

By: Kacal

H.B. No. 4314

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to a defense to prosecution for certain offenses involving  
3 possession of small amounts of controlled substances, marihuana,  
4 dangerous drugs, or abusable volatile chemicals, or possession of  
5 drug paraphernalia for defendants seeking assistance for a  
6 suspected overdose.

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

8 Section 1. This Act may be cited as the Jessica Sosa Act.

9 SECTION 2. Section 481.115, Health and Safety Code, is  
10 amended by adding Subsections (g), (h), and (i) to read as follows:

11 (g) It is a defense to prosecution for an offense punishable  
12 under Subsection (b) that the actor:

13 (1) was the first person to request emergency medical  
14 assistance in response to the possible overdose of another person  
15 and:

16 (A) made the request for medical assistance  
17 during an ongoing medical emergency;

18 (B) remained on the scene until the medical  
19 assistance arrived; and

20 (C) cooperated with medical assistance and law  
21 enforcement personnel; or

22 (2) was the victim of a possible overdose for which  
23 emergency medical assistance was requested, by the actor or by  
24 another person, during an ongoing medical emergency.

1       (h) The defense to prosecution provided by Subsection (g) is  
2 not available if:

3           (1) at the time the request for emergency medical  
4 assistance was made:

5           (A) a peace officer was in the process of  
6 arresting the actor or executing a search warrant describing the  
7 actor or the place from which the request for medical assistance was  
8 made; or

9           (B) the actor is committing another offense,  
10 other than an offense punishable under Section 481.1151(b)(1),  
11 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or  
12 481.121(b)(1) or (2), or an offense under Section 481.119(b),  
13 481.125(a), 483.041(a), or 485.031(a);

14           (2) the actor has been previously convicted of or  
15 placed on deferred adjudication community supervision for an  
16 offense under this chapter or Chapter 483 or 485; or

17           (3) the actor was acquitted in a previous proceeding  
18 in which the actor successfully established the defense under that  
19 subsection or Section 481.1151(c), 481.116(f), 481.1161(c),  
20 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),  
21 483.041(e), or 485.031(c).

22       (i) The defense to prosecution provided by Subsection (g)  
23 does not preclude the admission of evidence obtained by law  
24 enforcement resulting from the request for emergency medical  
25 assistance if that evidence pertains to an offense for which the  
26 defense described by Subsection (g) is not available.

27       SECTION 3. Section 481.1151, Health and Safety Code, is

1 amended by adding Subsections (c), (d), and (e) to read as follows:

2 (c) It is a defense to prosecution for an offense punishable  
3 under Subsection (b)(1) that the actor:

4 (1) was the first person to request emergency medical  
5 assistance in response to the possible overdose of another person  
6 and:

7 (A) made the request for medical assistance  
8 during an ongoing medical emergency;

9 (B) remained on the scene until the medical  
10 assistance arrived; and

11 (C) cooperated with medical assistance and law  
12 enforcement personnel; or

13 (2) was the victim of a possible overdose for which  
14 emergency medical assistance was requested, by the actor or by  
15 another person, during an ongoing medical emergency.

16 (d) The defense to prosecution provided by Subsection (c) is  
17 not available if:

18 (1) at the time the request for emergency medical  
19 assistance was made:

20 (A) a peace officer was in the process of  
21 arresting the actor or executing a search warrant describing the  
22 actor or the place from which the request for medical assistance was  
23 made; or

24 (B) the actor is committing another offense,  
25 other than an offense punishable under Section [481.115\(b\)](#),  
26 [481.116\(b\)](#), [481.1161\(b\)\(1\)](#) or (2), [481.117\(b\)](#), [481.118\(b\)](#), or  
27 [481.121\(b\)\(1\)](#) or (2), or an offense under Section [481.119\(b\)](#),

1 481.125(a), 483.041(a), or 485.031(a);

2 (2) the actor has been previously convicted of or  
3 placed on deferred adjudication community supervision for an  
4 offense under this chapter or Chapter 483 or 485; or

5 (3) the actor was acquitted in a previous proceeding  
6 in which the actor successfully established the defense under that  
7 subsection or Section 481.115(g), 481.116(f), 481.1161(c),  
8 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),  
9 483.041(e), or 485.031(c).

10 (e) The defense to prosecution provided by Subsection (c)  
11 does not preclude the admission of evidence obtained by law  
12 enforcement resulting from the request for emergency medical  
13 assistance if that evidence pertains to an offense for which the  
14 defense described by Subsection (c) is not available.

15 SECTION 4. Section 481.116, Health and Safety Code, is  
16 amended by adding Subsections (f), (g), and (h) to read as follows:

17 (f) It is a defense to prosecution for an offense punishable  
18 under Subsection (b) that the actor:

19 (1) was the first person to request emergency medical  
20 assistance in response to the possible overdose of another person  
21 and:

22 (A) made the request for medical assistance  
23 during an ongoing medical emergency;

24 (B) remained on the scene until the medical  
25 assistance arrived; and

26 (C) cooperated with medical assistance and law  
27 enforcement personnel; or

1           (2) was the victim of a possible overdose for which  
2 emergency medical assistance was requested, by the actor or by  
3 another person, during an ongoing medical emergency.

4           (g) The defense to prosecution provided by Subsection (f) is  
5 not available if:

6           (1) at the time the request for emergency medical  
7 assistance was made:

8           (A) a peace officer was in the process of  
9 arresting the actor or executing a search warrant describing the  
10 actor or the place from which the request for medical assistance was  
11 made; or

12           (B) the actor is committing another offense,  
13 other than an offense punishable under Section 481.115(b),  
14 481.1151(b)(1), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or  
15 481.121(b)(1) or (2), or an offense under Section 481.119(b),  
16 481.125(a), 483.041(a), or 485.031(a);

17           (2) the actor has been previously convicted of or  
18 placed on deferred adjudication community supervision for an  
19 offense under this chapter or Chapter 483 or 485; or

20           (3) the actor was acquitted in a previous proceeding  
21 in which the actor successfully established the defense under that  
22 subsection or Section 481.115(g), 481.1151(c), 481.1161(c),  
23 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),  
24 483.041(e), or 485.031(c).

25           (h) The defense to prosecution provided by Subsection (f)  
26 does not preclude the admission of evidence obtained by law  
27 enforcement resulting from the request for emergency medical

1 assistance if that evidence pertains to an offense for which the  
2 defense described by Subsection (f) is not available.

3 SECTION 5. Section 481.1161, Health and Safety Code, is  
4 amended by adding Subsections (c), (d), and (e) to read as follows:

5 (c) It is a defense to prosecution for an offense punishable  
6 under Subsection (b)(1) or (2) that the actor:

7 (1) was the first person to request emergency medical  
8 assistance in response to the possible overdose of another person  
9 and:

10 (A) made the request for medical assistance  
11 during an ongoing medical emergency;

12 (B) remained on the scene until the medical  
13 assistance arrived; and

14 (C) cooperated with medical assistance and law  
15 enforcement personnel; or

16 (2) was the victim of a possible overdose for which  
17 emergency medical assistance was requested, by the actor or by  
18 another person, during an ongoing medical emergency.

19 (d) The defense to prosecution provided by Subsection (c) is  
20 not available if:

21 (1) at the time the request for emergency medical  
22 assistance was made:

23 (A) a peace officer was in the process of  
24 arresting the actor or executing a search warrant describing the  
25 actor or the place from which the request for medical assistance was  
26 made; or

27 (B) the actor is committing another offense,

1 other than an offense punishable under Section 481.115(b),  
2 481.1151(b)(1), 481.116(b), 481.117(b), 481.118(b), or  
3 481.121(b)(1) or (2), or an offense under Section 481.119(b),  
4 481.125(a), 483.041(a), or 485.031(a);

5 (2) the actor has been previously convicted of or  
6 placed on deferred adjudication community supervision for an  
7 offense under this chapter or Chapter 483 or 485; or

8 (3) the actor was acquitted in a previous proceeding  
9 in which the actor successfully established the defense under that  
10 subsection or Section 481.115(g), 481.1151(c), 481.116(f),  
11 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),  
12 483.041(e), or 485.031(c).

13 (e) The defense to prosecution provided by Subsection (c)  
14 does not preclude the admission of evidence obtained by law  
15 enforcement resulting from the request for emergency medical  
16 assistance if that evidence pertains to an offense for which the  
17 defense described by Subsection (c) is not available.

18 SECTION 6. Section 481.117, Health and Safety Code, is  
19 amended by adding Subsections (f), (g), and (h) to read as follows:

20 (f) It is a defense to prosecution for an offense punishable  
21 under Subsection (b) that the actor:

22 (1) was the first person to request emergency medical  
23 assistance in response to the possible overdose of another person  
24 and:

25 (A) made the request for medical assistance  
26 during an ongoing medical emergency;

27 (B) remained on the scene until the medical

1 assistance arrived; and

2 (C) cooperated with medical assistance and law  
3 enforcement personnel; or

4 (2) was the victim of a possible overdose for which  
5 emergency medical assistance was requested, by the actor or by  
6 another person, during an ongoing medical emergency.

7 (g) The defense to prosecution provided by Subsection (f) is  
8 not available if:

9 (1) at the time the request for emergency medical  
10 assistance was made:

11 (A) a peace officer was in the process of  
12 arresting the actor or executing a search warrant describing the  
13 actor or the place from which the request for medical assistance was  
14 made; or

15 (B) the actor is committing another offense,  
16 other than an offense punishable under Section 481.115(b),  
17 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.118(b), or  
18 481.121(b)(1) or (2), or an offense under Section 481.119(b),  
19 481.125(a), 483.041(a), or 485.031(a);

20 (2) the actor has been previously convicted of or  
21 placed on deferred adjudication community supervision for an  
22 offense under this chapter or Chapter 483 or 485; or

23 (3) the actor was acquitted in a previous proceeding  
24 in which the actor successfully established the defense under that  
25 subsection or Section 481.115(g), 481.1151(c), 481.116(f),  
26 481.1161(c), 481.118(f), 481.119(c), 481.121(c), 481.125(g),  
27 483.041(e), or 485.031(c).

1       (h) The defense to prosecution provided by Subsection (f)  
2 does not preclude the admission of evidence obtained by law  
3 enforcement resulting from the request for emergency medical  
4 assistance if that evidence pertains to an offense for which the  
5 defense described by Subsection (f) is not available.

6       SECTION 7. Section 481.118, Health and Safety Code, is  
7 amended by adding Subsections (f), (g), and (h) to read as follows:

8       (f) It is a defense to prosecution for an offense punishable  
9 under Subsection (b) that the actor:

10           (1) was the first person to request emergency medical  
11 assistance in response to the possible overdose of another person  
12 and:

13                   (A) made the request for medical assistance  
14 during an ongoing medical emergency;

15                   (B) remained on the scene until the medical  
16 assistance arrived; and

17                   (C) cooperated with medical assistance and law  
18 enforcement personnel; or

19           (2) was the victim of a possible overdose for which  
20 emergency medical assistance was requested, by the actor or by  
21 another person, during an ongoing medical emergency.

22       (g) The defense to prosecution provided by Subsection (f) is  
23 not available if:

24           (1) at the time the request for emergency medical  
25 assistance was made:

26                   (A) a peace officer was in the process of  
27 arresting the actor or executing a search warrant describing the

1 actor or the place from which the request for medical assistance was  
2 made; or

3 (B) the actor is committing another offense,  
4 other than an offense punishable under Section 481.115(b),  
5 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), or  
6 481.121(b)(1) or (2), or an offense under Section 481.119(b),  
7 481.125(a), 483.041(a), or 485.031(a);

8 (2) the actor has been previously convicted of or  
9 placed on deferred adjudication community supervision for an  
10 offense under this chapter or Chapter 483 or 485; or

11 (3) the actor was acquitted in a previous proceeding  
12 in which the actor successfully established the defense under that  
13 subsection or Section 481.115(g), 481.1151(c), 481.116(f),  
14 481.1161(c), 481.117(f), 481.119(c), 481.121(c), 481.125(g),  
15 483.041(e), or 485.031(c).

16 (h) The defense to prosecution provided by Subsection (f)  
17 does not preclude the admission of evidence obtained by law  
18 enforcement resulting from the request for emergency medical  
19 assistance if that evidence pertains to an offense for which the  
20 defense described by Subsection (f) is not available.

21 SECTION 8. Section 481.119, Health and Safety Code, is  
22 amended by adding Subsections (c), (d), and (e) to read as follows:

23 (c) It is a defense to prosecution for an offense under  
24 Subsection (b) that the actor:

25 (1) was the first person to request emergency medical  
26 assistance in response to the possible overdose of another person  
27 and:

1           (A) made the request for medical assistance  
2 during an ongoing medical emergency;

3           (B) remained on the scene until the medical  
4 assistance arrived; and

5           (C) cooperated with medical assistance and law  
6 enforcement personnel; or

7           (2) was the victim of a possible overdose for which  
8 emergency medical assistance was requested, by the actor or by  
9 another person, during an ongoing medical emergency.

10          (d) The defense to prosecution provided by Subsection (c) is  
11 not available if:

12           (1) at the time the request for emergency medical  
13 assistance was made:

14           (A) a peace officer was in the process of  
15 arresting the actor or executing a search warrant describing the  
16 actor or the place from which the request for medical assistance was  
17 made; or

18           (B) the actor is committing another  
19 offense, other than an offense punishable under Section [481.115\(b\)](#),  
20 [481.1151\(b\)\(1\)](#), [481.116\(b\)](#), [481.1161\(b\)\(1\)](#) or (2), [481.117\(b\)](#),  
21 [481.118\(b\)](#), or [481.121\(b\)\(1\)](#) or (2), or an offense under Section  
22 [481.125\(a\)](#), [483.041\(a\)](#), or [485.031\(a\)](#);

23           (2) the actor has been previously convicted of or  
24 placed on deferred adjudication community supervision for an  
25 offense under this chapter or Chapter [483](#) or [485](#); or

26           (3) the actor was acquitted in a previous proceeding  
27 in which the actor successfully established the defense under that

1 subsection or Section 481.115(g), 481.1151(c), 481.116(f),  
2 481.1161(c), 481.117(f), 481.118(f), 481.121(c), 481.125(g),  
3 483.041(e), or 485.031(c).

4 (e) The defense to prosecution provided by Subsection (c)  
5 does not preclude the admission of evidence obtained by law  
6 enforcement resulting from the request for emergency medical  
7 assistance if that evidence pertains to an offense for which the  
8 defense described by Subsection (c) is not available.

9 SECTION 9. Section 481.121, Health and Safety Code, is  
10 amended by adding Subsections (c), (d), and (e) to read as follows:

11 (c) It is a defense to prosecution for an offense punishable  
12 under Subsection (b)(1) or (2) that the actor:

13 (1) was the first person to request emergency medical  
14 assistance in response to the possible overdose of another person  
15 and:

16 (A) made the request for medical assistance  
17 during an ongoing medical emergency;

18 (B) remained on the scene until the medical  
19 assistance arrived; and

20 (C) cooperated with medical assistance and law  
21 enforcement personnel; or

22 (2) was the victim of a possible overdose for which  
23 emergency medical assistance was requested, by the actor or by  
24 another person, during an ongoing medical emergency.

25 (d) The defense to prosecution provided by Subsection (c) is  
26 not available if:

27 (1) at the time the request for emergency medical

1 assistance was made:

2 (A) a peace officer was in the process of  
3 arresting the actor or executing a search warrant describing the  
4 actor or the place from which the request for medical assistance was  
5 made; or

6 (B) the actor is committing another offense,  
7 other than an offense punishable under Section 481.115(b),  
8 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), or  
9 481.118(b), or an offense under Section 481.119(b), 481.125(a),  
10 483.041(a), or 485.031(a);

11 (2) the actor has been previously convicted of or  
12 placed on deferred adjudication community supervision for an  
13 offense under this chapter or Chapter 483 or 485; or

14 (3) the actor was acquitted in a previous proceeding  
15 in which the actor successfully established the defense under that  
16 subsection or Section 481.115(g), 481.1151(c), 481.116(f),  
17 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.125(g),  
18 483.041(e), or 485.031(c).

19 (e) The defense to prosecution provided by Subsection (c)  
20 does not preclude the admission of evidence obtained by law  
21 enforcement resulting from the request for emergency medical  
22 assistance if that evidence pertains to an offense for which the  
23 defense described by Subsection (c) is not available.

24 SECTION 10. Section 481.125, Health and Safety Code, is  
25 amended by adding Subsections (g), (h), and (i) to read as follows:

26 (g) It is a defense to prosecution for an offense under  
27 Subsection (a) that the actor:

1           (1) was the first person to request emergency medical  
2 assistance in response to the possible overdose of another person  
3 and:

4           (A) made the request for medical assistance  
5 during an ongoing medical emergency;

6           (B) remained on the scene until the medical  
7 assistance arrived; and

8           (C) cooperated with medical assistance and law  
9 enforcement personnel; or

10          (2) was the victim of a possible overdose for which  
11 emergency medical assistance was requested, by the actor or by  
12 another person, during an ongoing medical emergency.

13          (h) The defense to prosecution provided by Subsection (g) is  
14 not available if:

15           (1) at the time the request for emergency medical  
16 assistance was made:

17           (A) a peace officer was in the process of  
18 arresting the actor or executing a search warrant describing the  
19 actor or the place from which the request for medical assistance was  
20 made; or

21           (B) the actor is committing another offense,  
22 other than an offense punishable under Section 481.115(b),  
23 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b),  
24 481.118(b), or 481.121(b)(1) or (2), or an offense under Section  
25 481.119(b), 483.041(a), or 485.031(a);

26           (2) the actor has been previously convicted of or  
27 placed on deferred adjudication community supervision for an

1 offense under this chapter or Chapter 483 or 485; or

2 (3) the actor was acquitted in a previous proceeding  
3 in which the actor successfully established the defense under that  
4 subsection or Section 481.115(g), 481.1151(c), 481.116(f),  
5 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c),  
6 483.041(e), or 485.031(c).

7 (i) The defense to prosecution provided by Subsection (g)  
8 does not preclude the admission of evidence obtained by law  
9 enforcement resulting from the request for emergency medical  
10 assistance if that evidence pertains to an offense for which the  
11 defense described by Subsection (g) is not available.

12 SECTION 11. Section 483.041, Health and Safety Code, is  
13 amended by adding Subsections (e), (f), and (g) to read as follows:

14 (e) It is a defense to prosecution for an offense under  
15 Subsection (a) that the actor:

16 (1) was the first person to request emergency medical  
17 assistance in response to the possible overdose of another person  
18 and:

19 (A) made the request for medical assistance  
20 during an ongoing medical emergency;

21 (B) remained on the scene until the medical  
22 assistance arrived; and

23 (C) cooperated with medical assistance and law  
24 enforcement personnel; or

25 (2) was the victim of a possible overdose for which  
26 emergency medical assistance was requested, by the actor or by  
27 another person, during an ongoing medical emergency.

1       (f) The defense to prosecution provided by Subsection (e) is  
2 not available if:

3           (1) at the time the request for emergency medical  
4 assistance was made:

5           (A) a peace officer was in the process of  
6 arresting the actor or executing a search warrant describing the  
7 actor or the place from which the request for medical assistance was  
8 made; or

9           (B) the actor is committing another offense,  
10 other than an offense punishable under Section 481.115(b),  
11 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b),  
12 481.118(b), or 481.121(b)(1) or (2), or an offense under Section  
13 481.119(b), 481.125(a), or 485.031(a);

14           (2) the actor has been previously convicted of or  
15 placed on deferred adjudication community supervision for an  
16 offense under this chapter or Chapter 481 or 485; or

17           (3) the actor was acquitted in a previous proceeding  
18 in which the actor successfully established the defense under that  
19 subsection or Section 481.115(g), 481.1151(c), 481.116(f),  
20 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c),  
21 481.125(g), or 485.031(c).

22       (g) The defense to prosecution provided by Subsection (e)  
23 does not preclude the admission of evidence obtained by law  
24 enforcement resulting from the request for emergency medical  
25 assistance if that evidence pertains to an offense for which the  
26 defense described by Subsection (e) is not available.

27       SECTION 12. Section 485.031, Health and Safety Code, is

1 amended by adding Subsections (c), (d), and (e) to read as follows:

2 (c) It is a defense to prosecution for an offense under  
3 Subsection (a) that the actor:

4 (1) was the first person to request emergency medical  
5 assistance in response to the possible overdose of another person  
6 and:

7 (A) made the request for medical assistance  
8 during an ongoing medical emergency;

9 (B) remained on the scene until the medical  
10 assistance arrived; and

11 (C) cooperated with medical assistance and law  
12 enforcement personnel; or

13 (2) was the victim of a possible overdose for which  
14 emergency medical assistance was requested, by the actor or by  
15 another person, during an ongoing medical emergency.

16 (d) The defense to prosecution provided by Subsection (c) is  
17 not available if:

18 (1) at the time the request for emergency medical  
19 assistance was made:

20 (A) a peace officer was in the process of  
21 arresting the actor or executing a search warrant describing the  
22 actor or the place from which the request for medical assistance was  
23 made; or

24 (B) the actor is committing another offense,  
25 other than an offense punishable under Section 481.115(b),  
26 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b),  
27 481.118(b), or 481.121(b)(1) or (2), or an offense under Section

1 481.119(b), 481.125(a), or 483.041(a);

2 (2) the actor has been previously convicted of or  
3 placed on deferred adjudication community supervision for an  
4 offense under this chapter or Chapter 481 or 483; or

5 (3) the actor was acquitted in a previous proceeding  
6 in which the actor successfully established the defense under that  
7 subsection or Section 481.115(g), 481.1151(c), 481.116(f),  
8 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c),  
9 481.125(g), or 483.041(e).

10 (e) The defense to prosecution provided by Subsection (c)  
11 does not preclude the admission of evidence obtained by law  
12 enforcement resulting from the request for emergency medical  
13 assistance if that evidence pertains to an offense for which the  
14 defense described by Subsection (c) is not available.

15 SECTION 13. The change in law made by this Act applies only  
16 to an offense committed on or after the effective date of this Act.  
17 An offense committed before the effective date of this Act is  
18 governed by the law in effect on the date the offense was committed,  
19 and the former law is continued in effect for that purpose. For  
20 purposes of this section, an offense was committed before the  
21 effective date of this Act if any element of the offense occurred  
22 before that date.

23 SECTION 14. This Act takes effect September 1, 2021.