87R1411 GCB-F

By:  Allen H.B. No. 2146

A BILL TO BE ENTITLED

AN ACT

relating to the punishment of certain controlled substance offenses committed in a drug-free zone.

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

SECTION 1.  Section 481.134, Health and Safety Code, is amended by amending Subsections (b), (c), (d), (e), and (f) and adding Subsection (i) to read as follows:

(b)  An offense otherwise punishable as a state jail felony under Section 481.112, 481.1121, 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 500 [~~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), 481.1121(b)(2), (3), or (4), 481.113(c), (d), or (e), 481.114(c), (d), or (e), 481.115(c), (d), (e), or (f) [~~481.115(c)-(f)~~], 481.1151(b)(2), (3), (4), or (5), 481.116(c), (d), or (e), 481.1161(b)(4), (5), or (6), 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 500 [~~1,000~~] feet of the premises of a school, the premises of a public or private youth center, or a playground; or

(2)  on a school bus.

(d)  An offense otherwise punishable under Section 481.112(b), 481.1121(b)(1), 481.113(b), 481.114(b), [~~481.115(b), 481.1151(b)(1), 481.116(b),~~] 481.1161(b)(3), 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 500 [~~1,000~~] feet of any real property that is owned, rented, or leased to a school or school board, the premises of a public or private youth center, or a playground; or

(2)  on a school bus.

(e)  An offense otherwise punishable under Section [~~481.117(b),~~] 481.119(a) or[~~,~~] 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 500 [~~1,000~~] feet of any real property that is owned, rented, or leased to a school or school board, the premises of a public or private youth center, or a playground; or

(2)  on a school bus.

(f)  An offense otherwise punishable under Section [~~481.118(b),~~] 481.119(b) or[~~,~~] 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 500 [~~1,000~~] feet of any real property that is owned, rented, or leased to a school or school board, the premises of a public or private youth center, or a playground; or

(2)  on a school bus.

(i)  Punishment may not be increased under this section if it is shown on the trial of the offense that the defendant was driving or otherwise in transit through an area described by Subsection (b)(1) or (2), (c)(1), (d)(1), (e)(1), or (f)(1) at the time the offense occurred.

SECTION 2.  Article 18.19(d), Code of Criminal Procedure, is amended to read as follows:

(d)  A person either convicted or receiving deferred adjudication under Chapter 46, Penal Code, is entitled to the weapon seized upon request to the court in which the person was convicted or placed on deferred adjudication. However, the court entering the judgment shall order the weapon destroyed, sold at public sale by the law enforcement agency holding the weapon or by an auctioneer licensed under Chapter 1802, Occupations Code, or forfeited to the state for use by the law enforcement agency holding the weapon or by a county forensic laboratory designated by the court if:

(1)  the person does not request the weapon before the 61st day after the date of the judgment of conviction or the order placing the person on deferred adjudication;

(2)  the person has been previously convicted under Chapter 46, Penal Code;

(3)  the weapon is one defined as a prohibited weapon under Chapter 46, Penal Code;

(4)  the offense for which the person is convicted or receives deferred adjudication was committed in or on the premises of:

(A)  a playground, school, [~~video arcade facility,~~] or youth center, as those terms are defined by Section 481.134, Health and Safety Code; or

(B)  a video arcade facility, as defined by Article 42A.453; or

(5)  the court determines based on the prior criminal history of the defendant or based on the circumstances surrounding the commission of the offense that possession of the seized weapon would pose a threat to the community or one or more individuals.

SECTION 3.  Article 42A.453(a), Code of Criminal Procedure, is amended to read as follows:

(a)  In this article:

(1)  "Playground,"[~~, "playground,"~~] "premises," "school," [~~"video arcade facility,"~~] and "youth center" have the meanings assigned by Section 481.134, Health and Safety Code.

(2)  "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.

SECTION 4.  Article 42A.502(a), Code of Criminal Procedure, is amended to read as follows:

(a)  In this article:

(1)  "Playground,"[~~, "playground,"~~] "premises," "school," [~~"video arcade facility,"~~] and "youth center" have the meanings assigned by Section 481.134, Health and Safety Code.

(2)  "Video arcade facility" has the meaning assigned by Article 42A.453.

SECTION 5.  Section 508.187(f), Government Code, is amended to read as follows:

(f)  In this section:

(1)  "Playground,"[~~, "playground,"~~] "premises," "school," [~~"video arcade facility,"~~] and "youth center" have the meanings assigned by Section 481.134, Health and Safety Code.

(2)  "Video arcade facility" has the meaning assigned by Article 42A.453, Code of Criminal Procedure.

SECTION 6.  Section 508.225(d), Government Code, is amended to read as follows:

(d)  In this section:

(1)  "Playground,"[~~, "playground,"~~] "premises," "school," [~~"video arcade facility,"~~] and "youth center" have the meanings assigned by Section 481.134, Health and Safety Code.

(2)  "Video arcade facility" has the meaning assigned by Article 42A.453, Code of Criminal Procedure.

SECTION 7.  Section 341.906(a), Local Government Code, is amended by amending Subdivision (2) and adding Subdivision (4) to read as follows:

(2)  "Playground," "premises," "school," [~~"video arcade facility,"~~] and "youth center" have the meanings assigned by Section 481.134, Health and Safety Code.

(4)  "Video arcade facility" has the meaning assigned by Article 42A.453, Code of Criminal Procedure.

SECTION 8.  Section 71.028(a), Penal Code, is amended by amending Subdivision (1) and adding Subdivision (3) to read as follows:

(1)  "Institution of higher education," "playground," "premises," "school," [~~"video arcade facility,"~~] and "youth center" have the meanings assigned by Section 481.134, Health and Safety Code.

(3)  "Video arcade facility" has the meaning assigned by Article 42A.453, Code of Criminal Procedure.

SECTION 9.  Section 481.134(a)(6), Health and Safety Code, is repealed.

SECTION 10.  The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 11.  This Act takes effect September 1, 2021.