

By: Allen

H.B. No. 371

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the prosecution of and penalties for possession of one
3 ounce or less of marihuana.

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

5 SECTION 1. Article 14.06(d), Code of Criminal Procedure, is
6 amended to read as follows:

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

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

12 (1-a) Section 481.1161, Health and Safety Code, if the
13 offense is punishable under Subsection (b)(1) or (2) of that
14 section;

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

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

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

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

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

1 (7) Section 521.457, Transportation Code.

2 SECTION 2. Articles 42A.551(a) and (c), Code of Criminal
3 Procedure, are amended to read as follows:

4 (a) Except as otherwise provided by Subsection (b) or (c),
5 on conviction of a state jail felony under Section 481.115(b),
6 481.1151(b)(1), 481.116(b), 481.1161(b)(3), 481.121(b)(4)
7 [~~481.121(b)(3)~~], or 481.129(g)(1), Health and Safety Code, that is
8 punished under Section 12.35(a), Penal Code, the judge shall
9 suspend the imposition of the sentence and place the defendant on
10 community supervision.

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

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

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

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

20 SECTION 3. Section 411.0728(a), Government Code, is amended
21 to read as follows:

22 (a) This section applies only to a person:

23 (1) who is placed on community supervision under
24 Chapter 42A, Code of Criminal Procedure, after conviction for an
25 offense under:

26 (A) Section 481.120, Health and Safety Code, if
27 the offense is punishable under Subsection (b)(1);

1 (B) Section 481.121, Health and Safety Code, if
2 the offense is punishable under Subsection (b)(2) [~~(b)(1)~~];

3 (C) Section 31.03, Penal Code, if the offense is
4 punishable under Subsection (e)(1) or (2);

5 (D) Section 43.02, Penal Code; or

6 (E) Section 43.03(a)(2), Penal Code, if the
7 offense is punishable as a Class A misdemeanor; and

8 (2) with respect to whom the conviction is
9 subsequently set aside by the court under Article 42A.701, Code of
10 Criminal Procedure.

11 SECTION 4. Section 481.121(b), Health and Safety Code, is
12 amended to read as follows:

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

14 (1) a Class C misdemeanor if the amount of marihuana
15 possessed is one ounce or less;

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

18 (3) [~~(2)~~] a Class A misdemeanor if the amount of
19 marihuana possessed is four ounces or less but more than two ounces;

20 (4) [~~(3)~~] a state jail felony if the amount of
21 marihuana possessed is five pounds or less but more than four
22 ounces;

23 (5) [~~(4)~~] a felony of the third degree if the amount of
24 marihuana possessed is 50 pounds or less but more than 5 pounds;

25 (6) [~~(5)~~] a felony of the second degree if the amount
26 of marihuana possessed is 2,000 pounds or less but more than 50
27 pounds; and

1 (7) [~~(6)~~] punishable by imprisonment in the Texas
2 Department of Criminal Justice for life or for a term of not more
3 than 99 years or less than 5 years, and a fine not to exceed \$50,000,
4 if the amount of marihuana possessed is more than 2,000 pounds.

5 SECTION 5. Section [481.126](#)(a), Health and Safety Code, is
6 amended to read as follows:

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

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

12 (2) barter property or expends funds the person knows
13 are derived from the commission of an offense under Section
14 [481.121](#)(a) that is punishable under Section [481.121](#)(b)(6)
15 [~~[481.121](#)(b)(5)~~];

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

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

24 SECTION 6. Section [481.134](#), Health and Safety Code, is
25 amended by amending Subsections (c), (d), (e), (f), and (g) and
26 adding Subsection (f-1) to read as follows:

27 (c) The minimum term of confinement or imprisonment for an

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

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

13 (2) on a school bus.

14 (d) An offense otherwise punishable under Section
15 481.112(b), 481.1121(b)(1), 481.113(b), 481.114(b), 481.115(b),
16 481.1151(b)(1), 481.116(b), 481.1161(b)(3), 481.120(b)(3), or
17 481.121(b)(4) [~~481.121(b)(3)~~] is a felony of the third degree if it
18 is shown on the trial of the offense that the offense was committed:

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

22 (2) on a school bus.

23 (e) An offense otherwise punishable under Section
24 481.117(b), 481.119(a), 481.120(b)(2), or 481.121(b)(3)
25 [~~481.121(b)(2)~~] is a state jail felony if it is shown on the trial
26 of the offense that the offense was committed:

27 (1) in, on, or within 1,000 feet of any real property

1 that is owned, rented, or leased to a school or school board, the
2 premises of a public or private youth center, or a playground; or

3 (2) on a school bus.

4 (f) An offense otherwise punishable under Section
5 481.118(b), 481.119(b), 481.120(b)(1), or 481.121(b)(2)
6 [~~481.121(b)(1)~~] is a Class A misdemeanor if it is shown on the trial
7 of the offense that the offense was committed:

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

11 (2) on a school bus.

12 (f-1) An offense otherwise punishable under Section
13 481.121(b)(1) is a Class B misdemeanor if it is shown on the trial
14 of the offense that the offense was committed:

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

18 (2) on a school bus.

19 (g) Subsections (f) and (f-1) do [~~Subsection (f) does~~] not
20 apply to an offense if:

21 (1) the offense was committed inside a private
22 residence; and

23 (2) no minor was present in the private residence at
24 the time the offense was committed.

25 SECTION 7. Section 12.43(c), Penal Code, is amended to read
26 as follows:

27 (c) If it is shown on the trial of an offense punishable as a

1 Class C misdemeanor under Section [42.01](#) or [49.02](#), or under Section
2 [481.121\(b\)\(1\)](#), Health and Safety Code, that the defendant has
3 previously been convicted of any [~~been before convicted under~~
4 ~~either~~] of those offenses [~~sections~~] three times or three times for
5 any combination of those offenses and each prior offense was
6 committed in the 24 months preceding the date of commission of the
7 instant offense, the defendant shall be punished by:

- 8 (1) a fine not to exceed \$2,000;
9 (2) confinement in jail for a term not to exceed 180
10 days; or
11 (3) both such fine and confinement.

12 SECTION 8. The amendments of Sections [481.121](#) and [481.134](#),
13 Health and Safety Code, by this Act apply to an offense committed
14 under Section [481.121](#) or an offense committed under Section [481.121](#)
15 and punishable under Section [481.134](#), Health and Safety Code,
16 before, on, or after September 1, 2019, except that a final
17 conviction for an offense that exists on September 1, 2019, is
18 unaffected by this Act.

19 SECTION 9. This Act takes effect September 1, 2019.