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HOUSE FLOOR AMENDMENTS

2019 Regular Session

Amendments proposed by Representative Gaines to Original House Bill No. 518 by Representative Gaines

1 AMENDMENT NO. 1

2 On page 1, line 2, after "reenact" delete the remainder of the line, delete lines 3 through 6
3 in their entirety and insert the following:

4 "R.S. 15:529.1(C) and Code of Criminal Procedure Article 893(E)(2), (3)(a),
5 and (4), relative to the habitual offender law; to provide relative to the
6 convictions to which the habitual offender law applies; to provide for the
7 application of the habitual offender law relative to a conviction that is
8 subsequently dismissed and set aside after a deferral of imposition of
9 sentence; and to"

10 AMENDMENT NO. 2

11 On page 1, line 9, after "Section 1." delete the remainder of the line, delete lines 10 and 11
12 in their entirety and insert "R.S. 15:529.1(C) is hereby amended and reenacted to read as
13 follows:"

14 AMENDMENT NO. 3

15 On page 1, delete lines 14 through 20 in their entirety

16 AMENDMENT NO. 4

17 Delete pages 2 through 5 in their entirety and insert the following:

18 "* * *
19 C.(1) Except as provided in ~~Paragraph~~ Paragraphs (2) and (3) of this
20 Subsection, the current offense shall not be counted as, respectively, a
21 second, third, fourth, or higher offense if more than five years have elapsed
22 between the date of the commission of the current offense or offenses and the
23 expiration of the correctional supervision, or term of imprisonment if the
24 offender is not placed on supervision following imprisonment, for the
25 previous conviction or convictions, or between the expiration of the
26 correctional supervision, or term of imprisonment if the offender is not
27 placed on supervision following imprisonment, for each preceding conviction
28 or convictions alleged in the multiple offender bill and the date of the
29 commission of the following offense or offenses. In computing the intervals
30 of time as provided in this Paragraph, any period of parole, probation, or
31 incarceration by a person in a penal institution, within or without the state,
32 shall not be included in the computation of any of the five-year periods
33 between the expiration of the correctional supervision, or term of
34 imprisonment if the offender is not placed on supervision following
35 imprisonment, and the next succeeding offense or offenses.
36 (2) ~~The~~ Except as provided in Paragraph (3) of this Subsection, the
37 current offense shall not be counted as, respectively, a second, third, fourth,
38 or higher offense if more than ten years have elapsed between the date of the

1 commission of the current offense or offenses and the expiration of
 2 correctional supervision, or term of imprisonment if the offender is not
 3 placed on supervision following imprisonment, for a crime of violence as
 4 defined in R.S. 14:2(B) or a sex offense as defined in R.S. 15:541, or
 5 between the expiration of correctional supervision, or term of imprisonment
 6 if the offender is not placed on supervision following imprisonment, for each
 7 preceding conviction or convictions alleged in the multiple offender bill for
 8 a crime of violence as defined in R.S. 14:2(B) or a sex offense as defined in
 9 R.S. 15:541 and the date of the commission of the following offense or
 10 offenses. In computing the intervals of time as provided in this Paragraph,
 11 any period of parole, probation, or incarceration by a person in a penal
 12 institution, within or without the state, shall not be included in the
 13 computation of any of the ten-year periods between the expiration of
 14 correctional supervision, or term of imprisonment if the offender is not
 15 placed on supervision following imprisonment, for a crime of violence as
 16 defined in R.S. 14:2(B) or a sex offense as defined in R.S. 15:541 and the
 17 next succeeding offense or offenses.

18 (3) Notwithstanding any provision of law to the contrary, a
 19 conviction for a felony offense that is not a crime of violence as defined by
 20 R.S. 14:2(B) and that has been set aside and dismissed pursuant to Code of
 21 Criminal Procedure Article 893(E)(2), (3), or (4), shall not be considered as
 22 a prior conviction for purposes of enhancing a felony that is not a crime of
 23 violence as defined by R.S. 14:2(B) pursuant to the provisions of Paragraph
 24 (A)(1) of this Section and shall not be included in the computation of the
 25 five-year time period set forth in Paragraph (1) of this Subsection, or the ten-
 26 year time period as set forth in Paragraph (2) of this Subsection, for purposes
 27 of enhancing a felony that is not a crime of violence as defined by R.S.
 28 14:2(B) pursuant to the provisions of Paragraph (A)(1) of this Section.

29 * * *

30 Section 2. Code of Criminal Procedure Article 893(E)(2), (3)(a), and
 31 (4) are hereby amended and reenacted to read as follows:

32 Art. 893. Suspension and deferral of sentence and probation in felony cases

33 * * *

34 E.

35 * * *

36 (2) Upon motion of the defendant, if the court finds at the conclusion
 37 of the probationary period that the probation of the defendant has been
 38 satisfactory, the court may set the conviction aside and dismiss the
 39 prosecution. The dismissal of the prosecution shall have the same effect as
 40 acquittal, except that the conviction may be considered as a first offense and
 41 provide the basis for subsequent prosecution of the party as a ~~multiple~~
 42 habitual offender; except as provided in R.S. 15:529.1(C)(3). ~~and further~~
 43 ~~shall~~ The conviction may be considered as a first prior offense for purposes
 44 of any other law or laws relating to cumulation of offenses. Dismissal under
 45 this Paragraph shall occur only once with respect to any person.

46 (3)(a) When a case is accepted into a drug court division probation
 47 program pursuant to the provisions of R.S. 13:5304 and at the conclusion of
 48 the probationary period the court finds that the defendant has successfully
 49 completed all conditions of probation, the court with the concurrence of the
 50 district attorney may set aside the conviction and dismiss prosecution,
 51 whether the defendant's sentence was suspended under Paragraph A of this
 52 Article or deferred under Subparagraph (1) of this Paragraph. The dismissal
 53 of prosecution shall have the same effect as an acquittal, except that the
 54 conviction may be considered as a first offense and provide the basis for
 55 subsequent prosecution of the party as a ~~multiple habitual offender, and shall~~
 56 except as provided in R.S. 15:529.1(C)(3). The conviction may be
 57 considered as a first prior offense for purposes of any other law or laws
 58 relating to cumulation of offenses.

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(4) When a defendant, who has been committed to the custody of the Department of Public Safety and Corrections to serve a sentence in the intensive incarceration program pursuant to the provisions of Article 895(B)(3), has successfully completed the intensive incarceration program as well as successfully completed all other conditions of parole or probation, and if the defendant is otherwise eligible, the court with the concurrence of the district attorney may set aside the conviction and dismiss prosecution, whether the defendant's sentence was suspended under Paragraph A of this Article or deferred under Subparagraph (1) of this Paragraph. The dismissal of prosecution shall have the same effect as an acquittal, except that the conviction may be considered as a first offense and provide the basis for subsequent prosecution of the party as a ~~multiple~~ habitual offender, ~~and shall~~ except as provided in R.S. 15:529.1(C)(3). The conviction may be considered as a ~~first~~ prior offense for purposes of any other law or laws relating to cumulation of offenses. Dismissal under this Subparagraph shall have the same effect as an acquittal for purposes of expungement under the provisions of R.S. 44:9 and may occur only once with respect to any person.

* * *"