

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

1 of the district attorney, the court may designate in the minutes whether such offense  
2 is a crime of violence only for the following purposes:

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

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

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

9 (1) Solicitation for murder.

10 (2) First degree murder.

11 (3) Second degree murder.

12 (4) Manslaughter.

13 (5) Aggravated or first degree rape.

14 (6) Forcible or second degree rape.

15 (7) Simple or third degree rape.

16 (8) Sexual battery.

17 (9) Second degree sexual battery.

18 (10) Intentional exposure to AIDS virus.

19 (11) Aggravated kidnapping.

20 (12) Second degree kidnapping.

21 (13) Aggravated arson.

22 (14) Armed robbery.

23 (15) Assault by drive-by shooting.

24 (16) Carjacking.

25 (17) Terrorism.

26 (18) Aggravated second degree battery.

27 (19) Aggravated assault with a firearm.

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

29 (21) Second degree robbery.

- 1           (22) Disarming of a peace officer.
- 2           (23) Second degree cruelty to juveniles.
- 3           (24) Aggravated crime against nature.
- 4           (25) Trafficking of children for sexual purposes.
- 5           (26) Human trafficking.
- 6           (27) Home invasion.

7   \*           \*           \*

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

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

25   \*           \*           \*

26                           E.(1)

27   \*           \*           \*

28                           (b) The court shall not defer a sentence under this provision for an offense  
29                           or an attempted offense ~~which~~ that is designated in the court minutes as a crime of

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 violence pursuant to Article 890.3 or that is defined ~~or enumerated~~ as a ~~crime of~~  
 2 ~~violence under R.S. 14:2(B) or a sex offense as defined by R.S. 15:541(14.1) R.S.~~  
 3 15:541, involving a child under the age of seventeen years or for a violation of the  
 4 Uniform Controlled Dangerous Substances Law that is punishable by a term of  
 5 imprisonment of more than five years or for a violation of R.S. 40:966(A), 967(A),  
 6 968(A), 969(A), or 970(A).

7 \* \* \*

8 Section 2. R.S. 13:5304(B)(10)(a) and (b) are hereby amended and reenacted to read  
 9 as follows:

10 §5304. The drug division probation program

11 \* \* \*

12 B. Participation in probation programs shall be subject to the following  
 13 provisions:

14 \* \* \*

15 (10) In order to be eligible for the drug division probation program, the  
 16 defendant must satisfy each of the following criteria:

17 (a) The defendant cannot have any prior felony convictions for any ~~offenses~~  
 18 ~~defined as crimes~~ offense that is designated in the court minutes as a crime of  
 19 violence in R.S. 14:2(B) pursuant to Code of Criminal Procedure Article 890.3.

20 (b) The crime before the court ~~cannot be~~ is not a criminal offense perpetrated  
 21 by one household member against another household member as defined by R.S.  
 22 14:35.3 or an offense that is designated in the court minutes as a crime of violence  
 23 as defined in R.S. 14:2(B) pursuant to Code of Criminal Procedure Article 890.3,  
 24 including domestic violence.

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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)]

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HB 802 Reengrossed

2016 Regular Session

Jackson

**Abstract:** Provides a procedure by which certain crimes of violence are designated as such in the court minutes and provides relative to certain benefits and restrictions based upon this designation.

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 or first degree rape, forcible or second degree rape, simple or third degree 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 crime against nature, 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.

The House Floor Amendments to the engrossed bill:

1. Makes technical corrections to reflect changes in terminology for certain offenses involving rape and crime against nature.