

Regular Session, 2014

SENATE BILL NO. 256

BY SENATOR MILLS

CONTROL DANGER SUBSTANCE. Provides relative to sentencing under the Uniform Controlled Dangerous Substances Law. (8/1/14)

AN ACT

To amend and reenact R.S. 40:967(B), (C), and (F), relative to controlled dangerous substances; to provide relative to certain sentencing provisions of the Uniform Controlled Dangerous Substances Law; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:967(B), (C), and (F) are hereby amended and reenacted to read as follows:

§967. Prohibited acts – Schedule II, penalties

* * *

B. Penalties for violation of Subsection A. Except as provided in Subsection F, any person who violates Subsection A with respect to:

(1) ~~A substance classified in Schedule II which is an amphetamine or methamphetamine or which is a narcotic drug, except cocaine or cocaine base or a mixture or substance containing cocaine or its analogues as provided in Schedule H(A)(4) of R.S. 40:964 and except oxycodone as provided in Schedule H(A)(1)(o) of R.S. 40:964 and except methadone as provided in Schedule H(B)(11) of R.S. 40:964 shall~~ **Shall** be sentenced to a term of imprisonment at hard labor for not less

1 than two years nor more than thirty years; and may, in addition, be sentenced to pay
2 a fine of not more than fifty thousand dollars.

3 ~~(2) Pentazocine, shall be sentenced to imprisonment at hard labor for not less~~
4 ~~than two years nor more than ten years, at least two years of which shall be served~~
5 ~~without benefit of parole, probation, or suspension of sentence, and, in addition, may~~
6 ~~be sentenced to pay a fine of not more than fifteen thousand dollars.~~

7 ~~(3)(a)~~ Production or manufacturing of amphetamine or methamphetamine
8 shall be sentenced to imprisonment at hard labor for not less than ten years nor more
9 than thirty years, ~~at least ten years of which shall be served without benefit of parole,~~
10 ~~probation, or suspension of sentence,~~ and in addition may be sentenced to pay a fine
11 of not more than five hundred thousand dollars.

12 ~~(b)~~ **(3)** This Subparagraph shall be cited as the "Child Endangerment Law."
13 When the state proves in addition to the elements of the crime as set forth in
14 Subsection A of this Section that a minor child twelve years of age or younger is
15 present in the home, mobile home or other inhabited dwelling at the time of the
16 commission of the offense, the minimum mandatory sentence shall be ~~fifteen~~ **ten**
17 years without benefit of parole, probation, or suspension of sentence.

18 ~~(4)(a)~~ Production or manufacturing of cocaine or cocaine base or a mixture
19 or substance containing cocaine or its analogues as provided in Schedule II(A)(4) of
20 R.S. 40:964 or oxycodone as provided in Schedule II(A)(1)(o) of R.S. 40:964 or
21 methadone as provided in Schedule II(B)(11) of R.S. 40:964 shall be sentenced to
22 imprisonment at hard labor for not less than ten nor more than thirty years, at least
23 ten years of which shall be served without benefit of parole, probation, or suspension
24 of sentence, and may be fined not more than five hundred thousand dollars.

25 ~~(b) Distribution, dispensing, or possession with intent to produce,~~
26 ~~manufacture, distribute, or dispense cocaine or cocaine base or a mixture or~~
27 ~~substance containing cocaine or its analogues as provided in Schedule II(A)(4) of~~
28 ~~R.S. 40:964 or oxycodone as provided in Schedule II(A)(1)(o) of R.S. 40:964 or~~
29 ~~methadone as provided in Schedule II(B)(11) of R.S. 40:964 shall be sentenced to~~

1 a term of imprisonment at hard labor for not less than two years nor more than thirty
2 years, with the first two years of said sentence being without benefit of parole,
3 probation, or suspension of sentence; and may, in addition, be sentenced to pay a fine
4 of not more than fifty thousand dollars.

5 ~~(5) Any other controlled dangerous substance classified in Schedule II except~~
6 ~~pentazocine, amphetamine, methamphetamine, cocaine, or oxycodone, or methadone~~
7 ~~shall be sentenced to a term of imprisonment at hard labor for not more than ten~~
8 ~~years, and in addition may be sentenced to pay a fine of not more than fifteen~~
9 ~~thousand dollars.~~

10 C. Possession. It is unlawful for any person knowingly or intentionally to
11 possess a controlled dangerous substance as classified in Schedule II unless such
12 substance was obtained directly or pursuant to a valid prescription or order from a
13 practitioner, as provided in R.S. 40:978 while acting in the course of his professional
14 practice, or except as otherwise authorized by this Part.

15 ~~(1) Any person who violates this Subsection with respect to pentazocine shall~~
16 ~~be imprisoned with or without hard labor for not less than two years and for not more~~
17 ~~than five years and, in addition, may be sentenced to pay a fine of not more than five~~
18 ~~thousand dollars.~~

19 ~~(2) Any person who violates this Subsection as to any other controlled~~
20 ~~dangerous substance shall be imprisoned with or without hard labor for not more~~
21 ~~than five years and, in addition, may be sentenced to pay a fine of not more than five~~
22 ~~thousand dollars.~~

23 * * *

24 F. Other penalties for possession.

25 (1) Except as otherwise authorized in this Part:

26 (a) ~~Any person who knowingly or intentionally possesses twenty-eight grams~~
27 ~~or more, but less than two hundred grams, of cocaine or of a mixture or substance~~
28 ~~containing a detectable amount of cocaine or of its analogues as provided in~~
29 ~~Schedule II(A)(4) of R.S. 40:964, shall be sentenced to serve a term of imprisonment~~

1 ~~at hard labor of not less than five years, nor more than thirty years, and to pay a fine~~
2 ~~of not less than fifty thousand dollars, nor more than one hundred fifty thousand~~
3 ~~dollars.~~

4 (b) Any person who knowingly or intentionally possesses two hundred grams
5 or more, but less than four hundred grams, of cocaine or of a mixture or substance
6 containing a detectable amount of cocaine or of its analogues as provided in
7 Schedule II(A)(4) of R.S. 40:964, shall be sentenced to serve a term of imprisonment
8 at hard labor of not less than ten years, nor more than thirty years, and to pay a fine
9 of not less than one hundred thousand dollars, nor more than three hundred fifty
10 thousand dollars.

11 (c) (b) Any person who knowingly or intentionally possesses four hundred
12 grams or more of cocaine or of a mixture or substance containing a detectable
13 amount of cocaine or of its analogues as provided in Schedule II(A)(4) of R.S.
14 40:964, shall be sentenced to serve a term of imprisonment at hard labor of not less
15 than fifteen years, nor more than thirty years and to pay a fine of not less than two
16 hundred fifty thousand dollars, nor more than six hundred thousand dollars.

17 (2) Except as otherwise authorized in this Part:

18 (a) ~~Any person who knowingly or intentionally possesses twenty-eight grams~~
19 ~~or more, but less than two hundred grams, of amphetamine or methamphetamine or~~
20 ~~of a mixture or substance containing a detectable amount of amphetamine or~~
21 ~~methamphetamine or any of their analogues as provided in Schedule II(C) of R.S.~~
22 ~~40:964, shall be sentenced to serve a term of imprisonment at hard labor of not less~~
23 ~~than five years, nor more than thirty years, and to pay a fine of not less than fifty~~
24 ~~thousand dollars, nor more than one hundred fifty thousand dollars.~~

25 (b) Any person who knowingly or intentionally possesses two hundred grams
26 or more, but less than four hundred grams, of amphetamine or methamphetamine or
27 of a mixture or substance containing a detectable amount of amphetamine or
28 methamphetamine or any of their analogues as provided in Schedule II(C) of R.S.
29 40:964, shall be sentenced to serve a term of imprisonment at hard labor of not less

1 than ten years, nor more than thirty years, and to pay a fine of not less than one
2 hundred thousand dollars, nor more than three hundred fifty thousand dollars.

3 ~~(c)~~ **(b)** Any person who knowingly or intentionally possesses four hundred
4 grams or more of amphetamine or methamphetamine or of a mixture or substance
5 containing a detectable amount of amphetamine or methamphetamine or any of its
6 analogues as provided in Schedule II(C) of R.S. 40:964, shall be sentenced to serve
7 a term of imprisonment at hard labor of not less than fifteen years, nor more than
8 thirty years, and to pay a fine of not less than two hundred fifty thousand dollars, nor
9 more than six hundred thousand dollars.

10 (3) Except as otherwise authorized in this Part:

11 ~~(a) Any person who knowingly or intentionally possesses twenty-eight grams~~
12 ~~or more, but less than two hundred grams, of gamma hydroxybutyric acid or of a~~
13 ~~mixture or substance containing a detectable amount of gamma hydroxybutyric acid~~
14 ~~or of its analogues shall be sentenced to serve a term of imprisonment at hard labor~~
15 ~~of not less than five years, nor more than thirty years, and to pay a fine of not less~~
16 ~~than fifty thousand dollars, nor more than one hundred fifty thousand dollars.~~

17 ~~(b)~~ Any person who knowingly or intentionally possesses two hundred grams
18 or more, but less than four hundred grams, of gamma hydroxybutyric acid or of a
19 mixture or substance containing a detectable amount of gamma hydroxybutyric acid
20 or of its analogues shall be sentenced to serve a term of imprisonment at hard labor
21 of not less than ten years, nor more than thirty years, and to pay a fine of not less
22 than one hundred thousand dollars, nor more than three hundred fifty thousand
23 dollars.

24 ~~(c)~~ **(b)** Any person who knowingly or intentionally possesses four hundred
25 grams or more of gamma hydroxybutyric acid or of a mixture or substance
26 containing a detectable amount of gamma hydroxybutyric acid or of its analogues
27 shall be sentenced to serve a term of imprisonment at hard labor of not less than
28 fifteen years, nor more than thirty years, and to pay a fine of not less than two
29 hundred fifty thousand dollars, nor more than six hundred thousand dollars.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alden A. Clement Jr.

DIGEST

Mills (SB 256)

Present law (Uniform Controlled Dangerous Substances Law) provides penalties for the production, manufacture, distribution, possession with intent to distribute, and simple possession of certain controlled dangerous substances (Schedule II drugs).

Present law provides that any person who illegally produces, manufactures, distributes, or possesses with intent to distribute certain Schedule II drugs that are amphetamines or narcotics, except cocaine, oxycodone, methadone, and pentazocine, is to be imprisoned at hard labor for between two and 30 years, and may also be fined up to \$50,000.

Present law provides that any person who illegally distributes or possesses with intent to distribute cocaine, oxycodone, or methadone is to be imprisoned at hard labor for between two and 30 years, with the first two years without benefit of parole, probation, or suspension of sentence, and may be fined up to \$50,000.

Present law provides that any person who illegally produces, manufactures, distributes, or possesses with intent to distribute the Schedule II drug pentazocine is to be sentenced to imprisonment at hard labor for between two and 10 years, at least two years of which must be served without benefit of parole, probation, or suspension of sentence, and may be fined up to \$15,000.

Proposed law deletes certain exceptions and separate penalties for cocaine, oxycodone, methadone, and pentazocine, and provides that any person who illegally distributes or possesses with intent to distribute cocaine, oxycodone, or methadone, or who produces, manufactures, distributes, or possesses with intent to distribute any other Schedule II drug, is to be imprisoned at hard labor for between two and 30 years, and may also be fined up to \$50,000.

Present law provides that any person who illegally produces or manufactures amphetamine or methamphetamine is to be sentenced to imprisonment at hard labor for between 10 and 30 years, at least 10 years of which must be served without benefit of parole, probation, or suspension of sentence, and may be fined up to \$500,000.

Proposed law deletes the requirement that at least 10 years of the sentence of imprisonment must be served without benefit of parole, probation, or suspension of sentence. Proposed law otherwise retains present law.

Present law (Child Endangerment Law) provides that when the state proves, in addition to the elements of the present law crime of illegal manufacture, distribution, or possession with intent to distribute certain Schedule II drugs, that a minor child 12 years of age or younger is present in the home, mobile home, or other inhabited dwelling at the time of the commission of the offense, the minimum mandatory sentence is to be 15 years without benefit of parole, probation, or suspension of sentence.

Proposed law changes the mandatory minimum sentence under the Child Endangerment Law from 15 years to 10 years. Proposed law otherwise retains present law.

Present law provides that any person who illegally produces or manufactures cocaine, oxycodone, and methadone is to be sentenced to imprisonment at hard labor for between 10 and 30 years, at least 10 years of which must be served without benefit of parole, probation,

or suspension of sentence, and may be fined up to \$500,000.

Present law provides penalties for simple possession of certain Schedule II drugs.

Present law provides that any person who illegally possesses any Schedule II drug except pentazocine is to be imprisoned, with or without hard labor, for up to five years, and may be fined up to \$5,000.

Present law provides that any person who illegally possesses pentazocine is to be imprisoned, with or without hard labor, for between two and five years, and may be fined up to \$5,000.

Proposed law deletes the two year minimum sentence for possession of pentazocine, and provides that any person who illegally possess any Schedule II drug is to be imprisoned, with or without hard labor, for up to five years, and may be fined up to \$5,000.

Present law provides penalties for possession of 28 grams or more but less than 200 grams of cocaine.

Proposed law deletes present law such that general proposed law penalties for possession apply.

Present law provides that any person who knowingly or intentionally possesses 200 grams or more, but less than 400 grams, of cocaine is to be imprisoned at hard labor for between 10 and 30 years, and fined between \$100,000 and \$350,000.

Proposed law retains present law.

Present law provides that any person who knowingly or intentionally possesses 400 grams or more of cocaine is to be imprisoned at hard labor for between 15 and 30 years and fined between \$250,000 and \$600,000.

Proposed law retains present law.

Present law provides penalties for possession of 28 grams or more but less than 200 grams of amphetamine or methamphetamine.

Proposed law deletes present law such that general proposed law penalties for possession apply.

Present law provides that any person who knowingly or intentionally possesses 200 grams or more but less than 400 grams of amphetamine or methamphetamine is to be imprisoned at hard labor for between 10 and 30 years, and fined between \$100,000 and \$350,000.

Proposed law retains present law.

Present law provides that any person who knowingly or intentionally possesses 400 grams or more of amphetamine or methamphetamine is to be imprisoned at hard labor for between 15 and 30 years, and fined between \$250,000 and \$600,000.

Proposed law retains present law.

Present law provides penalties for possession of 28 grams or more but less than 200 grams of gamma hydroxybutyric acid.

Proposed law deletes present law such that general proposed law penalties for possession apply.

Present law provides that any person who knowingly or intentionally possesses 200 grams or more, but less than 400 grams of gamma hydroxybutyric acid is to be imprisoned at hard labor for between 10 and 30 years, and fined between \$100,000 and \$350,000.

Proposed law retains present law.

Present law provides that any person who knowingly or intentionally possesses 400 grams or more of gamma hydroxybutyric acid is to be imprisoned at hard labor for between 15 and 30 years, and fined between \$250,000 and \$600,000.

Proposed law retains present law.

Effective August 1, 2014.

(Amends R.S. 40:967(B), (C), and (F))