

By: Jones of Harris

H.B. No. 753

A BILL TO BE ENTITLED

AN ACT

relating to removing criminal penalties for the possession of drug paraphernalia under the Texas Controlled Substances Act.

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

SECTION 1. The heading to Section 481.125, Health and Safety Code, is amended to read as follows:

Sec. 481.125. OFFENSE: [~~POSSESSION OR~~] DELIVERY OF DRUG PARAPHERNALIA.

SECTION 2. Sections 481.125(a), (d), (g), and (h), Health and Safety Code, are repealed.

SECTION 3. Section 481.115(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 481.1151(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),

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;

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 481.1151(c), 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); or

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

14 SECTION 4. Section 481.1151(d), Health and Safety Code, is  
15 amended to read as follows:

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;

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); or

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

14 SECTION 5. Section 481.116(g), Health and Safety Code, is  
15 amended to read as follows:

16 (g) The defense to prosecution provided by Subsection (f) 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), 481.1161(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;

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), 481.1161(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); or

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

14 SECTION 6. Section 481.1161(d), Health and Safety Code, is  
15 amended to read as follows:

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), 481.117(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;

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),  
8 481.117(f), 481.118(f), 481.119(c), 481.121(c), ~~[481.125(g),]~~  
9 483.041(e), or 485.031(c); or

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

14 SECTION 7. Section 481.117(g), Health and Safety Code, is  
15 amended to read as follows:

16 (g) The defense to prosecution provided by Subsection (f) 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), 481.118(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;

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), 481.118(f), 481.119(c), 481.121(c), ~~[481.125(g),]~~  
9 483.041(e), or 485.031(c); or

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

14 SECTION 8. Section 481.118(g), Health and Safety Code, is  
15 amended to read as follows:

16 (g) The defense to prosecution provided by Subsection (f) 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), 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;

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), 481.119(c), 481.121(c), ~~[481.125(g),]~~  
9 483.041(e), or 485.031(c); or

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

14 SECTION 9. Section 481.119(d), Health and Safety Code, is  
15 amended to read as follows:

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 ~~[481.125(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;

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), 481.121(c), ~~[481.125(g),]~~  
9 483.041(e), or 485.031(c); or

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

14 SECTION 10. Section 481.121(d), Health and Safety Code, is  
15 amended to read as follows:

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), or  
27 481.118(b), or an offense under Section 481.119(b), ~~[481.125(a),]~~



1 483.041(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;

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), [~~481.125(g),~~]  
9 483.041(e), or 485.031(c); or

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

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

16 (f) The defense to prosecution provided by Subsection (e) 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 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 481 or 485;

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 485.031(c); or

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

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

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;

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); or

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

14 SECTION 13. The change in law made by this Act applies to  
15 conduct that occurs before, on, or after the effective date of this  
16 Act, except that a final conviction for an offense that exists on  
17 the effective date of this Act is unaffected by this Act.

18 SECTION 14. This Act takes effect September 1, 2023.