

By: Dutton

H.B. No. 182

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

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

(2) the person has been previously convicted of an offense under this section or Section 481.1151, 481.116, 481.1161, 481.117, 481.118, or 481.121.

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

(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, 481.1161,
22 481.117, 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, 481.1161,
11 481.117, 481.118, or 481.121.

12 SECTION 4. Section 481.134(d), Health and Safety Code, is
13 amended to read as follows:

14 (d) An offense otherwise punishable under Section
15 481.112(b), 481.113(b), 481.114(b), 481.115(b-1) [~~481.115(b)~~],
16 481.116(b-1) [~~481.116(b)~~], 481.1161(b)(3), 481.120(b)(3), or
17 481.121(b)(3) is a felony of the third degree if it is shown on the
18 trial of the offense that the offense was committed:

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

22 (2) on a school bus.

23 SECTION 5. Section 11, Article 42.12, Code of Criminal
24 Procedure, is amended by adding Subsection (n) to read as follows:

25 (n) A judge who grants community supervision to a person
26 convicted of a Class A misdemeanor under Section 481.115(b),
27 481.1151(b)(1), 481.116(b), or 481.1161(b)(2), Health and Safety

1 Code, shall require, as a condition of community supervision, that
2 the person successfully complete an educational program on
3 substance abuse awareness approved by the Department of State
4 Health Services.

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

7 (1) On conviction of a state jail felony under Section
8 481.115(b-1) [~~481.115(b)~~], 481.1151(c) [~~481.1151(b)(1)~~],
9 481.116(b-1) [~~481.116(b)~~], 481.1161(b)(3), 481.121(b)(3), or
10 481.129(g)(1), Health and Safety Code, that is punished under
11 Section 12.35(a), Penal Code, the judge shall suspend the
12 imposition of the sentence and place the defendant on community
13 supervision, unless the defendant has previously been convicted of
14 a felony, other than a felony punished under Section 12.44(a),
15 Penal Code, or unless the conviction resulted from an adjudication
16 of the guilt of a defendant previously placed on deferred
17 adjudication community supervision for the offense, in which event
18 the judge may suspend the imposition of the sentence and place the
19 defendant on community supervision or may order the sentence to be
20 executed. The provisions of this subdivision requiring the judge
21 to suspend the imposition of the sentence and place the defendant on
22 community supervision do not apply to a defendant who:

23 (A) under Section 481.1151(c) [~~481.1151(b)(1)~~],
24 Health and Safety Code, possessed more than five abuse units of the
25 controlled substance;

26 (B) under Section 481.1161(b)(3), Health and
27 Safety Code, possessed more than one pound, by aggregate weight,

1 including adulterants or dilutants, of the controlled substance; or
2 (C) under Section 481.121(b)(3), Health and
3 Safety Code, possessed more than one pound of marihuana.

4 SECTION 7. The change in law made by this Act applies only
5 to an offense committed on or after the effective date of this Act.
6 An offense committed before the effective date of this Act is
7 covered by the law in effect when the offense was committed, and the
8 former law is continued in effect for that purpose. For purposes of
9 this section, an offense was committed before the effective date of
10 this Act if any element of the offense was committed before that
11 date.

12 SECTION 8. This Act takes effect September 1, 2013.