

RÉSUMÉ DIGEST

ACT 326 (HB 376)

2019 Regular Session

Huval

Existing 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.

New law provides that, notwithstanding existing 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.

Existing 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 existing law. In this regard, prior law provided for the following:

- (1) Authorized 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) Authorized 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 existing law. However, prior law also provided that if at any time during or at the completion of the trial, the court found by clear and convincing evidence that the state had established that a firearm was discharged, used, or actually possessed during the commission of the offense, the court was authorized to dispense with the hearing.
- (3) Authorized 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) Provided that the state had the burden to establish by clear and convincing evidence that the defendant actually discharged, used, or actually possessed a firearm during the commission of the offense.

New law amends prior 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 existing law is a specific finding of fact to be submitted to the jury and proven by the state beyond a reasonable doubt.

As such, new law repeals the prior law provisions which authorized the court to conduct a contradictory hearing, provided for the type of evidence the court may consider, and provided that the burden of proof was by clear and convincing evidence.

Existing law provides for the following penalties when it is determined that the offender discharged, used, or actually possessed a firearm during the commission of an offense:

- (1) 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.
- (2) 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.
- (3) 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.
- (4) 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.

- (5) 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, existing law defines "violent felony" as second degree sexual battery, aggravated burglary, carjacking, armed robbery, second degree kidnapping, manslaughter, or forcible or second degree rape.

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

Effective upon signature of governor (June 11, 2019).

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