

By: Murphy

H.B. No. 2170

Substitute the following for H.B. No. 2170:

By: Herrero

C.S.H.B. No. 2170

A BILL TO BE ENTITLED

AN ACT

relating to enhancing the penalties for certain repeat and habitual
misdemeanor offenders.

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

SECTION 1. Sections 12.42(a), (b), and (d), Penal Code, are
amended to read as follows:

(a) Except as provided by Subsection (c)(2), if it is shown
on the trial of a felony of the third degree that the defendant has
previously been finally convicted of a felony other than a state
jail felony punishable under Section 12.35(a) or 12.43(b-1), on
conviction the defendant shall be punished for a felony of the
second degree.

(b) Except as provided by Subsection (c)(2) or (c)(4), if it
is shown on the trial of a felony of the second degree that the
defendant has previously been finally convicted of a felony other
than a state jail felony punishable under Section 12.35(a) or
12.43(b-1), on conviction the defendant shall be punished for a
felony of the first degree.

(d) Except as provided by Subsection (c)(2) or (c)(4), if it
is shown on the trial of a felony offense other than a state jail
felony punishable under Section 12.35(a) or 12.43(b-1) that the
defendant has previously been finally convicted of two felony
offenses, and the second previous felony conviction is for an
offense that occurred subsequent to the first previous conviction

1 having become final, on conviction the defendant shall be punished
2 by imprisonment in the Texas Department of Criminal Justice for
3 life, or for any term of not more than 99 years or less than 25
4 years. A previous conviction for a state jail felony punishable
5 under Section [12.35\(a\)](#) or [12.43\(b-1\)](#) may not be used for
6 enhancement purposes under this subsection.

7 SECTION 2. Sections [12.42\(c\)\(1\)](#) and (5), Penal Code, are
8 amended to read as follows:

9 (1) If it is shown on the trial of a felony of the first
10 degree that the defendant has previously been finally convicted of
11 a felony other than a state jail felony punishable under Section
12 [12.35\(a\)](#) or [12.43\(b-1\)](#), on conviction the defendant shall be
13 punished by imprisonment in the Texas Department of Criminal
14 Justice for life, or for any term of not more than 99 years or less
15 than 15 years. In addition to imprisonment, an individual may be
16 punished by a fine not to exceed \$10,000.

17 (5) A previous conviction for a state jail felony
18 punishable under Section [12.35\(a\)](#) or [12.43\(b-1\)](#) may not be used for
19 enhancement purposes under Subdivision (2).

20 SECTION 3. Section [12.425](#), Penal Code, is amended to read as
21 follows:

22 Sec. 12.425. PENALTIES FOR REPEAT AND HABITUAL FELONY
23 OFFENDERS ON TRIAL FOR STATE JAIL FELONY. (a) If it is shown on
24 the trial of a state jail felony punishable under Section [12.35\(a\)](#)
25 or [12.43\(b-1\)](#) that the defendant has previously been finally
26 convicted of two state jail felonies punishable under Section
27 [12.35\(a\)](#) or [12.43\(b-1\)](#), on conviction the defendant shall be

1 punished for a felony of the third degree.

2 (b) If it is shown on the trial of a state jail felony
3 punishable under Section 12.35(a) or 12.43(b-1) that the defendant
4 has previously been finally convicted of two felonies other than a
5 state jail felony punishable under Section 12.35(a) or 12.43(b-1),
6 and the second previous felony conviction is for an offense that
7 occurred subsequent to the first previous conviction having become
8 final, on conviction the defendant shall be punished for a felony of
9 the second degree.

10 (c) If it is shown on the trial of a state jail felony for
11 which punishment may be enhanced under Section 12.35(c) that the
12 defendant has previously been finally convicted of a felony other
13 than a state jail felony punishable under Section 12.35(a) or
14 12.43(b-1), on conviction the defendant shall be punished for a
15 felony of the second degree.

16 SECTION 4. Section 12.43, Penal Code, is amended by
17 amending Subsection (a) and adding Subsection (b-1) to read as
18 follows:

19 (a) Except as provided under Subsection (b-1), if ~~if~~ it is
20 shown on the trial of a Class A misdemeanor that the defendant has
21 been previously ~~before~~ convicted of a Class A misdemeanor or any
22 degree of felony, on conviction the defendant ~~he~~ shall be
23 punished by:

- 24 (1) a fine not to exceed \$4,000;
- 25 (2) confinement in jail for any term of not more than
26 one year or less than 90 days; or
- 27 (3) both such fine and confinement.

1 (b-1) An offense that is a Class A misdemeanor is a state
2 jail felony if it is shown on the trial of the offense that:

3 (1) the defendant has been previously convicted four
4 or more times of a Class A misdemeanor or any degree of felony;

5 (2) at least one of the previous convictions described
6 by Subdivision (1) was of a felony; and

7 (3) each of the previous offenses was committed in the
8 10-year period preceding the date of commission of the instant
9 offense.

10 SECTION 5. Sections 15(a)(1) and (2), Article 42.12, Code
11 of Criminal Procedure, are amended to read as follows:

12 (1) On conviction of a state jail felony under Section
13 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(3),
14 481.121(b)(3), or 481.129(g)(1), Health and Safety Code, that is
15 punished under Section 12.35(a) or 12.43(b-1), Penal Code, the
16 judge shall suspend the imposition of the sentence and place the
17 defendant on community supervision, unless the defendant has
18 previously been convicted of a felony, other than a felony punished
19 under Section 12.44(a), Penal Code, or unless the conviction
20 resulted from an adjudication of the guilt of a defendant
21 previously placed on deferred adjudication community supervision
22 for the offense, in which event the judge may suspend the imposition
23 of the sentence and place the defendant on community supervision or
24 may order the sentence to be executed. The provisions of this
25 subdivision requiring the judge to suspend the imposition of the
26 sentence and place the defendant on community supervision do not
27 apply to a defendant who:

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

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

7 (C) under Section 481.121(b)(3), Health and
8 Safety Code, possessed more than one pound of marihuana.

9 (2) On conviction of a state jail felony punished
10 under Section 12.35(a) or 12.43(b-1), Penal Code, other than a
11 state jail felony listed in Subdivision (1), subject to Subdivision
12 (2-a), the judge may:

13 (A) suspend the imposition of the sentence and
14 place the defendant on community supervision; or

15 (B) order the sentence to be executed:

16 (i) in whole; or

17 (ii) in part, with a term of community
18 supervision to commence immediately on release of the defendant
19 from confinement.

20 SECTION 6. The change in law made by this Act applies only
21 to an offense committed on or after the effective date of this Act.
22 An offense committed before the effective date of this Act is
23 governed by the law in effect on the date the offense was committed,
24 and the former law is continued in effect for that purpose. For
25 purposes of this section, an offense was committed before the
26 effective date of this Act if any element of the offense occurred
27 before that date.

1 SECTION 7. This Act takes effect September 1, 2015.