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BY SENATORS WARD, BARROW, BERNARD, CLOUD, CONNICK, FOIL, HEWITT, JACKSON, JOHNS, LAMBERT, MCMATH, MILLIGAN, FRED MILLS, ROBERT MILLS, MIZELL, MORRIS, POPE, REESE, SMITH, TARVER AND WOMACK AND REPRESENTATIVE MARINO

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

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AN ACT

To amend and reenact Code of Criminal Procedure Articles 320(D) and (E)(1) and 893(A)(1)(a), (B)(2), (F), (G), and (H) and R.S. 13:5304(B)(3)(b) and to enact Code of Criminal Procedure Articles 893(B)(1)(c) and (I) and 904 and Subpart V of Part II-A of Chapter 1 of Subtitle I of Title 39 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 39:100.171 and 100.172, relative to mandatory drug testing and screening; to require drug testing and screening of persons arrested for certain offenses; to provide relative to assessment for participation in drug and specialty court programs for certain nonviolent offenders; to provide relative to confidentiality of drug testing and screening records; to establish the Drug and Specialty Court Fund; to provide for the administration and specific uses of the fund; to provide reporting requirements; to provide for effectiveness; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Articles 320(D) and (E)(1) and 893(A)(1)(a), (B)(2), (F), (G), and (H) are hereby amended and reenacted and Code of Criminal Procedure Articles 893(B)(1)(c) and (I) and 904 are hereby enacted to read as follows:

Art. 320. Conditions of bail undertaking

* * *

~~D. Drug offenses and crimes of violence.~~ **Pretrial drug testing and screening for substance use disorders.**

(1) Every person arrested for a violation of the Uniform Controlled Dangerous Substances Law or a crime of violence as provided in R.S. 14:2(B) shall be required to submit to a pretrial drug test for the presence of designated substances

1 in accordance with the provisions of this Article and rules of court governing such
2 testing. Every person arrested for any other felony may be required to submit to a
3 pretrial drug test for the presence of designated substances in accordance with the
4 provisions of this Article and rules of court governing such testing. Every person
5 arrested for a misdemeanor may be required to submit to a pretrial drug test for the
6 presence of designated substances in accordance with the provisions of this Article
7 and rules of court governing such testing.

8 **(2) Drug testing to determine the presence of any controlled dangerous**
9 **substance identified in the Uniform Controlled Dangerous Substances Law**
10 **should occur within twenty-four hours of the booking of the person, and**
11 **random testing thereafter may be required to verify that the person is drug free.**

12 **(3) All persons testing positive for the presence of one or more substances**
13 **designated in Subparagraph (2) of this Paragraph shall be clinically screened**
14 **utilizing a validated screening tool for the purpose of determining whether the**
15 **person suffers from a substance use disorder and is suitable for a drug or**
16 **specialty court program.**

17 **(4) All persons who receive a positive test result pursuant to**
18 **Subparagraph (2) of this Paragraph and who are considered suitable for a drug**
19 **or specialty court program pursuant to the screening process set forth in**
20 **Subparagraph (3) of this Paragraph shall be subject to the provisions of Code**
21 **of Criminal Procedure Article 904.**

22 **(5) All records and information provided or obtained pursuant to**
23 **Subparagraphs (2) and (3) of this Paragraph shall be considered confidential**
24 **and shall not be disclosed to any person who is not connected with the district**
25 **attorney, counsel for the person tested or screened pursuant to this Paragraph,**
26 **a treatment professional, or the court, without the consent of the person tested**
27 **or screened, and such records and information shall not be admissible in any**
28 **civil or criminal action or proceeding, except for the purposes of determining**
29 **suitability or eligibility of the person for any drug or specialty court program.**

30 **(6) Drug and Specialty Court Fund.**

1 (a) The costs and expenses of the drug testing required by Subparagraph
 2 (2) of this Paragraph and the screening required by Subparagraph (3) of this
 3 Paragraph shall be eligible for reimbursement from the Drug and Specialty
 4 Court Fund as set forth in R.S. 39:100.171.

5 (b) The mandatory drug testing required by Subparagraph (2) of this
 6 Paragraph and the screening required by Subparagraph (3) of this Paragraph
 7 shall be enforced to the extent that sufficient monies exist in the fund to
 8 reimburse the expenses and costs of these requirements. If the administrator of
 9 the fund certifies, in conformity with the certification procedures set forth in
 10 R.S. 39:100.172(C), that sufficient monies do not exist for the reimbursement
 11 of the expenses and costs of mandatory testing and screening, the provisions of
 12 Subparagraphs (2) and (3) of this Paragraph shall cease to be mandatory, but
 13 may still be enforced at the discretion of the governing authority responsible for
 14 funding those provisions.

15 E. Pretrial drug testing program. The court may implement a pretrial drug
 16 testing program. All persons released under the provisions of the pretrial drug testing
 17 program ~~must~~ **shall** submit to continued random testing and refrain from the use or
 18 possession of any controlled dangerous substance or any substance designated by the
 19 court. A pretrial drug testing program shall provide for the following:

20 ~~(1) Mandatory participation for all persons arrested for violations of state~~
 21 ~~law. Additionally, all~~ **All** persons testing positive for the presence of one or more of
 22 the designated substances set forth in Subparagraph (2) of this Paragraph, who are
 23 not otherwise required to participate, shall submit to a pretrial drug testing program.

24 * * *

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

26 A.(1)(a) When it appears that the best interest of the public and of the
 27 defendant will be served, the court, after a first, second, or third conviction of a
 28 noncapital felony, may suspend, in whole or in part, the imposition or execution of
 29 either or both sentences, where suspension is allowed under the law, and in either or
 30 both cases place the defendant on probation under the supervision of the division of

1 probation and parole. The court shall not suspend the sentence of a second or third
 2 conviction of R.S. 14:73.5. Except as provided in Paragraph ~~G~~ H of this Article, the
 3 period of probation shall be specified and shall not be more than three years, except
 4 as provided by Paragraph ~~H~~ I of this Article.

5 * * *

6 B.(1) Notwithstanding any other provision of law to the contrary, when it
 7 appears that the best interest of the public and of the defendant will be served, the
 8 court, after a fourth conviction of a noncapital felony or after a third or fourth
 9 conviction of operating a vehicle while intoxicated pursuant to R.S. 14:98, may
 10 suspend, in whole or in part, the imposition or execution of the sentence when the
 11 defendant was not offered such alternatives prior to his fourth conviction of
 12 operating a vehicle while intoxicated and the following conditions exist:

13 * * *

14 **(c) The defendant does not meet the requirements set forth in Paragraph**
 15 **F of this Article.**

16 (2)When suspension is allowed under this Paragraph, the defendant shall be
 17 placed on probation under the supervision of the division of probation and parole. **If**
 18 **the defendant has been sentenced to complete a treatment program, the**
 19 **defendant may be placed on probation under the supervision of a probation**
 20 **office, agency, or officer designated by the court.** The period of probation shall be
 21 specified and shall not be more than three years, except as provided in Paragraph ~~G~~
 22 H of this Article. The suspended sentence shall be regarded as a sentence for the
 23 purpose of granting or denying a new trial or appeal.

24 * * *

25 **F.(1) Notwithstanding any other provision of law to the contrary, when**
 26 **it appears that the best interest of the public and of the defendant will be served,**
 27 **after the conviction of a defendant considered suitable for a drug or specialty**
 28 **court program pursuant to Code of Criminal Procedure Article 904, the court**
 29 **may suspend, in whole or in part, the imposition or execution of the sentence**
 30 **when all of the following conditions are met:**

1 **(a) The district attorney consents to the suspension of sentence.**

2 **(b) There is an available drug or specialty court program recognized by**
3 **the Louisiana Supreme Court.**

4 **(c) The court orders the defendant to enter and complete any drug or**
5 **specialty court program recognized by the Louisiana Supreme Court.**

6 **(2) If the district attorney does not consent to the suspension of the**
7 **sentence, he shall file his objection with written reasons into the record.**

8 **(3) If the district attorney files an objection into the record, or if the**
9 **court determines that a specialty court program is not available for the**
10 **defendant, the court may sentence the defendant to any sentence provided for**
11 **the offense by law.**

12 **(4) When suspension of sentence is allowed pursuant to this Paragraph,**
13 **the defendant may be placed on probation under the supervision of the division**
14 **of probation and parole, or under the supervision of a probation office, agency,**
15 **or officer designated by the court. The period of probation shall be specified**
16 **and shall not exceed three years, except as provided in Paragraph H of this**
17 **Article. The suspended sentence shall be regarded as a sentence for the purpose**
18 **of granting or denying a motion for new trial or appeal.**

19 **(5) Upon motion of the defendant, if the court finds at the conclusion of**
20 **the probationary period that the probation of the defendant has been**
21 **satisfactory, the court may set the conviction aside and dismiss the prosecution.**
22 **The dismissal of the prosecution shall have the same effect as an acquittal,**
23 **except that the conviction may be considered as a prior offense and provide the**
24 **basis for a subsequent prosecution of the defendant as a habitual offender,**
25 **except as provided in R.S. 15:529.1(C)(3). The conviction also may be**
26 **considered as a prior offense for purposes of any other provision of law relating**
27 **to cumulation of offenses. Dismissal pursuant to this Paragraph shall occur only**
28 **once with respect to any person.**

29 **F.G.** Nothing contained herein shall be construed as being a basis for
30 destruction of records of the arrest and prosecution of any person convicted of a

1 felony.

2 ~~G.H.~~ If the court, with the consent of the district attorney, orders a defendant
3 to enter and complete a program provided by the drug division of the district court
4 pursuant to R.S. 13:5301, an established driving while intoxicated court or sobriety
5 court program, a mental health court program established pursuant to R.S. 13:5351
6 et seq., a Veterans Court program established pursuant to R.S. 13:5361 et seq., a
7 reentry court established pursuant to R.S. 13:5401, or the Swift and Certain
8 Probation Pilot Program established pursuant to R.S. 13:5371, the court may place
9 the defendant on probation for a period of not more than eight years if the court
10 determines that successful completion of the program may require that period of
11 probation to exceed the three-year limit. The court may not extend the duration of
12 the probation period solely due to unpaid fees and fines. The period of probation as
13 initially fixed or as extended shall not exceed eight years.

14 ~~H.I.~~(1) If a defendant is placed on supervised probation, the division of
15 probation and parole shall submit to the court a compliance report when requested
16 by the court, or when the division of probation and parole ~~deems~~ **considers** it
17 necessary to have the court make a determination with respect to "earned compliance
18 credits", modification of terms or conditions of probation, termination of probation,
19 revocation of probation, or other purpose proper under any provision of law.

20 (2) For purposes of this Paragraph:

21 (a) "Compliance" means the full completion of the terms and conditions of
22 probation as imposed by the sentencing judge, except for inability to pay fines, fees,
23 or restitution.

24 (b) "Compliance report" means a report generated and signed by the division
25 of probation and parole that contains clear and concise information relating to the
26 defendant's performance relative to "earned compliance credits", and may contain
27 a recommendation as to early termination.

28 (3) After a review of the compliance report, if it is the recommendation of the
29 division of probation and parole that the defendant is in compliance with the
30 conditions of probation, in accordance with the compliance report, the court shall

1 grant "earned compliance credit" for the time, absent a showing of cause for a denial.

2 (4) The court may terminate probation at any time as "satisfactorily
3 completed" upon the final determination that the defendant is in compliance with the
4 terms and conditions of probation.

5 (5) If the court determines that the defendant has failed to successfully
6 complete the terms and conditions of probation, the court may extend the probation
7 for a period not to exceed two years, for the purpose of allowing the defendant
8 additional time to complete the terms of probation, additional conditions, the
9 extension of probation, or the revocation of probation.

10 (6) Absent extenuating circumstances, the court shall, within ten days of
11 receipt of the compliance report, make an initial determination as to the issues
12 presented and shall transmit the decision to the probation officer. The court shall
13 disseminate the decision to the defendant, the division of probation and parole, and
14 the prosecuting agency within ten days of receipt. The parties shall have ten days
15 from receipt of the initial determination of the court to seek an expedited
16 contradictory hearing for the purpose of challenging the court's determination. If no
17 challenge is made within ten days, the court's initial determination shall become final
18 and shall constitute a valid order of the court.

19 * * *

20 **Art. 904. Mandatory assessment; suitability of defendant for drug or specialty**
21 **court program**

22 **A. A defendant shall be assessed for suitability for participation in a drug**
23 **or specialty court program if all of the following criteria are met:**

24 **(1) The defendant meets the statutory eligibility requirements for**
25 **participation in a drug or specialty court program.**

26 **(2) There is a relationship between the use of alcohol or drugs and the**
27 **offense before the court.**

28 **(3) The defendant has tested positive on a drug test and has been**
29 **screened and determined suitable pursuant to Code of Criminal Procedure**
30 **Article 320(D), or the defendant has been screened and determined suitable**

1 upon request of the defendant or as ordered by the court.

2 B.(1) A defendant who meets the criteria set forth in Paragraph A of this
3 Article shall be assessed by a licensed treatment professional designated by the
4 court. Treatment professionals shall possess sufficient experience in working
5 with clients who have alcohol or drug abuse or addiction issues or mental
6 illness, and shall be credentialed or licensed by the state of Louisiana.

7 (2) The designated treatment professional shall perform an assessment
8 of the defendant, utilizing validated assessment tools, to determine whether the
9 defendant is suitable for a treatment program, and shall report to the court, the
10 district attorney, the defendant, and counsel for the defendant, the results of the
11 assessment and evaluation, along with a recommendation as to whether or not
12 the defendant is suitable for a drug or specialty court program.

13 (3) The court shall inform the defendant that the designated treatment
14 professional may request that the defendant provide the following information
15 to the court:

16 (a) Information regarding prior criminal charges.

17 (b) Education, work experience, and training.

18 (c) Family history, including residence in the community.

19 (d) Medical and mental health history, including any psychiatric or
20 psychological treatment or counseling.

21 (e) Any other information reasonably related to the success of the
22 treatment program.

23 C.(1) All records and information provided by the defendant to the
24 designated treatment professional for the purposes of screening or assessment
25 shall be considered confidential and shall not be disclosed to any person who is
26 not connected with the treatment professional, treatment facility, district
27 attorney, counsel for defendant, or the court, without the consent of the
28 defendant.

29 (2) The provisions of Subparagraph (1) of this Paragraph shall not
30 restrict the use of records and information for the purposes of research or

1 evaluation of the mandatory screening procedures or the effectiveness of any
2 drug or specialty court program, provided that the records or information shall
3 not be published or otherwise disseminated in any manner that discloses the
4 name or identifying information of the defendant.

5 D. No statement, or any information obtained therefrom, with respect to
6 the specific offenses with which the defendant is charged that is made to any
7 designated treatment professional shall be admissible in any civil or criminal
8 action or proceeding, except for the purposes of determining the suitability or
9 eligibility of the defendant for a drug or specialty court program.

10 Section 2. R.S. 13:5304(B)(3)(b) is hereby amended and reenacted to read as follows:

11 §5304. The drug division probation program

12 * * *

13 B. Participation in probation programs shall be subject to the following
14 provisions:

15 * * *

16 (3) In offering a defendant the opportunity to request treatment, the court
17 shall advise the defendant of the following:

18 * * *

19 (b) If the defendant requests to undergo treatment and is accepted, the
20 defendant ~~will~~ **shall** be placed under the supervision of the drug division probation
21 program for a period of determined by the court, except that the probation period
22 for a defendant convicted of a violation of R.S. 14:98, 98.1, 98.2, or 98.3 shall not
23 be less than twelve months.

24 * * *

25 Section 3. Subpart V of Part II-A of Chapter 1 of Subtitle I of Title 39 of the
26 Louisiana Revised Statutes of 1950, comprised of R.S. 39:100.171 and 100.172, is hereby
27 enacted to read as follows:

28 SUBPART V. DRUG AND SPECIALTY COURT FUND

29 §100.171. Drug and Specialty Court Fund

30 A. There is hereby created in the state treasury, as a special fund, the

1 Drug and Specialty Court Fund, hereinafter referred to as the "fund".

2 B. After compliance with the requirements of Article VII, Section 9(B)
3 of the Constitution of Louisiana relative to the Bond Security and Redemption
4 Fund, all monies received by the state from any judgment, settlement,
5 assessment of civil or criminal penalties, or otherwise collected as a result of a
6 case or cause of action against a manufacturer of opioids or any other
7 responsible person brought to recover monies expended or anticipated to be
8 expended by the state or damages incurred by the state in connection with the
9 manufacturing, marketing, distribution, or sale of opioids, shall be deposited
10 into the fund.

11 C. Monies in the fund shall be invested by the state treasurer in the same
12 manner as monies in the state general fund. Interest earned on investment of
13 monies in the fund shall be credited to the fund. All unexpended and
14 unencumbered monies in the fund at the end of the fiscal year shall remain in
15 the fund, and any interest earned on the monies in the fund, shall be credited to
16 the fund.

17 D. The office of the attorney general shall be the administrator of the
18 fund, hereinafter the "administrator". Monies in the fund shall be appropriated
19 to the administrator to administer the fund in accordance with Subsection E of
20 this Section.

21 E.(1) Monies in the fund shall be disbursed by the administrator to
22 eligible applicants through the award of grants. Any and all monies disbursed
23 from the fund shall be awarded only as considered appropriate in the
24 administrator's discretion and based upon the individual needs of each entity
25 with respect to compliance with the provisions of this Section.

26 (2) Acceptable uses of the monies in this fund include but are not limited
27 to the following:

28 (a) Expenses related to the creation, maintenance, operation, expansion,
29 or improvement of any drug or specialty court within the district courts of this
30 state, including expenses incurred by the district courts, district attorneys'

1 offices, public defenders, parish and local governing authorities, and sheriffs'
2 offices related to participants or potential participants in any drug or specialty
3 court in this state, including expenses incurred for the purpose of supervising
4 participants.

5 (b) Expenses related to administering mandatory drug testing and
6 clinical drug screening by law enforcement agencies, including offices of the
7 sheriffs, in accordance with the provisions of Code of Criminal Procedure
8 Article 320(D).

9 (c) Expenses related to drug screening and testing of participants or
10 potential participants in any drug or specialty court program in this state.

11 (d) Expenses related to the services provided by drug or specialty court
12 programs or services received by participants or potential participants in any
13 drug or specialty court program in this state, including services provided
14 directly or through contractual arrangement, that directly relate to the
15 determination of suitability or eligibility for, and participation in, a drug or
16 specialty court program.

17 (e) Expenses related to the creation, maintenance, operation, expansion,
18 or improvement of any drug or alcohol treatment facility, program, or service
19 for individuals in the custody of the Department of Public Safety and
20 Corrections or in the custody of any parish or local correctional facility in this
21 state.

22 (f) Any other expenses directly related to or incurred due to compliance
23 with the provisions of this Section.

24 F. Any monies disbursed to an entity by the administrator that remain
25 unexpended or unencumbered at the end of the fiscal year shall be available for
26 use in the subsequent fiscal year by the entity, subject to the provisions of the
27 grant agreement.

28 §100.172. Reporting requirements

29 A. The administrator of the Drug and Specialty Court Fund shall submit
30 an annual report, in accordance with the provisions of R.S. 24:771 et seq., to the

1 **Joint Legislative Committee on the Budget no later than August first of each**
 2 **year. The report shall include information from the previous fiscal year relative**
 3 **to the number of grant applications received, recipients of the grants, and**
 4 **amounts of grants awarded.**

5 **B. The administrator shall submit a notice of the exhaustion or the**
 6 **anticipated exhaustion of all monies received or to be received by the fund, not**
 7 **less than three years prior to the exhaustion or anticipated exhaustion of those**
 8 **funds, to the Joint Legislative Committee on the Budget, the president of the**
 9 **Senate, the speaker of the House of Representatives, and the governor.**

10 **C. If the amount of monies in the fund is determined at any time to be**
 11 **insufficient to satisfy the expenses and costs of compliance with the provisions**
 12 **of this Subpart, the administrator shall certify the existence of this insufficiency**
 13 **and shall immediately provide notice of this certification to the Joint Legislative**
 14 **Committee on the Budget, the president of the Senate, the speaker of the House**
 15 **of Representatives, and the governor. Upon certification and notice of the**
 16 **insufficiency of funds, compliance with the provisions of Code of Criminal**
 17 **Procedure Article 320(D) shall cease to be mandatory, but may continue to be**
 18 **enforced at the discretion of the governing authority responsible for funding**
 19 **enforcement of those provisions.**

20 Section 4. The provisions of Sections 1 and 2 of this Act shall take effect and become
 21 operative one year from the date on which the balance of monies received and deposited in
 22 the Drug and Specialty Court Fund created by Section 3 of this Act totals ten million dollars.

 PRESIDENT OF THE SENATE

 SPEAKER OF THE HOUSE OF REPRESENTATIVES

 GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

VETO MESSAGE

"Please be advised that I have vetoed Senate Bill 145 of the 2021 Regular Session.

This bill purports to enhance access to drug and specialty courts throughout the state through a dedicated funding stream derived from proceeds recovered by the State from any settlement against opioid manufacturers. Although a worthwhile cause, this bill falls woefully short of accomplishing the intended purpose.

Senate Bill 145 would require 'all monies received by the state,' outside of what is constitutionally required to go through the bond security and redemption fund, to be deposited into the Drug and Specialty Court Fund. The plain language of the bill would give the administrator of the fund (designated as the Office of the Attorney General) sole discretion in making a determination as to what is 'considered appropriate' in awarding grants to 'eligible applicants,' contrary to testimony by the Attorney General in Senate Committee that the role of the Office of the Attorney General would be purely administrative and would only act to disperse money from the fund to the Louisiana Commission on Law Enforcement and the Louisiana Supreme Court Drug and Specialty Court Office. The legislation fails, however, to define 'eligible applicant' or what is 'appropriate.' Furthermore, while the bill provides for acceptable uses of the money, it does not provide that the acceptable uses are limited to those contained in the bill, meaning the acceptable uses of the money in the fund are without limitation. Practically, the bill requires the legislature to appropriate all of the money in the fund to the Office of the Attorney General and grants sole authority to the office to determine how much and to whom the money is to be dispersed without limitation. Further, it provides for no safeguards or checks that the money will be spent to enhance access to drug and specialty courts throughout the state.

In addition to the fatal defects discussed above, the bill creates confusion between whether costs and expenses of local law enforcement agencies to conduct mandatory drug testing are reimbursable through the fund or may be paid for through a grant from the fund. Reimbursement would require the responsible agency to pay for the expense out of their own operating budget and then seek reimbursement. The same cost-prohibitive problem that exists today for law enforcement agencies to conduct drug testing continues to exist under this reimbursement model. Because the bill fails to define 'eligible applicant,' it is unclear whether or not a law enforcement agency would be able to apply for a grant through the fund. Even more confusing is that a person who tests positive is required to be screened for a substance use disorder and also for whether the person is a suitable candidate for participation in a drug court or specialty program, and if the person is determined suitable for the program, then they have to be reassessed to determine whether or not they are suitable, one of the criteria being that they were already determined suitable in the first screening. Except for the twenty-four-hour period after booking within which the mandatory testing has to occur, there is no timeline established for any of the steps along the way. There are too many unknowns and uncertainties for this to be implemented by each jurisdiction equally across the board.

It is important to note that the Louisiana Supreme Court Drug and Specialty Court Office runs an extremely successful program. It works now with federal and state partners to ensure accountability, promote best practices in existing specialty court programs, assists with planning efforts of jurisdictions establishing new specialty court programs, awards funds annually to programs around the state, and monitors each program's operations throughout the year. Certainly, the office, which has been charged with these tasks for more than two decades, is in the best position to determine the needs of each jurisdiction when it comes to enhancing access to drug and specialty courts throughout the state. For this reason, and the many others discussed above, I have vetoed Senate Bill 145."