

2021 Regular Session

HOUSE BILL NO. 402

BY REPRESENTATIVE JONES

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CRIMINAL/HABIT OFFENDERS: Provides relative to habitual offenders

1 AN ACT

2 To amend and reenact R.S. 15:529.1(A), (D)(1)(a) and (3), (G), (H), and (I), relative to the
3 habitual offender law; to provide relative to sentencing terms; to provide relative to
4 eligibility for elected public office; to provide relative to the authority of the court;
5 and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 15:529.1(A), (D)(1)(a) and (3), (G), (H), and (I) are hereby amended
8 and reenacted to read as follows:

9 §529.1. Sentences for second and subsequent offenses; certificate of warden or clerk
10 of court in the state of Louisiana as evidence

11 A. Any person who, after having been convicted within this state of a felony,
12 or who, after having been convicted under the laws of any other state or of the
13 United States, or any foreign government of a crime which, if committed in this state
14 would be a felony, thereafter commits any subsequent felony within this state, upon
15 conviction of said felony, shall be punished as follows:

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

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

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

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

20 (a) The person ~~shall~~ may be sentenced to imprisonment for a determinate
21 term not less than one-half of the longest possible sentence for the conviction and not
22 more than twice the longest possible sentence prescribed for a first conviction.

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

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

4 (a) The person ~~shall~~ may be sentenced to imprisonment for the fourth or
5 subsequent felony for a determinate term not less than the longest prescribed for a
6 first conviction but in no event less than twenty years and not more than his natural
7 life.

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

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

19 * * *

20 D.(1)(a) If, at any time, either after conviction or sentence, it shall appear
21 that a person convicted of a felony has previously been convicted of a felony under
22 the laws of this state, or has been convicted under the laws of any other state, or of
23 the United States, or of any foreign government or country, of a crime, which, if
24 committed in this state would be a felony, the district attorney of the parish in which
25 subsequent conviction was had may file an information accusing the person of a
26 previous conviction. Whereupon the court in which the subsequent conviction was
27 had shall cause the person, whether confined in prison or otherwise, to be brought
28 before it and shall inform him of the allegation contained in the information and of
29 his right to be tried as to the truth thereof according to law and shall require the

1 offender to say whether the allegations are true. If he denies the allegation of the
 2 information or refuses to answer or remains silent, his plea or the fact of his silence
 3 shall be entered on the record and he shall be given fifteen days to file particular
 4 objections to the information, as provided in Subparagraph (b) of this Paragraph.
 5 The judge ~~shall~~ may fix a day to inquire whether the offender has been convicted of
 6 a prior felony or felonies as set forth in the information.

7 * * *

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

15 * * *

16 G. Any sentence imposed under the provisions of this Section ~~shall~~ may be
 17 at hard labor without benefit of probation or suspension of sentence.

18 H. A person ~~shall not~~ may be qualified to be a candidate for elected public
 19 office or take elected office if that person has been convicted of a felony, whether
 20 convicted within this state or convicted under the laws of any other state or of the
 21 United States of a crime which, if committed in this state would be a felony, and has
 22 not received a pardon therefor.

23 I. If the court finds that a sentence imposed under the provisions of this
 24 Section would be constitutionally excessive pursuant to the criteria set forth in State
 25 v. Dorthey, 623 So.2d 1276 (La. 1993), then the court ~~shall~~ may state for the record
 26 the reasons for such finding and shall impose the most severe sentence that is not
 27 constitutionally excessive.

28 * * *

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 402 Original

2021 Regular Session

Jones

Abstract: Removes the requirement imposing certain sentencing terms, provides relative to the court's authority regarding sentencing, and allows persons convicted of felonies to be able to qualify for or to take elected public office.

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.

Present law provides for the following penalties:

- (1) If the second felony is such that upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life, then the sentence to imprisonment shall be for a determinate term not less than one-third the longest term and not more than twice the longest term prescribed for a first conviction.
 - (a) If the second felony and the prior felony are sex offenses as defined in R.S. 15:541, or the prior felony would be a sex offense as defined in R.S. 15:541, except it occurred prior to June 18, 1992, or the conviction was obtained under the laws of any other state, the United States, or any foreign government, the person shall 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.
 - (b) If the second felony and the prior felony are sex offenses as defined in R.S. 15:541, or the prior felony would be a sex offense as defined in R.S. 15:541, except it occurred prior to June 18, 1992, or the conviction was obtained under the laws of any other state, the United States, or any foreign government, 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 or any part thereof, the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.
- (2) 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.
- (3) 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 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 makes the imposition of specific sentencing terms as provided in present law when the conviction of the offender is a second, third, fourth or subsequent felony conviction permissive.

Present law provides that the district attorney of the parish in which the subsequent conviction was had may file an information accusing the person of a previous conviction.

Present law requires that the offender be brought before the court where the subsequent conviction was to inform the offender of the allegation and of his right to be tried and present law provides that if the offender denies the allegation, refuses to answer, or remains silent, his plea or the fact of his silence shall be entered into the record and given 15 days to file particular objections to the information.

Present law requires the judge to fix a day to inquire whether the offender has been convicted of a prior felony or felonies.

Present law provides that when the judge finds that the offender has been convicted of a prior felony or felonies, or if the offender acknowledges or confesses in open court that he has been convicted, the court shall sentence him to the punishment prescribed in present law and shall vacate the previous sentence if already imposed, deducting from the new sentence the time actually served under the sentence so vacated.

Proposed law changes present law from requiring to allowing the judge to fix a day to inquire whether the offender has been convicted previously of felonies.

Proposed law provides that the court's authority with regard to sentencing offenders and vacating the previous sentence be permissive.

Present law provides that any sentence imposed under present law shall be at hard labor without benefit of probation or suspension of sentence.

Proposed law eliminates the mandatory requirement but still allows any sentence under present law be at hard labor without benefit of probation or suspension of sentence.

Present law further provides that a person shall not be qualified to be a candidate for elected public office or take elected public office if that person has been convicted of a felony.

Proposed law removes the prohibition on persons convicted of a felony from being qualified for elected public office or to take elected public office.

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

Proposed law eliminates the mandatory requirement but still allows the court to state for the record the reasons for finding that the sentence imposed would be constitutionally excessive.

(Amends R.S. 15:529.1(A), (D)(1)(a) and (3), (G), (H), and (I))