

DIGEST

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SB 221 Reengrossed

2017 Regular Session

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Present law ("habitual offender law") provides that any person who, after having been convicted of a felony, thereafter commits any subsequent felony within La., upon conviction is subject to the following penalties as provided by present law:

(1) Second felony:

- (a) The person is to be sentenced to imprisonment for a determinate term not less than one-half the longest term and not more than twice the longest term prescribed for a first conviction.

Proposed law decreases the minimum term of imprisonment for such offenders from one-half the longest term to one-third the longest term prescribed for a first conviction.

- (b) If the second felony and the prior felony are sex offenses as defined in present law, the person is to be sentenced to imprisonment at hard labor for a determinate term not less than two-thirds of the longest possible sentence for the conviction and not more than three times the longest possible sentence prescribed for a first conviction, without benefit of probation, parole, or suspension of sentence.

Proposed law retains present law.

- (c) If the second felony and the prior felony are sex offenses as defined in present law and the victims of the previous offense and the instant offense were under the age of 13 years at the time of the commission of the offense, the person is to be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

Proposed law retains present law.

(2) Third felony:

- (a) The person is to be sentenced to imprisonment for a determinate term not less than two-thirds of the longest possible sentence for the conviction and not more than twice the longest possible sentence prescribed for a first conviction.

Proposed law decreases the minimum term of imprisonment for such offenders from two-thirds the longest term to one-half the longest term prescribed for a first conviction.

- (b) If the third felony and the two prior felonies are felonies defined as a crime of violence under present law, a sex offense as defined in present law when the victim is under the age of 18 years at the time of commission of the offense, or as a violation of the Uniform Controlled Dangerous Substances (CDS Law) punishable by imprisonment for 10 years or more, or any other crimes punishable by imprisonment for 12 years or more, or any combination of such crimes, the person is to be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

Proposed law removes persons with a current or prior felony that is a violation of the CDS Law punishable by imprisonment for 10 years or more and any other non-

violent, non-sex offense punishable by imprisonment of 12 years or more from the group of persons who are subject to this sentence.

- (3) Fourth or subsequent felony:
- (a) The person is to be sentenced to imprisonment for the fourth or subsequent felony for a determinate term not less than the longest prescribed for a first conviction but in no event less than 20 years and not more than his natural life.

Proposed law retains present law.

Proposed law provides that if the fourth felony and no prior felony is defined as a crime of violence by present law or defined as a sex offense by present law, the person is to be imprisoned for not less than 20 years nor more than twice the longest possible sentence prescribed for a first conviction. Further provides that if twice the longest possible sentence is less than 20 years, the person is to be imprisoned for 20 years.

- (b) If the fourth felony and two of the prior felonies are defined as a crime of violence under present law, a sex offense as defined in present law when the victim is under the age of 18 years at the time of commission of the offense, or as a violation of the CDS Law punishable by imprisonment for 10 years or more, or of any other crime punishable by imprisonment for 12 years or more, or any combination of such crimes, the person is to be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

Proposed law removes persons with a current or prior felony that is a violation of the CDS Law punishable by imprisonment for 10 years or more and any other non-violent, non-sex offense punishable by imprisonment of 12 years or more from the group of persons who are subject to this sentence.

Present law provides that, for purposes of the habitual offender law, the current offense cannot be counted as a second, third, fourth, or higher offense if more than 10 years have elapsed between the date of the commission of the current offense or offenses and the expiration of the maximum sentence or sentences of the previous conviction or convictions.

Present law further provides that in computing the intervals of time as provided in present law, any period of parole, probation, or incarceration by a person in a penal institution, within or without the state, cannot be included in the computation of any of the 10-year periods between the expiration of the maximum sentence or sentences and the next succeeding offense or offenses.

Proposed law retains present law if the prior offense was a crime of violence or sex offense.

If the prior offense was not a crime of violence or a sex offense, proposed law decreases, from 10 years to five years, the amount of time that must elapse between the current and prior offense to determine whether the offense may be considered a prior offense in order for the habitual offender law to apply.

Proposed law provides that the five- or 10-year period which must elapse between the current and prior offense in order for the habitual offender law not to apply begins upon the expiration of the correctional supervision, or term of imprisonment if the offender is not placed on supervision following imprisonment, for the previous conviction or convictions.

Proposed law defines "correctional supervision" as any period of parole, probation, or incarceration of a person in a penal institution, either within the state of La. or outside of the state.

In the case *State v. Dorthey*, 623 So.2d 1276 (La. 1993), the court held that the trial judge has the option to reduce a sentence mandated by the habitual offender law if the trial judge

finds that the punishment makes no "measurable contribution to acceptable goals of punishment" or that the sentenced amounted to nothing more than "the purposeful imposition of pain and suffering" and is "grossly out of proportion to the severity of the crime".

Proposed law provides that if the court finds that a sentence imposed under the provisions of present law or proposed law to be constitutionally excessive pursuant to the criteria set forth in *State v. Dorthey*, 623 So.2d 1276 (La. 1993), then the court must state for the record the reasons for such finding and impose the most severe sentence that is not constitutionally excessive.

Proposed law applies prospectively only to offenders whose convictions become final on or after Nov. 1, 2017.

(Amends R.S. 15:529.1(A)(1), (3), and (4) and (C); Adds R.S. 15:529.1(I) and (J))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Changes sentence for conviction of second felony not punishable by life imprisonment from $\frac{1}{2}$ of longest possible sentence to $\frac{1}{3}$ longest possible sentence.
2. Provides that the maximum sentence on a fourth felony when no prior offense is a crime of violence or a sex offense is 20 years or twice the possible sentence prescribed for a first conviction, whichever is greater.
3. Provides that the maximum sentence on a fourth felony when two of the prior felonies are crimes of violence or sex offenses and the victim is under the age of 18 years at the time of commission of the offense is life imprisonment without benefit of parole, probation, or suspension of sentence.
4. Changes the cleansing period for offenses that are not crimes of violence or sex offenses under present law from 10 years to five years.
5. Changes the final date for calculating the cleansing period for all offenses whether or not crimes of violence or sex offenses from the expiration of the maximum sentence or sentences of the previous conviction or convictions to the expiration of the correctional supervision for each previous conviction.
6. Deletes proposed law references to a felony class system.
7. Codifies *State v. Dorthey*, 623 So.2d 1276 (La. 1993).
8. Adds definition of "correctional supervision" for purposes of proposed law.
9. Changes effective date from effective date of companion Senate Bill _____ of the 2017 Regular Session to 11/1/17.
10. Adds effective date and provides for prospective application.

Senate Floor Amendments to engrossed bill

1. Deletes the applicability of present law, relative to life without parole, to situations in which the third felony and two prior felonies are violations of either the Uniform Controlled Dangerous Substances Law punishable by imprisonment for 10 years or more or any other crimes punishable by imprisonment for 12 years or more.

2. Deletes "or term of incarceration if no supervision", from "correctional supervision" language as redundant.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the reengrossed bill:

1. Restore present law which provides that for a fourth or subsequent felony, the person shall be sentenced for a determinate term not less than the longest prescribed for a first conviction but in no event less than 20 years and not more than his natural life.
2. Provide that the five- or 10-year period which must elapse between the current and prior offense for the habitual offender law not to apply begins upon the expiration of the correctional supervision, or term of imprisonment if the offender is not placed on supervision following imprisonment, for the previous conviction or convictions.
3. Amend the citation to provide the specific provision of present law that defines "sex offense" (R.S. 15:541).
4. Make technical corrections.