

By: Ellis

S.B. No. 851

A BILL TO BE ENTITLED

AN ACT

relating to reducing the penalty for certain offenders for possession of a small amount of certain controlled substances; creating a dedicated account.

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 [state jail felony] if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, a usable quantity that is more than 0.02 grams but less than one gram.

(b-1) An offense under Subsection (b) is a state jail felony if the person has been previously convicted of an offense listed in Section 3g(a)(1), Article 42.12, Code of Criminal Procedure.

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) except as provided by Subsection (c), a Class A misdemeanor [state jail felony] if the number of abuse units of the controlled substance is fewer than 20;

(2) a felony of the third degree if the number of abuse

1 units of the controlled substance is 20 or more but fewer than 80;

2 (3) a felony of the second degree if the number of
3 abuse units of the controlled substance is 80 or more but fewer than
4 4,000;

5 (4) a felony of the first degree if the number of abuse
6 units of the controlled substance is 4,000 or more but fewer than
7 8,000; and

8 (5) punishable by imprisonment in the Texas Department
9 of Criminal Justice for life or for a term of not more than 99 years
10 or less than 15 years and a fine not to exceed \$250,000, if the
11 number of abuse units of the controlled substance is 8,000 or more.

12 (c) An offense under Subsection (b)(1) is a state jail
13 felony if the person has been previously convicted of an offense
14 listed in Section 3g(a)(1), Article 42.12, Code of Criminal
15 Procedure.

16 SECTION 3. Section 481.116, Health and Safety Code, is
17 amended by amending Subsection (b) and adding Subsection (b-1) to
18 read as follows:

19 (b) Except as provided by Subsection (b-1), an [An] offense
20 under Subsection (a) is a Class A misdemeanor [state jail felony] if
21 the amount of the controlled substance possessed is, by aggregate
22 weight, including adulterants or dilutants, a usable quantity that
23 is more than 0.02 grams but less than one gram.

24 (b-1) An offense under Subsection (b) is a state jail felony
25 if the person has been previously convicted of an offense listed in
26 Section 3g(a)(1), Article 42.12, Code of Criminal Procedure.

27 SECTION 4. Section 481.134(d), Health and Safety Code, is

1 amended to read as follows:

2 (d) An offense otherwise punishable under Section
3 481.112(b), 481.113(b), 481.114(b), 481.115(b-1) [~~481.115(b)~~],
4 481.116(b-1) [~~481.116(b)~~], 481.1161(b)(3), 481.120(b)(3), or
5 481.121(b)(3) is a felony of the third degree if it is shown on the
6 trial of the offense that the offense was committed:

- 7 (1) in, on, or within 1,000 feet of any real property
8 that is owned, rented, or leased to a school or school board, the
9 premises of a public or private youth center, or a playground; or
10 (2) on a school bus.

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

13 (n) A judge who grants community supervision to a person
14 convicted of a Class A misdemeanor under Section 481.115(b),
15 481.1151(b)(1), 481.116(b), or 481.1161(b)(2), Health and Safety
16 Code, may require, as a condition of community supervision, that
17 the person successfully complete an educational program on
18 substance abuse awareness approved by the Department of State
19 Health Services.

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

22 (1) On conviction of a state jail felony under Section
23 481.115(b-1) [~~481.115(b)~~], 481.1151(c) [~~481.1151(b)(1)~~],
24 481.116(b-1) [~~481.116(b)~~], 481.1161(b)(3), 481.121(b)(3), or
25 481.129(g)(1), Health and Safety Code, that is punished under
26 Section 12.35(a), Penal Code, the judge shall suspend the
27 imposition of the sentence and place the defendant on community

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

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

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

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

19 SECTION 7. Chapter 481, Health and Safety Code, is amended
20 by adding Subchapter J to read as follows:

21 SUBCHAPTER J. DISPOSITION OF SAVINGS RELATED TO PENALTIES FOR
22 CERTAIN CONTROLLED SUBSTANCE OFFENSES

23 Sec. 481.401. ACCOUNT. The safe neighborhoods and schools
24 account is a dedicated account in the general revenue fund.

25 Sec. 481.402. FUNDING SOURCE. (a) The comptroller shall
26 determine the amount of money saved as a result of the passage of
27 the Act of the 84th Legislature, Regular Session, 2015, that

1 reduces the penalties for certain persons convicted of offenses
2 under Sections 481.115, 481.1151, and 481.116.

3 (b) The comptroller shall deposit the amount determined
4 under Subsection (a) into the safe neighborhoods and schools
5 account as follows:

6 (1) 25 percent to the education subaccount in the
7 account;

8 (2) 10 percent to the victim compensation subaccount
9 in the account; and

10 (3) 65 percent to the corrections subaccount in the
11 account.

12 Sec. 481.403. EDUCATION SUBACCOUNT. Money in the education
13 subaccount of the safe neighborhoods and schools account may be
14 appropriated only to the Texas Education Agency to provide grants
15 to programs that are designed to improve outcomes for public school
16 students by reducing truancy and supporting students who are at
17 risk of dropping out of school or are victims of crime.

18 Sec. 481.404. VICTIM COMPENSATION SUBACCOUNT. Money in the
19 victim compensation subaccount of the safe neighborhoods and
20 schools account may be appropriated only to the victim services
21 division of the Texas Department of Criminal Justice to provide
22 grants for programs that assist victims of crime.

23 Sec. 481.405. CORRECTIONS SUBACCOUNT. Money in the
24 corrections subaccount of the safe neighborhoods and schools
25 account may be appropriated only to the community justice
26 assistance division of the Texas Department of Criminal Justice to
27 provide grants for:

1 (1) programs providing mental health treatment or
2 substance abuse treatment for persons in the criminal justice
3 system;

4 (2) pretrial intervention programs for persons in the
5 criminal justice system; and

6 (3) programs to reduce recidivism of:

7 (A) persons convicted of misdemeanor offenses;
8 and

9 (B) persons with mental health or substance abuse
10 issues who are in the criminal justice system.

11 Sec. 481.406. INTEREST ON ACCOUNT. Section 403.071,
12 Government Code, does not apply to the safe neighborhoods and
13 schools account.

14 SECTION 8. The change in law made by this Act applies only
15 to an offense committed on or after the effective date of this Act.
16 An offense committed before the effective date of this Act is
17 governed by the law in effect on the date the offense was committed,
18 and the former law is continued in effect for that purpose. For
19 purposes of this section, an offense was committed before the
20 effective date of this Act if any element of the offense was
21 committed before that date.

22 SECTION 9. This Act takes effect September 1, 2015.