

BILL ANALYSIS

C.S.H.B. 3772
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There have been calls to address the overcriminalization of marihuana possession that ultimately draws many Texans into the endless cycle of the criminal justice system. In addition to the harsh consequences for these people, these arrests overfill jails and prisons and take away time that law enforcement could use to apprehend more dangerous and potentially violent justice-involved individuals while depleting the resources of jailers and wardens to rehabilitate such individuals. It has been noted that this is due to the current definition of "marihuana" under the Texas Controlled Substances Act by which some cannabis concentrates are prosecuted as marihuana while others are prosecuted as Penalty Group 2 substances, where penalties begin at a state jail felony and can lead to harsher penalties than if the same substance was treated as marihuana. C.S.H.B. 3772 seeks to make revisions to the definition of and criminal consequences related to marihuana under the Texas Controlled Substances Act.

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. 3772 amends the Health and Safety Code to change the definition of "marihuana" for purposes of the Texas Controlled Substances Act to apply to any part of a plant of the genus Cannabis, whether growing or not, containing delta-9 tetrahydrocannabinol and includes the seeds of that plant and processed forms of that plant, including the resin extracted from the plant and compounds, manufactures, salts, derivatives, decarboxylates, mixtures, or preparations of the plant. The bill excludes from the definition any material also excluded from the federal Controlled Substances Act definition of marihuana and hemp or a nonconsumable hemp product, as defined in the Agriculture Code, or a consumable hemp product. The bill establishes that any such material excluded from the definition of "marihuana" is excluded from Penalty Group 2 for purposes of the act.

C.S.H.B. 3772 decreases the penalty for the possession of one ounce or less of marihuana from a Class B misdemeanor to a Class C misdemeanor and removes the penalty enhancement for such conduct committed in certain drug-free zones.

C.S.H.B. 3772 amends the Code of Criminal Procedure to provide for the expunction of certain records of a person who is charged with possession of one ounce or less of marihuana or the

Class C misdemeanor offense of use or possession of drug paraphernalia and who makes a written request under oath under the following conditions:

- the person was acquitted of the offense; or
- the complaint was dismissed and:
 - at least 180 days have elapsed from the date of the dismissal; or
 - at least one year has elapsed from the date of the citation.

C.S.H.B. 3772 requires the court to order all complaints, verdicts, sentences, and prosecutorial and law enforcement records and any other documents relating to the offense expunged from a person's record upon finding that the person satisfies the applicable requirements. The bill requires a justice or municipal court to require a person who requests the expungement to pay a \$30 fee to defray the cost of notifying state agencies of the orders of expungement. The bill's procedures for expunction are expressly separate and distinct from statutory procedures for a person who is entitled to the expunction of records and files relating to an arrest for a felony or misdemeanor.

C.S.H.B. 3772 requires a judge to defer further proceedings for possession of one ounce or less of marihuana or the Class C misdemeanor offense of use or possession of drug paraphernalia without entering an adjudication of guilt and place the defendant on probation on plea of guilty or nolo contendere, unless the defendant has previously received a deferral of disposition for either offense within the 12-month period preceding the date of the commission of the instant offense.

C.S.H.B. 3772 requires a defendant convicted of a fine-only offense under the Texas Controlled Substances Act or a fine-only drug offense to pay a \$100 fine, in addition to any other fees and fines imposed on the defendant. The bill requires the court to collect the fine in the same manner as court costs are collected in the case and for the fine to be deposited to the credit of the Texas mobility fund. The bill requires the court to waive imposition of that fine if the defendant's driver's license is automatically suspended as a result of the conviction of another offense arising from the same criminal episode.

C.S.H.B. 3772 amends the Transportation Code to make provisions relating to automatic suspension of a driver's license for certain drug offenses and felony non-drug offenses under the Texas Controlled Substances Act inapplicable to a drug offense that is punishable by fine only under Texas law. The bill's provisions relating to the \$100 fine for fine-only offenses and the inapplicability of that Transportation Code provision take effect on the 91st day after the date the office of the attorney general publishes the following findings in the Texas Register:

- the legislature has adopted a resolution expressing opposition to a law meeting the requirements of applicable federal law in suspending, revoking, or denying the driver's license of a person convicted of a fine-only drug offense for a period of six months;
- the governor has submitted to the U.S. secretary of transportation a written certification of the governor's opposition to the enactment or enforcement of a law required under that federal law as that law relates to fine-only offenses and a written certification that the legislature has adopted the resolution; and
- the U.S. secretary of transportation has responded to the governor's submission and certified that highway funds will not be withheld from the state in response to the partial repeal of the state law.

C.S.H.B. 3772 amends the Government Code to make conforming changes.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3772 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

While both the substitute and the original change the definition of "marihuana" for purposes of the Texas Controlled Substances Act, the substitute does not include the following specifications from the original regarding the amount of delta-9 tetrahydrocannabinol of the plant or processed form of the plant to be considered marihuana:

- the concentration of delta-9 tetrahydrocannabinol of the plant must equal one percent or more by weight; and
- processed forms of the plant must contain five milligrams or more of delta-9 tetrahydrocannabinol.

The substitute does not exclude from the definition of "marihuana" cannabis plant material and products that contain tetrahydrocannabinol and are exempted from the federal Controlled Substances Act under federal regulations, as in the original.

The substitute does not include certain exemptions that appeared in the original for the manufacture, delivery, or possession of a substance in Penalty Group 2 under the Texas Controlled Substances Act for a person who engages in specified activities with a raw material used in or by-product created by the production or cultivation of low-THC cannabis.

The substitute does not change the amounts for which the possession or delivery of marihuana constitutes an offense under the Texas Controlled Substances Act and does not change related penalties, as the original did.

The substitute does not include a requirement for the court that dismisses a complaint relating to possession of one ounce or less of marihuana or cannabis concentrate with 280 milligrams or less of delta-9 tetrahydrocannabinol or the Class C misdemeanor offense of use or possession of drug paraphernalia to provide written notice to the person of the right to expunction.

The substitute changes the amount of the fine that a defendant convicted of a fine-only offense under the Texas Controlled Substances Act or a fine-only drug offense must pay under the bill's provisions from an amount that is equivalent to the sum of all fees applicable to a suspension and reinstatement of a driver's license, to be calculated by the Department of Public Safety, to the amount of \$100.