

SUBJECT: Revisions to controlled substances laws

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Talton, Dunnam, Farrar, Galloway, Hinojosa, Keel, Nixon, A. Reyna  
0 nays  
1 absent — Place

WITNESSES: For — None  
Against — None  
On — David Boatwright, Johnny R. Hatcher, Department of Public Safety; Cynthia Culmo, Texas Department of Health

DIGEST: HB 1070 would add a new penalty group to the list of groups that define drug offenses, eliminate statutory references to drug schedules, allow oversight of home schools under law regulating controlled substances, change DPS procedures for revoking and suspending controlled substance registrations, and allow the compilation of statistical data concerning certain prescriptions.

HB 1070 would take effect January 1, 1998.

**Penalty groups** (Penalty groups are classifications of drugs used to establish criminal penalties for violations of the controlled substances law) HB 1070 would establish a new penalty group, I-A, for lysergic acid diethylamide (LSD). The bill would create offenses for manufacturing, delivering and possessing LSD. Punishments for manufacturing or delivering LSD would be either a third-, second-, or first-degree felony, or life in prison or a term 15 to 99 years, depending on quantity involved. Punishments for possession of LSD would be either a state jail, third-, second- or first-degree felony or life in prison or a term of 15 to 99 years, depending on the quantity involved.

HB 1070 would make other changes in the penalty groups by deleting, moving and adding substances.

**Drug schedules** (Schedules are used to define how classes of drugs are regulated.) HB 1070 would require the health commissioner, with the approval of the Texas Board of Health, to establish Schedules I, I-A, II, III, IV, and V of controlled substances. The commissioner would be able to add or delete substances to the schedules and to modify them. By December 1, 1997, the commissioner would be required to file with the secretary of state a list of substances in each schedule.

Instead of publishing the schedules annually by filing a copy with the secretary of state, the commissioner would be required to publish them by filing them with the secretary of state within five working days of the Board of Health approving a change made by the commissioner. A schedule or a change that was approved by the Board of Health could not take effect until at least 21 days after the schedule or modification had been published in the Texas Register, unless an emergency existed.

The bill would delete from the Health and Safety Code Schedules I, I-A, II, III, IV, and V.

**Home schools.** HB 1070 would exclude home schools from provisions that exempt the educational and research programs of private schools, school districts and public and private institutions of higher education from controlled substance registration and other permitting requirements concerning chemical precursors and laboratory apparatus. Home schools also would be excluded from requirements that DPS and the Texas Education Agency adopt a memorandum of understanding concerning private schools and school districts reporting information on controlled substances, chemical precursors and laboratory apparatus used for educational or research activities.

**Suspension and revocation of controlled substance registration.** HB 1070 would change the procedure for cancelling, suspending, probating and revoking controlled substances registrations. The bill would eliminate the current process of requiring a prosecutor in a district court or the attorney general to file and prosecute judicial proceedings for the suspension or

revocation of a registration upon presentation of evidence by DPS. Instead proceedings would subject to the Administrative Procedure and Practices Act.

The bill also would allow DPS to place on probation a person whose license had been suspended and to reprimand registrants for specified reasons and would authorize DPS to accept registrations that are voluntarily surrendered

**Prescription data.** HB 1070 would authorize DPS to create, use and report statistical data about triplicate prescriptions used for Schedule II drugs. DPS would have to remove information reasonably likely to reveal the identity of patients, practitioners or others.

HB 1070 would expand DPS' authorization to give access to the prescription information to certain law enforcement and prosecutorial officials, pharmacists or practitioners inquiring about their own activities or the prescription history of specific patients.

**Chemical precursors and laboratory apparatus.** HB 1070 would move within the Health and Safety Code the offenses of unlawfully transferring or receiving specified chemical precursors or chemical laboratory apparatus. The bill would change the penalties for these offenses from Class A misdemeanors or third-degree felonies to state jail felonies, except that repeat offenses would be third-degree felonies.

The bill also would create an offense for transferring precursor substances or chemical laboratory apparatus for unlawful manufacturing. These offenses would be third-degree felonies.

The bill would make changes in the list of chemical precursors and the requirements of persons who hold permits for chemical precursors and also change what is considered chemical laboratory apparatus and DPS oversight of the apparatuses.

**Miscellaneous.** The bill would make numerous other changes including:

- prohibiting persons from prescribing and possessing a controlled substance unless registered with DPS;

- not requiring registration with DPS for officers or employees of Texas, another state, or the United States who are lawfully engaged in law enforcement relating to a controlled substance or drug or customs law and were authorized to possess the controlled substance as part of their official duties;
- allowing DPS to refuse to issue controlled substance registrations to persons who refuse to consent to allowing the director to inspect records, controlled substances and other items; and
- making changes in DPS' authority to deny controlled substances registration.

**SUPPORTERS  
SAY:**

HB 1070 is necessary to update current law on controlled substances, to clean up the current statutes by bringing Texas law in compliance with federal law and to update other references in the law.

**Penalty groups.** HB 1070 would add a new penalty group, I-A, to the classifications of drugs used to define criminal violations of the controlled substances act. The new group would be composed of LSD and is necessary because the drug is abused in such small amounts that the more serious penalties are never applied to offenders as they are to persons who violate the laws with large amounts of other drugs. HB 1070 would allow LSD to be treated like other illegal drugs and for penalties for offenses to increase as the amount of drug involved increased.

HB 1070 also would include two drugs, flunitrazepam or rohypnol, commonly known as “date rape drugs” in Penalty Group 1 to reflect the seriousness involved with violating the law concerning these drugs.

Other changes to the penalty groups would bring the statute in line with federal law.

**Drug schedules.** By eliminating statutory references to drug schedules, HB 1070 would clear up confusion over what schedules are in effect. The drug schedules are used to define classes of drugs for regulation, such as for registrations and permits. Although current law includes these lists of drug schedules, the health commissioner has authority to make changes to the

schedule. This means that the statutory schedules may not be the ones in effect. By eliminating the statutory schedules, HB 1070 would ensure that persons turn to the schedules published by the health commissioner.

Penalty groups are used to define criminal offenses, and these would remain in the statute.

**Home school oversight.** HB 1070 would ensure that there is some oversight over home schools' use of controlled substances, chemical precursors and laboratory apparatuses. The bill would not prohibit home schools from using these substances but would require that they go through the standard permitting and registration procedures. For example, if a home school wanted to purchase a chemical precursor or laboratory apparatus, it could do so either under the current procedure that requires a 21-day waiting period or by obtaining a permit.

The current exemption from registration and permitting requirements for the education and research programs of private schools, school districts and public and private universities is acceptable because these entities are overseen by other authorities such as the Texas Education Agency or the Higher Education Coordinating Board.

**Suspension and revocation of registration.** HB 1070 would establish a more appropriate method for DPS to revoke and suspend registrations. Currently, the cases go to a district court if DPS presents sufficient evidence to a local prosecutor or the attorney general. HB 1070 would standardize these procedures with those of other state agencies by requiring that they operate under the Administrative Procedure and Practices Act. This would be a more efficient process and would ensure that all registrants are given the full range of due process and other rights including the right to go to district court upon appeal.

**Prescription data.** HB 1070 would allow DPS to compile statistical data concerning triplicate prescriptions that are used for Schedule II drugs. This would allow persons to study the use of these drugs. However, the bill would require that the identity of patients, practitioners and others be kept confidential.

**Chemical precursors and laboratory apparatus.** HB 1070 would codify changes that have been made by DPS rule to provisions concerning chemical precursors and laboratory equipment.

OPPONENTS  
SAY:

**Penalty groups.** The punishments for manufacturing or delivering LSD, found in the new Penalty Group I-A, should begin at the state jail level as they do for other penalty groups.

**Drug schedules.** It is unnecessary to require changes made to the drug schedules by the health commissioner to be approved by the Board of Health. Currently, changes made to conform to federal law have to be adopted and published according to standard procedures, and other changes to the schedules are made according to standard procedures for rule changes such as publishing the proposal and accepting public comments.

**Home schools.** Home schools, held by the courts to be private schools, should be given the same exception to requirements concerning oversight and registration that is given to other private schools.

**Suspension and revocation of controlled substance registration.** The current process for suspending and revoking registration should be retained. It ensures that registrants are afforded the maximum protections against unfair decisions by having the case brought before the district court.

NOTES:

The companion bill, SB 1011 by Madla, is pending in the Senate Criminal Justice Committee.