SLS 16RS-283 ENGROSSED

2016 Regular Session

SENATE BILL NO. 196

BY SENATOR CORTEZ

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CRIME/PUNISHMENT. Removes judge's discretion with regard to mandatory sentences for certain offenses involving the possession, use, or discharge of a firearm. (8/1/16)

AN ACT

2	To amend and reenact Code of Criminal Procedure Article 893.3(H), relative to sentences
3	imposed for certain offenses involving the possession, use, or discharge of a firearm;
4	to provide that sentences prescribed for certain offenses and conditions of those
5	sentences are to be considered mandatory; and to provide for related matters.
6	Be it enacted by the Legislature of Louisiana:
7	Section 1. Code of Criminal Procedure Article 893.3(H) is hereby amended and
8	reenacted to read as follows:
9	Art. 893.3. Sentence imposed on felony or specifically enumerated misdemeanor in
10	which firearm was possessed, used, or discharged
11	* * *
12	H. If the court finds that a sentence imposed under provisions of this Article
13	would be excessive, the court shall state for the record the reasons for such finding
14	and shall impose the most severe sentence which is not excessive. However, when
15	the court makes any finding relative to the possession, use, or discharge of a
16	firearm as described in this Article, the terms of imprisonment provided for in
17	Subparagraph (E)(1) of this Article shall be considered mandatory sentences

and the conditions of those sentences provided for in Subparagraph (E)(2) and

Paragraphs F and G of this Article shall be considered mandatory conditions.

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

DIGEST 2016 Regular Session

SB 196 Engrossed

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Cortez

<u>Present law</u> provides that if the court finds by clear and convincing evidence that an offender actually possessed a firearm during the commission of a felony or a specifically enumerated misdemeanor under <u>present law</u> for which he was convicted, the court is to impose a term of imprisonment of two years. <u>Present law</u> further provides that if the maximum sentence for the underlying offense is less than two years, then the court is to impose the maximum sentence set forth in present law.

Proposed law retains present law.

<u>Present law</u> provides that if the court finds by clear and convincing evidence that the offender actually used a firearm in the commission of a felony or a specifically enumerated misdemeanor under <u>present law</u> for which he was convicted, the court is to impose a term of imprisonment of five years. <u>Present law</u> further provides that if the maximum sentence for the underlying offense is less than five years, then the court is to impose the maximum sentence set forth in present law.

Proposed law retains present law.

<u>Present law</u> provides that if the court finds by clear and convincing evidence that the offender actually discharged a firearm in the commission of a felony or a specifically enumerated misdemeanor under <u>present law</u> for which he was convicted, the court is to impose a term of imprisonment of 10 years. <u>Present law</u> further provides that if the maximum sentence for the underlying offense is less than 10 years, then the court is to impose the maximum sentence set forth in <u>present law</u>.

Proposed law retains present law.

<u>Present law</u> provides that if the court finds by clear and convincing evidence that a firearm was actually used or discharged by the defendant during the commission of a felony for which he was convicted, and thereby caused bodily injury, the court is to impose a term of imprisonment of 15 years. <u>Present law</u> further provides that if the maximum sentence for the underlying felony is less than 15 years, then court is to impose the maximum sentence set forth in present law.

Proposed law retains present law.

<u>Present law</u> provides that if the defendant commits a felony with a firearm and the crime is considered a violent felony as defined in <u>present law</u>, then the court is to impose a minimum term of imprisonment of 10 years. <u>Present law</u> further provides that in addition, if the firearm is discharged during the commission of such violent felony, then the court is to impose a minimum term of imprisonment of 20 years. <u>Present law</u> further provides that a sentence imposed under this provision of <u>present law</u> is to be without benefit of parole, probation or suspension of sentence.

Proposed law retains present law.

<u>Present law</u> provides that a mandatory minimum sentence imposed under these provisions of <u>present law</u> cannot be suspended and must be imposed in the same manner as provided in the felony for which the defendant was convicted.

Proposed law retains present law.

<u>Present law</u> provides that a defendant sentenced under the provisions of <u>present law</u> is not eligible for parole during the period of the mandatory minimum sentence.

Proposed law retains present law.

<u>Present law</u> provides that if the court finds that a sentence imposed under these provisions of <u>present law</u> would be excessive, the court is to state for the record the reasons for such finding and impose the most severe sentence that is not excessive.

<u>Proposed law</u> retains <u>present law</u> and adds that with regard to "violent felonies" under <u>present law</u> (second degree sexual battery, aggravated burglary, carjacking, armed robbery, second degree kidnapping, manslaughter, or forcible or second degree rape) only, when the court makes any finding relative to the possession, use, or discharge of a firearm as described in <u>present law</u>, the terms of imprisonment provided for in <u>present law</u> are mandatory sentences and the conditions of those sentences provided for in <u>present law</u> are mandatory conditions.

Effective August 1, 2016.

(Amends C.Cr.P. Art. 893.3(H))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Makes <u>proposed law</u> applicable only to sentencing for "violent felonies" under present law.