

2016 Regular Session

SENATE BILL NO. 196

BY SENATOR CORTEZ

CRIME/PUNISHMENT. Limits the judge's discretion with regard to mandatory sentences for certain offenses involving the possession, use, or discharge of a firearm when the felony results in a fatality. (8/1/16)

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Article 893.3(H), relative to sentences  
3 imposed for certain offenses involving the possession, use, or discharge of a firearm;  
4 to provide that sentences prescribed for certain offenses and conditions of those  
5 sentences are to be considered mandatory; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Code of Criminal Procedure Article 893.3(H) is hereby amended and  
8 reenacted to read as follows:

9 Art. 893.3. Sentence imposed on felony or specifically enumerated misdemeanor in  
10 which firearm was possessed, used, or discharged

11 \* \* \*

12 H. If the court finds that a sentence imposed under provisions of this Article  
13 would be excessive, the court shall state for the record the reasons for such finding  
14 and shall impose the most severe sentence which is not excessive. **However, when**  
15 **the court makes any finding relative to the possession, use, or discharge of a**  
16 **firearm as described in this Article, and the felony resulted in a fatality, the**  
17 **court shall impose a minimum term of imprisonment in actual physical custody**

1 **of not less than three years.**

2 \* \* \*

3 Section 2. This Act shall be known and may be referred to as the "Austin Rivault  
4 Act."

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The original instrument was prepared by Alden A. Clement, Jr. The following digest, which does not constitute a part of the legislative instrument, was prepared by Ann S. Brown.

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DIGEST

SB 196 Reengrossed

2016 Regular Session

Cortez

Present law provides that if the court finds by clear and convincing evidence that an offender actually possessed a firearm during the commission of a felony or a specifically enumerated misdemeanor under present law for which he was convicted, the court is to impose a term of imprisonment of two years. Present law further provides that if the maximum sentence for the underlying offense is less than two years, then the court is to impose the maximum sentence set forth in present law.

Proposed law retains present law.

Present law provides that if the court finds by clear and convincing evidence that the offender actually used a firearm in the commission of a felony or a specifically enumerated misdemeanor under present law for which he was convicted, the court is to impose a term of imprisonment of five years. Present law further provides that if the maximum sentence for the underlying offense is less than five years, then the court is to impose the maximum sentence set forth in present law.

Proposed law retains present law.

Present law provides that if the court finds by clear and convincing evidence that the offender actually discharged a firearm in the commission of a felony or a specifically enumerated misdemeanor under present law for which he was convicted, the court is to impose a term of imprisonment of 10 years. Present law further provides that if the maximum sentence for the underlying offense is less than 10 years, then the court is to impose the maximum sentence set forth in present law.

Proposed law retains present law.

Present law provides that if the court finds by clear and convincing evidence that a firearm was actually used or discharged by the defendant during the commission of a felony for which he was convicted, and thereby caused bodily injury, the court is to impose a term of imprisonment of 15 years. Present law further provides that if the maximum sentence for the underlying felony is less than 15 years, then court is to impose the maximum sentence set forth in present law.

Proposed law retains present law.

Present law provides that if the defendant commits a felony with a firearm and the crime is considered a violent felony as defined in present law, then the court is to impose a minimum term of imprisonment of 10 years. Present law further provides that in addition, if the firearm is discharged during the commission of such violent felony, then the court is to impose a minimum term of imprisonment of 20 years. Present law further provides that a sentence imposed under this provision of present law is to be without benefit of parole, probation or

suspension of sentence.

Proposed law retains present law.

Present law provides that a mandatory minimum sentence imposed under these provisions of present law cannot be suspended and must be imposed in the same manner as provided in the felony for which the defendant was convicted.

Proposed law retains present law.

Present law provides that a defendant sentenced under the provisions of present law is not eligible for parole during the period of the mandatory minimum sentence.

Proposed law retains present law.

Present law provides that if the court finds that a sentence imposed under these provisions of present law would be excessive, the court is to state for the record the reasons for such finding and impose the most severe sentence that is not excessive.

Proposed law retains present law and adds that with regard to "violent felonies" under present law (second degree sexual battery, aggravated burglary, carjacking, armed robbery, second degree kidnapping, manslaughter, or forcible or second degree rape) only, when the court makes any finding relative to the possession, use, or discharge of a firearm as described in present law, and the felony resulted in a fatality, the court shall impose a minimum term of imprisonment in actual physical custody of not less than three years.

Proposed law names this the "Austin Rivault Act".

Effective August 1, 2016.

(Amends C.Cr.P. Art. 893.3(H))

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Makes proposed law applicable only to sentencing for "violent felonies" under present law.

##### Senate Floor Amendments to engrossed bill

1. Requires a three year minimum term of physical imprisonment when the violent felony results in a fatality.
2. Names this the "Austin Rivault Act".