

SUBJECT: Adjusting the penalties for possession of certain controlled substances

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Moody, Cook, Bhojani, Bowers, Darby, Harrison, Leach, C. Morales, Schatzline

0 nays

WITNESSES: For — Karen Reeves, CenTex Community Outreach; David Bass; Elizabeth Miller; Jason Vaughn (*Registered, but did not testify*; M Paige Williams, Dallas County Criminal District Attorney John Creuzot; Kevin Hale, Libertarian Party of Texas; Daryoush Zamhariri, Texas Cannabis Collective; and 10 individuals)

Against — (*Registered, but did not testify*: James Parnell, Dallas Police Association; Todd McCoy, Montgomery County S.O.; Jack Armstrong II, Michael Landrum, Justin Schutzenhofer, Michael Uber, Jason Prince, Montgomery County Sheriff’s Office; John Wilkerson, TMPA)

On — Amber York, Healthy Herb Farm

BACKGROUND: Health and Safety Code Chapter 481 subch. D classifies controlled substances into Penalty Groups 1 through 4 for the purpose of establishing criminal penalties.

Sec. 481.103 establishes that Penalty Group 2 consists of tetrahydrocannabinols (THC), other than marihuana, synthetic equivalents of the substances contained in the plant or in the resinous extractives of Cannabis, or any derivative with similar chemical structure and pharmacological activity, including specified structures and compounds of those structures.

Sec. 481.116 establishes that an offense of possession of a substance in Penalty Group 2 is a felony, ranging from a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) to a first-

degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) depending on the amount possessed.

Sec. 481.121 specifies that an offense of possession of marihuana is a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) if the amount of marihuana possessed is two ounces or less. This substance does not fall within penalty groups established within the Health and Safety Code.

Concerns have been raised that the difference in the penalty between possession of small amounts of marihuana and possession of THC in forms other than marihuana creates an unnecessary disparity and that the criminal penalty for possession of small amounts of marihuana is too high.

DIGEST:

CSHB 218 would decrease the penalty for possession of an ounce or less of marihuana from a class B misdemeanor to a class C misdemeanor (maximum fine of \$500). The bill also would create a new Penalty Group related to the possession of certain THC compounds. The bill also would allow for the expungement of related records for first-time offenders.

Penalty Group 2-B. CSHB 218 would remove THC substances and compounds listed within Penalty Group 2 and place them into a new penalty group, Penalty Group 2-B. The bill would include conforming language to reflect this change.

Penalty Group 2-B would consist of any quantity of THC substances, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers were possible within the specific designation.

The bill would amend the offense of knowingly delivering certain substances to a child or person enrolled in primary or secondary school to include substances from Penalty Group 2-B and Penalty Group 2-A, which includes synthetic marihuana and cannabinoids.

CSHB 218 would add Penalty Group 2-A and 2-B substances to the list of

substances that would qualify as a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if involved in an offense of possession or transport with intent to manufacture a controlled substance.

Possession of a substance in Penalty Group 2-A or 2-B otherwise punishable as a class B misdemeanor would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) if the offense was committed in a drug-free zone.

The bill would add drugs listed in Penalty Group 2-A and 2-B to the definition of a controlled substance and would remove such substances from the definition of the term “dangerous drug.”

Possession of a substance in Penalty Group 2-A and 2-B. The bill would add substances under Penalty Group 2-B to penalties already established for the possession of a substance in Penalty Group 2-A.

The bill would amend the established penalties for possession of substances in Penalty Group 2-A or 2-B, making it a class C misdemeanor if the amount of the controlled substance was, by aggregate weight, one ounce or less.

The bill would specify that, if the amount of the controlled substance was, by aggregate weight, two ounces or less but more than one ounce, such an offense would be classified as a class B misdemeanor.

Possession of marihuana. CSHB 218 would decrease the criminal penalty for possession of one ounce or less of marihuana from a class B misdemeanor to a class C misdemeanor.

The bill would specify that such an offense would be a class B misdemeanor if the possessed amount was two ounces or less but more than one ounce.

Appearance in front of a magistrate. CSHB 218 would amend provisions specifying when an offender was required to be taken before a

magistrate.

The bill would prohibit a peace officer from arresting an individual who was being charged with a class C misdemeanor offense for the possession of a substance in Penalty Group 2-A or 2-B, possession of marihuana, or possession or delivery of drug paraphernalia. In these instances, a peace officer would be required to issue the person a citation.

Expunction of certain conviction records. The bill would amend the Code of Criminal Procedure to establish that persons charged with a class C misdemeanor offense for the possession of a substance in Penalty Group 2-A or 2-B, possession of marihuana, and possession or delivery of drug paraphernalia could be eligible for record expunction if:

- the complaint was dismissed under a deferral of disposition; and
- either at least 180 days had elapsed from the date of the dismissal, at least one year had elapsed from the date of the citation, or the person was acquitted of the offense.

The person would be required to make a written request, under oath, to have the record expunged. The court would be required to order all complaints, verdicts, sentences and prosecutorial and law enforcement records and any other documents relating to the offense expunged from the person's record if the court found that the person satisfied the requirements for record expunction.

The justice or municipal court would have to require a person who requested expungement to pay a \$30 fee to defray the cost of notifying state agencies of orders of expungement. These procedures for expunction would be separate from other expunction procedures.

Suspension of sentence and deferral of final disposition. CSHB 218 would add provisions relating to deferral procedures for a class C misdemeanor offense for the possession of a substance in Penalty Group 2-A or 2-B, possession of marihuana, or possession or delivery for drug paraphernalia.

The bill would establish that, unless the defendant had previously received a deferral of disposition for such an offense committed within the 12-month period preceding the date of the commission of the current offense, on a plea of guilt or nolo contendere for either offense, a judge would be required to defer further proceedings without entering an adjudication of guilt and place the defendant on probation.

A court that dismissed a complaint for a person charged with such offenses would be required to notify the defendant in writing of the person's expunction rights and provide the person with a copy of the provision specifying those rights. The dismissed complaint would not be a conviction and could not be used against the person for any purpose.

Other provisions. To petition for an order of nondisclosure of criminal history record information on the grounds of having committed an offense solely as a victim of trafficking of persons, continuous trafficking of persons, or compelling prostitution, CSHB 218 would make eligible a person convicted of or placed on deferred adjudication community supervision for a class B misdemeanor offense for the possession of a substances in Penalty Group 2-A or 2-B.

The bill would clarify that the term "drug offense" did not include an offense punishable by fine only under the laws of Texas. This provision would take effect on the 91st day after the office of the attorney general published a specified finding in the Texas Register.

The bill would take effect September 1, 2023, and would apply only to an offense committed on or after that date.

NOTES:

According to the Legislative Budget Board (LBB), CSHB 218 could result in reduced demands upon state correctional resources but the fiscal implications cannot be determined due to lack of relevant data.