

SUBJECT: Handguns for community supervision officers and certain retired officers

COMMITTEE: Public Safety — favorable, with amendment

VOTE: 7 ayes — Oakley, Bailey, Driver, Edwards, Luna, Madden, McCoulskey

0 nays

2 absent — Allen, Carter

SENATE VOTE: On final passage, April 18 — 31-0

WITNESSES: None

BACKGROUND: Penal Code Chapter 46 makes it a Class A misdemeanor, maximum punishment of one year in jail and a \$4,000 fine, to carry a handgun, illegal knife or club outside one's home or business. However, sec. 46.02 of the code creates an exception (defense to prosecution) for members of the armed forces or state military, licensed peace officers, security officers, persons engaging in hunting or fishing and travelers.

Community supervision officers supervise offenders who are at liberty in the community but are under certain reporting requirements.

DIGEST: SB 254, as amended, would amend Penal Code sec. 46.02 to permit carrying of a handgun, illegal knife or club by certain community supervision officers and certain retired and special retired peace officers.

Community supervision officers. A community supervision officer could carry a handgun, illegal knife or club with written authorization from the director of the community supervision and corrections department and the judges participating in the supervision and administration of the department. In addition, the community supervision officers would have to earn a certificate of firearms proficiency from the Texas Commission of Law Enforcement Officer Standards (TCLEOSE).

TCLEOSE would have to adopt a memorandum of understanding with the community justice division of the Texas Department of Criminal Justice,

establishing their respective responsibilities in developing a basic training program in the use of firearms by community supervision officers by January 1, 1996. The memorandum would establish a program that would provide instruction in the following:

- the legal limitations on the use of firearms and on the powers and authority of supervision officers;
- range firing and procedure;
- firearms safety and maintenance; and
- other topics determined by TCLEOSE and the division for the responsible use of firearms by supervision officers.

TCLEOSE would administer the training program and would issue a certificate of firearms proficiency to each supervision officer who successfully completed the program. TCLEOSE would have authority to establish reasonable fees to conduct the programs.

Retired peace officers. SB 254 would also amend sec. 46.02 to allow a retired peace officer to carry a handgun, illegal knife or club if holding a certificate issued according to this section.

The Texas Department of Public Safety (DPS) or a local law enforcement agency would allow an honorably retired commissioned officer of the department or agency an annual opportunity to demonstrate weapons proficiency as set forth by TCLEOSE rule.

The retired officer would have the opportunity to demonstrate weapons proficiency only if the chief law enforcement officer of the agency from which the officer retired provided the officer with a written statement indicating that the officer's license was not ever revoked or suspended and that the officer has no psychological or physical disability that would interfere with the officer's proper handling of a gun.

If the officer satisfactorily demonstrated weapons proficiency, the DPS or agency would have to issue a certificate of proficiency to the retired officer.

The DPS or agency would have to maintain records of any retired officer who holds such a certificate. The certificate would expire one year after issuance. TCLEOSE would have to adopt rules for the administration of this section and would set fees that DPS or an agency could collect to recover expenses incurred under this section.

Special retired peace officers. A special retired peace officer commissioned under Government Code sec. 415.067 would be considered a peace officer under Code of Criminal Procedure art. 2.12. A law enforcement agency could appoint as a special retired peace officer an honorably retired officer of the DPS or a local law enforcement agency with 15 years of service who satisfies the weapons proficiency requirement.

The special retired peace officer would not be entitled to compensation for services as a special retired peace officer. The appointing agency could revoke a special retired peace officer commission at any time for cause.

The special retired peace officer would be subject to the orders of the appointing agency, the governor, and the agency from which the officer retired to the same extent as other law enforcement officers, but could not arrest a person for a violation of the Uniform Act Regulating Traffic on Highways.

Before issuing a special retired peace officer commission, the officer would need to enter a TCLEOSE approved surety bond of \$2,500 that indemnifies all persons against damages resulting from an unlawful act of the officer. A special retired peace officer commission would expire January 1 of the first odd-numbered year after appointment, but would be automatically renewed on resubmission of a bond.

The bill would take effect September 1, 1995.

**SUPPORTERS
SAY:**

Community supervision officers deal with criminals every day, more often than most police officers and armed security guards. Overcrowding in the state's prisons has meant that more and more violent criminals are placed on community supervision. It is not surprising that many community supervision officers fear for their lives, especially when they must make home visits.

In fact, community supervision officers nationwide are twice as likely to be assaulted than the average person. This is not surprising considering that many supervision officers must make home visits after dark in crime-ridden areas of town because a day visit would disrupt the person's work schedule.

Community supervision officers currently can carry stun guns, but these will not work on someone who is extremely enraged or under the influence of drugs or alcohol. In addition, the stun gun only works at very close range. It would be quite easy to take a stun gun away from an officer and use it against the officer. If handgun licensing is generally authorized, officers would, of course, have the same right to carry as other citizens. But a special exemption, similar to that for peace officers, would be sound policy.

SB 254 would simply give the state's community supervision officers the same rights of self-defense as community supervision officers in most other states. The bill contains strict training requirements, and officers would not be allowed to carry a gun without written authorization and supervision from their superiors.

A community supervision officer would not be required to carry a handgun; the bill is permissive, not mandatory. In addition, the fiscal note indicates that because the officers would be charged for the training and administration necessary, TCLEOSE and the agencies involved would fully recover their costs.

Allowing retired officers to carry a weapon and allowing the appointment and 2.12 Code of Criminal Procedure peace officer status of certain retired officers would be beneficial to the state and to local communities. An appointed special retired officer would need to have at least 15 years of service, and that experience would be an invaluable asset to the appointing agency. Moreover, the agency would not need to pay for the services of the retired officer. In other words, SB 254 would allow communities to have experienced additional officers at no cost to them.

**OPPONENTS
SAY:**

Allowing community supervision officers to carry handguns would present a number of hazards to the public and to the officers. Supervision officers carrying guns might be more inclined to take risks they might not otherwise

take, which could lead to an officer being overcome by a criminal and shot with his or her own gun.

The bill would create new liability problems for the state. If an officer was disarmed by a violent criminal, the state could be liable for any subsequent shooting involving the gun. The state could also be liable for any wrongful death that resulted from an overzealous supervision officer accidentally killing an innocent bystander.

Community supervision officers are not police officers. Police officers are highly trained in the use of deadly force and are able to avoid the type of problems that threaten public safety and increase the state's liability. Although this bill does not specify the amount of training that supervision officers would have to undergo, the training would surely not approach the extensive training required of police officers.

NOTES:

The committee amendment would provide that a community supervision officer would need *written* authorization to carry a handgun.

SB 60 by Patterson, allowing DPS to grant licenses to carry a concealed handgun, was sent to the governor May 18, 1995. It contains certain special provisions related to retired peace officers.