

By: Bucy

H.B. No. 1790

A BILL TO BE ENTITLED

AN ACT

relating to criminal penalties and defenses to prosecution for certain drug possession and drug paraphernalia offenses.

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

SECTION 1. Section 481.115(h), Health and Safety Code, is amended to read as follows:

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

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

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

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

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

~~(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that~~

1 subsection or Section ~~481.1151(c), 481.116(f), 481.1161(c),~~
2 ~~481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),~~
3 ~~483.041(e), or 485.031(c); or~~

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

8 SECTION 2. Section 481.1151(d), Health and Safety Code, is
9 amended to read as follows:

10 (d) The defense to prosecution provided by Subsection (c) is
11 not available if[+

12 ~~[(1)]~~ at the time the request for emergency medical
13 assistance was made:

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

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

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

26 ~~[(3) the actor was acquitted in a previous proceeding~~
27 ~~in which the actor successfully established the defense under that~~

1 subsection or Section ~~481.115(g), 481.116(f), 481.1161(c),~~
2 ~~481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),~~
3 ~~483.041(e), or 485.031(c); or~~

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

8 SECTION 3. Section 481.116(g), Health and Safety Code, is
9 amended to read as follows:

10 (g) The defense to prosecution provided by Subsection (f) is
11 not available if[+

12 ~~[(1)]~~ at the time the request for emergency medical
13 assistance was made:

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

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

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

26 ~~[(3) the actor was acquitted in a previous proceeding~~
27 ~~in which the actor successfully established the defense under that~~

1 subsection or Section ~~481.115(g), 481.1151(c), 481.1161(c),~~
2 ~~481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),~~
3 ~~483.041(e), or 485.031(c); or~~

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

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

10 (d) The defense to prosecution provided by Subsection (c) is
11 not available if[+]

12 ~~[(1)]~~ at the time the request for emergency medical
13 assistance was made:

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

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

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

26 ~~[(3) the actor was acquitted in a previous proceeding~~
27 ~~in which the actor successfully established the defense under that~~

1 subsection or Section ~~481.115(g), 481.1151(c), 481.116(f),~~
2 ~~481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),~~
3 ~~483.041(e), or 485.031(c); or~~

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

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

10 (g) The defense to prosecution provided by Subsection (f) is
11 not available if[+

12 ~~[(1)]~~ at the time the request for emergency medical
13 assistance was made:

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

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

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

26 ~~[(3) the actor was acquitted in a previous proceeding~~
27 ~~in which the actor successfully established the defense under that~~

1 subsection or Section ~~481.115(g), 481.1151(c), 481.116(f),~~
2 ~~481.1161(c), 481.118(f), 481.119(c), 481.121(c), 481.125(g),~~
3 ~~483.041(e), or 485.031(c); or~~

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

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

10 (g) The defense to prosecution provided by Subsection (f) is
11 not available if[+

12 [~~(1)~~] at the time the request for emergency medical
13 assistance was made:

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

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

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

26 [~~(3) the actor was acquitted in a previous proceeding~~
27 ~~in which the actor successfully established the defense under that~~

1 subsection or Section ~~481.115(g), 481.1151(c), 481.116(f),~~
2 ~~481.1161(c), 481.117(f), 481.119(c), 481.121(c), 481.125(g),~~
3 ~~483.041(e), or 485.031(c); or~~

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

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

10 (d) The defense to prosecution provided by Subsection (c) is
11 not available if[+

12 [~~(1)~~] at the time the request for emergency medical
13 assistance was made:

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

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

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

26 [~~(3) the actor was acquitted in a previous proceeding~~
27 ~~in which the actor successfully established the defense under that~~

1 ~~subsection or Section 481.115(g), 481.1151(c), 481.116(f),~~
2 ~~481.1161(c), 481.117(f), 481.118(f), 481.121(c), 481.125(g),~~
3 ~~483.041(e), or 485.031(c); or~~

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

8 SECTION 8. Sections 481.121(a), (b), and (d), Health and
9 Safety Code, are amended to read as follows:

10 (a) Except as authorized by this chapter, a person commits
11 an offense if the person knowingly or intentionally possesses a
12 usable quantity of marihuana greater than one ounce.

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

14 (1) a Class B misdemeanor if the amount of marihuana
15 possessed is two ounces or less but more than one ounce;

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

18 (3) a state jail felony if the amount of marihuana
19 possessed is five pounds or less but more than four ounces;

20 (4) a felony of the third degree if the amount of
21 marihuana possessed is 50 pounds or less but more than 5 pounds;

22 (5) a felony of the second degree if the amount of
23 marihuana possessed is 2,000 pounds or less but more than 50 pounds;

24 and

25 (6) a felony of the first degree punishable by
26 imprisonment in the Texas Department of Criminal Justice for life
27 or for a term of not more than 99 years or less than 5 years, and a

1 fine not to exceed \$50,000, if the amount of marihuana possessed is
2 more than 2,000 pounds.

3 (d) The defense to prosecution provided by Subsection (c) is
4 not available if [+

5 [~~(1)~~] at the time the request for emergency medical
6 assistance was made:

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

11 (2) [~~(B)~~] the actor is committing another offense,
12 other than an offense punishable under Section 481.115(b),
13 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), or
14 481.118(b), or an offense under Section 481.119(b), [~~481.125(a)~~],
15 483.041(a), or 485.031(a) [+

16 [~~(2) the actor has been previously convicted of or~~
17 ~~placed on deferred adjudication community supervision for an~~
18 ~~offense under this chapter or Chapter 483 or 485,~~

19 [~~(3) the actor was acquitted in a previous proceeding~~
20 ~~in which the actor successfully established the defense under that~~
21 ~~subsection or Section 481.115(g), 481.1151(c), 481.116(f),~~
22 ~~481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.125(g),~~
23 ~~483.041(e), or 485.031(c), or~~

24 [~~(4) at any time during the 18-month period preceding~~
25 ~~the date of the commission of the instant offense, the actor~~
26 ~~requested emergency medical assistance in response to the possible~~
27 ~~overdose of the actor or another person].~~

1 SECTION 9. The heading to Section 481.125, Health and
2 Safety Code, is amended to read as follows:

3 Sec. 481.125. OFFENSE: [~~POSSESSION OR~~] DELIVERY OF DRUG
4 PARAPHERNALIA.

5 SECTION 10. Section 483.041(f), Health and Safety Code, is
6 amended to read as follows:

7 (f) The defense to prosecution provided by Subsection (e) is
8 not available if[+]

9 [~~(1)~~] at the time the request for emergency medical
10 assistance was made:

11 (1) [~~(A)~~] a peace officer was in the process of
12 arresting the actor or executing a search warrant describing the
13 actor or the place from which the request for medical assistance was
14 made; or

15 (2) [~~(B)~~] the actor is committing another offense,
16 other than an offense punishable under Section 481.115(b),
17 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b),
18 481.118(b), or 481.121(b)(1) or (2), or an offense under Section
19 481.119(b), [~~481.125(a)~~], or 485.031(a)[+]

20 [~~(2) the actor has been previously convicted of or~~
21 ~~placed on deferred adjudication community supervision for an~~
22 ~~offense under this chapter or Chapter 481 or 485,~~

23 [~~(3) the actor was acquitted in a previous proceeding~~
24 ~~in which the actor successfully established the defense under that~~
25 ~~subsection or Section 481.115(g), 481.1151(c), 481.116(f),~~
26 ~~481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c),~~
27 ~~481.125(g), or 485.031(c), or~~

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

5 SECTION 11. Section 485.031(d), Health and Safety Code, is
6 amended to read as follows:

7 (d) The defense to prosecution provided by Subsection (c) is
8 not available if[+]

9 ~~[(1)]~~ at the time the request for emergency medical
10 assistance was made:

11 (1) ~~[(A)]~~ a peace officer was in the process of
12 arresting the actor or executing a search warrant describing the
13 actor or the place from which the request for medical assistance was
14 made; or

15 (2) ~~[(B)]~~ the actor is committing another offense,
16 other than an offense punishable under Section 481.115(b),
17 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b),
18 481.118(b), or 481.121(b)(1) or (2), or an offense under Section
19 481.119(b), ~~[481.125(a),]~~ or 483.041(a)[+]

20 ~~[(2) the actor has been previously convicted of or~~
21 ~~placed on deferred adjudication community supervision for an~~
22 ~~offense under this chapter or Chapter 481 or 483,~~

23 ~~[(3) the actor was acquitted in a previous proceeding~~
24 ~~in which the actor successfully established the defense under that~~
25 ~~subsection or Section 481.115(g), 481.1151(c), 481.116(f),~~
26 ~~481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c),~~
27 ~~481.125(g), or 483.041(c), or~~

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

5 SECTION 12. Sections 481.125(a), (d), (g), (h), and (i),
6 Health and Safety Code, are repealed.

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

15 (b) The change in law made by this Act to Section 481.125,
16 Health and Safety Code, applies to conduct that occurs before, on,
17 or after the effective date of this Act, except that a final
18 conviction for an offense that exists on the effective date of this
19 Act is unaffected by this Act.

20 SECTION 14. This Act takes effect September 1, 2025.