

BILL ANALYSIS

Senate Research Center
88R15704 CJD-D

C.S.S.B. 645
By: Huffman
Criminal Justice
3/7/2023
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In recent years, overdoses in the United States have seen an alarming increase due to the increased production of fentanyl, an incredibly potent synthetic opioid. Since the beginning of Operation Lone Star, the Texas Department of Public Safety has seized over 353 million lethal doses of fentanyl.

S.B. 645 increases the penalty for manufacturing or delivery of less than 1 gram of fentanyl from a state jail felony to a third-degree felony. Furthermore, if an individual dies from a fentanyl overdose, the penalty would be enhanced to a second-degree felony. Additionally, S.B. 645 includes possession of fentanyl with the intent to deliver in the organized criminal activity statute and clarifies penalty levels for drug offenses to ensure more efficient prosecution of these crimes.

(Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 645 amends current law relating to the designation of fentanyl poisoning for purposes of the death certificate and to the criminal penalties for certain controlled substance offenses and increases a criminal penalty.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 193.005, Health and Safety Code, by adding Subsection (e-1), as follows:

(e-1) Requires that the medical certification on the death certificate include the presence of the substance and the term "Fentanyl Poisoning" if a toxicology examination reveals a detectable amount of a controlled substance listed in Penalty Group 1-B in the body of the decedent. Provides that this subsection does not apply if the decedent at the time of death had a valid prescription for the controlled substance.

SECTION 2. Amends Sections 481.112(e) and (f), Health and Safety Code, as follows:

(e) Provides that an offense under Subsection (a) (relating to an offense committed if a person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 1) is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice (TDCJ) for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.

(f) Provides that an offense under Subsection (a) is a felony of the first degree punishable by imprisonment in TDCJ 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 amount of the controlled substance to

which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

SECTION 3. Amends Section 481.1121(b), Health and Safety Code, as follows:

(b) Provides that an offense under Section 481.1121 (Offense: Manufacture or Delivery of Substance in Penalty Group 1-A) is:

(1)-(3) makes no changes to these subdivisions; and

(4) a felony of the first degree punishable by imprisonment in TDCJ 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 4,000 or more.

SECTION 4. Amends Sections 481.1123(b), (d), (e), and (f), Health and Safety Code, as follows:

(b) Provides that an offense under Subsection (a) (relating to an offense committed if a person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 1-B) is a felony of the third degree, rather than a state jail felony, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, less than one gram.

(d) Provides that an offense under Subsection (a) is a felony of the first degree punishable by imprisonment in TDCJ for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$20,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, four grams or more but less than 200 grams.

(e) Provides that an offense under Subsection (a) is a felony of the first degree punishable by imprisonment in TDCJ for life or for a term of not more than 99 years or less than 15 years, and a fine not to exceed \$200,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.

(f) Provides that an offense under Subsection (a) is a felony of the first degree punishable by imprisonment in TDCJ for life or for a term of not more than 99 years or less than 20 years, and a fine not to exceed \$500,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

SECTION 5. Amends Section 481.113(e), Health and Safety Code, as follows

(e) Provides that an offense under Subsection (a) (relating to an offense committed if a person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 2 or 2-A) is a felony of the first degree punishable by imprisonment in TDCJ for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

SECTION 6. Amends Section 481.114(e), Health and Safety Code, as follows:

(e) Provides that an offense under Subsection (a) (relating to an offense committed if a person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 3 or 4) is a felony of the first degree punishable by imprisonment in TDCJ for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

SECTION 7. Amends Section 481.115(f), Health and Safety Code, as follows:

(f) Provides that an offense under Subsection (a) (relating to an offense committed if a person knowingly or intentionally possesses a controlled substance listed in Penalty Group 1 or 1-B) is a felony of the first degree punishable by imprisonment in TDCJ for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

SECTION 8. Amends Section 481.1151(b), Health and Safety Code, as follows:

(b) Provides that an offense under Section 481.1151 (Offense: Possession of Substance in Penalty Group 1-A) is:

(1)-(4) makes no changes to these subdivisions; and

(5) a felony of the first degree punishable by imprisonment in TDCJ 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 9. Amends Section 481.116(e), Health and Safety Code, as follows:

(e) Provides that an offense under Subsection (a) (relating to an offense committed if a person knowingly or intentionally possesses a controlled substance listed in Penalty Group 2) is a felony of the first degree punishable by imprisonment in TDCJ for life or for a term of not more than 99 years or less than five 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, 400 grams or more.

SECTION 10. Amends Section 481.1161(b), Health and Safety Code, as follows:

(b) Provides that an offense under Section 481.1161 (Offense: Possession of Substance in Penalty Group 2-A) is:

(1)-(5) makes no changes to these subdivisions; and

(6) a felony of the first degree punishable by imprisonment in TDCJ 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 11. Amends Section 481.117(e), Health and Safety Code, as follows:

(e) Provides that an offense under Subsection (a) (relating to an offense committed if a person knowingly or intentionally possesses a controlled substance listed in Penalty Group 3) is a felony of the first degree punishable by imprisonment in TDCJ for life or for a term of not more than 99 years or less than five 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, 400 grams or more.

SECTION 12. Amends Section 481.118(e), Health and Safety Code, as follows:

(e) Provides that an offense under Subsection (a) (relating to an offense committed if a person knowingly or intentionally possesses a controlled substance listed in Penalty Group 4) is a felony of the first degree punishable by imprisonment in TDCJ for life or for a term of not more than 99 years or less than five 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, 400 grams or more.

SECTION 13. Amends Section 481.120(b), Health and Safety Code, as follows:

(b) Provides that an offense under Subsection (a) (relating to an offense committed if a person knowingly or intentionally delivers marihuana) is:

(1)-(5) makes no changes to these subdivisions; and

(6) a felony of the first degree punishable by imprisonment in TDCJ for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of marihuana delivered is more than 2,000 pounds.

SECTION 14. Amends Section 481.121(b), Health and Safety Code, as follows:

(b) Provides that an offense under Subsection (a) (relating to an offense committed if a person knowingly or intentionally possesses a usable quantity of marihuana) is:

(1)-(5) makes no changes to these subdivisions; and

(6) a felony of the first degree punishable by imprisonment in TDCJ 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 15. Amends Section 481.126(a), Health and Safety Code, as follows:

(a) Provides that a person commits an offense if the person:

(1) barter property or expends funds the person knows are derived from the commission of a first degree felony offense under Chapter 481 (Texas Controlled Substances Act) punishable by imprisonment in TDCJ for life; or

(2)-(4) makes no changes to these subdivisions.

SECTION 16. Reenacts Section 481.134(c), Health and Safety Code, as amended by Chapters 584 (S.B. 768) and 807 (H.B. 1540), Acts of the 87th Legislature, Regular Session, 2021, and amends it, as follows:

(c) Provides that the minimum term of confinement or imprisonment for an offense otherwise punishable under certain sections, including Section 481.1123(b), is increased by five years and the maximum fine for the offense is doubled if it is shown on the trial of the offense that the offense was committed in certain locations.

SECTION 17. Amends Section 71.02(a), Penal Code, as follows:

(a) Provides that a person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following:

(1)-(5-a) makes no changes to these subdivisions;

(5-b) unlawful possession with intent to deliver a controlled substance listed in Penalty Group 1-B under Section 481.1022 (Penalty Group 1-B), Health and Safety Code; or

(6)-(19) makes no changes to these subdivisions.

SECTION 18. Provides that the change in law made by this Act to Section 193.005, Health and Safety Code, applies only to a death that occurs on or after the effective date of this Act, or a death that occurs before that date but is discovered on or after the effective date of this Act.

SECTION 19. Makes application of Chapter 481, Health and Safety Code, and Section 71.02 (Engaging in Organized Criminal Activity), Penal Code, as amended by this Act, prospective.

SECTION 20. Provides that, to the extent of any conflict, this Act prevails over another Act of the 88th Legislature, Regular Session, 2023, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 21. Effective date: September 1, 2023.