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## DIGEST

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HB 376 Engrossed

2019 Regular Session

Huval

**Abstract:** Provides that the determination of whether a person discharged, used, or actually possessed a firearm during the commission of certain enumerated offenses is a specific finding of fact to be submitted to the jury, and provides relative to the penalties imposed in such cases.

Present law (C.Cr.P. Art. 817) provides that any qualification of or addition to a verdict of guilty, beyond a specification of the offense as to which the verdict is found, is without effect upon the finding.

Proposed law provides that, notwithstanding present law, any fact that increases the maximum or mandatory minimum penalty for a crime, other than the fact of a prior conviction, may be submitted to the jury, and the verdict may include a specific finding of fact as to that issue.

Present law (C.Cr.P. Art. 893.1 et seq.) provides for the imposition of certain sentences when a firearm was discharged, used, or actually possessed during the commission of the certain offenses set forth in present law. In this regard, present law provides for the following:

- (1) Authorizes the district attorney to file a motion for the imposition of such sentence within a reasonable period of time prior to the commencement of trial.
- (2) Authorizes the court to conduct a contradictory hearing following conviction to determine whether a firearm was discharged, used, or actually possessed during the commission of the specific offenses enumerated in present law. However, present law also provides that if at any time during or at the completion of the trial, the court finds by clear and convincing evidence that the state has established that a firearm was discharged, used, or actually possessed during the commission of the offense the court may dispense with the hearing.
- (3) Authorizes the court to consider any evidence introduced at the trial on the merits, at defendant's guilty plea, or at the hearing of any motion filed in the case, and any other relevant evidence presented by either party at the contradictory hearing.
- (4) Provides that the burden shall be upon the state to establish by clear and convincing evidence that the defendant actually discharged, used, or actually possessed a firearm during the commission of the offense.
- (5) If the court finds by clear and convincing evidence that the offender discharged, used, or

actually possessed a firearm during the commission of the offense, the following penalties shall apply:

- (a) For actual possession of the firearm: the court shall impose a term of imprisonment of two years; however, if the maximum sentence for the underlying offense is less than two years, the court shall impose the maximum sentence.
- (b) For actual use of the firearm: the court shall impose a term of imprisonment of five years; however, if the maximum sentence for the underlying offense is less than five years, the court shall impose the maximum sentence.
- (c) For actual discharge of the firearm: the court shall impose a term of imprisonment of ten years; however, if the maximum sentence for the underlying offense is less than ten years, the court shall impose the maximum sentence.
- (d) For actual use or discharge that results in bodily injury: the court shall impose a term of imprisonment of fifteen years; however, if the maximum sentence for the underlying felony is less than fifteen years, the court shall impose the maximum sentence.
- (e) For commission of a violent felony with a firearm, the court shall impose a minimum term of imprisonment of ten years; and for the discharge of a firearm during the commission of a violent felony, the court shall impose a minimum term of imprisonment of twenty years. In this regard, present law defines "violent felony" as second degree sexual battery, aggravated burglary, carjacking, armed robbery, second degree kidnapping, manslaughter, or forcible or second degree rape.

Proposed law amends present law to provide that the determination as to whether a firearm was discharged, used, or actually possessed during the commission of one of the specifically enumerated offenses in present law is a specific finding of fact to be submitted to the jury and proven by the state beyond a reasonable doubt.

As such, proposed law repeals the present law provisions which authorize the court to conduct a contradictory hearing, provide for the type of evidence the court may consider, and provide that the burden of proof is by clear and convincing evidence.

With regard to the penalties imposed, proposed law provides that the term of imprisonment provided in present law is a minimum and that the court shall impose a term of imprisonment not less than the minimum amount set forth in present law and not more than the term of imprisonment imposed for the underlying offense.

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

(Amends C.Cr.P. Art. 817, 893.2, and 893.3(A), (B), (C), (D), and (E)(1)(a))