

By: Dutton

H.B. No. 82

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the penalties for possession of one ounce or less of
3 marihuana and eligibility for placement on community supervision or
4 on deferred adjudication community supervision for that offense.

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

6 SECTION 1. Section [481.121](#), Health and Safety Code, is
7 amended by amending Subsection (b) and adding Subsections (c) and
8 (d) to read as follows:

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

10 (1) a Class C misdemeanor if the amount of marihuana
11 possessed is one ounce or less, except as provided by Subsection
12 (c);

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

15 (3) [~~(2)~~] a Class A misdemeanor if the amount of
16 marihuana possessed is four ounces or less but more than two ounces;

17 (4) [~~(3)~~] a state jail felony if the amount of
18 marihuana possessed is five pounds or less but more than four
19 ounces;

20 (5) [~~(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 (6) [~~(5)~~] a felony of the second degree if the amount
23 of marihuana possessed is 2,000 pounds or less but more than 50
24 pounds; and

1 (7) [~~(6)~~] punishable by imprisonment in the Texas
2 Department of Criminal Justice for life or for a term of not more
3 than 99 years or less than 5 years, and a fine not to exceed \$50,000,
4 if the amount of marihuana possessed is more than 2,000 pounds.

5 (c) 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 (d) A defendant convicted of an offense punishable under
16 Subsection (c) is not eligible for community supervision under
17 Chapter 42A, Code of Criminal Procedure.

18 SECTION 2. Section 481.126(a), Health and Safety Code, is
19 amended to read as follows:

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

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

25 (2) barter property or expends funds the person knows
26 are derived from the commission of an offense under Section
27 481.121(a) that is punishable under Section 481.121(b)(6)

1 ~~[481.121(b)(5)]~~;

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

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

10 SECTION 3. Sections 481.134(c), (d), (e), and (f), Health
11 and Safety Code, are amended to read as follows:

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

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

25 (2) on a school bus.

26 (d) An offense otherwise punishable under Section
27 481.112(b), 481.1121(b)(1), 481.113(b), 481.114(b), 481.115(b),

1 481.1151(b)(1), 481.116(b), 481.1161(b)(3), 481.120(b)(3), or
2 481.121(b)(4) [~~481.121(b)(3)~~] is a felony of the third degree if it
3 is shown on the trial of the offense that the offense was committed:

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

8 (e) An offense otherwise punishable under Section
9 481.117(b), 481.119(a), 481.120(b)(2), or 481.121(b)(3)
10 [~~481.121(b)(2)~~] is a state jail felony if it is shown on the trial
11 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; or
15 (2) on a school bus.

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

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

24 SECTION 4. Article 14.06(d), Code of Criminal Procedure, is
25 amended to read as follows:

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

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

4 (1-a) Section 481.1161, Health and Safety Code, if the
5 offense is punishable under Subsection (b)(1) or (2) of that
6 section;

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

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

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

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

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

17 (7) Section 521.457, Transportation Code.

18 SECTION 5. Articles 42A.551(a) and (c), Code of Criminal
19 Procedure, are amended to read as follows:

20 (a) Except as otherwise provided by Subsection (b) or (c),
21 on conviction of a state jail felony under Section 481.115(b),
22 481.1151(b)(1), 481.116(b), 481.1161(b)(3), 481.121(b)(4)
23 [~~481.121(b)(3)~~], or 481.129(g)(1), Health and Safety Code, that is
24 punished under Section 12.35(a), Penal Code, the judge shall
25 suspend the imposition of the sentence and place the defendant on
26 community supervision.

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

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

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

7 (3) under Section 481.121(b)(4) [~~481.121(b)(3)~~],
8 Health and Safety Code, possessed more than one pound of marihuana.

9 SECTION 6. Article 45.051, Code of Criminal Procedure, is
10 amended by adding Subsection (h) to read as follows:

11 (h) This subsection applies only to a defendant charged with
12 an offense under Section 481.121, Health and Safety Code, who is
13 granted a deferral under Subsection (a). In addition to any other
14 requirement, the judge shall, during the deferral period, require
15 that the defendant successfully complete a drug abuse awareness and
16 education program approved by the Department of State Health
17 Services.

18 SECTION 7. The changes in law made by this Act apply only to
19 an offense committed on or after the effective date of this Act. An
20 offense committed before the effective date of this Act is governed
21 by the law in effect on the date the offense was committed, and the
22 former law is continued in effect for that purpose. For purposes of
23 this section, an offense was committed before the effective date of
24 this Act if any element of the offense was committed before that
25 date.

26 SECTION 8. This Act takes effect September 1, 2017.