

RÉSUMÉ DIGEST

ACT 257 (SB 146)

2017 Regular Session

Claitor

Prior law ("habitual offender law") provided that any person who, after having been convicted of a felony, thereafter committed any subsequent felony within La., upon conviction is subject to the following penalties as provided by prior law:

(1) Second felony:

- (a) The person is to be sentenced to imprisonment for a determinate term not less than one-half the longest term and not more than twice the longest term prescribed for a first conviction.

New law decreases the minimum term of imprisonment for such offenders from one-half the longest term to one-third the longest term prescribed for a first conviction.

- (b) If the second felony and the prior felony are sex offenses as defined in prior law, the person is to be sentenced to imprisonment at hard labor for a determinate term not less than two-thirds 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.

New law retains prior law.

- (c) If the second felony and the prior felony are sex offenses as defined in prior law 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, the person is to be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

New law retains prior law.

(2) Third felony:

- (a) The person is to be sentenced to imprisonment for a determinate term not less than two-thirds of the longest possible sentence for the conviction and not more than twice the longest possible sentence prescribed for a first conviction.

New law decreases the minimum term of imprisonment for such offenders from two-thirds the longest term to one-half the longest term prescribed for a first conviction.

- (b) If the third felony and the two prior felonies are felonies defined as a crime of violence under prior law, a sex offense as defined in prior 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 (CDS) 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.

New law removes persons with a current or prior felony that is a violation of the CDS Law punishable by imprisonment for 10 years or more and any other non-violent, non-sex offense punishable by imprisonment of 12 years or more from the group of persons who are subject to this sentence.

(3) Fourth or subsequent felony:

- (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.

New law retains prior law.

New law provides that if the fourth felony and no prior felony is defined as a crime of violence by prior law or defined as a sex offense by prior law, 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. Further provides that if twice the longest possible sentence is less than 20 years, the person is to be imprisoned for 20 years.

- (b) If the fourth felony and two of the prior felonies are defined as a crime of violence under prior law, a sex offense as defined in prior 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.

New law removes persons with a current or prior felony that is a violation of the CDS Law punishable by imprisonment for 10 years or more and any other non-violent, non-sex offense punishable by imprisonment of 12 years or more from the group of persons who are subject to this sentence.

Prior law provided 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 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.

Prior law further provided that in computing the intervals of time as provided in prior 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 the 10-year periods between the expiration of the maximum sentence or sentences and the next succeeding offense or offenses.

New law retains prior law if the prior offense was a crime of violence or sex offense.

If the prior offense was not a crime of violence or a sex offense, new law decreases, from 10 years to five years, the amount of time that must elapse between the current and prior offense to determine whether the offense may be considered a prior offense in order for the habitual offender law to apply.

New law provides that the five- or 10-year period which must elapse between the current and prior offense in order for the habitual offender law not to apply begins upon the expiration of the correctional supervision, or term of imprisonment if the offender is not placed on supervision following imprisonment, for the previous conviction or convictions.

New law defines "correctional supervision" as 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.

In the case *State v. Dorthey*, 623 So.2d 1276 (La. 1993), the court held that the trial judge has the option to reduce a sentence mandated by the habitual offender law if the trial judge finds that the punishment makes no "measurable contribution to acceptable goals of punishment" or that the sentenced amounted to nothing more than "the purposeful imposition of pain and suffering" and is "grossly out of proportion to the severity of the crime".

New law provides that if the court finds that a sentence imposed under the provisions of prior law or new law to 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.

New law effective November 1, 2018, and applies prospectively only to offenders whose convictions became final on or after 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))