

SUBJECT: Revising drug Penalty Group 2-A for synthetic cannabinoids

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Herrero, Moody, Canales, Hunter, Leach

0 nays

2 absent — Shaheen, Simpson

WITNESSES: For — (*Registered, but did not testify*: Amy Granberry, Association of Substance Abuse Programs; Larry Smith, William Travis, Maxey Cerliano, Micah Harmon, and A.J. Louderback, Sheriffs' Association of Texas; Micahael Pacheco, Texas Farm Bureau; Donald Baker, Texas Police Chiefs Association; James Grunden and Bobby Sanders, Upshur County Sheriff's Office, Anna Bowers; James Capra; R. Glenn Smith)

Against — None

On — Drew Fout, Department of Public Safety Crime Lab; Azell Carter, Pasadena Police Department Regional Crime Laboratory; Aaron Crowell, Texas Municipal Police Association; (*Registered, but did not testify*: Skylor Hearn, Department of Public Safety)

BACKGROUND: Health and Safety Code, ch. 481 is the Texas Controlled Substances Act. It categorizes illegal substances into schedules and penalty groups and provides penalties for the manufacture, delivery, and possession of controlled substances. Penalty Group 2-A consists of compounds that are synthetic cannabinoids.

"Controlled substances" are defined in sec. 481.002(5) as substances, including drugs, adulterants, and dilutants listed in schedules I through V or penalty groups 1, 1-A or 2 through 4. "Controlled substance analogues" are defined in sec. 481.002(6) as substances with chemical structures similar to the chemical structures of controlled substances in schedule I or II or in penalty groups 1, 1-A, or 2. The definition of "controlled

substance analogue” also includes substances specifically designed to produce an effect similar to or greater than the effect of certain controlled substances.

Health and Safety Code, sec. 481.119 establishes punishments for substances that are not listed in penalty groups but are listed in schedules. Schedules are lists of controlled substances maintained under Health and Safety Code, sec. 481.032 by the Department of State Health Services that track federal lists of controlled substances.

Sec. 481.119(a) makes it a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) to knowingly manufacture, deliver, or possess with intent to deliver a controlled substance in a schedule but not a penalty group. Sec. 481.119(b) makes it a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) to possess a controlled substance listed in a schedule but not in a penalty group.

DIGEST: HB 1424 would expand the lists of chemical compounds listed in Penalty Group 2-A, which governs synthetic cannabinoids. It also would include Penalty Group 2-A within the definitions of “controlled substance” and “controlled substance analogue.” The bill would add Penalty Group 2-A to a list of penalty groups that can be prosecuted for substance analogues.

The bill would increase the punishments for repeat offenses of knowingly manufacturing, delivering, or possessing with the intent to deliver a controlled substance in a schedule but not a penalty group. The punishment would increase from a class A misdemeanor to a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) for second offenses. Third and subsequent offenses would increase to a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000).

The bill would take effect September 1, 2015, and would apply to offenses committed on or after that date.

**SUPPORTERS
SAY:**

HB 1424 would better enable law enforcement officers to combat dangerous synthetic cannabinoids. In 2011, the Legislature created Penalty Group 2-A for synthetic marijuana to address a growing problem with drugs such as K2 and Spice, and problems with the drugs continue. These powerful drugs are unsafe synthetic compounds with serious side effects.

The 2011 legislation placed specific compounds that described common synthetic cannabinoids into the new penalty group. However, the legislation did not include the new penalty group with other penalty groups within the definitions of “controlled substance” and “controlled substance analogue” or in a list of penalty groups that can be prosecuted for substance analogues. HB 1424 would remedy this oversight by including Penalty Group 2-A in these sections.

HB 1424 would address the growing types of synthetic cannabinoids by expanding the list of substances that fall under Penalty Group 2-A to include additional versions of the drug. This expansion would make it easier to identify and prosecute new, dangerous versions of synthetic marijuana.

HB 1424 would deter repeat drug offenders and punish them more appropriately than current law does by increasing the punishments for second and subsequent offenses by manufacturers, distributors, and sellers of drugs that appear in schedules but not in penalty groups. The bill would focus on offenses by these groups, not simple possession. The punishments governing drugs in schedules, but not penalty groups, could be used for synthetic marijuana not covered by Penalty Group 2-A. Currently, repeat offenses under this section would continue to be handled as class A misdemeanors, something that does not reflect the seriousness of dealing in synthetic marijuana, especially by someone who already has been convicted once.

**OPPONENTS
SAY:**

Raising penalties, especially to the felony level, for repeat offenses relating to manufacturing, delivering, or selling certain controlled substances not in a penalty group could result in overly harsh penalties for

some lower-level sellers.