

Regular Session, 2010

SENATE BILL NO. 215

BY SENATORS MOUNT, CROWE, DORSEY, DUPLESSIS AND GUILLORY

DWI. Amends the penalty provisions for a third and fourth offense DWI. (gov sig)

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AN ACT

To amend and reenact R.S. 14:98(D)(1)(a) and (E)(1)(a) and (4)(b), and Code of Criminal Procedure Art. 893 (B), relative to offenses involving operating a vehicle while intoxicated; to provide with respect to the crime of operating a vehicle while intoxicated; to amend the criminal penalties for such crime; to provide for certain circumstances to apply probation in felony cases; to provide for substance abuse treatment; to provide for a specified probationary period; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 14:98(D)(1)(a) and(E)(1)(a) and (4)(b) are hereby amended and reenacted to read as follows:

§98. Operating a vehicle while intoxicated

* * *

D.(1)(a) On a conviction of a third offense, notwithstanding any other provision of law to the contrary and regardless of whether the offense occurred before or after an earlier conviction, the offender shall be imprisoned with or without hard labor for not less than one year nor more than five years and shall be fined two

1 thousand dollars. ~~Forty-five days~~ **One year** of the sentence of imprisonment shall be
 2 imposed without benefit of probation, parole, or suspension of sentence. The court,
 3 in its discretion, may suspend all or any part of the remainder of the sentence of
 4 imprisonment. If any portion of the sentence is suspended, the offender shall be
 5 placed on supervised probation with the Department of Public Safety and
 6 Corrections, division of probation and parole, for a period of time equal to the
 7 remainder of the sentence of imprisonment, which probation shall commence on the
 8 day after the offender's release from custody.

* * *

10 E.(1)(a) Except as otherwise provided in Subparagraph (4)(b) of this
 11 Subsection, on a conviction of a fourth or subsequent offense, notwithstanding any
 12 other provision of law to the contrary and regardless of whether the fourth offense
 13 occurred before or after an earlier conviction, the offender shall be imprisoned with
 14 or without hard labor for not less than ten years nor more than thirty years and shall
 15 be fined five thousand dollars. ~~Seventy-five days~~ **Three years** of the sentence of
 16 imprisonment shall be imposed without benefit of probation, parole, or suspension
 17 of sentence. The court, in its discretion, may suspend all or any part of the remainder
 18 of the sentence of imprisonment. If any portion of the sentence is suspended, the
 19 offender shall be placed on supervised probation with the Department of Public
 20 Safety and Corrections, division of probation and parole, for a period of time not to
 21 exceed five years, which probation shall commence on the day after the offender's
 22 release from custody.

* * *

(4)(a) * * *

25 (b) If the offender has previously received the benefit of suspension of
 26 sentence, probation, or parole as a fourth offender, **in addition to the mandatory**
 27 **three years which must be served,** no part of **the remainder of** the sentence may
 28 be imposed with benefit of suspension of sentence, probation, or parole, and no
 29 portion of the sentence shall be imposed concurrently with the remaining balance of

1 any sentence to be served for a prior conviction for any offense.

2 * * *

3 Section 2. Code of Criminal Procedure Art. 893(B) is hereby amended and reenacted
4 to read as follows:

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

6 * * *

7 B. After third conviction of a noncapital felony for which a defendant could
8 have his sentence suspended under Paragraph A of this Article if such conviction
9 were for a first or second offense or for a violation of the Uniform Controlled
10 Dangerous Substances Law, **or for a third conviction of operating a vehicle while**
11 **intoxicated in violation of R.S. 14:98,** and when it appears that the best interest of
12 the public and the defendant will be served, and with the consent of the district
13 attorney, the court may suspend, in whole or in part, the imposition or execution of
14 the sentence, provided the defendant enters and completes a drug court program as
15 defined in R.S. 13:5301 et seq., **or enters and completes an established DWI court**
16 **program pursuant to the agreement of the trial court and the district attorney,**
17 **as set forth in R.S. 14:98(D)(1)(a), or if the defendant is sent by the trial court**
18 **for a minimum period of one year to a facility which conforms to the Judicial**
19 **Agency Referral Residential Facility Regulatory Act, R.S. 40:2852.** When
20 suspension is allowed under this Paragraph, the defendant shall be placed on
21 probation under the supervision of the division of probation and parole. The period
22 of probation shall be specified and shall not be less than two years nor more than five
23 years. The suspended sentence shall be regarded as a sentence for the purpose of
24 granting or denying a new trial or appeal.

25 * * *

26 Section 3. This Act shall become effective upon signature by the governor or, if not
27 signed by the governor, upon expiration of the time for bills to become law without signature
28 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. if
29 vetoed by the governor and subsequently approved by the legislature, this act shall become

1 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Michael Bell.

DIGEST

Mount (SB 215)

Present law provides that on a conviction of a third offense DWI, the offender will be imprisoned with or without hard labor for not less than one year nor more than five years and shall be fined \$2,000 and imprisoned for 45 days without benefit of probation, parole, or suspension of sentence. The court, in its discretion, may suspend all or any part of the remainder of the sentence of imprisonment.

Proposed law maintains present law and enhances the imprisonment sentence from 45 days to one year without benefit of probation, parole, or suspension of sentence.

Present law provides that on a conviction of a fourth or subsequent offense, the offender will be imprisoned with or without hard labor for not less than 10 years nor more than 30 years and shall be fined \$5,000 and imprisoned for 75 days without benefit of probation, parole, or suspension of sentence. The court, in its discretion, may suspend all or any part of the remainder of the sentence of imprisonment.

Proposed law maintains present law and enhances the imprisonment sentence from 75 days to three years without benefit of probation, parole, or suspension of sentence.

Present law provides for suspension of a third conviction of a noncapital felony which a defendant could have his sentence suspended if such conviction were for a first or second offense or for a violation of the Uniform Controlled Dangerous Substances Law, and when it appears that the best interest of the public and the defendant will be served, and with the consent of the district attorney the court may suspend, in whole or in part, the imposition or execution of the sentence.

Proposed law retains present law and provides for suspension of a third conviction of operating a vehicle while intoxicated which a defendant could have his sentence suspended, and when it appears that the best interest of the public and the defendant will be served, and with the consent of the district attorney the court may suspend, in whole or in part, the imposition or execution of the sentence.

Proposed law provides for an offender to enter and complete an established DWI court program pursuant to the trial court and the district attorney.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 14:98(D)(1)(a) and (E)(1)(a) and (4)(b) and C.Cr.P. Art. 893(B))

Summary of Amendments Adopted by Senate

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

1. Adds a third conviction of operating a vehicle while intoxicated to the list of noncapital felony cases for which a defendant could have his sentence suspended upon entering and completing an established DWI court program.