

2018 Regular Session

HOUSE BILL NO. 355

BY REPRESENTATIVE CHAD BROWN

CRIMINAL/SENTENCING: Provides relative to the habitual offender law

1 AN ACT

2 To amend and reenact R.S. 15:529.1(A)(introductory paragraph), (1), (3)(introductory
3 paragraph) and (b), and (4)(introductory paragraph), (b), and (c), (C)(2), (D)(1)(a),
4 (2), and (3), (E), and (J), relative to the habitual offender law; to provide that the
5 habitual offender law shall only be applied to persons whose instant conviction and
6 any prior conviction is for a crime of violence; to provide for definitions; and to
7 provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 15:529.1(A)(introductory paragraph), (1), (3)(introductory
10 paragraph) and (b), and (4)(introductory paragraph), (b), and (c), (C)(2), (D)(1)(a), (2), and
11 (3), (E), and (J) are hereby amended and reenacted to read as follows:

12 §529.1. Sentences for second and subsequent offenses; certificate of warden or clerk
13 of court in the state of Louisiana as evidence

14 A. Any person who, after having been convicted within this state of a felony
15 offense that is a crime of violence, or who, after having been convicted under the
16 laws of any other state or of the United States, or any foreign government of a crime
17 which, if committed in this state would be a felony offense that is a crime of
18 violence, thereafter commits any subsequent felony offense that is a crime of
19 violence within this state, upon conviction of said felony, shall be punished as
20 follows:

1 (1) If the second felony is such that upon a first conviction the ~~offender~~
2 offense would be punishable by imprisonment for any term less than ~~his~~ natural life,
3 then the sentence to imprisonment shall be for a determinate term not less than one-
4 third the longest term and not more than twice the longest term prescribed for a first
5 conviction.

6 * * *

7 (3) If the third felony is such that upon a first conviction, the ~~offender~~
8 offense would be punishable by imprisonment for any term less than ~~his~~ natural life,
9 then the following sentences apply:

10 * * *

11 (b) If the third felony and the two prior felonies are felonies defined as a
12 ~~crime of violence under R.S. 14:2(B), or~~ a sex offense as defined in R.S. 15:541
13 when the victim is under the age of eighteen at the time of commission of the
14 offense, or any combination of such crimes, the person shall be imprisoned for the
15 remainder of his natural life, without benefit of parole, probation, or suspension of
16 sentence.

17 (4) If the fourth or subsequent felony is such that, upon a first conviction the
18 ~~offender~~ offense would be punishable by imprisonment for any term less than ~~his~~
19 natural life, then the following sentences apply:

20 * * *

21 (b) If the fourth felony and no prior felony is defined as a ~~crime of violence~~
22 ~~under R.S. 14:2(B) or~~ as a sex offense under R.S. 15:541, the person shall be
23 imprisoned for not less than twenty years nor more than twice the longest possible
24 sentence prescribed for a first conviction. If twice the possible sentence prescribed
25 for a first conviction is less than twenty years, the person shall be imprisoned for
26 twenty years.

27 (c) If the fourth felony and two of the prior felonies are felonies defined as
28 ~~a crime of violence under R.S. 14:2(B), or~~ a sex offense as defined in R.S. 15:541
29 when the victim is under the age of eighteen at the time of commission of the

1 offense, the person shall be imprisoned for the remainder of his natural life, without
2 benefit of parole, probation, or suspension of sentence.

3 * * *

4 C.

5 * * *

6 (2) The current offense shall not be counted as, respectively, a second, third,
7 fourth, or higher offense if more than ten years have elapsed between the date of the
8 commission of the current offense or offenses and the expiration of correctional
9 supervision, or term of imprisonment if the offender is not placed on supervision
10 following imprisonment, for ~~a crime of violence as defined in R.S. 14:2(B)~~ or a sex
11 offense as defined in R.S. 15:541, or between the expiration of correctional
12 supervision, or term of imprisonment if the offender is not placed on supervision
13 following imprisonment, for each preceding conviction or convictions alleged in the
14 multiple offender bill for ~~a crime of violence as defined in R.S. 14:2(B)~~ or a sex
15 offense as defined in R.S. 15:541 and the date of the commission of the following
16 offense or offenses. In computing the intervals of time as provided in this Paragraph,
17 any period of parole, probation, or incarceration by a person in a penal institution,
18 within or without the state, shall not be included in the computation of any of the
19 ten-year periods between the expiration of correctional supervision, or term of
20 imprisonment if the offender is not placed on supervision following imprisonment,
21 for ~~a crime of violence as defined in R.S. 14:2(B)~~ or a sex offense as defined in R.S.
22 15:541 and the next succeeding offense or offenses.

23 D.(1)(a) If, at any time, either after conviction or sentence, it shall appear
24 that a person convicted of a felony offense that is a crime of violence has previously
25 been convicted of a felony offense that is a crime of violence under the laws of this
26 state, or has been convicted under the laws of any other state, or of the United States,
27 or of any foreign government or country, of a crime, which, if committed in this state
28 would be a felony offense that is a crime of violence, the district attorney of the
29 parish in which subsequent conviction was had may file an information accusing the

1 person of a previous conviction. Whereupon the court in which the subsequent
 2 conviction was had shall cause the person, whether confined in prison or otherwise,
 3 to be brought before it and shall inform him of the allegation contained in the
 4 information and of his right to be tried as to the truth thereof according to law and
 5 shall require the offender to say whether the allegations are true. If he denies the
 6 allegation of the information or refuses to answer or remains silent, his plea or the
 7 fact of his silence shall be entered on the record and he shall be given fifteen days
 8 to file particular objections to the information, as provided in Subparagraph (b) of
 9 this Paragraph. The judge shall fix a day to inquire whether the offender has been
 10 convicted of a prior felony or felonies as set forth in the information.

11 * * *

12 (2) Following a contradictory hearing, the court shall find that the defendant
 13 is:

14 (a) A second offender upon proof of a prior felony conviction for an offense
 15 that is a crime of violence.

16 (b) A third offender, upon proof of two prior felony convictions each for an
 17 offense that is a crime of violence.

18 (c) A fourth offender, upon proof of three or more prior felony convictions
 19 each for an offense that is a crime of violence.

20 (3) When the judge finds that ~~he~~ the person has ~~been convicted of a~~ one or
 21 more prior felony or felonies convictions each for an offense that is a crime of
 22 violence, or if he acknowledges or confesses in open court, after being duly
 23 cautioned as to his rights, that he has been so convicted, the court shall sentence him
 24 to the punishment prescribed in this Section, and shall vacate the previous sentence
 25 if already imposed, deducting from the new sentence the time actually served under
 26 the sentence so vacated. The court shall provide written reasons for its
 27 determination. Either party may seek review of an adverse ruling.

28 E. Whenever it shall become known to any superintendent or prison,
 29 probation, parole, police, or other peace officer, that any person charged with or

1 convicted of a felony offense that is a crime of violence has been previously
 2 convicted of a felony offense that is a crime of violence, he shall immediately report
 3 the fact to the district attorney of the parish in which the charge lies, or the
 4 conviction has been had.

5 * * *

6 J. For purposes of this Section:

7 (1) "~~correctional~~ Correctional supervision" means any period of parole,
 8 probation, or incarceration of a person in a penal institution, either within the state
 9 of Louisiana or outside of the state.

10 (2) "Crime of violence" means any offense defined or enumerated in R.S.
 11 14:2(B).

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 355 Original

2018 Regular Session

Chad Brown

Abstract: Provides that the habitual offender law shall only be applied to persons whose instant conviction and any prior conviction is for a crime of violence.

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 shall be subject to certain enhanced penalties as set forth in present law.

Proposed law amends present law to provide that the habitual offender law shall only be applied to persons whose instant conviction and any prior conviction is for a crime of violence as defined by present law (R.S. 14:2(B)).

Present law provides for the following penalties:

- (1) If the third felony is such that upon a first conviction the offense would be punishable by imprisonment for any term less than natural life, and if the third felony and two prior felonies are defined as a crime of violence or sex offense when the victim is under the age of 18, the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.
- (2) If the fourth or subsequent felony is such that upon a first conviction the offense would be punishable by imprisonment for any term less than natural life, then the following sentences apply:
 - (a) If the fourth felony and no prior felony is defined as a crime of violence or as a sex offense, the person shall be imprisoned for not less than 20 years nor more than twice the longest possible sentence prescribed for a first

conviction. If twice the possible sentence prescribed for a first conviction is less than 20 years, the person shall be imprisoned for 20 years.

- (b) If the fourth felony and two of the prior felonies are felonies defined as a crime of violence or a sex offense when the victim is under the age of eighteen at the time of commission of the offense, the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

Because proposed law provides that the habitual offender law shall only be applied to persons whose instant conviction and any prior conviction is for a crime of violence, proposed law amends present law to remove references to prior convictions that are crimes of violence.

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 five 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. With regard to prior convictions for offenses that are crimes of violence or sex offenses, present law extends this period of time to ten years.

Proposed law amends present law to provide that the five-year period shall apply in cases where the prior conviction is for an offense that is a crime of violence, and the ten-year period shall apply in cases where the prior conviction is a sex offense.

Present law provides the procedure by which a person is convicted as a habitual offender and sentenced under the habitual offender law.

Proposed law makes changes to these provisions of present law to provide that these provisions apply only to persons whose instant conviction and any prior conviction is for a crime of violence as provided in proposed law.

(Amends R.S. 15:529.1(A)(intro. para.), (1), (3)(intro. para.) and (b), and (4)(intro. para.), (b), and (c), (C)(2), (D)(1)(a), (2), and (3), (E), and (J))