SLS 14RS-678 ORIGINAL

Regular Session, 2014

SENATE BILL NO. 286

BY SENATOR MURRAY

1

CRIME/PUNISHMENT. Provides relative to sentences imposed on crimes of violence. (8/1/14)

AN ACT

2	To amend and reenact Code of Criminal Procedure Article 893(A) and (E)(1)(b), R.S.
3	13:5304(B)(10)(a) and (b), and R.S. 15:529.1(A)(3)(b), 571.3(A)(1), (B)(1)(a) and
4	(2) and (D), $574.2(C)(2)(a)$ , $574.4(A)(1)(b)(i)$ and (4)(a) and (B)(1),
5	574.9(G)(1)(b)(i), 827.1(E)(3) and (4), 833.1(D), and 1199.7(C), and to enact Code
6	of Criminal Procedure Article 890.3 and R.S. 15:827.1(E)(5) and 1199.7(D), relative
7	to sentencing for crimes of violence; to provide relative to suspension of sentence
8	and probation in certain felony cases; to provide relative to drug division probation
9	programs; to provide relative to sentencing of certain habitual offenders; to provide
10	relative to diminution of sentence under certain circumstances; to provide relative
11	to parole eligibility and revocation; and to provide for related matters.
12	Be it enacted by the Legislature of Louisiana:
13	Section 1. Code of Criminal Procedure Article 893(A) and (E)(1)(b) are hereby
14	amended and reenacted, and Code of Criminal Procedure Article 890.3 is hereby enacted,
15	to read as follows:
16	Art. 890.3. Sentence imposed on a crime of violence
17	A. In accordance with Paragraphs B and C of this Article, when a court

1	imposes a sentence it shall state in the sentencing minutes whether the offender
2	is sentenced for a crime of violence as defined or enumerated in R.S. 14:2(B).
3	B. The court shall designate the following as crimes of violence in the
4	sentencing minutes:
5	(1) R.S. 14:28.1, solicitation for murder.
6	(2) R.S. 14:30, first degree murder.
7	(3) R.S. 14:30.1, second degree murder.
8	(4) R.S. 14:31, manslaughter.
9	(5) R.S. 14:34.6, disarming of a peace officer.
10	(6) R.S. 14:34.7, aggravated second degree battery.
11	(7) R.S. 14:37.1, assault by drive-by shooting.
12	(8) R.S. 14:37.4, aggravated assault with a firearm.
13	(9) R.S. 14:42, aggravated rape.
14	(10) R.S. 14:42.1, forcible rape.
15	(11) R.S. 14:43, simple rape.
16	(12 R.S. 14:43.1, sexual battery.
17	(13) R.S. 14:43.2, second degree sexual battery.
18	(14) R.S. 14:43.5, intentional exposure to AIDS virus.
19	(15) R.S. 14:44, aggravated kidnapping.
20	(16) R.S. 14:44.1, second degree kidnapping.
21	(17) R.S. 14:46.2, human trafficking.
22	(18) R.S. 14:46.3, trafficking of children for sexual purposes.
23	(19) R.S. 14:51, aggravated arson.
24	(20) R.S. 14:62.8, home invasion.
25	(21) R.S. 14:64, armed robbery.
26	(22) R.S. 14:64.2, carjacking.
27	(23) R.S. 14:64.3, armed robbery using a firearm.
28	(24) R.S. 14:64.4, second degree robbery.
29	(25) R.S. 14:78.1, aggravated incest.

1	(26) R.S. 14:93.2.3, second degree cruelty to juveniles.
2	(27) R.S. 14:128.1, terrorism.
3	C. The court may designate any other crime of violence defined or
4	enumerated in R.S. 14:2(B) or attempts to commit any other crime of violence
5	defined or enumerated in R.S. 14:2(B) as a crime of violence in the sentencing
6	minutes upon the written recommendation of the prosecution.
7	* * *
8	Art. 893. Suspension and deferral of sentence and probation in felony cases
9	A. When it appears that the best interest of the public and of the defendant
10	will be served, the court, after a first or second conviction of a noncapital felony,
11	may suspend, in whole or in part, the imposition or execution of either or both
12	sentences, where suspension is allowed under the law, and in either or both cases
13	place the defendant on probation under the supervision of the division of probation
14	and parole. The court shall not suspend the sentence of a conviction for a crime of
15	violence as defined in R.S. 14:2(B)(1), (2), (3), (4), (5), (9), (10), (11), (12), (13),
16	(14), (15), (16), (18), (20), (21), (22), (26), (27), or (28), or provided in Code of
17	Criminal Procedure Article 890.1(B), or suspend the sentence of a second
18	conviction if the second conviction is for a violation of R.S. 14:73.5, 81.1, or 81.2.
19	The period of probation shall be specified and shall not be less than one year nor
20	more than five years. The suspended sentence shall be regarded as a sentence for the
21	purpose of granting or denying a new trial or appeal. Supervised release as provided
22	for by Chapter 3-E of Title 15 of the Louisiana Revised Statutes of 1950 shall not be
23	considered probation and shall not be limited by the five-year period for probation
24	provided for by the provisions of this Paragraph.
25	* * *
26	E.(1) * * *
27	(b) The court shall not defer a sentence under this provision for an offense or
28	an attempted offense which is defined or enumerated as a crime of violence under

an attempted offense which is defined or enumerated as a crime of violence under R.S. 14:2(B) or a that is a sex offense as defined by R.S. 15:541; involving a child

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1	under the age of seventeen years, or for a violation of the Uniform Controlled
2	Dangerous Substances Law that is punishable by a term of imprisonment of more
3	than five years, or for a violation of R.S. 40:966(A), 967(A), 968(A), 969(A), or
4	970(A), or for a defendant who was sentenced for a crime of violence as
5	provided by Code of Criminal Procedure Article 890.3.
6	* * *
7	Section 2. R.S. 13:5304(B)(10)(a) and (b) are hereby amended and reenacted to read
8	as follows:
9	§5304. The drug division probation program
10	* * *
11	B. Participation in probation programs shall be subject to the following
12	provisions:
13	* * *
14	(10) In order to be eligible for the drug division probation program, the
15	defendant must satisfy each of the following criteria:
16	(a) The defendant cannot have any prior felony convictions for any offenses
17	defined as crimes of violence in R.S. 14:2(B) have been previously sentenced for
18	a crime of violence as provided in Code of Criminal Procedure Article 890.3.
19	(b) The crime before the court <del>cannot be a crime of violence as defined in</del>
20	R.S. 14:2(B), including domestic violence is not domestic violence or the
21	defendant will not be sentenced for a crime including domestic violence.
22	* * *
23	Section 3. R.S. $15:529.1(A)(3)(b)$ , $571.3(A)(1)$ , $(B)(1)(a)$ and $(2)$ and $(D)$ ,
24	574.2(C)(2)(a), 574.4(A)(1)(b)(i) and (4)(a) and (B)(1), 574.9(G)(1)(b)(i), 827.1(E)(3) and
25	(4),833.1(D), and 1199.7(C) are hereby amended and reenacted and R.S. 15:827.1(E)(5) and (2000) and (2000) are hereby amended and reenacted and R.S. 15:827.1(E)(5) and (2000) are hereby amended and reenacted and R.S. 15:827.1(E)(5) and (2000) are hereby amended and reenacted and R.S. 15:827.1(E)(5) and (2000) are hereby amended and reenacted and R.S. 15:827.1(E)(5) and (2000) are hereby amended and reenacted and R.S. 15:827.1(E)(5) and (2000) are hereby amended and reenacted and R.S. 15:827.1(E)(5) and (2000) are hereby amended and reenacted and R.S. 15:827.1(E)(5) and (2000) are hereby amended and reenacted and R.S. 15:827.1(E)(5) and (2000) are hereby amended and (2000) are hereby are
26	1199.7(D) are hereby enacted to read as follows:
27	§529.1. Sentences for second and subsequent offenses; certificate of warden or clerk
28	of court in the state of Louisiana as evidence
29	A. Any person who, after having been convicted within this state of a felony,

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

\* \* \*

(3) If the third felony is such that upon a first conviction, the offender would be punishable by imprisonment for any term less than his natural life then:

\* \* \*

(b) If the third felony and the two prior felonies are felonies defined as such that the person was sentenced for a crime of violence under R.S. 14:2(B), as provided in Code of Criminal Procedure Article 890.3, or defined or enumerated as a sex offense as defined in R.S. 15:540 et seq. when the victim is under the age of eighteen at the time of commission of the offense, or as a violation of the Uniform Controlled Dangerous Substances Law punishable by imprisonment for ten years or more, or any other crimes punishable by imprisonment for twelve years or more, or any combination of such crimes, the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

\* \* \*

## §571.3. Diminution of sentence for good behavior

A.(1) Every prisoner in a parish prison convicted of an offense and sentenced to imprisonment without hard labor, except a prisoner convicted a second time of <u>for</u> a crime of violence as <u>defined by R.S. 14:2(B)</u> <u>provided in Code of Criminal Procedure Article 890.3</u>, may earn a diminution of sentence, to be known as "good time", by good behavior and performance of work or self-improvement activities, or both. The amount of diminution of sentence allowed under this Paragraph shall be at the rate of thirty days for every thirty days in actual custody, except for a prisoner convicted <u>sentenced</u> a first time <u>of <u>for</u> a crime of violence, as <u>defined in R.S. 14:2(B)</u> <u>provided in Code of Criminal Procedure Article 890.3</u>, who shall earn</u>

diminution of sentence at the rate of three days for every seventeen days in actual custody held on the imposed sentence, including, in either case, time spent in custody with good behavior prior to sentencing for the particular sentence imposed as

authorized by Code of Criminal Procedure Article 880.

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B.(1)(a) Unless otherwise prohibited, every inmate in the custody of the department who has been convicted of a felony, except an inmate convicted sentenced a second time of for a crime of violence as defined by R.S. 14:2(B) provided in Code of Criminal Procedure Article 890.3, and sentenced to imprisonment for a stated number of years or months, may earn, in lieu of incentive wages, a diminution of sentence by good behavior and performance of work or self-improvement activities, or both, to be known as "good time". Those inmates serving life sentences will be credited with good time earned which will be applied toward diminution of their sentences at such time as the life sentences might be commuted to a specific number of years. The secretary shall establish regulations for awarding and recording of good time and shall determine when good time has been earned toward diminution of sentence. The amount of diminution of sentence allowed under the provisions of this Section shall be at the rate of one and one halfday for every one day in actual custody served on the imposed sentence, including time spent in custody with good behavior prior to sentencing for the particular sentence imposed as authorized by the provisions of Code of Criminal Procedure Article 880.

\* \* \*

(2) An inmate convicted sentenced a first time of for a crime of violence as defined in R.S. 14:2(B), provided in Code of Criminal Procedure Article 890.3 shall earn diminution of sentence at a rate of three days for every seventeen days in actual custody held on the imposed sentence, including time spent in custody with good behavior prior to sentencing for the particular sentence imposed as authorized by Code of Criminal Procedure Article 880.

1	* * *
2	D. Diminution of sentence shall not be allowed an inmate in the custody of
3	the Department of Public Safety and Corrections if the instant offense is a second
4	offense sentencing for a crime of violence as defined by R.S. 14:2(B) provided in
5	Code of Criminal Procedure Article 890.3.
6	* * *
7	§574.2. Committee on parole, Board of Pardons; membership; qualifications;
8	vacancies; compensation; domicile; venue; meetings; quorum;
9	panels; powers and duties; transfer of property to committee;
10	representation of applicants before the committee; prohibitions
11	* * *
12	C. * * *
13	(2) The committee may grant parole with two votes of a three-member panel,
14	or, if the number exceeds a three-member panel, a majority vote of those present if
15	all of the following conditions are met:
16	(a) The offender has not been convicted of sentenced for a crime of violence
17	as defined in R.S. 14:2(B) provided in Code of Criminal Procedure Article 890.3
18	or <b>convicted of</b> a sex offense as defined <b>or enumerated</b> in R.S. 15:541, <del>or convicted</del>
19	of an offense which would constitute a crime of violence as defined in R.S. 14:2(B)
20	or a sex offense as defined in R.S. 15:541, regardless of the date of conviction.
21	* * *
22	§574.4. Parole; eligibility
23	A.(1) * * *
24	(b)(i) Notwithstanding the provisions of Subparagraph (a) of this Paragraph,
25	a person, otherwise eligible for parole, convicted of a first felony offense shall be
26	eligible for parole consideration upon serving twenty-five percent of the sentence
27	imposed. The provisions of this Subparagraph shall not apply to any person who has
28	been convicted of sentenced for a crime of violence as defined in R.S. 14:2(B)

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provided in Code of Criminal Procedure Article 890.3, has been convicted of a

sex offense as defined <u>or enumerated</u> in R.S. 15:541, has been sentenced as a habitual offender pursuant to R.S. 15:529.1, or is otherwise ineligible for parole.

\* \* \*

(4) Notwithstanding any other provision of law to the contrary, unless eligible for parole at an earlier date, a person committed to the Department of Public Safety and Corrections for a term or terms of imprisonment with or without benefit of parole who has served at least ten years of the term or terms of imprisonment in actual custody shall be eligible for parole consideration upon reaching the age of sixty years if all of the following conditions are met:

(a) The offender has not been convicted of sentenced for a crime of violence as defined in R.S. 14:2(B) provided in Code of Criminal Procedure Article 890.3 or convicted of a sex offense as defined or enumerated in R.S. 15:541, or convicted of an offense which would constitute a crime of violence as defined in R.S. 14:2(B) or a sex offense as defined in R.S. 15:541, regardless of the date of conviction.

\* \* \*

B.(1) No person shall be eligible for parole consideration who has been convicted of armed robbery and denied parole eligibility under the provisions of R.S. 14:64. Except as provided in Paragraph (2) of this Subsection, and except as provided in Subsections D and E of this Section, no prisoner serving a life sentence shall be eligible for parole consideration until his life sentence has been commuted to a fixed term of years. No prisoner sentenced as a serial sexual offender shall be eligible for parole. No prisoner may be paroled while there is pending against him any indictment or information for any crime suspected of having been committed by him while a prisoner. Notwithstanding any other provisions of law to the contrary, a person convicted of sentenced for a crime of violence as provided in Code of Criminal Procedure Article 890.3 and not otherwise ineligible for parole shall serve at least eighty-five percent of the sentence imposed, before being eligible for parole. The victim or victim's family shall be notified whenever the offender is to be released provided that the victim or victim's family has completed a Louisiana

1	victim notice and registration form as provided in R.S. 46:1841 et seq., or has
2	otherwise provided contact information and has indicated to the Department of
3	Public Safety and Corrections, Crime Victims Services Bureau, that they desire such
4	notification.
5	* * *
6	§574.9. Revocation of parole for violation of condition; committee panels; return to
7	custody hearing; duration of reimprisonment and reparole after
8	revocation; credit for time served; revocation for a technical violation
9	* * *
10	G.(1) * * *
11	(b) The provisions of Subparagraph (a) of this Paragraph shall not apply to
12	the following offenders:
13	(i) Any offender released on parole for the conviction of a crime of violence
14	as defined in R.S. 14:2(B) provided in Code of Criminal Procedure Article 890.3.
15	* * *
16	§827.1. Reentry preparation program; establishment
17	* * *
18	E. * * *
19	(3) An offender convicted of any of the following offenses shall not be
20	eligible for participation in the program:
21	(a) A sex offense as defined in R.S. 15:541(24).
22	(b) A crime of violence as defined in R.S. 14:2(B).
23	(c) (b) A habitual offender in accordance with R.S. 15:529.1.
24	(4) An offender sentenced for a crime of violence as provided in Code of
25	Criminal Procedure Article 890.3 shall not be eligible for participation in the
26	program.
27	(5) An offender who is eligible for participation in the entrepreneurial skills
28	curriculum may be selected for participation based upon the following criteria:
29	(a) The skills, interests, and abilities of the offender.

1	(b) The availability of training facilities, instructors, and the number of
2	offenders enrolled in the program.
3	(c) The staff at the adult reception and diagnostic centers, after a thorough
4	evaluation, determine that the offender is suitable and appropriate for participation
5	in the program.
6	(d) The secretary, or his designee, determines that the offender meets the
7	guidelines and criteria established by rule for participation in the program.
8	(e) The secretary, or his designee, after an evaluation, determines that the
9	offender is particularly likely to respond affirmatively to participation in the
10	program.
11	(f) The offender meets other conditions of participation or rules or regulations
12	adopted by the department.
13	(g) The offender voluntarily enrolls in the program after having been advised
14	by the department of the rules and regulations governing participation in the
15	program.
16	* * *
17	§833.1. Community resource centers; participation; conditions
18	* * *
19	D. An inmate in the custody of the Department of Public Safety and
20	Corrections shall not be eligible to participate in the community resource centers if
21	the inmate has been convicted of a crime defined or enumerated as sentenced for a
22	crime of violence in R.S. 14:2(B) as provided in Code of Criminal Procedure
23	Article 890.3 or the inmate has been convicted of a sex offense as defined $\underline{or}$
24	enumerated in R.S. 15:541.
25	* * *
26	§1199.7. Inmate eligibility for program; prohibitions
27	* * *
28	C. An inmate convicted of any of the following offenses shall not be eligible
29	for participation in the program:

	(1) A sex offense as defined in R.S. 15:541.
	(2) A crime of violence as defined in R.S. 14:2(B).
	(3) (2) A habitual offender in accordance with R.S. 15:529.1.
	D. An inmate sentenced for a crime of violence as provided in Code of
	Criminal Procedure Article 890.3 shall not be eligible for participation in the
	program.
	The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alden A. Clement, Jr.
Murr	DIGEST ay (SB 286)
<u>Prese</u>	ent law defines and enumerates certain "crimes of violence."
Propo	osed law retains present law.
minu	osed law provides that when a court imposes a sentence it is to state in the sentencing tes whether the offender is sentenced for a crime of violence as defined or enumerated esent law.
_	osed law sets forth the following list of <u>present law</u> crimes that are to be designated by ourt as crimes of violence in the sentencing minutes:
(1)	Solicitation for murder.
(2)	First degree murder.
(3)	Second degree murder.
(4)	Manslaughter.
(5)	Disarming of a peace officer.
(6)	Aggravated second degree battery.
(7)	Assault by drive-by shooting.
(8)	Aggravated assault with a firearm.
(9)	Aggravated rape.
(10)	Forcible rape.
(11)	Simple rape.
(12)	Sexual battery.
(13)	Second degree sexual battery.
(14)	Intentional exposure to AIDS virus.

- (15) Aggravated kidnapping.
- (16) Second degree kidnapping.
- (17) Human trafficking.
- (18) Trafficking of children for sexual purposes.
- (19) Aggravated arson.
- (20) Home invasion.
- (21) Armed robbery.
- (22) Carjacking.
- (23) Armed robbery using a firearm.
- (24) Second degree robbery.
- (25) Aggravated incest.
- (26) Second degree cruelty to juveniles.
- (27) Terrorism.

<u>Proposed law</u> provides that the court may designate any other crime of violence defined or enumerated in <u>present law</u> as a crime of violence in the sentencing minutes upon the written recommendation of the prosecution.

<u>Present law</u> provides relative to suspension and deferral of sentences and probation in felony cases and makes reference to <u>present law</u> crimes of violence.

<u>Proposed law</u> changes references to crimes of violence in <u>present law</u> to correspond to references to crimes of violence in <u>proposed law</u> relative to sentencing for crimes of violence in sentencing minutes. <u>Proposed law</u> otherwise retains <u>present law</u>.

<u>Present law</u> provides relative to drug division probation programs and the ineligibility of certain defendants to participate in such programs if convicted of a crime of violence.

<u>Proposed law</u> changes references to crimes of violence in <u>present law</u> to correspond to references to crimes of violence in <u>proposed law</u> relative to sentencing for crimes of violence in sentencing minutes. <u>Proposed law</u> otherwise retains <u>present law</u>.

<u>Present law</u> provides relative to the sentencing of habitual offenders and provides relative to sentencing offenders convicted of third offenses that are crimes of violence under <u>present law</u>.

<u>Proposed law</u> changes references to crimes of violence in <u>present law</u> to correspond to references to crimes of violence in <u>proposed law</u> relative to sentencing for crimes of violence in sentencing minutes. <u>Proposed law</u> otherwise retains <u>present law</u>.

<u>Present law</u> provides relative to diminution of sentence for good behavior and further provides that diminution of sentence is not allowed for an inmate if the instant offense is second offense crime of violence as defined by <u>present law</u>.

<u>Proposed law</u> changes references to crimes of violence in <u>present law</u> to correspond to references to crimes of violence in <u>proposed law</u> relative to sentencing for crimes of violence

in sentencing minutes. Proposed law otherwise retains present law.

<u>Present law</u> provides relative to the Board of Pardons and the committee on parole. <u>Present law</u> further provides that the committee on parole may grant parole under certain circumstances, provided that the offender has not been convicted of a crime of violence as defined in <u>present law</u> or a sex offense as defined in <u>present law</u>.

<u>Proposed law</u> changes references to crimes of violence in <u>present law</u> to correspond to references to crimes of violence in <u>proposed law</u> relative to sentencing for crimes of violence in sentencing minutes. <u>Proposed law</u> otherwise retains <u>present law</u>.

<u>Present law</u> provides relative to parole eligibility and provides that to be eligible for parole under certain circumstances, the offender cannot have been convicted of a crime of violence as defined in <u>present law</u>.

<u>Proposed law</u> changes references to crimes of violence in <u>present law</u> to correspond to references to crimes of violence in <u>proposed law</u> relative to sentencing for crimes of violence in sentencing minutes. <u>Proposed law</u> otherwise retains <u>present law</u>.

<u>Proposed law</u> provides relative to revocation of parole for violation of conditions of parole.

<u>Proposed law</u> changes references to crimes of violence in <u>present law</u> to correspond to references to crimes of violence in <u>proposed law</u> relative to sentencing for crimes of violence in sentencing minutes. <u>Proposed law</u> otherwise retains <u>present law</u>.

Present law provides relative to inmate reentry preparation programs.

<u>Proposed law</u> changes references to crimes of violence in <u>present law</u> to correspond to references to crimes of violence in <u>proposed law</u> relative to sentencing for crimes of violence in sentencing minutes. <u>Proposed law</u> otherwise retains <u>present law</u>.

<u>Present law</u> provides an inmate entrepreneurial educational curriculum to eligible offenders, and further provides that an offender convicted of a crime of violence as defined in <u>present</u> law is not eligible for participation in the program.

<u>Proposed law</u> changes references to crimes of violence in <u>present law</u> to correspond to references to crimes of violence in <u>proposed law</u> relative to sentencing for crimes of violence in sentencing minutes. <u>Proposed law</u> otherwise retains <u>present law</u>.

<u>Present law</u> provides relative to community resource centers for inmates.

<u>Proposed law</u> changes references to crimes of violence in <u>present law</u> to correspond to references to crimes of violence in <u>proposed law</u> relative to sentencing for crimes of violence in sentencing minutes. <u>Proposed law</u> otherwise retains <u>present law</u>.

<u>Present law</u> provides relative to the eligibility for certain inmate rehabilitation programs.

<u>Proposed law</u> changes references to crimes of violence in <u>present law</u> to correspond to references to crimes of violence in <u>proposed law</u> relative to sentencing for crimes of violence in sentencing minutes. <u>Proposed law</u> otherwise retains <u>present law</u>.

Effective August 1, 2014.

(Amends C.Cr.P. Art. 893(A) and (E)(1)(b), R.S. 13:5304(B)(10)(a) and (b), and R.S. 15:529.1(A)(3)(b), 571.3(A)(1), (B)(1)(a) and (2) and (D), 574.2(C)(2)(a), 574.4(A)(1)(b)(i) and (4)(a) and (B)(1), 574.9(G)(1)(b)(i), 827.1(E)(3) and (4), 833.1(D), and 1199.7(C); adds C.Cr.P. Art. 890.3 and R.S. 15:827.1(E)(5) and 1199.7(D))