

Regular Session, 2014

HOUSE BILL NO. 731

BY REPRESENTATIVE KATRINA JACKSON

CRIMINAL/SENTENCING: Creates a procedure for designating certain crimes in the court minutes as a crime of violence and provides relative to the benefits and restrictions based on such designation

1 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), R.S. 15:529.1(A)(3)(b), 571.3(A)(1), (B)(1)(a) and (b)(ii),
4 (2), and (D), 574.2(C)(2)(a), 574.4(A)(1)(b)(i) and (ii), (4)(a), and (B)(1),
5 574.9(G)(1)(b)(i), 827.1(E)(3)(b), 833.1(D), and 1199.7(C)(2), and to enact Code of
6 Criminal Procedure Article 890.3, and to repeal R.S. 15:571.3(B)(1)(b)(iii), relative
7 to crimes of violence; to provide a procedure by which certain crimes of violence are
8 designated as such in the court minutes; to provide relative to certain benefits and
9 restrictions based upon this designation; to provide with respect to deferral of
10 sentences; to provide for participation in certain programs; to provide with respect
11 to parole; 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 to
15 read as follows:

16 Art. 890.3. Sentencing for crimes of violence

17 A. Except as provided in Paragraph B of this Article, when a defendant is
18 sentenced for any offense, or the attempt to commit any offense, defined or
19 enumerated as a crime of violence in R.S. 14:2(B), upon the written recommendation

1 of the district attorney, the court may designate in the minutes whether such offense
2 is a crime of violence.

3 B. The following crimes of violence enumerated in R.S. 14:2(B) shall be
4 designated by the court in the minutes as a crime of violence:

5 (1) Solicitation for murder

6 (2) First degree murder

7 (3) Second degree murder

8 (4) Manslaughter

9 (5) Aggravated rape

10 (6) Forcible rape

11 (7) Simple rape

12 (8) Sexual battery

13 (9) Second degree sexual battery

14 (10) Intentional exposure to AIDS virus

15 (11) Aggravated kidnapping

16 (12) Second degree kidnapping

17 (13) Aggravated arson

18 (14) Armed robbery

19 (15) Assault by drive-by shooting

20 (16) Carjacking

21 (17) Terrorism

22 (18) Aggravated second degree battery

23 (19) Aggravated assault with a firearm

24 (20) Armed robbery; use of firearm; additional penalty

25 (21) Second degree robbery

26 (22) Disarming of a peace officer

27 (23) Second degree cruelty to juveniles

28 (24) Aggravated incest

29 (25) Trafficking of children for sexual purposes

1 (26) Human trafficking

2 (27) Home invasion

3 * * *

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

5 A. When it appears that the best interest of the public and of the defendant
6 will be served, the court, after a first or second conviction of a noncapital felony,
7 may suspend, in whole or in part, the imposition or execution of either or both
8 sentences, where suspension is allowed under the law, and in either or both cases
9 place the defendant on probation under the supervision of the division of probation
10 and parole. The court shall not suspend the sentence of a conviction for an offense
11 that is designated in the court minutes as a crime of violence ~~as defined in R.S.~~
12 ~~14:2(B)(1), (2), (3), (4), (5), (9), (10), (11), (12), (13), (14), (15), (16), (18), (20),~~
13 ~~(21), (22), (26), (27), or (28)~~ pursuant to Article 890.3, or of a second conviction if
14 the second conviction is for a violation of R.S. 14:73.5, 81.1, or 81.2. The period of
15 probation shall be specified and shall not be less than one year nor more than five
16 years. The suspended sentence shall be regarded as a sentence for the purpose of
17 granting or denying a new trial or appeal. Supervised release as provided for by
18 Chapter 3-E of Title 15 of the Louisiana Revised Statutes of 1950 shall not be
19 considered probation and shall not be limited by the five-year period for probation
20 provided for by the provisions of this Paragraph.

21 * * *

22 E.(1)

23 * * *

24 (b) The court shall not defer a sentence under this provision for an offense
25 or an attempted offense ~~which~~ that is designated in the court minutes as a crime of
26 violence pursuant to Article 890.3 or that is defined ~~or enumerated~~ as a ~~crime of~~
27 ~~violence under R.S. 14:2(B) or a sex offense as defined by R.S. 15:541(14.1) R.S.~~
28 15:541, involving a child under the age of seventeen years or for a violation of the
29 Uniform Controlled Dangerous Substances Law that is punishable by a term of

1 imprisonment of more than five years or for a violation of R.S. 40:966(A), 967(A),
2 968(A), 969(A), or 970(A).

3 * * *

4 Section 2. R.S. 13:5304(B)(10)(a) and (b) are hereby amended and reenacted to read
5 as follows:

6 §5304. The drug division probation program

7 * * *

8 B. Participation in probation programs shall be subject to the following
9 provisions:

10 * * *

11 (10) In order to be eligible for the drug division probation program, the
12 defendant must satisfy each of the following criteria:

13 (a) The defendant cannot have any prior felony convictions for any ~~offenses~~
14 ~~defined as crimes~~ offense that is designated in the court minutes as a crime of
15 violence in R.S. 14:2(B) pursuant to Code of Criminal Procedure Article 890.3.

16 (b) The crime before the court ~~cannot be~~ is not a criminal offense perpetrated
17 by one household member against another household member as defined by R.S.
18 14:35.3 or an offense that is designated in the court minutes as a crime of violence
19 as defined in R.S. 14:2(B) pursuant to Code of Criminal Procedure Article 890.3,
20 including domestic violence.

21 * * *

22 Section 3. R.S. 15:529.1(A)(3)(b), 571.3(A)(1), (B)(1)(a) and (b)(ii), (2), and (D),
23 574.2(C)(2)(a), 574.4(A)(1)(b)(i) and (ii), (4)(a), and (B)(1), 574.9(G)(1)(b)(i),
24 827.1(E)(3)(b), 833.1(D), and 1199.7(C)(2) are hereby amended and reenacted to read as
25 follows:

26 §529.1. Sentences for second and subsequent offenses; certificate of warden or clerk
27 of court in the state of Louisiana as evidence

28 A. Any person who, after having been convicted within this state of a felony,
29 or who, after having been convicted under the laws of any other state or of the

1 United States, or any foreign government of a crime which, if committed in this state
2 would be a felony, thereafter commits any subsequent felony within this state, upon
3 conviction of said felony, shall be punished as follows:

4 * * *

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

7 * * *

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

17 * * *

18 §571.3. Diminution of sentence for good behavior

19 A.(1) Every prisoner in a parish prison convicted of an offense and sentenced
20 to imprisonment without hard labor, except a prisoner convicted a second time of an
21 offense that is designated in the court minutes as a crime of violence as defined by
22 R.S. 14:2(B) pursuant to Code of Criminal Procedure Article 890.3, may earn a
23 diminution of sentence, to be known as "good time", by good behavior and
24 performance of work or self-improvement activities, or both. The amount of
25 diminution of sentence allowed under this Paragraph shall be at the rate of thirty days
26 for every thirty days in actual custody, except for a prisoner convicted a first time of
27 an offense that is designated in the court minutes as a crime of violence, as defined
28 in R.S. 14:2(B) pursuant to Code of Criminal Procedure Article 890.3, who shall
29 earn diminution of sentence at the rate of three days for every seventeen days in

1 actual custody held on the imposed sentence, including, in either case, time spent in
2 custody with good behavior prior to sentencing for the particular sentence imposed
3 as authorized by Code of Criminal Procedure Article 880.

4 * * *

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

22 (b) The provisions of Subparagraph (a) of this Paragraph shall be applicable
23 to persons convicted of offenses on or after January 1, 1992 and who are not serving
24 a sentence for the following offenses:

25 * * *

26 (ii) ~~A crime of violence as defined in R.S. 14:2(B).~~

27 (iii)(ii) Any offense which would constitute ~~a crime of violence as defined~~
28 ~~in R.S. 14:2(B)~~ or a sex offense as defined in R.S. 15:541, regardless of the date of
29 conviction.

1 (2) An inmate convicted a first time of an offense that is designated in the
2 court minutes as a crime of violence as defined in R.S. 14:2(B) pursuant to Code of
3 Criminal Procedure Article 890.3, shall earn diminution of sentence at a rate of three
4 days for every seventeen days in actual custody held on the imposed sentence,
5 including time spent in custody with good behavior prior to sentencing for the
6 particular sentence imposed as authorized by Code of Criminal Procedure Article
7 880.

8 * * *

9 D. Diminution of sentence shall not be allowed an inmate in the custody of
10 the Department of Public Safety and Corrections if the instant offense is a second
11 offense that is designated in the court minutes as a crime of violence as defined by
12 R.S. 14:2(B) pursuant to Code of Criminal Procedure Article 890.3.

13 * * *

14 §574.2. Committee on parole, Board of Pardons; membership; qualifications;
15 vacancies; compensation; domicile; venue; meetings; quorum; panels;
16 powers and duties; transfer of property to committee; representation of
17 applicants before the committee; prohibitions

18 * * *

19 C.

20 * * *

21 (2) The committee may grant parole with two votes of a three-member panel,
22 or, if the number exceeds a three-member panel, a majority vote of those present if
23 all of the following conditions are met:

24 (a) The offender has not been convicted of an offense designated in the court
25 minutes as a crime of violence as defined in R.S. 14:2(B) pursuant to Code of
26 Criminal Procedure Article 890.3, or convicted of a sex offense as defined in R.S.
27 15:541; or ~~convicted of an offense which would constitute a crime of violence as~~

1 ~~defined in R.S. 14:2(B)~~ or a sex offense as defined in R.S. 15:541, regardless of the
2 date of conviction.

3 * * *

4 §574.4. Parole; eligibility

5 A.(1)

6 * * *

7 (b)(i) Notwithstanding the provisions of Subparagraph (a) of this Paragraph,
8 a person, otherwise eligible for parole, convicted of a first felony offense shall be
9 eligible for parole consideration upon serving twenty-five percent of the sentence
10 imposed. The provisions of this Subparagraph shall not apply to any person who has
11 been convicted of an offense that is designated in the court minutes as a crime of
12 violence ~~as defined in R.S. 14:2(B)~~ pursuant to Code of Criminal Procedure Article
13 890.3, has been convicted of a sex offense as defined in R.S. 15:541, has been
14 sentenced as a habitual offender pursuant to R.S. 15:529.1, or is otherwise ineligible
15 for parole.

16 (ii) Notwithstanding the provisions of Subparagraph (a) of this Paragraph,
17 a person, otherwise eligible for parole, convicted of a second felony offense shall be
18 eligible for parole consideration upon serving thirty-three and one-third percent of
19 the sentence imposed. The provisions of this Item shall not apply to any person who
20 has been convicted of an offense that is designated in the court minutes as a crime
21 of violence ~~as defined in R.S. 14:2(B)~~ pursuant to Code of Criminal Procedure
22 Article 890.3, has been convicted of a sex offense as defined in R.S. 15:541, has
23 been sentenced as a habitual offender pursuant to R.S. 15:529.1, or is otherwise
24 ineligible for parole.

25 * * *

26 (4) Notwithstanding any other provision of law to the contrary, unless
27 eligible for parole at an earlier date, a person committed to the Department of Public
28 Safety and Corrections for a term or terms of imprisonment with or without benefit
29 of parole who has served at least ten years of the term or terms of imprisonment in

1 actual custody shall be eligible for parole consideration upon reaching the age of
2 sixty years if all of the following conditions are met:

3 (a) The offender has not been convicted of an offense that was designated
4 in the court minutes as a crime of violence as defined in R.S. 14:2(B) pursuant to
5 Code of Criminal Procedure Article 890.3 or convicted of a sex offense as defined
6 in R.S. 15:541; or convicted of an offense which would constitute a crime of
7 violence as defined in R.S. 14:2(B) or a sex offense as defined in R.S. 15:541,
8 regardless of the date of conviction.

9 * * *

10 B.(1) No person shall be eligible for parole consideration who has been
11 convicted of armed robbery and denied parole eligibility under the provisions of R.S.
12 14:64. Except as provided in Paragraph (2) of this Subsection, and except as
13 provided in Subsections D and E of this Section, no prisoner serving a life sentence
14 shall be eligible for parole consideration until his life sentence has been commuted
15 to a fixed term of years. No prisoner sentenced as a serial sexual offender shall be
16 eligible for parole. No prisoner may be paroled while there is pending against him
17 any indictment or information for any crime suspected of having been committed by
18 him while a prisoner. Notwithstanding any other provisions of law to the contrary,
19 a person convicted of an offense that was designated in the court minutes as a crime
20 of violence pursuant to Code of Criminal Procedure Article 890.3 and not otherwise
21 ineligible for parole shall serve at least eighty-five percent of the sentence imposed,
22 before being eligible for parole. The victim or victim's family shall be notified
23 whenever the offender is to be released provided that the victim or victim's family
24 has completed a Louisiana victim notice and registration form as provided in R.S.
25 46:1841 et seq., or has otherwise provided contact information and has indicated to
26 the Department of Public Safety and Corrections, Crime Victims Services Bureau,
27 that they desire such notification.

28 * * *

§574.9. Revocation of parole for violation of condition; committee panels; return to custody hearing; duration of reimprisonment and reparole after revocation; credit for time served; revocation for a technical violation

* * *

G.(1)

* * *

(b) The provisions of Subparagraph (a) of this Paragraph shall not apply to the following offenders:

(i) Any offender released on parole for the conviction of an offense that was designated in the court minutes as a crime of violence as defined in R.S. 14:2(B) pursuant to Code of Criminal Procedure Article 890.3.

* * *

§827.1. Reentry preparation program; establishment

* * *

E.

* * *

(3) An offender convicted of any of the following offenses shall not be eligible for participation in the program:

* * *

(b) ~~A~~ An offense that was designated in the court minutes as a crime of violence as defined in R.S. 14:2(B) pursuant to Code of Criminal Procedure Article 890.3.

* * *

§833.1. Community resource centers; participation; conditions

* * *

D. An inmate in the custody of the Department of Public Safety and Corrections shall not be eligible to participate in the community resource centers if the inmate has been convicted of ~~a crime defined or enumerated~~ an offense that was designated in the court minutes as a crime of violence in R.S. 14:2(B) pursuant to

Code of Criminal Procedure Article 890.3 or the inmate has been convicted of a sex offense as defined in R.S. 15:541.

* * *

§1199.7. Inmate eligibility for program; prohibitions

* * *

C. An inmate convicted of any of the following offenses shall not be eligible for participation in the program:

* * *

(2) ~~A~~ An offense that was designated in the court minutes as a crime of violence as defined in R.S. 14:2(B) pursuant to Code of Criminal Procedure Article 890.3.

* * *

Section 4. R.S. 15:571.3(B)(1)(b)(iii) is hereby repealed in its entirety.

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)]

Katrina Jackson

HB No. 731

Abstract: Provides a procedure by which certain crimes of violence are designated as such in the court minutes and provides relative to certain benefits and restrictions based upon this designation.

Present law (R.S. 14:2(B)) provides that certain offenses can be defined as, or are specifically enumerated as, a crime of violence.

Proposed law retains present law and authorizes the court, upon the written recommendation of the district attorney, to designate in the court minutes that an offense is a crime of violence.

Proposed law further provides that the following offenses shall be designated by the court as a crime of violence in the court minutes: solicitation for murder, first degree murder, second degree murder, manslaughter, aggravated rape, forcible rape, simple rape, sexual battery, second degree sexual battery, intentional exposure to AIDS virus, aggravated kidnapping, second degree kidnapping, aggravated arson, armed robbery, assault by drive-by shooting, carjacking, terrorism, aggravated second degree battery, aggravated assault with a firearm, armed robbery (use of firearm; additional penalty), second degree robbery, disarming of a peace officer, second degree cruelty to juveniles, aggravated incest, trafficking of children for sexual purposes, human trafficking, and home invasion.

Present law prohibits persons convicted of a crime of violence as defined by present law from participating or from obtaining the benefits of the following:

- (1) Deferral of sentences. (C.Cr.P. Art. 893)
- (2) A drug division probation program. (R.S. 13:5304)
- (3) Reentry preparation programs. (R.S. 15:827.1)
- (4) Community resource center programs. (R.S. 15:833.1)
- (5) Rehabilitation and workforce development program. (R.S. 15:1199.7)

Present law (R.S. 15:529.1) provides for sentencing of a person as a habitual offender and provides for increased penalties when an offense for which the person was convicted is defined or enumerated as a crime of violence in present law.

Proposed law amends present law to provide increased penalties only for those offenses that were designated in the court minutes as a crime of violence pursuant to proposed law.

Present law (R.S. 15:571.3) authorizes the diminution of a person's sentence for good behavior and provides that a person is prohibited or shall earn good time at a lesser rate for certain convictions of an offense that is defined or enumerated as a crime of violence in present law.

Proposed law amends present law to provide that this prohibition and the rate at which the person earns good time shall only apply to persons convicted of an offense that was designated in the court minutes as a crime of violence pursuant to proposed law.

Present law (R.S. 15:574.2 and 574.4) provides that persons convicted of an offense defined or enumerated as a crime of violence shall only be eligible for parole upon serving 85% of the sentence imposed and shall only be granted parole by a unanimous vote of the committee on parole.

Proposed law amends present law to provide that the 85% parole eligibility and the unanimous vote of the committee on parole required to grant parole shall only apply to offenses that were designated in the court minutes as a crime of violence pursuant to proposed law.

Present law (R.S. 15:574.9) authorizes certain offenders who are released on parole to receive the benefit of not having their parole revoked for a first technical violation of a parole condition and only being required to serve up to 90 days for the violation. Present law prohibits persons convicted of a crime of violence as defined or enumerated in present law from receiving the benefit of a first technical violation.

Proposed law amends present law and provides that this prohibition on receiving the benefit of a first technical violation of parole conditions shall only apply to persons convicted of an offense that was designated in the court minutes as a crime of violence pursuant to proposed law.

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