

Regular Session, 2013

HOUSE BILL NO. 103

BY REPRESENTATIVE BADON

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

CRIMINAL/SENTENCING: Reduces criminal penalties for possession of marijuana and prohibits the applicability of the Habitual Offender Law relative to possession of marijuana

1 AN ACT

2 To amend and reenact R.S. 40:966(E) and to enact R.S. 15:529.1(A)(5), relative to  
3 possession of marijuana; to amend the criminal penalties for such offense; to provide  
4 with respect to sentencing pursuant to the Habitual Offender Law; and to provide for  
5 related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 40:966(E) is hereby amended and reenacted to read as follows:

8 §966. Penalty for distribution or possession with intent to distribute narcotic drugs  
9 listed in Schedule I; possession of marijuana, possession of synthetic  
10 cannabinoids

11 \* \* \*

12 E.(1) Possession of marijuana, ~~or synthetic cannabinoids.~~ ~~(1)(a)~~ Except as  
13 provided in ~~Subsections E and Subsection F~~ or G of this Section, on a first conviction  
14 for violation of Subsection C of this Section with regard to marijuana,  
15 tetrahydrocannabinol, or chemical derivatives thereof, ~~or synthetic cannabinoids,~~ the  
16 offender shall be fined not more than five hundred dollars, imprisoned ~~in the parish~~  
17 ~~jaill~~ for not more than six months, or both.

18 ~~(2)(a)(b)~~ Except as provided in Subsection F or G of this Section, on a  
19 second conviction for violation of Subsection C of this Section with regard to

1 marijuana, tetrahydrocannabinol or chemical derivatives thereof, ~~or synthetic~~  
2 ~~cannabinoids~~; the offender shall be fined not less than two hundred fifty dollars, nor  
3 more than ~~two thousand~~ five hundred dollars, imprisoned with or without hard labor  
4 for not more than ~~five years~~ two years, or both.

5 ~~(b)~~(c) If the court places the offender on probation, the probation shall  
6 provide for a minimum condition that he participate in a court-approved substance  
7 abuse program and perform four eight-hour days of court-approved community  
8 service activities. Any costs associated with probation shall be paid by the offender.

9 ~~(3)~~(d) Except as provided in Subsection F or G of this Section, on a third ~~or~~  
10 ~~subsequent~~ conviction for violation of Subsection C of this Section with regard to  
11 marijuana, tetrahydrocannabinol or chemical derivatives thereof, ~~or synthetic~~  
12 ~~cannabinoids~~; the offender shall be fined not more than two thousand dollars,  
13 ~~sentenced to imprisonment~~ imprisoned with or without hard labor for not more than  
14 ~~twenty five~~ five years, and may, in addition, be sentenced to pay a fine of not more than  
15 ~~five thousand dollars~~ or both.

16 (e) Except as provided in Subsection F or G of this Section, on a fourth or  
17 subsequent conviction for violation of Subsection C of this Section with regard to  
18 marijuana, tetrahydrocannabinol or chemical derivatives thereof, the offender shall  
19 be fined not more than two thousand dollars, imprisoned with or without hard labor  
20 for not more than eight years, or both.

21 ~~(4)~~(f) A conviction for the violation of any other statute or ordinance with  
22 the same elements as ~~R.S. 40:966(C)~~ Subsection C of this Section prohibiting the  
23 possession of marijuana, tetrahydrocannabinol or chemical derivatives thereof, ~~or~~  
24 ~~synthetic cannabinoids~~ shall be considered as a prior conviction for the purposes of  
25 this Subsection relating to penalties for second, third, fourth, or subsequent  
26 offenders.

27 ~~(5)~~(g) A conviction for the violation of any other statute or ordinance with  
28 the same elements as ~~R.S. 40:966(B)(3)~~ Paragraph (B)(3) of this Section prohibiting  
29 the distributing or dispensing or possession with intent to distribute or dispense

1 marijuana, ~~of marijuana,~~<sup>†</sup> tetrahydrocannabinol or chemical derivatives thereof, ~~or~~  
2 ~~synthetic cannabinoids~~ shall be considered as a prior conviction for the purposes of  
3 this Subsection relating to penalties for second, third, fourth, or subsequent  
4 offenders.

5 (2) Possession of synthetic cannabinoids. (a) Except as provided in  
6 Subsections F and G of this Section, on a first conviction for violation of Subsection  
7 C of this Section with regard to synthetic cannabinoids, the offender shall be fined  
8 not more than five hundred dollars, imprisoned in the parish jail for not more than  
9 six months, or both.

10 (b) Except as provided in Subsection F or G of this Section, on a second  
11 conviction for violation of Subsection C of this Section with regard to synthetic  
12 cannabinoids, the offender shall be fined not less than two hundred fifty dollars nor  
13 more than two thousand dollars, imprisoned with or without hard labor for not more  
14 than five years, or both.

15 (c) Except as provided in Subsection F or G of this Section, on a third or  
16 subsequent conviction for violation of Subsection C of this Section with regard to  
17 synthetic cannabinoids, the offender shall be sentenced to imprisonment with or  
18 without hard labor for not more than twenty years, and may, in addition, be  
19 sentenced to pay a fine of not more than five thousand dollars.

20 (d) A conviction for the violation of any other statute or ordinance with the  
21 same elements as Subsection C of this Section prohibiting the possession of synthetic  
22 cannabinoids shall be considered as a prior conviction for the purposes of this  
23 Subsection relating to penalties for second, third, or subsequent offenders.

24 (e) A conviction for the violation of any other statute or ordinance with the  
25 same elements as Paragraph (B)(3) of this Section prohibiting the distributing or  
26 dispensing or possession with intent to distribute or dispense synthetic cannabinoids  
27 shall be considered as a prior conviction for the purposes of this Subsection relating  
28 to penalties for second, third, or subsequent offenders.

29 \* \* \*

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 Section 2. R.S. 15:529.1(A)(5) is hereby enacted to read as follows:

2 §529.1. Sentences for second and subsequent offenses; certificate of warden or clerk  
3 of court in the state of Louisiana as evidence

4 A. Any person who, after having been convicted within this state of a felony,  
5 or who, after having been convicted under the laws of any other state or of the  
6 United States, or any foreign government of a crime which, if committed in this state  
7 would be a felony, thereafter commits any subsequent felony within this state, upon  
8 conviction of said felony, shall be punished as follows:

9 \* \* \*

10 (5) If the current and all prior felony convictions are convictions for which  
11 sentence may be imposed under R.S. 40:966(E)(1), the person shall not be subject  
12 or sentenced pursuant to the provisions of this Section.

13 \* \* \*

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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)]

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Badon HB No. 103

**Abstract:** Amends the criminal penalties for second and subsequent convictions of possession of marijuana and prohibits the application of the Habitual Offender Law when all underlying criminal convictions are for possession of marijuana.

Present law provides for the following penalties with regard to the crime of possession of marijuana or synthetic cannabinoids:

- (1) On a first conviction, the offender shall be fined not more than \$500, imprisoned in the parish jail for not more than six months, or both.
- (2) On a second conviction, the offender shall be fined not less than \$250 nor more than \$2,000, imprisoned with or without hard labor for not more than five years, or both. In addition, present law required that certain conditions be met if the offender is placed on probation, including substance abuse treatment and community service.
- (3) On a third or subsequent conviction, the offender shall be sentenced to imprisonment with or without hard labor for not more than 20 years, and may, in addition, be sentenced to pay a fine of not more than \$5,000.

Proposed law amends the penalties for possession of marijuana as follows:

- (1) On a first conviction, proposed law retains present law.

- (2) On a second conviction, the offender shall be fined not more than \$500, imprisoned with or without hard labor for not more than two years, or both.
- (3) On a third conviction, the offender shall be fined not more than \$2,000, imprisoned with or without hard labor for not more than five years, or both.
- (4) On a fourth or subsequent conviction, the offender shall be fined not more than \$2,000, imprisoned with or without hard labor for not more than eight years, or both.

Present law provides for increased penalties for habitual offenders, including offenders who have been convicted of possession of marijuana or synthetic cannabinoids.

Proposed law retains the provisions of present law regarding synthetic cannabinoids and prohibits the Habitual Offender Law from applying when all underlying criminal convictions are for possession of marijuana.

(Amends R.S. 40:966(E); Adds R.S. 15:529.1(A)(5))

#### Summary of Amendments Adopted by House

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

1. Retained present law penalties for possession of synthetic cannabinoids and reduced the penalties for possession of marijuana.
2. Prohibited the Habitual Offender Law from applying when all underlying criminal convictions are for possession of marijuana.

#### House Floor Amendments to the engrossed bill.

1. Deleted provisions regarding a motion to reconsider sentence.
2. Changed maximum penalty provisions for 2nd, 3rd, 4th and subsequent convictions for possession of marijuana.
3. Made legislative bureau amendments.
4. Reinstated present law provisions regarding court-approved substance abuse programs and court-approved community service for a 2nd conviction.