

By: Turner of Harris

H.B. No. 2045

A BILL TO BE ENTITLED

AN ACT

relating to the penalty 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 C 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 C 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) and (d), 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 SECTION 4. Section 15(a)(1), Article 42.12, Code of
18 Criminal Procedure, is amended to read as follows:

19 (a)(1) On conviction of a state jail felony under Section
20 ~~[481.115(b)]~~ 481.1151(b)(1), 481.116(b), 481.1161(b)(3),
21 481.121(b)(3), or 481.129(g)(1), Health and Safety Code, that is
22 punished under Section 12.35(a), Penal Code, the judge shall
23 suspend the imposition of the sentence and place the defendant on
24 community supervision, unless the defendant has previously been
25 convicted of a felony, other than a felony punished under Section
26 12.44(a), Penal Code, or unless the conviction resulted from an
27 adjudication of the guilt of a defendant previously placed on

1 deferred adjudication community supervision for the offense, in
2 which event the judge may suspend the imposition of the sentence and
3 place the defendant on community supervision or may order the
4 sentence to be executed. The provisions of this subdivision
5 requiring the judge to suspend the imposition of the sentence and
6 place the defendant on community supervision do not apply to a
7 defendant who:

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

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

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

16 SECTION 5. Section 15(d), Article 42.12, Code of Criminal
17 Procedure, is amended to read as follows:

18 (d) A judge may impose as a condition of community
19 supervision that a defendant submit at the beginning of the period
20 of community supervision to a term of confinement in a state jail
21 felony facility for a term of not less than 90 days or more than 180
22 days, or a term of not less than 90 days or more than one year if the
23 defendant is convicted of an offense punishable as a state jail
24 felony under Section ~~[481.112]~~ 481.1121, 481.113, or 481.120,
25 Health and Safety Code. A judge may not require a defendant to
26 submit to both the term of confinement authorized by this
27 subsection and a term of confinement under Section 5 or 12 of this

1 article. For the purposes of this subsection, a defendant
2 previously has been convicted of a felony regardless of whether the
3 sentence for the previous conviction was actually imposed or was
4 probated and suspended.

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

13 SECTION 7. This Act takes effect September 1, 2013.