

By: Schwertner

S.B. No. 811

A BILL TO BE ENTITLED

1 AN ACT
2 relating to a defense to prosecution for certain offenses involving
3 possession of small amounts of controlled substances, marihuana,
4 dangerous drugs, or abusable volatile chemicals, or possession of
5 drug paraphernalia for defendants seeking assistance for a
6 suspected overdose.

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

8 SECTION 1. Section 481.115, Health and Safety Code, is
9 amended by adding Subsections (g), (h), and (i) to read as follows:

10 (g) It is a defense to prosecution for an offense punishable
11 under Subsection (b) that the actor:

12 (1) was the first person to request emergency medical
13 assistance in response to the possible overdose of another person
14 and:

15 (A) made the request for medical assistance
16 during an ongoing medical emergency;

17 (B) remained on the scene until the medical
18 assistance arrived; and

19 (C) cooperated with medical assistance and law
20 enforcement personnel; or

21 (2) was the victim of a possible overdose for which
22 emergency medical assistance was requested, by the actor or by
23 another person, during an ongoing medical emergency.

24 (h) The defense to prosecution provided by Subsection (g) is

1 not available if:

2 (1) at the time the request for emergency medical
3 assistance was made:

4 (A) a peace officer was in the process of
5 arresting the actor or executing a search warrant describing the
6 actor or the place from which the request for medical assistance was
7 made; or

8 (B) the actor is committing another offense,
9 other than an offense punishable under Section 481.1151(b)(1),
10 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or
11 481.121(b)(1) or (2), or an offense under Section 481.119(b),
12 481.125(a), 483.041(a), or 485.031(a);

13 (2) the actor has been previously convicted of or
14 placed on deferred adjudication community supervision for an
15 offense under this chapter or Chapter 483 or 485; or

16 (3) the actor was acquitted in a previous proceeding
17 in which the actor successfully established the defense under that
18 subsection or Section 481.1151(c), 481.116(f), 481.1161(c),
19 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),
20 483.041(e), or 485.031(c).

21 (i) The defense to prosecution provided by Subsection (g)
22 does not preclude the admission of evidence obtained by law
23 enforcement resulting from the request for emergency medical
24 assistance if that evidence pertains to an offense for which the
25 defense described by Subsection (g) is not available.

26 SECTION 2. Section 481.1151, Health and Safety Code, is
27 amended by adding Subsections (c), (d), and (e) to read as follows:

1 (c) It is a defense to prosecution for an offense punishable
2 under Subsection (b)(1) that the actor:

3 (1) was the first person to request emergency medical
4 assistance in response to the possible overdose of another person
5 and:

6 (A) made the request for medical assistance
7 during an ongoing medical emergency;

8 (B) remained on the scene until the medical
9 assistance arrived; and

10 (C) cooperated with medical assistance and law
11 enforcement personnel; or

12 (2) was the victim of a possible overdose for which
13 emergency medical assistance was requested, by the actor or by
14 another person, during an ongoing medical emergency.

15 (d) The defense to prosecution provided by Subsection (c) is
16 not available if:

17 (1) at the time the request for emergency medical
18 assistance was made:

19 (A) a peace officer was in the process of
20 arresting the actor or executing a search warrant describing the
21 actor or the place from which the request for medical assistance was
22 made; or

23 (B) the actor is committing another offense,
24 other than an offense punishable under Section 481.115(b),
25 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or
26 481.121(b)(1) or (2), or an offense under Section 481.119(b),
27 481.125(a), 483.041(a), or 485.031(a);

1 (2) the actor has been previously convicted of or
2 placed on deferred adjudication community supervision for an
3 offense under this chapter or Chapter 483 or 485; or

4 (3) the actor was acquitted in a previous proceeding
5 in which the actor successfully established the defense under that
6 subsection or Section 481.115(g), 481.116(f), 481.1161(c),
7 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),
8 483.041(e), or 485.031(c).

9 (e) The defense to prosecution provided by Subsection (c)
10 does not preclude the admission of evidence obtained by law
11 enforcement resulting from the request for emergency medical
12 assistance if that evidence pertains to an offense for which the
13 defense described by Subsection (c) is not available.

14 SECTION 3. Section 481.116, Health and Safety Code, is
15 amended by adding Subsections (f), (g), and (h) to read as follows:

16 (f) It is a defense to prosecution for an offense punishable
17 under Subsection (b) that the actor:

18 (1) was the first person to request emergency medical
19 assistance in response to the possible overdose of another person
20 and:

21 (A) made the request for medical assistance
22 during an ongoing medical emergency;

23 (B) remained on the scene until the medical
24 assistance arrived; and

25 (C) cooperated with medical assistance and law
26 enforcement personnel; or

27 (2) was the victim of a possible overdose for which

1 emergency medical assistance was requested, by the actor or by
2 another person, during an ongoing medical emergency.

3 (g) The defense to prosecution provided by Subsection (f) is
4 not available if:

5 (1) at the time the request for emergency medical
6 assistance was made:

7 (A) a peace officer was in the process of
8 arresting the actor or executing a search warrant describing the
9 actor or the place from which the request for medical assistance was
10 made; or

11 (B) the actor is committing another offense,
12 other than an offense punishable under Section 481.115(b),
13 481.1151(b)(1), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or
14 481.121(b)(1) or (2), or an offense under Section 481.119(b),
15 481.125(a), 483.041(a), or 485.031(a);

16 (2) the actor has been previously convicted of or
17 placed on deferred adjudication community supervision for an
18 offense under this chapter or Chapter 483 or 485; or

19 (3) the actor was acquitted in a previous proceeding
20 in which the actor successfully established the defense under that
21 subsection or Section 481.115(g), 481.1151(c), 481.1161(c),
22 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),
23 483.041(e), or 485.031(c).

24 (h) The defense to prosecution provided by Subsection (f)
25 does not preclude the admission of evidence obtained by law
26 enforcement resulting from the request for emergency medical
27 assistance if that evidence pertains to an offense for which the

1 defense described by Subsection (f) is not available.

2 SECTION 4. Section [481.1161](#), Health and Safety Code, is
3 amended by adding Subsections (c), (d), and (e) to read as follows:

4 (c) It is a defense to prosecution for an offense punishable
5 under Subsection (b)(1) or (2) that the actor:

6 (1) was the first person to request emergency medical
7 assistance in response to the possible overdose of another person
8 and:

9 (A) made the request for medical assistance
10 during an ongoing medical emergency;

11 (B) remained on the scene until the medical
12 assistance arrived; and

13 (C) cooperated with medical assistance and law
14 enforcement personnel; or

15 (2) was the victim of a possible overdose for which
16 emergency medical assistance was requested, by the actor or by
17 another person, during an ongoing medical emergency.

18 (d) The defense to prosecution provided by Subsection (c) is
19 not available if:

20 (1) at the time the request for emergency medical
21 assistance was made:

22 (A) a peace officer was in the process of
23 arresting the actor or executing a search warrant describing the
24 actor or the place from which the request for medical assistance was
25 made; or

26 (B) the actor is committing another offense,
27 other than an offense punishable under Section [481.115\(b\)](#),

1 481.1151(b)(1), 481.116(b), 481.117(b), 481.118(b), or
2 481.121(b)(1) or (2), or an offense under Section 481.119(b),
3 481.125(a), 483.041(a), or 485.031(a);

4 (2) the actor has been previously convicted of or
5 placed on deferred adjudication community supervision for an
6 offense under this chapter or Chapter 483 or 485; or

7 (3) the actor was acquitted in a previous proceeding
8 in which the actor successfully established the defense under that
9 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
10 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),
11 483.041(e), or 485.031(c).

12 (e) The defense to prosecution provided by Subsection (c)
13 does not preclude the admission of evidence obtained by law
14 enforcement resulting from the request for emergency medical
15 assistance if that evidence pertains to an offense for which the
16 defense described by Subsection (c) is not available.

17 SECTION 5. Section 481.117, Health and Safety Code, is
18 amended by adding Subsections (f), (g), and (h) to read as follows:

19 (f) It is a defense to prosecution for an offense punishable
20 under Subsection (b) that the actor:

21 (1) was the first person to request emergency medical
22 assistance in response to the possible overdose of another person
23 and:

24 (A) made the request for medical assistance
25 during an ongoing medical emergency;

26 (B) remained on the scene until the medical
27 assistance arrived; and

1 (C) cooperated with medical assistance and law
2 enforcement personnel; or

3 (2) was the victim of a possible overdose for which
4 emergency medical assistance was requested, by the actor or by
5 another person, during an ongoing medical emergency.

6 (g) The defense to prosecution provided by Subsection (f) is
7 not available if:

8 (1) at the time the request for emergency medical
9 assistance was made:

10 (A) a peace officer was in the process of
11 arresting the actor or executing a search warrant describing the
12 actor or the place from which the request for medical assistance was
13 made; or

14 (B) the actor is committing another offense,
15 other than an offense punishable under Section 481.115(b),
16 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.118(b), or
17 481.121(b)(1) or (2), or an offense under Section 481.119(b),
18 481.125(a), 483.041(a), or 485.031(a);

19 (2) the actor has been previously convicted of or
20 placed on deferred adjudication community supervision for an
21 offense under this chapter or Chapter 483 or 485; or

22 (3) the actor was acquitted in a previous proceeding
23 in which the actor successfully established the defense under that
24 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
25 481.1161(c), 481.118(f), 481.119(c), 481.121(c), 481.125(g),
26 483.041(e), or 485.031(c).

27 (h) The defense to prosecution provided by Subsection (f)

1 does not preclude the admission of evidence obtained by law
2 enforcement resulting from the request for emergency medical
3 assistance if that evidence pertains to an offense for which the
4 defense described by Subsection (f) is not available.

5 SECTION 6. Section 481.118, Health and Safety Code, is
6 amended by adding Subsections (f), (g), and (h) to read as follows:

7 (f) It is a defense to prosecution for an offense punishable
8 under Subsection (b) that the actor:

9 (1) was the first person to request emergency medical
10 assistance in response to the possible overdose of another person
11 and:

12 (A) made the request for medical assistance
13 during an ongoing medical emergency;

14 (B) remained on the scene until the medical
15 assistance arrived; and

16 (C) cooperated with medical assistance and law
17 enforcement personnel; or

18 (2) was the victim of a possible overdose for which
19 emergency medical assistance was requested, by the actor or by
20 another person, during an ongoing medical emergency.

21 (g) The defense to prosecution provided by Subsection (f) is
22 not available if:

23 (1) at the time the request for emergency medical
24 assistance was made:

25 (A) a peace officer was in the process of
26 arresting the actor or executing a search warrant describing the
27 actor or the place from which the request for medical assistance was

1 made; or

2 (B) the actor is committing another offense,
3 other than an offense punishable under Section 481.115(b),
4 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), or
5 481.121(b)(1) or (2), or an offense under Section 481.119(b),
6 481.125(a), 483.041(a), or 485.031(a);

7 (2) the actor has been previously convicted of or
8 placed on deferred adjudication community supervision for an
9 offense under this chapter or Chapter 483 or 485; or

10 (3) the actor was acquitted in a previous proceeding
11 in which the actor successfully established the defense under that
12 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
13 481.1161(c), 481.117(f), 481.119(c), 481.121(c), 481.125(g),
14 483.041(e), or 485.031(c).

15 (h) The defense to prosecution provided by Subsection (f)
16 does not preclude the admission of evidence obtained by law
17 enforcement resulting from the request for emergency medical
18 assistance if that evidence pertains to an offense for which the
19 defense described by Subsection (f) is not available.

20 SECTION 7. Section 481.119, Health and Safety Code, is
21 amended by adding Subsections (c), (d), and (e) to read as follows:

22 (c) It is a defense to prosecution for an offense under
23 Subsection (b) that the actor:

24 (1) was the first person to request emergency medical
25 assistance in response to the possible overdose of another person
26 and:

27 (A) made the request for medical assistance

1 during an ongoing medical emergency;

2 (B) remained on the scene until the medical
3 assistance arrived; and

4 (C) cooperated with medical assistance and law
5 enforcement personnel; or

6 (2) was the victim of a possible overdose for which
7 emergency medical assistance was requested, by the actor or by
8 another person, during an ongoing medical emergency.

9 (d) The defense to prosecution provided by Subsection (c) is
10 not available if:

11 (1) at the time the request for emergency medical
12 assistance was made:

13 (A) a peace officer was in the process of
14 arresting the actor or executing a search warrant describing the
15 actor or the place from which the request for medical assistance was
16 made; or

17 (B) the actor is committing another offense,
18 other than an offense punishable under Section [481.115\(b\)](#),
19 [481.1151\(b\)\(1\)](#), [481.116\(b\)](#), [481.1161\(b\)\(1\)](#) or (2), [481.117\(b\)](#),
20 [481.118\(b\)](#), or [481.121\(b\)\(1\)](#) or (2), or an offense under Section
21 [481.125\(a\)](#), [483.041\(a\)](#), or [485.031\(a\)](#);

22 (2) the actor has been previously convicted of or
23 placed on deferred adjudication community supervision for an
24 offense under this chapter or Chapter [483](#) or [485](#); or

25 (3) the actor was acquitted in a previous proceeding
26 in which the actor successfully established the defense under that
27 subsection or Section [481.115\(g\)](#), [481.1151\(c\)](#), [481.116\(f\)](#),

1 481.1161(c), 481.117(f), 481.118(f), 481.121(c), 481.125(g),
2 483.041(e), or 485.031(c).

3 (e) The defense to prosecution provided by Subsection (c)
4 does not preclude the admission of evidence obtained by law
5 enforcement resulting from the request for emergency medical
6 assistance if that evidence pertains to an offense for which the
7 defense described by Subsection (c) is not available.

8 SECTION 8. Section 481.121, Health and Safety Code, is
9 amended by adding Subsections (c), (d), and (e) to read as follows:

10 (c) It is a defense to prosecution for an offense punishable
11 under Subsection (b)(1) or (2) that the actor:

12 (1) was the first person to request emergency medical
13 assistance in response to the possible overdose of another person
14 and:

15 (A) made the request for medical assistance
16 during an ongoing medical emergency;

17 (B) remained on the scene until the medical
18 assistance arrived; and

19 (C) cooperated with medical assistance and law
20 enforcement personnel; or

21 (2) was the victim of a possible overdose for which
22 emergency medical assistance was requested, by the actor or by
23 another person, during an ongoing medical emergency.

24 (d) The defense to prosecution provided by Subsection (c) is
25 not available if:

26 (1) at the time the request for emergency medical
27 assistance was made:

1 (A) a peace officer was in the process of
2 arresting the actor or executing a search warrant describing the
3 actor or the place from which the request for medical assistance was
4 made; or

5 (B) the actor is committing another offense,
6 other than an offense punishable under Section 481.115(b),
7 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), or
8 481.118(b), or an offense under Section 481.119(b), 481.125(a),
9 483.041(a), or 485.031(a);

10 (2) the actor has been previously convicted of or
11 placed on deferred adjudication community supervision for an
12 offense under this chapter or Chapter 483 or 485; or

13 (3) the actor was acquitted in a previous proceeding
14 in which the actor successfully established the defense under that
15 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
16 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.125(g),
17 483.041(e), or 485.031(c).

18 (e) The defense to prosecution provided by Subsection (c)
19 does not preclude the admission of evidence obtained by law
20 enforcement resulting from the request for emergency medical
21 assistance if that evidence pertains to an offense for which the
22 defense described by Subsection (c) is not available.

23 SECTION 9. Section 481.125, Health and Safety Code, is
24 amended by adding Subsections (g), (h), and (i) to read as follows:

25 (g) It is a defense to prosecution for an offense under
26 Subsection (a) that the actor:

27 (1) was the first person to request emergency medical

1 assistance in response to the possible overdose of another person
2 and:

3 (A) made the request for medical assistance
4 during an ongoing medical emergency;

5 (B) remained on the scene until the medical
6 assistance arrived; and

7 (C) cooperated with medical assistance and law
8 enforcement personnel; or

9 (2) was the victim of a possible overdose for which
10 emergency medical assistance was requested, by the actor or by
11 another person, during an ongoing medical emergency.

12 (h) The defense to prosecution provided by Subsection (g) is
13 not available if:

14 (1) at the time the request for emergency medical
15 assistance was made:

16 (A) a peace officer was in the process of
17 arresting the actor or executing a search warrant describing the
18 actor or the place from which the request for medical assistance was
19 made; or

20 (B) the actor is committing another offense,
21 other than an offense punishable under Section [481.115\(b\)](#),
22 [481.1151\(b\)\(1\)](#), [481.116\(b\)](#), [481.1161\(b\)\(1\)](#) or (2), [481.117\(b\)](#),
23 [481.118\(b\)](#), or [481.121\(b\)\(1\)](#) or (2), or an offense under Section
24 [481.119\(b\)](#), [483.041\(a\)](#), or [485.031\(a\)](#);

25 (2) the actor has been previously convicted of or
26 placed on deferred adjudication community supervision for an
27 offense under this chapter or Chapter [483](#) or [485](#); or

1 (3) the actor was acquitted in a previous proceeding
2 in which the actor successfully established the defense under that
3 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
4 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c),
5 483.041(e), or 485.031(c).

6 (i) The defense to prosecution provided by Subsection (g)
7 does not preclude the admission of evidence obtained by law
8 enforcement resulting from the request for emergency medical
9 assistance if that evidence pertains to an offense for which the
10 defense described by Subsection (g) is not available.

11 SECTION 10. Section 483.041, Health and Safety Code, is
12 amended by adding Subsections (e), (f), and (g) to read as follows:

13 (e) It is a defense to prosecution for an offense under
14 Subsection (a) that the actor:

15 (1) was the first person to request emergency medical
16 assistance in response to the possible overdose of another person
17 and:

18 (A) made the request for medical assistance
19 during an ongoing medical emergency;

20 (B) remained on the scene until the medical
21 assistance arrived; and

22 (C) cooperated with medical assistance and law
23 enforcement personnel; or

24 (2) was the victim of a possible overdose for which
25 emergency medical assistance was requested, by the actor or by
26 another person, during an ongoing medical emergency.

27 (f) The defense to prosecution provided by Subsection (e) is

1 not available if:

2 (1) at the time the request for emergency medical
3 assistance was made:

4 (A) a peace officer was in the process of
5 arresting the actor or executing a search warrant describing the
6 actor or the place from which the request for medical assistance was
7 made; or

8 (B) the actor is committing another offense,
9 other than an offense punishable under Section 481.115(b),
10 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b),
11 481.118(b), or 481.121(b)(1) or (2), or an offense under Section
12 481.119(b), 481.125(a), or 485.031(a);

13 (2) the actor has been previously convicted of or
14 placed on deferred adjudication community supervision for an
15 offense under this chapter or Chapter 481 or 485; or

16 (3) the actor was acquitted in a previous proceeding
17 in which the actor successfully established the defense under that
18 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
19 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c),
20 481.125(g), or 485.031(c).

21 (g) The defense to prosecution provided by Subsection (e)
22 does not preclude the admission of evidence obtained by law
23 enforcement resulting from the request for emergency medical
24 assistance if that evidence pertains to an offense for which the
25 defense described by Subsection (e) is not available.

26 SECTION 11. Section 485.031, Health and Safety Code, is
27 amended by adding Subsections (c), (d), and (e) to read as follows:

1 (c) It is a defense to prosecution for an offense under
2 Subsection (a) that the actor:

3 (1) was the first person to request emergency medical
4 assistance in response to the possible overdose of another person
5 and:

6 (A) made the request for medical assistance
7 during an ongoing medical emergency;

8 (B) remained on the scene until the medical
9 assistance arrived; and

10 (C) cooperated with medical assistance and law
11 enforcement personnel; or

12 (2) was the victim of a possible overdose for which
13 emergency medical assistance was requested, by the actor or by
14 another person, during an ongoing medical emergency.

15 (d) The defense to prosecution provided by Subsection (c) is
16 not available if:

17 (1) at the time the request for emergency medical
18 assistance was made:

19 (A) a peace officer was in the process of
20 arresting the actor or executing a search warrant describing the
21 actor or the place from which the request for medical assistance was
22 made; or

23 (B) the actor is committing another offense,
24 other than an offense punishable under Section [481.115\(b\)](#),
25 [481.1151\(b\)\(1\)](#), [481.116\(b\)](#), [481.1161\(b\)\(1\)](#) or (2), [481.117\(b\)](#),
26 [481.118\(b\)](#), or [481.121\(b\)\(1\)](#) or (2), or an offense under Section
27 [481.119\(b\)](#), [481.125\(a\)](#), or [483.041\(a\)](#);

1 (2) the actor has been previously convicted of or
2 placed on deferred adjudication community supervision for an
3 offense under this chapter or Chapter 481 or 483; or

4 (3) the actor was acquitted in a previous proceeding
5 in which the actor successfully established the defense under that
6 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
7 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c),
8 481.125(g), or 483.041(e).

9 (e) The defense to prosecution provided by Subsection (c)
10 does not preclude the admission of evidence obtained by law
11 enforcement resulting from the request for emergency medical
12 assistance if that evidence pertains to an offense for which the
13 defense described by Subsection (c) is not available.

14 SECTION 12. The change in law made by this Act applies only
15 to an offense committed on or after the effective date of this Act.
16 An offense committed before the effective date of this Act is
17 governed by the law in effect on the date the offense was committed,
18 and the former law is continued in effect for that purpose. For
19 purposes of this section, an offense was committed before the
20 effective date of this Act if any element of the offense occurred
21 before that date.

22 SECTION 13. This Act takes effect September 1, 2021.