

By: Dutton

H.B. No. 2446

A BILL TO BE ENTITLED

AN ACT

relating to the criminal penalties for possession of marihuana.

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

SECTION 1. Article 14.06(d), Code of Criminal Procedure, is amended to read as follows:

(d) Subsection (c) applies only to a person charged with committing an offense under:

(1) Section 481.121, Health and Safety Code, if the offense is punishable under Subsection (b)(2), (b)(3), or (b-1) [~~(b)(1) or (2)~~] of that section;

(1-a) Section 481.1161, Health and Safety Code, if the offense is punishable under Subsection (b)(1) or (2) of that section;

(2) Section 28.03, Penal Code, if the offense is punishable under Subsection (b)(2) of that section;

(3) Section 28.08, Penal Code, if the offense is punishable under Subsection (b)(2) or (3) of that section;

(4) Section 31.03, Penal Code, if the offense is punishable under Subsection (e)(2)(A) of that section;

(5) Section 31.04, Penal Code, if the offense is punishable under Subsection (e)(2) of that section;

(6) Section 38.114, Penal Code, if the offense is punishable as a Class B misdemeanor; or

(7) Section 521.457, Transportation Code.

1 SECTION 2. 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),  
5 481.1151(b)(1), 481.116(b), 481.1161(b)(3), 481.121(b)(4)  
6 [~~481.121(b)(3)~~], or 481.129(g)(1), Health and Safety Code, that is  
7 punished under Section 12.35(a), Penal Code, the judge shall  
8 suspend the imposition of the sentence and place the defendant on  
9 community supervision.

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

11 (1) under Section 481.1151(b)(1), Health and Safety  
12 Code, possessed more than five abuse units of the controlled  
13 substance; or

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 marijuana]~~.

19 SECTION 3. Article 45.051, Code of Criminal Procedure, is  
20 amended by adding Subsection (h) to read as follows:

21 (h) This subsection applies only to a defendant charged with  
22 an offense under Section 481.121, Health and Safety Code, who is  
23 granted a deferral under Subsection (a) of this section. In  
24 addition to any other requirement, the judge shall, during the  
25 deferral period, require that the defendant successfully complete a  
26 drug abuse awareness and education program approved by the Texas  
27 Department of Licensing and Regulation.

1 SECTION 4. Article 55.01(a), Code of Criminal Procedure, is  
2 amended to read as follows:

3 (a) A person who has been placed under a custodial or  
4 noncustodial arrest for commission of either a felony or  
5 misdemeanor is entitled to have all records and files relating to  
6 the arrest expunged if:

7 (1) the person is tried for the offense for which the  
8 person was arrested and is:

9 (A) acquitted by the trial court, except as  
10 provided by Subsection (c);

11 (B) convicted and subsequently:

12 (i) pardoned for a reason other than that  
13 described by Subparagraph (ii); or

14 (ii) pardoned or otherwise granted relief  
15 on the basis of actual innocence with respect to that offense, if  
16 the applicable pardon or court order clearly indicates on its face  
17 that the pardon or order was granted or rendered on the basis of the  
18 person's actual innocence; ~~or~~

19 (C) convicted of an offense committed before  
20 September 1, 2021, under Section 46.02(a), Penal Code, as that  
21 section existed before that date; or

22 (D) convicted of an offense committed before  
23 September 1, 2023, under Section 481.121(b)(1), Health and Safety  
24 Code, as that section existed before that date; or

25 (2) the person has been released and the charge, if  
26 any, has not resulted in a final conviction and is no longer pending  
27 and there was no court-ordered community supervision under Chapter

1 42A for the offense, unless the offense is a Class C misdemeanor,  
2 provided that:

3 (A) regardless of whether any statute of  
4 limitations exists for the offense and whether any limitations  
5 period for the offense has expired, an indictment or information  
6 charging the person with the commission of a misdemeanor offense  
7 based on the person's arrest or charging the person with the  
8 commission of any felony offense arising out of the same  
9 transaction for which the person was arrested:

10 (i) has not been presented against the  
11 person at any time following the arrest, and:

12 (a) at least 180 days have elapsed  
13 from the date of arrest if the arrest for which the expunction was  
14 sought was for an offense punishable as a Class C misdemeanor and if  
15 there was no felony charge arising out of the same transaction for  
16 which the person was arrested;

17 (b) at least one year has elapsed from  
18 the date of arrest if the arrest for which the expunction was sought  
19 was for an offense punishable as a Class B or A misdemeanor and if  
20 there was no felony charge arising out of the same transaction for  
21 which the person was arrested;

22 (c) at least three years have elapsed  
23 from the date of arrest if the arrest for which the expunction was  
24 sought was for an offense punishable as a felony or if there was a  
25 felony charge arising out of the same transaction for which the  
26 person was arrested; or

27 (d) the attorney representing the

1 state certifies that the applicable arrest records and files are  
2 not needed for use in any criminal investigation or prosecution,  
3 including an investigation or prosecution of another person; or

4 (ii) if presented at any time following the  
5 arrest, was dismissed or quashed, and the court finds that the  
6 indictment or information was dismissed or quashed because:

7 (a) the person completed a veterans  
8 treatment court program created under Chapter 124, Government Code,  
9 or former law, subject to Subsection (a-3);

10 (b) the person completed a mental  
11 health court program created under Chapter 125, Government Code, or  
12 former law, subject to Subsection (a-4);

13 (c) the person completed a pretrial  
14 intervention program authorized under Section 76.011, Government  
15 Code, other than a veterans treatment court program created under  
16 Chapter 124, Government Code, or former law, or a mental health  
17 court program created under Chapter 125, Government Code, or former  
18 law;

19 (d) the presentment had been made  
20 because of mistake, false information, or other similar reason  
21 indicating absence of probable cause at the time of the dismissal to  
22 believe the person committed the offense; or

23 (e) the indictment or information was  
24 void; or

25 (B) prosecution of the person for the offense for  
26 which the person was arrested is no longer possible because the  
27 limitations period has expired.

1 SECTION 5. Section 2(a), Article 55.02, Code of Criminal  
2 Procedure, is amended to read as follows:

3 (a) A person who is entitled to expunction of records and  
4 files under Article 55.01(a)(1)(A), 55.01(a)(1)(B)(i),  
5 55.01(a)(1)(C), 55.01(a)(1)(D), or 55.01(a)(2) or a person who is  
6 eligible for expunction of records and files under Article 55.01(b)  
7 may file an ex parte petition for expunction in a district court for  
8 the county in which:

9 (1) the petitioner was arrested; or

10 (2) the offense was alleged to have occurred.

11 SECTION 6. Section 411.0728(a), Government Code, is amended  
12 to read as follows:

13 (a) This section applies only to a person:

14 (1) who is convicted of or placed on deferred  
15 adjudication community supervision for an offense under:

16 (A) Section 481.120, Health and Safety Code, if  
17 the offense is punishable under Subsection (b)(1);

18 (B) Section 481.121, Health and Safety Code, if  
19 the offense is punishable under Subsection (b)(2) or (b-1)  
20 [~~(b)(1)~~];

21 (C) Section 31.03, Penal Code, if the offense is  
22 punishable under Subsection (e)(1) or (2); or

23 (D) Section 43.02, Penal Code; and

24 (2) who, if requested by the applicable law  
25 enforcement agency or prosecuting attorney to provide assistance in  
26 the investigation or prosecution of an offense under Section  
27 20A.02, 20A.03, or 43.05, Penal Code, or a federal offense

1 containing elements that are substantially similar to the elements  
2 of an offense under any of those sections:

3 (A) provided assistance in the investigation or  
4 prosecution of the offense; or

5 (B) did not provide assistance in the  
6 investigation or prosecution of the offense due to the person's age  
7 or a physical or mental disability resulting from being a victim of  
8 an offense described by this subdivision.

9 SECTION 7. Section 481.115(h), Health and Safety Code, is  
10 amended to read as follows:

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

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

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

19 (B) the actor is committing another offense,  
20 other than an offense punishable under Section 481.1151(b)(1),  
21 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or  
22 481.121(b)(1), (b)(2), (b)(3), or (b-1) [~~(2)~~], or an offense under  
23 Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

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

27 (3) the actor was acquitted in a previous proceeding

1 in which the actor successfully established the defense under that  
2 subsection or Section 481.1151(c), 481.116(f), 481.1161(c),  
3 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),  
4 483.041(e), or 485.031(c); or

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

9 SECTION 8. Section 481.1151(d), Health and Safety Code, is  
10 amended to read as follows:

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

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

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

19 (B) the actor is committing another offense,  
20 other than an offense punishable under Section 481.115(b),  
21 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or  
22 481.121(b)(1), (b)(2), (b)(3), or (b-1) [~~(2)~~], or an offense under  
23 Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

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

27 (3) the actor was acquitted in a previous proceeding



1 in which the actor successfully established the defense under that  
2 subsection or Section 481.115(g), 481.116(f), 481.1161(c),  
3 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),  
4 483.041(e), or 485.031(c); or

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

9 SECTION 9. Section 481.116(g), Health and Safety Code, is  
10 amended to read as follows:

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

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

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

19 (B) the actor is committing another offense,  
20 other than an offense punishable under Section 481.115(b),  
21 481.1151(b)(1), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or  
22 481.121(b)(1), (b)(2), (b)(3), or (b-1) [~~(2)~~], or an offense under  
23 Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

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

27 (3) the actor was acquitted in a previous proceeding

1 in which the actor successfully established the defense under that  
2 subsection or Section 481.115(g), 481.1151(c), 481.1161(c),  
3 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),  
4 483.041(e), or 485.031(c); or

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

9 SECTION 10. Section 481.1161(d), Health and Safety Code, is  
10 amended to read as follows:

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

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

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

19 (B) the actor is committing another offense,  
20 other than an offense punishable under Section 481.115(b),  
21 481.1151(b)(1), 481.116(b), 481.117(b), 481.118(b), or  
22 481.121(b)(1), (b)(2), (b)(3), or (b-1) [~~(2)~~], or an offense under  
23 Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

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

27 (3) the actor was acquitted in a previous proceeding

1 in which the actor successfully established the defense under that  
2 subsection or Section 481.115(g), 481.1151(c), 481.116(f),  
3 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),  
4 483.041(e), or 485.031(c); or

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

9 SECTION 11. Section 481.117(g), Health and Safety Code, is  
10 amended to read as follows:

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

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

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

19 (B) the actor is committing another offense,  
20 other than an offense punishable under Section 481.115(b),  
21 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.118(b), or  
22 481.121(b)(1), (b)(2), (b)(3), or (b-1) [~~(2)~~], or an offense under  
23 Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

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

27 (3) the actor was acquitted in a previous proceeding

1 in which the actor successfully established the defense under that  
2 subsection or Section 481.115(g), 481.1151(c), 481.116(f),  
3 481.1161(c), 481.118(f), 481.119(c), 481.121(c), 481.125(g),  
4 483.041(e), or 485.031(c); or

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

9 SECTION 12. Section 481.118(g), Health and Safety Code, is  
10 amended to read as follows:

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

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

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

19 (B) the actor is committing another offense,  
20 other than an offense punishable under Section 481.115(b),  
21 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), or  
22 481.121(b)(1), (b)(2), (b)(3), or (b-1) [~~(2)~~], or an offense under  
23 Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

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

27 (3) the actor was acquitted in a previous proceeding

1 in which the actor successfully established the defense under that  
2 subsection or Section 481.115(g), 481.1151(c), 481.116(f),  
3 481.1161(c), 481.117(f), 481.119(c), 481.121(c), 481.125(g),  
4 483.041(e), or 485.031(c); or

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

9 SECTION 13. Section 481.119(d), Health and Safety Code, is  
10 amended to read as follows:

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

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

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

19 (B) the actor is committing another offense,  
20 other than an offense punishable under Section 481.115(b),  
21 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b),  
22 481.118(b), or 481.121(b)(1), (b)(2), (b)(3), or (b-1) [~~(2)~~], or an  
23 offense under Section 481.125(a), 483.041(a), or 485.031(a);

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

27 (3) the actor was acquitted in a previous proceeding

1 in which the actor successfully established the defense under that  
2 subsection or Section 481.115(g), 481.1151(c), 481.116(f),  
3 481.1161(c), 481.117(f), 481.118(f), 481.121(c), 481.125(g),  
4 483.041(e), or 485.031(c); or

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

9 SECTION 14. Section 481.121, Health and Safety Code, is  
10 amended by amending Subsections (b) and (c) and adding Subsection  
11 (b-1) to read as follows:

12 (b) An offense under Subsection (a) is:

13 (1) a Class C [~~B~~] misdemeanor if the amount of  
14 marihuana possessed is two ounces or less, except as provided by  
15 Subsection (b-1);

16 (2) a Class B [~~A~~] misdemeanor if the amount of  
17 marihuana possessed is four ounces or less but more than two ounces;

18 (3) a Class A misdemeanor [~~state jail felony~~] if the  
19 amount of marihuana possessed is five pounds or less but more than  
20 four ounces;

21 (4) a state jail felony [~~of the third degree~~] if the  
22 amount of marihuana possessed is 50 pounds or less but more than 5  
23 pounds;

24 (5) a felony of the third [~~second~~] degree if the amount  
25 of marihuana possessed is 2,000 pounds or less but more than 50  
26 pounds; and

27 (6) a felony of the second degree [~~punishable by~~

1 ~~imprisonment in the Texas Department of Criminal Justice for life~~  
2 ~~or for a term of not more than 99 years or less than 5 years, and a~~  
3 ~~fine not to exceed \$50,000,]~~ if the amount of marihuana possessed is  
4 more than 2,000 pounds.

5 (b-1) An offense under Subsection (b)(1) is a Class B  
6 misdemeanor if it is shown on the trial of the offense that the  
7 defendant has been previously convicted three or more times of an  
8 offense involving the possession of marihuana and each prior  
9 offense was committed within the 24-month period preceding the date  
10 of the commission of the instant offense. For purposes of this  
11 subsection, "offense involving the possession of marihuana" means  
12 an offense under this section or an offense under the laws of  
13 another state that contains elements substantially similar to the  
14 elements of an offense under this section.

15 (c) It is a defense to prosecution for an offense punishable  
16 under Subsection (b)(1), (b)(2), (b)(3), or (b-1) [~~(2)~~] that the  
17 actor:

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

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

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

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

27 (2) was the victim of a possible overdose for which

1 emergency medical assistance was requested, by the actor or by  
2 another person, during an ongoing medical emergency.

3 SECTION 15. Section 481.125(h), Health and Safety Code, is  
4 amended to read as follows:

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

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

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

13 (B) the actor is committing another offense,  
14 other than an offense punishable under Section 481.115(b),  
15 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b),  
16 481.118(b), or 481.121(b)(1), (b)(2), (b)(3), or (b-1) [~~(2)~~], or an  
17 offense under Section 481.119(b), 483.041(a), or 485.031(a);

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

21 (3) the actor was acquitted in a previous proceeding  
22 in which the actor successfully established the defense under that  
23 subsection or Section 481.115(g), 481.1151(c), 481.116(f),  
24 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c),  
25 483.041(e), or 485.031(c); or

26 (4) at any time during the 18-month period preceding  
27 the date of the commission of the instant offense, the actor



1 requested emergency medical assistance in response to the possible  
2 overdose of the actor or another person.

3 SECTION 16. Section 481.126(a), Health and Safety Code, is  
4 amended to read as follows:

5 (a) A person commits an offense if the person:

6 (1) barter property or expends funds the person knows  
7 are derived from the commission of an offense under this chapter  
8 punishable by imprisonment in the Texas Department of Criminal  
9 Justice for life;

10 (2) barter property or expends funds the person knows  
11 are derived from the commission of an offense under Section  
12 481.121(a) that is punishable under Section 481.121(b)(6)  
13 [~~481.121(b)(5)~~];

14 (3) barter property or finances or invests funds the  
15 person knows or believes are intended to further the commission of  
16 an offense for which the punishment is described by Subdivision  
17 (1); or

18 (4) barter property or finances or invests funds the  
19 person knows or believes are intended to further the commission of  
20 an offense under Section 481.121(a) that is punishable under  
21 Section 481.121(b)(6) [~~481.121(b)(5)~~].

22 SECTION 17. Section 481.134(c), Health and Safety Code, as  
23 amended by Chapters 584 (S.B. 768) and 807 (H.B. 1540), Acts of the  
24 87th Legislature, Regular Session, 2021, is reenacted and amended  
25 to read as follows:

26 (c) The minimum term of confinement or imprisonment for an  
27 offense otherwise punishable under Section 481.112(c), (d), (e), or

1 (f), 481.1121(b)(2), (3), or (4), 481.1123(c), (d), (e), or (f),  
2 481.113(c), (d), or (e), 481.114(c), (d), or (e), 481.115(c)-(f),  
3 481.1151(b)(2), (3), (4), or (5), 481.116(c), (d), or (e),  
4 481.1161(b)(4), (5), or (6), 481.117(c), (d), or (e), 481.118(c),  
5 (d), or (e), 481.120(b)(4), (5), or (6), or 481.121(b)(5)  
6 [~~481.121(b)(4), (5)~~] or (6) is increased by five years and the  
7 maximum fine for the offense is doubled if it is shown on the trial  
8 of the offense that the offense was committed:

9 (1) in, on, or within 1,000 feet of the premises of a  
10 school, the premises of a public or private youth center, or a  
11 playground;

12 (2) on a school bus; or

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

17 SECTION 18. Sections 481.134(d), (e), and (f), Health and  
18 Safety 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),  
21 481.1151(b)(1), 481.116(b), 481.1161(b)(3), 481.120(b)(3), or  
22 481.121(b)(4) [~~481.121(b)(3)~~] is a felony of the third degree if it  
23 is shown on the trial of the offense that the offense was committed:

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

27 (2) on a school bus; or

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

5           (e) An offense otherwise punishable under Section  
6 481.117(b), 481.119(a), 481.120(b)(2), or 481.121(b)(3)  
7 [~~481.121(b)(2)~~] is a state jail felony if it is shown on the trial  
8 of the offense that the offense was committed:

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

12           (2) on a school bus; or

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

17           (f) An offense otherwise punishable under Section  
18 481.118(b), 481.119(b), 481.120(b)(1), or 481.121(b)(2) or (b-1)  
19 [~~481.121(b)(1)~~] is a Class A misdemeanor if it is shown on the trial  
20 of the offense that the offense was committed:

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

24           (2) on a school bus; or

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

1 residential treatment center.

2 SECTION 19. Section 483.041(f), Health and Safety Code, is  
3 amended to read as follows:

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

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

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

12 (B) the actor is committing another offense,  
13 other than an offense punishable under Section 481.115(b),  
14 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b),  
15 481.118(b), or 481.121(b)(1), (b)(2), (b)(3), or (b-1) [~~(2)~~], or an  
16 offense under Section 481.119(b), 481.125(a), or 485.031(a);

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

20 (3) the actor was acquitted in a previous proceeding  
21 in which the actor successfully established the defense under that  
22 subsection or Section 481.115(g), 481.1151(c), 481.116(f),  
23 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c),  
24 481.125(g), or 485.031(c); or

25 (4) at any time during the 18-month period preceding  
26 the date of the commission of the instant offense, the actor  
27 requested emergency medical assistance in response to the possible

1 overdose of the actor or another person.

2 SECTION 20. Section 485.031(d), Health and Safety Code, is  
3 amended to read as follows:

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

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

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

12 (B) the actor is committing another offense,  
13 other than an offense punishable under Section 481.115(b),  
14 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b),  
15 481.118(b), or 481.121(b)(1), (b)(2), (b)(3), or (b-1) [~~(2)~~], or an  
16 offense under Section 481.119(b), 481.125(a), or 483.041(a);

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

20 (3) the actor was acquitted in a previous proceeding  
21 in which the actor successfully established the defense under that  
22 subsection or Section 481.115(g), 481.1151(c), 481.116(f),  
23 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c),  
24 481.125(g), or 483.041(e); or

25 (4) at any time during the 18-month period preceding  
26 the date of the commission of the instant offense, the actor  
27 requested emergency medical assistance in response to the possible

1 overdose of the actor or another person.

2           SECTION 21. The changes in law made by this Act apply only  
3 to an offense committed on or after the effective date of this Act.  
4 An offense committed before the effective date of this Act is  
5 governed by the law in effect on the date the offense was committed,  
6 and the former law is continued in effect for that purpose. For  
7 purposes of this section, an offense was committed before the  
8 effective date of this Act if any element of the offense was  
9 committed before that date.

10           SECTION 22. To the extent of any conflict, this Act prevails  
11 over another Act of the 88th Legislature, Regular Session, 2023,  
12 relating to nonsubstantive additions to and corrections in enacted  
13 codes.

14           SECTION 23. This Act takes effect September 1, 2023.