

HOUSE SUMMARY OF SENATE AMENDMENTS

HB 3

2024 Second Extraordinary Session

Butler

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

Synopsis of Senate Amendments

1. Makes technical changes.
2. Removes proposed law relative to the automatic expungement of the arrest and conviction resulting from the violation that necessitated the person's participation in the program established pursuant to proposed law.
3. Provides for an effective date of July 1, 2024.

Digest of Bill as Finally Passed by Senate

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.

Proposed law shall be effective on July 1, 2024.

(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)