

2019 Regular Session

HOUSE BILL NO. 376

BY REPRESENTATIVE HUVAL

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

CRIMINAL/PROCEDURE: Provides relative to sentencing when a defendant possessed, used, or discharged a firearm in the commission of certain offenses

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Articles 817, 893.2, and 893.3(A), (B),

3 (C), (D), and (E)(1)(a), relative to criminal sentencing; to provide relative to

4 qualified verdicts; to provide that certain facts that increase the penalty for a crime

5 may be submitted to a jury and be included in the verdict; to provide relative to the

6 sentence imposed when a firearm is discharged, used, or actually possessed during

7 the commission of certain offenses; to provide relative to the procedure for such

8 determinations; to provide relative to the court's authority to consider certain

9 evidence and hold a contradictory hearing in this regard; to provide that the

10 determination of whether a firearm was discharged, used, or actually possessed

11 during the commission of an offense is a specific finding of fact to be submitted to

12 the jury; to provide relative to the burden of proof; to provide relative to the

13 sentences imposed upon the determination being made; and to provide for related

14 matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. Code of Criminal Procedure Articles 817, 893.2, and 893.3(A), (B), (C),

17 (D), and (E)(1)(a) are hereby amended and reenacted to read as follows:

1 Art. 817. Qualifying verdicts

2 A. Any Except as provided in Paragraph B of this Article, any qualification  
3 of or addition to a verdict of guilty, beyond a specification of the offense as to which  
4 the verdict is found, is without effect upon the finding.

5 B. Notwithstanding any other provision of law to the contrary, in addition  
6 to a specification of the offense as to which the verdict is found pursuant to  
7 Paragraph A of this Article, any fact that increases the maximum or mandatory  
8 minimum penalty for a crime, other than the fact of a prior conviction, may be  
9 submitted to the jury, and the verdict may include a specific finding of fact as to that  
10 issue.

11 \* \* \*

12 Art. 893.2. Discharge, use, or possession of firearm in commission of a felony or a  
13 specifically enumerated misdemeanor; hearing submission to jury

14 ~~A.~~ If a motion was filed by the state in compliance with Article 893.1, ~~the~~  
15 ~~court may conduct a contradictory hearing following conviction to determine a~~  
16 determination shall be made as to whether a firearm was discharged, or used during  
17 the commission of the felony or specifically enumerated misdemeanor, or actually  
18 possessed during the commission of a felony which is a crime of violence as defined  
19 by R.S. 14:2(B), felony theft, production, manufacturing, distribution, dispensing,  
20 or possession with intent to produce, manufacture, distribute, or dispense a controlled  
21 dangerous substance in violation of the Uniform Controlled Dangerous Substances  
22 Law, or specifically enumerated misdemeanor and whether the mandatory minimum  
23 sentencing provisions of Article 893.3 have been shown to be applicable. Such  
24 determination is a specific finding of fact to be submitted to the jury and proven by  
25 the state beyond a reasonable doubt.

26 ~~B.~~ The court may consider any evidence introduced at the trial on the merits,  
27 ~~at defendant's guilty plea, or at the hearing of any motion filed in the case. The court~~  
28 ~~may also consider any other relevant evidence presented by either party at the~~

1       ~~contradictory hearing. The hearsay rule shall not be applicable at such contradictory~~  
2       ~~hearings.~~

3               ~~C. The burden shall be upon the state to establish by clear and convincing~~  
4       ~~evidence that the defendant actually discharged, used, or actually possessed a firearm~~  
5       ~~during the commission of the felony or specifically enumerated misdemeanor for~~  
6       ~~which the defendant was convicted and that any conditions otherwise required by the~~  
7       ~~mandatory minimum sentencing provisions of Article 893.3 are shown to be~~  
8       ~~applicable.~~

9               ~~D. If at any time during or at the completion of the trial, the court finds by~~  
10       ~~clear and convincing evidence that the state has established that a firearm was~~  
11       ~~discharged or used during the commission of the felony or specifically enumerated~~  
12       ~~misdemeanor or actually possessed during the commission of a felony which is a~~  
13       ~~crime of violence as defined by R.S. 14:2(B), a felony theft, production,~~  
14       ~~manufacturing, distribution, dispensing, or possession with intent to produce,~~  
15       ~~manufacture, distribute, or dispense a controlled dangerous substance in violation of~~  
16       ~~the Uniform Controlled Dangerous Substances Law, or specifically enumerated~~  
17       ~~misdemeanor, and that the mandatory minimum sentencing provisions of Article~~  
18       ~~893.3 have been shown to be applicable, the court may dispense with the hearing~~  
19       ~~provided for in Paragraph A of this Article.~~

20               ~~E. The motion shall be heard and disposed of prior to the imposition of~~  
21       ~~sentence.~~

22       Art. 893.3. Sentence imposed on felony or specifically enumerated misdemeanor in  
23               which firearm was possessed, used, or discharged

24               A. If the court finder of fact finds by ~~clear and convincing evidence~~ beyond  
25       a reasonable doubt that the offender actually possessed a firearm during the  
26       commission of the felony or specifically enumerated misdemeanor for which he was  
27       convicted, the court shall impose a term of imprisonment of not less than two years  
28       nor more than the maximum term of imprisonment provided for the underlying

1 offense; however, if the maximum sentence for the underlying offense is less than  
2 two years, the court shall impose the maximum sentence.

3 B. If the ~~court~~ finder of fact finds by ~~clear and convincing evidence~~ beyond  
4 a reasonable doubt that the offender actually used a firearm in the commission of the  
5 felony or specifically enumerated misdemeanor for which he was convicted, the  
6 court shall impose a term of imprisonment of not less than five years nor more than  
7 the maximum term of imprisonment provided for the underlying offense; however,  
8 if the maximum sentence for the underlying offense is less than five years, the court  
9 shall impose the maximum sentence.

10 C. If the ~~court~~ finder of fact finds by ~~clear and convincing evidence~~ beyond  
11 a reasonable doubt that the offender actually discharged a firearm in the commission  
12 of the felony or specifically enumerated misdemeanor for which he was convicted,  
13 the court shall impose a term of imprisonment of not less than ten years nor more  
14 than the maximum term of imprisonment provided for the underlying offense;  
15 however, if the maximum sentence for the underlying offense is less than ten years,  
16 the court shall impose the maximum sentence.

17 D. If the ~~court~~ finder of fact finds by ~~clear and convincing evidence~~ beyond  
18 a reasonable doubt that a firearm was actually used or discharged by the defendant  
19 during the commission of the felony for which he was convicted, and thereby caused  
20 bodily injury, the court shall impose a term of imprisonment of not less than fifteen  
21 years nor more than the maximum term of imprisonment provided for the underlying  
22 offense; however, if the maximum sentence for the underlying felony is less than  
23 fifteen years, the court shall impose the maximum sentence.

24 E.(1)(a) Notwithstanding any other provision of law to the contrary, if the  
25 finder of fact has determined that the defendant ~~commits~~ committed a felony with  
26 a firearm as provided for in this Article, and the crime is considered a violent felony  
27 as defined in this Paragraph, the court shall impose a minimum term of  
28 imprisonment of not less than ten years nor more than the maximum term of  
29 imprisonment provided for the underlying offense. In addition, if the firearm is

1 discharged during the commission of such a violent felony, the court shall impose  
2 a minimum term of imprisonment of not less than twenty years nor more than the  
3 maximum term of imprisonment provided for the underlying offense.

4 \* \* \*

5 Section 2. This Act shall become effective upon signature by the governor or, if not  
6 signed by the governor, upon expiration of the time for bills to become law without signature  
7 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
8 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
9 effective on the day following such approval.

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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 376 Original

2019 Regular Session

Huval

**Abstract:** Provides that the determination of whether a person discharged, used, or actually possessed a firearm during the commission of certain enumerated offenses is a specific finding of fact to be submitted to the jury, and provides relative to the penalties imposed in such cases.

Present law (C.Cr.P. Art. 817) provides that any qualification of or addition to a verdict of guilty, beyond a specification of the offense as to which the verdict is found, is without effect upon the finding.

Proposed law provides that, notwithstanding present law, any fact that increases the maximum or mandatory minimum penalty for a crime, other than the fact of a prior conviction, may be submitted to the jury, and the verdict may include a specific finding of fact as to that issue.

Present law (C.Cr.P. Art. 893.1 et seq.) provides for the imposition of certain sentences when a firearm was discharged, used, or actually possessed during the commission of the certain offenses set forth in present law. In this regard, present law provides for the following:

- (1) Authorizes the district attorney to file a motion for the imposition of such sentence within a reasonable period of time prior to the commencement of trial.
- (2) Authorizes the court to conduct a contradictory hearing following conviction to determine whether a firearm was discharged, used, or actually possessed during the commission of the specific offenses enumerated in present law. However, present law also provides that if at any time during or at the completion of the trial, the court finds by clear and convincing evidence that the state has established that a firearm was discharged, used, or actually possessed during the commission of the offense the court may dispense with the hearing.

- (3) Authorizes the court to consider any evidence introduced at the trial on the merits, at defendant's guilty plea, or at the hearing of any motion filed in the case, and any other relevant evidence presented by either party at the contradictory hearing.
- (4) Provides that the burden shall be upon the state to establish by clear and convincing evidence that the defendant actually discharged, used, or actually possessed a firearm during the commission of the offense.
- (5) If the court finds by clear and convincing evidence that the offender discharged, used, or actually possessed a firearm during the commission of the offense, the following penalties shall apply:
  - (a) For actual possession of the firearm: the court shall impose a term of imprisonment of two years; however, if the maximum sentence for the underlying offense is less than two years, the court shall impose the maximum sentence.
  - (b) For actual use of the firearm: the court shall impose a term of imprisonment of five years; however, if the maximum sentence for the underlying offense is less than five years, the court shall impose the maximum sentence.
  - (c) For actual discharge of the firearm: the court shall impose a term of imprisonment of ten years; however, if the maximum sentence for the underlying offense is less than ten years, the court shall impose the maximum sentence.
  - (d) For actual use or discharge that results in bodily injury: the court shall impose a term of imprisonment of fifteen years; however, if the maximum sentence for the underlying felony is less than fifteen years, the court shall impose the maximum sentence.
  - (e) For commission of a violent felony with a firearm, the court shall impose a minimum term of imprisonment of ten years; and for the discharge of a firearm during the commission of a violent felony, the court shall impose a minimum term of imprisonment of twenty years. In this regard, proposed law defines "violent felony" as second degree sexual battery, aggravated burglary, carjacking, armed robbery, second degree kidnapping, manslaughter, or forcible or second degree rape.

Proposed law amends present law to provide that the determination as to whether a firearm was discharged, used, or actually possessed during the commission of one of the specifically enumerated offenses in present law is a specific finding of fact to be submitted to the jury and proven by the state beyond a reasonable doubt.

As such, proposed law repeals the present law provisions which authorize the court to conduct a contradictory hearing, provide for the type of evidence the court may consider, and provide that the burden of proof is by clear and convincing evidence.

With regard to the penalties imposed, proposed law provides that the term of imprisonment provided in present law is a minimum and that the court shall impose a term of imprisonment not less than the minimum amount set forth in present law and not more than the term of imprisonment imposed for the underlying offense.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends C.Cr.P. Art. 817, 893.2, and 893.3(A), (B), (C), (D), and (E)(1)(a))