

2021 Regular Session

SENATE BILL NO. 139

BY SENATOR HARRIS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CRIMINAL PROCEDURE. Provides relative to sentencing when a defendant possessed, used, or discharged a firearm in the commission of certain offenses. (8/1/21)

1 AN ACT
2 To amend and reenact Code of Criminal Procedure Art. 893.2, relative to the sentence
3 imposed when a firearm is discharged, used, or actually possessed during the
4 commission of certain offenses; to provide relative to the procedure for such
5 determinations; to provide relative to the court's authority to consider certain
6 evidence and hold a contradictory hearing in this regard; to provide that the
7 determination of whether a firearm was discharged, used, or actually possessed
8 during the commission of an offense is a specific finding of fact to be submitted to
9 the jury; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Code of Criminal Procedure Art. 893.2 is hereby amended and reenacted
12 to read as follows:

13 Art. 893.2. Discharge, use, or possession of firearm in commission of a felony or a
14 specifically enumerated misdemeanor; submission to jury

15 If a motion was filed by the state in compliance with Article 893.1, a
16 determination shall be made as to whether a firearm was discharged, or used during
17 the commission of the felony or specifically enumerated misdemeanor, or actually

1 possessed during the commission of a felony which is a crime of violence as defined
2 by R.S. 14:2(B), felony theft, **simple burglary, simple burglary of an inhabited**
3 **dwelling, unauthorized entry of an inhabited dwelling,** production,
4 manufacturing, distribution, dispensing, or possession with intent to produce,
5 manufacture, distribute, or dispense a controlled dangerous substance in violation of
6 the Uniform Controlled Dangerous Substances Law, or specifically enumerated
7 misdemeanor and whether the mandatory minimum sentencing provisions of Article
8 893.3 have been shown to be applicable. Such determination is a specific finding of
9 fact to be submitted to the jury and proven by the state beyond a reasonable doubt.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Michael Bell.

DIGEST

SB 139 Engrossed

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Harris

Present law provides that if a motion was filed by the state in compliance with C.Cr.P. Article 893.1, a determination shall be made as to whether a firearm was discharged, or used during the commission of the felony or specifically enumerated misdemeanor, or actually possessed during the commission of a felony which is a crime of violence as defined by R.S. 14:2(B).

Present law further provides that such determination is a specific finding of fact to be submitted to the jury and proven by the state beyond a reasonable doubt.

Proposed law retains present law and adds the crimes of simple burglary, simple burglary of an inhabited dwelling, and unauthorized entry of an inhabited dwelling for the determination if a firearm was discharged, used, or possessed during the commission of such crimes.

Effective August 1, 2021.

(Amends C.Cr.P. Art. 893.2)