

By: Huffman

S.B. No. 731

A BILL TO BE ENTITLED

AN ACT

relating to the penalties for the production or delivery of marihuana plants.

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

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

(d) A judge may impose as a condition of community supervision that a defendant submit at the beginning of the period of community supervision to a term of confinement in a state jail felony facility for a term of not less than 90 days or more than 180 days, or a term of not less than 90 days or more than one year if the defendant is convicted of an offense punishable as a state jail felony under Section 481.112, 481.1121, 481.113, ~~[or]~~ 481.120, or 481.1211, Health and Safety Code. A judge may not require a defendant to submit to both the term of confinement authorized by this subsection and a term of confinement under Section 5 or 12 of this article. For the purposes of this subsection, a defendant previously has been convicted of a felony regardless of whether the sentence for the previous conviction was actually imposed or was probated and suspended.

SECTION 2. Section 481.002, Health and Safety Code, is amended by adding Subdivision (54) to read as follows:

(54) "Marihuana plant" means a single specimen of the organism Cannabis sativa L. having leaves and a readily observable

1 root formation, including a root ball or root hairs.

2 SECTION 3. Subchapter D, Chapter 481, Health and Safety
3 Code, is amended by adding Section 481.1211 to read as follows:

4 Sec. 481.1211. OFFENSE: PRODUCTION OR DELIVERY OF MARIHUANA
5 PLANT. (a) A person commits an offense if the person produces,
6 delivers, or possesses with the intent to produce or deliver 10 or
7 more marihuana plants, regardless of the weight or size of each
8 plant.

9 (b) An offense under Subsection (a) is:

10 (1) a state jail felony if the number of plants is 10
11 or more but fewer than 25;

12 (2) a felony of the third degree if the number of
13 plants is 25 or more but fewer than 100;

14 (3) a felony of the second degree if the number of
15 plants is 100 or more but fewer than 500;

16 (4) a felony of the first degree if the number of
17 plants is 500 or more but fewer than 1,000; and

18 (5) punishable by imprisonment in the Texas Department
19 of Criminal Justice for life or for a term of not more than 99 years
20 or less than 10 years, and a fine not to exceed \$100,000, if the
21 number of plants is 1,000 or more.

22 (c) If conduct that is an offense under this section is also
23 an offense under another section of this chapter, the actor may be
24 prosecuted under either section or both.

25 SECTION 4. Sections 481.134(b), (c), and (d), Health and
26 Safety Code, are amended to read as follows:

27 (b) An offense otherwise punishable as a state jail felony

1 under Section 481.112, 481.113, 481.114, [~~or~~] 481.120, or 481.1211
2 is punishable as a felony of the third degree, and an offense
3 otherwise punishable as a felony of the second degree under any of
4 those sections is punishable as a felony of the first degree, if it
5 is shown at the punishment phase of the trial of the offense that
6 the offense was committed:

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

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

12 (c) The minimum term of confinement or imprisonment for an
13 offense otherwise punishable under Section 481.112(c), (d), (e), or
14 (f), 481.113(c), (d), or (e), 481.114(c), (d), or (e),
15 481.115(c)-(f), 481.116(c), (d), or (e), 481.1161(b)(4), (5), or
16 (6), 481.117(c), (d), or (e), 481.118(c), (d), or (e),
17 481.120(b)(4), (5), or (6), [~~or~~] 481.121(b)(4), (5), or (6), or
18 481.1211(b)(2), (3), (4), or (5) is increased by five years and the
19 maximum fine for the offense is doubled if it is shown on the trial
20 of the offense that the offense was committed:

21 (1) in, on, or within 1,000 feet of the premises of a
22 school, the premises of a public or private youth center, or a
23 playground; or

24 (2) on a school bus.

25 (d) An offense otherwise punishable under Section
26 481.112(b), 481.113(b), 481.114(b), 481.115(b), 481.116(b),
27 481.1161(b)(3), 481.120(b)(3), [~~or~~] 481.121(b)(3), or

1 481.1211(b)(1) is a felony of the third degree if it is shown on the
2 trial of the offense that the offense was committed:

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

6 (2) on a school bus.

7 SECTION 5. Section 481.140(a), Health and Safety Code, is
8 amended to read as follows:

9 (a) If it is shown at the punishment phase of the trial of an
10 offense otherwise punishable as a state jail felony, felony of the
11 third degree, or felony of the second degree under Section 481.112,
12 481.1121, 481.113, 481.114, 481.120, 481.1211, or 481.122 that the
13 defendant used or attempted to use a child younger than 18 years of
14 age to commit or assist in the commission of the offense, the
15 punishment is increased by one degree, unless the defendant used or
16 threatened to use force against the child or another to gain the
17 child's assistance, in which event the punishment for the offense
18 is a felony of the first degree.

19 SECTION 6. The change in law made by this Act applies only
20 to an offense committed on or after the effective date of this Act.
21 An offense committed before the effective date of this Act is
22 governed by the law in effect on the date the offense was committed,
23 and the former law is continued in effect for that purpose. For
24 purposes of this section, an offense was committed before the
25 effective date of this Act if any element of the offense occurred
26 before that date.

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