

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: Reduces criminal penalties for possession of marijuana and prohibits the applicability of the Habitual Offender Law relative to possession of marijuana

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; to amend the criminal penalties for
5 such offense; to provide with respect to sentencing pursuant to the Habitual Offender
6 Law; to provide for the procedure by which offenders currently serving time for a
7 conviction for possession of marijuana may be resentenced; and to provide for
8 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.(1) 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)~~(b) 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 (c) 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, the offender shall
23 be fined not more than two thousand dollars, imprisoned with or without hard labor
24 for not more than five years, or both.

25 ~~(4)~~(d) 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)(e)~~ (e) 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,~~[†] 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 (2) Possession of synthetic cannabinoids. (1) Except as provided in
11 Subsections F and G of this Section, on a first conviction for violation of Subsection
12 C of this Section with regard to synthetic cannabinoids, the offender shall be fined
13 not more than five hundred dollars, imprisoned in the parish jail for not more than
14 six months, or both.

15 (a) Except as provided in Subsection F or G of this Section, on a second
16 conviction for violation of Subsection C of this Section with regard to synthetic
17 cannabinoids, the offender shall be fined not less than two hundred fifty dollars nor
18 more than two thousand dollars, imprisoned with or without hard labor for not more
19 than five years, or both.

20 (b) Except as provided in Subsection F or G of this Section, on a third or
21 subsequent conviction for violation of Subsection C of this Section with regard to
22 synthetic cannabinoids, the offender shall be sentenced to imprisonment with or
23 without hard labor for not more than twenty years, and may, in addition, be
24 sentenced to pay a fine of not more than five thousand dollars.

25 (c) A conviction for the violation of any other statute or ordinance with the
26 same elements as Subsection C of this Section prohibiting the possession of synthetic
27 cannabinoids shall be considered as a prior conviction for the purposes of this
28 Subsection relating to penalties for second, third, or subsequent offenders.

1 (d) A conviction for the violation of any other statute or ordinance with the
2 same elements as Paragraph (B)(3) of this Section prohibiting the distributing or
3 dispensing or possession with intent to distribute or dispense synthetic cannabinoids
4 shall be considered as a prior conviction for the purposes of this Subsection relating
5 to penalties for second, third, or subsequent offenders.

6 * * *

7 Section 2. R.S. 15:529.1(A)(5) is hereby enacted to read as follows:

8 §529.1. Sentences for second and subsequent offenses; certificate of warden or clerk
9 of court in the state of Louisiana as evidence

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

15 * * *

16 (5) If the current and all prior felony convictions are convictions of a
17 violation of R.S. 40:966(E)(1), the person shall not be subject or sentenced pursuant
18 to the provisions of this Section.

19 * * *

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

23 Art. 881.1. Motion to reconsider sentence

24 A.(1) ~~In~~ Except as provided in Subparagraph (5) of this Paragraph, in felony
25 cases, within thirty days following the imposition of sentence or within such longer
26 period as the trial court may set at sentence, the state or the defendant may make or
27 file a motion to reconsider sentence.

28 (2) ~~In~~ Except as provided in Subparagraph (5) of this Paragraph, in
29 misdemeanor cases, the defendant may file a motion to reconsider sentence at any

1 time following commencement or execution of such sentence. The court may grant
2 the motion and amend the sentence, even following completion of execution of the
3 sentence, to impose a lesser sentence which could lawfully have been imposed.

4 * * *

5 (5)(a) Notwithstanding any provision of law to the contrary, if the defendant
6 is incarcerated after having been convicted of possession of marijuana pursuant to
7 R.S. 40:966(E)(1) and has been sentenced pursuant to the provisions of R.S.
8 40:966(E)(1) or pursuant to the provisions of the Habitual Offender Law (R.S.
9 15:529.1), wherein at least one of the offenses which forms the basis for such
10 sentence is a conviction for possession of marijuana pursuant to R.S. 40:966(E)(1),
11 the defendant may file a motion to reconsider the sentence if he has served at least
12 one-half of the maximum term of imprisonment provided for in R.S. 40:966(E)(1),
13 had the offender been convicted for the offense on or after August 1, 2013.

14 (b) The motion to reconsider the sentence shall be in writing, shall set forth
15 the specific grounds on which the motion is based, and shall provide all evidence
16 necessary to support the claim. If the court determines that the defendant meets the
17 criteria provided for in Subsubparagraph (a) of this Paragraph, the court shall grant
18 the motion and shall amend the sentence of the defendant in accordance with the
19 provisions of R.S. 40:966(E)(1), with credit for time served by the offender for the
20 initial sentence imposed upon conviction.

21 * * *

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)]

Badon

HB No. 103

Abstract: Amends the criminal penalties for second and subsequent convictions of possession of marijuana, prohibits the application of the Habitual Offender Law to possession of marijuana, and provides for the filing of a motion to reconsider a sentence in certain cases.

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.

Proposed law amends the penalties for possession of marijuana 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.

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

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

Proposed law authorizes the filing of a motion to reconsider the sentence of a defendant who is incarcerated after having been convicted of and sentenced according to the provisions of present law regarding possession of marijuana 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 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))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill.

1. Retained present law penalties for possession of synthetic cannabinoids and reduced the penalties for possession of marijuana.
2. Prohibited the Habitual Offender Law from applying when all underlying criminal convictions are for possession of marijuana.