

By: Murphy

H.B. No. 2170

A BILL TO BE ENTITLED

AN ACT

relating to enhancing the penalties for certain repeat and habitual misdemeanor offenders.

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

SECTION 1. Sections 12.42(a), (b), and (d), Penal Code, are amended to read as follows:

(a) Except as provided by Subsection (c)(2), if it is shown on the trial of a felony of the third degree that the defendant has previously been finally convicted of a felony other than a state jail felony punishable under Section 12.35(a) or 12.43(b-1), on conviction the defendant shall be punished for a felony of the second degree.

(b) Except as provided by Subsection (c)(2) or (c)(4), if it is shown on the trial of a felony of the second degree that the defendant has previously been finally convicted of a felony other than a state jail felony punishable under Section 12.35(a) or 12.43(b-1), on conviction the defendant shall be punished for a felony of the first degree.

(d) Except as provided by Subsection (c)(2) or (c)(4), if it is shown on the trial of a felony offense other than a state jail felony punishable under Section 12.35(a) or 12.43(b-1) that the defendant has previously been finally convicted of two felony offenses, and the second previous felony conviction is for an offense that occurred subsequent to the first previous conviction

1 having become final, on conviction the defendant shall be punished  
2 by imprisonment in the Texas Department of Criminal Justice for  
3 life, or for any term of not more than 99 years or less than 25  
4 years. A previous conviction for a state jail felony punishable  
5 under Section [12.35\(a\)](#) or [12.43\(b-1\)](#) may not be used for  
6 enhancement purposes under this subsection.

7 SECTION 2. Sections [12.42\(c\)\(1\)](#) and (5), Penal Code, are  
8 amended to read as follows:

9 (1) If it is shown on the trial of a felony of the first  
10 degree that the defendant has previously been finally convicted of  
11 a felony other than a state jail felony punishable under Section  
12 [12.35\(a\)](#) or [12.43\(b-1\)](#), on conviction the defendant shall be  
13 punished by imprisonment in the Texas Department of Criminal  
14 Justice for life, or for any term of not more than 99 years or less  
15 than 15 years. In addition to imprisonment, an individual may be  
16 punished by a fine not to exceed \$10,000.

17 (5) A previous conviction for a state jail felony  
18 punishable under Section [12.35\(a\)](#) or [12.43\(b-1\)](#) may not be used for  
19 enhancement purposes under Subdivision (2).

20 SECTION 3. Section [12.425](#), Penal Code, is amended to read as  
21 follows:

22 Sec. 12.425. PENALTIES FOR REPEAT AND HABITUAL FELONY  
23 OFFENDERS ON TRIAL FOR STATE JAIL FELONY. (a) If it is shown on  
24 the trial of a state jail felony punishable under Section [12.35\(a\)](#)  
25 or [12.43\(b-1\)](#) that the defendant has previously been finally  
26 convicted of two state jail felonies punishable under Section  
27 [12.35\(a\)](#) or [12.43\(b-1\)](#), on conviction the defendant shall be

1 punished for a felony of the third degree.

2 (b) If it is shown on the trial of a state jail felony  
3 punishable under Section 12.35(a) or 12.43(b-1) that the defendant  
4 has previously been finally convicted of two felonies other than a  
5 state jail felony punishable under Section 12.35(a) or 12.43(b-1),  
6 and the second previous felony conviction is for an offense that  
7 occurred subsequent to the first previous conviction having become  
8 final, on conviction the defendant shall be punished for a felony of  
9 the second degree.

10 (c) If it is shown on the trial of a state jail felony for  
11 which punishment may be enhanced under Section 12.35(c) that the  
12 defendant has previously been finally convicted of a felony other  
13 than a state jail felony punishable under Section 12.35(a) or  
14 12.43(b-1), on conviction the defendant shall be punished for a  
15 felony of the second degree.

16 SECTION 4. Section 12.43, Penal Code, is amended by  
17 amending Subsections (a) and (b) and adding Subsection (b-1) to  
18 read as follows:

19 (a) Except as provided under Subsection (b-1), if ~~if~~ it is  
20 shown on the trial of a Class A misdemeanor that the defendant has  
21 been previously ~~before~~ convicted of a Class A misdemeanor or any  
22 degree of felony, on conviction the defendant ~~he~~ shall be  
23 punished by:

- 24 (1) a fine not to exceed \$4,000;
- 25 (2) confinement in jail for any term of not more than  
26 one year or less than 90 days; or
- 27 (3) both such fine and confinement.

1           (b) Except as provided under Subsection (b-1), if ~~if~~ it is  
2 shown on the trial of a Class B misdemeanor that the defendant has  
3 been previously ~~before~~ convicted of a Class A or Class B  
4 misdemeanor or any degree of felony, on conviction the defendant  
5 ~~he~~ shall be punished by:

6                   (1) a fine not to exceed \$2,000;

7                   (2) confinement in jail for any term of not more than  
8 180 days or less than 30 days; or

9                   (3) both such fine and confinement.

10           **(b-1) An offense that is otherwise punishable as a Class A**  
11 **or Class B misdemeanor is punishable as a state jail felony if it is**  
12 **shown on the trial of the offense that:**

13                   **(1) the defendant has been previously convicted four**  
14 **or more times of a Class A or Class B misdemeanor or any degree of**  
15 **felony; and**

16                   **(2) each of the previous offenses was committed in the**  
17 **10-year period preceding the date of commission of the instant**  
18 **offense.**

19           SECTION 5. Sections 15(a)(1) and (2), Article 42.12, Code  
20 of Criminal Procedure, are amended to read as follows:

21           (1) On conviction of a state jail felony under Section  
22 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(3),  
23 481.121(b)(3), or 481.129(g)(1), Health and Safety Code, that is  
24 punished under Section 12.35(a) or 12.43(b-1), Penal Code, the  
25 judge shall suspend the imposition of the sentence and place the  
26 defendant on community supervision, unless the defendant has  
27 previously been convicted of a felony, other than a felony punished

1 under Section 12.44(a), Penal Code, or unless the conviction  
2 resulted from an adjudication of the guilt of a defendant  
3 previously placed on deferred adjudication community supervision  
4 for the offense, in which event the judge may suspend the imposition  
5 of the sentence and place the defendant on community supervision or  
6 may order the sentence to be executed. The provisions of this  
7 subdivision requiring the judge to suspend the imposition of the  
8 sentence and place the defendant on community supervision do not  
9 apply to a defendant who:

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

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

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

18 (2) On conviction of a state jail felony punished  
19 under Section 12.35(a) or 12.43(b-1), Penal Code, other than a  
20 state jail felony listed in Subdivision (1), subject to Subdivision  
21 (2-a), the judge may:

22 (A) suspend the imposition of the sentence and  
23 place the defendant on community supervision; or

24 (B) order the sentence to be executed:

25 (i) in whole; or

26 (ii) in part, with a term of community  
27 supervision to commence immediately on release of the defendant

1 from confinement.

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

10       SECTION 7. This Act takes effect September 1, 2015.