

Regular Session, 2010

SENATE BILL NO. 215

BY SENATORS MOUNT, CROWE, DORSEY, DUPLESSIS, GUILLORY AND THOMPSON

DWI. Amends the penalty provisions for a third and fourth offense DWI. (gov sig)

1 AN ACT
2 To amend and reenact R.S. 14:98(D)(1)(a) and (E)(1)(a) and (4)(b), and Code of Criminal
3 Procedure Art. 893 (B), relative to offenses involving operating a vehicle while
4 intoxicated; to provide with respect to the crime of operating a vehicle while
5 intoxicated; to amend the criminal penalties for such crime; to provide for certain
6 circumstances to apply probation in felony cases; to provide for substance abuse
7 treatment; to provide for a specified probationary period; and to provide for related
8 matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 14:98(D)(1)(a) and(E)(1)(a) and (4)(b) are hereby amended and
11 reenacted to read as follows:

12 §98. Operating a vehicle while intoxicated

13 * * *

14 D.(1)(a) On a conviction of a third offense, notwithstanding any other
15 provision of law to the contrary and regardless of whether the offense occurred
16 before or after an earlier conviction, the offender shall be imprisoned with or without
17 hard labor for not less than one year nor more than five years and shall be fined two

1 thousand dollars. ~~Forty-five days~~ **One year** of the sentence of imprisonment shall be
 2 imposed without benefit of probation, parole, or suspension of sentence. The court,
 3 in its discretion, may suspend all or any part of the remainder of the sentence of
 4 imprisonment. If any portion of the sentence is suspended, the offender shall be
 5 placed on supervised probation with the Department of Public Safety and
 6 Corrections, division of probation and parole, for a period of time equal to the
 7 remainder of the sentence of imprisonment, which probation shall commence on the
 8 day after the offender's release from custody.

* * *

10 E.(1)(a) Except as otherwise provided in Subparagraph (4)(b) of this
 11 Subsection, on a conviction of a fourth or subsequent offense, notwithstanding any
 12 other provision of law to the contrary and regardless of whether the fourth offense
 13 occurred before or after an earlier conviction, the offender shall be imprisoned with
 14 or without hard labor for not less than ten years nor more than thirty years and shall
 15 be fined five thousand dollars. ~~Seventy-five days~~ **Two years** of the sentence of
 16 imprisonment shall be imposed without benefit of probation, parole, or suspension
 17 of sentence. The court, in its discretion, may suspend all or any part of the remainder
 18 of the sentence of imprisonment. If any portion of the sentence is suspended, the
 19 offender shall be placed on supervised probation with the Department of Public
 20 Safety and Corrections, division of probation and parole, for a period of time not to
 21 exceed five years, which probation shall commence on the day after the offender's
 22 release from custody.

* * *

(4)(a) * * *

25 (b) If the offender has previously received the benefit of suspension of
 26 sentence, probation, or parole as a fourth offender, **in addition to the mandatory**
 27 **two years which must be served,** no part of **the remainder of** the sentence may be
 28 imposed with benefit of suspension of sentence, probation, or parole, and no portion
 29 of the sentence shall be imposed concurrently with the remaining balance of any

1 sentence to be served for a prior conviction for any offense.

2 * * *

3 Section 2. Code of Criminal Procedure Art. 893(B) is hereby amended and reenacted
4 to read as follows:

5 Art. 893. Suspension and deferral of sentence and probation in felony cases

6 * * *

7 B.(1) After third conviction of a noncapital felony for which a defendant
8 could have his sentence suspended under Paragraph A of this Article if such
9 conviction were for a first or second offense or for a violation of the Uniform
10 Controlled Dangerous Substances Law, **or for a third conviction of operating a**
11 **vehicle while intoxicated in violation of R.S. 14:98**, and when it appears that the
12 best interest of the public and the defendant will be served, and with the consent of
13 the district attorney, the court may suspend, in whole or in part, the imposition or
14 execution of the sentence, provided the defendant enters and completes a drug court
15 program as defined in R.S. 13:5301 et seq., **or enters and completes an established**
16 **DWI court program pursuant to the agreement of the trial court and the district**
17 **attorney, as set forth in R.S. 14:98(D)(1)(b), or if the defendant is sent by the**
18 **trial court for a minimum period of one year to a facility which conforms to the**
19 **Judicial Agency Referral Residential Facility Regulatory Act, R.S. 40:2852.**
20 When suspension is allowed under this Paragraph, the defendant shall be placed on
21 probation under the supervision of the division of probation and parole. The period
22 of probation shall be specified and shall not be less than two years nor more than five
23 years. The suspended sentence shall be regarded as a sentence for the purpose of
24 granting or denying a new trial or appeal.

25 **(2) Notwithstanding any other provisions of law to the contrary, the**
26 **sentencing alternatives available in Subparagraph (1) of this Paragraph, shall**
27 **be made available to offenders convicted of a fourth offense violation of**
28 **operating a vehicle while intoxicated pursuant to R.S. 14:98, only if the offender**
29 **had not been offered such alternatives prior to his fourth conviction of**

Proposed law provides that sentencing alternatives are available to offenders convicted of a fourth offense DWI, but only if the offender had not been offered such alternatives prior to his fourth conviction.

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

(Amends R.S. 14:98(D)(1)(a) and (E)(1)(a) and (4)(b) and C.Cr.P. Art. 893(B))

Summary of Amendments Adopted by Senate

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

1. Adds a third conviction of operating a vehicle while intoxicated to the list of noncapital felony cases for which a defendant could have his sentence suspended upon entering and completing an established DWI court program.

Senate Floor Amendments to reengrossed bill.

1. Technical corrections made.
2. Changes the number of mandatory years for a fourth offense DWI from three to two.
3. Allows for alternative sentencing to be made available to fourth offense DWI offenders who have not been offered such alternatives prior to a fourth conviction.