

By: Johnson

S.B. No. 1479

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution of, criminal penalties for, and other consequences of possession of one ounce or less of marihuana.

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

SECTION 1. Article 14.01, Code of Criminal Procedure, is amended by adding Subsection (c) to read as follows:

(c) Notwithstanding Subsection (a) or (b), a peace officer or any other person may not, without a warrant, arrest an offender for a misdemeanor punishable by fine only under Section 481.121(b)(1), Health and Safety Code.

SECTION 2. Article 14.03, Code of Criminal Procedure, is amended by adding Subsection (h) to read as follows:

(h) Notwithstanding Subsection (a), (d), or (g), a peace officer may not, without a warrant, arrest a person who only commits an offense punishable by fine only under Section 481.121(b)(1), Health and Safety Code.

SECTION 3. 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) or (3) [~~(b)(1) or (2)~~] of that section;

(1-a) Section 481.1161, Health and Safety Code, if the

1 offense is punishable under Subsection (b)(1) or (2) of that
2 section;

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

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

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

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

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

13 (7) Section 521.457, Transportation Code.

14 SECTION 4. Articles 42A.551(a) and (c), Code of Criminal
15 Procedure, are amended to read as follows:

16 (a) Except as otherwise provided by Subsection (b) or (c),
17 on conviction of a state jail felony under Section 481.115(b),
18 481.1151(b)(1), 481.116(b), 481.1161(b)(3), 481.121(b)(4)
19 [~~481.121(b)(3)~~], or 481.129(g)(1), Health and Safety Code, that is
20 punished under Section 12.35(a), Penal Code, the judge shall
21 suspend the imposition of the sentence and place the defendant on
22 community supervision.

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

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

27 (2) under Section 481.1161(b)(3), Health and Safety

1 Code, possessed more than one pound, by aggregate weight, including
2 adulterants or dilutants, of the controlled substance; or

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

5 SECTION 5. Section 411.0728(a), Government Code, is amended
6 to read as follows:

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

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

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

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

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

17 (D) Section 43.02, Penal Code; or

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

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

23 SECTION 6. Section 481.121(b), Health and Safety Code, is
24 amended to read as follows:

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

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

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

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

5 (4) [~~(3)~~] a state jail felony if the amount of
6 marihuana possessed is five pounds or less but more than four
7 ounces;

8 (5) [~~(4)~~] a felony of the third degree if the amount of
9 marihuana possessed is 50 pounds or less but more than 5 pounds;

10 (6) [~~(5)~~] a felony of the second degree if the amount
11 of marihuana possessed is 2,000 pounds or less but more than 50
12 pounds; and

13 (7) [~~(6)~~] punishable by imprisonment in the Texas
14 Department of Criminal Justice for life or for a term of not more
15 than 99 years or less than 5 years, and a fine not to exceed \$50,000,
16 if the amount of marihuana possessed is more than 2,000 pounds.

17 SECTION 7. Section [481.126\(a\)](#), Health and Safety Code, is
18 amended to read as follows:

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

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

24 (2) barter property or expends funds the person knows
25 are derived from the commission of an offense under Section
26 [481.121\(a\)](#) that is punishable under Section [481.121\(b\)\(6\)](#)
27 [~~[481.121\(b\)\(5\)](#)~~];

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

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

9 SECTION 8. Section 481.134, Health and Safety Code, is
10 amended by amending Subsections (c), (d), (e), (f), and (g) and
11 adding Subsection (f-1) to read as follows:

12 (c) The minimum term of confinement or imprisonment for an
13 offense otherwise punishable under Section 481.112(c), (d), (e), or
14 (f), 481.1121(b)(2), (3), or (4), 481.113(c), (d), or (e),
15 481.114(c), (d), or (e), 481.115(c)-(f), 481.1151(b)(2), (3), (4),
16 or (5), 481.116(c), (d), or (e), 481.1161(b)(4), (5), or (6),
17 481.117(c), (d), or (e), 481.118(c), (d), or (e), 481.120(b)(4),
18 (5), or (6), or 481.121(b)(5), (6), or (7) [~~481.121(b)(4), (5), or~~
19 ~~(6)~~] is increased by five years and the maximum fine for the offense
20 is doubled if it is shown on the trial of the offense that the
21 offense was committed:

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

25 (2) on a school bus.

26 (d) An offense otherwise punishable under Section
27 481.112(b), 481.1121(b)(1), 481.113(b), 481.114(b), 481.115(b),

1 481.1151(b)(1), 481.116(b), 481.1161(b)(3), 481.120(b)(3), or
2 481.121(b)(4) [~~481.121(b)(3)~~] is a felony of the third degree if it
3 is shown on the trial of the offense that the offense was committed:

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

7 (2) on a school bus.

8 (e) An offense otherwise punishable under Section
9 481.117(b), 481.119(a), 481.120(b)(2), or 481.121(b)(3)
10 [~~481.121(b)(2)~~] is a state jail felony if it is shown on the trial
11 of the offense that the offense was committed:

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

15 (2) on a school bus.

16 (f) An offense otherwise punishable under Section
17 481.118(b), 481.119(b), 481.120(b)(1), or 481.121(b)(2)
18 [~~481.121(b)(1)~~] is a Class A misdemeanor if it is shown on the trial
19 of the offense that the offense was committed:

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

23 (2) on a school bus.

24 (f-1) An offense otherwise punishable under Section
25 481.121(b)(1) is a Class B misdemeanor 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 (g) Subsections (f) and (f-1) do [~~Subsection (f) does~~] not
5 apply to an offense if:

6 (1) the offense was committed inside a private
7 residence; and

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

10 SECTION 9. Section 12.43(c), Penal Code, is amended to read
11 as follows:

12 (c) If it is shown on the trial of an offense punishable as a
13 Class C misdemeanor under Section 42.01 or 49.02, or under Section
14 481.121(b)(1), Health and Safety Code, that the defendant has
15 previously been convicted of any [~~been before convicted under~~
16 ~~either~~] of those offenses [~~sections~~] three times or three times for
17 any combination of those offenses and each prior offense was
18 committed in the 24 months preceding the date of commission of the
19 instant offense, the defendant shall be punished by:

20 (1) a fine not to exceed \$2,000;

21 (2) confinement in jail for a term not to exceed 180
22 days; or

23 (3) both such fine and confinement.

24 SECTION 10. Section 521.372, Transportation Code, is
25 amended by adding Subsection (d) to read as follows:

26 (d) Notwithstanding Subsection (a), a person's license is
27 not automatically suspended on conviction of an offense punishable

1 by fine only under Section 481.121(b)(1), Health and Safety Code.
2 Notwithstanding Subsection (b), the department is not prohibited
3 from issuing a driver's license to a person convicted of an offense
4 punishable by fine only under Section 481.121(b)(1), Health and
5 Safety Code, who, on the date of the conviction, did not hold a
6 driver's license.

7 SECTION 11. Articles 14.01(c) and 14.03(h), Code of
8 Criminal Procedure, as added by this Act, apply only to an offense
9 committed on or after the effective date of this Act. An offense
10 committed before the effective date of this Act is governed by the
11 law in effect on the date the offense was committed, and the former
12 law is continued in effect for that purpose. For purposes of this
13 section, an offense was committed before the effective date of this
14 Act if any element of the offense occurred before that date.

15 SECTION 12. Sections 481.121 and 481.134, Health and Safety
16 Code, as amended by this Act, apply to an offense committed under
17 Section 481.121 or an offense committed under Section 481.121 and
18 punishable under Section 481.134 before, on, or after September 1,
19 2019, except that a final conviction for an offense that exists on
20 September 1, 2019, is unaffected by this Act.

21 SECTION 13. (a) Except as provided by Subsection (b) of
22 this section, this Act takes effect September 1, 2019.

23 (b) Section 521.372(d), Transportation Code, as added by
24 this Act, takes effect on the 91st day after the date the office of
25 the attorney general publishes in the Texas Register a finding
26 that:

27 (1) the legislature of this state has adopted a

1 resolution expressing the legislature's opposition to a law meeting
2 the requirements of 23 U.S.C. Section 159 in suspending, revoking,
3 or denying the driver's license of a person convicted of a drug
4 offense for a period of six months;

5 (2) the governor of this state has submitted to the
6 United States secretary of transportation:

7 (A) a written certification of the governor's
8 opposition to the enactment or enforcement of a law required under
9 23 U.S.C. Section 159; and

10 (B) a written certification that the legislature
11 has adopted the resolution described by Subdivision (1) of this
12 subsection; and

13 (3) the United States secretary of transportation has
14 responded to the governor's submission and certified that highway
15 funds will not be withheld from this state in response to any
16 modification to or repeal of the law required under 23 U.S.C.
17 Section 159.