

Regular Session, 2012

SENATE BILL NO. 687

BY SENATOR PERRY

DWI. Provides relative to the sentencing guidelines for first and subsequent offense DWI.
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AN ACT

To amend and reenact R.S. 14:98(B), (C), (D)(1), (E)(1), (I), and (K)(3)(a), relative to the crime of operating a vehicle while intoxicated; to provide relative to sentencing guidelines for conviction of operating a vehicle while intoxicated; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 14:98(B), (C), (D)(1), (E)(1), (I), and (K)(3)(a) are hereby amended and reenacted to read as follows:

§98. Operating a vehicle while intoxicated

* * *

B.(1)(a) On a first conviction, notwithstanding any other provision of law to the contrary, the offender shall be fined not less than three hundred dollars nor more than one thousand dollars, and shall be imprisoned for not less than ~~ten days~~ **forty-eight hours** nor more than six months. Imposition or execution of sentence shall not be suspended, ~~unless:~~

(a) ~~(b)~~ The offender is placed on probation with a minimum condition that ~~he serve two days in jail and~~ **shall immediately undergo an evaluation by the**

1 Department of Health and Hospitals, office of behavioral health to determine
 2 the nature and extent of the offender's substance abuse disorder and shall
 3 participate in any treatment plan recommended by the office of behavioral
 4 health. ~~participate in a court-approved substance abuse program and participate in~~
 5 ~~a court-approved driver improvement program; or~~

6 (b) ~~The offender is placed on probation with a minimum condition that he~~
 7 ~~perform four eight-hour days of court-approved community service activities, at least~~
 8 ~~half of which shall consist of participation in a litter abatement or collection~~
 9 ~~program, participate in a court-approved substance abuse program, and participate~~
 10 ~~in a court-approved driver improvement program. An offender, who participates in~~
 11 ~~a litter abatement or collection program pursuant to this Subparagraph, shall have no~~
 12 ~~cause of action for damages against the entity conducting the program or supervising~~
 13 ~~his participation therein, including a municipality, parish, sheriff, or other entity, nor~~
 14 ~~against any official, employee, or agent of such entity, for any injury or loss suffered~~
 15 ~~by him during or arising out of his participation in the program, if such injury or loss~~
 16 ~~is a direct result of the lack of supervision or act or omission of the supervisor, unless~~
 17 ~~the injury or loss was caused by the intentional or grossly negligent act or omission~~
 18 ~~of the entity or its official, employee, or agent.~~

19 (2)(a) On a first conviction if ~~If~~ the offender had a blood alcohol
 20 concentration of 0.15 percent or more by weight based on grams of alcohol per one
 21 hundred cubic centimeters of blood, ~~at least forty-eight hours of the sentence~~
 22 ~~imposed pursuant to Paragraph (B)(1) of this Subsection shall be served without the~~
 23 ~~benefit of parole, probation, or suspension of sentence. Imposition or execution of~~
 24 ~~the remainder of the sentence shall not be suspended unless the offender complies~~
 25 ~~with Subparagraph (B)(1)(a) or (b) of this Subsection~~ the offender shall be fined
 26 not less than five hundred dollars nor more than one thousand dollars, and shall
 27 be imprisoned for not less than three days nor more than six months.
 28 Imposition or execution of sentence shall not be suspended.

29 (b) On a first conviction if ~~If~~ the offender had a blood alcohol concentration

1 of 0.20 percent or more by weight based on grams of alcohol per one hundred cubic
2 centimeters of blood, the offender shall be fined not less than seven hundred fifty
3 dollars nor more than one thousand dollars ~~and at least forty-eight hours of the~~
4 ~~sentence imposed pursuant to Paragraph (B)(1) of this Subsection shall be served~~
5 ~~without the benefit of parole, probation, or suspension of sentence. Imposition or~~
6 ~~execution of the remainder of the sentence shall not be suspended unless the offender~~
7 ~~complies with Subparagraph (B)(1)(a) or (b) of this Subsection~~ **and shall be**
8 **imprisoned for not less than five days nor more than six months. Imposition or**
9 **execution of sentence shall not be suspended.**

10 **(c) Notwithstanding the provisions of Paragraph (1) of this Subsection,**
11 **on a conviction of a first offense when the crime of vehicular homicide occurs**
12 **in violation of R.S. 14:32.1, or first degree vehicular negligent injuring in**
13 **violation of R.S. 14:39.2, the offender shall be imprisoned with or without hard**
14 **labor for not less than one year nor more than five years, and shall be fined two**
15 **thousand dollars. The sentence of imprisonment imposed shall be without**
16 **benefit of probation, parole, or suspension of sentence.**

17 **(d) The offender shall immediately undergo an evaluation by the**
18 **Department of Health and Hospitals, office of behavioral health to determine**
19 **the nature and extent of the offender's substance abuse disorder and shall**
20 **participate in any treatment plan recommended by the office of behavioral**
21 **health.**

22 C.(1) On a conviction of a second offense, notwithstanding any other
23 provision of law to the contrary except as provided in Paragraph ~~(3)~~**(2)** of this
24 Subsection, regardless of whether the second offense occurred before or after the
25 first conviction, the offender shall be fined not less than ~~seven hundred fifty~~ **one**
26 **thousand** dollars, nor more than ~~one~~ **two** thousand dollars, and shall be imprisoned
27 for not less than thirty days nor more than six months. At least ~~forty-eight hours~~
28 **fifteen days** of the sentence imposed shall be served without benefit of parole,
29 probation, **home incarceration**, or suspension of sentence. **Upon completion of the**

1 **portion of the sentence that cannot be suspended, nothing** Nothing herein shall
2 prohibit a court from sentencing a defendant to home incarceration, if otherwise
3 allowed under the provisions of Article 894.2 of the Code of Criminal Procedure.
4 Imposition or execution of the remainder of the sentence shall not be suspended
5 ~~unless:~~

6 (a) ~~The offender is placed on probation with a minimum condition that he~~
7 ~~serve fifteen days in jail and participate in a court-approved substance abuse program~~
8 ~~and participate in a court-approved driver improvement program; or~~

9 (b) ~~The offender is placed on probation with a minimum condition that he~~
10 ~~perform thirty eight-hour days of court-approved community service activities, at~~
11 ~~least half of which shall consist of participation in a litter abatement or collection~~
12 ~~program, and participate in a court-approved substance abuse program, and~~
13 ~~participate in a court-approved driver improvement program. An offender, who~~
14 ~~participates in a litter abatement or collection program pursuant to this~~
15 ~~Subparagraph, shall have no cause of action for damages against the entity~~
16 ~~conducting the program or supervising his participation therein, including a~~
17 ~~municipality, parish, sheriff, or other entity, nor against any official, employee, or~~
18 ~~agent of such entity, for any injury or loss suffered by him during or arising out of~~
19 ~~his participation therein, if such injury or loss is a direct result of the lack of~~
20 ~~supervision or act or omission of the supervisor, unless the injury or loss was caused~~
21 ~~by the intentional or grossly negligent act or omission of the entity or its official,~~
22 ~~employee, or agent.~~

23 (2)(a) ~~If the offender had a blood alcohol concentration of 0.15 percent or~~
24 ~~more by weight based on grams of alcohol per one hundred cubic centimeters of~~
25 ~~blood, at least ninety-six hours of the sentence imposed pursuant to Paragraph (1) of~~
26 ~~this Subsection shall be served without the benefit of parole, probation, or suspension~~
27 ~~of sentence. Imposition or execution of the remainder of the sentence shall not be~~
28 ~~suspended unless the offender complies with Subparagraph (1)(a) or (b) of this~~
29 ~~Subsection.~~

1 ~~(b) If the offender had a blood alcohol concentration of 0.20 percent or more~~
2 ~~by weight based on grams of alcohol per one hundred cubic centimeters of blood, the~~
3 ~~offender shall be fined one thousand dollars and at least ninety-six hours of the~~
4 ~~sentence imposed pursuant to Paragraph (1) of this Subsection shall be served~~
5 ~~without the benefit of parole, probation, or suspension of sentence. Imposition or~~
6 ~~execution of the remainder of the sentence shall not be suspended unless the offender~~
7 ~~complies with Subparagraph (1)(a) or (b) of this Subsection.~~

8 ~~(3)~~ **(2)(a)** Notwithstanding the provisions of Paragraph (1) of this Subsection,
9 on a conviction of a second offense when the first offense **or second offense** was for
10 the crime of vehicular homicide in violation of R.S. 14:32.1, or first degree vehicular
11 negligent injuring in violation of R.S. 14:39.2, the offender shall be imprisoned with
12 or without hard labor for not less than ~~one year~~ **two years** nor more than five years,
13 and shall be fined two thousand dollars. ~~At least six months of the~~ **The** sentence of
14 imprisonment imposed shall be without benefit of probation, parole, or suspension
15 of sentence. ~~Imposition or execution of the remainder of the sentence shall not be~~
16 ~~suspended unless the provisions of Subparagraph (1)(a) or (b) of this Subsection are~~
17 ~~complied with.~~

18 **(b) The offender shall immediately undergo an evaluation by the**
19 **Department of Health and Hospitals, office of behavioral health to determine**
20 **the nature and extent of the offender's substance abuse disorder and shall**
21 **participate in any treatment plan recommended by the office of behavioral**
22 **health.**

23 D.(1)(a) On a conviction of a third offense, notwithstanding any other
24 provision of law to the contrary and regardless of whether the offense occurred
25 before or after an earlier conviction, the offender shall be imprisoned with or without
26 hard labor for not less than ~~one year~~ **three years** nor more than ~~five~~ **ten** years and
27 shall be fined two thousand dollars. ~~One year of the~~ **The** sentence of imprisonment
28 shall be imposed without benefit of probation, parole, or suspension of sentence. ~~The~~
29 ~~court, in its discretion, may suspend all or any part of the remainder of the sentence~~

1 of imprisonment. If any portion of the sentence is suspended, the offender shall be
2 placed on supervised probation with the Department of Public Safety and
3 Corrections, division of probation and parole, for a period of time equal to the
4 remainder of the sentence of imprisonment, which probation shall commence on the
5 day after the offender's release from custody.

6 (b) Any offender placed on probation pursuant to the provisions of this
7 Subsection shall be required as a condition of probation to participate in thirty eight-
8 hour days of court-approved community service activities and to submit to and
9 complete either of the following requirements:

10 (i) ~~To immediately~~ **The offender shall immediately** undergo an evaluation
11 by the Department of Health and Hospitals, office of behavioral health to determine
12 the nature and extent of the offender's substance abuse disorder and to participate in
13 any treatment plan recommended by the office of behavioral health, including
14 treatment in an inpatient facility approved by the office for a period of not less than
15 four weeks followed by outpatient treatment services for a period not to exceed
16 twelve months; **and shall**

17 (ii) ~~To~~ participate in substance abuse treatment in an alcohol and drug abuse
18 program provided by a drug division subject to the applicable provisions of R.S.
19 13:5301 et seq., if the offender is otherwise eligible to participate in such program.

20 (c) ~~In addition to the requirements set forth in Subparagraph (b) of this~~
21 ~~Paragraph, any offender placed on probation pursuant to the provisions of Subsection~~
22 ~~D of this Section shall be placed in a home incarceration program approved by the~~
23 ~~division of probation and parole for a period of time not less than six months and not~~
24 ~~more than the remainder of the sentence of imprisonment.~~

25 (d) ~~If any offender placed on probation pursuant to the provisions of~~
26 ~~Subsection D of this Section fails to complete the substance abuse treatment required~~
27 ~~by the provisions of this Paragraph or violates any other condition of probation,~~
28 ~~including conditions of home incarceration, his probation may be revoked, and he~~
29 ~~may be ordered to serve the balance of the sentence of imprisonment, without credit~~

1 R.S. 32:414(D)(1)(b), upon conviction of a third or subsequent offense of the
 2 provisions of this Section, any motor vehicle, while being operated by the offender,
 3 shall be equipped with a functioning ignition interlock device in accordance with the
 4 provisions of R.S. 15:306. The ignition interlock device shall remain installed and
 5 operative until the offender has completed the requirements of substance abuse
 6 treatment ~~and home incarceration~~ under the provisions of Subsections D and E of
 7 this Section.

8 * * *

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

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Alden A. Clement, Jr.

DIGEST

Present law provides that on a first conviction of operating a vehicle while intoxicated, the offender is to be fined not less than \$300 nor more than \$1,000, and imprisoned for not less than 10 days nor more than six months. Present law further provides that imposition or execution of sentence can be suspended under certain circumstances.

Proposed law provides that the offender is to be fined not less than \$300 nor more than \$1,000, and imprisoned for not less than 48 hours nor more than six months. Proposed law further provides that imposition or execution of sentence cannot be suspended.

Proposed law provides that on a first conviction, if the offender had a blood alcohol concentration of 0.15 percent or more, he is to be fined not less than \$500 nor more than \$1,000, and imprisoned for not less than three days nor more than six months. Proposed law further provides that imposition or execution of sentence cannot be suspended.

Proposed law provides that on a first conviction, if the offender had a blood alcohol concentration of 0.20 percent or more, he is to be fined not less than \$750 dollars nor more than \$1,000, and is to be imprisoned for not less than five days nor more than six months. Proposed law further provides that imposition or execution of sentence cannot be suspended.

Proposed law provides that on a conviction of a first offense when the crime of vehicular homicide or first degree vehicular negligent injuring occurs, the offender is to be imprisoned with or without hard labor for not less than one year nor more than five years, without benefit of probation, parole, or suspension of sentence, and is to be fined \$2,000. Proposed law further provides that the offender must immediately undergo an evaluation by the Dept. of Health and Hospitals, office of behavioral health, to determine the nature and extent of the offender's substance abuse disorder and the offender must participate in any treatment

plan recommended by the office of behavioral health.

Present law provides that on a conviction of a second offense of operating a vehicle while intoxicated, and regardless of whether the second offense occurred before or after the first conviction, the offender is to be fined not less than \$750 nor more than \$1,000, and is to be imprisoned for not less than 30 days nor more than six months. Present law further provides that at least 48 hours of the sentence is to be served without benefit of parole, probation, or suspension of sentence. Present law further provides that the offender may be sentenced to home incarceration, and provides that imposition or execution of sentence can be suspended under certain circumstances.

Proposed law provides that on a second conviction, the offender is to be fined not less than \$1,000 nor more than \$2,000, and imprisoned for not less than 30 days nor more than six months. Proposed law further provides that at least 15 days of the sentence is to be served without benefit of parole, probation, home incarceration, or suspension of sentence. Proposed law further provides that upon completion of the portion of the sentence that cannot be suspended, the offender may serve home incarceration. Proposed law further provides that imposition or execution of the remainder of the sentence cannot be suspended.

Present law provides that on a conviction of a second offense operating a vehicle while intoxicated, when the first offense was for the crime of vehicular homicide or first degree vehicular negligent injuring, the offender is to be imprisoned with or without hard labor for not less than one year nor more than five years, and fined \$2,000. Present law further provides that at least six months of the sentence of imprisonment is to be served without benefit of probation, parole, or suspension of sentence, and imposition or execution of the remainder of the sentence can only be suspended if the offender complies with certain provisions of present law.

Proposed law provides that on a second conviction, when the first offense was for the crime of vehicular homicide or first degree vehicular negligent injuring, the offender is to be imprisoned with or without hard labor for not less than two years nor more than five years, and fined \$2,000.

Proposed law further provides that the entire sentence of imprisonment is to be without benefit of probation, parole, or suspension of sentence, and imposition or execution of sentence cannot be suspended. Proposed law further provides that the offender must immediately undergo an evaluation by the Dept. of Health and Hospitals, office of behavioral health, to determine the nature and extent of the offender's substance abuse disorder and the offender must participate in any treatment plan recommended by the office of behavioral health.

Present law provides that on a conviction of a third offense of operating a vehicle while intoxicated, the offender is to be imprisoned with or without hard labor for not less than one year nor more than five years and fined \$2,000. Present law further provides that one year of the sentence of imprisonment is to be imposed without benefit of probation, parole, or suspension of sentence.

Proposed law provides that on a third conviction, the offender is to be imprisoned with or without hard labor for not less than three years nor more than ten years and fined \$2,000.

Proposed law further provides that the entire sentence of imprisonment is to be imposed without benefit of probation, parole, or suspension of sentence. Proposed law further requires the offender immediately to undergo an evaluation by the Dept. of Health and Hospitals, office of behavioral health, to determine the nature and extent of the offender's substance abuse disorder and to participate in any treatment plan recommended by the office of behavioral health, including treatment in an inpatient facility approved by the office for a period of not less than four weeks followed by outpatient treatment services for a period not to exceed twelve months. Proposed law further requires the offender to participate in

substance abuse treatment in an alcohol and drug abuse program provided by a drug division subject to the applicable provisions of present law.

Present law provides that the court, in its discretion, may suspend all or any part of the remainder of the sentence of imprisonment. Present law further provides that if any portion of the sentence is suspended, the offender shall be placed on supervised probation with the Department of Public Safety and Corrections, division of probation and parole, for a period of time equal to the remainder of the sentence of imprisonment, which probation shall commence on the day after the offender's release from custody. Present law further provides that any offender placed on probation pursuant to the provisions of present law is required as a condition of probation to participate in 30 eight-hour days of court-approved community service activities and to submit to and complete certain requirements of present law.

Proposed law deletes these provisions of present law.

Present law provides relative to home incarceration for offenders placed on probation pursuant to present law.

Proposed law deletes these provisions of present law.

Present law provides that on a conviction for a fourth or subsequent offense operating a vehicle while intoxicated, regardless of whether the fourth offense occurred before or after an earlier conviction, the offender is to be imprisoned with or without hard labor for not less than 10 years nor more than 30 years, and fined \$5,000.

Proposed law retains these provisions of present law and adds that the offender must immediately undergo an evaluation by the Dept. of Health and Hospitals, office of behavioral health, to determine the nature and extent of the offender's substance abuse disorder and to participate in any treatment plan recommended by the office of behavioral health, including treatment in an inpatient facility approved by the office for a period of not less than four weeks followed by outpatient treatment services for a period not to exceed 12 months, and must participate in substance abuse treatment in an alcohol and drug abuse program provided by a drug division subject to the applicable provisions of present law.

Present law provides that two years of the sentence of imprisonment on a fourth conviction are to be served without benefit of probation, parole, or suspension of sentence.

Proposed law requires that the entire sentence of imprisonment is to be served without benefit of probation, parole, or suspension of sentence.

Present law provides that on a fourth conviction, the offender is to be imprisoned with or without hard labor for not less than 10 years nor more than 30 years, and fined \$5,000.

Present law further provides that two years of the sentence of imprisonment are to be served without benefit of probation, parole, or suspension of sentence.

Present law provides that on a fourth conviction, the court may suspend all or any part of the remainder of the sentence of imprisonment, and if any portion of the sentence is suspended, the offender is to be placed on supervised probation with the Dept. of Public Safety and Corrections, division of probation and parole, for a period of time not to exceed five years.

Present law further provides that any offender placed on probation is required, as a condition of probation, to participate in 40 eight-hour days of court-approved community service activities and to submit to and complete certain present law requirements.

Proposed law deletes these provisions of present law.

Present law provides relative to home incarceration for offenders placed on probation

pursuant to present law.

Proposed law deletes these provisions of present law.

Present law provides that an offender ordered to participate in a substance abuse program must pay the cost incurred in participating in the program, and failure to make such payment subjects the offender to revocation of probation, unless the court determines that the offender is unable to pay. Present law further provides that if the court determines that the offender is unable to pay, the state shall pay for the cost of the substance abuse treatment.

Proposed law retains these provisions of present law.

Present law provides that an offender sentenced to home incarceration and to participate in a driver improvement program shall pay the cost incurred in participating in home incarceration and a driver improvement program unless the court determines that the offender is unable to pay.

Proposed law deletes this provision of present law.

Present law provides that upon conviction of a third or subsequent offense operating a vehicle while intoxicated, any motor vehicle, while being operated by the offender, must be equipped with a functioning ignition interlock device in accordance with the provisions of present law. Present law further provides that the ignition interlock device must remain installed and operative until the offender has completed the requirements of substance abuse treatment and home incarceration under the provisions of present law.

Proposed law deletes the applicability of present law to home incarceration. Proposed law otherwise retains present law.

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

(Amends R.S. 14:98(B), (C), (D)(1), (E)(1), (I), and (K)(3)(a))