By:  Dutton H.B. No. 335

A BILL TO BE ENTITLED

AN ACT

relating to the penalties for possession of one ounce or less of marihuana and eligibility for placement on community supervision or on deferred adjudication community supervision for that offense.

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

SECTION 1.  Section 481.121, Health and Safety Code, is amended by amending Subsection (b) and adding Subsections (c) and (d) to read as follows:

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

(1)  a Class C misdemeanor if the amount of marihuana possessed is one ounce or less, except as provided by Subsection (c);

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

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

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

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

(6) [~~(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

(7) [~~(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.

(c)  An offense under Subsection (b)(1) is a Class B misdemeanor if it is shown on the trial of the offense that the defendant has been previously convicted three or more times of an offense involving the possession of marihuana and each prior offense was committed within the 24-month period preceding the date of the commission of the instant offense. For purposes of this subsection, "offense involving the possession of marihuana" means an offense under this section or an offense under the laws of another state that contains elements substantially similar to the elements of an offense under this section.

(d)  A defendant convicted of an offense punishable under Subsection (c) is not eligible for community supervision under Chapter 42A, Code of Criminal Procedure.

SECTION 2.  Section 481.126(a), Health and Safety Code, is amended to read as follows:

(a)  A person commits an offense if the person:

(1)  barters property or expends funds the person knows are derived from the commission of an offense under this chapter punishable by imprisonment in the Texas Department of Criminal Justice for life;

(2)  barters property or expends funds the person knows are derived from the commission of an offense under Section 481.121(a) that is punishable under Section 481.121(b)(6) [~~481.121(b)(5)~~];

(3)  barters property or finances or invests funds the person knows or believes are intended to further the commission of an offense for which the punishment is described by Subdivision (1); or

(4)  barters property or finances or invests funds the person knows or believes are intended to further the commission of an offense under Section 481.121(a) that is punishable under Section 481.121(b)(6) [~~481.121(b)(5)~~].

SECTION 3.  Sections 481.134(c), (d), (e), and (f), Health and Safety Code, are amended to read as follows:

(c)  The minimum term of confinement or imprisonment for an offense otherwise punishable under Section 481.112(c), (d), (e), or (f), 481.1121(b)(2), (3), or (4), 481.113(c), (d), or (e), 481.114(c), (d), or (e), 481.115(c)-(f), 481.1151(b)(2), (3), (4), or (5), 481.116(c), (d), or (e), 481.1161(b)(4), (5), or (6), 481.117(c), (d), or (e), 481.118(c), (d), or (e), 481.120(b)(4), (5), or (6), or 481.121(b)(5), (6), or (7) [~~481.121(b)(4), (5), or (6)~~] is increased by five years and the maximum fine for the offense is doubled if it is shown on the trial of the offense that the offense was committed:

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

(2)  on a school bus.

(d)  An offense otherwise punishable under Section 481.112(b), 481.1121(b)(1), 481.113(b), 481.114(b), 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(3), 481.120(b)(3), or 481.121(b)(4) [~~481.121(b)(3)~~] is a felony of the third degree if it is shown on the trial of the offense that the offense was committed:

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

(2)  on a school bus.

(e)  An offense otherwise punishable under Section 481.117(b), 481.119(a), 481.120(b)(2), or 481.121(b)(3) [~~481.121(b)(2)~~] is a state jail felony if it is shown on the trial of the offense that the offense was committed:

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

(2)  on a school bus.

(f)  An offense otherwise punishable under Section 481.118(b), 481.119(b), 481.120(b)(1), or 481.121(b)(1), (b)(2), or (c) is a Class A misdemeanor if it is shown on the trial of the offense that the offense was committed:

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

(2)  on a school bus.

SECTION 4.  Article 14.06(d), Code of Criminal Procedure, is amended to read as follows:

(d)  Subsection (c) applies only to a person charged with committing an offense under:

(1)  Section 481.121, Health and Safety Code, if the offense is punishable under Subsection (b)(2), (b)(3), or (c) [~~(b)(1) or (2)~~] of that section;

(1-a)  Section 481.1161, Health and Safety Code, if the offense is punishable under Subsection (b)(1) or (2) of that section;

(2)  Section 28.03, Penal Code, if the offense is punishable under Subsection (b)(2) of that section;

(3)  Section 28.08, Penal Code, if the offense is punishable under Subsection (b)(2) or (3) of that section;

(4)  Section 31.03, Penal Code, if the offense is punishable under Subsection (e)(2)(A) of that section;

(5)  Section 31.04, Penal Code, if the offense is punishable under Subsection (e)(2) of that section;

(6)  Section 38.114, Penal Code, if the offense is punishable as a Class B misdemeanor; or

(7)  Section 521.457, Transportation Code.

SECTION 5.  Articles 42A.551(a) and (c), Code of Criminal Procedure, are amended to read as follows:

(a)  Except as otherwise provided by Subsection (b) or (c), on conviction of a state jail felony under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(3), 481.121(b)(4) [~~481.121(b)(3)~~], or 481.129(g)(1), Health and Safety Code, that is punished under Section 12.35(a), Penal Code, the judge shall suspend the imposition of the sentence and place the defendant on community supervision.

(c)  Subsection (a) does not apply to a defendant who:

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

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

(3)  under Section 481.121(b)(4) [~~481.121(b)(3)~~], Health and Safety Code, possessed more than one pound of marihuana.

SECTION 6.  Article 45.051, Code of Criminal Procedure, is amended by adding Subsection (h) to read as follows:

(h)  This subsection applies only to a defendant charged with an offense under Section 481.121, Health and Safety Code, who is granted a deferral under Subsection (a). In addition to any other requirement, the judge shall, during the deferral period, require that the defendant successfully complete a drug abuse awareness and education program approved by the Department of State Health Services.

SECTION 7.  The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

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