

DOUGLAS F. GANSLER  
ATTORNEY GENERAL

KATHERINE WINFREE  
Chief Deputy Attorney General

JOHN B. HOWARD, JR.  
Deputy Attorney General



DAN FRIEDMAN  
Counsel to the General Assembly

SANDRA BENSON BRANTLEY  
BONNIE A. KIRKLAND  
KATHRYN M. ROWE  
Assistant Attorneys General

THE ATTORNEY GENERAL OF MARYLAND  
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

May 1, 2009

The Honorable Martin J. O'Malley  
Governor of Maryland  
State House  
Annapolis, Maryland 21401-1991

**RE: *Senate Bill 850 and House Bill 539***

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency Senate Bill 850 and House Bill 539, identical bills entitled "Public Safety - Electronic Control Devices - Requirements." While we approve the bills, we write to discuss the effect of the prospectivity clause in Section 3.

Senate Bill 850 and House Bill 539 enact a variety of provisions intended to control and regulate the possession and use of electronic control devices, the most common of which are those made by Taser International. The bills limit the possession and use of these devices to person who have attained the age of 18 years and have not been convicted of a crime of violence or certain controlled dangerous substances offenses. They further provide that an electronic control device may not be sold and activated in the State unless an instructional manual or audio or audiovisual instructions are provided to the purchaser, the manufacturer maintains a record of the original owner of the device, and the manufacturer or seller has obtained a State and federal criminal history records check on the original owner to ensure compliance with the restriction on possession and use of these devices by persons convicted of certain crimes. The bills further require a manufacturer of electronic control devices to provide certain information to law enforcement with respect to electronic control devices and cartridges sold in this State. The bills also authorize the Police Training Commission and the Correctional Training Commission to include proper use of electronic control devices in the curriculum for police officers and correctional officers who are issued electronic control devices.

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Section 3 of the bills provides:

AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any electronic control device sold or purchased before the effective date of this Act.

While this provision was presumably meant to make clear that the various requirements placed on sellers and manufacturers of electronic control devices did not apply to devices sold before the effective date of the bills, it also may have the effect of allowing minors and persons convicted of crimes of violence and controlled dangerous substances offenses to possess and use electronic control devices so long as those devices were sold or purchased before the effective date of the Act.

It may be desirable to clarify the application of this provision in the next session.

Very truly yours,



Douglas F. Gansler  
Attorney General

DFG/KMR/kk

cc: The Honorable C. Anthony Muse  
The Honorable Talmadge Branch  
The Honorable John P. McDonough  
Joseph Bryce  
Karl Aro