

By: Wu

H.B. No. 325

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the prosecution of and penalties for possession of 0.35
3 ounces or less of marihuana.

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

5 SECTION 1. Article 14.06(d), Code of Criminal Procedure, is
6 amended to read as follows:

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

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

12 (1-a) Section 481.1161, Health and Safety Code, if the
13 offense is punishable under Subsection (b)(1) or (2) of that
14 section;

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

17 (3) Section 28.08, Penal Code, if the offense is
18 punishable under Subsection (b)(1) of that section;

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

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

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

1 (7) Section 521.457, Transportation Code.

2 SECTION 2. Section 15(a)(1), Article 42.12, Code of
3 Criminal Procedure, is amended to read as follows:

4 (1) On conviction of a state jail felony under Section
5 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(3),
6 481.121(b)(4) [~~481.121(b)(3)~~], or 481.129(g)(1), Health and Safety
7 Code, that is punished under Section 12.35(a), Penal Code, the
8 judge shall suspend the imposition of the sentence and place the
9 defendant on community supervision, unless the defendant has
10 previously been convicted of a felony, other than a felony punished
11 under Section 12.44(a), Penal Code, or unless the conviction
12 resulted from an adjudication of the guilt of a defendant
13 previously placed on deferred adjudication community supervision
14 for the offense, in which event the judge may suspend the imposition
15 of the sentence and place the defendant on community supervision or
16 may order the sentence to be executed. The provisions of this
17 subdivision requiring the judge to suspend the imposition of the
18 sentence and place the defendant on community supervision do not
19 apply to a defendant who:

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

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

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

1 SECTION 3. Section 481.121(b), Health and Safety Code, is
2 amended to read as follows:

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

4 (1) a Class C misdemeanor if the amount of marihuana
5 possessed is 0.35 ounces or less;

6 (2) a Class B misdemeanor if the amount of marihuana
7 possessed is two ounces or less but more than 0.35 ounces;

8 (3) [~~(2)~~] a Class A misdemeanor if the amount of
9 marihuana possessed is four ounces or less but more than two ounces;

10 (4) [~~(3)~~] a state jail felony if the amount of
11 marihuana possessed is five pounds or less but more than four
12 ounces;

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

15 (6) [~~(5)~~] a felony of the second degree if the amount
16 of marihuana possessed is 2,000 pounds or less but more than 50
17 pounds; and

18 (7) [~~(6)~~] punishable by imprisonment in the Texas
19 Department of Criminal Justice for life or for a term of not more
20 than 99 years or less than 5 years, and a fine not to exceed \$50,000,
21 if the amount of marihuana possessed is more than 2,000 pounds.

22 SECTION 4. 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 Section [481.121\(b\)\(6\)](#)
5 [~~[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 Section [481.121\(b\)\(6\)](#) [~~[481.121\(b\)\(5\)](#)~~].

14 SECTION 5. Section [481.134](#), Health and Safety Code, is
15 amended by amending Subsections (c), (d), (e), (f), and (g) and
16 adding Subsection (f-1) to read as follows:

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

26 (1) in, on, or within 1,000 feet of the premises of a
27 school, the premises of a public or private youth center, or a

1 playground; or

2 (2) on a school bus.

3 (d) An offense otherwise punishable under Section
4 [481.112\(b\)](#), [481.113\(b\)](#), [481.114\(b\)](#), [481.115\(b\)](#), [481.116\(b\)](#),
5 [481.1161\(b\)\(3\)](#), [481.120\(b\)\(3\)](#), or [481.121\(b\)\(4\)](#) [~~[481.121\(b\)\(3\)](#)~~] is
6 a felony of the third degree if it is shown on the trial of the
7 offense that the offense was committed:

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

11 (2) on a school bus.

12 (e) An offense otherwise punishable under Section
13 [481.117\(b\)](#), [481.119\(a\)](#), [481.120\(b\)\(2\)](#), or [481.121\(b\)\(3\)](#)
14 [~~[481.121\(b\)\(2\)](#)~~] is a state jail felony if it is shown on the trial
15 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; or

19 (2) on a school bus.

20 (f) An offense otherwise punishable under Section
21 [481.118\(b\)](#), [481.119\(b\)](#), [481.120\(b\)\(1\)](#), or [481.121\(b\)\(2\)](#)
22 [~~[481.121\(b\)\(1\)](#)~~] is a Class A misdemeanor if it is shown on the trial
23 of the offense that the offense was committed:

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

27 (2) on a school bus.

1 (f-1) An offense otherwise punishable under Section
2 481.121(b)(1) is a Class B misdemeanor if it is shown on the trial
3 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 (g) Subsections (f) and (f-1) do [~~Subsection (f) does~~] not
9 apply to an offense if:

10 (1) the offense was committed inside a private
11 residence; and

12 (2) no minor was present in the private residence at
13 the time the offense was committed.

14 SECTION 6. Section 12.43(c), Penal Code, is amended to read
15 as follows:

16 (c) If it is shown on the trial of an offense punishable as a
17 Class C misdemeanor under Section 42.01 or 49.02, or under Section
18 481.121(b)(1), Health and Safety Code, that the defendant has
19 previously been convicted of any [~~been before convicted under~~
20 ~~either~~] of those offenses [~~sections~~] three times or three times for
21 any combination of those offenses and each prior offense was
22 committed in the 24 months preceding the date of commission of the
23 instant offense, the defendant shall be punished by:

24 (1) a fine not to exceed \$2,000;

25 (2) confinement in jail for a term not to exceed 180
26 days; or

27 (3) both such fine and confinement.

1 SECTION 7. The amendments of Sections 481.121 and 481.134,
2 Health and Safety Code, by this Act apply to an offense committed
3 under Section 481.121 or an offense committed under Section 481.121
4 and punishable under Section 481.134, Health and Safety Code,
5 before, on, or after September 1, 2015, except that a final
6 conviction for an offense that exists on September 1, 2015, is
7 unaffected by this Act.

8 SECTION 8. This Act takes effect September 1, 2015.