

By: Driver

H.B. No. 1033

A BILL TO BE ENTITLED

AN ACT

relating to the penalty group classification of 3,4-methylenedioxy methamphetamine (MDMA, MDM) and related criminal offenses.

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

SECTION 1. Subchapter D, Chapter 481, Health and Safety Code, is amended by adding Sections 481.1022, 481.1122, and 481.1152 to read as follows:

Sec. 481.1022. PENALTY GROUP 1-B. Penalty Group 1-B consists of 3,4-methylenedioxy methamphetamine (MDMA, MDM), including its salts, isomers, and salts of isomers.

Sec. 481.1122. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 1-B. (a) Except as provided by this chapter, a person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 1-B.

(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 five;

(2) a felony of the second degree if the number of abuse units of the controlled substance is five or more but fewer than 20;

(3) a felony of the first degree if the number of abuse units of the controlled substance is 20 or more but fewer than 600;

(4) punishable by imprisonment in the institutional

1 division of the Texas Department of Criminal Justice for life or for  
2 a term of not more than 99 years or less than 10 years, and a fine  
3 not to exceed \$100,000, if the number of abuse units of the  
4 controlled substance is 600 or more but fewer than 1,200; and

5 (5) punishable by imprisonment in the institutional  
6 division of the Texas Department of Criminal Justice for life or for  
7 a term of not more than 99 years or less than 15 years, and a fine  
8 not to exceed \$250,000, if the number of abuse units of the  
9 controlled substance is 1,200 or more.

10 Sec. 481.1152. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY  
11 GROUP 1-B. (a) Except as provided by this chapter, a person commits  
12 an offense if the person knowingly possesses a controlled substance  
13 listed in Penalty Group 1-B.

14 (b) An offense under this section is:

15 (1) a state jail felony if the number of abuse units  
16 of the controlled substance is fewer than five;

17 (2) a felony of the third degree if the number of abuse  
18 units of the controlled substance is five or more but fewer than 20;

19 (3) a felony of the second degree if the number of  
20 abuse units of the controlled substance is 20 or more but fewer than  
21 600;

22 (4) a felony of the first degree if the number of abuse  
23 units of the controlled substance is 600 or more but fewer than  
24 1,200; and

25 (5) punishable by imprisonment in the institutional  
26 division of the Texas Department of Criminal Justice for life or for  
27 a term of not more than 99 years or less than 10 years, and a fine

1 not to exceed \$100,000, if the number of abuse units of the  
2 controlled substance is 1,200 or more.

3 SECTION 2. Sections 481.002(5), (6), and (50), Health and  
4 Safety Code, are amended to read as follows:

5 (5) "Controlled substance" means a substance,  
6 including a drug, an adulterant, and a dilutant, listed in  
7 Schedules I through V or Penalty Groups 1, 1-A, 1-B, or 2 through 4.  
8 The term includes the aggregate weight of any mixture, solution, or  
9 other substance containing a controlled substance.

10 (6) "Controlled substance analogue" means:

11 (A) a substance with a chemical structure  
12 substantially similar to the chemical structure of a controlled  
13 substance in Schedule I or II or Penalty Group 1, 1-A, 1-B, or 2; or

14 (B) a substance specifically designed to produce  
15 an effect substantially similar to, or greater than, the effect of a  
16 controlled substance in Schedule I or II or Penalty Group 1, 1-A,  
17 1-B, or 2.

18 (50) "Abuseunit" means:

19 (A) except as provided by Paragraph (B):

20 (i) a single unit on or in any adulterant,  
21 dilutant, or similar carrier medium, including marked or perforated  
22 blotter paper, a tablet, gelatin wafer, sugar cube, or stamp, or  
23 other medium that contains any amount of a controlled substance  
24 listed in Penalty Group 1-A or 1-B, if the unit is commonly used in  
25 abuse of that substance; or

26 (ii) each quarter-inch square section of  
27 paper, if the adulterant, dilutant, or carrier medium is paper not

1 marked or perforated into individual abuse units; or

2 (B) if the controlled substance is in liquid  
3 form, 40 micrograms of the controlled substance including any  
4 adulterant or dilutant.

5 SECTION 3. Section 481.103(a), Health and Safety Code, is  
6 amended to read as follows:

7 (a) Penalty Group 2 consists of:

8 (1) any quantity of the following hallucinogenic  
9 substances, their salts, isomers, and salts of isomers, unless  
10 specifically excepted, if the existence of these salts, isomers,  
11 and salts of isomers is possible within the specific chemical  
12 designation:

13 alpha-ethyltryptamine;

14 4-bromo-2, 5-dimethoxyamphetamine (some trade or  
15 other names: 4-bromo- 2, 5-dimethoxy-alpha-methylphenethylamine;  
16 4-bromo-2, 5-DMA);

17 4-bromo-2, 5-dimethoxyphenethylamine;

18 Bufotenine (some trade and other names:  
19 3-(beta-Dimethylaminoethyl)-5-hydroxyindole;  
20 3-(2-dimethylaminoethyl)-5- indolol; N, N-dimethylserotonin;  
21 5-hydroxy-N, N-dimethyltryptamine; mappine);

22 Diethyltryptamine (some trade and other names: N,  
23 N-Diethyltryptamine, DET);

24 2, 5-dimethoxyamphetamine (some trade or other  
25 names: 2, 5-dimethoxy- alpha-methylphenethylamine; 2, 5-DMA);

26 2, 5-dimethoxy-4-ethylamphetamine (some trade or  
27 other names: DOET);

1                   Dimethyltryptamine (some trade and other names:  
2 DMT);

3                   Dronabinol (synthetic) in sesame oil and  
4 encapsulated in a soft gelatin capsule in a U.S. Food and Drug  
5 Administration approved drug product (some trade or other names for  
6 Dronabinol:( $\alpha$ 6aR-trans)-6a,7,8,10a-tetrahydro-6,6,  
7 9-trimethyl-3-pentyl-6H-dibenzo [b,d]pyran-1-ol or  
8 (-)-delta-9-(trans)- tetrahydrocannabinol);

9                   Ethylamine Analog of Phencyclidine (some trade or  
10 other names: N-ethyl-1-phenylcyclohexylamine,  
11 (1-phenylcyclohexyl) ethylamine, N-(1- phenylcyclohexyl)  
12 ethylamine, cyclohexamine, PCE);

13                   Ibogaine (some trade or other names: 7-Ethyl-6,  
14 6, beta 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6,  
15 9-methano-5H-pyrido [1', 2':1, 2] azepino [5, 4-b] indole;  
16 tabernanthe iboga.);

17                   Ketamine;

18                   Mescaline;

19                   5-methoxy-3, 4-methylenedioxy amphetamine;

20                   4-methoxyamphetamine (some trade or other names:  
21 4-methoxy-alpha- methylphenethylamine; paramethoxyamphetamine;  
22 PMA);

23                   1-methyl- 4-phenyl-4-propionoxypiperidine (MPPP,  
24 PPMP);

25                   4-methyl-2, 5-dimethoxyamphetamine (some trade  
26 and other names: 4- methyl-2,  
27 5-dimethoxy-alpha-methylphenethylamine; "DOM"; "STP");

1                   ~~[3,4-methylenedioxy methamphetamine (MDMA,~~  
2 ~~MDM),]~~  
3                   3,4-methylenedioxy amphetamine;  
4                   3,4-methylenedioxy N-ethylamphetamine (Also  
5 known as N-ethyl MDA);  
6                   Nabilone (Another name for nabilone:  
7 (+)-trans-3-(1,1-dimethylheptyl)- 6,6a,7,8,10,10a-hexahydro-1-  
8 hydroxy-6,6- dimethyl-9H-dibenzo[b,d]pyran-9-one;  
9                   N-ethyl-3-piperidyl benzilate;  
10                   N-hydroxy-3,4-methylenedioxyamphetamine (Also  
11 known as N-hydroxy MDA);  
12                   4-methylaminorex;  
13                   N-methyl-3-piperidyl benzilate;  
14                   Parahexyl (some trade or other names:  
15 3-Hexyl-1-hydroxy-7, 8, 9, 10- tetrahydro-6, 6,  
16 9-trimethyl-6H-dibenzo [b,d] pyran; Synhexyl);  
17                   1-Phenylcyclohexylamine;  
18                   1-Piperidinocyclohexanecarbonitrile (PCC);  
19                   Psilocin;  
20                   Psilocybin;  
21                   Pyrrolidine Analog of Phencyclidine (some trade  
22 or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP);  
23                   Tetrahydrocannabinols, other than marihuana, and  
24 synthetic equivalents of the substances contained in the plant, or  
25 in the resinous extractives of Cannabis, or synthetic substances,  
26 derivatives, and their isomers with similar chemical structure and  
27 pharmacological activity such as:

1           delta-1 cis or trans tetrahydrocannabinol, and  
2 their optical isomers;

3           delta-6 cis or trans tetrahydrocannabinol, and  
4 their optical isomers;

5           delta-3, 4 cis or trans tetrahydrocannabinol, and  
6 its optical isomers;

7           compounds of these structures, regardless of  
8 numerical designation of atomic positions, since nomenclature of  
9 these substances is not internationally standardized;

10           Thiophene Analog of Phencyclidine (some trade or  
11 other names: 1-[1-(2-thienyl) cyclohexyl] piperidine; 2-Thienyl  
12 Analog of Phencyclidine; TPCP, TCP);

13           1-[1-(2-thienyl)cyclohexyl] pyrrolidine (some  
14 trade or other names: TCPy); and

15           3,4,5-trimethoxy amphetamine;

16           (2) Phenylacetone (some trade or other names:  
17 Phenyl-2-propanone; P2P, Benzylmethyl ketone, methyl benzyl  
18 ketone); and

19           (3) unless specifically excepted or unless listed in  
20 another Penalty Group, a material, compound, mixture, or  
21 preparation that contains any quantity of the following substances  
22 having a potential for abuse associated with a depressant or  
23 stimulant effect on the central nervous system:

24           Aminorex (some trade or other names: aminoxaphen;  
25 2-amino-5-phenyl-2-oxazoline;

26 4,5-dihydro-5-phenyl-2-oxazolamine);

27           Amphetamine, its salts, optical isomers, and

1 salts of optical isomers;

2 Cathinone (some trade or other names:  
3 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone,  
4 2-aminopropiophenone);

5 Etorphine Hydrochloride;

6 Fenethylline and its salts;

7 Mecloqualone and its salts;

8 Methaqualone and its salts;

9 Methcathinone (some trade or other names:

10 2-methylamino-propriophenone; alpha-(methylamino)propriophenone;

11 2-(methylamino)-1-phenylpropan-1-one;

12 alpha-N-methylaminopropriophenone; monomethylpropion;

13 ephedrone, N-methylcathinone; methylcathinone; AL-464; AL-422;

14 AL-463; and UR 1431);

15 N-Ethylamphetamine, its salts, optical isomers,  
16 and salts of optical isomers; and

17 N,N-dimethylamphetamine (some trade or other

18 names: N,N,alpha-trimethylbenzeneethaneamine;

19 N,N,alpha-trimethylphenethylamine), its salts, optical isomers,

20 and salts of optical isomers.

21 SECTION 4. Section 481.122(a), Health and Safety Code, is  
22 amended to read as follows:

23 (a) A person commits an offense if the person knowingly  
24 delivers a controlled substance listed in Penalty Group 1, 1-A,  
25 1-B, 2, or 3 or knowingly delivers marihuana and the person delivers  
26 the controlled substance or marihuana to a person:

27 (1) who is a child;



1           (2) who is enrolled in a public or private primary or  
2 secondary school; or

3           (3) who the actor knows or believes intends to deliver  
4 the controlled substance or marihuana to a person described by  
5 Subdivision (1) or (2).

6           SECTION 5. Section 481.123(a), Health and Safety Code, is  
7 amended to read as follows:

8           (a) For the purposes of this chapter, a controlled substance  
9 analogue is considered to be a controlled substance listed in  
10 Penalty Group 1, [~~or~~] 1-A, or 1-B if the analogue in whole or in part  
11 is intended for human consumption and:

12           (1) the chemical structure of the analogue is  
13 substantially similar to the chemical structure of a controlled  
14 substance listed in Schedule I or Penalty Group 1, [~~or~~] 1-A, or 1-B;  
15 or

16           (2) the analogue is specifically designed to produce  
17 an effect substantially similar to or greater than the effect of a  
18 controlled substance listed in Schedule I or Penalty Group 1, [~~or~~]  
19 1-A, or 1-B.

20           SECTION 6. Section 481.124(d), Health and Safety Code, is  
21 amended to read as follows:

22           (d) An offense under this section is:

23           (1) a felony of the second degree if the controlled  
24 substance is listed in Penalty Group 1, [~~or~~] 1-A, or 1-B;

25           (2) a felony of the third degree if the controlled  
26 substance is listed in Penalty Group 2;

27           (3) a state jail felony if the controlled substance is

1 listed in Penalty Group 3 or 4; or

2 (4) a Class A misdemeanor if the controlled substance  
3 is listed in a schedule by an action of the commissioner under this  
4 chapter but not listed in a penalty group.

5 SECTION 7. Section 551.003(11), Occupations Code, is  
6 amended to read as follows:

7 (11) "Controlled substance" means a substance,  
8 including a drug:

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

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

16 SECTION 8. (a) Except as provided by Subsection (b) of this  
17 section, a change in law made by this Act applies only to an offense  
18 committed on or after September 1, 2003. An offense committed  
19 before September 1, 2003, is covered by the law in effect when the  
20 offense was committed, and the former law is continued in effect for  
21 this purpose.

22 (b) For purposes of Subsection (a) of this section, an  
23 offense was committed before September 1, 2003, if any element of  
24 the offense occurred before that date.

25 SECTION 9. This Act takes effect September 1, 2003.