

BILL ANALYSIS

C.S.H.B. 63
By: Moody
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been suggested that the punishment for the possession of a small amount of marihuana is excessive, particularly when considering the additional consequences that a conviction for such possession may bring. C.S.H.B. 63 seeks to address this issue by revising penalties associated with the possession of certain small amounts of marihuana.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 63 amends the Health and Safety Code to exclude the knowing or intentional possession of one ounce or less of a usable quantity of marihuana from the conduct constituting a Class B misdemeanor possession of marihuana offense. The bill makes a person who knowingly or intentionally possesses such an amount of a usable quantity of marihuana liable to the state for a maximum \$250 civil penalty but establishes that such conduct does not constitute an offense and that the imposition of the civil penalty is not a conviction and may not be considered a conviction for any purpose.

C.S.H.B. 63 creates the Class C misdemeanor offense of subsequent possession of a small amount of marihuana for a person who knowingly or intentionally possesses such an amount of a usable quantity of marihuana and has previously been assessed a civil penalty two times for a possession of a small amount of marihuana violation.

C.S.H.B. 63 establishes as a defense to prosecution for possession or delivery of drug paraphernalia that drug paraphernalia was knowingly or intentionally used, possessed, or delivered solely in furtherance of a possession of a small amount of marihuana civil violation or the offense of subsequent possession of a small amount of marihuana.

C.S.H.B. 63 amends the Code of Criminal Procedure to prohibit a peace officer from making an arrest solely because of a possession of a small amount of marihuana civil violation regardless of whether the person is subject to prosecution for subsequent possession of a small amount of marihuana. The bill authorizes a peace officer to issue to a person a citation that contains written notice of the time and place the person must appear before a justice court, the name and address of the person charged, and the violation charged.

C.S.H.B. 63 requires such a citation for a notice to appear to notify the person that the person may be subject to prosecution for a Class C misdemeanor for subsequent possession of a small amount of marihuana if the person has previously been assessed a civil penalty for possession of a small amount of marihuana two times. The bill establishes that the citation is considered to be a sufficient complaint for purposes of charging the accused with the commission of an offense if the citation is filed with a court by a district or county attorney.

C.S.H.B. 63 requires the justice court, at the time and place the person is required to appear before the court pursuant to the citation, to inquire whether the district or county attorney intends to collect a civil penalty or prosecute an offense. The bill requires the court to dismiss the complaint with prejudice if the attorney does not answer in the affirmative.

C.S.H.B. 63 authorizes the district or county attorney of the county in which the possession of a small amount of marihuana violation is alleged to have occurred to bring an action in the justice court of the county to collect the applicable civil penalty or to charge the person with a subsequent possession of a small amount of marihuana offense if the person has previously been assessed such a civil penalty two times. The bill requires a civil action for a possession of a small amount of marihuana violation to be conducted in the manner provided by statutory provisions governing criminal proceedings in justice and municipal courts as if an offense were charged.

C.S.H.B. 63 prohibits the court from issuing an arrest warrant for a possession of a small amount of marihuana violation or a subsequent possession of a small amount of marihuana offense and from requiring the person liable for the civil penalty or who commits the offense to give bail but authorizes the court to issue a *capias* for the arrest of a person who fails to appear in court or to make payment, as directed by the citation. The bill prohibits a person liable for the civil penalty for a possession of a small amount of marihuana violation from appealing under statutory provisions governing appeal procedures for justice and municipal courts.

C.S.H.B. 63 requires the court to determine whether the person subject to the civil penalty for a possession of a small amount of marihuana violation is indigent before imposing the penalty and to waive the penalty if it makes such a determination and authorizes the court to order the indigent person to complete a maximum of 10 hours of community service. The bill authorizes the court to waive or reduce the civil penalty for a nonindigent person if the person attends a certain approved substance abuse education program or performs not more than 10 hours of community service, as ordered by the court.

C.S.H.B. 63 requires the court, if during the proceeding for a possession of a small amount of marihuana violation the court finds that the person has previously been assessed a civil penalty for such a violation one time, to order the person to attend a certain approved substance abuse education program, in addition to assessing a civil penalty. The bill requires the court, if during the proceeding the court finds that the person has previously been assessed such a civil penalty two times, to suspend the proceedings and notify the appropriate prosecuting attorney so that the person may be charged with the offense of subsequent possession of a small amount of marihuana. The bill requires the judge, on a plea of guilty or *nolo contendere* for such an offense by a defendant and payment of all court costs, to defer further proceedings without entering an adjudication of guilt and place the defendant on probation. The bill authorizes the court that determines that such a civil penalty is uncollectable to enter an order waiving any remaining unpaid portion of the penalty.

C.S.H.B. 63 sets out provisions relating to the seizure, preservation, and disposal of marihuana seized by law enforcement from a person subject to a civil penalty for a possession of a small amount of marihuana violation or to prosecution for an offense of subsequent possession of a small amount of marihuana. The bill provides for the confidentiality of the identity of a person cited for a possession of a small amount of marihuana violation and the identity of a person found liable for a civil penalty for such a violation and makes these seizure and confidentiality

provisions applicable to an indigent person for whom a court waives the civil penalty.

C.S.H.B. 63 authorizes a court that assesses such a civil penalty to maintain a database or other electronic record of civil penalties assessed for the possession of a small amount of marihuana and to share that database or record with other courts and prosecutors in Texas for purposes of determining whether a person has been previously assessed such a civil penalty and is subject to prosecution for an offense of subsequent possession. The bill makes the information in the database or record confidential and prohibits its disclosure to the public.

C.S.H.B. 63 establishes that its provisions relating to the proceedings for certain small amount of marihuana possession violations and offenses do not affect a peace officer's authority to conduct a search or seize marihuana or other property as contraband under any law.

C.S.H.B. 63 amends the Family Code to include conduct constituting a possession of a small amount of marihuana civil violation or the offense of subsequent possession of a small amount of marihuana among the conduct that constitutes delinquent conduct.

C.S.H.B. 63 amends the Local Government Code to include the filing of a civil action by the state under the bill's provisions relating to a possession of a small amount of marihuana violation among the actions for which a justice of the peace is not entitled to a fee.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 63 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute reduces from three to two the number of previous assessments of a civil penalty for the possession of a small amount of marihuana that constitutes the offense of subsequent possession of a small amount of marihuana.

The substitute includes provisions:

- providing for a court's authority to maintain and share a database or other electronic record of such assessed civil penalties and for the confidentiality of information in the database or record;
- relating to a justice court's required dismissal of a complaint for a possession of a small amount of marihuana violation in certain circumstances; and
- authorizing the court to waive any remaining unpaid portion of such assessed civil penalties determined to be uncollectable.