

SUBJECT: Creating class C misdemeanor for marijuana possession up to one ounce

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Collier, Cason, Cook, Crockett, Hinojosa, A. Johnson, Vasut

1 nay — K. Bell

1 absent — Murr

WITNESSES: For — Jaclyn Finkel, Texas NORML and Foundation for an Informed Texas; Derek Cohen, Texas Public Policy Foundation; Elizabeth Grow; Patrick Pope; Shaun Salvaje (Hostutler); (*Registered, but did not testify*: Greg Glod, Americans For Prosperity; Warren Burkley and Chas Moore, Austin Justice Coalition; Jonathan Copeland, Cannabis Reform of Houston; Karen Reeves, CenTex Community Outreach; Dustin Cox, GRAV; Kathy Mitchell, Just Liberty; Nathan Moxley and Rene Perez, Libertarian Party of Texas; Elizabeth Miller, Libertarian Party of Texas, SD10; John Baucum, Republicans Against Marijuana Prohibition and Texas Young Republican Federation; Heather Fazio, Texans for Responsible Marijuana Policy; Rene Lara, Texas AFL-CIO; Sarah Moseley, Texas Cannabis Collective; Jason Vaughn, Texas Young Republicans; Ebony Johnson, The Afiya Center; and 16 individuals)

Against — (*Registered, but did not testify*: Jennifer Szimanski, CLEAT; Frederick Frazier, Dallas Police Association/FOP716 State FOP; James Smith, San Antonio Police Department; Jimmy Rodriguez, San Antonio Police Officers Association; Tom Maddox, Sheriffs Association of Texas; Cindi Castilla, Texas Eagle Forum, President; John Wilkerson, Texas Municipal Police Association; John Chancellor, Texas Police Chiefs Association; Aldo Caldo; Deana Johnston; David Kohler)

On — (*Registered, but did not testify*: Amelia Casas and Emily Gerrick, Texas Fair Defense Project)

BACKGROUND: Health and Safety Code sec. 481.121 makes possession of marijuana a

crime. It is a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) to knowingly or intentionally possess up to two ounces of marijuana and class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) to possess between two ounces and four ounces. Penalties continue to increase as the amount of marijuana increases.

DIGEST:

CSHB 441 would lower the penalty for possession of less than one ounce of marijuana and require peace officers to issue citations in such cases. The bill also would prohibit arrests, authorize the expunction of records, and eliminate automatic drivers license suspensions in such cases.

Penalties. The bill would make it a class C misdemeanor (maximum fine of \$500) to possess one ounce or less of marijuana. It would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) penalty to possess more than one ounce and up to two ounces.

Citation. Peace officers would be prohibited from making an arrest if charging someone with possessing an ounce or less of marijuana or with a class C misdemeanor offense for possession of drug paraphernalia.

When charging a person with such an offense, a peace officer would be required to issue the person a citation that included information currently required on certain other class C misdemeanor citations, including the time and place the person would have to appear before a magistrate, the offense charged, and information about alternatives to the full payment of any fine or costs.

Deferrals in certain cases. The bill would require, under certain circumstances, judges to defer proceedings in cases of possession of an ounce or less of marijuana or possession of drug paraphernalia and to put individuals pleading guilty or no contest on probation. Judges would not be required to take these actions if the individual had previously received a deferral of disposition for the same offenses for conduct committed within 12 months before the current offense.

Courts dismissing a complaint under the bill for possession of an ounce or less of marijuana or possession of drug paraphernalia would have to notify individuals in writing of the person's expunction rights and give them a copy of the expunction provisions. The dismissed complaint would not be a conviction and could not be used against the person for any purpose.

Expunction. The bill would authorize the expunction of records for a person charged with possessing an ounce or less of marijuana or a class C misdemeanor offense for possession of drug paraphernalia if:

- the person was acquitted of the offense; or
- the complaint was dismissed under current provisions for suspending and dismissing charges in justice or municipal court or other law and it was at least 180 days from the date of the dismissal or at least one year from the date of the citation.

Courts would be required to order all complaints, verdicts, sentences, and prosecutorial and law enforcement records and any other documents relating to the offense expunged if the court found that the person met those requirements.

Expunction requests would have to be written and made under oath, they would be subject to a \$30 fee.

The expunction procedures in the bill would be separate and distinct from those in Code of Criminal Procedure ch. 55.

Drivers license suspension. A fine-only offense would not be considered a drug offense that can trigger an automatic drivers license suspension based on a final drug offense conviction.

This provision would take effect 91 days after the attorney general published in the Texas Register a finding that the Texas Legislature had adopted a resolution concerning federal highway funds and requirements to suspend, revoke, or deny drivers licenses of those convicted of certain drug offenses and other related findings.

The bill would take effect September 1, 2021, and would apply to offenses committed on or after that date.

**SUPPORTERS
SAY:**

HB 441 would revise penalties and procedures associated with possession of the very smallest amounts of marijuana to better reflect the seriousness of the offense, mitigate the harsh consequences that can come with a criminal record, and allow state and local governments to use criminal justice resources more efficiently and effectively. The bill would not legalize, decriminalize, or promote marijuana but would allow a reasonable enforcement mechanism to hold those possessing small amounts of marijuana accountable through a class C misdemeanor.

Current laws establishing a class B misdemeanor for possessing up to two ounces of marijuana over-criminalize a non-violent behavior that does not pose a public safety risk, and this criminalization can result in negative consequences that are out of proportion to the offense. Drug charges or convictions can be barriers to employment, housing, education, military service, and more, and can lead to the revocation of driver's licenses. In low-level marijuana cases, these consequences often fall on young Texans and follow them for a lifetime. By limiting arrests, requiring probation in some cases, and allowing records to be expunged, the bill would keep individuals employable and in school and allow them to move on from a minor offense.

The bill would help address significant and unnecessary costs to local governments to enforce current laws on possession, freeing resources to address more serious incidents. A statewide law is needed so there would be consistent treatment for individuals instead of a patchwork of local policies. This could help address geographic and racial disparities in the enforcement of drug laws. The bill would not remove the discretion of local governments to adopt other programs such as diversion or treatment and would not harm other law enforcement efforts.

CSHB 441 would not reduce public safety or encourage drug use. Current punishments would remain for possession of larger amounts of marijuana

and selling marijuana.

CRITICS
SAY:

CSHB 441 would inappropriately lower the penalty for possessing an ounce or less of marijuana. Marijuana is a potentially harmful drug and possessing even small amounts should continue to be treated as such under law. Current law making possession of up to two ounces a class B misdemeanor provides a range of punishments and options for handling low-level possession cases, including probation, pre-trial diversion, and deferred adjudication, and some jurisdictions use current law to issue a citation and a summons to appear in court. These options allow communities to handle cases appropriately and to address any cost concerns. By prohibiting arrests, the bill would reduce law enforcement officers' discretion, something that should be retained in handling these cases.

Marijuana continues to be a public health and safety concern, and lowering penalties could send the wrong message about drug use. Any expanded drug use could exacerbate public health problems, such as drug abuse and addiction. These problems can be especially harmful to youth who are developing cognitively.

OTHER
CRITICS
SAY:

It could be difficult for a court considering a case of possession of less than an ounce of marijuana or drug paraphernalia to know if an individual had a previous offense as in general these offenses are not reported to a statewide database.