

BILL ANALYSIS

C.S.H.B. 81
By: Moody
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that the punishment for the possession of a small amount of marihuana is too harsh when considering additional consequences that a conviction for such possession may bring. C.S.H.B. 81 seeks to address this issue by revising penalties associated with the possession of certain small amounts of marihuana.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 81 amends the Health and Safety Code to exclude the knowing or intentional possession of a usable quantity of marihuana in an amount that is one ounce or less from the Class B misdemeanor offense of possession of marihuana. The bill makes a person who knowingly or intentionally possesses such an amount of marihuana liable to the state for a civil penalty capped at \$250 but establishes that such conduct does not constitute an offense. The bill establishes that the imposition of this civil penalty is not a conviction and may not be considered a conviction for any purpose. The bill creates the Class C misdemeanor offense of subsequent possession of a small amount of marihuana for a person who knowingly or intentionally possesses a usable quantity of marihuana in an amount that is one ounce or less and has previously been assessed a civil penalty three times for a possession of a small amount of marihuana violation. The bill establishes as a defense to prosecution for possession or delivery of drug paraphernalia that drug paraphernalia was knowingly or intentionally used, possessed, or delivered solely in furtherance of a possession of a small amount of marihuana civil violation or the offense of subsequent possession of a small amount of marihuana.

C.S.H.B. 81 amends the Code of Criminal Procedure to prohibit a peace officer from making an arrest solely because of a possession of a small amount of marihuana civil violation regardless of whether the person may be subject to prosecution for subsequent possession of a small amount of marihuana and to authorize a peace officer to issue to a person a citation that contains written notice of the time and place the person must appear before a justice court, the name and address of the person charged, and the violation charged. The bill requires the citation to notify the person that the person may be subject to prosecution for a Class C misdemeanor for subsequent possession of a small amount of marihuana if the person has previously been assessed a civil penalty for possession of a small amount of marihuana three times. The bill authorizes the

district or county attorney of the county in which the possession of a small amount of marihuana violation is alleged to have occurred to bring an action in the justice court of the county to collect the applicable civil penalty from the person so cited or to charge the person with a subsequent possession of a small amount of marihuana offense if the person has previously been assessed such a civil penalty three times.

C.S.H.B. 81 requires that a civil action for a possession of a small amount of marihuana violation be conducted in the manner provided by statutory provisions governing criminal proceedings in justice and municipal courts as amended by the bill as if an offense were charged. The bill prohibits the court from issuing an arrest warrant for a possession of a small amount of marihuana violation or a subsequent possession of a small amount of marihuana offense and prohibits the court from requiring the person liable for the civil penalty or who commits the offense to give bail. The bill establishes that a citation issued in such proceedings is considered to be a sufficient complaint for certain purposes if the citation is filed with the court by a district or county attorney. The bill prohibits a person liable for the civil penalty for a possession of a small amount of marihuana violation from appealing under a certain provision.

C.S.H.B. 81 requires the court to determine whether the person subject to the civil penalty for a possession of a small amount of marihuana violation is indigent before imposing the penalty, requires the court to waive the penalty if it determines the person is indigent, and authorizes the court to order the indigent person to complete not more than 10 hours of community service. The bill authorizes the court to waive or reduce the civil penalty for a non-indigent person if the person attends a program that provides education in substance abuse and is approved by the Department of State Health Services, the Texas Department of Licensing and Regulation, or the Texas Department of Public Safety or if the person performs not more than 10 hours of community service, as ordered by the court. The bill requires the court, if during the proceeding for a possession of a small amount of marihuana violation the court finds that the person has previously been assessed a civil penalty for such a violation one or two times, to order the person to attend such an education program, in addition to assessing a civil penalty. The bill requires the court, if during the proceeding the court finds that the person has previously been assessed such a civil penalty three times, to suspend the proceedings and notify the appropriate prosecuting attorney so that the person may be charged with the offense of subsequent possession of a small amount of marihuana. The bill requires the judge, on a plea of guilty or nolo contendere for such an offense by a defendant and payment of all court costs, to defer further proceedings without entering an adjudication of guilt and place the defendant on probation. The bill authorizes the court to issue a capias for the arrest of a person who fails to appear or to make payment as directed by the citation issued under such proceedings.

C.S.H.B. 81 authorizes law enforcement to seize any marihuana in possession of a person subject to a civil penalty for a possession of a small amount of marihuana violation or to prosecution for an offense for subsequent possession of a small amount of marihuana and requires law enforcement to preserve marihuana so seized as if the marihuana were evidence of an offense for the subsequent possession of a small amount of marihuana pending the final resolution of the civil proceeding. The bill subjects any such seized marihuana to forfeiture after final resolution of the civil proceeding and requires that the seized marihuana be disposed of in accordance with statutory provisions governing the disposition of a controlled substance property or plant. The bill makes the identity of a person cited for a possession of a small amount of marihuana violation confidential information under state public information law, unless the person is charged with the offense of subsequent possession of a small amount of marihuana in connection with that citation. The bill makes the identity of a person found liable for a civil penalty for a possession of a small amount of marihuana violation confidential under that law. These seizure and confidentiality provisions apply to an indigent person for whom a court waives the civil penalty.

C.S.H.B. 81 establishes that its provisions relating to the proceedings for certain marihuana possession violations and offenses expressly do not affect the authority of a peace officer to

conduct a search or seize marihuana or other property as contraband.

C.S.H.B. 81 amends the Family Code to include conduct constituting a possession of a small amount of marihuana civil violation or the offense of subsequent possession of a small amount of marihuana among conduct that constitutes delinquent conduct.

C.S.H.B. 81 amends the Local Government Code to include the filing of a civil action by the state under the bill's provisions relating to a possession of a small amount of marihuana violation among the actions for which a justice of the peace is not entitled to a fee.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 81 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 481.121(b), Health and Safety Code, is amended.

SECTION 2. Subchapter D, Chapter 481, Health and Safety Code, is amended by adding Section 481.1211 to read as follows:

Sec. 481.1211. CIVIL PENALTY: POSSESSION OF SMALL AMOUNT OF MARIHUANA. (a) A person who knowingly or intentionally possesses a usable quantity of marihuana in an amount that is one ounce or less is liable to the state for a civil penalty not to exceed \$250.

(b) The imposition of a civil penalty under this section is not a conviction and may not be considered a conviction for any purpose.

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Subchapter D, Chapter 481, Health and Safety Code, is amended by adding Sections 481.1211 and 481.1212 to read as follows:

Sec. 481.1211. CIVIL PENALTY: POSSESSION OF SMALL AMOUNT OF MARIHUANA. (a) Notwithstanding Section 481.121 and except as otherwise provided by Section 481.1212, a person who knowingly or intentionally possesses a usable quantity of marihuana in an amount that is one ounce or less does not commit an offense but is liable to the state for a civil penalty not to exceed \$250.

(b) The imposition of a civil penalty under this section is not a conviction and may not be considered a conviction for any purpose.

Sec. 481.1212. OFFENSE: SUBSEQUENT POSSESSION OF SMALL AMOUNT OF MARIHUANA. (a) A person commits an offense if the person: (1) knowingly or intentionally possesses a usable quantity of marihuana in an amount that is one ounce or less; and (2) has previously been assessed a civil penalty three times under Section 481.1211. (b) An offense under this section is a Class

SECTION 2 Subchapter D, Chapter 481, Health and Safety Code, is amended by adding Section 481.1211 to read as follows:

(c) A peace officer may not make an arrest solely because of a violation of this section. A peace officer may issue to a person who violates this section a citation that contains written notice of the time and place the person must appear before a justice court, the name and address of the person charged, and the civil violation charged.

(d) The district or county attorney of the county in which the conduct described by Subsection (a) is alleged to have occurred may bring an action in the justice court of the county to collect the civil penalty of a person who receives a citation under this section.

(e) A civil action under this section shall be conducted in the manner provided by Chapter 45, Code of Criminal Procedure, as if an offense were charged, except that:

(1) the court may not:

(A) issue an arrest warrant under Article 45.014, Code of Criminal Procedure; or

(B) require the person liable for a civil penalty to give bail under Article 45.016, Code of Criminal Procedure;

C misdemeanor.

SECTION 4. Subchapter B, Chapter 45, Code of Criminal Procedure, is amended by adding Article 45.062 to read as follows:

Art. 45.062. PROCEEDINGS FOR CERTAIN MARIHUANA POSSESSION VIOLATIONS AND OFFENSES.

(a) A peace officer may not make an arrest solely because of a violation of Section 481.1211, Health and Safety Code, regardless of whether the person may be subject to prosecution under Section 481.1212 of that code. A peace officer may issue to a person a citation that contains written notice of the time and place the person must appear before a justice court, the name and address of the person charged, and the violation charged. The citation must notify the person that the person may be subject to prosecution for a Class C misdemeanor under Section 481.1212, Health and Safety Code, if the person has previously been assessed a civil penalty three times under Section 481.1211, Health and Safety Code.

(b) The district or county attorney of the county in which the conduct described by Section 481.1211, Health and Safety Code, is alleged to have occurred may:

(1) bring an action in the justice court of the county to collect the civil penalty of a person who receives a citation under this section; or

(2) charge the person with an offense under Section 481.1212, Health and Safety Code, if the person has previously been assessed a civil penalty three times under Section 481.1211 of that code.

(c) Except as otherwise provided by this article, a civil action under this article for a violation of Section 481.1211, Health and Safety Code, shall be conducted in the manner provided by this chapter as if an offense were charged.

(d) The court may not:

(1) issue an arrest warrant under Article 45.014 for a violation of Section 481.1211, Health and Safety Code, or an offense under Section 481.1212 of that code; or

(2) require the person who violates Section 481.1211, Health and Safety Code, or commits an offense under Section 481.1212 of that code, to give bail under Article 45.016.

(2) a citation issued under this section is considered to be a sufficient complaint for purposes of Articles 45.018 and 45.019, Code of Criminal Procedure, if the citation is filed with the court by a district or county attorney; and

(3) a person liable for a civil penalty under this section may not appeal under Article 45.042, Code of Criminal Procedure.

(f)(1) Before imposing a civil penalty under this section, the court shall determine whether the person subject to the penalty is indigent. If the court determines the person is indigent, the court shall waive the penalty and may order the person to complete not more than 10 hours of community service.

(2) Subsections (i) and (j) apply to a person for whom a court waives a penalty under Subdivision (1).

(g) The court may waive or reduce the civil penalty for a person other than a person described by Subsection (f) if:

(1) the person subject to a civil penalty under this section attends a program that provides education in substance abuse and is approved by the Department of State Health Services or the Texas Department of Public Safety; or

(2) the person performs not more than 10 hours of community service, as ordered by the court.

(e) A citation issued under this article is considered to be a sufficient complaint for purposes of Articles 45.018 and 45.019 if the citation is filed with the court by a district or county attorney.

(f) A person liable for a civil penalty under Section 481.1211, Health and Safety Code, may not appeal under Article 45.042.

(g) Before imposing a civil penalty under Section 481.1211, Health and Safety Code, the court shall determine whether the person subject to the penalty is indigent. If the court determines the person is indigent, the court shall waive the penalty and may order the person to complete not more than 10 hours of community service.

(h) Subsections (n), (p), and (q) apply to a person for whom a court waives a penalty under Subsection (g).

(i) The court may waive or reduce the civil penalty for a person other than a person described by Subsection (g) if:

(1) the person subject to a civil penalty under Section 481.1211, Health and Safety Code, attends a program that provides education in substance abuse and is approved by the Department of State Health Services, the Texas Department of Licensing and Regulation, or the Texas Department of Public Safety; or

(2) the person performs not more than 10 hours of community service, as ordered by the court.

(j) If during a proceeding for a violation of Section 481.1211, Health and Safety Code, the court finds that the person has previously been assessed a civil penalty under that section one or two times, the court shall, in addition to assessing a civil penalty, order the person to attend a program that provides education in substance abuse and is approved by the Department of State Health Services, the Texas Department of Licensing and Regulation, or the Texas Department of Public Safety.

(k) If during a proceeding for a violation of Section 481.1211, Health and Safety Code, the court finds that the person has previously been assessed a civil penalty under that section three times, the court shall suspend the proceedings and notify the appropriate prosecuting attorney so that the person may be charged with an offense

(h) The court may issue a capias for the arrest of a person who fails to appear or to make payment, as directed by a citation issued under this section.

(i) Law enforcement may seize any marihuana in possession of a person subject to a civil penalty under this section.

If marihuana is seized under this section, law enforcement shall preserve the marihuana as if the marihuana were evidence of an offense under this chapter pending the final resolution of a civil proceeding under this section. After final resolution of a civil proceeding under this section, any marihuana seized is subject to forfeiture and shall be disposed of in accordance with Section 481.159.

(j) The identity of a person cited or found liable for a civil penalty under this section is confidential information under Section 552.101, Government Code.

SECTION 3. Section 481.125, Health and Safety Code, is amended by adding Subsection (g) to read as follows:

(g) It is a defense to prosecution under this

under Section 481.1212, Health and Safety Code.

(l) On a plea of guilty or nolo contendere for an offense under Section 481.1212, Health and Safety Code, by a defendant and payment of all court costs, the judge shall defer further proceedings without entering an adjudication of guilt and place the defendant on probation under the provisions of Article 45.051.

(m) The court may issue a capias for the arrest of a person who fails to appear or to make payment, as directed by a citation issued under this section.

(n) Law enforcement may seize any marihuana in possession of a person subject to a civil penalty under Section 481.1211, Health and Safety Code, or subject to prosecution under Section 481.1212 of that code. If marihuana is seized under this article in connection with a violation of Section 481.1211, Health and Safety Code, law enforcement shall preserve the marihuana as if the marihuana were evidence of an offense under Section 481.1212, Health and Safety Code, pending the final resolution of a civil proceeding under this article. After final resolution of a civil proceeding under this article, any marihuana seized is subject to forfeiture and shall be disposed of in accordance with Section 481.159, Health and Safety Code.

(o) This article does not affect the authority of a peace officer to conduct a search or seize marihuana or other property as contraband under Chapter 18 or 59 or other law.

(p) The identity of a person cited for a violation of Section 481.1211, Health and Safety Code, is confidential information under Section 552.101, Government Code, unless the person is charged with an offense under Section 481.1212, Health and Safety Code, in connection with that citation.

(q) The identity of a person found liable for a civil penalty under Section 481.1211, Health and Safety Code, is confidential information under Section 552.101, Government Code.

SECTION 3. Section 481.125, Health and Safety Code, is amended by adding Subsection (g) to read as follows:

(g) It is a defense to prosecution under this

section that drug paraphernalia was knowingly or intentionally used, possessed, or delivered solely in furtherance of a violation of Section 481.1211.

SECTION 4. Section 51.03(a), Family Code, is amended to read as follows:

- (a) Delinquent conduct is:
- (1) conduct, other than a traffic offense, that violates a penal law of this state or of the United States punishable by imprisonment or by confinement in jail;
 - (2) conduct that violates a lawful order of a court under circumstances that would constitute contempt of that court in:
 - (A) a justice or municipal court;
 - (B) a county court for conduct punishable only by a fine; or
 - (C) a truancy court;
 - (3) conduct that violates Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code; [øf]
 - (4) conduct that violates Section 106.041, Alcoholic Beverage Code, relating to driving under the influence of alcohol by a minor (third or subsequent offense); or
 - (5) conduct for which a person is subject to a civil penalty under Section 481.1211, Health and Safety Code.

SECTION 5. Section 118.124, Local Government Code, is amended.

SECTION 6. The changes in law made by this Act apply only to a violation of law that occurs on or after the effective date of this Act. A violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose. For purposes of this section, a violation of law occurred before the effective date of this Act if any element of the violation occurred before that date.

SECTION 7. This Act takes effect September 1, 2017.

section that drug paraphernalia was knowingly or intentionally used, possessed, or delivered solely in furtherance of a violation of Section 481.1211 or an offense under Section 481.1212.

SECTION 5. Section 51.03(a), Family Code, is amended to read as follows:

- (a) Delinquent conduct is:
- (1) conduct, other than a traffic offense, that violates a penal law of this state or of the United States punishable by imprisonment or by confinement in jail;
 - (2) conduct that violates a lawful order of a court under circumstances that would constitute contempt of that court in:
 - (A) a justice or municipal court;
 - (B) a county court for conduct punishable only by a fine; or
 - (C) a truancy court;
 - (3) conduct that violates Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code; [øf]
 - (4) conduct that violates Section 106.041, Alcoholic Beverage Code, relating to driving under the influence of alcohol by a minor (third or subsequent offense); or
 - (5) conduct for which a person is subject to a civil penalty under Section 481.1211, Health and Safety Code, or that violates Section 481.1212 of that code.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

SECTION 8. Same as introduced version.