

By: Garcia of Bexar

H.B. No. 2871

A BILL TO BE ENTITLED

AN ACT

relating to the criminal penalties for possession of marihuana;
changing the eligibility for community supervision.

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

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

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

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

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

(1-a) a Class B misdemeanor if the amount of marihuana possessed is 10 ounces or less but more than 4 ounces;

(2) a Class A misdemeanor if the amount of marihuana possessed is 1 pound or less but more than 10 ounces;

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

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

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

and

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

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

10 (A) made the request for medical assistance
11 during an ongoing medical emergency;

12 (B) remained on the scene until the medical
13 assistance arrived; and

14 (C) cooperated with medical assistance and law
15 enforcement personnel; or

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

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

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

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

26 (1-a) Section 481.1161, Health and Safety Code, if the
27 offense is punishable under Subsection (b)(1) or (2) of that

1 section;

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

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

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

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

10 (5-a) Section 37.10, Penal Code, if the offense is for
11 tampering with a temporary tag issued under Chapter 502 or 503,
12 Transportation Code;

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

15 (7) Section 521.457, Transportation Code.

16 SECTION 3. Article 42A.551(c), Code of Criminal Procedure,
17 is amended to read as follows:

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

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

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

25 [~~(3) under Section 481.121(b)(3), Health and Safety~~
26 ~~Code, possessed more than one pound of marijuana]~~].

27 SECTION 4. Section 411.0728(a), Government Code, is amended

1 to read as follows:

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

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

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

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

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

11 (D) Section 43.02, Penal Code; and

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

18 (A) provided assistance in the investigation or
19 prosecution of the offense; or

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

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

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

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

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

7 (B) the actor is committing another offense,
8 other than an offense punishable under Section 481.1151(b)(1),
9 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or
10 481.121(b)(1), (1-a), or (2), or an offense under Section
11 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

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

15 (3) the actor was acquitted in a previous proceeding
16 in which the actor successfully established the defense under that
17 subsection or Section 481.1151(c), 481.116(f), 481.1161(c),
18 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),
19 483.041(e), or 485.031(c); or

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

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

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

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

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

7 (B) the actor is committing another offense,
8 other than an offense punishable under Section 481.115(b),
9 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or
10 481.121(b)(1), (1-a), or (2), or an offense under Section
11 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

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

15 (3) the actor was acquitted in a previous proceeding
16 in which the actor successfully established the defense under that
17 subsection or Section 481.115(g), 481.116(f), 481.1161(c),
18 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),
19 483.041(e), or 485.031(c); or

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

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

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

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

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

7 (B) the actor is committing another offense,
8 other than an offense punishable under Section 481.115(b),
9 481.1151(b)(1), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or
10 481.121(b)(1), (1-a), or (2), or an offense under Section
11 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

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

15 (3) the actor was acquitted in a previous proceeding
16 in which the actor successfully established the defense under that
17 subsection or Section 481.115(g), 481.1151(c), 481.1161(c),
18 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),
19 483.041(e), or 485.031(c); or

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

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

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

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

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

7 (B) the actor is committing another offense,
8 other than an offense punishable under Section 481.115(b),
9 481.1151(b)(1), 481.116(b), 481.117(b), 481.118(b), or
10 481.121(b)(1), (1-a), or (2), or an offense under Section
11 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

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

15 (3) the actor was acquitted in a previous proceeding
16 in which the actor successfully established the defense under that
17 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
18 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g),
19 483.041(e), or 485.031(c); or

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

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

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

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

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

7 (B) the actor is committing another offense,
8 other than an offense punishable under Section 481.115(b),
9 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.118(b), or
10 481.121(b)(1), (1-a), or (2), or an offense under Section
11 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

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

15 (3) the actor was acquitted in a previous proceeding
16 in which the actor successfully established the defense under that
17 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
18 481.1161(c), 481.118(f), 481.119(c), 481.121(c), 481.125(g),
19 483.041(e), or 485.031(c); or

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

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

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

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

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

7 (B) the actor is committing another offense,
8 other than an offense punishable under Section 481.115(b),
9 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), or
10 481.121(b)(1), (1-a), or (2), or an offense under Section
11 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

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

15 (3) the actor was acquitted in a previous proceeding
16 in which the actor successfully established the defense under that
17 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
18 481.1161(c), 481.117(f), 481.119(c), 481.121(c), 481.125(g),
19 483.041(e), or 485.031(c); or

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

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

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

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

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

7 (B) the actor is committing another offense,
8 other than an offense punishable under Section 481.115(b),
9 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b),
10 481.118(b), or 481.121(b)(1), (1-a), or (2), or an offense under
11 Section 481.125(a), 483.041(a), or 485.031(a);

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

15 (3) the actor was acquitted in a previous proceeding
16 in which the actor successfully established the defense under that
17 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
18 481.1161(c), 481.117(f), 481.118(f), 481.121(c), 481.125(g),
19 483.041(e), or 485.031(c); or

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

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

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

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

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

7 (B) the actor is committing another offense,
8 other than an offense punishable under Section 481.115(b),
9 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b),
10 481.118(b), or 481.121(b)(1), (1-a), or (2), or an offense under
11 Section 481.119(b), 483.041(a), or 485.031(a);

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

15 (3) the actor was acquitted in a previous proceeding
16 in which the actor successfully established the defense under that
17 subsection or Section 481.115(g), 481.1151(c), 481.116(f),
18 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c),
19 483.041(e), or 485.031(c); or

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

24 SECTION 13. Section 481.134(f), Health and Safety Code, is
25 amended to read as follows:

26 (f) An offense otherwise punishable under Section
27 481.118(b), 481.119(b), 481.120(b)(1), or 481.121(b)(1-a)

1 ~~[481.121(b)(1)]~~ is a Class A misdemeanor if it is shown on the trial
2 of the offense that the offense was committed:

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

6 (2) on a school bus; or

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

11 SECTION 14. Section 483.041(f), Health and Safety Code, is
12 amended to read as follows:

13 (f) The defense to prosecution provided by Subsection (e) 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), 481.125(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 481 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),
6 481.125(g), 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 485.031(d), Health and Safety Code, is
12 amended to read as follows:

13 (d) The defense to prosecution provided by Subsection (c) 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), 481.125(a), or 483.041(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 481 or 483;

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),
6 481.125(g), or 483.041(e); 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 16. (a) Except as otherwise provided by Subsection
12 (b) of this section, the changes in law made by this Act apply only
13 to an offense committed on or after the effective date of this Act.
14 An offense committed before the effective date of this Act is
15 governed by the law in effect on the date the offense was committed,
16 and the former law is continued in effect for that purpose. For
17 purposes of this subsection, an offense was committed before the
18 effective date of this Act if any element of the offense was
19 committed before that date.

20 (b) Sections 481.121 and 481.134, Health and Safety Code, as
21 amended by this Act, apply to an offense committed under Section
22 481.121 or an offense committed under Section 481.121 and
23 punishable under Section 481.134 before, on, or after September 1,
24 2025, except that a final conviction for an offense that exists on
25 September 1, 2025, is unaffected by this Act.

26 SECTION 17. This Act takes effect September 1, 2025.