

## **BILL ANALYSIS**

C.S.H.B. 1743  
By: Johnson  
Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Each year, numerous deaths resulting from accidental drug overdoses occur in Texas. Interested parties contend that many of these deaths could be prevented if emergency medical assistance was requested in a timely manner. The parties further contend that such emergency medical assistance is more likely to be requested in a timely manner if individuals concerned about potential prosecution for the possession of controlled substances did not have reason to hesitate to contact authorities for help. Last session, the Texas Legislature enacted legislation encouraging individuals under 21 years of age to request medical assistance in incidents involving alcohol poisoning. Interested parties contend that similar protection should be afforded to those who seek help in cases involving controlled substances to encourage life-saving behavior in drug overdose instances. C.S.H.B. 1743 seeks to reduce the number of deaths caused by accidental drug overdoses by establishing a defense to prosecution for certain low-level controlled substances offenses for an actor who, among other criteria, requested emergency medical assistance in the case of a possible drug overdose.

### **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. 1743 amends the Health and Safety Code to establish a defense to prosecution for the following offenses if the actor requested emergency medical assistance in response to a possible controlled substance, dangerous drug, or abusable volatile chemical overdose, as applicable, of another person; was the first person to make the request for such medical assistance; remained on the scene until the medical assistance arrived; and cooperated with medical assistance and law enforcement personnel:

- a state jail felony offense of possession of a substance listed in Penalty Group 1, 1-A, or 2 of the Texas Controlled Substances Act
- a Class B or Class A misdemeanor offense of possession of a substance listed in Penalty Group 2-A of the Texas Controlled Substances Act
- a Class A misdemeanor offense of possession of a substance listed in Penalty Group 3 of the Texas Controlled Substances Act
- a Class B misdemeanor offense of possession of a substance listed in Penalty Group 4 of the Texas Controlled Substances Act
- a Class B misdemeanor offense of possession of miscellaneous substances
- a Class B or Class A misdemeanor offense of possession of marihuana
- the offense of possession of drug paraphernalia
- the offense of possession of a dangerous drug without a prescription

- the offense of possession and use of an abusable volatile chemical

## **EFFECTIVE DATE**

September 1, 2013.

## **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1743 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 481.115, Health and Safety Code, is amended by adding Subsection (g) to read as follows:

(g) It is a defense to prosecution under Subsection (a) that the actor:

- (1) requested emergency medical assistance in response to the possible controlled substance overdose of another person;
- (2) was the first person to make a request for medical assistance under Subdivision (1);
- (3) remained on the scene until the medical assistance arrived; and
- (4) cooperated with medical assistance and law enforcement personnel.

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

(c) It is a defense to prosecution under Subsection (a) that the actor:

- (1) requested emergency medical assistance in response to the possible controlled substance overdose of another person;
- (2) was the first person to make a request for medical assistance under Subdivision (1);
- (3) remained on the scene until the medical assistance arrived; and
- (4) cooperated with medical assistance and law enforcement personnel.

SECTION 3. Section 481.116, Health and Safety Code, is amended by adding Subsection (f) to read as follows:

(f) It is a defense to prosecution under Subsection (a) that the actor:

- (1) requested emergency medical assistance

### **HOUSE COMMITTEE SUBSTITUTE**

SECTION 1. Section 481.115, Health and Safety Code, is amended by adding Subsection (g) to read as follows:

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

- (1) requested emergency medical assistance in response to the possible controlled substance overdose of another person;
- (2) was the first person to make a request for medical assistance under Subdivision (1);
- (3) remained on the scene until the medical assistance arrived; and
- (4) cooperated with medical assistance and law enforcement personnel.

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

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

- (1) requested emergency medical assistance in response to the possible controlled substance overdose of another person;
- (2) was the first person to make a request for medical assistance under Subdivision (1);
- (3) remained on the scene until the medical assistance arrived; and
- (4) cooperated with medical assistance and law enforcement personnel.

SECTION 3. Section 481.116, Health and Safety Code, is amended by adding Subsection (f) to read as follows:

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

- (1) requested emergency medical assistance

in response to the possible controlled substance overdose of another person;  
(2) was the first person to make a request for medical assistance under Subdivision (1);  
(3) remained on the scene until the medical assistance arrived; and  
(4) cooperated with medical assistance and law enforcement personnel.

SECTION 4. Section 481.1161, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c) It is a defense to prosecution under Subsection (a) that the actor:

(1) requested emergency medical assistance in response to the possible controlled substance overdose of another person;  
(2) was the first person to make a request for medical assistance under Subdivision (1);  
(3) remained on the scene until the medical assistance arrived; and  
(4) cooperated with medical assistance and law enforcement personnel.

SECTION 5. Section 481.117, Health and Safety Code, is amended by adding Subsection (f) to read as follows:

(f) It is a defense to prosecution under Subsection (a) that the actor:

(1) requested emergency medical assistance in response to the possible controlled substance overdose of another person;  
(2) was the first person to make a request for medical assistance under Subdivision (1);  
(3) remained on the scene until the medical assistance arrived; and  
(4) cooperated with medical assistance and law enforcement personnel.

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

(f) It is a defense to prosecution under Subsection (a) that the actor:

(1) requested emergency medical assistance in response to the possible controlled substance overdose of another person;  
(2) was the first person to make a request for medical assistance under Subdivision (1);

in response to the possible controlled substance overdose of another person;  
(2) was the first person to make a request for medical assistance under Subdivision (1);  
(3) remained on the scene until the medical assistance arrived; and  
(4) cooperated with medical assistance and law enforcement personnel.

SECTION 4. Section 481.1161, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

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

(1) requested emergency medical assistance in response to the possible controlled substance overdose of another person;  
(2) was the first person to make a request for medical assistance under Subdivision (1);  
(3) remained on the scene until the medical assistance arrived; and  
(4) cooperated with medical assistance and law enforcement personnel.

SECTION 5. Section 481.117, Health and Safety Code, is amended by adding Subsection (f) to read as follows:

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

(1) requested emergency medical assistance in response to the possible controlled substance overdose of another person;  
(2) was the first person to make a request for medical assistance under Subdivision (1);  
(3) remained on the scene until the medical assistance arrived; and  
(4) cooperated with medical assistance and law enforcement personnel.

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

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

(1) requested emergency medical assistance in response to the possible controlled substance overdose of another person;  
(2) was the first person to make a request for medical assistance under Subdivision (1);

(3) remained on the scene until the medical assistance arrived; and  
(4) cooperated with medical assistance and law enforcement personnel.

SECTION 7. Section 481.119, Health and Safety Code, is amended.

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

(c) It is a defense to prosecution under Subsection (a) that the actor:

(1) requested emergency medical assistance in response to the possible controlled substance overdose of another person;  
(2) was the first person to make a request for medical assistance under Subdivision (1);  
(3) remained on the scene until the medical assistance arrived; and  
(4) cooperated with medical assistance and law enforcement personnel.

SECTION 9. Section 481.125, Health and Safety Code, is amended.

SECTION 10. Section 483.041, Health and Safety Code, is amended.

SECTION 11. Section 485.031, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c) It is an exception to the application of Subsection (a) that the actor:

(1) requested emergency medical assistance in response to the possible abusable volatile chemical overdose of another person;  
(2) was the first person to make a request for medical assistance under Subdivision (1);  
(3) remained on the scene until the medical assistance arrived; and  
(4) cooperated with medical assistance and law enforcement personnel.

SECTION 12. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the

(3) remained on the scene until the medical assistance arrived; and  
(4) cooperated with medical assistance and law enforcement personnel.

SECTION 7. Same as introduced version.

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

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

(1) requested emergency medical assistance in response to the possible controlled substance overdose of another person;  
(2) was the first person to make a request for medical assistance under Subdivision (1);  
(3) remained on the scene until the medical assistance arrived; and  
(4) cooperated with medical assistance and law enforcement personnel.

SECTION 9. Same as introduced version.

SECTION 10. Same as introduced version.

SECTION 11. Section 485.031, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c) It is a defense to prosecution under Subsection (a) that the actor:

(1) requested emergency medical assistance in response to the possible abusable volatile chemical overdose of another person;  
(2) was the first person to make a request for medical assistance under Subdivision (1);  
(3) remained on the scene until the medical assistance arrived; and  
(4) cooperated with medical assistance and law enforcement personnel.

SECTION 12. Same as introduced version.

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 occurred before that date.

SECTION 13. This Act takes effect September 1, 2013.

SECTION 13. Same as introduced version.