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## DIGEST

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HB 402 Engrossed

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))