

By: Eckhardt

S.B. No. 208

A BILL TO BE ENTITLED

AN ACT

relating to the criminal penalties for delivery and possession of marihuana and citations given for those offenses.

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

SECTION 1. Article 14.01, Code of Criminal Procedure, is amended by adding Subsection (c) to read as follows:

(c) Notwithstanding Subsection (a) or (b), a peace officer or any other person may not, without a warrant, arrest an offender for a misdemeanor punishable by fine only under Section 481.120(b)(1) or 481.121(b)(1), Health and Safety Code.

SECTION 2. Article 14.03, Code of Criminal Procedure, is amended by adding Subsection (i) to read as follows:

(i) Notwithstanding Subsection (a), (d), or (g), a peace officer may not, without a warrant, arrest a person who only commits an offense punishable by fine only under Section 481.120(b)(1) or 481.121(b)(1), Health and Safety Code.

SECTION 3. Article 14.06, Code of Criminal Procedure, is amended by adding Subsections (b-1) and (b-2) and amending Subsection (d) to read as follows:

(b-1) A peace officer who is charging a person with committing an offense under Section 481.120(b)(1) or 481.121(b)(1), Health and Safety Code, may not arrest the person and shall issue the person a citation as provided by Subsection (b).

(b-2) Subsection (b-1) does not apply to an officer making

1 an arrest for an offense other than an offense under Section
2 481.120(b)(1) or 481.121(b)(1), Health and Safety Code.

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

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

8 (1-a) Section 481.1161, Health and Safety Code, if the
9 offense is punishable under Subsection (b)(1) or (2) of that
10 section;

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

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

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

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

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

21 (7) Section 521.457, Transportation Code.

22 SECTION 4. Article 42A.551(c), Code of Criminal Procedure,
23 is amended to read as follows:

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

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

1 (2) under Section 481.1161(b)(3), Health and Safety
2 Code, possessed more than one pound, by aggregate weight, including
3 adulterants or dilutants, of the controlled substance [~~or~~
4 ~~[(3) under Section 481.121(b)(3), Health and Safety~~
5 ~~Code, possessed more than one pound of marihuana]~~].

6 SECTION 5. Section 411.0728(a), Government Code, is amended
7 to read as follows:

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

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

11 (A) Section 481.120, Health and Safety Code, if
12 the offense is punishable under Subsection (b)(1-a) [~~(b)(1)~~];

13 (B) Section 481.121, Health and Safety Code, if
14 the offense is punishable under Subsection (b)(1-a) [~~(b)(1)~~];

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

17 (D) Section 43.02, Penal Code; and

18 (2) who, if requested by the applicable law
19 enforcement agency or prosecuting attorney to provide assistance in
20 the investigation or prosecution of an offense under Section
21 20A.02, 20A.03, or 43.05, Penal Code, or a federal offense
22 containing elements that are substantially similar to the elements
23 of an offense under any of those sections:

24 (A) provided assistance in the investigation or
25 prosecution of the offense; or

26 (B) did not provide assistance in the
27 investigation or prosecution of the offense due to the person's age

1 or a physical or mental disability resulting from being a victim of
2 an offense described by this subdivision.

3 SECTION 6. Section 481.115(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 481.1151(b)(1),
15 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or
16 481.121(b)(1), (1-a), or (2), or an offense under Section
17 481.119(b), 481.125(a), 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 481.1151(c), 481.116(f), 481.1161(c),
24 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),
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 7. Section 481.1151(d), Health and Safety Code, is
4 amended to read as follows:

5 (d) The defense to prosecution provided by Subsection (c) 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),
15 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or
16 481.121(b)(1), (1-a), or (2), or an offense under Section
17 481.119(b), 481.125(a), 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), 481.116(f), 481.1161(c),
24 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),
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 8. Section 481.1161(d), Health and Safety Code, is
4 amended to read as follows:

5 (d) The defense to prosecution provided by Subsection (c) 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), 481.117(b), 481.118(b), or
16 481.121(b)(1), (1-a), or (2), or an offense under Section
17 481.119(b), 481.125(a), 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),
24 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),
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 9. Section 481.117(g), Health and Safety Code, is
4 amended to read as follows:

5 (g) The defense to prosecution provided by Subsection (f) 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), 481.118(b), or
16 481.121(b)(1), (1-a), or (2), or an offense under Section
17 481.119(b), 481.125(a), 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), 481.118(f), 481.119(c), 481.121(c), 481.125(g),
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 10. Section 481.118(g), Health and Safety Code, is
4 amended to read as follows:

5 (g) The defense to prosecution provided by Subsection (f) 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), or
16 481.121(b)(1), (1-a), or (2), or an offense under Section
17 481.119(b), 481.125(a), 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), 481.119(c), 481.121(c), 481.125(g),
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 11. Section 481.119(d), Health and Safety Code, is
4 amended to read as follows:

5 (d) The defense to prosecution provided by Subsection (c) 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), (1-a), or (2), or an offense under
17 Section 481.125(a), 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), 481.121(c), 481.125(g),
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 12. Section 481.120(b), Health and Safety Code, is
4 amended to read as follows:

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

6 (1) a Class C [~~B~~] misdemeanor if the amount of
7 marihuana delivered is one-fourth ounce or less and the person
8 committing the offense does not receive remuneration for the
9 marihuana;

10 (1-a) [~~(2)~~] a Class B [~~A~~] misdemeanor if the amount of
11 marihuana delivered is one-fourth ounce or less and the person
12 committing the offense receives remuneration for the marihuana;

13 (2) [~~(3)~~] a Class A misdemeanor [~~state jail felony~~] if
14 the amount of marihuana delivered is five pounds or less but more
15 than one-fourth ounce;

16 (3) [~~(4)~~] a state jail felony [~~of the second degree~~]
17 if the amount of marihuana delivered is 50 pounds or less but more
18 than five pounds;

19 (4) [~~(5)~~] a felony of the second [~~first~~] degree if the
20 amount of marihuana delivered is 2,000 pounds or less but more than
21 50 pounds; and

22 (5) a felony of the first degree [~~(6) punishable by~~
23 ~~imprisonment in the Texas Department of Criminal Justice for life~~
24 ~~or for a term of not more than 99 years or less than 10 years, and a~~
25 ~~fine not to exceed \$100,000,~~] if the amount of marihuana delivered
26 is more than 2,000 pounds.

27 SECTION 13. Sections 481.121(a), (b), and (c), Health and

1 Safety Code, are amended to read as follows:

2 (a) Except as authorized by this chapter, a person commits
3 an offense if the person knowingly or intentionally possesses a
4 usable quantity of more than one ounce of marihuana.

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

6 (1) a Class C [~~B~~] misdemeanor if the amount of
7 marihuana possessed is two ounces or less but more than one ounce;

8 (1-a) [~~(2)~~] a Class B [~~A~~] misdemeanor if the amount of
9 marihuana possessed is four ounces or less but more than two ounces;

10 (2) [~~(3)~~] a Class A misdemeanor [~~state jail felony~~] if
11 the amount of marihuana possessed is five pounds or less but more
12 than four ounces;

13 (3) [~~(4)~~] a state jail felony [~~of the third degree~~] if
14 the amount of marihuana possessed is 50 pounds or less but more than
15 5 pounds;

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

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

24 (c) It is a defense to prosecution for an offense punishable
25 under Subsection (b)(1), (1-a), or (2) that the actor:

26 (1) was the first person to request emergency medical
27 assistance in response to the possible overdose of another person

1 and:

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

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

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

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

11 SECTION 14. Section 481.125(h), Health and Safety Code, is
12 amended to read as follows:

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

15 (1) at the time the request for emergency medical
16 assistance was made:

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

21 (B) the actor is committing another offense,
22 other than an offense punishable under Section 481.115(b),
23 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b),
24 481.118(b), or 481.121(b)(1), (1-a), or (2), or an offense under
25 Section 481.119(b), 483.041(a), or 485.031(a);

26 (2) the actor has been previously convicted of or
27 placed on deferred adjudication community supervision for an

1 offense under this chapter or Chapter 483 or 485;

2 (3) the actor was acquitted in a previous proceeding
 3 in which the actor successfully established the defense under that
 4 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
 5 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c),
 6 483.041(e), or 485.031(c); or

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

11 SECTION 15. Section 481.134(c), Health and Safety Code, as
 12 amended by Chapters 584 (S.B. 768) and 807 (H.B. 1540), Acts of the
 13 87th Legislature, Regular Session, 2021, is reenacted and amended
 14 to read as follows:

15 (c) The minimum term of confinement or imprisonment for an
 16 offense otherwise punishable under Section 481.112(c), (d), (e), or
 17 (f), 481.1121(b)(2), (3), or (4), 481.1123(c), (d), (e), or (f),
 18 481.113(c), (d), or (e), 481.114(c), (d), or (e), 481.115(c), (d),
 19 (e), or (f) [~~481.115(c)-(f)~~], 481.1151(b)(2), (3), (4), or (5),
 20 481.116(c), (d), or (e), 481.1161(b)(4), (5), or (6), 481.117(c),
 21 (d), or (e), 481.118(c), (d), or (e), 481.120(b)(4) or[~~7~~] (5), [~~or~~
 22 ~~(6)~~] or 481.121(b)(4) or[~~7~~] (5)[~~or (6)~~] is increased by five
 23 years and the maximum fine for the offense is doubled if it is shown
 24 on the trial of the offense that the offense was committed:

25 (1) in, on, or within 1,000 feet of the premises of a
 26 school, the premises of a public or private youth center, or a
 27 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 SECTION 16. Section 481.134(f), Health and Safety Code, is
7 amended to read as follows:

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

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

15 (2) on a school bus; or

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

20 SECTION 17. Section 483.041(f), Health and Safety Code, is
21 amended to read as follows:

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

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

26 (A) a peace officer was in the process of
27 arresting the actor or executing a search warrant describing the

1 actor or the place from which the request for medical assistance was
2 made; or

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

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

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

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

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

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

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

26 (A) a peace officer was in the process of
27 arresting the actor or executing a search warrant describing the

1 actor or the place from which the request for medical assistance was
2 made; or

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

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

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

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

20 SECTION 19. Section 71.023(a), Penal Code, is amended to
21 read as follows:

22 (a) A person commits an offense if the person, as part of the
23 identifiable leadership of a criminal street gang, knowingly
24 finances, directs, or supervises the commission of, or a conspiracy
25 to commit, one or more of the following offenses by members of a
26 criminal street gang:

27 (1) a felony offense that is listed in Article

1 42A.054(a), Code of Criminal Procedure;

2 (2) a felony offense for which it is shown that a
3 deadly weapon, as defined by Section 1.07, was used or exhibited
4 during the commission of the offense or during immediate flight
5 from the commission of the offense; or

6 (3) an offense that is punishable under Section
7 481.112(e) or (f), 481.1121(b)(4), 481.1123(d), (e), or (f), or
8 481.115(f), [~~or 481.120(b)(6),~~] Health and Safety Code.

9 SECTION 20. (a) Except as otherwise provided by this
10 section, the changes in law made by this Act apply only to an
11 offense committed on or after the effective date of this Act. An
12 offense committed before the effective date of this Act is governed
13 by the law in effect on the date the offense was committed, and the
14 former law is continued in effect for that purpose. For purposes of
15 this section, an offense was committed before the effective date of
16 this Act if any element of the offense occurred before that date.

17 (b) Sections 481.120, 481.121, and 481.134, Health and
18 Safety Code, as amended by this Act, apply to an offense committed
19 under Section 481.120 or 481.121, or an offense committed under
20 Section 481.120 or 481.121 and punishable under Section 481.134,
21 before, on, or after September 1, 2023, except that a final
22 conviction for an offense that exists on September 1, 2023, is
23 unaffected by this Act.

24 SECTION 21. To the extent of any conflict, this Act prevails
25 over another Act of the 88th Legislature, Regular Session, 2023,
26 relating to nonsubstantive additions to and corrections in enacted
27 codes.

1 SECTION 22. This Act takes effect September 1, 2023.