88R2696 CJD-D

By:  Dutton 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 Subsection (b) 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 481.1151, 481.116, 481.1161, 481.117, 481.118, or 481.121.

SECTION 2.  Section 481.1151, Health and Safety Code, is amended by amending Subsection (b) 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.

SECTION 3.  Section 481.116, Health and Safety Code, is amended by amending Subsection (b) 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.

SECTION 4.  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) [~~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 5.  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 6.  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) [~~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 7.  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 8.  This Act takes effect September 1, 2023.