

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Phillips

H.B. No. 442

A BILL TO BE ENTITLED

AN ACT

relating to taking or attempting to take a stun gun from a peace officer or certain other officers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 38.14(a)(2), Penal Code, is amended to read as follows:

(2) "Stun gun" means an electronic [a] device that emits an electrical charge and is designed and primarily employed to incapacitate ~~[propel darts or other projectiles attached to wires that, on contact, will deliver an electrical pulse capable of incapacitating]~~ a person or animal through:

(A) direct contact with electrodes on the device;

(B) a projection of wired probes attached to the device; or

(C) a spark or a stream of plasma or ionized gas or another conductive stream emitting from the device.

SECTION 2. This Act takes effect September 1, 2007.

FLOOR AMENDMENT NO. 1

ADOPTED

MAY 23 2007 BY: Patricia VandePutte

Lataj Shaw  
Secretary of the Senate

1 Amend H.B. No. 442 on 2<sup>nd</sup> Reading by adding the following  
2 appropriately numbered SECTIONS and renumbering the subsequent  
3 SECTIONS of the bill accordingly:

4 SECTION \_\_\_\_\_. The heading to Section 38.14, Penal Code, is  
5 amended to read as follows:

6 Sec. 38.14. TAKING OR ATTEMPTING TO TAKE WEAPON FROM PEACE  
7 OFFICER, EMPLOYEE OR OFFICIAL OF CORRECTIONAL FACILITY THAT IS  
8 OPERATED BY A COUNTY OR MUNICIPALITY, PAROLE OFFICER, OR  
9 COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENT OFFICER.

10 SECTION \_\_\_\_\_. Sections 38.14(b), (c), and (d), Penal Code,  
11 are amended to read as follows:

12 (b) A person commits an offense if the person  
13 intentionally or knowingly and with force takes or attempts to  
14 take from a peace officer, employee or official of a  
15 correctional facility that is operated by a county or  
16 municipality, parole officer, or community supervision and  
17 corrections department officer the officer's, employee's, or  
18 official's firearm, nightstick, stun gun, or personal protection  
19 chemical dispensing device with the intention of harming the  
20 officer, employee, or official or a third person.

21 (c) The actor is presumed to have known that the peace  
22 officer, employee or official of a correctional facility that is  
23 operated by a county or municipality, parole officer, or  
24 community supervision and corrections department officer was a  
25 peace officer, employee or official of a correctional facility  
26 that is operated by a county or municipality, parole officer, or  
27 community supervision and corrections department officer if:

28 (1) the officer, employee, or official was wearing a  
29 distinctive uniform or badge indicating his employment; [7] or

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1           (2) ~~if~~ the officer, employee, or official  
2 identified himself as a peace officer, employee or official of a  
3 correctional facility that is operated by a county or  
4 municipality, parole officer, or community supervision and  
5 corrections department officer.

6           (d) It is a defense to prosecution under this section that  
7 the defendant took or attempted to take the weapon from a peace  
8 officer, employee or official of a correctional facility that is  
9 operated by a county or municipality, parole officer, or  
10 community supervision and corrections department officer who was  
11 using force against the defendant or another in excess of the  
12 amount of force permitted by law.

13          SECTION \_\_\_\_\_. The change in law made by this Act applies  
14 only to an offense committed on or after the effective date of  
15 this Act. An offense committed before the effective date of this  
16 Act is governed by the law in effect at the time the offense was  
17 committed, and the former law is continued in effect for that  
18 purpose. For the purposes of this section, an offense was  
19 committed before the effective date of this Act if any element  
20 of the offense occurred before that date.

ADOPTED

COMMITTEE AMENDMENT NO. 1

BY:

*J. J. King*  
<EOH>

*Latoy Spaw*  
Secretary

Amend H.B. No. 442 by striking ~~SECTION~~ 2 of the bill (house engrossment, page 1, line 17), adding the following appropriately numbered SECTIONS to the bill, and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 46.01, Penal Code, is amended by adding Subdivision (17) to read as follows:

(17) "Stun gun" has the meaning assigned by Section 38.14.

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

(j) It is a defense to prosecution under this section that the actor possessed a stun gun and was, at the time of the offense:

(1) 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

(2) a security officer registered with the Private Security Bureau of the Department of Public Safety who engaged in the conduct:

(A) after successfully completing the training described by Section 411.0207, Government Code; and

(B) while traveling to or from the actor's place of assignment or in the actual discharge of duties as a security officer.

(k) 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 \_\_\_\_\_. Section 46.05, Penal Code, is amended by amending Subsections (a) and (b) and adding Subsections (h) and (i) to read as follows:

(a) A person commits an offense if he intentionally or knowingly possesses, manufactures, transports, repairs, or sells:

- (1) an explosive weapon;
- (2) a machine gun;
- (3) a short-barrel firearm;
- (4) a firearm silencer;
- (5) a switchblade knife;
- (6) knuckles;
- (7) armor-piercing ammunition;
- (8) a chemical dispensing device; ~~[or]~~
- (9) a zip gun; or
- (10) a stun gun.

(b) It is a defense to prosecution under Subsections (a) (1) - (9) ~~[this section]~~ that the actor's conduct was

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incidental to the performance of official duty by the armed forces or national guard, a governmental law enforcement agency, or a correctional facility.

(h) It is a defense to prosecution under Subsection (a)(10) that the actor was, at the time of the offense:

(1) 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

(2) a security officer registered with the Private Security Bureau of the Department of Public Safety who engaged in the conduct:

(A) after successfully completing the training described by Section 411.0207, Government Code; and

(B) while traveling to or from the actor's place of assignment or in the actual discharge of duties as a security officer.

(i) 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

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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 \_\_\_\_\_. Subchapter A, Chapter 411, Government Code, is amended by adding Section 411.0207 to read as follows:

Sec. 411.0207. STUN GUN TRAINING. (a) In this section, "stun gun" has the meaning assigned by Section 46.01, Penal Code.

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

(c) Except as provided by Subsection (d), the department shall charge a fee for the training offered under this section.

(d) The director by rule shall establish minimum standards for the certification of stun gun instructors. An applicant for certification as a stun gun instructor under this subsection must be a peace officer employed by the department and must

successfully complete the training offered under this section before the department may certify the applicant as a stun gun instructor. An applicant for certification as a stun gun instructor is not required to pay a fee for the training under this section.

SECTION \_\_\_\_\_. The public safety director of the Department of Public Safety shall adopt the rules required by Section 411.0207, Government Code, as added by this Act, not later than November 1, 2007.

SECTION \_\_\_\_\_. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2007.

(b) The change in law made by this Act in amending Sections 46.03 and 46.05, Penal Code, takes effect March 1, 2008.



LEGISLATIVE BUDGET BOARD  
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 19, 2007

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB442** by Phillips (Relating to taking or attempting to take a stun gun from a peace officer or certain other officers.), **Committee Report 2nd House, As Amended**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB442, Committee Report 2nd House, As Amended: a positive impact of \$6,020,550 through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$3,112,275
2009	\$2,908,275
2010	\$3,112,275
2011	\$2,908,275
2012	\$3,112,275

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/ (Loss) from GENERAL REVENUE FUND 1	Probable Savings/(Cost) from STATE HIGHWAY FUND 6	Change in Number of State Employees from FY 2007
2008	\$3,112,275	(\$1,646,399)	18.0
2009	\$2,908,275	(\$830,974)	18.0
2010	\$3,112,275	(\$978,286)	18.0
2011	\$2,908,275	(\$841,900)	18.0
2012	\$3,112,275	(\$1,018,138)	18.0

Fiscal Analysis

The bill would amend the Penal Code and Government Code relating to the taking or attempting to take a stun gun from a peace officer or certain other officers.

The bill would amend Penal Code, Section 38 by further defining the term "stun gun". The bill would amend Penal Code, Section 46 which defines when a defense to prosecution can exist relating to a stun gun a then provides exemptions to the revised section. The bill would add the offense of possessing, manufacturing, transporting, repairing, or selling a stun gun. The bill requires the Department of Public Safety (DPS) to establish a stun gun training proficiency class. The bill states DPS shall charge a fee for the training class. The bill states the rules of the training course must be adopted by

November 1, 2007 and the changes to Penal Code, Sections 46.03 and 46.05 take effect March 1, 2008.

## **Methodology**

DPS states that records or statistics indicating how many current concealed handgun license holders, private security officers, citizens, or any other group might be interested in owning a stun gun or applying for a stun gun license are not available. DPS' Regulatory Licensing Service used assumptions based on current handgun license holder statistics to determine license and revenue collection estimates. DPS estimates a total of 38,777 applications for stun gun licenses each year based on a combination of estimates for current and new concealed handgun license holders, current and new security officer licenses, and individual stun gun owners who would require a license. DPS assumes they would charge \$75 per license for stun gun application totaling \$2,908,275 in General Revenue each year ( $\$75 \times 38,777$  stun gun applications). In addition, DPS assumes they would charge \$100 per license for stun gun instructor applications that are valid for two years totaling an additional \$204,000 in General Revenue every other year ( $\$100 \times 2,040$  instructor applications). DPS estimates total annual revenue to be \$3,112,275 in General Revenue ( $\$2,908,275 + \$204,000$ ) during fiscal years 2008, 2010 and 2012 allowing for instructor recertifications and total annual revenue without instructor recertifications is estimated to be \$2,908,275 in General Revenue for fiscal years 2009 and 2011.

This analysis assumes that an additional 18 FTEs per year would be required to implement the provisions of the bill, including: 2 commissioned officers (1 sergeant and 1 lieutenant) to staff the stun gun license training academy to educate both potential license holders and future license trainers and 16 support staff FTEs to process and archive application materials, input registration information into the database, and provide administrative and legal support to the officers and the agency. The cost estimate also includes the necessary police equipment (including state travel costs).

DPS estimates that additional office space would be required to accommodate the additional personnel. This analysis assumes estimated lease costs of \$75,582 per year, which is also included in the cost estimate. Other operating expenses such as maintenance and repair of office machines and computer equipment, computer supplies, non-capital computer equipment, and furniture and equipment, are also included in the cost estimate.

The Department of Criminal Justice anticipates no significant fiscal impact to the agency.

## **Technology**

This analysis includes technology costs estimated for computers, printers, and enterprise software agreements totaling \$328,597 in 2008. Fiscal years 2009 through 2012 have a technology impact of \$2,682 per year for continued enterprise software agreements.

## **Local Government Impact**

There would be costs to local law enforcement agencies to arrest, process, house, and prosecute the offenders of the newly established offense, depending on the number of offenders. However, some of these costs could be offset by fines and court costs collected from the offender.

**Source Agencies:** 405 Department of Public Safety, 696 Department of Criminal Justice

**LBB Staff:** JOB, LG, ES, GG, KJG

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**May 16, 2007**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB442** by Phillips (Relating to taking or attempting to take a stun gun from a peace officer or certain other officers.), **As Engrossed**

<b>No fiscal implication to the State is anticipated.</b>
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**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:**

**LBB Staff:** JOB, ES, DB

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**April 2, 2007**

**TO:** Honorable Joe Driver, Chair, House Committee on Law Enforcement

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE:** **HB442** by Phillips (Relating to taking or attempting to take a stun gun from a peace officer or certain other officers. ), **Committee Report 1st House, Substituted**

<b>No fiscal implication to the State is anticipated.</b>
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**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:**

**LBB Staff:** JOB, ES, DB

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**March 10, 2007**

**TO:** Honorable Joe Driver, Chair, House Committee on Law Enforcement

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB442** by Phillips (Relating to taking or attempting to take a Taser or similar device from a peace officer or certain other officers.), **As Introduced**

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill would amend Section 38.14(a)(2), Penal Code, to add "taser or similar device" to the definition of "stun gun." This change would have an insignificant fiscal impact on training provided to law enforcement officers.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 405 Department of Public Safety

**LBB Staff:** JOB, ES, DB

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**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**80TH LEGISLATIVE REGULAR SESSION**

**May 19, 2007**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB442** by Phillips (Relating to taking or attempting to take a stun gun from a peace officer or certain other officers.), **Committee Report 2nd House, As Amended**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

**Source Agencies:**

**LBB Staff:** JOB, TM

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**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**80TH LEGISLATIVE REGULAR SESSION**

**May 16, 2007**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB442** by Phillips (Relating to taking or attempting to take a stun gun from a peace officer or certain other officers.), **As Engrossed**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

**Source Agencies:**

**LBB Staff:** JOB, TM