

2017 Regular Session

SENATE BILL NO. 221

BY SENATOR ALARIO

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

CRIME/PUNISHMENT. Provides relative to the cleansing period for certain crimes applicable to habitual offender penalty enhancements. (11/1/17)

1 AN ACT

2 To amend and reenact R.S. 15:529.1(A)(1), (3), and (4) and (C) and to enact R.S.
3 15:529.1(I) and (J), relative to the Habitual Offender Law; to decrease the cleansing
4 period for offenses that are not crimes of violence or sex offenses; to provide for the
5 reduction by the court of a sentence under the Habitual Offender Law under certain
6 circumstances; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 15:529.1(A)(1), (3), and (4) and (C) are hereby amended and
9 reenacted and R.S. 15:529.1(I) and (J) are hereby enacted to read as follows:

10 §529.1. Sentences for second and subsequent offenses; certificate of warden or clerk
11 of court in the state of Louisiana as evidence

12 A. Any person who, after having been convicted within this state of a felony,
13 or who, after having been convicted under the laws of any other state or of the
14 United States, or any foreign government of a crime which, if committed in this state
15 would be a felony, thereafter commits any subsequent felony within this state, upon
16 conviction of said felony, shall be punished as follows:

17 (1) If the second felony is such that upon a first conviction the offender

1 would be punishable by imprisonment for any term less than his natural life, then the
2 sentence to imprisonment shall be for a determinate term not less than ~~one-half~~ one-
3 third the longest term and not more than twice the longest term prescribed for a first
4 conviction.

5 * * *

6 (3) If the third felony is such that upon a first conviction, the offender would
7 be punishable by imprisonment for any term less than his natural life then:

8 (a) The person shall be sentenced to imprisonment for a determinate term not
9 less than ~~two-thirds~~ one-half of the longest possible sentence for the conviction and
10 not more than twice the longest possible sentence prescribed for a first conviction;
11 or

12 (b) If the third felony and the two prior felonies are felonies defined as a
13 crime of violence under R.S. 14:2(B), or a sex offense as defined in R.S. 15:540 et
14 seq. when the victim is under the age of eighteen at the time of commission of the
15 offense, ~~or as a violation of the Uniform Controlled Dangerous Substances Law~~
16 ~~punishable by imprisonment for ten years or more, or any other crimes punishable~~
17 ~~by imprisonment for twelve years or more, or any combination of such crimes, the~~
18 person shall be imprisoned for the remainder of his natural life, without benefit of
19 parole, probation, or suspension of sentence.

20 (4) If the fourth or subsequent felony is such that, upon a first conviction the
21 offender would be punishable by imprisonment for any term less than his natural life
22 then:

23 ~~(a) The person shall be sentenced to imprisonment for the fourth or~~
24 ~~subsequent felony for a determinate term not less than the longest prescribed for a~~
25 ~~first conviction but in no event less than twenty years and not more than his natural~~
26 ~~life; or~~ **If the fourth felony and no prior felony is defined as a crime of violence**
27 **under R.S. 14:2(B) or as a sex offense under R.S. 15:541, the person shall be**
28 **imprisoned for not less than twenty years nor more than twice the longest**
29 **possible sentence prescribed for a first conviction. If twice the possible sentence**

1 prescribed for a first conviction is less than twenty years, the person shall be
 2 imprisoned for twenty years; or

3 (b) If the fourth felony and two of the prior felonies are felonies defined as
 4 a crime of violence under R.S. 14:2(B), a sex offense as defined in R.S. ~~15:540 et~~
 5 ~~seq.~~ 15:541 when the victim is under the age of eighteen at the time of commission
 6 of the offense, ~~or as a violation of the Uniform Controlled Dangerous Substances~~
 7 ~~Law punishable by imprisonment for ten years or more, or of any other crime~~
 8 ~~punishable by imprisonment for twelve years or more, or any combination of such~~
 9 ~~crimes,~~ the person shall be imprisoned for the remainder of his natural life, without
 10 benefit of parole, probation, or suspension of sentence.

11 * * *

12 C.(1) The Except as provided in Paragraph (2) of this Subsection, the
 13 current offense shall not be counted as, respectively, a second, third, fourth, or higher
 14 offense if more than ~~ten~~ five years have elapsed between the date of the commission
 15 of the current offense or offenses and the expiration of the ~~maximum sentence or~~
 16 ~~sentences of~~ correctional supervision for the previous conviction or convictions,
 17 or between the expiration of the ~~maximum sentence or sentences of~~ correctional
 18 supervision for each preceding conviction or convictions alleged in the multiple
 19 offender bill and the date of the commission of the following offense or offenses. In
 20 computing the intervals of time as provided herein, any period of parole, probation,
 21 or incarceration by a person in a penal institution, within or without the state, shall
 22 not be included in the computation of any of ~~said ten-year~~ the five-year periods
 23 between the expiration of the ~~maximum sentence or sentences~~ correctional
 24 supervision and the next succeeding offense or offenses.

25 (2) The current offense shall not be counted as, respectively, a second,
 26 third, fourth, or higher offense if more than ten years have elapsed between the
 27 date of the commission of the current offense or offenses and the expiration of
 28 correctional supervision for a crime of violence as defined in R.S. 14:2(B) or a
 29 sex offense as defined in R.S. 15:541, or between the expiration of correctional

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

10 * * *

11 I. If the court finds that a sentence imposed under the provisions of this
 12 Section would be constitutionally excessive pursuant to the criteria set forth in
 13 State v. Dorthey, 623 So.2d 1276 (La. 1993), then the court shall state for the
 14 record the reasons for such finding and shall impose the most severe sentence
 15 that is not constitutionally excessive.

16 J. For purposes of this Section, "correctional supervision" means any
 17 period of parole, probation, or incarceration of a person in a penal institution,
 18 either within the state of Louisiana or outside of the state.

19 Section 2. This Act shall become effective November 1, 2017, and shall have
 20 prospective application only to offenders whose convictions became final on or after
 21 November 1, 2017.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Alden A. Clement Jr.

DIGEST

SB 221 Reengrossed 2017 Regular Session Alario

Present law (Habitual Offender Law) provides that any person who, after having been convicted within La. of a felony, or who, after having been convicted under the laws of any other state or of the U.S. or any foreign government of a crime which, if committed in La. would be a felony, thereafter commits any subsequent felony within La. upon conviction is to be punished as follows:

- (1) If the second felony is such that upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life, then the sentence to imprisonment is to be for a determinate term not less than 1/2 the longest term and

- not more than twice the longest term prescribed for a first conviction.
- (2) If the second felony and the prior felony are sex offenses as defined in present law, or the prior felony would be a sex offense as defined in present law, except that it occurred prior to 6/18/92, or the conviction was obtained under the laws of any other state, the U.S. or any foreign government, the person is to be sentenced to imprisonment at hard labor for a determinate term not less than 2/3 of the longest possible sentence for the conviction and not more than three times the longest possible sentence prescribed for a first conviction, without benefit of probation, parole, or suspension of sentence.
 - (3) If the second felony and the prior felony are sex offenses as defined in present law, or the prior felony would be a sex offense as defined in present law, except that it occurred prior to 6/18/92, or the conviction was obtained under the laws of any other state, the U.S. or any foreign government, and the victims of the previous offense and the instant offense were under the age of 13 years at the time of the commission of the offense or any part thereof, the person is to be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.
 - (4) If the third felony is such that upon a first conviction, the offender would be punishable by imprisonment for any term less than his natural life then:
 - (a) The person is to be sentenced to imprisonment for a determinate term not less than 2/3 of the longest possible sentence for the conviction and not more than twice the longest possible sentence prescribed for a first conviction; or
 - (b) If the third felony and the two prior felonies are felonies defined as a crime of violence under present law, a sex offense as defined in present law when the victim is under the age of 18 years at the time of commission of the offense, or as a violation of the Uniform Controlled Dangerous Substances Law punishable by imprisonment for 10 years or more, or any other crimes punishable by imprisonment for 12 years or more, or any combination of such crimes, the person is to be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.
 - (5) If the fourth or subsequent felony is such that, upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life then:
 - (a) The person is to be sentenced to imprisonment for the fourth or subsequent felony for a determinate term not less than the longest prescribed for a first conviction but in no event less than 20 years and not more than his natural life; or
 - (b) If the fourth felony and two of the prior felonies are felonies defined as a crime of violence under present law, a sex offense as defined in present law when the victim is under the age of 18 years at the time of commission of the offense, or as a violation of the Uniform Controlled Dangerous Substances Law punishable by imprisonment for 10 years or more, or of any other crime punishable by imprisonment for 12 years or more, or any combination of such crimes, the person is to be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

Proposed law provides that any person who, after having been convicted within La. of a felony, or who, after having been convicted under the laws of any other state or of the U.S. or any foreign government of a crime which, if committed in La. would be a felony, thereafter commits any subsequent felony within La. upon conviction, with regard to a second felony such that upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life, is to be sentenced to imprisonment for

a determinate term not less than 1/3 instead of 1/2 the longest term and not more than twice the longest term prescribed for a first conviction.

Proposed law provides that if the third felony and the two prior felonies are felonies defined as a crime of violence under present law, a sex offense as defined in present law when the victim is under the age of 18 years at the time of commission of the offense, or any combination of such crimes, the person is to be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence. Proposed law further deletes the present law application of life without parole to situations in which the third felony and the two prior felonies are either violations of the Uniform Controlled Dangerous Substances Law punishable by imprisonment for 10 years or more, or any other crimes punishable by imprisonment for 12 years or more.

Proposed law provides that if the fourth felony and no prior felony is defined as a crime of violence or as a sex offense under present law, then the person is to be imprisoned for not less than 20 years nor more than twice the longest possible sentence prescribed for a first conviction. Proposed law further provides that if twice the possible sentence prescribed for a first conviction is less than 20 years, then the person is to be imprisoned for 20 years.

Proposed law provides that if the fourth felony and two of the prior felonies are felonies defined as a crime of violence or as a sex offense under present law when the victim is under the age of 18 years at the time of commission of the offense, the person is to be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

Proposed law otherwise retains present law.

Present law provides that for purposes of the Habitual Offender Law, the current offense cannot be counted as, respectively, a second, third, fourth, or higher offense if more than 10 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, or between the expiration of the maximum sentence or sentences of each preceding conviction or convictions alleged in the multiple offender bill and the date of the commission of the following offense or offenses ("cleansing period"). Present law further provides that in computing the intervals of time as provided in present law, any period of parole, probation, or incarceration by a person in a penal institution, within or without the state, cannot be included in the computation of any of said 10-year periods between the expiration of the maximum sentence or sentences and the next succeeding offense or offenses.

Proposed law changes the cleansing period for offenses that are not crimes of violence or sex offenses under present law from 10 years to five years. Proposed law further changes the final date for calculating the cleansing period for all offenses whether or not crimes of violence or sex offenses from the expiration of the maximum sentence or sentences of the previous conviction or convictions to the expiration of the correctional supervision for each previous conviction.

Proposed law otherwise retains present law.

Proposed law provides that if the court finds that a sentence imposed under the provisions of present law or proposed law would be constitutionally excessive pursuant to the criteria set forth in *State v. Dorthey*, 623 So.2d 1276 (La. 1993), then the court must state for the record the reasons for such finding and impose the most severe sentence that is not constitutionally excessive.

Proposed law provides that for purposes of proposed law, "correctional supervision" means any period of parole, probation, or incarceration of a person in a penal institution, either within the state of La. or outside of the state.

Proposed law applies prospectively only to offenders whose convictions became final on or after 11/1/17.

Effective November 1, 2017.

(Amends R.S. 15:529.1(A)(1), (3), and (4) and (C); adds R.S. 15:529.1(I) and (J))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Changes sentence for conviction of second felony not punishable by life imprisonment from ½ of longest possible sentence to 1/3 longest possible sentence.
2. Provides that the maximum sentence on a fourth felony when no prior offense is a crime of violence or a sex offense is 20 years or twice the possible sentence prescribed for a first conviction, whichever is greater.
3. Provides that the maximum sentence on a fourth felony when two of the prior felonies are crimes of violence or sex offenses and the victim is under the age of 18 years at the time of commission of the offense is life imprisonment without benefit of parole, probation, or suspension of sentence.
4. Changes the cleansing period for offenses that are not crimes of violence or sex offenses under present law from 10 years to five years.
5. Changes the final date for calculating the cleansing period for all offenses whether or not crimes of violence or sex offenses from the expiration of the maximum sentence or sentences of the previous conviction or convictions to the expiration of the correctional supervision for each previous conviction.
6. Deletes proposed law references to a felony class system.
7. Codifies *State v. Dorthey*, 623 So.2d 1276 (La. 1993).
8. Adds definition of "correctional supervision" for purposes of proposed law.
9. Changes effective date from effective date of companion Senate Bill _____ of the 2017 Regular Session to 11/1/17.
10. Adds effective date and provides for prospective application.

Senate Floor Amendments to engrossed bill

1. Deletes the applicability of present law, relative to life without parole, to situations in which the third felony and two prior felonies are violations of either the Uniform Controlled Dangerous Substances Law punishable by imprisonment for 10 years or more or any other crimes punishable by imprisonment for 12 years or more.
2. Deletes "or term of incarceration if no supervision", from "correctional supervision" language as redundant.