

2018 Regular Session

SENATE BILL NO. 395

BY SENATOR GARY SMITH

CRIME/PUNISHMENT. Provides relative to second degree murder. (gov sig)

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AN ACT

To amend and reenact Code of Criminal Procedure Article 782 and R.S. 14:30.1(B), relative to the crime of second degree murder; to provide relative to penalties for second degree murder under certain circumstances; to provide relative to the number of jurors required for a conviction of second degree murder under certain circumstances; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Article 782 is hereby amended and reenacted to read as follows:

Art. 782. Number of jurors composing jury; number which must concur; waiver

A. Cases in which punishment may be capital shall be tried by a jury of twelve jurors, all of whom must concur to render a verdict. ~~Cases~~

B. Except as provided in Paragraph C of this Article, cases in which punishment is necessarily confinement at hard labor shall be tried by a jury composed of twelve jurors, ten of whom must concur to render a verdict.

C. A charge of second degree murder shall be tried by a jury composed of twelve jurors, all of whom must concur to render a verdict, except that if the

1 defendant is charged as a principal to the crime of second degree murder, the
2 case shall be tried by a jury composed of twelve jurors, ten of whom must
3 concur to render a verdict.

4 D. Cases in which the punishment may be confinement at hard labor shall be
5 tried by a jury composed of six jurors, all of whom must concur to render a verdict.

6 ~~B:~~ E. Trial by jury may be knowingly and intelligently waived by the
7 defendant except in capital cases.

8 Section 2. R.S. 14:30.1(B) is hereby amended and reenacted to read as follows:

9 §30.1. Second degree murder

10 * * *

11 B. Whoever (1) Except as provided in Paragraph (2) of this Subsection,
12 whoever commits the crime of second degree murder shall be ~~punished by life~~
13 ~~imprisonment~~ imprisoned at hard labor for not less than forty years or for life
14 without benefit of parole, probation, or suspension of sentence.

15 (2) Whoever commits the crime of second degree murder when the
16 offender is a principal to the offense who was neither present at the commission
17 of the offense, nor aided and abetted in the commission of the offense, nor
18 directly or indirectly counseled or procured another to commit the offense, shall
19 be imprisoned at hard labor for not more than forty years.

20 Section 3. This Act shall become effective upon signature by the governor or, if not
21 signed by the governor, upon expiration of the time for bills to become law without signature
22 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
23 vetoed by the governor and subsequently approved by the legislature, this Act shall become
24 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.

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Present law provides that second degree murder is the killing of a human being under any
of the following circumstances:

- (1) The offender has a specific intent to kill or to inflict great bodily harm.
- (2) The offender is engaged in the perpetration or attempted perpetration of certain present law crimes, even though he has no intent to kill or to inflict great bodily harm.
- (3) The offender unlawfully distributes or dispenses a controlled dangerous substance listed in present law that is the direct cause of the death of the recipient who ingested or consumed the controlled dangerous substance.
- (4) The offender unlawfully distributes or dispenses a controlled dangerous substance listed in present law to another who subsequently distributes or dispenses such controlled dangerous substance that is the direct cause of the death of the person who ingested or consumed the controlled dangerous substance.

Proposed law retains present law.

Present law provides that whoever commits the crime of second degree murder is to be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.

Proposed law changes the punishment for second degree murder to imprisonment at hard labor for at least 40 years or life imprisonment without benefit of parole, probation, or suspension of sentence. However, proposed law further provides that if the offender is a principal to the offense who was neither present at the commission of the offense, nor aided and abetted in the commission of the offense, nor directly or indirectly counseled or procured another to commit the offense, then the punishment is imprisonment at hard labor for up to 40 years.

Present law provides that in cases in which punishment must be imprisonment at hard labor, including second degree murder, the case is to be tried by a jury of 12, at least 10 of whom must concur to render a verdict.

Proposed law changes the number of jurors required for a verdict by providing that a charge of second degree murder must be tried by a jury of 12, all 12 of whom must concur to render a verdict. However, proposed law further provides that if the defendant is charged as a principal to the crime of second degree murder, the case is to be tried by a jury of 12, only 10 of whom must concur to render a verdict.

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

(Amends C.Cr.P. Art. 782 and R.S. 14:30.1(B))