

By: Dutton

H.B. No. 853

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the penalty for certain offenders for possession of a
3 small amount of certain controlled substances.

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

5 SECTION 1. Section 481.115, Health and Safety Code, is
6 amended by amending Subsection (b) and adding Subsection (b-1) to
7 read as follows:

8 (b) Except as provided by Subsection (b-1), an [An] offense
9 under Subsection (a) is a Class A misdemeanor with a minimum term of
10 confinement of 180 days [state jail felony] if the amount of the
11 controlled substance possessed is, by aggregate weight, including
12 adulterants or dilutants, less than one gram.

13 (b-1) An offense under Subsection (a) is a state jail felony
14 if:

15 (1) the amount of the controlled substance possessed
16 is, by aggregate weight, including adulterants or dilutants, less
17 than one gram; and

18 (2) the person has been previously convicted of an
19 offense under this section or Section 481.1151, 481.116, 481.117,
20 481.118, or 481.121.

21 SECTION 2. Section 481.1151, Health and Safety Code, is
22 amended by amending Subsection (b) and adding Subsection (c) to
23 read as follows:

24 (b) An offense under this section is:

1 (1) a Class A misdemeanor with a minimum term of
2 confinement of 180 days [~~state jail felony~~] if the number of abuse
3 units of the controlled substance is fewer than 20, except as
4 provided by Subsection (c);

5 (2) a felony of the third degree if the number of abuse
6 units of the controlled substance is 20 or more but fewer than 80;

7 (3) a felony of the second degree if the number of
8 abuse units of the controlled substance is 80 or more but fewer than
9 4,000;

10 (4) a felony of the first degree if the number of abuse
11 units of the controlled substance is 4,000 or more but fewer than
12 8,000; and

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

17 (c) An offense under this section is a state jail felony if:

18 (1) the number of abuse units of the controlled
19 substance is fewer than 20; and

20 (2) the person has been previously convicted of an
21 offense under this section or Section 481.115, 481.116, 481.117,
22 481.118, or 481.121.

23 SECTION 3. Section 481.116, Health and Safety Code, is
24 amended by amending Subsection (b) and adding Subsection (b-1) to
25 read as follows:

26 (b) Except as provided by Subsection (b-1), an [~~An~~] offense
27 under Subsection (a) is a Class A misdemeanor with a minimum term of

1 confinement of 180 days [~~state jail felony~~] if the amount of the
2 controlled substance possessed is, by aggregate weight, including
3 adulterants or dilutants, less than one gram.

4 (b-1) An offense under Subsection (a) is a state jail felony
5 if:

6 (1) the amount of the controlled substance possessed
7 is, by aggregate weight, including adulterants or dilutants, less
8 than one gram; and

9 (2) the person has been previously convicted of an
10 offense under this section or Section 481.115, 481.1151, 481.117,
11 481.118, or 481.121.

12 SECTION 4. Section 11, Article 42.12, Code of Criminal
13 Procedure, is amended by adding Subsection (m) to read as follows:

14 (m) A judge who grants community supervision to a person
15 convicted of a Class A misdemeanor under Section 481.115(b),
16 481.1151(b)(1), or 481.116(b), Health and Safety Code, shall
17 require, as a condition of community supervision, that the person
18 successfully complete an educational program on substance abuse
19 awareness approved by the Department of State Health Services.

20 SECTION 5. Section 15(a)(1), Article 42.12, Code of
21 Criminal Procedure, is amended to read as follows:

22 (1) On conviction of a state jail felony under Section
23 481.115(b-1) [~~481.115(b)~~], 481.1151(c) [~~481.1151(b)(1)~~],
24 481.116(b-1) [~~481.116(b)~~], 481.121(b)(3), or 481.129(g)(1), Health
25 and Safety Code, that is punished under Section 12.35(a), Penal
26 Code, the judge shall suspend the imposition of the sentence and
27 place the defendant on community supervision, unless the defendant

1 has previously been convicted of a felony, other than a felony
2 punished under Section 12.44(a), Penal Code, or unless the
3 conviction resulted from an adjudication of the guilt of a
4 defendant previously placed on deferred adjudication community
5 supervision for the offense, in which event the judge may suspend
6 the imposition of the sentence and place the defendant on community
7 supervision or may order the sentence to be executed. The
8 provisions of this subdivision requiring the judge to suspend the
9 imposition of the sentence and place the defendant on community
10 supervision do not apply to a defendant who under Section
11 481.1151(c) [~~481.1151(b)(1)~~], Health and Safety Code, possessed
12 more than five abuse units of the controlled substance or under
13 Section 481.121(b)(3), Health and Safety Code, possessed more than
14 one pound of marihuana.

15 SECTION 6. The change in law made by this Act applies only
16 to an offense committed on or after the effective date of this Act.
17 An offense committed before the effective date of this Act is
18 covered by the law in effect when the offense was committed, and the
19 former law is continued in effect for that purpose. For purposes of
20 this section, an offense was committed before the effective date of
21 this Act if any element of the offense was committed before that
22 date.

23 SECTION 7. This Act takes effect September 1, 2011.