The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alden A. Clement Jr.

DIGEST

SB 395 Original

2018 Regular Session

Gary Smith

<u>Present law</u> provides that second degree murder is the killing of a human being under any of the following circumstances:

- (1) The offender has a specific intent to kill or to inflict great bodily harm.
- (2) The offender is engaged in the perpetration or attempted perpetration of certain <u>present law</u> crimes, even though he has no intent to kill or to inflict great bodily harm.
- (3) The offender unlawfully distributes or dispenses a controlled dangerous substance listed in <u>present law</u> that is the direct cause of the death of the recipient who ingested or consumed the controlled dangerous substance.
- (4) The offender unlawfully distributes or dispenses a controlled dangerous substance listed in <u>present law</u> to another who subsequently distributes or dispenses such controlled dangerous substance that is the direct cause of the death of the person who ingested or consumed the controlled dangerous substance.

Proposed law retains present law.

<u>Present law</u> provides that whoever commits the crime of second degree murder is to be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.

<u>Proposed law</u> changes the punishment for second degree murder to imprisonment at hard labor for at least 40 years or life imprisonment without benefit of parole, probation, or suspension of sentence. However, <u>proposed law</u> further provides that if the offender is a principal to the offense who was neither present at the commission of the offense, nor aided and abetted in the commission of the offense, nor directly or indirectly counseled or procured another to commit the offense, then the punishment is imprisonment at hard labor for up to 40 years.

<u>Present law</u> provides that in cases in which punishment must be imprisonment at hard labor, including second degree murder, the case is to be tried by a jury of 12, at least 10 of whom must concur to render a verdict.

<u>Proposed law</u> changes the number of jurors required for a verdict by providing that a charge of second degree murder must be tried by a jury of 12, all 12 of whom must concur to render a verdict. However, <u>proposed law</u> further provides that if the defendant is charged as a principal to the crime of second degree murder, the case is to be tried by a jury of 12, only 10 of whom must concur to

render a verdict.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends C.Cr.P. Art. 782 and R.S. 14:30.1(B))