86R19651 JSC-D

By:  Moody, Collier, White, Dutton, Phelan, H.B. No. 63

     et al.

Substitute the following for H.B. No. 63:

By:  Collier C.S.H.B. No. 63

A BILL TO BE ENTITLED

AN ACT

relating to the civil and criminal penalties for possession of certain small amounts of marihuana and an exception to prosecution for possession of associated drug paraphernalia; creating a criminal offense.

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

SECTION 1.  Section 481.121(b), Health and Safety Code, is amended to read as follows:

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

(1)  a Class B misdemeanor if the amount of marihuana possessed is two ounces or less but more than one ounce;

(2)  a Class A misdemeanor if the amount of marihuana possessed is four ounces or less but more than two ounces;

(3)  a state jail felony if the amount of marihuana possessed is five pounds or less but more than four ounces;

(4)  a felony of the third degree if the amount of marihuana possessed is 50 pounds or less but more than 5 pounds;

(5)  a felony of the second degree if the amount of marihuana possessed is 2,000 pounds or less but more than 50 pounds; and

(6)  punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed $50,000, if the amount of marihuana possessed is more than 2,000 pounds.

SECTION 2.  Subchapter D, Chapter 481, Health and Safety Code, is amended by adding Sections 481.1211 and 481.1212 to read as follows:

Sec. 481.1211.  CIVIL PENALTY: POSSESSION OF SMALL AMOUNT OF MARIHUANA. (a) Notwithstanding Section 481.121 and except as otherwise provided by Section 481.1212, a person who knowingly or intentionally possesses a usable quantity of marihuana in an amount that is one ounce or less does not commit an offense but is liable to the state for a civil penalty not to exceed $250.

(b)  The imposition of a civil penalty under this section is not a conviction and may not be considered a conviction for any purpose.

Sec. 481.1212.  OFFENSE: SUBSEQUENT POSSESSION OF SMALL AMOUNT OF MARIHUANA. (a) A person commits an offense if the person:

(1)  knowingly or intentionally possesses a usable quantity of marihuana in an amount that is one ounce or less; and

(2)  has previously been assessed a civil penalty two times under Section 481.1211.

(b)  An offense under this section is a Class C misdemeanor.

SECTION 3.  Section 481.125, Health and Safety Code, is amended by adding Subsection (g) to read as follows:

(g)  It is a defense to prosecution under this section that drug paraphernalia was knowingly or intentionally used, possessed, or delivered solely in furtherance of a violation of Section 481.1211 or an offense under Section 481.1212.

SECTION 4.  Subchapter B, Chapter 45, Code of Criminal Procedure, is amended by adding Article 45.062 to read as follows:

Art. 45.062.  PROCEEDINGS FOR CERTAIN MARIHUANA POSSESSION VIOLATIONS AND OFFENSES. (a) A peace officer may not make an arrest solely because of a violation of Section 481.1211, Health and Safety Code, regardless of whether the person may be subject to prosecution under Section 481.1212 of that code. A peace officer may 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. The citation must notify the person that the person may be subject to prosecution for a Class C misdemeanor under Section 481.1212, Health and Safety Code, if the person has previously been assessed a civil penalty two times under Section 481.1211, Health and Safety Code.

(b)  The district or county attorney of the county in which the conduct described by Section 481.1211, Health and Safety Code, is alleged to have occurred may:

(1)  bring an action in the justice court of the county to collect the civil penalty of a person who receives a citation under this article; or

(2)  charge the person with an offense under Section 481.1212, Health and Safety Code, if the person has previously been assessed a civil penalty two times under Section 481.1211 of that code.

(c)  Except as otherwise provided by this article, a civil action under this article for a violation of Section 481.1211, Health and Safety Code, shall be conducted in the manner provided by this chapter as if an offense were charged.

(d)  The court may not:

(1)  issue an arrest warrant under Article 45.014 for a violation of Section 481.1211, Health and Safety Code, or an offense under Section 481.1212 of that code; or

(2)  require the person who violates Section 481.1211, Health and Safety Code, or commits an offense under Section 481.1212 of that code, to give bail under Article 45.016.

(e)  A citation issued under this article is considered to be a sufficient complaint for purposes of Articles 45.018 and 45.019 if the citation is filed with the court by a district or county attorney.

(f)  At the time and place the person is required to appear before the justice court pursuant to the citation issued to the person under Subsection (a), the court shall inquire whether the district or county attorney intends to collect a civil penalty or prosecute an offense. If the attorney does not answer in the affirmative, the court shall dismiss the complaint with prejudice.

(g)  A person liable for a civil penalty under Section 481.1211, Health and Safety Code, may not appeal under Article 45.042.

(h)  Before imposing a civil penalty under Section 481.1211, Health and Safety Code, the court shall determine whether the person subject to the penalty is indigent. If the court determines the person is indigent, the court shall waive the penalty and may order the person to complete not more than 10 hours of community service.

(i)  Subsections (p), (r), and (s) apply to a person for whom a court waives a penalty under Subsection (h).

(j)  The court may waive or reduce the civil penalty for a person other than a person described by Subsection (h) if:

(1)  the person subject to a civil penalty under Section 481.1211, Health and Safety Code, attends a program that provides education in substance abuse and is approved by the Department of State Health Services, the Texas Department of Licensing and Regulation, or the Texas Department of Public Safety; or

(2)  the person performs not more than 10 hours of community service, as ordered by the court.

(k)  If during a proceeding for a violation of Section 481.1211, Health and Safety Code, the court finds that the person has previously been assessed a civil penalty under that section one time, the court shall, in addition to assessing a civil penalty, order the person to attend a program that provides education in substance abuse and is approved by the Department of State Health Services, the Texas Department of Licensing and Regulation, or the Texas Department of Public Safety.

(l)  If during a proceeding for a violation of Section 481.1211, Health and Safety Code, the court finds that the person has previously been assessed a civil penalty under that section two times, the court shall suspend the proceedings and notify the appropriate prosecuting attorney so that the person may be charged with an offense under Section 481.1212, Health and Safety Code.

(m)  On a plea of guilty or nolo contendere for an offense under Section 481.1212, Health and Safety Code, by a defendant and payment of all court costs, the judge shall defer further proceedings without entering an adjudication of guilt and place the defendant on probation under the provisions of Article 45.051.

(n)  The court may issue a capias for the arrest of a person who fails to appear or to make payment, as directed by a citation issued under this article.

(o)  If the court determines that the civil penalty assessed under Section 411.1211, Health and Safety Code, is uncollectable, the court may enter an order waiving any remaining unpaid portion of the penalty.

(p)  Law enforcement may seize any marihuana in possession of a person subject to a civil penalty under Section 481.1211, Health and Safety Code, or subject to prosecution under Section 481.1212 of that code. If marihuana is seized under this article in connection with a violation of Section 481.1211, Health and Safety Code, law enforcement shall preserve the marihuana as if the marihuana were evidence of an offense under Section 481.1212, Health and Safety Code, pending the final resolution of a civil proceeding under this article. After final resolution of a civil proceeding under this article, any marihuana seized is subject to forfeiture and shall be disposed of in accordance with Section 481.159, Health and Safety Code.

(q)  This article does not affect the authority of a peace officer to conduct a search or seize marihuana or other property as contraband under Chapter 18 or 59 or other law.

(r)  The identity of a person cited for a violation of Section 481.1211, Health and Safety Code, is confidential information and may not be disclosed to the public unless the person is charged with an offense under Section 481.1212, Health and Safety Code, in connection with that citation.

(s)  The identity of a person found liable for a civil penalty under Section 481.1211, Health and Safety Code, is confidential information and may not be disclosed to the public.

(t)  A court that assesses a civil penalty under Section 481.1211, Health and Safety Code, may maintain a database or other electronic record of penalties assessed under that section. The court may share that database or electronic record with other courts and prosecutors in this state for purposes of determining whether a person has been previously assessed a civil penalty under Section 481.1211, Health and Safety Code, and is subject to prosecution under Section 481.1212 of that code. The information in the database or electronic record is confidential and may not be disclosed to the public.

SECTION 5.  Section 51.03(a), Family Code, is amended to read as follows:

(a)  Delinquent conduct is:

(1)  conduct, other than a traffic offense, that violates a penal law of this state or of the United States punishable by imprisonment or by confinement in jail;

(2)  conduct that violates a lawful order of a court under circumstances that would constitute contempt of that court in:

(A)  a justice or municipal court;

(B)  a county court for conduct punishable only by a fine; or

(C)  a truancy court;

(3)  conduct that violates Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code; [~~or~~]

(4)  conduct that violates Section 106.041, Alcoholic Beverage Code, relating to driving under the influence of alcohol by a minor (third or subsequent offense); or

(5)  conduct for which a person is subject to a civil penalty under Section 481.1211, Health and Safety Code, or that violates Section 481.1212 of that code.

SECTION 6.  Section 118.124, Local Government Code, is amended to read as follows:

Sec. 118.124.  PROHIBITED FEES. A justice of the peace is not entitled to a fee for:

(1)  the examination of a paper or record in the justice's office;

(2)  filing any process or document the justice issues that is returned to court;

(3)  a motion or judgment on a motion for security for costs;

(4)  taking or approving a bond for costs; [~~or~~]

(5)  the first copy of a document in a criminal case issued to:

(A)  a criminal defendant in the case;

(B)  an attorney representing a criminal defendant in the case; or

(C)  a prosecuting attorney; or

(6)  the filing of a civil action by the state under Section 481.1211, Health and Safety Code.

SECTION 7.  The changes in law made by this Act apply only to a violation of law that occurs on or after the effective date of this Act. A violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose. For purposes of this section, a violation of law occurred before the effective date of this Act if any element of the violation occurred before that date.

SECTION 8.  This Act takes effect September 1, 2019.