

2020 Regular Session

HOUSE BILL NO. 178

BY REPRESENTATIVE MARINO

PROBATION: Provides relative to the suspension or deferral of sentence and probation in felony cases

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Article 893(E)(1)(b), (2), (3)(c), and (4),
3 relative to suspension and deferral of sentence and probation in felony cases; to
4 provide relative to the deferral of a sentence for certain drug offenses; to provide
5 relative to dismissals of prosecution; to provide that the restriction that certain
6 dismissals may occur only twice; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Code of Criminal Procedure Article 893(E)(1)(b), (2), (3)(c), and (4) are
9 hereby amended and reenacted to read as follows:

10 Art. 893. Suspension and deferral of sentence and probation in felony cases

11 * * *

12 E.(1)

13 * * *

14 (b) The court shall not defer a sentence under this provision for an offense
15 or an attempted offense that is designated in the court minutes as a crime of violence
16 pursuant to Article 890.3 or that is defined as a sex offense by R.S. 15:541, involving
17 a child under the age of seventeen years or for a violation of the Uniform Controlled
18 Dangerous Substances Law that is punishable by a term of imprisonment of more
19 than ~~five~~ ten years or for a violation of R.S. 40:966(A), 967(A), 968(A), 969(A), or
20 970(A).

1 (2) Upon motion of the defendant, if the court finds at the conclusion of the
2 probationary period that the probation of the defendant has been satisfactory, the
3 court may set the conviction aside and dismiss the prosecution. The dismissal of the
4 prosecution shall have the same effect as acquittal, except that the conviction may
5 be considered as a first offense and provide the basis for subsequent prosecution of
6 the party as a habitual offender except as provided in R.S. 15:529.1(C)(3). The
7 conviction may be considered as a prior offense for purposes of any other law or
8 laws relating to cumulation of offenses. Dismissal under this Paragraph shall occur
9 only ~~once~~ twice with respect to any person.

* * *

11 (3)

* * *

13 (c) Dismissal under this Paragraph shall have the same effect as an acquittal
14 for purposes of expungement under the provisions of Title XXXIV of this Code and
15 may occur only ~~once~~ twice with respect to any person.

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

1 purposes of expungement under the provisions of Title XXXIV of this Code and
2 may occur only ~~once~~ twice with respect to any person.

3 * * *

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 178 Engrossed

2020 Regular Session

Marino

Abstract: Provides relative to the court's authority to defer a sentence for a violation of certain Uniform Controlled Dangerous Substances Law offenses and provides that the restriction of certain dismissals of prosecution may occur only twice.

Present law provides that the court shall not defer a sentence for an offense or an attempted offense that is designated in the court minutes as a crime of violence or that is defined as a sex offense, involving a child under the age of 17 years or for a violation of the Uniform Controlled Dangerous Substances Law that is punishable by a term of imprisonment of more than five years or for a violation of present law.

Proposed law amends present law to provide that the court shall not defer a sentence for a violation of the Uniform Controlled Dangerous Substances Law that is punishable by a term of imprisonment of more than 10 years, instead of five years, or for a violation of present law.

Present law provides that upon motion of the defendant, 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. Present law further provides that the dismissal shall occur only once with respect to any person.

Proposed law increases the limitations on the number of dismissals from prosecution pursuant to present law from not more than once to not more than twice.

Present law provides that when a case is accepted into a drug court division probation program pursuant to present law and at the conclusion of the probationary period the court finds that the defendant has successfully completed all conditions of probation, the court with the concurrence of the district attorney may set aside the conviction and dismiss prosecution. Present law further provides that the dismissal may occur only once with respect to any person.

Proposed law increases the limitations on the number of dismissals from prosecution pursuant to present law from not more than once to not more than twice.

Present law provides that when a defendant, who has been committed to the custody of the Dept. of Public Safety and Corrections to serve a sentence in the intensive incarceration program pursuant to present law, has successfully completed the intensive incarceration program as well as successfully completed all other conditions of parole or probation, and if the defendant is otherwise eligible, the court with the concurrence of the district attorney may set aside the conviction and dismiss prosecution. Present law further provides that the dismissal may occur only once with respect to any person.

Proposed law increases the limitations on the number of dismissals from prosecution pursuant to present law from not more than once to not more than twice.

(Amends C.Cr.P. Art. 893(E)(1)(b), (2), (3)(c), and (4))

Summary of Amendments Adopted by House

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

1. Restore the present law prohibition on deferral of a sentence for certain violations of the Uniform Controlled Dangerous Substances Law, except that the prohibition will only apply to offenses punishable by a term of imprisonment for more than 10 years.
2. Increase the limitations on the number of dismissals from prosecution pursuant to present law from not more than once to not more than twice.