

Regular Session, 2013

HOUSE BILL NO. 103

BY REPRESENTATIVE BADON

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

CRIMINAL/SENTENCING: Provides relative to criminal penalties for possession of marijuana or synthetic cannabinoids and the applicability of the Habitual Offender Law relative to possession of marijuana or synthetic cannabinoid offenses

1 AN ACT

2 To amend and reenact R.S. 40:966(E) and Code of Criminal Procedure Article 881.1(A)(1)

3 and (2) and to enact R.S. 15:529.1(A)(5) and Code of Criminal Procedure Article

4 881.1(A)(5), relative to possession of marijuana or synthetic cannabinoids; to amend

5 the criminal penalties for such offense; to provide with respect to sentencing

6 pursuant to the Habitual Offender Law; to provide for the procedure by which

7 offenders currently serving time for a conviction for possession of marijuana or

8 synthetic cannabinoids may be resentenced; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 40:966(E) is hereby amended and reenacted to read as follows:

11 §966. Penalty for distribution or possession with intent to distribute narcotic drugs

12 listed in Schedule I; possession of marijuana, possession of synthetic

13 cannabinoids

14 \* \* \*

15 E. Possession of marijuana, or synthetic cannabinoids. (1) Except as

16 provided in ~~Subsections E and Subsection F or G~~ of this Section, on a first conviction

17 for violation of Subsection C of this Section with regard to marijuana,

18 tetrahydrocannabinol, or chemical derivatives thereof, or synthetic cannabinoids, the

1 offender shall be fined not more than five hundred dollars, imprisoned ~~in the parish~~  
2 ~~jail~~ for not more than six months, or both.

3 (2)(a) Except as provided in Subsection F or G of this Section, on a second  
4 conviction for violation of Subsection C of this Section with regard to marijuana,  
5 tetrahydrocannabinol or chemical derivatives thereof, or synthetic cannabinoids, the  
6 offender shall be fined not ~~less than two hundred fifty dollars, nor more than two~~  
7 ~~thousand~~ five hundred dollars, imprisoned ~~with or without hard labor~~ for not more  
8 than ~~five years~~ one year, or both.

9 (b) ~~If the court places the offender on probation, the probation shall provide~~  
10 ~~for a minimum condition that he participate in a court-approved substance abuse~~  
11 ~~program and perform four eight-hour days of court-approved community service~~  
12 ~~activities. Any costs associated with probation shall be paid by the offender.~~

13 (3) Except as provided in Subsection F or G of this Section, on a third ~~or~~  
14 ~~subsequent~~ conviction for violation of Subsection C of this Section with regard to  
15 marijuana, tetrahydrocannabinol or chemical derivatives thereof, or synthetic  
16 cannabinoids, the offender shall be fined not more than two thousand dollars,  
17 ~~sentenced to imprisonment~~ imprisoned with or without hard labor for not more than  
18 ~~twenty two~~ years, and may, in addition, be sentenced to pay a fine of not more than  
19 ~~five thousand dollars~~ or both.

20 (4) Except as provided in Subsection F or G of this Section, on a fourth or  
21 subsequent conviction for violation of Subsection C of this Section with regard to  
22 marijuana, tetrahydrocannabinol or chemical derivatives thereof, or synthetic  
23 cannabinoids, the offender shall be fined not more than two thousand dollars,  
24 imprisoned with or without hard labor for not more than five years, or both.

25 (4)(5) A conviction for the violation of any other statute or ordinance with  
26 the same elements as ~~R.S. 40:966(C)~~ Subsection C of this Section prohibiting the  
27 possession of marijuana, tetrahydrocannabinol or chemical derivatives thereof, or  
28 synthetic cannabinoids shall be considered as a prior conviction for the purposes of

1 this Subsection relating to penalties for second, third, fourth, or subsequent  
2 offenders.

3 ~~(5)~~(6) A conviction for the violation of any other statute or ordinance with  
4 the same elements as ~~R.S. 40:966(B)(3)~~ Paragraph (B)(3) of this Section prohibiting  
5 the distributing or dispensing or possession with intent to distribute or dispense  
6 marijuana, ~~of marijuana,~~<sup>†</sup> tetrahydrocannabinol or chemical derivatives thereof, or  
7 synthetic cannabinoids shall be considered as a prior conviction for the purposes of  
8 this Subsection relating to penalties for second, third, fourth, or subsequent  
9 offenders.

10 \* \* \*

11 Section 2. R.S. 15:529(A)(5) is hereby enacted to read as follows:

12 §529.1. Sentences for second and subsequent offenses; certificate of warden or clerk  
13 of court in the state of Louisiana as evidence

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

19 \* \* \*

20 (5) If the current or prior felony conviction is a conviction of a violation of  
21 R.S. 40:966(E), the person shall not be subject or sentenced pursuant to the  
22 provisions of this Section.

23 \* \* \*

24 Section 3. Code of Criminal Procedure Article 881.1(A)(1) and (2) are hereby  
25 amended and reenacted and Code of Criminal Procedure Article 881.1(A)(5) is hereby  
26 enacted to read as follows:

27 Art. 881.1. Motion to reconsider sentence

28 A.(1) ~~In~~ Except as provided in Subparagraph (5) of this Paragraph, in felony  
29 cases, within thirty days following the imposition of sentence or within such longer

1 period as the trial court may set at sentence, the state or the defendant may make or  
2 file a motion to reconsider sentence.

3 (2) ~~In~~ Except as provided in Subparagraph (5) of this Paragraph, in  
4 misdemeanor cases, the defendant may file a motion to reconsider sentence at any  
5 time following commencement or execution of such sentence. The court may grant  
6 the motion and amend the sentence, even following completion of execution of the  
7 sentence, to impose a lesser sentence which could lawfully have been imposed.

8 \* \* \*

9 (5)(a) Notwithstanding any provision of law to the contrary, if the defendant  
10 is incarcerated after having been convicted of possession of marijuana or synthetic  
11 cannabinoids pursuant to R.S. 40:966(E) and has been sentenced pursuant to the  
12 provisions of R.S. 40:966(E) or pursuant to the provisions of the Habitual Offender  
13 Law (R.S. 15:529.1), wherein at least one of the offenses which forms the basis for  
14 such sentence is a conviction for possession of marijuana or synthetic cannabinoids  
15 pursuant to R.S. 40:966(E), the defendant may file a motion to reconsider the  
16 sentence if he has served at least one-half of the maximum term of imprisonment  
17 provided for in R.S. 40:966(E) had the offender been convicted for the offense on or  
18 after August 1, 2013.

19 (b) The motion to reconsider the sentence shall be in writing, shall set forth  
20 the specific grounds on which the motion is based, and shall provide all evidence  
21 necessary to support the claim. If the court determines that the defendant meets the  
22 criteria provided for in Subparagraph (a) of this Paragraph, the court shall grant the  
23 motion and shall amend the sentence of the defendant in accordance with the  
24 provisions of R.S. 40:966(E), with credit for time served by the offender for the  
25 initial sentence imposed upon conviction.

26 \* \* \*

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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)]

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HB No. 103

**Abstract:** Amends the criminal penalties for second and subsequent convictions of possession of marijuana or synthetic cannabinoids and prohibits the application of the Habitual Offender Law to possession of marijuana or synthetic cannabinoid offenses.

Present law provides for the following penalties with regard to the crime of possession of marijuana or synthetic cannabinoids:

- (1) On a first conviction, the offender shall be fined not more than \$500, imprisoned in the parish jail for not more than six months, or both.
- (2) On a second conviction, the offender shall be fined not less than \$250 nor more than \$2,000, imprisoned with or without hard labor for not more than five years, or both. In addition, present law required that certain conditions be met if the offender is placed on probation, including substance abuse treatment and community service.
- (3) On a third or subsequent conviction, the offender shall be sentenced to imprisonment with or without hard labor for not more than 20 years, and may, in addition, be sentenced to pay a fine of not more than \$5,000.

Present law provides for increased penalties for habitual offenders, including offenders who have been convicted of possession of marijuana or synthetic cannabinoids.

Proposed law amends the penalties for possession of marijuana or synthetic cannabinoids as follows:

- (1) On a first conviction, proposed law retains present law.
- (2) On a second conviction, the offender shall be fined not more than \$500, imprisoned for not more than one year, or both. In addition, proposed law repeals the provision which provides for the special conditions of probation for a second offense.
- (3) On a third conviction, the offender shall be fined not more than \$2,000, imprisoned with or without hard labor for not more than two years, or both.
- (4) On a fourth or subsequent conviction, the offender shall be fined not more than \$2,000, imprisoned with or without hard labor for not more than five years, or both.

Proposed law removes possession of marijuana or synthetic cannabinoids as a possible offense for which an offender may be sentenced pursuant to the Habitual Offender Law.

Proposed law authorizes a defendant who is incarcerated after having been convicted of and sentenced according to the provisions of present law regarding possession of marijuana or synthetic cannabinoids or present law habitual offender provisions, wherein at least one of the offenses which forms the basis for such sentence is a conviction for possession of

marijuana or synthetic cannabinoids pursuant to present law, if the defendant has served at least ½ of the maximum term of imprisonment provided for in proposed law. Proposed law further provides the procedure for such motions to reconsider.

(Amends R.S. 40:966(E) and C.Cr.P. Art. 881.1(A)(1) and (2); Adds R.S. 15:529.1(A)(5) and C.Cr.P. Art. 881.1(A)(5))