87R4690 JSC-D

By:  Wu H.B. No. 1735

A BILL TO BE ENTITLED

AN ACT

relating to criminal penalties for possession offenses under the Texas Controlled Substances Act.

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

ARTICLE 1. POSSESSION OFFENSE PENALTIES

SECTION 1.01.  Section 481.115(c), Health and Safety Code, is amended to read as follows:

(c)  An offense under Subsection (a) is a felony of the third degree with a maximum term of imprisonment of five years if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, one gram or more [~~but less than four grams~~].

SECTION 1.02.  Section 481.1151(b), Health and Safety Code, is amended to read as follows:

(b)  An offense under this section is:

(1)  a state jail felony if the number of abuse units of the controlled substance is fewer than 20; and

(2)  a felony of the third degree with a maximum term of imprisonment of five years if the number of abuse units of the controlled substance is 20 or more [~~but fewer than 80;~~

[~~(3)  a felony of the second degree if the number of abuse units of the controlled substance is 80 or more but fewer than 4,000;~~

[~~(4)  a felony of the first degree if the number of abuse units of the controlled substance is 4,000 or more but fewer than 8,000; and~~

[~~(5)  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 15 years and a fine not to exceed $250,000, if the number of abuse units of the controlled substance is 8,000 or more~~].

SECTION 1.03.  Section 481.116(c), Health and Safety Code, is amended to read as follows:

(c)  An offense under Subsection (a) is a felony of the third degree with a maximum term of imprisonment of five years if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, one gram or more [~~but less than four grams~~].

SECTION 1.04.  Section 481.1161(b), Health and Safety Code, is amended to read as follows:

(b)  An offense under this section is:

(1)  a Class B misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, two ounces or less;

(2)  a Class A misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, four ounces or less but more than two ounces;

(3)  a state jail felony if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, five pounds or less but more than four ounces; and

(4)  a felony of the third degree with a maximum term of imprisonment of five years if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, [~~50 pounds or less but~~] more than 5 pounds[~~;~~

[~~(5)  a felony of the second degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 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 the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, more than 2,000 pounds~~].

SECTION 1.05.  Section 481.117(c), Health and Safety Code, is amended to read as follows:

(c)  An offense under Subsection (a) is a felony of the third degree with a maximum term of imprisonment of five years if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 28 grams or more [~~but less than 200 grams~~].

SECTION 1.06.  Section 481.118(c), Health and Safety Code, is amended to read as follows:

(c)  An offense under Subsection (a) is a felony of the third degree with a maximum term of imprisonment of five years if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 28 grams or more [~~but less than 200 grams~~].

SECTION 1.07.  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;

(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; and

(4)  a felony of the third degree with a maximum term of imprisonment of five years 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 1.08.  Sections 481.115(d), (e), and (f), 481.116(d) and (e), 481.117(d) and (e), 481.118(d) and (e), and 481.134(c), (d), (e), (f), and (g), Health and Safety Code, are repealed.

ARTICLE 2. PRIOR CONVICTIONS

SECTION 2.01.  Subchapter D, Chapter 12, Penal Code, is amended by adding Section 12.495 to read as follows:

Sec. 12.495.  DRUG POSSESSION OFFENSES NOT SUBJECT TO ENHANCEMENT. Notwithstanding any other provision of this subchapter:

(1)  a previous conviction for an offense under Section 481.115, 481.1151, 481.116, 481.1161, 481.117, 481.118, 481.119(b), 481.121, or 481.125(a), Health and Safety Code, may not be used for enhancement purposes under this subchapter; and

(2)  a previous conviction for any offense may not be used for enhancing an offense under Section 481.115, 481.1151, 481.116, 481.1161, 481.117, 481.118, 481.119(b), 481.121, or 481.125(a), Health and Safety Code, under any provision of this subchapter.

ARTICLE 3. CONFORMING CHANGES

SECTION 3.01.  Article 42A.054(a), Code of Criminal Procedure, is amended to read as follows:

(a)  Article 42A.053 does not apply to a defendant adjudged guilty of an offense under:

(1)  Section 15.03, Penal Code, if the offense is punishable as a felony of the first degree;

(2)  Section 19.02, Penal Code (Murder);

(3)  Section 19.03, Penal Code (Capital Murder);

(4)  Section 20.04, Penal Code (Aggravated Kidnapping);

(5)  Section 20A.02, Penal Code (Trafficking of Persons);

(6)  Section 20A.03, Penal Code (Continuous Trafficking of Persons);

(7)  Section 21.11, Penal Code (Indecency with a Child);

(8)  Section 22.011, Penal Code (Sexual Assault);

(9)  Section 22.021, Penal Code (Aggravated Sexual Assault);

(10)  Section 22.04(a)(1), Penal Code (Injury to a Child, Elderly Individual, or Disabled Individual), if:

(A)  the offense is punishable as a felony of the first degree; and

(B)  the victim of the offense is a child;

(11)  Section 29.03, Penal Code (Aggravated Robbery);

(12)  Section 30.02, Penal Code (Burglary), if:

(A)  the offense is punishable under Subsection (d) of that section; and

(B)  the actor committed the offense with the intent to commit a felony under Section 21.02, 21.11, 22.011, 22.021, or 25.02, Penal Code;

(13)  Section 43.04, Penal Code (Aggravated Promotion of Prostitution);

(14)  Section 43.05, Penal Code (Compelling Prostitution);

(15)  Section 43.25, Penal Code (Sexual Performance by a Child); or

(16)  Chapter 481, Health and Safety Code, for which punishment is increased under[~~:~~

[~~(A)~~]  Section 481.140 of that code (Use of Child in Commission of Offense)[~~; or~~

[~~(B)  Section 481.134(c), (d), (e), or (f) of that code (Drug-free Zones) if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under any of those subsections~~].

SECTION 3.02.  Article 42A.056, Code of Criminal Procedure, is amended to read as follows:

Art. 42A.056.  LIMITATION ON JURY-RECOMMENDED COMMUNITY SUPERVISION. A defendant is not eligible for community supervision under Article 42A.055 if the defendant:

(1)  is sentenced to a term of imprisonment that exceeds 10 years;

(2)  is convicted of a state jail felony for which suspension of the imposition of the sentence occurs automatically under Article 42A.551;

(3)  is adjudged guilty of an offense under Section 19.02, Penal Code;

(4)  is convicted of an offense under Section 21.11, 22.011, or 22.021, Penal Code, if the victim of the offense was younger than 14 years of age at the time the offense was committed;

(5)  is convicted of an offense under Section 20.04, Penal Code, if:

(A)  the victim of the offense was younger than 14 years of age at the time the offense was committed; and

(B)  the actor committed the offense with the intent to violate or abuse the victim sexually; or

(6)  is convicted of an offense under Section 20A.02, 20A.03, 43.04, 43.05, or 43.25, Penal Code[~~; or~~

[~~(7)  is convicted of an offense for which punishment is increased under Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under any of those subsections~~].

SECTION 3.03.  Article 42A.102(b), Code of Criminal Procedure, as amended by Chapters 1137 (H.B. 2758) and 1298 (H.B. 3582), Acts of the 86th Legislature, Regular Session, 2019, is reenacted and amended to read as follows:

(b)  In all other cases, the judge may grant deferred adjudication community supervision unless:

(1)  the defendant is charged with an offense:

(A)  under Section 20A.02, [~~or~~] 20A.03, [~~or~~] 49.045, 49.05, 49.065, 49.07, or 49.08, Penal Code;

(B)  under Section 49.04 or 49.06, Penal Code, and, at the time of the offense:

(i)  the defendant held a commercial driver's license or a commercial learner's permit; or

(ii)  the defendant's alcohol concentration, as defined by Section 49.01, Penal Code, was 0.15 or more; or

(C)  for which punishment may be increased under Section 49.09, Penal Code; [~~or~~

[~~(D)  for which punishment may be increased under Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under any one of those subsections;~~]

(2)  the defendant:

(A)  is charged with an offense under Section 21.11, 22.011, 22.021, 43.04, or 43.05, Penal Code, regardless of the age of the victim, or a felony described by Article 42A.453(b), other than a felony described by Subdivision (1)(A) or (3)(B) of this subsection; and

(B)  has previously been placed on community supervision for an offense under Paragraph (A);

(3)  the defendant is charged with an offense under:

(A)  Section 21.02, Penal Code; or

(B)  Section 22.021, Penal Code, that is punishable under Subsection (f) of that section or under Section 12.42(c)(3) or (4), Penal Code; or

(4)  the defendant is charged with an offense under Section 19.02, Penal Code, except that the judge may grant deferred adjudication community supervision on determining that the defendant did not cause the death of the deceased, did not intend to kill the deceased or another, and did not anticipate that a human life would be taken.

SECTION 3.04.  Section 481.126, Health and Safety Code, is amended to read as follows:

Sec. 481.126.  OFFENSE: ILLEGAL BARTER, EXPENDITURE, OR INVESTMENT. (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; or

(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)(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)(5)~~].

(b)  An offense under this section [~~Subsection (a)(1) or (3)~~] is a felony of the first degree. [~~An offense under Subsection (a)(2) or (4) is a felony of the second degree.~~]

SECTION 3.05.  Section 71.023(a), Penal Code, is amended to read as follows:

(a)  A person commits an offense if the person, as part of the identifiable leadership of a criminal street gang, knowingly finances, directs, or supervises the commission of, or a conspiracy to commit, one or more of the following offenses by members of a criminal street gang:

(1)  a felony offense that is listed in Article 42A.054(a), Code of Criminal Procedure;

(2)  a felony offense for which it is shown that a deadly weapon, as defined by Section 1.07, was used or exhibited during the commission of the offense or during immediate flight from the commission of the offense; or

(3)  an offense that is punishable under Section 481.112(e), 481.112(f), 481.1121(b)(4), [~~481.115(f),~~] or 481.120(b)(6), Health and Safety Code.

ARTICLE 4. TRANSITION; EFFECTIVE DATE

SECTION 4.01.  The changes in law made by this Act apply to an offense committed before, on, or after September 1, 2021, except that a final conviction for an offense that exists on September 1, 2021, is unaffected by this Act.

SECTION 4.02.  To the extent of any conflict, this Act prevails over another Act of the 87th Legislature, Regular Session, 2021, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 4.03.  This Act takes effect September 1, 2021.