88R20578 LHC-D

By:  Dutton, Thompson of Harris H.B. No. 939

Substitute the following for H.B. No. 939:

By:  Moody C.S.H.B. No. 939

A BILL TO BE ENTITLED

AN ACT

relating to the penalty for certain offenders for possession of a small amount of certain controlled substances.

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

SECTION 1.  Section 481.115, Health and Safety Code, is amended by amending Subsections (b) and (g) and adding Subsections (b-1) and (b-2) to read as follows:

(b)  Except as provided by Subsection (b-1), an [~~An~~] offense under Subsection (a) is a Class A misdemeanor with a minimum term of confinement of 180 days [~~state jail felony~~] if the controlled substance is listed in Penalty Group 1 and the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than one gram.

(b-1)  An offense punishable under Subsection (b) is a state jail felony if the person has been previously convicted of an offense under this section or Section 481.1151, 481.116, 481.1161, 481.117, 481.118, or 481.121.

(b-2)  An offense under Subsection (a) is a state jail felony if the controlled substance is listed in Penalty Group 1-B and the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than one gram.

(g)  It is a defense to prosecution for an offense punishable under Subsection (b) or (b-2) that the actor:

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

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

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

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

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

SECTION 2.  Section 481.1151, Health and Safety Code, is amended by amending Subsections (b) and (d) and adding Subsection (b-1) to read as follows:

(b)  An offense under this section is:

(1)  a Class A misdemeanor with a minimum term of confinement of 180 days [~~state jail felony~~] if the number of abuse units of the controlled substance is fewer than 20, except as provided by Subsection (b-1);

(2)  a felony of the third degree 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.

(b-1)  An offense punishable under Subsection (b)(1) is a state jail felony if the person has been previously convicted of an offense under this section or Section 481.115, 481.116, 481.1161, 481.117, 481.118, or 481.121.

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

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

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

(B)  the actor is committing another offense, other than an offense punishable under Section 481.115(b) or (b-2), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

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

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

(4)  at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

SECTION 3.  Section 481.116, Health and Safety Code, is amended by amending Subsections (b) and (g) and adding Subsection (b-1) to read as follows:

(b)  Except as provided by Subsection (b-1), an [~~An~~] offense under Subsection (a) is a Class A misdemeanor with a minimum term of confinement of 180 days [~~state jail felony~~] if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than one gram.

(b-1)  An offense punishable under Subsection (b) is a state jail felony if the person has been previously convicted of an offense under this section or Section 481.115, 481.1151, 481.1161, 481.117, 481.118, or 481.121.

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

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

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

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

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

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

(4)  at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

SECTION 4.  Section 481.1161(d), Health and Safety Code, is amended to read as follows:

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

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

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

(B)  the actor is committing another offense, other than an offense punishable under Section 481.115(b) or (b-2), 481.1151(b)(1), 481.116(b), 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

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

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

(4)  at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the  possible overdose of the actor or another person.

SECTION 5.  Section 481.117(g), Health and Safety Code, is amended to read as follows:

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

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

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

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

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

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

(4)  at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

SECTION 6.  Section 481.118(g), Health and Safety Code, is amended to read as follows:

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

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

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

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

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

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

(4)  at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

SECTION 7.  Section 481.119(d), Health and Safety Code, is amended to read as follows:

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

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

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

(B)  the actor is committing another offense, other than an offense punishable under Section 481.115(b) or (b-2), 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.125(a), 483.041(a), or 485.031(a);

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

(3)  the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.1151(c), 481.116(f), 481.1161(c), 481.117(f), 481.118(f), 481.121(c), 481.125(g), 483.041(e), or 485.031(c); or

(4)  at any time during  the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

SECTION 8.  Section 481.121(d), Health and Safety Code, is amended to read as follows:

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

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

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

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

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

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

(4)  at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

SECTION 9.  Section 481.125(h), Health and Safety Code, is amended to read as follows:

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

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

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

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

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

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

(4)  at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

SECTION 10.  Sections 481.134(d) and (e), Health and Safety Code, are amended to read as follows:

(d)  An offense otherwise punishable under Section 481.112(b), 481.1121(b)(1), 481.113(b), 481.114(b), 481.115(b-1) or (b-2) [~~481.115(b)~~], 481.1151(b-1) [~~481.1151(b)(1)~~], 481.116(b-1) [~~481.116(b)~~], 481.1161(b)(3), 481.120(b)(3), or 481.121(b)(3) is a felony of the third degree if it is shown on the trial of the offense that the offense was committed:

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

(2)  on a school bus; or

(3)  by any unauthorized person 18 years of age or older, in, on, or within 1,000 feet of premises owned, rented, or leased by a general residential operation operating as a residential treatment center.

(e)  An offense otherwise punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.117(b), 481.119(a), 481.120(b)(2), or 481.121(b)(2) is a state jail felony if it is shown on the trial of the offense that the offense was committed:

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

(2)  on a school bus; or

(3)  by any unauthorized person 18 years of age or older, in, on, or within 1,000 feet of premises owned, rented, or leased by a general residential operation operating as a residential treatment center.

SECTION 11.  Section 483.041(f), Health and Safety Code, is amended to read as follows:

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

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

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

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

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

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

(4)  at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

SECTION 12.  Section 485.031(d), Health and Safety Code, is amended to read as follows:

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

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

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

(B)  the actor is committing another offense, other than an offense punishable under Section 481.115(b) or (b-2), 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.119(b), 481.125(a), or 483.041(a);

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

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

(4)  at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

SECTION 13.  Subchapter K, Chapter 42A, Code of Criminal Procedure, is amended by adding Article 42A.518 to read as follows:

Art. 42A.518.  COMMUNITY SUPERVISION FOR CERTAIN DRUG OFFENSES; EDUCATIONAL PROGRAM. A judge who grants community supervision to a person convicted of a Class A misdemeanor under Section 481.115(b), 481.1151(b)(1), 481.116(b), or 481.1161(b)(2), Health and Safety Code, may require, as a condition of community supervision, that the person successfully complete an educational program on substance abuse awareness approved by the Texas Department of Licensing and Regulation.

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

(a)  Except as otherwise provided by Subsection (b) or (c), on conviction of a state jail felony under Section 481.115(b-1) or (b-2) [~~481.115(b)~~], 481.1151(b-1) [~~481.1151(b)(1)~~], 481.116(b-1) [~~481.116(b)~~], 481.1161(b)(3), 481.121(b)(3), or 481.129(g)(1), Health and Safety Code, that is punished under Section 12.35(a), Penal Code, the judge shall suspend the imposition of the sentence and place the defendant on community supervision.

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

(1)  under Section 481.1151(b-1) [~~481.1151(b)(1)~~], Health and Safety Code, possessed more than five abuse units of the controlled substance;

(2)  under Section 481.1161(b)(3), Health and Safety Code, possessed more than one pound, by aggregate weight, including adulterants or dilutants, of the controlled substance; or

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

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

SECTION 16.  This Act takes effect September 1, 2023.