

By: Murr

H.B. No. 208

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the punishment for certain controlled substance  
3 offenses committed in a drug-free zone; increasing criminal  
4 penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Sections 481.134(b) and (c), Health and Safety  
7 Code, as amended by Chapters 584 (S.B. 768) and 807 (H.B. 1540),  
8 Acts of the 87th Legislature, Regular Session, 2021, are reenacted  
9 and amended to read as follows:

10 (b) An offense otherwise punishable as a state jail felony  
11 under Section 481.112, 481.1121, 481.1123, 481.113, 481.114, or  
12 481.120 is punishable as a felony of the third degree, an offense  
13 otherwise punishable as a felony of the third degree under any of  
14 those sections is punishable as a felony of the second degree, and  
15 an offense otherwise punishable as a felony of the second degree  
16 under any of those sections is punishable as a felony of the first  
17 degree, if it is shown at the punishment phase of the trial of the  
18 offense that the offense was committed:

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

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

24 (3) by any unauthorized person 18 years of age or

1 older, in, on, or within 1,000 feet of premises owned, rented, or  
2 leased by a general residential operation operating as a  
3 residential treatment center.

4 (c) The minimum term of confinement or imprisonment for an  
5 offense otherwise punishable under Section 481.112(d) [~~481.112(e),~~  
6 ~~(d)~~], (e), or (f), 481.1121(b)(3) [~~481.1121(b)(2), (3)~~], or (4),  
7 481.1123(d) [~~481.1123(e), (d)~~], (e), or (f), 481.113(d)  
8 [~~481.113(c), (d)~~], or (e), 481.114(d) [~~481.114(c), (d)~~], or (e),  
9 481.115(c), (d), (e), or (f) [~~481.115(c)-(f)~~], 481.1151(b)(2),  
10 (3), (4), or (5), 481.116(c), (d), or (e), 481.1161(b)(4), (5), or  
11 (6), 481.117(c), (d), or (e), 481.118(c), (d), or (e),  
12 481.120(b)(5) [~~481.120(b)(4), (5)~~], or (6), or 481.121(b)(4), (5),  
13 or (6) is increased by five years and the maximum fine for the  
14 offense is doubled if it is shown on the trial of the offense that  
15 the offense was committed:

16 (1) in, on, or within 1,000 feet of the premises of a  
17 school, the premises of a public or private youth center, or a  
18 playground;

19 (2) on a school bus; or

20 (3) by any unauthorized person 18 years of age or  
21 older, in, on, or within 1,000 feet of premises owned, rented, or  
22 leased by a general residential operation operating as a  
23 residential treatment center.

24 SECTION 2. Section 481.134, Health and Safety Code, is  
25 amended by adding Subsection (c-1) to read as follows:

26 (c-1) An offense otherwise punishable under Section  
27 481.112(c), 481.1121(b)(2), 481.1123(c), 481.113(c), 481.114(c),

1 or 481.120(b)(4) is a felony of the first degree if it is shown on  
2 the trial of the offense that the offense was committed:

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

6 (2) on a school bus.

7 SECTION 3. Article 42A.054(a), Code of Criminal Procedure,  
8 is amended to read as follows:

9 (a) Article 42A.053 does not apply to a defendant adjudged  
10 guilty of an offense under:

11 (1) Section 15.03, Penal Code, if the offense is  
12 punishable as a felony of the first degree;

13 (2) Section 19.02, Penal Code (Murder);

14 (3) Section 19.03, Penal Code (Capital Murder);

15 (4) Section 20.04, Penal Code (Aggravated  
16 Kidnapping);

17 (5) Section 20A.02, Penal Code (Trafficking of  
18 Persons);

19 (6) Section 20A.03, Penal Code (Continuous  
20 Trafficking of Persons);

21 (7) Section 21.11, Penal Code (Indecency with a  
22 Child);

23 (8) Section 22.011, Penal Code (Sexual Assault);

24 (9) Section 22.021, Penal Code (Aggravated Sexual  
25 Assault);

26 (10) Section 22.04(a)(1), Penal Code (Injury to a  
27 Child, Elderly Individual, or Disabled Individual), if:

1 (A) the offense is punishable as a felony of the  
2 first degree; and

3 (B) the victim of the offense is a child;

4 (11) Section 29.03, Penal Code (Aggravated Robbery);

5 (12) Section 30.02, Penal Code (Burglary), if:

6 (A) the offense is punishable under Subsection  
7 (d) of that section; and

8 (B) the actor committed the offense with the  
9 intent to commit a felony under Section 21.02, 21.11, 22.011,  
10 22.021, or 25.02, Penal Code;

11 (13) Section 43.04, Penal Code (Aggravated Promotion  
12 of Prostitution);

13 (14) Section 43.05, Penal Code (Compelling  
14 Prostitution);

15 (15) Section 43.25, Penal Code (Sexual Performance by  
16 a Child);

17 (16) Chapter 481, Health and Safety Code, for which  
18 punishment is increased under:

19 (A) Section 481.140 of that code (Use of Child in  
20 Commission of Offense); or

21 (B) Section 481.134(c), (c-1), (d), (e), or (f)  
22 of that code (Drug-free Zones) if it is shown that the defendant has  
23 been previously convicted of an offense for which punishment was  
24 increased under any of those subsections; or

25 (17) Section 481.1123, Health and Safety Code  
26 (Manufacture or Delivery of Substance in Penalty Group 1-B), if the  
27 offense is punishable under Subsection (d), (e), or (f) of that

1 section.

2 SECTION 4. Article 42A.056, Code of Criminal Procedure, is  
3 amended to read as follows:

4 Art. 42A.056. LIMITATION ON JURY-RECOMMENDED COMMUNITY  
5 SUPERVISION. A defendant is not eligible for community supervision  
6 under Article 42A.055 if the defendant:

7 (1) is sentenced to a term of imprisonment that  
8 exceeds 10 years;

9 (2) is convicted of a state jail felony for which  
10 suspension of the imposition of the sentence occurs automatically  
11 under Article 42A.551;

12 (3) is adjudged guilty of an offense under Section  
13 19.02, Penal Code;

14 (4) is convicted of an offense under Section 21.11,  
15 22.011, or 22.021, Penal Code, if the victim of the offense was  
16 younger than 14 years of age at the time the offense was committed;

17 (5) is convicted of an offense under Section 20.04,  
18 Penal Code, if:

19 (A) the victim of the offense was younger than 14  
20 years of age at the time the offense was committed; and

21 (B) the actor committed the offense with the  
22 intent to violate or abuse the victim sexually;

23 (6) is convicted of an offense under Section 20A.02,  
24 20A.03, 43.04, 43.05, or 43.25, Penal Code;

25 (7) is convicted of an offense for which punishment is  
26 increased under Section 481.134(c), (c-1), (d), (e), or (f), Health  
27 and Safety Code, if it is shown that the defendant has been

1 previously convicted of an offense for which punishment was  
2 increased under any of those subsections; or

3 (8) is convicted of an offense under Section 481.1123,  
4 Health and Safety Code, if the offense is punishable under  
5 Subsection (d), (e), or (f) of that section.

6 SECTION 5. Article 42A.102(b), Code of Criminal Procedure,  
7 is amended to read as follows:

8 (b) In all other cases, the judge may grant deferred  
9 adjudication community supervision unless:

10 (1) the defendant is charged with an offense:

11 (A) under Section 20A.02, 20A.03, 49.045, 49.05,  
12 49.065, 49.07, or 49.08, Penal Code;

13 (B) under Section 49.04 or 49.06, Penal Code,  
14 and, at the time of the offense:

15 (i) the defendant held a commercial  
16 driver's license or a commercial learner's permit; or

17 (ii) the defendant's alcohol concentration,  
18 as defined by Section 49.01, Penal Code, was 0.15 or more;

19 (C) for which punishment may be increased under  
20 Section 49.09, Penal Code;

21 (D) for which punishment may be increased under  
22 Section 481.134(c), (c-1), (d), (e), or (f), Health and Safety  
23 Code, if it is shown that the defendant has been previously  
24 convicted of an offense for which punishment was increased under  
25 any one of those subsections; or

26 (E) under Section 481.1123, Health and Safety  
27 Code, that is punishable under Subsection (d), (e), or (f) of that

1 section;

2 (2) the defendant:

3 (A) is charged with an offense under Section  
4 21.11, 22.011, 22.021, 43.04, or 43.05, Penal Code, regardless of  
5 the age of the victim, or a felony described by Article 42A.453(b),  
6 other than a felony described by Subdivision (1)(A) or (3)(B) of  
7 this subsection; and

8 (B) has previously been placed on community  
9 supervision for an offense under Paragraph (A);

10 (3) the defendant is charged with an offense under:

11 (A) Section 21.02, Penal Code; or

12 (B) Section 22.021, Penal Code, that is  
13 punishable under Subsection (f) of that section or under Section  
14 12.42(c)(3) or (4), Penal Code; or

15 (4) the defendant is charged with an offense under  
16 Section 19.02, Penal Code, except that the judge may grant deferred  
17 adjudication community supervision on determining that the  
18 defendant did not cause the death of the deceased, did not intend to  
19 kill the deceased or another, and did not anticipate that a human  
20 life would be taken.

21 SECTION 6. The change in law made by this Act applies only  
22 to an offense committed on or after the effective date of this  
23 Act. An offense committed before the effective date of this Act is  
24 governed by the law in effect on the date the offense was committed,  
25 and the former law is continued in effect for that purpose. For  
26 purposes of this section, an offense was committed before the  
27 effective date of this Act if any element of the offense was

1 committed before that date.

2 SECTION 7. This Act takes effect September 1, 2023.