

BILL ANALYSIS

C.S.H.B. 218
By: Moody
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Individuals who are arrested for possessing small amounts of marihuana face criminal charges that can dramatically impact their futures. Under current law, possession of less than two ounces of marihuana is a Class B misdemeanor, which is punishable by imprisonment for up to 180 days, a fine up to \$2,000, and other lifelong consequences. Such consequences for individuals who do not pose a threat to their communities are excessive and can harm their ability to find housing or employment and to contribute positively to their communities. Additionally, low-level marihuana arrests place a significant and unnecessary financial burden on the state by contributing to growing prison populations and preventing law enforcement from spending more resources on pursuing violent offenders. In addition, current law punishes the possession of small amounts of marihuana, whose active component is tetrahydrocannabinol (THC), as a misdemeanor, while the possession of THC in other formats is a felony. This disparity seemingly has no rational basis and leads to uneven and sometimes unduly harsh results, as well as costly testing to prove that these items contain more than the legal limit of THC. C.S.H.B. 218 seeks to address these issues by lowering the penalty for possession of one ounce or less of marihuana to a Class C misdemeanor, requiring law enforcement to issue citations instead of arresting individuals for this conduct, allowing the expungement of related records for first-time offenders, and creating a new Penalty Group under the Texas Controlled Substances Act that consists of certain THC compounds, other than marihuana, and has a penalty range originating at the misdemeanor level.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 218 amends the Health and Safety Code to create Penalty Group 2-B under the Texas Controlled Substances Act and to transfer from Penalty Group 2 to Penalty Group 2-B the following substances, their salts, isomers, and salts of isomers, unless specifically excepted, if their existence is possible within the specific chemical designation: Tetrahydrocannabinols, other than marihuana, and synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity, including certain specified structures and compounds of those structures.

C.S.H.B. 218 extends to Penalty Group 2-B substances the applicability of certain provisions governing the following:

- the definition of "controlled substance" and "controlled substance analogue" under the act;
- the classification of certain controlled substance analogues; and
- the offenses for the manufacture or delivery of a substance in Penalty Group 2 or 2-A and for possession of a substance in Penalty Group 2-A.

C.S.H.B. 218 extends to Penalty Group 2-A and 2-B substances the applicability of certain provisions governing the following:

- the offense for the delivery of a controlled substance or marihuana to a child; and
- the third degree felony offense for the possession or transport of certain chemicals with the intent to manufacture a controlled substance.

The bill extends to Penalty Group 2-A substances the applicability of provisions governing the possession of certain substances in a drug-free zone.

C.S.H.B. 218 decreases the penalty for the following offenses from a Class B misdemeanor to a Class C misdemeanor:

- possession of an aggregate weight of one ounce or less of a controlled substance in Penalty Group 2-A; and
- possession of one ounce or less of marihuana.

C.S.H.B. 218 amends the Code of Criminal Procedure to establish the following with respect to arrests and expunction and deferral procedures for a Class C misdemeanor offense for the possession of a substance in Penalty Group 2-A or 2-B, for the possession of marihuana, and for the possession or delivery of drug paraphernalia:

- a peace officer may not arrest a person for such an offense and must instead issue the person a citation to appear in court;
- a person charged with such an offense may have records relating to the offense expunged if the complaint was dismissed in accordance with applicable statute and certain specified periods have elapsed from the date of the dismissal or citation, or if the person was acquitted of the offense. The person must make a written request under oath for the expungement;
- the court must order all documents relating to the offense expunged from the person's record if the court finds that the person meets such conditions;
- the justice or municipal court must require a person who requests the expungement to pay a \$30 fee to defray the cost of notifying state agencies of the expungement;
- procedures for such an expunction are separate and distinct from the expunction procedures of criminal records;
- unless the defendant has previously received a deferral of disposition for such an offense within the 12-month period preceding the date of the commission of the instant offense, on a plea of guilty or nolo contendere for either offense, a judge must defer further proceedings without entering an adjudication of guilt and place the defendant on probation;
- a court that dismisses a complaint following such an order of deferral must notify the defendant in writing of the person's expunction rights and provide the person with a copy of the applicable article; and
- a dismissed complaint is not a conviction and may not be used against the person for any purpose.

C.S.H.B. 218 amends the Government Code to make a person convicted of or placed on deferred adjudication community supervision for a Class B misdemeanor offense for the possession of a substance in Penalty Group 2-A or 2-B eligible to petition for an order of nondisclosure of criminal history record information on the grounds of having committed the offense solely as a victim of trafficking of persons, continuous trafficking of persons, or compelling prostitution.

C.S.H.B. 218 amends the Occupations Code to include a substance listed in Penalty Group 2-A or 2-B among the drugs constituting a controlled substance and to exclude such a substance from the term "dangerous drug" for purposes of the Texas Pharmacy Act.

C.S.H.B. 218 amends the Transportation Code to clarify that the term "drug offense" does not include an offense punishable by fine only under state law. This change takes effect on the 91st day after the date the office of the attorney general publishes a specified finding in the Texas Register.

C.S.H.B. 218 applies only to an offense committed on or after the bill's effective date. The bill provides for the continuation of the law in effect before the bill's effective date for purposes of an offense, or any element thereof, that occurred before that date.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 218 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Whereas the introduced made a person convicted of or placed on deferred adjudication community supervision for a Class C misdemeanor offense for the possession of a substance in Penalty Group 2-A or 2-B eligible to petition for an order of nondisclosure of criminal history record information on the grounds of having committed the offense solely as a victim of certain offenses, the substitute makes a person convicted of or placed on deferred adjudication community supervision for a Class B misdemeanor offense for such possession eligible to petition for such an order on those grounds.

Whereas the introduced extended to only Penalty Group 2-B substances the applicability of provisions governing the offense for the delivery of a controlled substance, the substitute also extends that applicability to Penalty Group 2-A substances.

The substitute includes provisions absent from the introduced that do the following:

- extend to Penalty Group 2-A and 2-B substances the applicability of the third degree felony offense for the possession or transport of certain chemicals with the intent to manufacture a controlled substance; and
- extend to Penalty Group 2-A substances the applicability of provisions governing the possession of certain substances in a drug-free zone.

Whereas the introduced included only a substance listed in Penalty Group 2-B among the drugs constituting a controlled substance for purposes of the Texas Pharmacy Act, the substitute also includes a substance listed in Penalty Group 2-A among the drugs constituting a controlled substance for purposes of that act. Whereas the introduced excluded only Penalty Group 2-B substances from the term "dangerous drug" for purposes of the act, the substitute also excludes Penalty Group 2-A substances from that term for purposes of the act.