

Texas Health and Safety Code

Sec. 161.252. POSSESSION, PURCHASE, CONSUMPTION, OR RECEIPT OF CIGARETTES OR TOBACCO PRODUCTS BY MINORS PROHIBITED.

- (a) An individual who is younger than 18 years of age commits an offense if the individual:
- (1) possesses, purchases, consumes, or accepts a cigarette or tobacco product; or
 - (2) falsely represents himself or herself to be 18 years of age or older by displaying proof of age that is false, fraudulent, or not actually proof of the individual's own age in order to obtain possession of, purchase, or receive a cigarette or tobacco product.
- (b) It is an exception to the application of this section that the individual younger than 18 years of age possessed the cigarette or tobacco product in the presence of:
- (1) an adult parent, a guardian, or a spouse of the individual; or
 - (2) an employer of the individual, if possession or receipt of the tobacco product is required in the performance of the employee's duties as an employee.
- (c) It is an exception to the application of this section that the individual younger than 18 years of age is participating in an inspection or test of compliance in accordance with Section 161.088.
- (d) An offense under this section is punishable by a fine not to exceed \$250.

Sec. 481.121. OFFENSE: POSSESSION OF MARIHUANA. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a usable quantity of marihuana.

- (b) An offense under Subsection (a) is:
- (1) a Class B misdemeanor if the amount of marihuana possessed is two ounces or less;
 - (2) a Class A misdemeanor if the amount of marihuana possessed is four ounces or less but more than two ounces;
 - (3) a state jail felony if the amount of marihuana possessed is five pounds or less but more than four ounces;
 - (4) a felony of the third degree if the amount of marihuana possessed is 50 pounds or less but more than 5 pounds;
 - (5) a felony of the second degree if the amount of marihuana possessed is 2,000 pounds or less but more than 50 pounds; and
 - (6) punishable by imprisonment in the institutional division of the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000, if the amount of marihuana possessed is more than 2,000 pounds.

Sec. 481.122. OFFENSE: DELIVERY OF CONTROLLED SUBSTANCE OR MARIHUANA TO CHILD.

- (a) A person commits an offense if the person knowingly delivers a controlled substance listed in Penalty Group 1, 1-A, 2, or 3 or knowingly delivers marihuana and the person delivers the controlled substance or marihuana to a person:

- (1) who is a child;
 - (2) who is enrolled in a public or private primary or secondary school; or
 - (3) who the actor knows or believes intends to deliver the controlled substance or marihuana to a person described by Subdivision (1) or (2).
- (b) It is an affirmative defense to prosecution under this section that:
- (1) the actor was a child when the offense was committed; or
 - (2) the actor:
 - (A) was younger than 21 years of age when the offense was committed;
 - (B) delivered only marihuana in an amount equal to or less than one-fourth ounce; and
 - (C) did not receive remuneration for the delivery.
- (c) An offense under this section is a felony of the second degree.
- (d) In this section, "child" means a person younger than 18 years of age.
- (e) If conduct that is an offense under this section is also an offense under another section of this chapter, the actor may be prosecuted under either section or both.

Sec. 481.125. OFFENSE: POSSESSION OR DELIVERY OF DRUG

PARAPHERNALIA. (a) A person commits an offense if the person knowingly or intentionally uses or possesses with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this chapter or to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

(b) A person commits an offense if the person knowingly or intentionally delivers, possesses with intent to deliver, or manufactures with intent to deliver drug paraphernalia knowing that the person who receives or who is intended to receive the drug paraphernalia intends that it be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this chapter or to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

(c) A person commits an offense if the person commits an offense under Subsection (b), is 18 years of age or older, and the person who receives or who is intended to receive the drug paraphernalia is younger than 18 years of age and at least three years younger than the actor.

(d) An offense under Subsection (a) is a Class C misdemeanor.

(e) An offense under Subsection (b) is a Class A misdemeanor, unless it is shown on the trial of a defendant that the defendant has previously been convicted under Subsection (b) or (c), in which event the offense is punishable by confinement in jail for a term of not more than one year or less than 90 days.

(f) An offense under Subsection (c) is a state jail felony.

Sec. 481.134. DRUG-FREE ZONES. (a) In this section:

- (1) "Minor" means a person who is younger than 18 years of age.

(2) "Institution of higher education" means any public or private technical institute, junior college, senior college or university, medical or dental unit, or other agency of higher education as defined by Section 61.003, Education Code.

(3) "Playground" means any outdoor facility that is not on the premises of a school and that:

(A) is intended for recreation;

(B) is open to the public; and

(C) contains three or more separate apparatus intended for the recreation of children, such as slides, swing sets, and teeterboards.

(4) "Premises" means real property and all buildings and appurtenances pertaining to the real property.

(5) "School" means a private or public elementary or secondary school or a day-care center, as defined by Section 42.002, Human Resources Code.

(6) "Video arcade facility" means any facility that:

(A) is open to the public, including persons who are 17 years of age or younger;

(B) is intended primarily for the use of pinball or video machines; and

(C) contains at least three pinball or video machines.

(7) "Youth center" means any recreational facility or gymnasium that:

(A) is intended primarily for use by persons who are 17 years of age or younger; and

(B) regularly provides athletic, civic, or cultural activities.

(b) An offense otherwise punishable as a state jail felony under Section 481.112, 481.113, 481.114, or 481.120 is punishable as a felony of the third degree, and an offense otherwise punishable as a felony of the second degree under any of those sections is punishable as a felony of the first degree, if it is shown at the punishment phase of the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of premises owned, rented, or leased by an institution of higher learning, the premises of a public or private youth center, or a playground; or

(2) in, on, or within 300 feet of the premises of a public swimming pool or video arcade facility.

(c) The minimum term of confinement or imprisonment for an offense otherwise punishable under Section 481.112(c), (d), (e), or (f), 481.113(c), (d), or (e), 481.114(c), (d), or (e), 481.115(c)-(f), 481.116(c), (d), or (e), 481.117(c), (d), or (e), 481.118(c), (d), or (e), 481.120(b)(4), (5), or (6), or 481.121(b)(4), (5), or (6) is increased by five years and the maximum fine for the offense is doubled if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of premises of a school or a public or private youth center; or

(2) on a school bus.

(d) An offense otherwise punishable under Section 481.112(b), 481.113(b), 481.114(b), 481.115(b), 481.116(b), 481.120(b)(3), or 481.121(b)(3) is a felony of the third degree if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board or the premises of a public or private youth center; or

(2) on a school bus.

(e) An offense otherwise punishable under Section 481.117(b), 481.119(a), 481.120(b)(2), or 481.121(b)(2) is a state jail felony if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board or the premises of a public or private youth center; or

(2) on a school bus.

(f) An offense otherwise punishable under Section 481.118(b), 481.119(b), 481.120(b)(1), or 481.121(b)(1) is a Class A misdemeanor if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board or the premises of a public or private youth center; or

(2) on a school bus.

(g) Subsection (f) does not apply to an offense if:

(1) the offense was committed inside a private residence; and

(2) no minor was present in the private residence at the time the offense was committed.

(h) Punishment that is increased for a conviction for an offense listed under this section may not run concurrently with punishment for a conviction under any other criminal statute.

Sec. 481.140. USE OF CHILD IN COMMISSION OF OFFENSE.

(a) If it is shown at the punishment phase of the trial of an offense otherwise punishable as a state jail felony, felony of the third degree, or felony of the second degree under Section 481.112, 481.1121, 481.113, 481.114, 481.120, or 481.122 that the defendant used or attempted to use a child younger than 18 years of age to commit or assist in the commission of the offense, the punishment is increased by one degree, unless the defendant used or threatened to use force against the child or another to gain the child's assistance, in which event the punishment for the offense is a felony of the first degree.

(b) Notwithstanding Article 42.08, Code of Criminal Procedure, if punishment for a defendant is increased under this section, the court may not order the sentence for the offense to run concurrently with any other sentence the court imposes on the defendant.

Sec. 482.002. UNLAWFUL DELIVERY OR MANUFACTURE WITH INTENT TO DELIVER; CRIMINAL PENALTY.

(a) A person commits an offense if the person knowingly or intentionally manufactures with the intent to deliver or delivers a simulated controlled substance and the person:

(1) expressly represents the substance to be a controlled substance;

(2) represents the substance to be a controlled substance in a manner that would lead a reasonable person to believe that the substance is a controlled substance; or

(3) states to the person receiving or intended to receive the simulated controlled substance that the person may successfully represent the substance to be a controlled substance to a third party.

(b) It is a defense to prosecution under this section that the person manufacturing with the intent to deliver or delivering the simulated controlled substance was:

- (1) acting in the discharge of the person's official duties as a peace officer;
- (2) manufacturing the substance for or delivering the substance to a licensed medical practitioner for use as a placebo in the course of the practitioner's research or practice; or

(3) a licensed medical practitioner, pharmacist, or other person authorized to dispense or administer a controlled substance, and the person was acting in the legitimate performance of the person's professional duties.

(c) It is not a defense to prosecution under this section that the person manufacturing with the intent to deliver or delivering the simulated controlled substance believed the substance to be a controlled substance.

(d) An offense under this section is a state jail felony.