

By: Turner of Harris

H.B. No. 2044

A BILL TO BE ENTITLED

AN ACT

relating to the criminal consequences for the manufacture,
delivery, or possession of certain small amounts of Penalty Group 1
controlled substances.

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

SECTION 1. Section 481.112(b), Health and Safety Code, is
amended to read as follows:

(b) An offense under Subsection (a) is a Class A misdemeanor
~~[state jail felony]~~ if the amount of the controlled substance to
which the offense applies is, by aggregate weight, including
adulterants or dilutants, less than one gram.

SECTION 2. Section 481.115(b), Health and Safety Code, is
amended to read as follows:

(b) An offense under Subsection (a) is a Class A misdemeanor
~~[state jail felony]~~ if the amount of the controlled substance
possessed is, by aggregate weight, including adulterants or
dilutants, less than one gram.

SECTION 3. Sections 481.134(b), (d), and (e), Health and
Safety Code, are amended to read as follows:

(b) An offense otherwise punishable as a state jail felony
under Section ~~[481.112]~~ 481.113, 481.114, or 481.120 is punishable
as a felony of the third degree, and an offense otherwise punishable
as a felony of the second degree under any of those sections or
under Section 481.112 is punishable as a felony of the first degree,

1 if it is shown at the punishment phase of the trial of the offense
2 that the offense was committed:

3 (1) in, on, or within 1,000 feet of premises owned,
4 rented, or leased by an institution of higher learning, the
5 premises of a public or private youth center, or a playground; or

6 (2) in, on, or within 300 feet of the premises of a
7 public swimming pool or video arcade facility.

8 (d) An offense otherwise punishable under Section
9 ~~[481.112(b)]~~ 481.113(b), 481.114(b), ~~[481.115(b)]~~ 481.116(b),
10 481.1161(b)(3), 481.120(b)(3), or 481.121(b)(3) is a felony of the
11 third degree if it is shown on the trial of the offense that the
12 offense was committed:

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

16 (2) on a school bus.

17 (e) An offense otherwise punishable under Section
18 481.112(b), 481.115(b), 481.117(b), 481.119(a), 481.120(b)(2), or
19 481.121(b)(2) is a state jail felony if it is shown on the trial of
20 the offense that the offense was committed:

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

24 (2) on a school bus.

25 SECTION 4. Article 42.12, Code of Criminal Procedure, is
26 amended by adding Section 14A to read as follows:

27 Sec. 14A. MANDATORY DRUG TREATMENT PROGRAM. On conviction

1 of an offense under Section 481.112(b) or 481.115(b), Health and
2 Safety Code, unless the defendant has previously been convicted of
3 an offense under Section 481.112 or 481.115, Health and Safety
4 Code, the judge shall:

5 (1) suspend the imposition of the sentence and place
6 the defendant on community supervision; and

7 (2) order the defendant as a condition of community
8 supervision to participate in a drug treatment program approved by
9 the Department of State Health Services.

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

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

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

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

7 (C) under Section 481.121(b)(3), Health and
8 Safety Code, possessed more than one pound of marihuana.

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

11 (d) A judge may impose as a condition of community
12 supervision that a defendant submit at the beginning of the period
13 of community supervision to a term of confinement in a state jail
14 felony facility for a term of not less than 90 days or more than 180
15 days, or a term of not less than 90 days or more than one year if the
16 defendant is convicted of an offense punishable as a state jail
17 felony under Section [~~481.112~~] 481.1121, 481.113, or 481.120,
18 Health and Safety Code. A judge may not require a defendant to
19 submit to both the term of confinement authorized by this
20 subsection and a term of confinement under Section 5 or 12 of this
21 article. For the purposes of this subsection, a defendant
22 previously has been convicted of a felony regardless of whether the
23 sentence for the previous conviction was actually imposed or was
24 probated and suspended.

25 SECTION 7. The change in law made by this Act applies only
26 to an offense committed on or after the effective date of this Act.
27 An offense committed before the effective date of this Act is

1 governed by the law in effect on the date the offense was committed,
2 and the former law is continued in effect for that purpose. For
3 purposes of this section, an offense was committed before the
4 effective date of this Act if any element of the offense was
5 committed before that date.

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