

By: Dutton

H.B. No. 939

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the penalty for certain offenders for possession of a
3 small amount of certain controlled substances.

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

5 SECTION 1. Section 481.115, Health and Safety Code, is
6 amended by amending Subsection (b) and adding Subsection (b-1) to
7 read as follows:

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

13 (b-1) An offense punishable under Subsection (b) is a state
14 jail felony if the person has been previously convicted of an
15 offense under this section or Section 481.1151, 481.116, 481.1161,
16 481.117, 481.118, or 481.121.

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

20 (b) An offense under this section is:

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

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

3 (3) a felony of the second degree if the number of
4 abuse units of the controlled substance is 80 or more but fewer than
5 4,000;

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

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

13 (b-1) An offense punishable under Subsection (b)(1) is a
14 state jail felony if the person has been previously convicted of an
15 offense under this section or Section 481.115, 481.116, 481.1161,
16 481.117, 481.118, or 481.121.

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

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

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

1 481.117, 481.118, or 481.121.

2 SECTION 4. Sections 481.134(d) and (e), Health and Safety
3 Code, are amended to read as follows:

4 (d) An offense otherwise punishable under Section
5 481.112(b), 481.1121(b)(1), 481.113(b), 481.114(b), 481.115(b-1)
6 [~~481.115(b)~~], 481.1151(b-1) [~~481.1151(b)(1)~~], 481.116(b-1)
7 [~~481.116(b)~~], 481.1161(b)(3), 481.120(b)(3), or 481.121(b)(3) is a
8 felony of the third degree if it is shown on the trial of the offense
9 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 (e) An offense otherwise punishable under Section
19 481.115(b), 481.1151(b)(1), 481.116(b), 481.117(b), 481.119(a),
20 481.120(b)(2), or 481.121(b)(2) is a state jail felony if it is
21 shown on the trial of the offense that the offense was committed:

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

25 (2) on a school bus; or

26 (3) by any unauthorized person 18 years of age or
27 older, in, on, or within 1,000 feet of premises owned, rented, or

1 leased by a general residential operation operating as a
2 residential treatment center.

3 SECTION 5. Subchapter K, Chapter 42A, Code of Criminal
4 Procedure, is amended by adding Article 42A.518 to read as follows:

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

13 SECTION 6. Articles 42A.551(a) and (c), Code of Criminal
14 Procedure, are amended to read as follows:

15 (a) Except as otherwise provided by Subsection (b) or (c),
16 on conviction of a state jail felony under Section 481.115(b-1)
17 [~~481.115(b)~~], 481.1151(b-1) [~~481.1151(b)(1)~~], 481.116(b-1)
18 [~~481.116(b)~~], 481.1161(b)(3), 481.121(b)(3), or 481.129(g)(1),
19 Health and Safety Code, that is punished under Section 12.35(a),
20 Penal Code, the judge shall suspend the imposition of the sentence
21 and place the defendant on community supervision.

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

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

26 (2) under Section 481.1161(b)(3), Health and Safety
27 Code, possessed more than one pound, by aggregate weight, including

1 adulterants or dilutants, of the controlled substance; or

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

4 SECTION 7. The change in law made by this Act applies only
5 to an offense committed on or after the effective date of this Act.
6 An offense committed before the effective date of this Act is
7 governed by the law in effect on the date the offense was committed,
8 and the former law is continued in effect for that purpose. For
9 purposes of this section, an offense was committed before the
10 effective date of this Act if any element of the offense was
11 committed before that date.

12 SECTION 8. This Act takes effect September 1, 2023.