

2016 Regular Session

HOUSE BILL NO. 802

BY REPRESENTATIVE JACKSON

CRIMINAL/SENTENCING: Creates a procedure for designating certain crimes in the court minutes as a crime of violence and provides relative to the benefits and restrictions based on such designation

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Article 893(A) and (E)(1)(b) and R.S.
3 13:5304(B)(10)(a) and (b) and to enact Code of Criminal Procedure Article 890.3,
4 relative to crimes of violence; to provide a procedure by which certain crimes of
5 violence are designated as such in the court minutes; to provide relative to certain
6 benefits and restrictions based upon this designation; to provide with respect to
7 deferral of sentences; to provide for participation in certain programs; and to provide
8 for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Code of Criminal Procedure Article 893(A) and (E)(1)(b) are hereby
11 amended and reenacted and Code of Criminal Procedure Article 890.3 is hereby enacted to
12 read as follows:

13 Art. 890.3. Sentencing for crimes of violence

14 A. Except as provided in Paragraph B of this Article, when a defendant is
15 sentenced for any offense, or the attempt to commit any offense, defined or
16 enumerated as a crime of violence in R.S. 14:2(B), upon the written recommendation
17 of the district attorney, the court may designate in the minutes whether such offense
18 is a crime of violence only for the following purposes:

1 (1) To determine a defendant's eligibility for suspension or deferral of
2 sentence pursuant to Code of Criminal Procedure Article 893.

3 (2) To determine a defendant's eligibility for participation in a drug division
4 probation program pursuant to R.S. 13:5304.

5 B. The following crimes of violence enumerated in R.S. 14:2(B) shall be
6 designated by the court in the minutes as a crime of violence:

7 (1) Solicitation for murder.

8 (2) First degree murder.

9 (3) Second degree murder.

10 (4) Manslaughter.

11 (5) Aggravated rape.

12 (6) Forcible rape.

13 (7) Simple rape.

14 (8) Sexual battery.

15 (9) Second degree sexual battery.

16 (10) Intentional exposure to AIDS virus.

17 (11) Aggravated kidnapping.

18 (12) Second degree kidnapping.

19 (13) Aggravated arson.

20 (14) Armed robbery.

21 (15) Assault by drive-by shooting.

22 (16) Carjacking.

23 (17) Terrorism.

24 (18) Aggravated second degree battery.

25 (19) Aggravated assault with a firearm.

26 (20) Armed robbery; use of firearm; additional penalty.

27 (21) Second degree robbery.

28 (22) Disarming of a peace officer.

29 (23) Second degree cruelty to juveniles.

1 (24) Aggravated incest.

2 (25) Trafficking of children for sexual purposes.

3 (26) Human trafficking.

4 (27) Home invasion.

5 * * *

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

7 A. When it appears that the best interest of the public and of the defendant
8 will be served, the court, after a first or second conviction of a noncapital felony,
9 may suspend, in whole or in part, the imposition or execution of either or both
10 sentences, where suspension is allowed under the law, and in either or both cases
11 place the defendant on probation under the supervision of the division of probation
12 and parole. The court shall not suspend the sentence of a conviction for an offense
13 that is designated in the court minutes as a crime of violence ~~as defined in R.S.~~
14 ~~14:2(B)(1), (2), (3), (4), (5), (9), (10), (11), (12), (13), (14), (15), (16), (18), (20),~~
15 ~~(21), (22), (26), (27), or (28)~~ pursuant to Article 890.3, or of a second conviction if
16 the second conviction is for a violation of R.S. 14:73.5, 81.1, or 81.2. The period of
17 probation shall be specified and shall not be less than one year nor more than five
18 years. The suspended sentence shall be regarded as a sentence for the purpose of
19 granting or denying a new trial or appeal. Supervised release as provided for by
20 Chapter 3-E of Title 15 of the Louisiana Revised Statutes of 1950 shall not be
21 considered probation and shall not be limited by the five-year period for probation
22 provided for by the provisions of this Paragraph.

23 * * *

24 E.(1)

25 * * *

26 (b) The court shall not defer a sentence under this provision for an offense
27 or an attempted offense ~~which~~ that is designated in the court minutes as a crime of
28 violence pursuant to Article 890.3 or that is defined ~~or enumerated~~ as a ~~crime of~~
29 ~~violence under R.S. 14:2(B) or a sex offense as defined by R.S. 15:541(14.1)~~ R.S.

Present law (R.S. 14:2(B)) provides that certain offenses can be defined as, or are specifically enumerated as, a crime of violence.

Present law prohibits persons convicted of certain crimes of violence as defined by present law from obtaining the benefits of suspension or deferral of sentence pursuant to C.Cr.P. Art. 893 or from participating in a drug division probation program pursuant to R.S. 13:5304.

Proposed law authorizes the court, upon the written recommendation of the district attorney, to designate in the court minutes that an offense is a crime of violence only for the purpose of determining whether the defendant is eligible for suspension or deferral of sentence or for participation in a drug division probation program.

Proposed law further provides that the following offenses shall always be designated by the court as a crime of violence in the court minutes: solicitation for murder, first degree murder, second degree murder, manslaughter, aggravated rape, forcible rape, simple rape, sexual battery, second degree sexual battery, intentional exposure to AIDS virus, aggravated kidnapping, second degree kidnapping, aggravated arson, armed robbery, assault by drive-by shooting, carjacking, terrorism, aggravated second degree battery, aggravated assault with a firearm, armed robbery, second degree robbery, disarming of a peace officer, second degree cruelty to juveniles, aggravated incest, trafficking of children for sexual purposes, human trafficking, and home invasion.

(Amends C.Cr.P. Art. 893(A) and (E)(1)(b) and R.S. 13:5304(B)(10)(a) and (b); Adds C.Cr.P. Art. 890.3)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill:

1. Provide that the designation by the court as a crime of violence in the court minutes is only for the purpose of determining whether the defendant is eligible for suspension or deferral of sentence or for participation in a drug division probation program.
2. Remove provisions of proposed law regarding reentry preparation programs, community resource centers, rehabilitation and workforce development programs, sentencing of habitual offenders, diminution of sentence, parole eligibility, and eligibility to receive technical violations. Therefore, any person convicted of a crime of violence as defined by present law (R.S. 14:2(B)) will be subject to present law provisions for these matters regardless of how the court designates the person's offense in the court minutes pursuant to proposed law.