

2019 Regular Session

HOUSE BILL NO. 518

BY REPRESENTATIVE GAINES

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

CRIMINAL/SENTENCING: Provides relative to the sentencing of habitual offenders

1 AN ACT

2 To amend and reenact R.S. 15:529.1(C) and Code of Criminal Procedure Article 893(E)(2),
3 (3)(a) and (c), and (4), relative to the habitual offender law; to provide relative to the
4 convictions to which the habitual offender law applies; to provide for the application
5 of the habitual offender law relative to a conviction that is subsequently dismissed
6 and set aside after a deferral of imposition of sentence; and to provide for related
7 matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 15:529.1(C) is hereby amended and reenacted 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 * * *

13 C.(1) Except as provided in ~~Paragraph~~ Paragraphs (2) and (3) of this
14 Subsection, the current offense shall not be counted as, respectively, a second, third,
15 fourth, or higher offense if more than five years have elapsed between the date of the
16 commission of the current offense or offenses and the expiration of the correctional
17 supervision, or term of imprisonment if the offender is not placed on supervision
18 following imprisonment, for the previous conviction or convictions, or between the
19 expiration of the correctional supervision, or term of imprisonment if the offender

1 is not placed on supervision following imprisonment, for each preceding conviction
2 or convictions alleged in the multiple offender bill and the date of the commission
3 of the following offense or offenses. In computing the intervals of time as provided
4 in this Paragraph, any period of parole, probation, or incarceration by a person in a
5 penal institution, within or without the state, shall not be included in the computation
6 of any of the five-year periods between the expiration of the correctional supervision,
7 or term of imprisonment if the offender is not placed on supervision following
8 imprisonment, and the next succeeding offense or offenses.

9 (2) ~~The~~ Except as provided in Paragraph (3) of this Subsection, the current
10 offense shall not be counted as, respectively, a second, third, fourth, or higher
11 offense if more than ten years have elapsed between the date of the commission of
12 the current offense or offenses and the expiration of correctional supervision, or term
13 of imprisonment if the offender is not placed on supervision following
14 imprisonment, for a crime of violence as defined in R.S. 14:2(B) or a sex offense as
15 defined in R.S. 15:541, or between the expiration of correctional supervision, or term
16 of imprisonment if the offender is not placed on supervision following
17 imprisonment, for each preceding conviction or convictions alleged in the multiple
18 offender bill for a crime of violence as defined in R.S. 14:2(B) or a sex offense as
19 defined in R.S. 15:541 and the date of the commission of the following offense or
20 offenses. In computing the intervals of time as provided in this Paragraph, any
21 period of parole, probation, or incarceration by a person in a penal institution, within
22 or without the state, shall not be included in the computation of any of the ten-year
23 periods between the expiration of correctional supervision, or term of imprisonment
24 if the offender is not placed on supervision following imprisonment, for a crime of
25 violence as defined in R.S. 14:2(B) or a sex offense as defined in R.S. 15:541 and the
26 next succeeding offense or offenses.

27 (3) Notwithstanding any provision of law to the contrary, a conviction for
28 a felony offense that is not a crime of violence as defined by R.S. 14:2(B) and that
29 has been set aside and dismissed pursuant to Code of Criminal Procedure Article

1 under Paragraph A of this Article or deferred under Subparagraph (1) of this
 2 Paragraph. The dismissal of prosecution shall have the same effect as an acquittal,
 3 except that the conviction may be considered as a first offense and provide the basis
 4 for subsequent prosecution of the party as a ~~multiple~~ habitual offender, ~~and shall~~
 5 except as provided in R.S. 15:529.1(C)(3). The conviction may be considered as a
 6 first prior offense for purposes of any other law or laws relating to cumulation of
 7 offenses.

* * *

9 (c) Dismissal under this Paragraph shall have the same effect as an acquittal
 10 for purposes of expungement under the provisions of ~~R.S. 44:9~~ Title XXXIV of the
 11 Code of Criminal Procedure and may occur only once with respect to any person.

* * *

13 (4) When a defendant, who has been committed to the custody of the
 14 Department of Public Safety and Corrections to serve a sentence in the intensive
 15 incarceration program pursuant to the provisions of Article 895(B)(3), has
 16 successfully completed the intensive incarceration program as well as successfully
 17 completed all other conditions of parole or probation, and if the defendant is
 18 otherwise eligible, the court with the concurrence of the district attorney may set
 19 aside the conviction and dismiss prosecution, whether the defendant's sentence was
 20 suspended under Paragraph A of this Article or deferred under Subparagraph (1) of
 21 this Paragraph. The dismissal of prosecution shall have the same effect as an
 22 acquittal, except that the conviction may be considered as a first offense and provide
 23 the basis for subsequent prosecution of the party as a ~~multiple~~ habitual offender, ~~and~~
 24 ~~shall~~ except as provided in R.S. 15:529.1(C)(3). The conviction may be considered
 25 as a first prior offense for purposes of any other law or laws relating to cumulation
 26 of offenses. Dismissal under this Subparagraph shall have the same effect as an
 27 acquittal for purposes of expungement under the provisions of ~~R.S. 44:9~~ Title
 28 XXXIV of the Code of Criminal Procedure and may occur only once with respect
 29 to any person.

 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)]

HB 518 Reengrossed

2019 Regular Session

Gaines

Abstract: Provides that a conviction for a non-violent felony that has been set aside and dismissed after deferred imposition of sentence shall not be considered a prior offense for subsequent prosecution of the person as a habitual offender for a non-violent felony offense.

Present law (habitual offender law) provides that any person who, after having been convicted of a felony, thereafter commits any subsequent felony within La., upon conviction shall be subject to certain enhanced penalties as set forth in present law.

Present law provides 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 five 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. With regard to prior convictions for offenses that are crimes of violence or sex offenses, present law extends this period of time to ten years.

Proposed law retains this provision of present law but provides that a conviction for a felony offense that is not a crime of violence as defined by present law (R.S. 14:2) and that has been set aside and dismissed after deferred imposition of sentence pursuant to present law (C.Cr.P. Art. 893) shall not be considered as a prior conviction for enhancing a felony that is not a crime of violence under the habitual offender law, nor shall it be included in the computation of the five- or ten-year time period set forth in present law for the same purposes.

Present law (C.Cr.P. Art. 893) provides that when it appears that the best interest of the public and of the defendant will be served, the court may defer, in whole or in part, the imposition of a sentence after conviction of a first offense noncapital felony and place the defendant on probation under the supervision of the division of probation and parole.

Present law (C.Cr.P. Art. 893) provides that if the court finds at the conclusion of the probationary period that the probation of the defendant has been satisfactory, the court may set the conviction aside and dismiss the prosecution, which shall have the same effect as acquittal, except that the conviction may be considered as a first offense and provide the basis for subsequent prosecution of the party as a multiple offender, and further shall be considered as a first offense for purposes of any other law or laws relating to cumulation of offenses.

Proposed law retains the present law provision which provides that the conviction may be considered as a prior offense for purposes of any law or laws relating to cumulation of offenses.

Proposed law amends present law to provide that conviction may only be considered as a first offense or provide the basis for subsequent prosecution of the party as a habitual offender pursuant to proposed law which prohibits its use for enhancement of a second felony offense that is not a crime of violence.

(Amends R.S. 15:529.1(C) and C.Cr.P. Art. 893(E)(2), (3)(a) and (c), and (4))

Summary of Amendments Adopted by House

The House Floor Amendments to the original bill:

1. Remove from proposed law changes that would have made the habitual offender law apply only to persons whose instant conviction and any prior conviction is for a crime of violence.
2. Add that a conviction for a non-violent felony that has been set aside and dismissed after deferred imposition of sentence pursuant to present law may not be used to enhance a felony that is not a crime of violence under the habitual offender law.

The House Floor Amendments to the engrossed bill:

1. Make technical corrections to citations in present law regarding expungement of criminal records.