

By: Garcia

H.B. No. 2601

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the criminal penalties for possession of marihuana.

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

4 SECTION 1. Sections [481.121](#)(b) and (c), Health and Safety
5 Code, are amended to read as follows:

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

7 (1) a Class C [~~B misdemeanor if the amount of marihuana~~
8 ~~possessed is two ounces or less;~~

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

11 (2) [~~(3)~~] a state jail felony if the amount of
12 marihuana possessed is five pounds or less but more than four
13 ounces;

14 (3) [~~(4)~~] a felony of the third degree if the amount of
15 marihuana possessed is 50 pounds or less but more than 5 pounds;

16 (4) [~~(5)~~] a felony of the second degree if the amount
17 of marihuana possessed is 2,000 pounds or less but more than 50
18 pounds; and

19 (5) [~~(6)~~] punishable by imprisonment in the Texas
20 Department of Criminal Justice for life or for a term of not more
21 than 99 years or less than 5 years, and a fine not to exceed \$50,000,
22 if the amount of marihuana possessed is more than 2,000 pounds.

23 (c) It is a defense to prosecution for an offense punishable
24 under Subsection (b)(1) [~~or (2)~~] that the actor:

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

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

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

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

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

13 SECTION 2. Article 14.06(d), Code of Criminal Procedure, is
14 amended to read as follows:

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

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

20 ~~[(1-a)]~~ Section 481.1161, Health and Safety Code, if
21 the offense is punishable under Subsection (b)(1) or (2) of that
22 section;

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

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

27 (4) Section 31.03, Penal Code, if the offense is

1 punishable under Subsection (e)(2)(A) of that section;

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

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

6 (7) Section 521.457, Transportation Code.

7 SECTION 3. Articles 42A.551(a) and (c), Code of Criminal
8 Procedure, are amended to read as follows:

9 (a) Except as otherwise provided by Subsection (b) or (c),
10 on conviction of a state jail felony under Section 481.115(b),
11 481.1151(b)(1), 481.116(b), 481.1161(b)(3), 481.121(b)(2)
12 [~~481.121(b)(3)~~], or 481.129(g)(1), Health and Safety Code, that is
13 punished under Section 12.35(a), Penal Code, the judge shall
14 suspend the imposition of the sentence and place the defendant on
15 community supervision.

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

17 (1) under Section 481.1151(b)(1), Health and Safety
18 Code, possessed more than five abuse units of the controlled
19 substance;

20 (2) under Section 481.1161(b)(3), Health and Safety
21 Code, possessed more than one pound, by aggregate weight, including
22 adulterants or dilutants, of the controlled substance; or

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

25 SECTION 4. Section 411.0728(a), Government Code, is amended
26 to read as follows:

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

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

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

5 (B) [~~Section 481.121, Health and Safety Code, if~~
6 ~~the offense is punishable under Subsection (b)(1);~~];

7 [~~(C)~~] Section 31.03, Penal Code, if the offense is
8 punishable under Subsection (e)(1) or (2); or

9 (C) [~~(D)~~] Section 43.02, Penal Code; and

10 (2) who, if requested by the applicable law
11 enforcement agency or prosecuting attorney to provide assistance in
12 the investigation or prosecution of an offense under Section
13 20A.02, 20A.03, or 43.05, Penal Code, or a federal offense
14 containing elements that are substantially similar to the elements
15 of an offense under any of those sections:

16 (A) provided assistance in the investigation or
17 prosecution of the offense; or

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

22 SECTION 5. Section 481.115(h), Health and Safety Code, is
23 amended to read as follows:

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

26 (1) at the time the request for emergency medical
27 assistance was made:

1 (A) a peace officer was in the process of
2 arresting the actor or executing a search warrant describing the
3 actor or the place from which the request for medical assistance was
4 made; or

5 (B) the actor is committing another offense,
6 other than an offense punishable under Section 481.1151(b)(1),
7 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or
8 481.121(b)(1) [~~or (2)~~], or an offense under Section 481.119(b),
9 481.125(a), 483.041(a), or 485.031(a);

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

13 (3) the actor was acquitted in a previous proceeding
14 in which the actor successfully established the defense under that
15 subsection or Section 481.1151(c), 481.116(f), 481.1161(c),
16 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),
17 483.041(e), or 485.031(c); or

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

22 SECTION 6. Section 481.1151(d), Health and Safety Code, is
23 amended to read as follows:

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

26 (1) at the time the request for emergency medical
27 assistance was made:

1 (A) a peace officer was in the process of
2 arresting the actor or executing a search warrant describing the
3 actor or the place from which the request for medical assistance was
4 made; or

5 (B) the actor is committing another offense,
6 other than an offense punishable under Section 481.115(b),
7 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or
8 481.121(b)(1) [~~or (2)~~], or an offense under Section 481.119(b),
9 481.125(a), 483.041(a), or 485.031(a);

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

13 (3) the actor was acquitted in a previous proceeding
14 in which the actor successfully established the defense under that
15 subsection or Section 481.115(g), 481.116(f), 481.1161(c),
16 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),
17 483.041(e), or 485.031(c); or

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

22 SECTION 7. Section 481.116(g), Health and Safety Code, is
23 amended to read as follows:

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

26 (1) at the time the request for emergency medical
27 assistance was made:

1 (A) a peace officer was in the process of
2 arresting the actor or executing a search warrant describing the
3 actor or the place from which the request for medical assistance was
4 made; or

5 (B) the actor is committing another offense,
6 other than an offense punishable under Section 481.115(b),
7 481.1151(b)(1), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or
8 481.121(b)(1) [~~or (2)~~], or an offense under Section 481.119(b),
9 481.125(a), 483.041(a), or 485.031(a);

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

13 (3) the actor was acquitted in a previous proceeding
14 in which the actor successfully established the defense under that
15 subsection or Section 481.115(g), 481.1151(c), 481.1161(c),
16 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),
17 483.041(e), or 485.031(c); or

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

22 SECTION 8. Section 481.1161(d), Health and Safety Code, is
23 amended to read as follows:

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

26 (1) at the time the request for emergency medical
27 assistance was made:

1 (A) a peace officer was in the process of
2 arresting the actor or executing a search warrant describing the
3 actor or the place from which the request for medical assistance was
4 made; or

5 (B) the actor is committing another offense,
6 other than an offense punishable under Section 481.115(b),
7 481.1151(b)(1), 481.116(b), 481.117(b), 481.118(b), or
8 481.121(b)(1) [~~or (2)~~], or an offense under Section 481.119(b),
9 481.125(a), 483.041(a), or 485.031(a);

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

13 (3) the actor was acquitted in a previous proceeding
14 in which the actor successfully established the defense under that
15 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
16 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),
17 483.041(e), or 485.031(c); or

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

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

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

26 (1) at the time the request for emergency medical
27 assistance was made:

1 (A) a peace officer was in the process of
2 arresting the actor or executing a search warrant describing the
3 actor or the place from which the request for medical assistance was
4 made; or

5 (B) the actor is committing another offense,
6 other than an offense punishable under Section 481.115(b),
7 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.118(b), or
8 481.121(b)(1) [~~or (2)~~], or an offense under Section 481.119(b),
9 481.125(a), 483.041(a), or 485.031(a);

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

13 (3) the actor was acquitted in a previous proceeding
14 in which the actor successfully established the defense under that
15 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
16 481.1161(c), 481.118(f), 481.119(c), 481.121(c), 481.125(g),
17 483.041(e), or 485.031(c); or

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

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

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

26 (1) at the time the request for emergency medical
27 assistance was made:

1 (A) a peace officer was in the process of
2 arresting the actor or executing a search warrant describing the
3 actor or the place from which the request for medical assistance was
4 made; or

5 (B) the actor is committing another offense,
6 other than an offense punishable under Section 481.115(b),
7 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), or
8 481.121(b)(1) [~~or (2)~~], or an offense under Section 481.119(b),
9 481.125(a), 483.041(a), or 485.031(a);

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

13 (3) the actor was acquitted in a previous proceeding
14 in which the actor successfully established the defense under that
15 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
16 481.1161(c), 481.117(f), 481.119(c), 481.121(c), 481.125(g),
17 483.041(e), or 485.031(c); or

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

22 SECTION 11. Section 481.119(d), Health and Safety Code, is
23 amended to read as follows:

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

26 (1) at the time the request for emergency medical
27 assistance was made:

1 (A) a peace officer was in the process of
2 arresting the actor or executing a search warrant describing the
3 actor or the place from which the request for medical assistance was
4 made; or

5 (B) the actor is committing another offense,
6 other than an offense punishable under Section 481.115(b),
7 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b),
8 481.118(b), or 481.121(b)(1) [~~or (2)~~], or an offense under Section
9 481.125(a), 483.041(a), or 485.031(a);

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

13 (3) the actor was acquitted in a previous proceeding
14 in which the actor successfully established the defense under that
15 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
16 481.1161(c), 481.117(f), 481.118(f), 481.121(c), 481.125(g),
17 483.041(e), or 485.031(c); or

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

22 SECTION 12. Section 481.125(h), Health and Safety Code, is
23 amended to read as follows:

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

26 (1) at the time the request for emergency medical
27 assistance was made:

1 (A) a peace officer was in the process of
2 arresting the actor or executing a search warrant describing the
3 actor or the place from which the request for medical assistance was
4 made; or

5 (B) the actor is committing another offense,
6 other than an offense punishable under Section 481.115(b),
7 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b),
8 481.118(b), or 481.121(b)(1) [~~or (2)~~], or an offense under Section
9 481.119(b), 483.041(a), or 485.031(a);

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

13 (3) the actor was acquitted in a previous proceeding
14 in which the actor successfully established the defense under that
15 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
16 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c),
17 483.041(e), or 485.031(c); or

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

22 SECTION 13. Section 481.126(a), Health and Safety Code, is
23 amended to read as follows:

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

25 (1) barter property or expends funds the person knows
26 are derived from the commission of an offense under this chapter
27 punishable by imprisonment in the Texas Department of Criminal

1 Justice for life;

2 (2) barter property or expends funds the person knows
3 are derived from the commission of an offense under Section
4 [481.121\(a\)](#) that is punishable under Subsection (b)(4) of that
5 section [~~Section [481.121\(b\)\(5\)](#)~~];

6 (3) barter property or finances or invests funds the
7 person knows or believes are intended to further the commission of
8 an offense for which the punishment is described by Subdivision
9 (1); or

10 (4) barter property or finances or invests funds the
11 person knows or believes are intended to further the commission of
12 an offense under Section [481.121\(a\)](#) that is punishable under
13 Subsection (b)(4) of that section [~~Section [481.121\(b\)\(5\)](#)~~].

14 SECTION 14. Section [481.134\(c\)](#), Health and Safety Code, as
15 amended by Chapters 584 (S.B. 768) and 807 (H.B. 1540), Acts of the
16 87th Legislature, Regular Session, 2021, is reenacted and amended
17 to read as follows:

18 (c) The minimum term of confinement or imprisonment for an
19 offense otherwise punishable under Section [481.112\(c\)](#), (d), (e), or
20 (f), [481.1121\(b\)\(2\)](#), (3), or (4), [481.1123\(c\)](#), (d), (e), or (f),
21 [481.113\(c\)](#), (d), or (e), [481.114\(c\)](#), (d), or (e), [481.115\(c\)-\(f\)](#),
22 [481.1151\(b\)\(2\)](#), (3), (4), or (5), [481.116\(c\)](#), (d), or (e),
23 [481.1161\(b\)\(4\)](#), (5), or (6), [481.117\(c\)](#), (d), or (e), [481.118\(c\)](#),
24 (d), or (e), [481.120\(b\)\(4\)](#), (5), or (6), or [481.121\(b\)\(3\)](#), (4), or
25 (5) [~~[481.121\(b\)\(4\)](#), (5), or (6)~~] is increased by five years and the
26 maximum fine for the offense is doubled if it is shown on the trial
27 of the offense that the offense was committed:

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

4 (2) on a school bus; or

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

9 SECTION 15. Sections 481.134(d), (e), and (f), Health and
10 Safety Code, are amended to read as follows:

11 (d) An offense otherwise punishable under Section
12 481.112(b), 481.1121(b)(1), 481.113(b), 481.114(b), 481.115(b),
13 481.1151(b)(1), 481.116(b), 481.1161(b)(3), 481.120(b)(3), or
14 481.121(b)(2) [~~481.121(b)(3)~~] is a felony of the third degree if it
15 is shown on the trial of the offense that the offense was committed:

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

19 (2) on a school bus; or

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

24 (e) An offense otherwise punishable under Section
25 481.117(b), 481.119(a), or 481.120(b)(2) [~~or 481.121(b)(2)~~] is a
26 state jail felony if it is shown on the trial of the offense that the
27 offense was committed:

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

4 (2) on a school bus; or

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

9 (f) An offense otherwise punishable under Section
10 [481.118\(b\)](#), [481.119\(b\)](#), [or 481.120\(b\)\(1\)](#) [~~, or [481.121\(b\)\(1\)](#)~~] is a
11 Class A misdemeanor if it is shown on the trial of the offense that
12 the offense was committed:

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

16 (2) on a school bus; or

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

21 SECTION 16. Section [483.041\(f\)](#), Health and Safety Code, is
22 amended to read as follows:

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

25 (1) at the time the request for emergency medical
26 assistance was made:

27 (A) a peace officer was in the process of

1 arresting the actor or executing a search warrant describing the
2 actor or the place from which the request for medical assistance was
3 made; or

4 (B) the actor is committing another offense,
5 other than an offense punishable under Section 481.115(b),
6 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b),
7 481.118(b), or 481.121(b)(1) [~~or (2)~~], or an offense under Section
8 481.119(b), 481.125(a), or 485.031(a);

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

12 (3) the actor was acquitted in a previous proceeding
13 in which the actor successfully established the defense under that
14 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
15 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c),
16 481.125(g), or 485.031(c); or

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

21 SECTION 17. Section 485.031(d), Health and Safety Code, is
22 amended to read as follows:

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

25 (1) at the time the request for emergency medical
26 assistance was made:

27 (A) a peace officer was in the process of

1 arresting the actor or executing a search warrant describing the
2 actor or the place from which the request for medical assistance was
3 made; or

4 (B) the actor is committing another offense,
5 other than an offense punishable under Section 481.115(b),
6 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b),
7 481.118(b), or 481.121(b)(1) [~~or (2)~~], or an offense under Section
8 481.119(b), 481.125(a), or 483.041(a);

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

12 (3) the actor was acquitted in a previous proceeding
13 in which the actor successfully established the defense under that
14 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
15 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c),
16 481.125(g), or 483.041(e); or

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

21 SECTION 18. (a) Except as otherwise provided by Subsection
22 (b) of this section, the changes in law made by this Act apply only
23 to an offense committed on or after the effective date of this Act.
24 An offense committed before the effective date of this Act is
25 governed by the law in effect on the date the offense was committed,
26 and the former law is continued in effect for that purpose. For
27 purposes of this subsection, an offense was committed before the

1 effective date of this Act if any element of the offense was
2 committed before that date.

3 (b) Sections 481.121 and 481.134, Health and Safety Code, as
4 amended by this Act, apply to an offense committed under Section
5 481.121 or an offense committed under Section 481.121 and
6 punishable under Section 481.134 before, on, or after September 1,
7 2023, except that a final conviction for an offense that exists on
8 September 1, 2023, is unaffected by this Act.

9 SECTION 19. To the extent of any conflict, this Act prevails
10 over another Act of the 88th Legislature, Regular Session, 2023,
11 relating to nonsubstantive additions to and corrections in enacted
12 codes.

13 SECTION 20. This Act takes effect September 1, 2023.