
DIGEST

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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.