although a prior Attorney General had previously indicated that a "taser" –a brand-name stun gun– would fall within the general prohibition against prohibited offensive weapons, (see Official Opinion of the Attorney General No. 76-14, 75 D. & C. 2d 597 (1976)), I believe that section 908 (Prohibited offensive weapons) of the Crimes Code should be amended to specifically include tasers, stun guns and other electric or electronic weapons. This would provide a clear statement to the police and to the public that possession of these types of weapons is prohibited.

Interestingly, several years ago, the Pittsburgh Police in fact filed a charge of Prohibited Offensive Weapons (POW) based on the defendant's possession

of a stun gun and in reliance on the Attorney General's Opinion. However, the presiding magistrate in Pittsburgh's City Court dismissed the POW charge stating that he was not persuaded that an Opinion of the Attorney General had the effect of law and said that it was instead "up to the legislature" to speak to the legality of such devices. Today, I urge the legislature to speak to this point.

Initially, due to the significant potential for misuse and abuse of these devices, I am inclined to seek a total ban on the possession and use of these weapons. Accordingly, I fully support the proposal contained in Section 1 of House Bill No. 1666, sponsored by Representative Orie, which adds "tasers, stun guns and other electric or electronic weapons" to the general prohibition against possessing or using certain offensive weapons. In the alternative, I would favor a statute that would permit the defensive use of such weapons while criminalizing offensive or otherwise unauthorized use of these weapons. An example of this approach is found at Section 2 of Representative Orie's Bill.

Finally on the issue of stun guns, I would note that several other jurisdictions, including Michigan, Wisconsin, Minnesota and Florida, have either banned these kinds of weapons or severely regulated their possession and use. I firmly believe that Pennsylvania should follow this course.

While undertaking this examination of laws applicable to electric or electronic defensive weapons, it was noted that many of the jurisdictions that regulated these types of weapons also regulated pepper spray or OC spray devices. Coincidentally, at about this time there was an incident at a local

suburban high school in Allegheny County, which resulted in many students being affected by another student's reckless discharge of a pepper spray device. A number of these students required medical treatment after being exposed to pepper spray.

I viewed the incident at Bethel Park High School with sufficient concern that I circulated proposed legislation to regulate the use of these types of so-called defensive weapons. Representative Kaiser, whose district includes Bethel Park High School, was kind enough to sponsor a bill, House Bill No. 1640, which achieves this result.

Based upon the incident at Bethel Park High School and other incidents involving the offensive use of a device designed for self-defense, I believe it is time that we develop some means of regulating the possession and use of these kinds of potentially dangerous weapons. Indeed, because both types of devices –stun guns and pepper spray– are intended as means of self-defense, several other states have combined prohibitions on use and possession of electric or electronic incapacitation devices and personal protection spray devices. I believe such an approach should be followed here in Pennsylvania. Therefore, I would also support the proposed amendments regulating and restricting the use and possession of personal protection spray devices.

I would conclude by pledging my full support to the Legislature's efforts to address these matters, and particularly to this body's efforts to make this Commonwealth a safer place for all of its citizens.