

2019 Regular Session

HOUSE BILL NO. 376

BY REPRESENTATIVE HUVAL

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:

18 Art. 817. Qualifying verdicts

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

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

7 * * *

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

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

22 ~~B. The court may consider any evidence introduced at the trial on the merits,~~
 23 ~~at defendant's guilty plea, or at the hearing of any motion filed in the case. The court~~
 24 ~~may also consider any other relevant evidence presented by either party at the~~
 25 ~~contradictory hearing. The hearsay rule shall not be applicable at such contradictory~~
 26 ~~hearings.~~

27 ~~C. The burden shall be upon the state to establish by clear and convincing~~
 28 ~~evidence that the defendant actually discharged, used, or actually possessed a firearm~~
 29 ~~during the commission of the felony or specifically enumerated misdemeanor for~~
 30 ~~which the defendant was convicted and that any conditions otherwise required by the~~

1 ~~mandatory minimum sentencing provisions of Article 893.3 are shown to be~~
 2 ~~applicable.~~

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

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

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

18 A. If the court finder of fact finds by clear and convincing evidence beyond
 19 a reasonable doubt that the offender actually possessed a firearm during the
 20 commission of the felony or specifically enumerated misdemeanor for which he was
 21 convicted, the court shall impose a term of imprisonment of not less than two years
 22 nor more than the maximum term of imprisonment provided for the underlying
 23 offense; however, if the maximum sentence for the underlying offense is less than
 24 two years, the court shall impose the maximum sentence.

25 B. If the court finder of fact finds by clear and convincing evidence beyond
 26 a reasonable doubt that the offender actually used a firearm in the commission of the
 27 felony or specifically enumerated misdemeanor for which he was convicted, the
 28 court shall impose a term of imprisonment of not less than five years nor more than
 29 the maximum term of imprisonment provided for the underlying offense; however,

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

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

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

17 E.(1)(a) Notwithstanding any other provision of law to the contrary, if the
 18 finder of fact has determined that the defendant ~~commits~~ committed a felony with
 19 a firearm as provided for in this Article, and the crime is considered a violent felony
 20 as defined in this Paragraph, the court shall impose a minimum term of
 21 imprisonment of not less than ten years nor more than the maximum term of
 22 imprisonment provided for the underlying offense. In addition, if the firearm is
 23 discharged during the commission of such a violent felony, the court shall impose
 24 a minimum term of imprisonment of not less than twenty years nor more than the
 25 maximum term of imprisonment provided for the underlying offense.

26 * * *

27 Section 2. This Act shall become effective upon signature by the governor or, if not
 28 signed by the governor, upon expiration of the time for bills to become law without signature
 29 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If

1 vetoed by the governor and subsequently approved by the legislature, this Act shall become
2 effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____