

SUBJECT: Adding tire deflation devices to the list of prohibited weapons

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Gallego, Burkett, Carter, Christian, Zedler

0 nays

4 absent — Hartnett, Aliseda, Y. Davis, Rodriguez

SENATE VOTE: On final passage, April, 11 — 31-0

WITNESSES: (*On House companion bill, HB 47:*)

For — Gary Chandler, Texas Department of Public Safety Officers Association; (*Registered, but did not testify:* Lon Craft, Texas Municipal Police Association; Marsha Solana, Catholic Bishops of Texas; Elizabeth Barnes, Jim Barnes, Fern McClaugherty, Virginia Townsend, O.W.L.S., Objective Watchers of the Legal System; Mary Sue Molnar)

Against — None

On — Steven McCraw, Texas Department of Public Safety

BACKGROUND: Penal Code, sec. 46.05 makes it a criminal offense to intentionally or knowingly possess, manufacture, transport, repair, or sell nine types of prohibited weapons. The offense is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the weapon is an explosive weapon, a machine gun, a short-barrel firearm, a firearm silencer, armor-piercing ammunition, a chemical dispensing device, or a zip gun. The offense is class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) if the weapon is a switchblade knife or knuckles.

DIGEST: SB 1416 would add tire deflation devices to the list of prohibited weapons that it would be a criminal offense to possess, manufacture, transport, repair, or sell. The offense would be a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000). A tire deflation device would be defined as a device, including a caltrop or

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spike strip that, when driven over, impeded or stopped a vehicle's movement by puncturing one or more tires. It would not include a traffic control device designed to puncture tires when driven over in a specific direction and that had a clearly visible sign posted nearby that prohibited entry or warned drivers of the device.

The bill would take effect September 1, 2011.

**SUPPORTERS
SAY:**

SB 1416 is needed to deal with an increasing number of persons trying to evade law enforcement officers by throwing spikes onto the road to cause flat tires, especially along the border in South Texas. By one count, the use of spikes has grown in an area of the border from two in 2008 to 19 in 2010. While these tire deflation devices are a threat to law enforcement officers and the public, the possession of them is not a criminal offense.

SB 1416 would address this problem by adding tire deflation devices to the list of weapons of which possession, manufacturer, transport, repair, and selling was prohibited. These devices are analogous to the other weapons currently listed in the Penal Code. The prohibition on possessing these devices would be warranted because of the potential harm to law enforcement by tires being damaged during a pursuit and the potential harm to anything that moves on the road, such as drivers of cars, school buses, and more. The devices also have been used to harm persons on foot and on horseback. It is important to make possessing them an offense to help deter their use before harm is done.

SB 1416 would punish appropriately the possession, manufacture, transport, repair, or selling of spikes as a state jail felony. The state jail felony punishment is designed for crimes more serious than a misdemeanor, but more appropriately punished by incarceration in a facility a step away from a state prison. SB 1416 would use a state jail felony to place the punishment between the more serious third-degree felony punishment for other types of prohibited weapons and the Class A misdemeanor punishment for knuckles and switchblades.

SB 1416 would allow the same defense to prosecution for tire deflation devices that is in current law for situations involving the armed forces, law enforcement agencies, and correctional facilities. The bill would define the devices so as not to include one directional spike strips used at rental car facilities and other places.

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- OPPONENTS SAY:** The possession, manufacture, transport, repair, or selling of spikes and other tire deflation devices would be more appropriately punished as a Class A misdemeanor, along with the possession of knuckles and switchblades. Tire deflation devices are designed to damage property, not harm persons, like machine guns, explosive weapons, and other weapons the possession of which currently is a felony.
- NOTES:** The companion bill, HB 47 by Peña, was considered in a public hearing by the House Criminal Jurisprudence Committee on April 5 and left pending.