

By: Huffman, et al.

S.B. No. 768

A BILL TO BE ENTITLED

AN ACT

1
2 relating to increasing the criminal penalties for manufacture or
3 delivery of fentanyl and related substances; creating a criminal
4 offense.

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

6 SECTION 1. Sections 481.002(5) and (6), Health and Safety
7 Code, are amended to read as follows:

8 (5) "Controlled substance" means a substance,
9 including a drug, an adulterant, and a dilutant, listed in
10 Schedules I through V or Penalty Group 1, 1-A, 1-B, 2, 2-A, 3, or
11 4. The term includes the aggregate weight of any mixture,
12 solution, or other substance containing a controlled substance.
13 The term does not include hemp, as defined by Section 121.001,
14 Agriculture Code, or the tetrahydrocannabinols in hemp.

15 (6) "Controlled substance analogue" means:

16 (A) a substance with a chemical structure
17 substantially similar to the chemical structure of a controlled
18 substance in Schedule I or II or Penalty Group 1, 1-A, 1-B, 2, or
19 2-A; or

20 (B) a substance specifically designed to produce
21 an effect substantially similar to, or greater than, the effect of a
22 controlled substance in Schedule I or II or Penalty Group 1, 1-A,
23 1-B, 2, or 2-A.

24 SECTION 2. Section 481.102, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 481.102. PENALTY GROUP 1. Penalty Group 1 consists
3 of:

4 (1) the following opiates, including their isomers,
5 esters, ethers, salts, and salts of isomers, esters, and ethers,
6 unless specifically excepted, if the existence of these isomers,
7 esters, ethers, and salts is possible within the specific chemical
8 designation:

- 9 Alfentanil;
- 10 Allylprodine;
- 11 Alphacetylmethadol;
- 12 Benzethidine;
- 13 Betaprodine;
- 14 Clonitazene;
- 15 Diampromide;
- 16 Diethylthiambutene;
- 17 Difenoxin not listed in Penalty Group 3 or 4;
- 18 Dimenoxadol;
- 19 Dimethylthiambutene;
- 20 Dioxaphetyl butyrate;
- 21 Dipipanone;
- 22 Ethylmethylthiambutene;
- 23 Etonitazene;
- 24 Etoxeridine;
- 25 Furethidine;
- 26 Hydroxypethidine;
- 27 Ketobemidone;

1 Levophenacymorphan;
2 Meprodine;
3 Methadol;
4 Moramide;
5 Morpheridine;
6 Noracymethadol;
7 Norlevorphanol;
8 Normethadone;
9 Norpipanone;
10 Phenadoxone;
11 Phenampromide;
12 Phenomorphan;
13 Phenoperidine;
14 Piritramide;
15 Proheptazine;
16 Properidine;
17 Propiram;
18 Sufentanil;
19 Tilidine; and
20 Trimeperidine;

21 (2) the following opium derivatives, their salts,
22 isomers, and salts of isomers, unless specifically excepted, if the
23 existence of these salts, isomers, and salts of isomers is possible
24 within the specific chemical designation:

25 Acetorphine;
26 Acetyldihydrocodeine;
27 Benzylmorphine;

- 1 Codeine methylbromide;
- 2 Codeine-N-Oxide;
- 3 Cyprenorphine;
- 4 Desomorphine;
- 5 Dihydromorphine;
- 6 Drotebanol;
- 7 Etorphine, except hydrochloride salt;
- 8 Heroin;
- 9 Hydromorphenol;
- 10 Methyldesorphine;
- 11 Methyldihydromorphine;
- 12 Monoacetylmorphine;
- 13 Morphine methylbromide;
- 14 Morphine methylsulfonate;
- 15 Morphine-N-Oxide;
- 16 Myrophine;
- 17 Nicocodeine;
- 18 Nicomorphine;
- 19 Normorphine;
- 20 Pholcodine; and
- 21 Thebacon;

22 (3) the following substances, however produced,
23 except those narcotic drugs listed in another group:

24 (A) Opium and opiate not listed in Penalty Group
25 3 or 4, and a salt, compound, derivative, or preparation of opium or
26 opiate, other than thebaine derived butorphanol, nalmeffene and its
27 salts, naloxone and its salts, and naltrexone and its salts, but

1 including:

- 2 Codeine not listed in Penalty Group 3 or 4;
- 3 Dihydroetorphine;
- 4 Ethylmorphine not listed in Penalty Group 3
- 5 or 4;
- 6 Granulated opium;
- 7 Hydrocodone not listed in Penalty Group 3;
- 8 Hydromorphone;
- 9 Metopon;
- 10 Morphine not listed in Penalty Group 3;
- 11 Opium extracts;
- 12 Opium fluid extracts;
- 13 Oripavine;
- 14 Oxycodone;
- 15 Oxymorphone;
- 16 Powdered opium;
- 17 Raw opium;
- 18 Thebaine; and
- 19 Tincture of opium;

20 (B) a salt, compound, isomer, derivative, or
21 preparation of a substance that is chemically equivalent or
22 identical to a substance described by Paragraph (A), other than the
23 isoquinoline alkaloids of opium;

24 (C) Opium poppy and poppy straw;

25 (D) Cocaine, including:

26 (i) its salts, its optical, position, and
27 geometric isomers, and the salts of those isomers;

1 (ii) coca leaves and a salt, compound,
2 derivative, or preparation of coca leaves; and

3 (iii) a salt, compound, derivative, or
4 preparation of a salt, compound, or derivative that is chemically
5 equivalent or identical to a substance described by Subparagraph
6 (i) or (ii), other than decocainized coca leaves or extractions of
7 coca leaves that do not contain cocaine or ecgonine; and

8 (E) concentrate of poppy straw, meaning the crude
9 extract of poppy straw in liquid, solid, or powder form that
10 contains the phenanthrine alkaloids of the opium poppy;

11 (4) the following opiates, including their isomers,
12 esters, ethers, salts, and salts of isomers, if the existence of
13 these isomers, esters, ethers, and salts is possible within the
14 specific chemical designation:

15 Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-
16 phenethyl)-4-piperidinyl]-N-phenylacetamide);

17 Alpha-methylthiofentanyl (N-[1-methyl-2-(2-
18 thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);

19 Alphaprodine;

20 Anileridine;

21 Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-
22 phenethyl)-4-piperidinyl]-N-phenylpropanamide);

23 Beta-hydroxy-3-methylfentanyl;

24 Bezitramide;

25 Carfentanil;

26 Dihydrocodeine not listed in Penalty Group 3 or 4;

27 Diphenoxylate not listed in Penalty Group 3 or 4;

- 1 ~~[Fentanyl or alpha-methylfentanyl, or any other~~
2 ~~derivative of Fentanyl,]~~
- 3 Isomethadone;
- 4 Levomethorphan;
- 5 Levorphanol;
- 6 Metazocine;
- 7 Methadone;
- 8 Methadone-Intermediate, 4-cyano-2-dimethylamino-
- 9 4, 4-diphenyl butane;
- 10 3-methylfentanyl(N-[3-methyl-1-(2-phenylethyl)-
- 11 4-piperidyl]-N-phenylpropanamide);
- 12 3-methylthiofentanyl(N-[3-methyl-1-(2-thienyl)
- 13 ethyl-4-piperidinyl]-N-phenylpropanamide);
- 14 Moramide-Intermediate, 2-methyl-3-morpholino-1,
- 15 1-diphenyl-propane-carboxylic acid;
- 16 Para-fluorofentanyl(N-(4-fluorophenyl)-N-1-(2-
- 17 phenylethyl)-4-piperidinylpropanamide);
- 18 PEPAP (1-(2-phenethyl)-4-phenyl-4-
- 19 acetoxypiperidine);
- 20 Pethidine (Meperidine);
- 21 Pethidine-Intermediate-A, 4-cyano-1-methyl-4-
- 22 phenylpiperidine;
- 23 Pethidine-Intermediate-B, ethyl-4-
- 24 phenylpiperidine-4 carboxylate;
- 25 Pethidine-Intermediate-C, 1-methyl-4-
- 26 phenylpiperidine-4-carboxylic acid;
- 27 Phenazocine;

- 1 Piminodine;
- 2 Racemethorphan;
- 3 Racemorphan;
- 4 Remifentanil; and
- 5 Thiofentanyl(N-phenyl-N-[1-(2-thienyl)ethyl-4-
- 6 piperidinyl]-propanamide);
- 7 (5) Flunitrazepam (trade or other name: Rohypnol);
- 8 (6) Methamphetamine, including its salts, optical
- 9 isomers, and salts of optical isomers;
- 10 (7) Phenylacetone and methylamine, if possessed
- 11 together with intent to manufacture methamphetamine;
- 12 (8) Phencyclidine, including its salts;
- 13 (9) Gamma hydroxybutyric acid (some trade or other
- 14 names: gamma hydroxybutyrate, GHB), including its salts;
- 15 (10) Ketamine;
- 16 (11) Phenazepam;
- 17 (12) U-47700;
- 18 (13) AH-7921;
- 19 (14) ADB-FUBINACA;
- 20 (15) AMB-FUBINACA; and
- 21 (16) MDMB-CHMICA.

22 SECTION 3. Subchapter D, Chapter 481, Health and Safety

23 Code, is amended by adding Section 481.1022 to read as follows:

24 Sec. 481.1022. PENALTY GROUP 1-B. Penalty Group 1-B

25 consists of fentanyl, alpha-methylfentanyl, and any other

26 derivative of fentanyl.

27 SECTION 4. Section 481.106, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 481.106. CLASSIFICATION OF CONTROLLED SUBSTANCE
3 ANALOGUE. For the purposes of the prosecution of an offense under
4 this subchapter involving the manufacture, delivery, or possession
5 of a controlled substance, Penalty Groups 1, 1-A, 1-B, 2, and 2-A
6 include a controlled substance analogue that:

7 (1) has a chemical structure substantially similar to
8 the chemical structure of a controlled substance listed in the
9 applicable penalty group; or

10 (2) is specifically designed to produce an effect
11 substantially similar to, or greater than, a controlled substance
12 listed in the applicable penalty group.

13 SECTION 5. Subchapter D, Chapter 481, Health and Safety
14 Code, is amended by adding Section 481.1123 to read as follows:

15 Sec. 481.1123. OFFENSE: MANUFACTURE OR DELIVERY OF
16 SUBSTANCE IN PENALTY GROUP 1-B. (a) Except as authorized by this
17 chapter, a person commits an offense if the person knowingly
18 manufactures, delivers, or possesses with intent to deliver a
19 controlled substance listed in Penalty Group 1-B.

20 (b) An offense under Subsection (a) is a state jail felony
21 if the amount of the controlled substance to which the offense
22 applies is, by aggregate weight, including adulterants or
23 dilutants, less than one gram.

24 (c) An offense under Subsection (a) is a felony of the
25 second degree if the amount of the controlled substance to which the
26 offense applies is, by aggregate weight, including adulterants or
27 dilutants, one gram or more but less than four grams.

1 (d) An offense under Subsection (a) is punishable by
2 imprisonment in the Texas Department of Criminal Justice for life
3 or for a term of not more than 99 years or less than 10 years, and a
4 fine not to exceed \$20,000, if the amount of the controlled
5 substance to which the offense applies is, by aggregate weight,
6 including adulterants or dilutants, four grams or more but less
7 than 200 grams.

8 (e) An offense under Subsection (a) is punishable by
9 imprisonment in the Texas Department of Criminal Justice for life
10 or for a term of not more than 99 years or less than 15 years, and a
11 fine not to exceed \$200,000, if the amount of the controlled
12 substance to which the offense applies is, by aggregate weight,
13 including adulterants or dilutants, 200 grams or more but less than
14 400 grams.

15 (f) An offense under Subsection (a) is punishable by
16 imprisonment in the Texas Department of Criminal Justice for life
17 or for a term of not more than 99 years or less than 20 years, and a
18 fine not to exceed \$500,000, if the amount of the controlled
19 substance to which the offense applies is, by aggregate weight,
20 including adulterants or dilutants, 400 grams or more.

21 SECTION 6. The heading to Section 481.115, Health and
22 Safety Code, is amended to read as follows:

23 Sec. 481.115. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY
24 GROUP 1 OR 1-B.

25 SECTION 7. Section 481.115(a), Health and Safety Code, is
26 amended to read as follows:

27 (a) Except as authorized by this chapter, a person commits

1 an offense if the person knowingly or intentionally possesses a
2 controlled substance listed in Penalty Group 1 or 1-B, unless the
3 person obtained the substance directly from or under a valid
4 prescription or order of a practitioner acting in the course of
5 professional practice.

6 SECTION 8. Section 481.122(a), Health and Safety Code, is
7 amended to read as follows:

8 (a) A person commits an offense if the person knowingly
9 delivers a controlled substance listed in Penalty Group 1, 1-A,
10 1-B, 2, or 3 or knowingly delivers marihuana and the person delivers
11 the controlled substance or marihuana to a person:

- 12 (1) who is a child;
- 13 (2) who is enrolled in a public or private primary or
14 secondary school; or
- 15 (3) who the actor knows or believes intends to deliver
16 the controlled substance or marihuana to a person described by
17 Subdivision (1) or (2).

18 SECTION 9. Section 481.124(d), Health and Safety Code, is
19 amended to read as follows:

- 20 (d) An offense under this section is:
- 21 (1) a felony of the second degree if the controlled
22 substance is listed in Penalty Group 1, ~~or~~ 1-A, or 1-B;
- 23 (2) a felony of the third degree if the controlled
24 substance is listed in Penalty Group 2;
- 25 (3) a state jail felony if the controlled substance is
26 listed in Penalty Group 3 or 4; or
- 27 (4) a Class A misdemeanor if the controlled substance

1 is listed in a schedule by an action of the commissioner under this
2 chapter but not listed in a penalty group.

3 SECTION 10. Sections 481.134(b) and (c), Health and Safety
4 Code, are amended to read as follows:

5 (b) An offense otherwise punishable as a state jail felony
6 under Section 481.112, 481.1121, 481.1123, 481.113, 481.114, or
7 481.120 is punishable as a felony of the third degree, an offense
8 otherwise punishable as a felony of the third degree under any of
9 those sections is punishable as a felony of the second degree, and
10 an offense otherwise punishable as a felony of the second degree
11 under any of those sections is punishable as a felony of the first
12 degree, if it is shown at the punishment phase of the trial of the
13 offense that the offense was committed:

14 (1) in, on, or within 1,000 feet of premises owned,
15 rented, or leased by an institution of higher learning, the
16 premises of a public or private youth center, or a playground; or

17 (2) in, on, or within 300 feet of the premises of a
18 public swimming pool or video arcade facility.

19 (c) The minimum term of confinement or imprisonment for an
20 offense otherwise punishable under Section 481.112(c), (d), (e), or
21 (f), 481.1121(b)(2), (3), or (4), 481.1123(c), (d), (e), or (f),
22 481.113(c), (d), or (e), 481.114(c), (d), or (e), 481.115(c)-(f),
23 481.1151(b)(2), (3), (4), or (5), 481.116(c), (d), or (e),
24 481.1161(b)(4), (5), or (6), 481.117(c), (d), or (e), 481.118(c),
25 (d), or (e), 481.120(b)(4), (5), or (6), or 481.121(b)(4), (5), or
26 (6) is increased by five years and the maximum fine for the offense
27 is doubled if it is shown on the trial of the offense that the

1 offense was committed:

2 (1) in, on, or within 1,000 feet of the premises of a
3 school, the premises of a public or private youth center, or a
4 playground; or

5 (2) on a school bus.

6 SECTION 11. Section 481.140(a), Health and Safety Code, is
7 amended to read as follows:

8 (a) If it is shown at the punishment phase of the trial of an
9 offense otherwise punishable as a state jail felony, felony of the
10 third degree, or felony of the second degree under Section 481.112,
11 481.1121, 481.1123, 481.113, 481.114, 481.120, or 481.122 that the
12 defendant used or attempted to use a child younger than 18 years of
13 age to commit or assist in the commission of the offense, the
14 punishment is increased by one degree, unless the defendant used or
15 threatened to use force against the child or another to gain the
16 child's assistance, in which event the punishment for the offense
17 is a felony of the first degree.

18 SECTION 12. Section 481.141(b), Health and Safety Code, is
19 amended to read as follows:

20 (b) This section applies to an offense otherwise punishable
21 as a state jail felony, felony of the third degree, or felony of the
22 second degree under Section 481.112, 481.1121, 481.1123, 481.113,
23 481.114, or 481.122.

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

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

- 1 (1) Section 15.03, Penal Code, if the offense is
2 punishable as a felony of the first degree;
- 3 (2) Section 19.02, Penal Code (Murder);
- 4 (3) Section 19.03, Penal Code (Capital Murder);
- 5 (4) Section 20.04, Penal Code (Aggravated
6 Kidnapping);
- 7 (5) Section 20A.02, Penal Code (Trafficking of
8 Persons);
- 9 (6) Section 20A.03, Penal Code (Continuous
10 Trafficking of Persons);
- 11 (7) Section 21.11, Penal Code (Indecency with a
12 Child);
- 13 (8) Section 22.011, Penal Code (Sexual Assault);
- 14 (9) Section 22.021, Penal Code (Aggravated Sexual
15 Assault);
- 16 (10) Section 22.04(a)(1), Penal Code (Injury to a
17 Child, Elderly Individual, or Disabled Individual), if:
 - 18 (A) the offense is punishable as a felony of the
19 first degree; and
 - 20 (B) the victim of the offense is a child;
- 21 (11) Section 29.03, Penal Code (Aggravated Robbery);
- 22 (12) Section 30.02, Penal Code (Burglary), if:
 - 23 (A) the offense is punishable under Subsection
24 (d) of that section; and
 - 25 (B) the actor committed the offense with the
26 intent to commit a felony under Section 21.02, 21.11, 22.011,
27 22.021, or 25.02, Penal Code;

1 (13) Section 43.04, Penal Code (Aggravated Promotion
2 of Prostitution);

3 (14) Section 43.05, Penal Code (Compelling
4 Prostitution);

5 (15) Section 43.25, Penal Code (Sexual Performance by
6 a Child); ~~[or]~~

7 (16) Chapter 481, Health and Safety Code, for which
8 punishment is increased under:

9 (A) Section 481.140 of that code (Use of Child in
10 Commission of Offense); or

11 (B) Section 481.134(c), (d), (e), or (f) of that
12 code (Drug-free Zones) if it is shown that the defendant has been
13 previously convicted of an offense for which punishment was
14 increased under any of those subsections; or

15 (17) Section 481.1123, Health and Safety Code
16 (Manufacture or Delivery of Substance in Penalty Group 1-B), if the
17 offense is punishable under Subsection (d), (e), or (f) of that
18 section.

19 SECTION 14. Article 42A.056, Code of Criminal Procedure, is
20 amended to read as follows:

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

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

26 (2) is convicted of a state jail felony for which
27 suspension of the imposition of the sentence occurs automatically

1 under Article 42A.551;

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

4 (4) is convicted of an offense under Section 21.11,
5 22.011, or 22.021, Penal Code, if the victim of the offense was
6 younger than 14 years of age at the time the offense was committed;

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

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

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

13 (6) is convicted of an offense under Section 20A.02,
14 20A.03, 43.04, 43.05, or 43.25, Penal Code; ~~or~~

15 (7) is convicted of an offense for which punishment is
16 increased under Section 481.134(c), (d), (e), or (f), Health and
17 Safety Code, if it is shown that the defendant has been previously
18 convicted of an offense for which punishment was increased under
19 any of those subsections; or

20 (8) is convicted of an offense under Section 481.1123,
21 Health and Safety Code, if the offense is punishable under
22 Subsection (d), (e), or (f) of that section.

23 SECTION 15. Article 42A.102(b), Code of Criminal Procedure,
24 as amended by Chapters 1137 (H.B. 2758) and 1298 (H.B. 3582), Acts
25 of the 86th Legislature, Regular Session, 2019, is reenacted and
26 amended to read as follows:

27 (b) In all other cases, the judge may grant deferred

1 adjudication community supervision unless:

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

3 (A) under Section 20A.02, ~~[or]~~ 20A.03, ~~[or]~~
4 49.045, 49.05, 49.065, 49.07, or 49.08, Penal Code;

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

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

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

11 (C) for which punishment may be increased under
12 Section 49.09, Penal Code; ~~[or]~~

13 (D) for which punishment may be increased under
14 Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it
15 is shown that the defendant has been previously convicted of an
16 offense for which punishment was increased under any one of those
17 subsections; or

18 (E) under Section 481.1123, Health and Safety
19 Code, that is punishable under Subsection (d), (e), or (f) of that
20 section;

21 (2) the defendant:

22 (A) is charged with an offense under Section
23 21.11, 22.011, 22.021, 43.04, or 43.05, Penal Code, regardless of
24 the age of the victim, or a felony described by Article 42A.453(b),
25 other than a felony described by Subdivision (1)(A) or (3)(B) of
26 this subsection; and

27 (B) has previously been placed on community

1 supervision for an offense under Paragraph (A);

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

3 (A) Section 21.02, Penal Code; or

4 (B) Section 22.021, Penal Code, that is
5 punishable under Subsection (f) of that section or under Section
6 12.42(c)(3) or (4), Penal Code; or

7 (4) the defendant is charged with an offense under
8 Section 19.02, Penal Code, except that the judge may grant deferred
9 adjudication community supervision on determining that the
10 defendant did not cause the death of the deceased, did not intend to
11 kill the deceased or another, and did not anticipate that a human
12 life would be taken.

13 SECTION 16. Section 508.149(a), Government Code, is amended
14 to read as follows:

15 (a) An inmate may not be released to mandatory supervision
16 if the inmate is serving a sentence for or has been previously
17 convicted of:

18 (1) an offense for which the judgment contains an
19 affirmative finding under Article 42A.054(c) or (d), Code of
20 Criminal Procedure;

21 (2) a first degree felony or a second degree felony
22 under Section 19.02, Penal Code;

23 (3) a capital felony under Section 19.03, Penal Code;

24 (4) a first degree felony or a second degree felony
25 under Section 20.04, Penal Code;

26 (5) an offense under Section 21.11, Penal Code;

27 (6) a felony under Section 22.011, Penal Code;

- 1 (7) a first degree felony or a second degree felony
2 under Section 22.02, Penal Code;
- 3 (8) a first degree felony under Section 22.021, Penal
4 Code;
- 5 (9) a first degree felony under Section 22.04, Penal
6 Code;
- 7 (10) a first degree felony under Section 28.02, Penal
8 Code;
- 9 (11) a second degree felony under Section 29.02, Penal
10 Code;
- 11 (12) a first degree felony under Section 29.03, Penal
12 Code;
- 13 (13) a first degree felony under Section 30.02, Penal
14 Code;
- 15 (14) a felony for which the punishment is increased
16 under Section 481.134 or Section 481.140, Health and Safety Code;
- 17 (15) an offense under Section 43.25, Penal Code;
- 18 (16) an offense under Section 21.02, Penal Code;
- 19 (17) a first degree felony under Section 15.03, Penal
20 Code;
- 21 (18) an offense under Section 43.05, Penal Code;
- 22 (19) an offense under Section 20A.02, Penal Code;
- 23 (20) an offense under Section 20A.03, Penal Code; [~~or~~]
- 24 (21) a first degree felony under Section 71.02 or
25 71.023, Penal Code; or
- 26 (22) an offense under Section 481.1123, Health and
27 Safety Code, punished under Subsection (d), (e), or (f) of that

1 section.

2 SECTION 17. Section 161.042(a), Health and Safety Code, is
3 amended to read as follows:

4 (a) A physician who attends or treats, or who is requested
5 to attend or treat, an overdose of a controlled substance listed in
6 Penalty Group 1 under Section 481.102 or a controlled substance
7 listed in Penalty Group 1-B under Section 481.1022, or the
8 administrator, superintendent, or other person in charge of a
9 hospital, sanitorium, or other institution in which an overdose of
10 a controlled substance listed in Penalty Group 1 under Section
11 481.102 or a controlled substance listed in Penalty Group 1-B under
12 Section 481.1022 is attended or treated or in which the attention or
13 treatment is requested, shall report the case at once to the
14 department.

15 SECTION 18. Sections 551.003(11) and (12), Occupations
16 Code, are amended to read as follows:

17 (11) "Controlled substance" means a substance,
18 including a drug:

19 (A) listed in Schedule I, II, III, IV, or V, as
20 established by the commissioner of public health under Chapter 481,
21 Health and Safety Code, or in Penalty Group 1, 1-A, 1-B, 2, 3, or 4,
22 Chapter 481; or

23 (B) included in Schedule I, II, III, IV, or V of
24 the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21
25 U.S.C. Section 801 et seq.).

26 (12) "Dangerous drug" means a drug or device that:

27 (A) is not included in Penalty Group 1, 1-B, 2, 3,

1 or 4, Chapter 481, Health and Safety Code, and is unsafe for
2 self-medication; or

3 (B) bears or is required to bear the legend:

4 (i) "Caution: federal law prohibits
5 dispensing without prescription" or "Rx only" or another legend
6 that complies with federal law; or

7 (ii) "Caution: federal law restricts this
8 drug to use by or on the order of a licensed veterinarian."

9 SECTION 19. Section 22.041(c-1), Penal Code, is amended to
10 read as follows:

11 (c-1) For purposes of Subsection (c), it is presumed that a
12 person engaged in conduct that places a child in imminent danger of
13 death, bodily injury, or physical or mental impairment if:

14 (1) the person manufactured, possessed, or in any way
15 introduced into the body of any person the controlled substance
16 methamphetamine in the presence of the child;

17 (2) the person's conduct related to the proximity or
18 accessibility of the controlled substance methamphetamine to the
19 child and an analysis of a specimen of the child's blood, urine, or
20 other bodily substance indicates the presence of methamphetamine in
21 the child's body; or

22 (3) the person injected, ingested, inhaled, or
23 otherwise introduced a controlled substance listed in Penalty Group
24 1, Section 481.102, Health and Safety Code, or Penalty Group 1-B,
25 Section 481.1022, Health and Safety Code, into the human body when
26 the person was not in lawful possession of the substance as defined
27 by Section 481.002(24) of that code.

1 SECTION 20. Section 71.023(a), Penal Code, is amended to
2 read as follows:

3 (a) A person commits an offense if the person, as part of the
4 identifiable leadership of a criminal street gang, knowingly
5 finances, directs, or supervises the commission of, or a conspiracy
6 to commit, one or more of the following offenses by members of a
7 criminal street gang:

8 (1) a felony offense that is listed in Article
9 42A.054(a), Code of Criminal Procedure;

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

14 (3) an offense that is punishable under Section
15 481.112(e) or (f) [~~481.112(f)~~], 481.1121(b)(4), 481.1123(d), (e),
16 or (f), 481.115(f), or 481.120(b)(6), Health and Safety Code.

17 SECTION 21. To the extent of any conflict, this Act prevails
18 over another Act of the 87th Legislature, Regular Session, 2021,
19 relating to nonsubstantive additions to and corrections in enacted
20 codes.

21 SECTION 22. The change in law made by this Act applies only
22 to an offense committed on or after the effective date of this Act.
23 An offense committed before the effective date of this Act is
24 governed by the law in effect on the date the offense was committed,
25 and the former law is continued in effect for that purpose. For
26 purposes of this section, an offense was committed before the
27 effective date of this Act if any element of the offense occurred

1 before that date.

2 SECTION 23. The Texas Department of Criminal Justice is
3 required to implement this Act only if the legislature appropriates
4 money specifically for that purpose. If the legislature does not
5 appropriate money specifically for that purpose, the department
6 may, but is not required to, implement this Act using other
7 appropriations available for the purpose.

8 SECTION 24. This Act takes effect September 1, 2021.