

By: Hinojosa

S.B. No. 1461

A BILL TO BE ENTITLED

AN ACT

relating to the punishment for certain possession offenses under the Texas Controlled Substances Act; changing eligibility for community supervision.

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

SECTION 1. Section 509.011, Government Code, is amended by amending Subsections (a) and (b) to read as follows:

(a) If the division determines that a department complies with division standards and if the department has submitted a strategic plan under Section 509.007 and the supporting information required by the division and the division determines the plan and supporting information are acceptable, the division shall prepare and submit to the comptroller vouchers for payment to the department as follows:

(1) for per capita funding, a per diem amount for the term of supervision for each [~~felony~~] defendant directly supervised by the department pursuant to lawful authority for an offense punishable as:

(A) a felony; or

(B) a Class A misdemeanor under Section 481.115, 481.1151, or 481.116, Health and Safety Code;

(2) for per capita funding, a per diem amount for a period not to exceed 182 days for each defendant supervised by the department pursuant to lawful authority for a misdemeanor

1 offense~~[7]~~ other than an offense described by Subdivision (1)(B) [~~a~~
2 ~~felony defendant~~]; and

3 (3) for formula funding, an annual amount as computed
4 by multiplying a percentage determined by the allocation formula
5 established under Subsection (f) times the total amount provided in
6 the General Appropriations Act for payments under this subdivision.

7 (b) The division may use discretionary grant funds to
8 further the purposes of this chapter by contracting for services
9 with state agencies or nonprofit organizations. The division may
10 also make discretionary grants to departments, municipalities, or
11 counties for the following purposes:

12 (1) development and operation of pretrial and
13 presentencing services;

14 (2) electronic monitoring services, surveillance
15 supervision programs, and controlled substances testing services;

16 (3) research projects to evaluate the effectiveness of
17 community corrections programs, if the research is conducted in
18 cooperation with the Criminal Justice Policy Council;

19 (4) contract services for felony defendants;

20 (5) residential services for misdemeanor defendants
21 who exhibit levels of risk or needs indicating a need for
22 confinement and treatment~~[7, as described by Section 509.005(b)]~~;

23 (6) establishment or operation of county correctional
24 centers under Subchapter H, Chapter 351, Local Government Code, or
25 community corrections facilities for which the division has
26 established standards under Section 509.006;

27 (7) development and operation of treatment

1 alternative to incarceration programs under Section 76.017; ~~and~~

2 (8) other purposes determined appropriate by the
3 division and approved by the board; and

4 (9) to place defendants in pretrial intervention
5 programs to provide substance abuse treatment, aftercare, and
6 specialized pretrial supervision for defendants charged with an
7 offense punishable as a Class A misdemeanor under Section 481.115,
8 481.1151, or 481.116, Health and Safety Code.

9 SECTION 2. Section 481.113, Health and Safety Code, is
10 amended by amending Subsections (a) and (b) and adding Subsection
11 (b-1) to read as follows:

12 (a) Except as authorized by this chapter, a person commits
13 an offense if the person knowingly manufactures, delivers, or
14 possesses with intent to deliver a controlled substance listed in:

15 (1) Penalty Group 2; or

16 (2) Penalty Group 2-A.

17 (b) An offense under Subsection (a)(1) ~~(a)~~ is a state jail
18 felony if the amount of the controlled substance to which the
19 offense applies is, by aggregate weight, including adulterants or
20 dilutants, less than one gram.

21 (b-1) An offense under Subsection (a)(2) is a felony of the
22 third degree if the amount of the controlled substance to which the
23 offense applies is, by aggregate weight, including adulterants or
24 dilutants, less than one gram.

25 SECTION 3. Section 481.115(b), Health and Safety Code, is
26 amended to read as follows:

27 (b) An offense under Subsection (a) is a Class A misdemeanor

1 ~~[state jail felony]~~ if the amount of the controlled substance
2 possessed is, by aggregate weight, including adulterants or
3 dilutants, less than one gram.

4 SECTION 4. Section 481.1151(b), Health and Safety Code, is
5 amended to read as follows:

6 (b) An offense under this section is:

7 (1) a Class A misdemeanor ~~[state jail felony]~~ if the
8 number of abuse units of the controlled substance is fewer than 20;

9 (2) a felony of the third degree if the number of abuse
10 units of the controlled substance is 20 or more but fewer than 80;

11 (3) a felony of the second degree if the number of
12 abuse units of the controlled substance is 80 or more but fewer than
13 4,000;

14 (4) a felony of the first degree if the number of abuse
15 units of the controlled substance is 4,000 or more but fewer than
16 8,000; and

17 (5) punishable by imprisonment in the Texas Department
18 of Criminal Justice for life or for a term of not more than 99 years
19 or less than 15 years and a fine not to exceed \$250,000, if the
20 number of abuse units of the controlled substance is 8,000 or more.

21 SECTION 5. Section 481.116(b), Health and Safety Code, is
22 amended to read as follows:

23 (b) An offense under Subsection (a) is a Class A misdemeanor
24 ~~[state jail felony]~~ if the amount of the controlled substance
25 possessed is, by aggregate weight, including adulterants or
26 dilutants, less than one gram.

27 SECTION 6. Article 42A.056, Code of Criminal Procedure, is

1 amended to read as follows:

2 Art. 42A.056. LIMITATION ON JURY-RECOMMENDED COMMUNITY
3 SUPERVISION. A defendant is not eligible for community supervision
4 under Article 42A.055 if the defendant:

5 (1) is sentenced to a term of imprisonment that
6 exceeds 10 years;

7 (2) is convicted of an offense [~~a state jail felony~~]
8 for which suspension of the imposition of the sentence occurs
9 automatically under Article 42A.551;

10 (3) is adjudged guilty of an offense under Section
11 19.02, Penal Code;

12 (4) is convicted of an offense under Section
13 21.11(a)(1), 22.011, or 22.021, Penal Code, if the victim of the
14 offense was younger than 14 years of age at the time the offense was
15 committed;

16 (5) is convicted of an offense under Section 20.04,
17 Penal Code, if:

18 (A) the victim of the offense was younger than 14
19 years of age at the time the offense was committed; and

20 (B) the actor committed the offense with the
21 intent to violate or abuse the victim sexually;

22 (6) is convicted of an offense under Section 20A.02,
23 43.05, or 43.25, Penal Code; or

24 (7) is convicted of an offense for which punishment is
25 increased under Section 481.134(c), (d), (e), or (f), Health and
26 Safety Code, if it is shown that the defendant has been previously
27 convicted of an offense for which punishment was increased under

any of those subsections.

SECTION 7. Articles 42A.551(a) and (c), Code of Criminal Procedure, are amended to read as follows:

(a) Except as otherwise provided by Subsection (b) or (c), on conviction of a state jail felony under Section [~~481.115(b), 481.1151(b)(1), 481.116(b)~~], 481.1161(b)(3), 481.121(b)(3), or 481.129(g)(1), Health and Safety Code, that is punished under Section 12.35(a), Penal Code, the judge shall suspend the imposition of the sentence and place the defendant on community supervision.

(c) Subsection (a) does not apply to a defendant who:

(1) [~~under Section 481.1151(b)(1), Health and Safety Code, possessed more than five abuse units of the controlled substance,~~

~~(2)]~~ under Section 481.1161(b)(3), Health and Safety Code, possessed more than one pound, by aggregate weight, including adulterants or dilutants, of the controlled substance; or

(2) [~~(3)~~] under Section 481.121(b)(3), Health and Safety Code, possessed more than one pound of marihuana.

SECTION 8. (a) Section 509.011(a), Government Code, as amended by this Act, applies only to a payment to a community supervision and corrections department based on a voucher submitted to the comptroller on or after September 1, 2017.

(b) Except as provided by Subsection (c) of this section:

(1) the change in law made by this Act applies only to an offense committed on or after the effective date of this Act; and

(2) an offense committed before the effective date of

1 this Act is governed by the law in effect on the date the offense was
2 committed, and the former law is continued in effect for that
3 purpose.

4 (c) In a criminal action pending on or commenced on or after
5 the effective date of this Act, for an offense under Section
6 481.115, 481.1151, or 481.116, Health and Safety Code, committed
7 before the effective date, the defendant, if adjudged guilty, shall
8 be assessed punishment under Section 481.115, 481.1151, or 481.116,
9 Health and Safety Code, as applicable, as amended by this Act, if
10 the defendant so elects by written motion filed with the trial court
11 before the sentencing hearing begins.

12 (d) For purposes of this section, an offense was committed
13 before the effective date of this Act if any element of the offense
14 occurred before that date.

15 (e) A defendant who elects by written motion to be assessed
16 punishment under Section 481.115, 481.1151, or 481.116, Health and
17 Safety Code, as applicable, as amended by this Act, is eligible for
18 treatment, supervision, and care in accordance with Sections
19 509.011(a) and (b), Government Code, as amended by this Act. A
20 community supervision and corrections department established under
21 Chapter 76, Government Code, is eligible to be paid for providing
22 the treatment, supervision, and care in accordance with Sections
23 509.011(a) and (b), Government Code, as amended by this Act. A
24 municipality, county, or community supervision and corrections
25 department established under Chapter 76, Government Code, may
26 provide treatment, supervision, and care to the defendant under a
27 grant made to the municipality, county, or department under Section

1 509.011(b), Government Code, as amended by this Act.

2 SECTION 9. This Act takes effect September 1, 2017, but only
3 if the 85th Legislature specifically includes a rider in the
4 General Appropriations Act or in the Supplemental Appropriations
5 Act that is contingent on this Act passing and becoming law, or that
6 notes this Act has passed and will become law, and that appropriates
7 money to implement the changes in law made by this Act to Section
8 509.011, Government Code, during the state fiscal biennium
9 beginning September 1, 2017. If the 85th Legislature does not
10 include such a rider in the General Appropriations Act or in the
11 Supplemental Appropriations Act, this Act has no effect.