

2020 Regular Session

HOUSE BILL NO. 364

BY REPRESENTATIVE GAINES

CRIMINAL/SENTENCING: Provides relative to the sentencing of habitual offenders

1 AN ACT

2 To amend and reenact R.S. 15:529.1(A)(introductory paragraph), (1), (2), (3)(introductory  
3 paragraph) and (b), and (4), (C), (D)(1)(a), (2), and (3), (E), (J), and (K) and Code  
4 of Criminal Procedure Article 893(E)(2), (3)(a), and (4), relative to the habitual  
5 offender law; to provide that the habitual offender law shall only be applied to  
6 persons whose instant conviction and any prior conviction is for a crime of violence  
7 or a sex offense; to provide relative to the application of the habitual offender law  
8 to a conviction that is dismissed and set aside after a deferral of imposition of  
9 sentence; to provide for definitions; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

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

14 §529.1. Sentences for second and subsequent offenses; certificate of warden or clerk  
15 of court in the state of Louisiana as evidence

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

1 offense that is a crime of violence or a sex offense within this state, upon conviction  
2 of ~~said~~ the subsequent felony, shall be punished as follows:

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

8 (2)(a) If the second felony and the prior felony are sex offenses ~~as defined~~  
9 ~~in R.S. 15:541~~, or the prior felony would be a sex offense ~~as defined in R.S. 15:541~~,  
10 except it occurred prior to June 18, 1992, or the conviction was obtained under the  
11 laws of any other state, the United States, or any foreign government, the person  
12 shall be sentenced to imprisonment at hard labor for a determinate term not less than  
13 two-thirds of the longest possible sentence for the conviction and not more than three  
14 times the longest possible sentence prescribed for a first conviction, without benefit  
15 of probation, parole, or suspension of sentence.

16 (b) If the second felony and the prior felony are sex offenses ~~as defined in~~  
17 ~~R.S. 15:541~~, or the prior felony would be a sex offense ~~as defined in R.S. 15:541~~,  
18 except it occurred prior to June 18, 1992, or the conviction was obtained under the  
19 laws of any other state, the United States, or any foreign government, and the victims  
20 of the previous offense and the instant offense were under the age of thirteen years  
21 at the time of the commission of the offense or any part thereof, the person shall be  
22 imprisoned for the remainder of his natural life, without benefit of parole, probation,  
23 or suspension of sentence.

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

27 \* \* \*

28 (b) If the third felony and either of the two prior felonies are felonies defined  
29 as a ~~crime of violence under R.S. 14:2(B)~~, or a sex offense ~~as defined in R.S. 15:541~~

1 when the victim is under the age of eighteen at the time of commission of the  
2 offense, or any combination of such crimes, the person shall be imprisoned for the  
3 remainder of his natural life, without benefit of parole, probation, or suspension of  
4 sentence.

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

8 (a) The person shall be sentenced to imprisonment for the fourth or  
9 subsequent felony for a determinate term not less than the longest prescribed for a  
10 first conviction but in no event less than twenty years and not more than his natural  
11 life.

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

18 (c) If the fourth felony ~~and two~~ or any of the prior felonies are felonies  
19 defined as ~~a crime of violence under R.S. 14:2(B), or a sex offense as defined in R.S.~~  
20 ~~15:541~~ when the victim is under the age of eighteen at the time of commission of the  
21 offense, the person shall be imprisoned for the remainder of his natural life, without  
22 benefit of parole, probation, or suspension of sentence.

23 \* \* \*

24 ~~C.(1) Except as provided in Paragraphs (2) and (3) of this Subsection, the~~  
25 ~~current offense shall not be counted as, respectively, a second, third, fourth, or higher~~  
26 ~~offense if more than five years have elapsed between the date of the commission of~~  
27 ~~the current offense or offenses and the expiration of the correctional supervision, or~~  
28 ~~term of imprisonment if the offender is not placed on supervision following~~  
29 ~~imprisonment, for the previous conviction or convictions, or between the expiration~~

1 of the correctional supervision, or term of imprisonment if the offender is not placed  
 2 on supervision following imprisonment, for each preceding conviction or convictions  
 3 alleged in the multiple offender bill and the date of the commission of the following  
 4 offense or offenses. In computing the intervals of time as provided in this Paragraph,  
 5 any period of parole, probation, or incarceration by a person in a penal institution,  
 6 within or without the state, shall not be included in the computation of any of the  
 7 five-year periods between the expiration of the correctional supervision, or term of  
 8 imprisonment if the offender is not placed on supervision following imprisonment,  
 9 and the next succeeding offense or offenses.

10 (2) ~~Except as provided in Paragraph (3) of this Subsection, the~~ The current  
 11 offense shall not be counted as, respectively, a second, third, fourth, or higher  
 12 offense if more than ten years have elapsed between the date of the commission of  
 13 the current offense or offenses and the expiration of correctional supervision, or term  
 14 of imprisonment if the offender is not placed on supervision following  
 15 imprisonment, for a crime of violence as defined in R.S. 14:2(B) or a sex offense as  
 16 defined in R.S. 15:541, or between the expiration of correctional supervision, or term  
 17 of imprisonment if the offender is not placed on supervision following  
 18 imprisonment, for each preceding conviction or convictions alleged in the multiple  
 19 offender bill for a crime of violence as defined in R.S. 14:2(B) or a sex offense as  
 20 defined in R.S. 15:541 and the date of the commission of the following offense or  
 21 offenses. In computing the intervals of time as provided in this Paragraph, any  
 22 period of parole, probation, or incarceration by a person in a penal institution, within  
 23 or without the state, shall not be included in the computation of any of the ten-year  
 24 periods between the expiration of correctional supervision, or term of imprisonment  
 25 if the offender is not placed on supervision following imprisonment, for a crime of  
 26 violence as defined in R.S. 14:2(B) or a sex offense as defined in R.S. 15:541 and the  
 27 next succeeding offense or offenses.

28 (3) ~~Notwithstanding any provision of law to the contrary, a conviction for~~  
 29 ~~a felony offense that is not a crime of violence as defined by R.S. 14:2(B) and that~~

1 ~~has been set aside and dismissed pursuant to Code of Criminal Procedure Article~~  
2 ~~893(E)(2), (3), or (4), shall not be considered as a prior conviction for purposes of~~  
3 ~~enhancing a felony that is not a crime of violence as defined by R.S. 14:2(B)~~  
4 ~~pursuant to the provisions of Paragraph (A)(1) of this Section and shall not be~~  
5 ~~included in the computation of the five-year time period set forth in Paragraph (1)~~  
6 ~~of this Subsection, or the ten-year time period as set forth in Paragraph (2) of this~~  
7 ~~Subsection, for purposes of enhancing a felony that is not a crime of violence as~~  
8 ~~defined by R.S. 14:2(B) pursuant to the provisions of Paragraph (A)(1) of this~~  
9 ~~Section.~~

10 D.(1)(a) If, at any time, either after conviction or sentence, it shall appear  
11 that a person convicted of a felony offense that is a crime of violence or a sex offense  
12 has previously been convicted of a felony offense that is a crime of violence or a sex  
13 offense under the laws of this state, or has been convicted under the laws of any  
14 other state, or of the United States, or of any foreign government or country, of a  
15 crime, which, if committed in this state would be a felony offense that is a crime of  
16 violence or a sex offense, the district attorney of the parish in which subsequent  
17 conviction was had may file an information accusing the person of a previous  
18 conviction. Whereupon the court in which the subsequent conviction was had shall  
19 cause the person, whether confined in prison or otherwise, to be brought before it and  
20 shall inform him of the allegation contained in the information and of his right to be  
21 tried as to the truth thereof according to law and shall require the offender to say  
22 whether the allegations are true. If he denies the allegation of the information or  
23 refuses to answer or remains silent, his plea or the fact of his silence shall be entered  
24 on the record and he shall be given fifteen days to file particular objections to the  
25 information, as provided in Subparagraph (b) of this Paragraph. The judge shall fix  
26 a day to inquire whether the offender has been convicted of a prior felony or felonies  
27 as set forth in the information.

28 \* \* \*

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

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

3 (a) A second offender upon proof of a prior felony conviction for an offense  
4 that is a crime of violence or a sex offense.

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

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

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

17 E. Whenever it shall become known to any superintendent or prison,  
18 probation, parole, police, or other peace officer, that any person charged with or  
19 convicted of a felony offense that is a crime of violence or a sex offense has been  
20 previously convicted of a felony offense that is a crime of violence or a sex offense,  
21 he shall immediately report the fact to the district attorney of the parish in which the  
22 charge lies, or the conviction has been had.

23 \* \* \*

24 J. For purposes of this Section, ~~"correctional~~:

25 (1) "Correctional supervision" means any period of parole, probation, or  
26 incarceration of a person in a penal institution, either within the state of Louisiana  
27 or outside of the state.

28 (2) "Crime of violence" means any offense defined or enumerated in R.S.  
29 14:2(B).



1 of probation, the court with the concurrence of the district attorney may set aside the  
 2 conviction and dismiss prosecution, whether the defendant's sentence was suspended  
 3 under Paragraph A of this Article or deferred under Subparagraph (1) of this  
 4 Paragraph. The dismissal of prosecution shall have the same effect as an acquittal,  
 5 except that the conviction may be considered as a first offense and provide the basis  
 6 for subsequent prosecution of the party as a habitual offender ~~except as provided in~~  
 7 R.S. 15:529.1(C)(3) pursuant to R.S. 15:529.1. The conviction may be considered  
 8 as a prior offense for purposes of any other law or laws relating to cumulation of  
 9 offenses.

\* \* \*

11 (4) When a defendant, who has been committed to the custody of the  
 12 Department of Public Safety and Corrections to serve a sentence in the intensive  
 13 incarceration program pursuant to the provisions of Article 895(B)(3), has  
 14 successfully completed the intensive incarceration program as well as successfully  
 15 completed all other conditions of parole or probation, and if the defendant is  
 16 otherwise eligible, the court with the concurrence of the district attorney may set  
 17 aside the conviction and dismiss prosecution, whether the defendant's sentence was  
 18 suspended under Paragraph A of this Article or deferred under Subparagraph (1) of  
 19 this Paragraph. The dismissal of prosecution shall have the same effect as an  
 20 acquittal, except that the conviction may be considered as a first offense and provide  
 21 the basis for subsequent prosecution of the party as a habitual offender ~~except as~~  
 22 provided in R.S. 15:529.1(C)(3) pursuant to R.S. 15:529.1. The conviction may be  
 23 considered as a prior offense for purposes of any other law or laws relating to  
 24 cumulation of offenses. Dismissal under this Subparagraph shall have the same  
 25 effect as an acquittal for purposes of expungement under the provisions of Title  
 26 XXXIV of this Code and may occur only once with respect to any person.

\* \* \*

## 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 364 Original

2020 Regular Session

Gaines

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

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 only 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)) or a sex offense as defined by present law (R.S. 15:541).

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.

Proposed law amends present law to provide that these penalties shall apply if the third felony and either of the two prior felonies are defined as a sex offense when the victim is under the age of 18.

- (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.

Proposed law amends present law to provide that these penalties shall apply if the fourth felony and no prior felony is defined as a sex offense.

- (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 18 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.

Proposed law amends present law to provide that these penalties shall apply if the fourth felony or any of the prior felonies is defined as a sex offense when the victim is under the age of 18.

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 conform with changes in proposed law by removing from present law the five-year cleansing period for offenses that are not a crime of violence or 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 or sex offense as provided in proposed law.

Present law (C.Cr.P. Art. 893) provides that when it appears that the best interest of the public and of the defendant will be served, the court may defer, in whole or in part, the imposition of a sentence after conviction of a first offense noncapital felony and place the defendant on probation under the supervision of the division of probation and parole.

Present law (C.Cr.P. Art. 893) further provides that if the court finds at the conclusion of the probationary period that the probation of the defendant has been satisfactory, the court may set the conviction aside and dismiss the prosecution, which shall have the same effect as acquittal. In this regard, present law provides that such convictions that have been set aside and dismissed may only be considered as a first offense or provide the basis for subsequent prosecution of the party as a habitual offender pursuant to present law which prohibits its use for enhancement of a second felony offense that is not a crime of violence.

To conform with the changes in proposed law providing that the habitual offender law shall only be applied to persons whose instant conviction and any prior conviction is for a crime of violence or sex offense, proposed law removes the limitation in present law (C.Cr.P. Art. 893) referencing the prosecution under the habitual offender law and enhancement of a felony offense that is not a crime of violence.

(Amends R.S. 15:529.1(A)(intro. para.), (1), (2), (3)(intro. para.) and (b), and (4), (C), (D)(1)(a), (2), and (3), (E), (J), and (K) and C.Cr.P. Art. 893(E)(2), (3)(a), and (4))