

SUBJECT: Enhancing penalties for certain offenses with controlled substances

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

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

0 nays

WITNESSES: For — M Paige Williams, Dallas County Criminal District Attorney John Creuzot; Brett Ligon, Montgomery County District Attorney's Office; Jack Armstrong II, Rand Henderson, Michael Uber, Montgomery County Sheriff's Office (*Registered, but did not testify*: Jennifer Szimanski, Combined Law Enforcement Associations of Texas; James Parnell, Dallas Police Association; Julio Gonzalez, Dallas Police Department; Larry Young, Game Warden Peace Officers Association; Jessica Anderson, Houston Police Department; Ray Hunt, Houston Police Officers Union; Todd McCoy, Michael Landrum, Justin Schutzenhofer, Jason Prince, Montgomery County Sheriff's Office; John Wilkerson, TMPA; Elmer Beckworth; Jason Vaughn)

Against — (*Registered, but did not testify*: Kevin Hale, Libertarian Party of Texas; Joyce H; Jesse Williams)

BACKGROUND: Health and Safety Code sec. 481.122 states that a person commits a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) if the person knowingly delivers certain controlled substances or marihuana to:

- a child, defined as a person younger than 18 years old;
- a primary or secondary school student; or
- a person the offender knows or believes intends to deliver the controlled substance or marihuana to a child or student.

DIGEST: HB 513 would elevate the offense of knowingly delivering certain controlled substances or marihuana under sec. 481.122 of the Health and Safety Code from a second-degree felony 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) in certain circumstances. The offense would be a first-degree felony if it was shown in trial that the person to whom the controlled substance or marihuana was delivered died or suffered serious bodily injury as a result of injecting, ingesting, inhaling, or introducing into the person's body any amount of the controlled substance or marihuana. This would apply regardless of whether or not the controlled substance or marihuana was used by itself or with another substance.

The bill would make the offense of knowingly manufacturing or delivering a controlled substance a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the offense resulted in serious bodily injury to a person. This offense would be a second-degree felony if the offense resulted in the person's death.

The bill would create a defense to prosecution that the manufacture or delivery of a controlled substance was authorized by state or federal law. If the conduct of the offense constituted an offense under another chapter, the offense could be prosecuted under either or both sections.

The bill would take effect September 1, 2023.

**SUPPORTERS
SAY:**

HB 513 would update the law related to certain drug offenses to address the emergence of fentanyl as a dangerous substance. Under current law, law enforcement and prosecutors are required to prosecute drug offenses based on the quantity of drugs found at a crime scene. Fentanyl is novel in that even small doses can result in death or serious bodily injury, meaning that only small amounts of the substance may be found at a crime scene, if any. The bill would enable law enforcement and prosecutors to charge offenders based on the individual's role in causing death or serious bodily injury, rather than relying on drug quantity as a determinant. The bill would also set higher penalties for causing serious harm or death to children, as they are especially vulnerable. The bill would not create any new offenses relating to marijuana, but would enhance existing penalties to address the serious threat posed by fentanyl.

CRITICS
SAY:

While responding to the fentanyl crisis is important, HB 513 also could enhance certain criminal offenses related to marijuana, which could conflict with growing public support for its decriminalization.