

By: Wu

H.B. No. 753

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the prosecution of and penalties for possession of 0.35  
3 ounces 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 0.35 ounces or less;

16 (2) a Class B misdemeanor if the amount of marihuana  
17 possessed is two ounces or less but more than 0.35 ounces;

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.