

BILL ANALYSIS

C.S.H.B. 184
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Controlled Substances Act currently provides graduated penalties for possession of varying amounts of marihuana and other controlled substances listed in specific penalty groups. For example, possession of two ounces or less of marihuana is punishable as a Class B misdemeanor offense and possession of four ounces or less but more than two ounces is a Class A misdemeanor offense. There is concern that marihuana arrests disproportionately impact young people, and some reports indicate that a majority of marihuana arrests involve teenagers and young adults with a statistically significant proportion of those arrested being between the ages of 15 and 19 years old.

C.S.H.B. 184 seeks to address the issue of marihuana use among this demographic by using the graduated punishment model for possession of differing amounts of marihuana to make possession of one ounce or less a Class C misdemeanor for an offender under the age of 21 with no prior related conviction who successfully completes a drug abuse awareness and education program approved by the Department of State Health Services.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 184 amends the Health and Safety Code to require a court to punish a defendant who is convicted of Class B misdemeanor possession of marihuana or of a controlled substance listed in Penalty Group 2-A of the Texas Controlled Substances Act by imposing the punishment for a Class C misdemeanor if the defendant was younger than 21 years of age at the time of the commission of the offense; if the amount of controlled substance or marihuana possessed by the defendant was one ounce or less; if the defendant has not been previously convicted of an offense of possession of marihuana or of a Penalty Group 2-A controlled substance or an offense under another state's laws that contains substantially similar elements of such Texas offenses; and if the defendant agrees to complete a drug abuse awareness and education program approved by the Department of State Health Services. The bill establishes that a defendant punished under the bill's provisions is considered to be convicted of a Class C misdemeanor for the purposes of the Texas Controlled Substances Act and other law, and prohibits the use of the conviction for enhancement purposes. The bill establishes that the court in which the defendant is punished retains jurisdiction for 180 days for the limited purpose of determining whether the defendant has completed a drug abuse awareness and education program and requires the court, on determining that the defendant will not complete the program in a timely fashion, to impose the punishment otherwise provided for the offense of possession of marihuana or a Penalty Group 2-A controlled substance.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 184 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 481.1161, Health and Safety Code, is amended by amending Subsection (b) and adding Subsections (c) and (d) to read as follows:

(b) An offense under this section is:

(1) a Class C misdemeanor if the amount of controlled substance possessed is, by aggregate weight, including adulterants or dilutants, one ounce or less, except as provided by Subsection (c);

(2) a Class B misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, two ounces or less but more than one ounce;

(3) ~~[(2)]~~ a Class A misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, four ounces or less but more than two ounces;

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

(5) ~~[(4)]~~ a felony of the third degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 50 pounds or less but more than 5 pounds;

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

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

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

(c) An offense under Subsection (b)(1) is a Class B misdemeanor if it is shown on the trial of the offense that the defendant has been previously convicted three or more times of an offense involving the possession of marihuana or a synthetic cannabinoid and each prior offense was committed within the 24-month period preceding the date of the commission of the instant offense. For purposes of this subsection, "offense involving the possession of marihuana or a synthetic cannabinoid" means an offense under this section or Section 481.121 or an offense under the laws of another state that contains elements substantially similar to the elements of an offense under either of those sections.

(d) A defendant convicted of an offense punishable under Subsection (c) is not eligible for community supervision under Article 42.12, Code of Criminal Procedure.

SECTION 2. Section 481.121, Health and Safety Code, is amended by amending Subsection (b) and adding Subsections (c) and (d) to read as follows:

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

(1) a Class C misdemeanor if the amount of marihuana possessed is one ounce or less, except as provided by Subsection (c);

(2) a Class B misdemeanor if the amount of marihuana possessed is two ounces or less but more than one ounce;

(3) ~~[(2)]~~ a Class A misdemeanor if the amount of marihuana possessed is four ounces or less but more than two ounces;

(4) ~~[(3)]~~ a state jail felony if the amount of marihuana possessed is five pounds or less but more than four ounces;

(5) ~~[(4)]~~ a felony of the third degree if the amount of marihuana possessed is 50 pounds or less but more than 5 pounds;

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

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

(c) An offense under Subsection (b)(1) is a Class B misdemeanor if it is shown on the trial of the offense that the defendant has

No equivalent provision.

been previously convicted three or more times of an offense involving the possession of marihuana or a synthetic cannabinoid and each prior offense was committed within the 24-month period preceding the date of the commission of the instant offense. For purposes of this subsection, "offense involving the possession of marihuana or a synthetic cannabinoid" means an offense under this section or Section 481.1161 or an offense under the laws of another state that contains elements substantially similar to the elements of an offense under either of those sections.

(d) A defendant convicted of an offense punishable under Subsection (c) is not eligible for community supervision under Article 42.12, Code of Criminal Procedure.

SECTION 3. Section 481.126(a), Health and Safety Code, is amended to read as follows:

(a) A person commits an offense if the person:

(1) barter property or expend funds the person knows are derived from the commission of an offense under this chapter punishable by imprisonment in the Texas Department of Criminal Justice for life;

(2) barter property or expend funds the person knows are derived from the commission of an offense under Section 481.121(a) that is punishable under Section 481.121(b)(6) [~~481.121(b)(5)~~];

(3) barter property or finance or invest funds the person knows or believes are intended to further the commission of an offense for which the punishment is described by Subdivision (1); or

(4) barter property or finance or invest funds the person knows or believes are intended to further the commission of an offense under Section 481.121(a) that is punishable under Section 481.121(b)(6) [~~481.121(b)(5)~~].

No equivalent provision.

SECTION 4. Sections 481.134(c), (d), (e), and (f), Health and Safety Code, are amended to read as follows:

(c) The minimum term of confinement or imprisonment for an offense otherwise punishable under Section 481.112(c), (d), (e), or (f), 481.113(c), (d), or (e),

No equivalent provision.

481.114(c), (d), or (e), 481.115(c)-(f), 481.116(c), (d), or (e), 481.1161(b)(5), (6), or (7) [~~481.1161(b)(4), (5), or (6)~~], 481.117(c), (d), or (e), 481.118(c), (d), or (e), 481.120(b)(4), (5), or (6), or 481.121(b)(5), (6), or (7) [~~481.121(b)(4), (5), or (6)~~] is increased by five years and the maximum fine for the offense is doubled if it is shown on the trial of the offense that the offense was committed:

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

(2) on a school bus.

(d) An offense otherwise punishable under Section 481.112(b), 481.113(b), 481.114(b), 481.115(b), 481.116(b), 481.1161(b)(4) [~~481.1161(b)(3)~~], 481.120(b)(3), or 481.121(b)(4) [~~481.121(b)(3)~~] is a felony of the third degree if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board, the premises of a public or private youth center, or a playground; or

(2) on a school bus.

(e) An offense otherwise punishable under Section 481.117(b), 481.119(a), 481.120(b)(2), or 481.121(b)(3) [~~481.121(b)(2)~~] is a state jail felony if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board, the premises of a public or private youth center, or a playground; or

(2) on a school bus.

(f) An offense otherwise punishable under Section 481.118(b), 481.119(b), 481.120(b)(1), or 481.121(b)(1), (b)(2), or (c) is a Class A misdemeanor if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board, the premises of a public or private youth center, or a playground; or

(2) on a school bus.

SECTION 5. Article 14.06(d), Code of

No equivalent provision.

Criminal Procedure, is amended to read as follows:

(d) Subsection (c) applies only to a person charged with committing an offense under:

(1) Section 481.121, Health and Safety Code, if the offense is punishable under Subsection (b)(2), (b)(3), or (c) ~~[(b)(1) or (2)]~~ of that section;

(1-a) Section 481.1161, Health and Safety Code, if the offense is punishable under Subsection (b)(2), (b)(3), or (c) ~~[(b)(1) or (2)]~~ of that section;

(2) Section 28.03, Penal Code, if the offense is punishable under Subsection (b)(2) of that section;

(3) Section 28.08, Penal Code, if the offense is punishable under Subsection (b)(1) of that section;

(4) Section 31.03, Penal Code, if the offense is punishable under Subsection (e)(2)(A) of that section;

(5) Section 31.04, Penal Code, if the offense is punishable under Subsection (e)(2) of that section;

(6) Section 38.114, Penal Code, if the offense is punishable as a Class B misdemeanor; or

(7) Section 521.457, Transportation Code.

SECTION 6. Section 15(a)(1), Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(1) On conviction of a state jail felony under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(4), ~~481.1161(b)(3)~~, 481.121(b)(4), ~~481.121(b)(3)~~, or 481.129(g)(1), Health and Safety Code, that is punished under Section 12.35(a), Penal Code, the judge shall suspend the imposition of the sentence and place the defendant on community supervision, unless the defendant has previously been convicted of a felony, other than a felony punished under Section 12.44(a), Penal Code, or unless the conviction resulted from an adjudication of the guilt of a defendant previously placed on deferred adjudication community supervision for the offense, in which event the judge may suspend the imposition of the sentence and place the defendant on community supervision or may order the sentence to be executed. The provisions of this subdivision requiring the judge to

No equivalent provision.

suspend the imposition of the sentence and place the defendant on community supervision do not apply to a defendant who:

(A) under Section 481.1151(b)(1), Health and Safety Code, possessed more than five abuse units of the controlled substance;

(B) under Section 481.1161(b)(4) [~~481.1161(b)(3)~~], Health and Safety Code, possessed more than one pound, by aggregate weight, including adulterants or dilutants, of the controlled substance; or

(C) under Section 481.121(b)(4) [~~481.121(b)(3)~~], Health and Safety Code, possessed more than one pound of marihuana.

SECTION 7. Article 45.051, Code of Criminal Procedure, is amended by adding Subsection (g) to read as follows:

(g) This subsection applies only to a defendant charged with an offense under Section 481.1161 or 481.121, Health and Safety Code, who is granted a deferral under Subsection (a). In addition to any other requirement, the judge shall, during the deferral period, require that the defendant successfully complete a drug abuse awareness and education program approved by the Department of State Health Services.

No equivalent provision.

No equivalent provision.

SECTION 1. Subchapter D, Chapter 481, Health and Safety Code, is amended by adding Section 481.109 to read as follows:

Sec. 481.109. REDUCTION OF PUNISHMENT FOR CERTAIN YOUTHFUL DEFENDANTS. (a) A court shall punish a defendant who is convicted of a Class B misdemeanor under Section 481.1161 or 481.121 by imposing the punishment for a Class C misdemeanor if:

(1) the defendant was younger than 21 years of age at the time of the commission of the offense;

(2) the amount of controlled substance or marihuana, as appropriate, possessed by the defendant was, by aggregate weight, including adulterants or dilutants, one ounce or less;

(3) the defendant has not been previously convicted of an offense under Section 481.1161 or 481.121 or an offense under the laws of another state that contains elements

substantially similar to the elements of an offense under either of those sections; and (4) the defendant agrees to complete a drug abuse awareness and education program approved by the Department of State Health Services.

(b) Except as provided by Subsection (c), for purposes of this chapter and other law, a defendant punished under this section is considered to be convicted of a Class C misdemeanor, and the conviction may not be used for purposes of enhancement.

(c) The court in which a defendant is punished under this section retains jurisdiction for 180 days for the limited purpose of determining whether the defendant has completed a drug abuse awareness and education program described by Subsection (a)(4). On a determination by the court that the defendant will not complete the program in a timely fashion, the court shall impose the punishment otherwise provided by Section 481.1161 or 481.121.

SECTION 8. The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is **covered** by the law in effect **when** the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 9. This Act takes effect September 1, 2013.

SECTION 2. The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is **governed** by the law in effect **on the date** the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 3. Same as introduced version.