

BILL ANALYSIS

C.S.H.B. 507
By: Moody
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Possession of two ounces or less of marihuana is a Class B misdemeanor under current state law. Critics of this law have argued that hundreds of millions of dollars are spent every year on enforcement between arrests, evidentiary processing, confinement in jail, prosecutions, and probation, all of which distract criminal justice personnel from more serious crimes. Critics also point out that those arrested or convicted under these laws face serious consequences, many of which are collateral and nonobvious, such as loss of employment or housing, denial of federal financial aid, deportation of otherwise legal residents and visitors, and a lifetime criminal record that can be a barrier to progress within higher education and the workforce. These critics contend that there has been no appreciable deterrent effect on marihuana use despite that large expenditure and those consequences. C.S.H.B. 507 seeks to address these issues by revising provisions relating to the possession of small amounts of marihuana.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 507 amends the Health and Safety Code to limit application of the Class B misdemeanor offense of possession of marihuana to the possession of marihuana in an amount that is two ounces or less but more than one ounce and to make a person who knowingly or intentionally possesses a usable quantity of marihuana in an amount that is one ounce or less liable to the state for a civil penalty not to exceed \$250. The bill specifies that imposition of such a penalty is not a conviction and may not be considered a conviction for any purpose.

C.S.H.B. 507 prohibits a peace officer from making an arrest solely because a person possesses marihuana in an amount that is one ounce or less and authorizes a peace officer to issue to a person who possesses marihuana in such an amount a citation that contains written notice of the time and place the person must appear before a justice court, the name and address of the person charged, and the civil violation charged. The bill authorizes the district or county attorney of the county in which the conduct is alleged to have occurred to bring an action in the justice court of the county to collect the civil penalty of a person who receives such a citation. The bill requires the civil action to be conducted in the manner provided by statutory provisions governing justice and municipal courts but prohibits the court from issuing an arrest warrant or requiring the person liable for the civil penalty to give bail; establishes that a citation issued under the bill's provisions is considered to be a sufficient complaint for purposes of making the accused liable, if

the citation is filed with the court by a district or county attorney; and prohibits a person liable for the civil penalty from appealing.

C.S.H.B. 507 requires the court, before imposing a civil penalty on a person who receives a citation of possession of marihuana in an amount that is one ounce or less, to determine whether the person subject to the penalty is indigent and to waive the penalty on making such a determination. The bill authorizes the court to order an indigent person for whom the civil penalty was waived to complete not more than 10 hours of community service. The bill authorizes the court to waive or reduce the civil penalty for a person other than a person found indigent if the person subject to the penalty performs not more than 10 hours of community service, as ordered by the court, or the person attends a program that provides education in substance abuse and is approved by the Department of State Health Services or the Department of Public Safety. The bill authorizes the court to issue a *capias* for the arrest of a person who fails to appear or to make payment, as directed by a citation issued under the bill's provisions.

C.S.H.B. 507 authorizes law enforcement to seize any marihuana in possession of a person subject to a civil penalty under the bill's provisions and requires law enforcement to preserve the marihuana as if the marihuana were evidence of an offense pending the final resolution of a civil proceeding. The bill establishes that, after final resolution of the civil proceeding, any marihuana seized is subject to forfeiture and must be disposed of in accordance with the Texas Controlled Substances Act. The bill establishes that the identity of a person cited or found liable for a civil penalty under the bill's provisions is considered confidential information under state public information law. The bill specifies that these provisions apply to an indigent person for whom the court waived the civil penalty.

C.S.H.B. 507 makes it a defense to prosecution for the offense of possession or delivery of drug paraphernalia if the paraphernalia was knowingly or intentionally used, possessed, or delivered solely in furtherance of the possession of marihuana in an amount that is one ounce or less.

C.S.H.B. 507 amends the Family Code to include conduct for which a person is subject to a civil penalty for possession of marihuana in an amount that is one ounce or less among the conduct that is considered to be delinquent conduct for purposes of the juvenile justice code.

C.S.H.B. 507 amends the Local Government Code to establish that a justice of the peace is not entitled to a fee for the filing of a civil action by the state for possession of marihuana by a person in an amount that is one ounce or less.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 507 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 481.121(b), Health and Safety Code, is amended.	SECTION 1. Same as introduced version.
SECTION 2. Subchapter D, Chapter 481, Health and Safety Code, is amended by	SECTION 2. Subchapter D, Chapter 481, Health and Safety Code, is amended by

adding Section 481.1211 to read as follows:
Sec. 481.1211. CIVIL PENALTY: POSSESSION OF SMALL AMOUNT OF MARIHUANA. (a) A person who knowingly or intentionally possesses a usable quantity of marihuana in an amount that is one ounce or less is liable to the state for a civil penalty not to exceed \$100.
(b) The imposition of a civil penalty under this section is not a conviction and may not be considered a conviction for any purpose.
(c) A peace officer may not make an arrest solely because of a violation of this section. A peace officer shall issue to a person who violates this section a citation that contains written notice of the time and place the person must appear before a justice court, the name and address of the person charged, and the civil violation charged.
(d) The district or county attorney of the county in which the conduct described by Subsection (a) is alleged to have occurred shall bring an action in the justice court of the county to collect the civil penalty of a person who receives a citation under this section.

adding Section 481.1211 to read as follows:
Sec. 481.1211. CIVIL PENALTY: POSSESSION OF SMALL AMOUNT OF MARIHUANA. (a) A person who knowingly or intentionally possesses a usable quantity of marihuana in an amount that is one ounce or less is liable to the state for a civil penalty not to exceed \$250.
(b) The imposition of a civil penalty under this section is not a conviction and may not be considered a conviction for any purpose.
(c) A peace officer may not make an arrest solely because of a violation of this section. A peace officer may issue to a person who violates this section a citation that contains written notice of the time and place the person must appear before a justice court, the name and address of the person charged, and the civil violation charged.
(d) The district or county attorney of the county in which the conduct described by Subsection (a) is alleged to have occurred may bring an action in the justice court of the county to collect the civil penalty of a person who receives a citation under this section.
(e) A civil action under this section shall be conducted in the manner provided by Chapter 45, Code of Criminal Procedure, as if an offense were charged, except that:
(1) the court may not:
(A) issue an arrest warrant under Article 45.014, Code of Criminal Procedure; or
(B) require the person liable for a civil penalty to give bail under Article 45.016, Code of Criminal Procedure;
(2) a citation issued under this section is considered to be a sufficient complaint for purposes of Articles 45.018 and 45.019, Code of Criminal Procedure, if the citation is filed with the court by a district or county attorney; and
(3) a person liable for a civil penalty under this section may not appeal under Article 45.042, Code of Criminal Procedure.
(f)(1) Before imposing a civil penalty under this section, the court shall determine whether the person subject to the penalty is indigent. If the court determines the person is indigent, the court shall waive the penalty and may order the person to complete not more than 10 hours of community service.
(2) Subsections (i) and (j) apply to a person for whom a court waives a penalty under Subdivision (1).

(e) The court may waive or reduce the civil penalty if:

(1) the person subject to a civil penalty under this section attends a program that provides education in substance abuse and is approved by the Department of State Health Services or the Texas Department of Public Safety; or

(2) the person performs not more than 10 hours of community service, as recommended by the court.

(f) Law enforcement shall seize any marihuana in possession of a person subject to a civil penalty under this section and preserve the marihuana as if the marihuana were evidence of an offense under this chapter pending the final resolution of a civil proceeding under this section and any available appeal. After final resolution of the civil proceeding and any available appeal, any marihuana seized is subject to forfeiture and shall be disposed of in accordance with Section 481.159.

(g) The identity of a person cited or found liable for a civil penalty under this section is confidential information under Section 552.101, Government Code.

SECTION 3. Section 481.125, Health and Safety Code, is amended by adding Subsection (g) to read as follows:

(g) It is an exception to the application of this section that drug paraphernalia was knowingly or intentionally used, possessed, or delivered solely in furtherance of a violation of Section 481.1211.

No equivalent provision.

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(g) The court may waive or reduce the civil penalty for a person other than a person described by Subsection (f) if:

(1) the person subject to a civil penalty under this section attends a program that provides education in substance abuse and is approved by the Department of State Health Services or the Texas Department of Public Safety; or

(2) the person performs not more than 10 hours of community service, as ordered by the court.

(h) The court may issue a capias for the arrest of a person who fails to appear or to make payment, as directed by a citation issued under this section.

(i) Law enforcement may seize any marihuana in possession of a person subject to a civil penalty under this section. If marihuana is seized under this section, law enforcement shall preserve the marihuana as if the marihuana were evidence of an offense under this chapter pending the final resolution of a civil proceeding under this section. After final resolution of a civil proceeding under this section, any marihuana seized is subject to forfeiture and shall be disposed of in accordance with Section 481.159.

(j) The identity of a person cited or found liable for a civil penalty under this section is confidential information under Section 552.101, Government Code.

SECTION 3. Section 481.125, Health and Safety Code, is amended by adding Subsection (g) to read as follows:

(g) It is a defense to prosecution under this section that drug paraphernalia was knowingly or intentionally used, possessed, or delivered solely in furtherance of a violation of Section 481.1211.

SECTION 4. Section 51.03(a), Family Code, is amended to read as follows:

(a) Delinquent conduct is:

(1) conduct, other than a traffic offense, that violates a penal law of this state or of the United States punishable by imprisonment or by confinement in jail;

(2) conduct that violates a lawful order of a court under circumstances that would constitute contempt of that court in:

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- (A) a justice or municipal court; or
- (B) a county court for conduct punishable only by a fine;
- (3) conduct that violates Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code; ~~[or]~~
- (4) conduct that violates Section 106.041, Alcoholic Beverage Code, relating to driving under the influence of alcohol by a minor (third or subsequent offense); or
- (5) conduct for which a person is subject to a civil penalty under Section 418.1211, Health and Safety Code.

No equivalent provision.

SECTION 5. Section 118.124, Local Government Code, is amended to read as follows:

Sec. 118.124. PROHIBITED FEES. A justice of the peace is not entitled to a fee for:

- (1) the examination of a paper or record in the justice's office;
- (2) filing any process or document the justice issues that is returned to court;
- (3) a motion or judgment on a motion for security for costs;
- (4) taking or approving a bond for costs; ~~[or]~~
- (5) the first copy of a document in a criminal case issued to:
 - (A) a criminal defendant in the case;
 - (B) an attorney representing a criminal defendant in the case; or
 - (C) a prosecuting attorney; or
- (6) the filing of a civil action by the state under Section 481.1211, Health and Safety Code.

SECTION 4. The changes in law made by this Act apply only to a violation of law that occurs on or after the effective date of this Act. A violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose. For purposes of this section, a violation of law occurred before the effective date of this Act if any element of the violation occurred before that date.

SECTION 6. Same as introduced version.