

## **BILL ANALYSIS**

Senate Research Center

H.B. 442  
By: Phillips (Deuell)  
Criminal Justice  
5/18/2007  
Committee Report (Amended)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Penal Code currently provides that it is an offense for a person to take or attempt to take certain weapons from a peace, parole, or community supervision officer, including a stun gun. However, newer technologies have made the current definition of "stun gun" in that law obsolete.

H.B. 442 redefines "stun gun" to include newer models of the weapon.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 38.14(a)(2), Penal Code, to redefine "stun gun" to refer to an electronic device that emits an electrical charge and is designed and primarily employed to incapacitate a person or animal as set forth in this subdivision. Makes conforming deletions.

SECTION 2. Effective date: September 1, 2007.

### **SUMMARY OF COMMITTEE CHANGES**

Committee Amendment No. 1

Amends H.B. 442 (Engrossed Version), by striking SECTION 2 of the bill (page 1, line 17), and adding the following appropriately numbered SECTIONS to the bill, and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Amends Section 46.01, Penal Code, by adding Subdivision (17) to define "stun gun."

SECTION \_\_\_\_\_. Amends Section 46.03, Penal Code, by adding Subsections (j) and (k), as follows:

(j) Provides that it is a defense to prosecution under this section that the actor possessed a stun gun and was, at the time of the offense a license holder under Subchapter H (Licensed to Carry a Concealed Handgun), Chapter 411, Government Code, who engaged in the conduct after successfully completing the training described by Section 411.0207, Government Code; or a security officer registered with the Private Security Bureau of the Department of Public Safety (DPS) who engaged in the conduct after successfully completing the training described by Section 411.0207, Government Code, and while traveling to or from the actor's place of assignment or in the actual discharge of duties as a security officer.

(k) Provides that it is an exception to the application of this section that the actor possessed a stun gun and was, at the time of the offense, a peace officer, including a commissioned peace officer of a recognized state or a special investigator under Article 2.122, Code of Criminal Procedure, who was authorized by law to carry a weapon and

who engaged in the conduct after successfully completing the training described by Section 411.0207, Government Code.

SECTION \_\_\_\_\_. Amends Section 46.05, Penal Code, by amending Subsections (a) and (b) and adding Subsections (h) and (i), as follows:

(a) Provides that a person commits an offense if he intentionally or knowingly possesses, manufactures, transports, repairs, or sells a stun gun, in addition to other listed items.

(b) Updates a reference to this section to refer to Subsections (a)(1) - (9).

(h) Provides that it is a defense to prosecution under Subsection (a)(10) that the actor was, at the time of the offense a license holder under Subchapter H, Chapter 411, Government Code, who engaged in the conduct after successfully completing the training described by Section 411.0207, Government Code; or a security officer registered with the Private Security Bureau of DPS who engaged in the conduct after successfully completing the training described by Section 411.0207, Government Code, and while traveling to or from the actor's place of assignment or in the actual discharge of duties as a security officer.

(i) Provides that it is an exception to the application of Subsection (a)(10) that the actor was, at the time of the offense, a peace officer, including a commissioned peace officer of a recognized state or a special investigator under Article 2.122, Code of Criminal Procedure, who was authorized by law to carry a weapon and who engaged in the conduct after successfully completing the training described by Section 411.0207, Government Code.

SECTION \_\_\_\_\_. Amends Subchapter A, Chapter 411, Government Code, by adding Section 411.0207, as follows:

Sec. 411.0207. STUN GUN TRAINING. (a) Defines "stun gun."

(b) Requires the public safety director (director) to establish minimum standards for stun gun proficiency and to develop and make widely available throughout the state a course to teach stun gun proficiency and an examination to measure stun gun proficiency. Requires the examination to measure stun gun proficiency to require an actual demonstration by the applicant of the applicant's ability to safely and proficiently use a stun gun.

(c) Requires DPS to charge a fee for the training offered under this section, except as provided by Subsection (d).

(d) Requires the director by rule to establish minimum standards for the certification of stun gun instructors. Requires an applicant for certification as a stun gun instructor under this subsection to be a peace officer employed by DPS and to successfully complete the training offered under this section before DPS is authorized to certify the applicant as a stun gun instructor. Provides that an applicant for certification as a stun gun instructor is not required to pay a fee for the training under this section.

SECTION \_\_\_\_\_. Requires the director to adopt the rules required by Section 411.0207, Government Code, as added by this Act, not later than November 1, 2007.

SECTION \_\_\_\_\_. (a) Effective date: September 1, 2007, except as provided by Subsection (b) of this section.

(b) Effective date of the change in law made by this Act in amending Sections 46.03 and 46.05, Penal Code: March 1, 2008.

Rulemaking authority is expressly granted to the public safety director in added Section 411.0207, Government Code, of Committee Amendment No. 1.