

SUBJECT: Reducing penalty for possessing up to one ounce of marijuana

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Collier, J. González, Hunter, Moody, Pacheco

2 nays — K. Bell, Murr

2 absent — Zedler, P. King

WITNESSES: For — Nick Hudson, American Civil Liberties Union of Texas; Chas Moore, Austin Justice Coalition; Katharine Harris, Rice University Baker Institute for Public Policy; Jose Ramon, Cannabis Open Carry Walks; Karen Reeves, CenTex Community Outreach; Mark Gonzalez, Nueces County District Attorney; Jeff LeBlanc, Republican Liberty Caucus of Texas; John Baucum, Republicans Against Marijuana Prohibition; Bryon Adinoff and Heather Fazio, Texans for Responsible Marijuana Policy; Jaclyn Finkel, Texas NORML; Christopher Valenzuela, West Texas Movement for Marijuana Law Reform; and 17 individuals; (*Registered, but did not testify*: Chase Bearden, Coalition of Texans with Disabilities; Mandi Hughes, COCW; M. Paige Williams, Dallas County District Attorney's Office; Kory Watkins, Free The Weed In Texas; Jose Carlos Gonzalez, Gonzalez and Associates; Cate Graziani, Grassroots Leadership and Texas Advocates for Justice; Kathleen Mitchell, Just Liberty; Aimee Mobley Turney, League of Women Voters of Texas; Amos Postell, Lone Star Gun Rights; Connor Oakley, The Medical Cannabis Association of Texas; James Dickey, Republican Party of Texas; Chris Howe, Republican Party of Texas; Michael Cargill, Texans for Accountable Government; Lance Lowry, Texas Association of Taxpayers; Douglas Smith, Texas Criminal Justice Coalition; Emily Gerrick, Texas Fair Defense Project; Lonzo Kerr, Texas NAACP; Nicholas Entzi, Texas Pioneers; Snapper Carr, TexCann; Liza Deanda-Garcia, The Hemp and Cannabis Institute Houston; Jesse Williams, TX NORML; and 63 individuals)

Against — Ronnie Morris, City of Grand Prairie; Jimmy Perdue, City of

North Richland Hills (*Registered, but did not testify*: John Fleming, Nacogdoches County Attorney; Stephanie Stephens, Nacogdoches County Attorney; AJ Louderback, Sheriffs' Association of Texas; Wendell Mitchell and Gene Ellis, Texas Police Chiefs Association; Mary Castle, Texas Values; Nicole Hudgens, Texas Values Action; Noel Johnson, Texas Municipal Police Association; Micah Harmon)

On — Terence Holway, Plano police Department; (*Registered, but did not testify*: Shannon Edmonds, Texas District and County Attorneys Association)

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 more than two ounces and up to four ounces. Penalties continue to increase as the amount of marijuana increases.

DIGEST: CSHB 63 would make those who possessed one ounce or less of marijuana liable for a civil penalty of up to \$250 and would eliminate the criminal offense in these cases. The imposition of the civil penalty would not be a conviction and could not be considered one for any purpose. The bill would make it a class C misdemeanor (maximum fine of \$500) to possess one ounce or less of marijuana if the person had previously been held civilly liable two previous times for possession.

It would be a class B misdemeanor to possess more than one ounce and up to two ounces of marijuana. CSHB 63 would make it a defense to prosecution for the crime of possession or delivery of drug paraphernalia if the paraphernalia was used, possessed, or delivered solely for a violation of possessing an ounce or less of marijuana.

Citations. Peace officers would be prohibited from making an arrest solely because of a violation for possessing an ounce or less of marijuana. Peace officers could issue citations that required appearance in a justice

court, and the citation would have to notify persons that they could be subject to a class C misdemeanor if they had previously been assessed two civil penalties.

Court procedures. Prosecutors could bring an action in court to collect the civil penalty or could charge a qualifying person with the class C misdemeanor. A civil action would have to be conducted in the same manner as an offense.

Courts could not issue arrest warrants for the violations and could not require persons to post bail for the offenses. Individuals could not appeal the civil penalty in the justice court. Courts could issue a *capias* for the arrest of individuals who failed to appear or pay the civil penalty.

Before imposing a civil penalty, courts would have to determine whether the person was indigent, and if so, waive the penalty. Courts could order the person to complete up to 10 hours of community service. Courts could waive or reduce the civil penalty for an individual who was not indigent if the person attended an approved substance abuse education course or performed up to 10 hours of court-ordered community service.

If a person previously had been assessed a civil penalty, courts would be required to order the person to attend an approved substance abuse education course, in addition to the civil penalty. If a court found that a person previously had been assessed two civil penalties, it would have to suspend proceedings and notify the prosecutor.

On a plea of guilty or no contest for a class C misdemeanor under the bill and payment of all court costs, judges would have to place the defendant on deferred adjudication probation.

Evidence. Law enforcement officials could seize marijuana possessed by individuals subject to a civil penalty or a class C misdemeanor. If it were seized in relation to a civil offense, it would have to be preserved as if it were evidence for the class C misdemeanor.

Records. The identity of individuals cited and found liable for a civil violation would be confidential and could not be released to the public, except that a person's identity would not be confidential if the person were charged with a class C misdemeanor in connection with the penalty.

Courts could maintain a database or electronic record of civil penalties and could share that information with other courts to determine if a person had previously been assessed a civil penalty. Information in the database or record could not be disclosed to the public.

Other provisions. Justices of the peace would not be entitled to fees for the filing of a civil action under the bill.

CSHB 63 would not affect the authority of peace officers to conduct a search or seize marijuana or other property as contraband under other laws.

Possession of less than an ounce of marijuana that would be subject to a civil penalty or class C misdemeanor under the bill would be added to the definition of delinquent conduct in the Juvenile Justice Code.

The bill would take effect September 1, 2019, and would apply to violations that occur on or after that date.

**SUPPORTERS
SAY:**

CSHB 63 would revise penalties associated with possession of small amounts of marijuana to better reflect the seriousness of the offense and to allow state and local governments to use criminal justice resources more efficiently and effectively. CSHB 63 would not legalize marijuana in Texas, authorize medical marijuana, or promote marijuana. The bill would provide an enforcement alternative so that those possessing marijuana would be held accountable through civil fines and potentially a class C misdemeanor.

Current laws establishing a class B misdemeanor for possessing up to two ounces of marijuana overcriminalize a non-violent behavior that does not pose a serious health or public safety risk. This level of 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. CSHB 63 would keep individuals employable and in school by keeping them out of jail and eliminating criminal records for low-level first- and second-time possession.

CSHB 63 would be fiscally responsible because it is costly for local governments to enforce current laws on possession. These costs include time and resources spent arresting, prosecuting, and locking up those charged and in some cases providing lawyers at taxpayer expense. CSHB 63 could reduce these costs by allowing police officers to issue tickets and have individuals show up later at court, freeing resources to address more serious incidents.

A statewide law is needed so there would be consistent treatment for low-level possession instead of a patchwork of local policies. This could help address geographic and racial disparities in the enforcement of drug laws. CSHB 63 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 63 would not reduce public safety or encourage drug use, nor would it contribute to a "gateway" effect of leading individuals to harder drugs. It still would be illegal to traffic drugs, drive while under the influence, and to be publicly intoxicated. Current punishments would remain for possession of larger amounts of marijuana and selling marijuana. Drug or other searches would be completely unaffected by the bill.

Texans support reduced penalties for possessing small amounts of marijuana. Sixty-nine percent of those surveyed in a 2018 University of Texas/Texas Tribune poll supported reducing punishment for possession of a small amount of marijuana to a citation and a fine.

CSHB 63 would not place police officers in a difficult position when

determining whether something was a civil or criminal offense. The average arrest is for a very small amount of marijuana, and it would be clear how to proceed in these cases. If officers were unsure how to proceed, they could weigh the marijuana. The bill allows courts to share electronic records with other courts and prosecutors so that subsequent offenses would be identified.

OPPONENTS
SAY:

Marijuana is a potentially harmful drug and possessing even small amounts should continue to be treated as such under current 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. Some jurisdictions use current law to issue a citation and a summons to appear in court. In some cases, jail sentences could be appropriate and motivate addicts to enter treatment or to stop abusing drugs.

Concerns about the costs of enforcing laws on marijuana possession should not override the need to handle these offenses appropriately. Communities concerned about the cost to enforce current law could explore options such as cite-and-summons law.

Marijuana continues to be a public safety concern, and lowering penalties could result in increased marijuana use that could raise serious public safety issues. Related crimes, such as impaired driving, robbery, burglary, and drug dealing could increase.

CSHB 63 would send the wrong message about drug use and could be a pathway for eventual legalization. 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 and for whom marijuana could serve as a gateway to other drug use.

OTHER
OPPONENTS

The process that would be established by CSHB 63 could be unwieldy and unworkable. It could be difficult for police officers on the street to know

SAY: whether to proceed civilly or criminally, and making a wrong choice could jeopardize a case. It could be difficult to know whether someone had a previous civil fine because courts would create their own electronic list.

Rather than institute a civil fine for low-level possession of one ounce or less of marijuana, the bill should make these offenses class C misdemeanors. This would adjust the penalty to be more appropriate and avoid imposing jail time but keep incidents in the criminal justice arena.

NOTES: According to the Legislative Budget Board, the bill would result in a positive impact of \$5.3 million on general revenue related funds through fiscal 2020-21.