Regular Session, 2011

HOUSE BILL NO. 414

BY REPRESENTATIVES LOPINTO AND MORENO

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

CRIMINAL/SENTENCING: Revises and consolidates statutes providing for the diminution of sentence

AN ACT

To amend and reenact Code of Criminal Procedure Articles 880 and 892(B)(1)(introductory paragraph) and (c) and R.S. 15:571.3(A)(1), (B)(1)(a), (2), and (3), and (C), 571.4, 571.5(A), 574.9(E), 828(B), and 833.1(E), to enact R.S. 15:571.3(B)(4), and to repeal Code of Criminal Procedure Article 890.1 and R.S. 15:571.6 and 571.8, relative to diminution of sentence and parole eligibility; to provide for the receipt of credit for prior custody; to provide for inclusion of the Uniform Sentencing Commitment Order in documents accompanying post-sentence sheriff's statement; to provide with respect to the earning of diminution of sentence for certain offenses; to provide for the reorganization of certain provisions of law regarding diminution of sentence; to provide for applicability; to authorize diminution of sentence for certain offenses; to provide for the forfeiture of earned credits toward the reduction of the projected good time parole supervision date; to provide for the forfeiture of credit for time served in actual custody; to provide for the earning of additional credits toward the reduction of the projected good time parole supervision date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

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Section 1. Code of Criminal Procedure Articles 880 and 892(B)(1)(introductory paragraph) and (c) are hereby amended and reenacted to read as follows:

Art. 880. Credit for prior custody; limitations

A. A defendant shall receive credit toward service of his sentence for time spent in actual custody prior to the imposition of sentence. ~~Under the provisions of this Article, no defendant shall receive more than thirty days of jail credit for any calendar month while serving a term for consecutive sentences.~~

B. A defendant shall receive credit only for time in actual custody and only once during any calendar month when consecutive sentences are imposed.

C. No defendant shall receive credit for any time served prior to the commission of the crime.

D. A defendant shall not receive credit for time served under home incarceration.

E. A defendant shall not receive overlapping jail credit, except in the instance of concurrent sentences and then only for time spent in jail on the instant felony.

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Art. 892. Post-sentence statement by sheriff; accompanying documents

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B.(1) When a sheriff's statement is required ~~as set forth above~~ pursuant to Paragraph A of this Article, the clerk of court shall also prepare the following documents:

* * *

(c) ~~The name and address of the judge and of the district attorney who participated in the trial.~~ A copy of the Uniform Sentencing Commitment Order in the format authorized by the Louisiana Supreme Court which shall include the name and address of the judge, the district attorney, and the defense attorney who participated in the sentencing trial.

* * *

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Section 2. R.S. 15:571.3(A)(1), (B)(1)(a), (2), and (3), and (C) are hereby amended and reenacted and R.S. 15:571.3(B)(4) is hereby enacted to read as follows:

§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 a crime of violence as defined by R.S. 14:2(B) ~~or when the sentencing court has denied or conditioned eligibility for "good time" as provided in R.S. 15:537~~, 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 a first time of a crime of violence, as defined in R.S. 14:2(B), who shall earn 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 ~~sentence~~ sentencing for the particular sentence imposed ~~which the prisoner is given credit~~ as authorized by Code of Criminal Procedure Article 880.

* * *

B.(1)(a) ~~Except as provided in Paragraph (B)(2) of this Section~~ Unless otherwise prohibited, every inmate in the custody of the department who has been convicted of a felony, except an inmate convicted a second time of a crime of violence as defined by R.S. 14:2(B), and sentenced to imprisonment for a stated number of years or months, ~~or when the sentencing court has denied or conditioned eligibility for "good time" as provided in R.S. 15:537,~~ 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

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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 thirty-five days for every thirty days 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)~~(a)~~ An inmate convicted a first time of a crime of violence as defined in R.S. 14:2(B), 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 ~~sentence~~ sentencing for the particular sentence imposed ~~for which defendant is given credit~~ as authorized by Code of Criminal Procedure Article 880.

~~(b) If a person is convicted of or pleads guilty to, or where adjudication has been deferred or withheld for a violation of R.S. 14:78 (incest), R.S. 14:78.1 (aggravated incest), R.S. 14:80 (felony carnal knowledge of a juvenile), R.S. 14:81 (indecent behavior with juveniles), R.S. 14:81.1 (pornography involving juveniles), R.S. 14:81.2 (molestation of a juvenile), R.S. 14:89(A)(1) (crime against nature), R.S. 14:89.1 (aggravated crime against nature), R.S. 14:93.5 (sexual battery of the infirm) or any provision of Subpart C of Part II of Chapter 1 of Title 14 of the Louisiana Revised Statutes of 1950, and is sentenced to imprisonment for a stated number of years or months, the person shall not be eligible for diminution of sentence for good behavior.~~

~~(3) Under the provisions of this Section, no inmate shall receive more than thirty-five days of good time or thirty days of jail credit for any calendar month while serving a term for consecutive sentences~~.

(3) A person shall not be eligible for diminution of sentence for good behavior if he has been convicted of or pled guilty to, or where adjudication has been deferred or withheld for, a violation of any one of the following offenses:

(a) Rape (R.S. 14:41).

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(b) Aggravated rape (R.S. 14:42).

(c) Forcible rape (R.S. 14:42.1).

(d) Simple rape (R.S. 14:43).

(e) Sexual battery (R.S. 14:43.1).

(f) Second degree sexual battery (R.S. 14:43.2).

(g) Oral sexual battery (R.S. 14:43.3).

(h) Intentional exposure to AIDS virus (R.S. 14:43.5).

(i) Incest (R.S. 14:78).

(j) Aggravated incest (R.S. 14:78.1).

(k) Felony carnal knowledge of a juvenile (R.S. 14:80).

(l) Indecent behavior with juveniles (R.S. 14:81).

(m) Pornography involving juvenile (R.S. 14:81.1).

(n) Molestation of a juvenile (R.S. 14:81.2).

(o) Computer-aided solicitation of a minor (R.S. 14:81.3).

(p) Crime against nature (R.S. 14:89(A)).

(q) Aggravated crime against nature (R.S. 14:89.1).

(r) Sexual battery of the infirm (R.S. 14:93.5).

(4) Diminution of sentence shall not be allowed an inmate in the custody of the Department of Public Safety and Corrections if the inmate has been convicted one or more times under the laws of this state, any other state, or the federal government of any one or more of the following crimes or attempts to commit any of the following crimes:

(a) Felony carnal knowledge of a juvenile.

(b) Indecent behavior with juveniles.

(c) Molestation of a juvenile.

(d) Incest.

(e) Aggravated incest.

C. Diminution of sentence shall not be allowed an inmate in the custody of the Department of Public Safety and Corrections if any of the following apply:

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~~(1) The inmate has been convicted one or more times under the laws of this state of any one or more of the following crimes:~~

~~(a) First degree murder.~~

~~(b) Second degree murder.~~

~~(c) Manslaughter.~~

~~(d) Aggravated battery.~~

~~(e) Aggravated rape.~~

~~(f) Forcible rape.~~

~~(g) Simple rape.~~

~~(h) Aggravated kidnapping.~~

~~(i) Aggravated burglary.~~

~~(j) Simple burglary.~~

~~(k) Armed robbery.~~

~~(l) Simple robbery.~~

~~(m) A violation of R.S. 14:67 which is a felony.~~

~~(n) A violation of R.S. 14:95 which is a felony.~~

~~(o) A violation of R.S. 14:95.1 which is a felony.~~

~~(p) A violation of Chapter 9 of Title 40 of the Louisiana Revised Statutes of 1950 which is a felony.~~

~~(q) Any crime of violence as defined by R.S. 14:2(B).~~

~~(r) Looting during the existence of a state of emergency;~~

~~(s) A violation of the Louisiana Controlled Dangerous Substances Law which is a felony; or~~

~~(t) Any felony which is defined as an attempt to commit one of the crimes enumerated in Subparagraphs (a) through (s) of this Paragraph, and~~

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~~(2)~~(1) The inmate has been sentenced as an habitual offender under the Habitual Offender Law as set forth in R.S. 15:529.1~~, and~~.

~~(3) The inmate's last conviction for the purposes of the Habitual Offender Law, was for a crime: (a) Committed during the period beginning September 16, 1975 through September 9, 1977, inclusive of both dates, and the sentence of the court specifically denies eligibility for diminution of sentence, or (b) committed on or after September 10, 1977.~~

~~(4) The inmate has been convicted one or more times under the laws of this state, any other state, or the federal government of any one or more of the following crimes or attempts to commit any of the following crimes:~~

~~(a) Carnal knowledge of a juvenile.~~

~~(b) Indecent behavior with juveniles.~~

~~(c) Molestation of a juvenile.~~

~~(d) Incest.~~

~~(e) Aggravated incest.~~

~~(5)~~(2) The trial court, in its discretion, prohibits the earning of such diminution of sentence for any person convicted of a violation of R.S. 14:40.2.

* * *

Section 3. R.S. 15:571.4, 571.5(A), 574.9(E), 828(B), and 833.1(E) are hereby amended and reenacted to read as follows:

§571.4. Forfeiture of diminution of sentence

A. Determination shall be made by the secretary ~~on a monthly basis~~ as to whether good time or credits toward the reduction of the projected good time parole supervision date has been earned by inmates in the department's custody. Good time, or credits toward the reduction of the projected good time parole supervision date, which has been earned by inmates in the custody of the Department of Public Safety and Corrections, hereinafter referred to as the "department", shall not be forfeited except as provided in Subsection D of this Section.

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B.(1) An inmate who is sentenced to the custody of the Department of Public Safety and Corrections and who commits a simple or aggravated escape, as defined in R.S. 14:110, from any correctional facility, work-release facility or from the lawful custody of any law enforcement officer or officer of the department, or, in the case of an inmate serving a sentence and participating in a work-release program authorized by law, fails to report to or return from his planned employment or other activity under the program, may forfeit all good time and credits toward the reduction of the projected good time parole supervision date earned on that portion of his sentence served prior to his escape.

(2) An inmate who has been returned to the custody of the department because of a violation of the terms of parole granted by the Board of Parole shall forfeit all good time earned or credits toward the reduction of the projected good time parole supervision date on that portion of the sentence served prior to the granting of parole.

(3) An inmate who is sentenced to the custody of the department and who commits a battery on an employee of the Department of Public Safety and Corrections or any police officer as defined in R.S. 14:34.2 may forfeit good time earned or credits toward the reduction of the projected good time parole supervision date on that portion of the sentence served prior to committing the battery of such person, up to a maximum of one hundred eighty days.

(4) In all other cases, forfeiture of good time or credits toward the reduction of the projected good time parole supervision date may include up to a maximum of one hundred eighty days.

C. The secretary may promulgate rules and regulations regarding the restoration of previously forfeited good time for disciplinary violations or credits toward the reduction of the projected good time parole supervision date. In order to be eligible for restoration of good time or credits toward the reduction of the projected good time parole supervision date which has been previously forfeited, the inmate shall not have been found guilty of any disciplinary violation for a

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consecutive twenty-four month period. Restoration of previously forfeited good time or credits toward the reduction of the projected good time parole supervision date shall not exceed five hundred forty days.

D. The department shall adopt rules to govern the imposition of the forfeiture of good time or credits toward the reduction of the projected good time parole supervision date for the causes enumerated in Subsection B of this Section and the restoration of good time or credits toward the reduction of the projected good time parole supervision date under the conditions enumerated in Subsection C of this Section. The rules shall be adopted in accordance with the Administrative Procedure Act. The rules shall provide that an inmate has the right to a hearing on any charges which are punishable by the forfeiture of good time or credits toward the reduction of the projected good time parole supervision date and that the inmate may waive that right. The rules shall be consistent with and shall implement the provisions of the constitutional, statutory, and jurisprudential requirements which govern the forfeiture of good time or credits toward the reduction of the projected good time parole supervision date.

§571.5. Supervision upon release after diminution of sentence for good behavior; conditions of release; revocation

A.~~(1)~~ When a prisoner committed to the Department of Public Safety and Corrections is released because of diminution of sentence pursuant to this Part, he shall be released as if released on parole.

~~(2) At least three months prior to the anticipated release due to diminution of sentence, the secretary of the department shall notify the parole board and provide such information as is necessary to allow the board to establish such conditions as provided in R.S. 15:574.4(H) as may be reasonably necessary to facilitate supervision. If diminution of sentence is not prohibited by R.S. 15:571.3(C)(1) and the sentence is for a sexual offense as enumerated in R.S. 15:574.4(H)(2), then the provisions of R.S. 15:574.4(H)(2)(a) and (b) and (3) apply.~~

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

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E. When the parole of a parolee has been revoked by the board for ~~the~~ violation of the conditions of parole, the parolee shall be returned to the physical custody of the Department of Public Safety and Corrections, corrections services, and serve the remainder of his sentence as of the date of his release on parole, ~~subject to consideration by the board of any commutation of the sentence,~~ and any credit for time served for good behavior while on parole. The parolee shall be given credit for time served prior to the revocation hearing ~~whether such time is~~ for time served in actual custody while being held for a parole violation in a local detention facility, state institution, or out-of-state institution pursuant to Code of Criminal Procedure Article 880.

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§828. Classification and treatment programs; qualified sex offender programs; reports; ~~additional good time~~ earned credits

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B. The secretary shall adopt rules and regulations for local jail facilities and state correctional institutions to encourage voluntary participation by inmates in certified treatment and rehabilitation programs, including but not limited to basic education, job skills training, values development and faith-based initiatives, therapeutic programs, and treatment programs. When funds are provided, such educational programs shall be available at each penal or correctional institution under the jurisdiction of the department. The rules and regulations may include provisions for furloughs or the awarding of ~~good time, in addition to the provisions of R.S. 15:571.3(B), for offenders who are otherwise eligible~~ earned credits toward the reduction of the projected good time parole supervision date. Offenders may be awarded up to ~~one hundred eighty~~ ninety days ~~good time~~ toward the reduction of the

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projected good time parole supervision date for satisfactory participation in each approved program pursuant to the provisions of this Subsection, but no offender shall receive more than ~~five hundred forty days total good time~~ two hundred fifty days total earned credits toward the reduction of the projected good time parole supervision date for program participation.

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§833.1. Community resource centers; participation; conditions

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E. Inmates participating in the community resource center shall be eligible to earn a maximum of thirty days ~~of good time~~ earned credits toward the reduction of the projected good time parole supervision date in addition to that otherwise authorized by law for every thirty days of service in this program.

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Section 4. Code of Criminal Procedure Article 890.1 and R.S. 15:571.6 and 571.8 are hereby repealed in their entirety.

Section 5. The provisions of Section 2 of this Act shall only apply to those persons sentenced on or after August 15, 2011.

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)]

Lopinto HB No. 414

Abstract: Amends provisions of law governing diminution of sentence (good time).

Present law provides for the awarding of credit for prior custody prior to the imposition of sentence at a maximum of 30 days of credit for any calendar month while serving consecutive sentences.

Proposed law changes present law as follows:

(1) A defendant shall receive credit only for time in actual custody and only once during any calendar month when consecutive sentences are imposed.

(2) No defendant shall receive credit for any time served prior to the commission of the crime.

(3) A defendant shall not receive credit for time served under home incarceration.

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(4) A defendant shall not receive overlapping jail credit, except in the instance of concurrent sentences and then only for time spent in jail on the instant felony.

Proposed law provides that when a sheriff's post-sentence statement is required, the clerk of court shall include in the accompanying documents a copy of the Uniform Sentencing Commitment Order in the format authorized by the La. Supreme Court which shall include the name and address of the judge, the district attorney, and the defense attorney who participated in the sentencing trial.

Present law provides for inmates to earn diminution of sentence (good time) to reduce the amount of time they are incarcerated at a rate of 35 days for every 30 days in actual custody.

Proposed law retains present law.

Present law provides for a rate of diminution of sentence for a first time offender convicted of a crime of violence of three days for every 17 days in actual custody.

Proposed law retains present law.

Proposed law provides that the awarding of credit for time served will be governed by the provisions of C.Cr.P. Art. 880.

Proposed law reorganizes present law.

(Amends C.Cr.P. Arts. 880 and 892(B)(1)(intro. para.) and (c) and R.S. 15:571.3(A)(1), (B)(1)(a), (2), and (3), and (C), 571.4, 571.5(A), 574.9(E), 828(B), and 833.1(E); Adds R.S. 15:571.3(B)(4); Repeals C.Cr.P. Art. 890.1 and R.S. 15:571.6 and 571.8)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill.

1. Deleted provision capping the restoration of previously forfeited good time at 250 days.

2. Changed proposed law regarding diminution of sentence rate to apply only to those persons sentenced on or after Aug. 15, 2011.

3. Made technical changes.

4. Added that good time diminution of sentence shall include time spent in custody with good behavior prior to sentence for the particular sentence imposed.

Summary of Amendments Adopted by House

House Floor Amendments to the engrossed bill.

1. Deleted proposed law provision which changed the good time diminution of sentence rate to 1-1/2 days for every one day in actual custody and reinstated the rate of 35 days for every 30 days in actual custody.

2. Made technical changes.

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