

1 HB462  
2 90514-2  
3 By Representatives Keahey and Guin  
4 RFD: Judiciary  
5 First Read: 14-FEB-08

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8 SYNOPSIS: Under existing law, when the term  
9 "dangerous instrument" is used in the Alabama  
10 Criminal Code the term does not specifically  
11 include an electronic stun gun.

12 This bill would define the term "electronic  
13 stun weapon," and further define it as a dangerous  
14 instrument so that when the term dangerous  
15 instrument is used anywhere in the Alabama Criminal  
16 Code it would include an electronic stun weapon.

17 Under existing law, it is not a crime for a  
18 person under the age of 18 to possess an electronic  
19 stun gun or for another person to provide by any  
20 means an electronic stun gun to a person under 18  
21 years of age.

22 This bill would prohibit a person less than  
23 18 years of age from possessing an electronic stun  
24 weapon.

25 This bill would also prohibit a person from  
26 selling, bartering, leasing, giving, renting, or

1 otherwise furnishing an electronic stun weapon to a  
2 person who is less than 18 years of age.

3 Under existing law, it is not a specific  
4 crime to use a stun gun in the commission of a  
5 criminal offense.

6 This bill would provide that the use of an  
7 electronic stun weapon in the commission of a crime  
8 is a crime and that the use of such a weapon  
9 against a law enforcement officer while the law  
10 enforcement officer is performing his or her  
11 official duties is a crime.

12 This bill would provide for criminal  
13 penalties.

14 Amendment 621 of the Constitution of Alabama  
15 of 1901, now appearing as Section 111.05 of the  
16 Official Recompilation of the Constitution of  
17 Alabama of 1901, as amended, prohibits a general  
18 law whose purpose or effect would be to require a  
19 new or increased expenditure of local funds from  
20 becoming effective with regard to a local  
21 governmental entity without enactment by a 2/3 vote  
22 unless: it comes within one of a number of  
23 specified exceptions; it is approved by the  
24 affected entity; or the Legislature appropriates  
25 funds, or provides a local source of revenue, to  
26 the entity for the purpose.

1                   The purpose or effect of this bill would be  
2                   to require a new or increased expenditure of local  
3                   funds within the meaning of the amendment. However,  
4                   the bill does not require approval of a local  
5                   governmental entity or enactment by a 2/3 vote to  
6                   become effective because it comes within one of the  
7                   specified exceptions contained in the amendment.

8  
9                   A BILL  
10                  TO BE ENTITLED  
11                  AN ACT

12  
13                  To amend Section 13A-1-2, Code of Alabama 1975,  
14                  defining certain terms; to define the term "electronic stun  
15                  weapon"; to create a new crime regarding the possession and  
16                  use of electronic stun weapons; to prohibit a person less than  
17                  18 years of age from possessing an electronic stun weapon; to  
18                  prohibit a person from selling, bartering, leasing, giving,  
19                  renting, or otherwise furnishing an electronic stun weapon to  
20                  a person who is less than 18 years of age; to provide that the  
21                  use of an electronic stun weapon during the commission of a  
22                  crime or against a law enforcement officer is a crime; to  
23                  provide for criminal penalties; and in connection therewith  
24                  would have as its purpose or effect the requirement of a new  
25                  or increased expenditure of local funds within the meaning of  
26                  Amendment 621 of the Constitution of Alabama of 1901, now

1 appearing as Section 111.05 of the Official Recompilation of  
2 the Constitution of Alabama of 1901, as amended.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 13A-1-2, Code of Alabama 1975, is  
5 amended to read as follows:

6 "§13A-1-2.

7 "Unless different meanings are expressly specified  
8 in subsequent provisions of this title, the following terms  
9 shall have the following meanings:

10 "(1) BOOBY TRAP. Any concealed or camouflaged device  
11 designed to cause bodily injury when triggered by any action  
12 of a person making contact with the device. This term includes  
13 guns, ammunition, or explosive devices attached to trip wires  
14 or other triggering mechanisms, sharpened stakes, nails,  
15 spikes, electrical devices, lines or wires with hooks  
16 attached, and devices for the production of toxic fumes or  
17 gases.

18 "(2) BURDEN OF INJECTING THE ISSUE. The term means  
19 that the defendant must offer some competent evidence relating  
20 to all matters subject to the burden, except that the  
21 defendant may rely upon evidence presented by the prosecution  
22 in meeting the burden.

23 "(3) CLANDESTINE LABORATORY OPERATION. Any of the  
24 following:

25 "a. Purchase or procurement of chemicals, supplies,  
26 equipment, or laboratory location for the unlawful manufacture  
27 of controlled substances.

1            "b. Transportation or arranging for the  
2 transportation of chemicals, supplies, or equipment for the  
3 unlawful manufacture of controlled substances.

4            "c. Setting up of equipment or supplies in  
5 preparation for the unlawful manufacture of controlled  
6 substances.

7            "d. Distribution or disposal of chemicals,  
8 equipment, supplies, or products used in or produced by the  
9 unlawful manufacture of controlled substances.

10           " (4) CRIME. A misdemeanor or a felony.

11           " (5) DANGEROUS INSTRUMENT. Any instrument, article,  
12 or substance which, under the circumstances in which it is  
13 used, attempted to be used, or threatened to be used, is  
14 highly capable of causing death or serious physical injury.  
15 The term includes a "vehicle," as that term is defined in  
16 subdivision ~~(15)~~ (16), and "electronic stun weapon" as that  
17 term is defined in subdivision (8).

18           " (6) DEADLY PHYSICAL FORCE. Physical force which,  
19 under the circumstances in which it is used, is readily  
20 capable of causing death or serious physical injury.

21           " (7) DEADLY WEAPON. A firearm or anything manifestly  
22 designed, made, or adapted for the purposes of inflicting  
23 death or serious physical injury. The term includes, but is  
24 not limited to, a pistol, rifle, or shotgun; or a switch-blade  
25 knife, gravity knife, stiletto, sword, or dagger; or any  
26 billy, black-jack, bludgeon, or metal knuckles.

1                   "~~(8)~~ (9) ELECTRONIC STUN WEAPON. A device created or  
2                   designed to be used as a weapon that is capable of  
3                   incapacitating a person by an electrical charge.

4                   "~~(8)~~ (9) FELONY. An offense for which a sentence to  
5                   a term of imprisonment in excess of one year is authorized by  
6                   this title.

7                   "~~(9)~~ (10) MISDEMEANOR. An offense for which a  
8                   sentence to a term of imprisonment not in excess of one year  
9                   may be imposed.

10                  "~~(10)~~ (11) OFFENSE. Conduct for which a sentence to  
11                  a term of imprisonment, or the death penalty, or to a fine is  
12                  provided by any law of this state or by any law, local law, or  
13                  ordinance of a political subdivision of this state.

14                  "~~(11)~~ (12) PERSON. A human being, and where  
15                  appropriate, a public or private corporation, an  
16                  unincorporated association, a partnership, a government, or a  
17                  governmental instrumentality.

18                  "~~(12)~~ (13) PHYSICAL INJURY. Impairment of physical  
19                  condition or substantial pain.

20                  "~~(13)~~ (14) POSSESS. To have physical possession or  
21                  otherwise to exercise dominion or control over tangible  
22                  property.

23                  "~~(14)~~ (15) SERIOUS PHYSICAL INJURY. Physical injury  
24                  which creates a substantial risk of death, or which causes  
25                  serious and protracted disfigurement, protracted impairment of  
26                  health, or protracted loss or impairment of the function of  
27                  any bodily organ.

1           "~~(15)~~ (16) VEHICLE. Any "propelled vehicle," as  
2 defined in subdivision (9) of Section 13A-8-1. The term  
3 includes any propelled device by which any person or property  
4 is transported on land, water, or in the air, and includes  
5 motor vehicles, motorcycles, motorboats, and aircraft, and any  
6 vessel, whether propelled by machinery or not.

7           "~~(16)~~ (17) VIOLATION. An offense for which a  
8 sentence to a term of imprisonment not in excess of 30 days  
9 may be imposed."

10           Section 2. (a) No person less than 18 years of age  
11 shall purchase or possess an electronic stun weapon.

12           (b) A violation of this section shall constitute a  
13 Class B misdemeanor.

14           Section 3. (a) No person shall sell, barter, lease,  
15 give, rent, or otherwise furnish an electronic stun weapon to  
16 any person less than 18 years of age.

17           (b) A violation of this section shall constitute a  
18 Class A misdemeanor.

19           Section 4. (a) A person commits the crime of  
20 criminal use of an electronic stun weapon if the person uses  
21 the weapon against another person during the commission of a  
22 crime or if the person uses the weapon against a law  
23 enforcement officer while the law enforcement officer is  
24 performing his or her official duties.

25           (b) A violation of this section shall constitute a  
26 Class C felony.

1           Section 5. This act shall not be construed to repeal  
2 other criminal laws. Whenever conduct proscribed by any  
3 provision of this act is also proscribed by any other  
4 provision of law, the provision which carries the more serious  
5 penalty shall be applied.

6           Section 6. Although this bill would have as its  
7 purpose or effect the requirement of a new or increased  
8 expenditure of local funds, the bill is excluded from further  
9 requirements and application under Amendment 621, now  
10 appearing as Section 111.05 of the Official Recompilation of  
11 the Constitution of Alabama of 1901, as amended, because the  
12 bill defines a new crime or amends the definition of an  
13 existing crime.

14           Section 7. This act shall become effective on the  
15 first day of the third month following its passage and  
16 approval by the Governor, or its otherwise becoming law.