
DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 364 Original

2020 Regular Session

Gaines

Abstract: Provides that the habitual offender law shall be applied only to persons whose instant conviction and any prior conviction is for a crime of violence or a sex offense.

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.

Proposed law amends present law to provide that the habitual offender law shall only be applied only to persons whose instant conviction and any prior conviction is for a crime of violence as defined by present law (R.S. 14:2(B)) or a sex offense as defined by present law (R.S. 15:541).

Present law provides for the following penalties:

- (1) 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.

Proposed law amends present law to provide that these penalties shall apply if the third felony and either of the two prior felonies are defined as a sex offense when the victim is under the age of 18.

- (2) 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.

Proposed law amends present law to provide that these penalties shall apply if the fourth felony and no prior felony is defined as a sex offense.

- (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 amends present law to provide that these penalties shall apply if the fourth felony or any of the prior felonies is defined as a sex offense when the victim is under the age of 18.

Present law provides that, for purposes of the habitual offender law, the current offense cannot be counted as a second, third, fourth, or higher offense if more than five years have elapsed between the date of the commission of the current offense or offenses and the expiration of the maximum sentence or sentences of the previous conviction or convictions. With regard to prior convictions for offenses that are crimes of violence or sex offenses, present law extends this period of time to ten years.

Proposed law amends present law to conform with changes in proposed law by removing from present law the five-year cleansing period for offenses that are not a crime of violence or a sex offense.

Present law provides the procedure by which a person is convicted as a habitual offender and sentenced under the habitual offender law.

Proposed law makes changes to these provisions of present law to provide that these provisions apply only to persons whose instant conviction and any prior conviction is for a crime of violence or sex offense as provided in proposed law.

Present law (C.Cr.P. Art. 893) provides that when it appears that the best interest of the public and of the defendant will be served, the court may defer, in whole or in part, the imposition of a sentence after conviction of a first offense noncapital felony and place the defendant on probation under the supervision of the division of probation and parole.

Present law (C.Cr.P. Art. 893) further provides that if the court finds at the conclusion of the probationary period that the probation of the defendant has been satisfactory, the court may set the conviction aside and dismiss the prosecution, which shall have the same effect as acquittal. In this regard, present law provides that such convictions that have been set aside and dismissed may only be considered as a first offense or provide the basis for subsequent prosecution of the party as a habitual offender pursuant to present law which prohibits its use for enhancement of a second felony offense that is not a crime of violence.

To conform with the changes in proposed law providing that the habitual offender law shall only be applied to persons whose instant conviction and any prior conviction is for a crime of violence or sex offense, proposed law removes the limitation in present law (C.Cr.P. Art. 893) referencing the prosecution under the habitual offender law and enhancement of a felony offense that is not a crime of violence.

(Amends R.S. 15:529.1(A)(intro. para.), (1), (2), (3)(intro. para.) and (b), and (4), (C), (D)(1)(a), (2), and (3), (E), (J), and (K) and C.Cr.P. Art. 893(E)(2), (3)(a), and (4))