

2024 Second Extraordinary Session

HOUSE BILL NO. 3

BY REPRESENTATIVES BUTLER AND MIKE JOHNSON AND SENATOR REESE

COURTS: Provides relative to mandatory drug testing, screening, and assessment for drug and specialty court participation for certain offenders (Item #10)

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Articles 320(D) and (E)(introductory
3 paragraph) and (1) and 893(A)(1)(a), (B)(3), and (F) through (H), R.S.
4 13:5304(B)(3)(b), and R.S. 15:529.1(C)(3) and to enact Code of Criminal Procedure
5 Articles 893(B)(2)(c) and (I) and 904, relative to mandatory drug testing and
6 screening; to require drug testing and screening of persons arrested for certain
7 offenses; to provide relative to assessment for participation in drug and specialty
8 court programs for certain nonviolent offenders; to provide relative to confidentiality
9 of drug testing and screening records; to provide relative to the funding for
10 administration of drug and specialty courts; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Code of Criminal Procedure Articles 320(D) and (E)(introductory
13 paragraph) and (1) and 893(A)(1)(a), (B)(3), and (F) through (H) are hereby amended and
14 reenacted and Code of Criminal Procedure Articles 893(B)(2)(c) and (I) and 904 are hereby
15 enacted to read as follows:

16 Art. 320. Conditions of bail undertaking

17 * * *

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

1 (1) Every person arrested for a violation of the Uniform Controlled
2 Dangerous Substances Law or a crime of violence as provided in R.S. 14:2(B) shall
3 be required to submit to a pretrial drug test for the presence of designated substances
4 in accordance with the provisions of this Article and rules of court governing such
5 testing. Every person arrested for any other felony may be required to submit to a
6 pretrial drug test for the presence of designated substances in accordance with the
7 provisions of this Article and rules of court governing such testing. Every person
8 arrested for a misdemeanor may be required to submit to a pretrial drug test for the
9 presence of designated substances in accordance with the provisions of this Article
10 and rules of court governing such testing.

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

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

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

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

1 proceeding, except for the purposes of determining suitability or eligibility of the
2 person for any drug or specialty court program.

3 (6) The expenses and costs incurred relative to the mandatory drug testing
4 and the screening required by this Paragraph shall be deemed to be an approved
5 purpose for use of opioid funds. If sufficient funds do not exist for the
6 reimbursement of the expenses and costs of mandatory testing and screening, the
7 provisions of Subparagraphs (2) and (3) of this Paragraph may still be enforced at the
8 discretion of the governing authority responsible for funding those provisions.

9 E. Pretrial drug testing program. The court may implement a pretrial drug
10 testing program. All persons released under the provisions of the pretrial drug
11 testing program ~~must~~ shall submit to continued random testing and refrain from the
12 use or possession of any controlled dangerous substance or any substance designated
13 by the court. A pretrial drug testing program shall provide for the following:

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

18 * * *

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

20 A.(1)(a) When it appears that the best interest of the public and of the
21 defendant will be served, the court, after a first, second, or third conviction of a
22 noncapital felony, may suspend, in whole or in part, the imposition or execution of
23 either or both sentences, where suspension is allowed under the law, and in either or
24 both cases place the defendant on probation under the supervision of the division of
25 probation and parole. The court shall not suspend the sentence of a second or third
26 conviction of R.S. 14:73.5. Except as provided in Paragraph ~~G~~ H of this Article, the
27 period of probation shall be specified and shall not be more than three years, except
28 as provided by Paragraph ~~H~~ I of this Article.

29 * * *

1 B.

2 * * *

3 (2) After a third or fourth conviction of operating a vehicle while intoxicated
4 pursuant to R.S. 14:98, the court may suspend, in whole or in part, the imposition or
5 execution of the sentence when the defendant was not offered such alternatives prior
6 to his fourth conviction of operating a vehicle while intoxicated and the following
7 conditions exist:

8 * * *

9 (c) The defendant does not meet the requirements set forth in Paragraph F
10 of this Article.

11 (3) When suspension is allowed under this Paragraph, the defendant shall be
12 placed on probation under the supervision of the division of probation and parole.
13 If the defendant has been sentenced to complete a specialty court program as
14 provided in Subsubparagraph (2)(b) of this Paragraph, the defendant may be placed
15 on probation under the supervision of a probation office, agency, or officer
16 designated by the court, other than the division of probation and parole of the
17 Department of Public Safety and Corrections. The period of probation shall be
18 specified and shall not be more than three years, except as provided in Paragraph G
19 H of this Article. The suspended sentence shall be regarded as a sentence for the
20 purpose of granting or denying a new trial or appeal.

21 * * *

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

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

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

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

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

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

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

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

26 G. Nothing contained herein shall be construed as being a basis for
27 destruction of records of the arrest and prosecution of any person convicted of a
28 felony.

1 the defendant has been screened and determined suitable upon request of the
2 defendant or as ordered by the court.

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

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

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

17 (a) Information regarding prior criminal charges.

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

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

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

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

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

1 Section 3. R.S. 15:529.1(C)(3) is hereby amended and reenacted 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 * * *

5 C.

6 * * *

7 (3) Notwithstanding any provision of law to the contrary, a conviction for
8 a felony offense that is not a crime of violence as defined by R.S. 14:2(B) and that
9 has been set aside and dismissed pursuant to Code of Criminal Procedure Article
10 893(E)(2), (3), ~~or (4)~~, or (F)(5), shall not be considered as a prior conviction for
11 purposes of enhancing a felony that is not a crime of violence as defined by R.S.
12 14:2(B) pursuant to the provisions of Paragraph (A)(1) of this Section and shall not
13 be included in the computation of the five-year time period set forth in Paragraph (1)
14 of this Subsection, or the ten-year time period as set forth in Paragraph (2) of this
15 Subsection, for purposes of enhancing a felony that is not a crime of violence as
16 defined by R.S. 14:2(B) pursuant to the provisions of Paragraph (A)(1) of this
17 Section.

18 * * *

19 Section 4. Additional funding for the administration of drug and other specialty
20 courts shall be subject to appropriation by the legislature.

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)]

HB 3 Engrossed 2024 Second Extraordinary Session Butler

Abstract: Provides relative to eligibility and requirements for participation in drug or specialty court programs.

Present law (C.Cr.P. Art. 320(D)) provides for conditions of bail undertaking for drug offenses and crimes of violence.

Proposed law amends present law to provide procedures for pretrial drug testing and screening for substance use disorders.

Proposed law provides that drug testing to determine the presence of any controlled dangerous substance identified in the Uniform Controlled Dangerous Substances Law shall occur within 24 hours of the booking of the person, and random testing thereafter may be required to verify that the person is drug free.

Proposed law provides that all persons testing positive for the presence of one or more substances provided in proposed law shall be clinically screened utilizing a validated screening tool for the purpose of determining whether the person suffers from a substance use disorder and is suitable for a drug or specialty court program.

Proposed law provides that all persons who receive a positive test result pursuant to the drug testing administered pursuant to proposed law and who are considered suitable for a drug or specialty court program pursuant to the screening process set forth in proposed law shall be subject to the provisions of proposed law (C.Cr.P. Art. 904).

Proposed law provides that all records and information provided or obtained pursuant to proposed law shall be considered confidential and shall not be, without the consent of the person tested or screened, disclosed to any person who is not connected with the district attorney, counsel for the person tested or screened pursuant to proposed law, a treatment professional, or the court. Further provides that such records and information shall not be admissible in any civil or criminal action or proceeding, except for the purposes of determining suitability or eligibility of the person for any drug or specialty court program.

Proposed law provides that the expenses and costs incurred relative to the mandatory drug testing and the screening required by proposed law shall be deemed to be an approved purpose for use of opioid funds. Further provides that if sufficient funds do not exist for the reimbursement of the expenses and costs of mandatory testing and screening, the provisions of proposed law may still be enforced at the discretion of the governing authority responsible for funding those provisions.

Present law (C.Cr.P. Art. 320(E)) provides for the implementation of a pretrial drug testing program and that all persons released under these provisions shall submit to continued random testing and refrain from the use or possession of any controlled dangerous substance or any substance designated by the court. Further provides for mandatory requirements of the program.

Proposed law retains present law in general relative to the implementation of a pretrial drug testing program.

Present law (C.Cr.P. Art. 320(E)(1)) provides that one of the requirements of a pretrial drug testing program is mandatory participation for all persons arrested for violations of state law and all persons testing positive for the presence of one or more of the designated substances set forth in present law, who are not otherwise required to participate.

Proposed law amends present law to remove the mandatory participation in a pretrial drug testing program for all persons arrested for violations of state law.

Present law (C.Cr.P. Art. 893(B)(2)) provides that after a third or fourth conviction of operating a vehicle while intoxicated pursuant to present law (R.S. 14:98), the court may suspend, in whole or in part, the imposition or execution of the sentence when the defendant was not offered such alternatives prior to his fourth conviction of operating a vehicle while intoxicated and certain conditions exist.

Proposed law amends present law to add an eligibility condition that the defendant does not meet the requirements set forth in proposed law (C.Cr.P. 893(F)).

Proposed law (C.Cr.P. Art. 893(F)) provides that when it appears that the best interest of the public and of the defendant will be served, after the conviction of a defendant considered

suitable for a drug or specialty court program pursuant to proposed law (C.Cr.P. Art. 904), the court may suspend, in whole or in part, the imposition or execution of the sentence when all of the following conditions are met:

- (1) The district attorney consents to the suspension of sentence.
- (2) There is an available drug or specialty court program recognized by the La. Supreme Court.
- (3) The court orders the defendant to enter and complete any drug or specialty court program recognized by the La. Supreme Court.

Proposed law provides that if the district attorney does not consent to the suspension of the sentence, he shall file his objection with written reasons into the record.

Proposed law provides that if the district attorney files an objection into the record, or if the court determines that a specialty court program is not available for the defendant, the court may sentence the defendant to any sentence provided for the offense by law.

Proposed law provides that when suspension of sentence is allowed pursuant to proposed law, the defendant may be placed on probation under the supervision of the division of probation and parole, or under the supervision of a probation office, agency, or officer designated by the court.

Proposed law provides that the period of probation shall be specified and shall not exceed three years, except as provided in proposed law (C.Cr.P. Art. 893(H)). Further provides that the suspended sentence shall be regarded as a sentence for the purpose of granting or denying a motion for new trial or appeal.

Proposed law provides that upon motion of the defendant, if the court finds at the conclusion of the probationary period that the probation of the defendant has been satisfactory, the court may set the conviction aside and dismiss the prosecution. Further provides that the dismissal of the prosecution shall have the same effect as an acquittal, except that the conviction may be considered as a first offense and provide the basis for a subsequent prosecution of the party as a habitual offender, except as provided in present law (R.S. 15:529.1(C)(3)).

Proposed law provides that the conviction also may be considered as a prior offense for purposes of any other provision of law relating to cumulation of offenses. Further provides that dismissal pursuant to proposed law shall occur only once with respect to any person.

Proposed law (C.Cr.P. Art. 904) provides that a defendant shall be assessed for suitability for participation in a drug or specialty court program if all of the following criteria are met:

- (1) The defendant meets the statutory eligibility requirements for participation in a drug or specialty court program.
- (2) There is a relationship between the use of alcohol or drugs and the offense before the court.
- (3) The defendant has tested positive on a drug test and has been screened and determined suitable pursuant to C.Cr.P. Art. 320(D), or the defendant has been screened and determined suitable upon request of the defendant or as ordered by the court.

Proposed law provides that a defendant who meets the criteria set forth in proposed law shall be assessed by a licensed treatment professional designated by the court. Further provides that the treatment professionals shall be credentialed or licensed by the state of La. and

possess sufficient experience in working with clients who have alcohol or drug abuse or addiction issues or mental illness.

Proposed law provides that the designated treatment professional shall perform an assessment of the defendant, utilizing validated assessment tools, to determine whether the defendant is suitable for a treatment program, and shall report the results of the assessment and evaluation to the court, the district attorney, the defendant, and counsel for the defendant along with a recommendation as to whether or not the defendant is suitable for a drug or specialty court program.

Proposed law provides that the court shall inform the defendant that the designated treatment professional may request that the defendant provide the following information to the court:

- (1) Information regarding prior criminal charges.
- (2) Education, work experience, and training.
- (3) Family history, including residence in the community.
- (4) Medical and mental health history, including any psychiatric or psychological treatment or counseling.
- (5) Any other information reasonably related to the success of the treatment program.

Proposed law provides that all records and information provided by the defendant to the designated treatment professional for the purposes of screening or assessment shall be considered confidential and shall not be disclosed, without the consent of the defendant, to any person who is not connected with the treatment professional, treatment facility, district attorney, counsel for defendant, or the court.

Proposed law shall not restrict the use of records and information for the purposes of research or evaluation of the mandatory screening procedures or the effectiveness of any drug or specialty court program, provided that the records or information shall not be published or otherwise disseminated in any manner that discloses the name or identifying information of the defendant.

Proposed law provides that no statement or any information obtained therefrom, that is made to any designated treatment professional with respect to a specific offense with which the defendant is charged, shall be admissible in any civil or criminal action or proceeding, except for the purposes of determining the suitability or eligibility of the defendant for a drug or specialty court program.

Present law (R.S. 15:529.1(C)(3)) provides that a conviction for a felony offense that is not a crime of violence as defined by present law (R.S. 14:2(B)) and that has been set aside and dismissed pursuant to present law (C.Cr.P. Art. 893(E)(2), (3) or (4)) shall not be considered as a prior conviction for purposes of enhancing a felony that is not a crime of violence and shall not be included in the computation of the five-year time period or the 10-year time period for purposes of enhancing a felony that is not a crime of violence.

Proposed law retains present law and provides for a cross reference relative to an offender whose sentence is suspended due to the offender's suitability for a drug or specialty court.

Proposed law provides that additional funding for the administration of drug and other specialty courts shall be subject to appropriation by the legislature.

(Amends C.Cr.P. Arts. 320(D) and (E)(intro. para.) and (1) and 893(A)(1)(a), (B)(3), and (F)-(H), R.S. 13:5304(B)(3)(b), and R.S. 15:529.1(C)(3); Adds C.Cr.P. Arts. 893(B)(2)(c) and (I) and 904)