

BILL ANALYSIS

C.S.H.B. 441
By: Zwiener
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Individuals who are arrested for possessing small amounts of marihuana face criminal charges that can dramatically impact their futures. Currently, possession of less than two ounces of marihuana is a Class B misdemeanor, which is punishable by imprisonment for up to 180 days, a fine up to \$2,000, and a 180-day driver's license suspension. Such consequences for individuals who have not posed a threat to their communities are excessive and can harm their ability to find housing or employment and their ability to positively contribute to their communities. Additionally, marihuana-related arrests place a significant and unnecessary financial burden on the state by contributing to growing prison populations and preventing law enforcement from pursuing violent offenders. For example, it has been reported that in 2015, just under 69,000 marihuana-related arrests cost taxpayers \$1.5 billion in court, police, and corrections expenses. C.S.H.B. 441 seeks to lower the penalty for possession of one ounce or less of marihuana to a Class C misdemeanor, remove the 180-day driver's license suspension, require law enforcement to issue citations instead of arresting individuals for this conduct, and allow the expungement of related records for first-time offenses.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change 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. 441 amends the Health and Safety Code to decrease the penalty for the possession of one ounce or less of marihuana from a Class B misdemeanor to a Class C misdemeanor.

C.S.H.B. 441 amends the Code of Criminal Procedure to prohibit a peace officer who is charging a person with committing an offense of possession of one ounce or less of marihuana or with the offense of possession with intent to use drug paraphernalia in relation to a controlled substance for certain purposes from arresting the person and requires the officer instead to issue the person a citation. The bill authorizes the expunction of a person's records relating to such a complaint if the person makes a written request under oath to have the records expunged and the following conditions are met:

- the person was acquitted of the offense; or
- the complaint was dismissed and at least:
 - 180 days have elapsed from the date of the dismissal; or
 - one year has elapsed from the date of the citation.

C.S.H.B. 441 requires the court to order all complaints, verdicts, sentences, and prosecutorial and law enforcement records and any other documents relating to the offense expunged from a person's record upon finding that the person satisfies the applicable requirements. The bill requires a justice or municipal court to require a person who requests the expungement to pay a \$30 fee to defray the cost of notifying state agencies of the orders of expungement. The bill's procedures for expunction are expressly separate and distinct from statutory procedures for a person who is entitled to the expunction of records and files relating to an arrest for a felony or misdemeanor.

C.S.H.B. 441 requires a judge to defer further proceedings without entering an adjudication of guilt and to place the defendant on probation on plea of guilty or nolo contendere for such a marijuana or drug paraphernalia possession offense unless the defendant has previously received a deferral of disposition for either offense committed within the 12-month period preceding the date of the commission of the instant offense. The bill requires a court that dismisses a complaint for a person charged with such an offense to notify the defendant in writing of the person's expunction rights under the bill's provisions and provide the person with a copy of those provisions. The dismissed complaint is not a conviction, and it may not be used against the person for any purpose.

C.S.H.B. 441 amends the Transportation Code to specify that a fine-only offense is not considered a drug offense for purposes of the automatic suspension of a person's driver's license based on a final conviction of a drug offense. This provision takes effect on the 91st day after the date the office of the attorney general publishes the following findings in the Texas Register:

- the legislature has adopted a resolution expressing opposition to a law meeting the requirements of applicable federal law in suspending, revoking, or denying the driver's license of a person convicted of a fine-only drug offense for a period of six months;
- the governor has submitted to the U.S. secretary of transportation a written certification of the governor's opposition to the enactment or enforcement of a law required under that federal law as that law relates to fine-only offenses and a written certification that the legislature has adopted the resolution; and
- the U.S. secretary of transportation has responded to the governor's submission and certified that highway funds will not be withheld from the state in response to the partial repeal of the state law.

C.S.H.B. 441 amends the Government Code to make a conforming change.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 441 differs from the original in minor or nonsubstantive ways to make technical corrections.