

House Bill 442
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

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.

No equivalent provision.

SENATE VERSION

SECTION __. The heading to Section 38.14, Penal Code, is amended to read as follows:

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

Same as House version.

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

(b) A person commits an offense if the person intentionally or knowingly and with force takes or

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attempts to take from a peace officer, employee or official of a correctional facility that is operated by a county or municipality, parole officer, or community supervision and corrections department officer the officer's, employee's, or official's firearm, nightstick, stun gun, or personal protection chemical dispensing device with the intention of harming the officer, employee, or official or a third person.

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

(1) the officer, employee, or official was wearing a distinctive uniform or badge indicating his employment; or

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

(d) It is a defense to prosecution under this section that the defendant took or attempted to take the weapon from a peace officer, employee or official of a correctional facility that is operated by a county or municipality, parole officer, or community supervision and corrections department officer who was using force against the

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defendant or another in excess of the amount of force permitted by law.

No equivalent provision.

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

No equivalent provision.

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.

No equivalent provision.

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

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(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.

No equivalent provision.

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;

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(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 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 Criminal Procedure, who was authorized by law to carry a weapon and who engaged in the

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

No equivalent provision.

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.

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No equivalent provision.

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 2. This Act takes effect September 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.