

By: Wu

H.B. No. 1735

A BILL TO BE ENTITLED

AN ACT

relating to criminal penalties for possession offenses under the Texas Controlled Substances Act.

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

ARTICLE 1. POSSESSION OFFENSE PENALTIES

SECTION 1.01. Section 481.115(c), Health and Safety Code, is amended to read as follows:

(c) An offense under Subsection (a) is a felony of the third degree with a maximum term of imprisonment of five years if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, one gram or more [~~but less than four grams~~].

SECTION 1.02. Section 481.1151(b), Health and Safety Code, is amended to read as follows:

(b) An offense under this section is:

(1) a state jail felony if the number of abuse units of the controlled substance is fewer than 20; and

(2) a felony of the third degree with a maximum term of imprisonment of five years if the number of abuse units of the controlled substance is 20 or more [~~but fewer than 80,~~

~~(3) a felony of the second degree if the number of abuse units of the controlled substance is 80 or more but fewer than 4,000,~~

~~(4) a felony of the first degree if the number of~~

1 ~~abuse units of the controlled substance is 4,000 or more but fewer~~
2 ~~than 8,000; and~~
3 ~~[(5) punishable by imprisonment in the Texas~~
4 ~~Department of Criminal Justice for life or for a term of not more~~
5 ~~than 99 years or less than 15 years and a fine not to exceed~~
6 ~~\$250,000, if the number of abuse units of the controlled substance~~
7 ~~is 8,000 or more].~~

8 SECTION 1.03. Section 481.116(c), Health and Safety Code,
9 is amended to read as follows:

10 (c) An offense under Subsection (a) is a felony of the third
11 degree with a maximum term of imprisonment of five years if the
12 amount of the controlled substance possessed is, by aggregate
13 weight, including adulterants or dilutants, one gram or more [~~but~~
14 ~~less than four grams~~].

15 SECTION 1.04. Section 481.1161(b), Health and Safety Code,
16 is amended to read as follows:

17 (b) An offense under this section is:

18 (1) a Class B misdemeanor if the amount of the
19 controlled substance possessed is, by aggregate weight, including
20 adulterants or dilutants, two ounces or less;

21 (2) a Class A misdemeanor if the amount of the
22 controlled substance possessed is, by aggregate weight, including
23 adulterants or dilutants, four ounces or less but more than two
24 ounces;

25 (3) a state jail felony if the amount of the controlled
26 substance possessed is, by aggregate weight, including adulterants
27 or dilutants, five pounds or less but more than four ounces; and

1 (4) a felony of the third degree with a maximum term of
2 imprisonment of five years if the amount of the controlled
3 substance possessed is, by aggregate weight, including adulterants
4 or dilutants, [~~50 pounds or less but~~] more than 5 pounds[+]

5 ~~[(5) a felony of the second degree if the amount of the~~
6 ~~controlled substance possessed is, by aggregate weight, including~~
7 ~~adulterants or dilutants, 2,000 pounds or less but more than 50~~
8 ~~pounds; and~~

9 ~~[(6) punishable by imprisonment in the Texas~~
10 ~~Department of Criminal Justice for life or for a term of not more~~
11 ~~than 99 years or less than 5 years, and a fine not to exceed \$50,000,~~
12 ~~if the amount of the controlled substance possessed is, by~~
13 ~~aggregate weight, including adulterants or dilutants, more than~~
14 ~~2,000 pounds].~~

15 SECTION 1.05. Section 481.117(c), Health and Safety Code,
16 is amended to read as follows:

17 (c) An offense under Subsection (a) is a felony of the third
18 degree with a maximum term of imprisonment of five years if the
19 amount of the controlled substance possessed is, by aggregate
20 weight, including adulterants or dilutants, 28 grams or more [~~but~~
21 ~~less than 200 grams~~].

22 SECTION 1.06. Section 481.118(c), Health and Safety Code,
23 is amended to read as follows:

24 (c) An offense under Subsection (a) is a felony of the third
25 degree with a maximum term of imprisonment of five years if the
26 amount of the controlled substance possessed is, by aggregate
27 weight, including adulterants or dilutants, 28 grams or more [~~but~~

1 ~~less than 200 grams~~].

2 SECTION 1.07. Section 481.121(b), Health and Safety Code,
3 is amended to read as follows:

4 (b) An offense under Subsection (a) is:

5 (1) a Class B misdemeanor if the amount of marihuana
6 possessed is two ounces or less;

7 (2) a Class A misdemeanor if the amount of marihuana
8 possessed is four ounces or less but more than two ounces;

9 (3) a state jail felony if the amount of marihuana
10 possessed is five pounds or less but more than four ounces; and

11 (4) a felony of the third degree with a maximum term of
12 imprisonment of five years if the amount of marihuana possessed is
13 [~~50 pounds or less but~~] more than 5 pounds[~~+~~

14 [~~(5) a felony of the second degree if the amount of~~
15 ~~marihuana possessed is 2,000 pounds or less but more than 50 pounds,~~
16 ~~and~~

17 [~~(6) punishable by imprisonment in the Texas~~
18 ~~Department of Criminal Justice for life or for a term of not more~~
19 ~~than 99 years or less than 5 years, and a fine not to exceed \$50,000,~~
20 ~~if the amount of marihuana possessed is more than 2,000 pounds].~~

21 SECTION 1.08. Sections 481.115(d), (e), and (f), 481.116(d)
22 and (e), 481.117(d) and (e), 481.118(d) and (e), and 481.134(c),
23 (d), (e), (f), and (g), Health and Safety Code, are repealed.

24 ARTICLE 2. PRIOR CONVICTIONS

25 SECTION 2.01. Subchapter D, Chapter 12, Penal Code, is
26 amended by adding Section 12.495 to read as follows:

27 Sec. 12.495. DRUG POSSESSION OFFENSES NOT SUBJECT TO

1 ENHANCEMENT. Notwithstanding any other provision of this
2 subchapter:

3 (1) a previous conviction for an offense under Section
4 481.115, 481.1151, 481.116, 481.1161, 481.117, 481.118,
5 481.119(b), 481.121, or 481.125(a), Health and Safety Code, may not
6 be used for enhancement purposes under this subchapter; and

7 (2) a previous conviction for any offense may not be
8 used for enhancing an offense under Section 481.115, 481.1151,
9 481.116, 481.1161, 481.117, 481.118, 481.119(b), 481.121, or
10 481.125(a), Health and Safety Code, under any provision of this
11 subchapter.

12 ARTICLE 3. CONFORMING CHANGES

13 SECTION 3.01. Article 42A.054(a), Code of Criminal
14 Procedure, is amended to read as follows:

15 (a) Article 42A.053 does not apply to a defendant adjudged
16 guilty of an offense under:

17 (1) Section 15.03, Penal Code, if the offense is
18 punishable as a felony of the first degree;

19 (2) Section 19.02, Penal Code (Murder);

20 (3) Section 19.03, Penal Code (Capital Murder);

21 (4) Section 20.04, Penal Code (Aggravated
22 Kidnapping);

23 (5) Section 20A.02, Penal Code (Trafficking of
24 Persons);

25 (6) Section 20A.03, Penal Code (Continuous
26 Trafficking of Persons);

27 (7) Section 21.11, Penal Code (Indecency with a

1 Child);

2 (8) Section 22.011, Penal Code (Sexual Assault);

3 (9) Section 22.021, Penal Code (Aggravated Sexual
4 Assault);

5 (10) Section 22.04(a)(1), Penal Code (Injury to a
6 Child, Elderly Individual, or Disabled Individual), if:

7 (A) the offense is punishable as a felony of the
8 first degree; and

9 (B) the victim of the offense is a child;

10 (11) Section 29.03, Penal Code (Aggravated Robbery);

11 (12) Section 30.02, Penal Code (Burglary), if:

12 (A) the offense is punishable under Subsection
13 (d) of that section; and

14 (B) the actor committed the offense with the
15 intent to commit a felony under Section 21.02, 21.11, 22.011,
16 22.021, or 25.02, Penal Code;

17 (13) Section 43.04, Penal Code (Aggravated Promotion
18 of Prostitution);

19 (14) Section 43.05, Penal Code (Compelling
20 Prostitution);

21 (15) Section 43.25, Penal Code (Sexual Performance by
22 a Child); or

23 (16) Chapter 481, Health and Safety Code, for which
24 punishment is increased under ~~[~~

25 ~~(A)]~~ Section 481.140 of that code (Use of Child
26 in Commission of Offense) ~~[, or~~

27 ~~(B) Section 481.134(c), (d), (e), or (f) of that~~

1 ~~code (Drug-free Zones) if it is shown that the defendant has been~~
2 ~~previously convicted of an offense for which punishment was~~
3 ~~increased under any of those subsections].~~

4 SECTION 3.02. Article 42A.056, Code of Criminal Procedure,
5 is amended to read as follows:

6 Art. 42A.056. LIMITATION ON JURY-RECOMMENDED COMMUNITY
7 SUPERVISION. A defendant is not eligible for community supervision
8 under Article 42A.055 if the defendant:

9 (1) is sentenced to a term of imprisonment that
10 exceeds 10 years;

11 (2) is convicted of a state jail felony for which
12 suspension of the imposition of the sentence occurs automatically
13 under Article 42A.551;

14 (3) is adjudged guilty of an offense under Section
15 19.02, Penal Code;

16 (4) is convicted of an offense under Section 21.11,
17 22.011, or 22.021, Penal Code, if the victim of the offense was
18 younger than 14 years of age at the time the offense was committed;

19 (5) is convicted of an offense under Section 20.04,
20 Penal Code, if:

21 (A) the victim of the offense was younger than 14
22 years of age at the time the offense was committed; and

23 (B) the actor committed the offense with the
24 intent to violate or abuse the victim sexually; or

25 (6) is convicted of an offense under Section 20A.02,
26 20A.03, 43.04, 43.05, or 43.25, Penal Code [~~, or~~

27 [~~(7) is convicted of an offense for which punishment~~

1 ~~is increased under Section 481.134(c), (d), (e), or (f), Health and~~
2 ~~Safety Code, if it is shown that the defendant has been previously~~
3 ~~convicted of an offense for which punishment was increased under~~
4 ~~any of those subsections].~~

5 SECTION 3.03. Article 42A.102(b), Code of Criminal
6 Procedure, as amended by Chapters 1137 (H.B. 2758) and 1298 (H.B.
7 3582), Acts of the 86th Legislature, Regular Session, 2019, is
8 reenacted and amended to read as follows:

9 (b) In all other cases, the judge may grant deferred
10 adjudication community supervision unless:

11 (1) the defendant is charged with an offense:

12 (A) under Section 20A.02, ~~[or]~~ 20A.03, ~~[or]~~
13 49.045, 49.05, 49.065, 49.07, or 49.08, Penal Code;

14 (B) under Section 49.04 or 49.06, Penal Code,
15 and, at the time of the offense:

16 (i) the defendant held a commercial
17 driver's license or a commercial learner's permit; or

18 (ii) the defendant's alcohol concentration,
19 as defined by Section 49.01, Penal Code, was 0.15 or more; or

20 (C) for which punishment may be increased under
21 Section 49.09, Penal Code; ~~[or~~

22 ~~[(D) for which punishment may be increased under~~
23 ~~Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it~~
24 ~~is shown that the defendant has been previously convicted of an~~
25 ~~offense for which punishment was increased under any one of those~~
26 ~~subsections,]~~

27 (2) the defendant:

1 (A) is charged with an offense under Section
2 21.11, 22.011, 22.021, 43.04, or 43.05, Penal Code, regardless of
3 the age of the victim, or a felony described by Article 42A.453(b),
4 other than a felony described by Subdivision (1)(A) or (3)(B) of
5 this subsection; and

6 (B) has previously been placed on community
7 supervision for an offense under Paragraph (A);

8 (3) the defendant is charged with an offense under:

9 (A) Section 21.02, Penal Code; or

10 (B) Section 22.021, Penal Code, that is
11 punishable under Subsection (f) of that section or under Section
12 12.42(c)(3) or (4), Penal Code; or

13 (4) the defendant is charged with an offense under
14 Section 19.02, Penal Code, except that the judge may grant deferred
15 adjudication community supervision on determining that the
16 defendant did not cause the death of the deceased, did not intend to
17 kill the deceased or another, and did not anticipate that a human
18 life would be taken.

19 SECTION 3.04. Section 481.126, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 481.126. OFFENSE: ILLEGAL BARTER, EXPENDITURE, OR
22 INVESTMENT. (a) A person commits an offense if the person:

23 (1) barters property or expends funds the person knows
24 are derived from the commission of an offense under this chapter
25 punishable by imprisonment in the Texas Department of Criminal
26 Justice for life; or

27 (2) [~~barters property or expends funds the person~~]

1 ~~knows are derived from the commission of an offense under Section~~
2 ~~481.121(a) that is punishable under Section 481.121(b)(5);~~

3 ~~[(3)]~~ barters property or finances or invests funds
4 the person knows or believes are intended to further the commission
5 of an offense for which the punishment is described by Subdivision
6 (1) ~~[, or~~

7 ~~[(4) barters property or finances or invests funds the~~
8 ~~person knows or believes are intended to further the commission of~~
9 ~~an offense under Section 481.121(a) that is punishable under~~
10 ~~Section 481.121(b)(5)].~~

11 (b) An offense under this section ~~[Subsection (a)(1) or (3)]~~
12 is a felony of the first degree. ~~[An offense under Subsection~~
13 ~~(a)(2) or (4) is a felony of the second degree.]~~

14 SECTION 3.05. Section 71.023(a), Penal Code, is amended to
15 read as follows:

16 (a) A person commits an offense if the person, as part of the
17 identifiable leadership of a criminal street gang, knowingly
18 finances, directs, or supervises the commission of, or a conspiracy
19 to commit, one or more of the following offenses by members of a
20 criminal street gang:

21 (1) a felony offense that is listed in Article
22 42A.054(a), Code of Criminal Procedure;

23 (2) a felony offense for which it is shown that a
24 deadly weapon, as defined by Section 1.07, was used or exhibited
25 during the commission of the offense or during immediate flight
26 from the commission of the offense; or

27 (3) an offense that is punishable under Section

1 481.112(e), 481.112(f), 481.1121(b)(4), [~~481.115(f),~~] or
2 481.120(b)(6), Health and Safety Code.

3 ARTICLE 4. TRANSITION; EFFECTIVE DATE

4 SECTION 4.01. The changes in law made by this Act apply to
5 an offense committed before, on, or after September 1, 2021, except
6 that a final conviction for an offense that exists on September 1,
7 2021, is unaffected by this Act.

8 SECTION 4.02. To the extent of any conflict, this Act
9 prevails over another Act of the 87th Legislature, Regular Session,
10 2021, relating to nonsubstantive additions to and corrections in
11 enacted codes.

12 SECTION 4.03. This Act takes effect September 1, 2021.