BILL ANALYSIS

H.B. 2418
By: Fletcher
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties assert that the Texas Controlled Substances Act does not currently establish penalties specific to marihuana cultivation and that the prosecution of such activity would have to proceed under provisions criminalizing possession of marihuana, in which the category of offense is based on the weight of seized and dried marihuana, as opposed to the number of marihuana plants being cultivated. The parties further note an increasing trend in marihuana cultivation for eventual distribution and sale to the public and contend that this cultivation is more profitable for criminals and more dangerous for law enforcement than traditional marihuana distribution activities, partly due to marihuana cultivators being well-armed and employing counter surveillance. H.B. 2418 seeks to address these concerns by creating a separate offense of production or delivery of a marihuana plant and establishing penalties.

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

H.B. 2418 amends the Health and Safety Code to create the offense of production or delivery of a marihuana plant for a person who produces, delivers, or possesses with the intent to produce or deliver 10 or more marihuana plants, regardless of the weight or size of each plant. The bill establishes penalties for the offense ranging from a state jail felony to imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 10 years and a fine not to exceed $100,000, depending on the number of plants involved in the offense. The bill specifies that if such an offense is also an offense under another provision of the Texas Controlled Substances Act, the actor may be prosecuted for either offense or both offenses.

H.B. 2418 increases the minimum term of confinement or imprisonment for a production or delivery of a marihuana plant offense punishable as a third degree felony or higher grade penalty by five years and doubles the maximum fine for the offense if it is shown at trial that the offense was committed in a certain drug-free zone. The bill enhances the penalty for a production or delivery of a marihuana plant offense punishable as a state jail felony to a third degree felony if it is shown at trial that the offense was committed in a certain drug-free zone. The bill includes a production or delivery of a marihuana plant offense punishable as state jail, third, or second degree felony among the offenses for which penalties are increased by one degree or to a first degree felony, depending on whether force was used or threatened, as a result of using or attempting to use a child in the commission of the offense.

H.B. 2418 amends the Code of Criminal Procedure to include a conviction of a production or delivery of a marihuana plant offense among the convictions for which a judge is authorized to impose as a condition of state jail felony community supervision that a defendant submit at the beginning of the supervision period to a term of confinement in a state jail felony facility for a

term of not less than 90 days or more than one year.

EFFECTIVE DATE

September 1, 2013.