

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

1 assistance in response to the possible overdose of another person
2 and:

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

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

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

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

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

15 (b) An offense under this section is:

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

20 (2) a felony of the third degree if the number of abuse
21 units of the controlled substance is 20 or more but fewer than 80;

22 (3) a felony of the second degree if the number of
23 abuse units of the controlled substance is 80 or more but fewer than
24 4,000;

25 (4) a felony of the first degree if the number of abuse
26 units of the controlled substance is 4,000 or more but fewer than
27 8,000; and

1 (5) punishable by imprisonment in the Texas Department
2 of Criminal Justice for life or for a term of not more than 99 years
3 or less than 15 years and a fine not to exceed \$250,000, if the
4 number of abuse units of the controlled substance is 8,000 or more.

5 (b-1) An offense punishable under Subsection (b)(1) is a
6 state jail felony if the person has been previously convicted of an
7 offense under this section or Section 481.115, 481.116, 481.1161,
8 481.117, 481.118, or 481.121.

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

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

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

17 (B) the actor is committing another offense,
18 other than an offense punishable under Section 481.115(b) or (b-2),
19 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or
20 481.121(b)(1) or (2), or an offense under Section 481.119(b),
21 481.125(a), 483.041(a), or 485.031(a);

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

25 (3) the actor was acquitted in a previous proceeding
26 in which the actor successfully established the defense under that
27 subsection or Section 481.115(g), 481.116(f), 481.1161(c),

1 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),
2 483.041(e), or 485.031(c); or

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

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

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

15 (b-1) An offense punishable under Subsection (b) is a state
16 jail felony if the person has been previously convicted of an
17 offense under this section or Section 481.115, 481.1151, 481.1161,
18 481.117, 481.118, or 481.121.

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

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

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

27 (B) the actor is committing another offense,

1 other than an offense punishable under Section 481.115(b) or (b-2),
2 481.1151(b)(1), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or
3 481.121(b)(1) or (2), or an offense under Section 481.119(b),
4 481.125(a), 483.041(a), or 485.031(a);

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

8 (3) the actor was acquitted in a previous proceeding
9 in which the actor successfully established the defense under that
10 subsection or Section 481.115(g), 481.1151(c), 481.1161(c),
11 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),
12 483.041(e), or 485.031(c); or

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

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

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

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

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

27 (B) the actor is committing another offense,

1 other than an offense punishable under Section 481.115(b) or (b-2),
2 481.1151(b)(1), 481.116(b), 481.117(b), 481.118(b), or
3 481.121(b)(1) or (2), or an offense under Section 481.119(b),
4 481.125(a), 483.041(a), or 485.031(a);

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

8 (3) the actor was acquitted in a previous proceeding
9 in which the actor successfully established the defense under that
10 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
11 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),
12 483.041(e), or 485.031(c); or

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

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

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

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

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

27 (B) the actor is committing another offense,

1 other than an offense punishable under Section 481.115(b) or (b-2),
2 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.118(b), or
3 481.121(b)(1) or (2), or an offense under Section 481.119(b),
4 481.125(a), 483.041(a), or 485.031(a);

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

8 (3) the actor was acquitted in a previous proceeding
9 in which the actor successfully established the defense under that
10 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
11 481.1161(c), 481.118(f), 481.119(c), 481.121(c), 481.125(g),
12 483.041(e), or 485.031(c); or

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

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

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

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

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

27 (B) the actor is committing another offense,

1 other than an offense punishable under Section 481.115(b) or (b-2),
2 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), or
3 481.121(b)(1) or (2), or an offense under Section 481.119(b),
4 481.125(a), 483.041(a), or 485.031(a);

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

8 (3) the actor was acquitted in a previous proceeding
9 in which the actor successfully established the defense under that
10 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
11 481.1161(c), 481.117(f), 481.119(c), 481.121(c), 481.125(g),
12 483.041(e), or 485.031(c); or

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

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

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

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

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

27 (B) the actor is committing another offense,

1 other than an offense punishable under Section 481.115(b) or (b-2),
2 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b),
3 481.118(b), or 481.121(b)(1) or (2), or an offense under Section
4 481.125(a), 483.041(a), or 485.031(a);

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

8 (3) the actor was acquitted in a previous proceeding
9 in which the actor successfully established the defense under that
10 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
11 481.1161(c), 481.117(f), 481.118(f), 481.121(c), 481.125(g),
12 483.041(e), or 485.031(c); or

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

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

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

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

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

27 (B) the actor is committing another offense,

1 other than an offense punishable under Section 481.115(b) or (b-2),
2 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), or
3 481.118(b), or an offense under Section 481.119(b), 481.125(a),
4 483.041(a), or 485.031(a);

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

8 (3) the actor was acquitted in a previous proceeding
9 in which the actor successfully established the defense under that
10 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
11 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.125(g),
12 483.041(e), or 485.031(c); or

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

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

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

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

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

27 (B) the actor is committing another offense,

1 other than an offense punishable under Section [481.115\(b\)](#) or (b-2),
2 [481.1151\(b\)\(1\)](#), [481.116\(b\)](#), [481.1161\(b\)\(1\)](#) or (2), [481.117\(b\)](#),
3 [481.118\(b\)](#), or [481.121\(b\)\(1\)](#) or (2), or an offense under Section
4 [481.119\(b\)](#), [483.041\(a\)](#), or [485.031\(a\)](#);

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

8 (3) the actor was acquitted in a previous proceeding
9 in which the actor successfully established the defense under that
10 subsection or Section [481.115\(g\)](#), [481.1151\(c\)](#), [481.116\(f\)](#),
11 [481.1161\(c\)](#), [481.117\(f\)](#), [481.118\(f\)](#), [481.119\(c\)](#), [481.121\(c\)](#),
12 [483.041\(e\)](#), or [485.031\(c\)](#); or

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

17 SECTION 10. Sections [481.134\(d\)](#) and (e), Health and Safety
18 Code, are amended to read as follows:

19 (d) An offense otherwise punishable under Section
20 [481.112\(b\)](#), [481.1121\(b\)\(1\)](#), [481.113\(b\)](#), [481.114\(b\)](#), [481.115\(b-1\)](#)
21 or (b-2) [~~[481.115\(b\)](#)~~], [481.1151\(b-1\)](#) [~~[481.1151\(b\)\(1\)](#)~~],
22 [481.116\(b-1\)](#) [~~[481.116\(b\)](#)~~], [481.1161\(b\)\(3\)](#), [481.120\(b\)\(3\)](#), or
23 [481.121\(b\)\(3\)](#) is a felony of the third degree if it is shown on the
24 trial of the offense that the offense was committed:

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

1 (2) on a school bus; or

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

6 (e) An offense otherwise punishable under Section
7 [481.115\(b\)](#), [481.1151\(b\)\(1\)](#), [481.116\(b\)](#), [481.117\(b\)](#), [481.119\(a\)](#),
8 [481.120\(b\)\(2\)](#), or [481.121\(b\)\(2\)](#) is a state jail felony if it is
9 shown on the trial of the offense that the offense was committed:

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

13 (2) on a school bus; or

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

18 SECTION 11. Section [483.041\(f\)](#), Health and Safety Code, is
19 amended to read as follows:

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

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

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

1 (B) the actor is committing another offense,
2 other than an offense punishable under Section 481.115(b) or (b-2),
3 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b),
4 481.118(b), or 481.121(b)(1) or (2), or an offense under Section
5 481.119(b), 481.125(a), or 485.031(a);

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

9 (3) the actor was acquitted in a previous proceeding
10 in which the actor successfully established the defense under that
11 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
12 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c),
13 481.125(g), or 485.031(c); or

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

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

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

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

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

1 (B) the actor is committing another offense,
2 other than an offense punishable under Section 481.115(b) or (b-2),
3 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b),
4 481.118(b), or 481.121(b)(1) or (2), or an offense under Section
5 481.119(b), 481.125(a), or 483.041(a);

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

9 (3) the actor was acquitted in a previous proceeding
10 in which the actor successfully established the defense under that
11 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
12 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c),
13 481.125(g), or 483.041(e); or

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

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

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

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

3 (a) Except as otherwise provided by Subsection (b) or (c),
4 on conviction of a state jail felony under Section [481.115\(b-1\)](#) or
5 [\(b-2\)](#) [~~[481.115\(b\)](#)~~], [481.1151\(b-1\)](#) [~~[481.1151\(b\)\(1\)](#)~~], [481.116\(b-1\)](#)
6 [~~[481.116\(b\)](#)~~], [481.1161\(b\)\(3\)](#), [481.121\(b\)\(3\)](#), or [481.129\(g\)\(1\)](#),
7 Health and Safety Code, that is punished under Section [12.35\(a\)](#),
8 Penal Code, the judge shall suspend the imposition of the sentence
9 and place the defendant on community supervision.

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

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

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

17 (3) under Section [481.121\(b\)\(3\)](#), Health and Safety
18 Code, possessed more than one pound of marihuana.

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

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