Regular Session, 2010

ACT No. 911

HOUSE BILL NO. 191

1

BY REPRESENTATIVES PERRY, ANDERS, ARNOLD, BOBBY BADON, BALDONE, BARRAS, BILLIOT, BROSSETT, BURFORD, HENRY BURNS, TIM BURNS, CARTER, CHAMPAGNE, CHANEY, CONNICK, CROMER, DOERGE, DOVE, HARDY, HENDERSON, HENRY, HINES, HOFFMANN, HUTTER, JOHNSON, KATZ, LABRUZZO, LAMBERT, LEGER, LIGI, LORUSSO, MILLS, MONICA, NOWLIN, PEARSON, PUGH, RICHARD, ROBIDEAUX, SCHRODER, SIMON, SMILEY, JANE SMITH, ST. GERMAIN, TALBOT, TEMPLET, THIBAUT, THIERRY, WHITE, AND WILLIAMS AND SENATORS ALARIO, AMEDEE, APPEL, BROOME, CROWE, DUPLESSIS, HEITMEIER, KOSTELKA, LONG, MARTINY, MICHOT, MOUNT, SHAW, AND THOMPSON

AN ACT

2	To amend and reenact R.S. 15:529.1(A), (C), (D), and (E), relative to the habitual offender
3	law; to provide for increased penalties for multiple sex offenses; to repeal statutory
4	language authorizing the use of juvenile adjudications of delinquency to enhance
5	penalty provisions for felony offenses; to provide for technical changes; and to
6	provide for related matters.
7	Be it enacted by the Legislature of Louisiana:
8	Section 1. R.S. 15:529.1(A), (C), (D), and (E) are hereby amended and reenacted to
9	read as follows:
10	§529.1. Sentences for second and subsequent offenses; certificate of warden or clerk
11	of court in the state of Louisiana as evidence
12	A.(1) Any person who, after having been convicted within this state of a
13	felony or adjudicated a delinquent under Title VIII of the Louisiana Children's Code
14	for the commission of a felony-grade violation of either the Louisiana Controlled
15	Dangerous Substances Law involving the manufacture, distribution, or possession
16	with intent to distribute a controlled dangerous substance or a crime of violence as
17	listed in Paragraph (2) of this Subsection, or who, after having been convicted under
18	the laws of any other state or of the United States, or any foreign government of a
19	crime which, if committed in this state would be a felony, thereafter commits any

subsequent felony within this state, upon conviction of said felony, shall be punished as follows:

(a)(1) If the second felony is such that upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life, then the sentence to imprisonment shall be for a determinate term not less than one-half the longest term and not more than twice the longest term prescribed for a first conviction:

(2)(a) If the second felony and the prior felony are sex offenses as defined in R.S. 15:541, or the prior felony would be a sex offense as defined in R.S. 15:541, except it occurred prior to June 18, 1992, or the conviction was obtained under the laws of any other state, the United States, or any foreign government, the person shall be sentenced to imprisonment at hard labor for a determinate term not less than two-thirds of the longest possible sentence for the conviction and not more than three times the longest possible sentence prescribed for a first conviction, without benefit of probation, parole, or suspension of sentence.

(b) If the second felony and the prior felony are sex offenses as defined in R,S, 15:541, or the prior felony would be a sex offense as defined in R,S,15:541, except it occurred prior to June 18, 1992, or the conviction was obtained under the laws of any other state, the United States, or any foreign government, and the victims of the previous offense and the instant offense were under the age of thirteen years at the time of the commission of the offense or any part thereof, the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

(b)(3) If the third felony is such that upon a first conviction, the offender would be punishable by imprisonment for any term less than his natural life then:

(i)(a) The person shall be sentenced to imprisonment for a determinate term not less than two-thirds of the longest possible sentence for the conviction and not more than twice the longest possible sentence prescribed for a first conviction; or

(ii)(b) If the third felony and the two prior felonies are felonies defined as a crime of violence under R.S. 14:2(B), a sex offense as defined in R.S. 15:540 et

seq. when the victim is under the age of eighteen at the time of commission of the offense, or as a violation of the Uniform Controlled Dangerous Substances Law punishable by imprisonment for ten years or more, or any other crimes punishable by imprisonment for twelve years or more, or any combination of such crimes, the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

(c)(4) If the fourth or subsequent felony is such that, upon a first conviction

(c)(4) If the fourth or subsequent felony is such that, upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life then:

(i)(a) The person shall be sentenced to imprisonment for the fourth or subsequent felony for a determinate term not less than the longest prescribed for a first conviction but in no event less than twenty years and not more than his natural life; or

(ii) (b) If the fourth felony and two of the prior felonies are felonies defined as a crime of violence under R.S. 14:2(B), a sex offense as defined in R.S. 15:540 et seq. when the victim is under the age of eighteen at the time of commission of the offense, or as a violation of the Uniform Controlled Dangerous Substances Law punishable by imprisonment for ten years or more, or of any other crime punishable by imprisonment for twelve years or more, or any combination of such crimes, the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

(2)(a) Attempted first degree murder.

(b) Attempted second degree murder.

(c) Manslaughter.

(d) Armed robbery.

(e) Forcible rape.

(f) Simple rape.

(g) Second degree kidnapping.

(h) A second or subsequent aggravated battery.

(i) A second or subsequent aggravated burglary.

(j) A second or subsequent offense of burglary of an inhabited dwelling.

2 * * *

1

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

C. The current offense shall not be counted as, respectively, a second, third, fourth, or higher offense if more than ten years have elapsed between the date of the commission of the current offense or offenses and the expiration of the maximum sentence or sentences of the previous conviction or convictions, or adjudication or adjudications of delinquency, or between the expiration of the maximum sentence or sentences of each preceding conviction or convictions or adjudication or adjudications of delinquency alleged in the multiple offender bill and the date of the commission of the following offense or offenses. In computing the intervals of time as provided herein, any period of parole, probation, or servitude incarceration by a person in a penal institution, within or without the state, shall not be included in the computation of any of said ten-year periods between the expiration of the maximum sentence or sentences and the next succeeding offense or offenses.

D.(1)(a) If, at any time, either after conviction or sentence, it shall appear that a person convicted of a felony has previously been convicted of a felony under the laws of this state or adjudicated a delinquent under Title VIII of the Louisiana Children's Code for the commission of a felony-grade violation of either the Louisiana Controlled Dangerous Substances Law involving the manufacture, distribution, or possession with intent to distribute a controlled dangerous substance or a crime of violence as listed in Paragraph (2) of Subsection A of this Section, or has been convicted under the laws of any other state, or of the United States, or of any foreign government or country, of a crime, which, if committed in this state would be a felony, the district attorney of the parish in which subsequent conviction was had may file an information accusing the person of a previous conviction or adjudication of delinquency. Whereupon the court in which the subsequent conviction was had shall cause the person, whether confined in prison or otherwise, to be brought before it and shall inform him of the allegation contained in the information and of his right to be tried as to the truth thereof according to law and shall require the offender to say whether the allegations are true. If he denies the

allegation of the information or refuses to answer or remains silent, his plea or the fact of his silence shall be entered on the record and he shall be given fifteen days to file particular objections to the information, as provided in Subparagraph (b) of this Paragraph. The judge shall fix a day to inquire whether the offender has been convicted of a prior felony or felonies or adjudicated a delinquent for an offense or offenses specified above as set forth in the information.

- (b) Except as otherwise provided in this Subsection, the district attorney shall have the burden of proof beyond a reasonable doubt on any issue of fact. The presumption of regularity of judgment shall be sufficient to meet the original burden of proof. If the person claims that any conviction or adjudication of delinquency alleged is invalid, he shall file a written response to the information. A copy of the response shall be served upon the prosecutor. A person claiming that a conviction or adjudication of delinquency alleged in the information was obtained in violation of the Constitutions of Louisiana or of the United States shall set forth his claim, and the factual basis therefor, with particularity in his response to the information. The person shall have the burden of proof, by a preponderance of the evidence, on any issue of fact raised by the response. Any challenge to a previous conviction or adjudication of delinquency which is not made before sentence is imposed may not thereafter be raised to attack the sentence.
- (2) Following a contradictory hearing, the court shall find that the defendant is:
- (a) A second offender upon proof of a prior felony conviction or adjudication of delinquency as authorized in Subsection A.
- (b) A third offender, upon proof of two prior felony convictions or adjudications of delinquency as authorized in Subsection A, or any combination thereof.
- (c) A fourth offender, upon proof of three or more prior felony convictions or adjudications of delinquency as authorized in Subsection A, or any combination thereof.

(3) When the judge finds that he has been convicted of a prior felony or felonies or adjudicated a delinquent as authorized in Subsection A, or if he acknowledges or confesses in open court, after being duly cautioned as to his rights, that he has been so convicted or adjudicated, the court shall sentence him to the punishment prescribed in this Section, and shall vacate the previous sentence if already imposed, deducting from the new sentence the time actually served under the sentence so vacated. The court shall provide written reasons for its determination. Either party may seek review of an adverse ruling.

E. Whenever it shall become known to any superintendent or prison, probation, parole, police, or other peace officer, that any person charged with or convicted of a felony has been previously convicted or adjudicated delinquent within the meaning of this Section, he shall immediately report the fact to the district attorney of the parish in which the charge lies, or the conviction has been had.

14 * * *

SPEAKER OF THE HOUSE OF REPRESENTATIVES
PRESIDENT OF THE SENATE
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: