

2024 Regular Session

HOUSE BILL NO. 864

BY REPRESENTATIVE GREEN

COURTS: Provides relative to the drug division probation program

1 AN ACT

2 To amend and reenact R.S. 13:5304(B)(3) through (11), (J)(1) and (3), and (K), to enact R.S.
3 13:5304(B)(12) and (13), and to repeal R.S. 13:5304(B)(10.1), relative to the drug
4 division probation program; to provide relative to conditions of drug division
5 probation; to provide relative to eligibility for a drug division program; to provide
6 relative to designated treatment professionals; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 13:5304(B)(3) through (11), (J)(1) and (3), and (K) are hereby
9 amended and reenacted and R.S. 13:5304(B)(12) and (13) are hereby enacted to read as
10 follows:

11 §5304. The drug division probation program

12 * * *

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

15 (1) The district attorney may propose to the court that an individual
16 defendant be screened for eligibility as a participant in the drug division probation
17 program if all of the following criteria are satisfied:

18 * * *

19 (3) ~~In offering a defendant the opportunity to request treatment, the court~~
20 ~~shall advise the defendant of the following:~~

1 ~~(a) If the defendant is accepted into the drug division probation program,~~
2 ~~then the defendant must waive the right to a trial. The defendant must enter a plea~~
3 ~~of guilty to the charge, with the stipulation that sentencing be deferred or that~~
4 ~~sentence be imposed, but suspended, and the defendant placed on supervised~~
5 ~~probation under the usual conditions of probation and under certain special~~
6 ~~conditions of probation related to the completion of such substance abuse treatment~~
7 ~~programs as are ordered by the court.~~

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

13 ~~(c) During treatment the defendant may be confined in a treatment facility~~
14 ~~or, at the discretion of the court, the defendant may be released on a probationary~~
15 ~~basis for treatment or supervised aftercare in the community.~~

16 ~~(d) The court may impose any conditions reasonably related to the complete~~
17 ~~rehabilitation of the defendant.~~

18 ~~(e) The defendant shall be required to participate in an alcohol and drug~~
19 ~~testing program at his own expense, unless the court determines that he is indigent.~~

20 ~~(f) If the defendant completes the drug division probation program, and~~
21 ~~successfully completes all other requirements of his court-ordered probation, the~~
22 ~~conviction may be set aside and the prosecution dismissed in accordance with the~~
23 ~~provisions of Code of Criminal Procedure Articles 893 and 894. If the defendant~~
24 ~~was sentenced at the time of the entry of the plea of guilty, the successful completion~~
25 ~~of the drug division probation program and the other requirements of probation will~~
26 ~~result in his discharge from supervision. If the defendant does not successfully~~
27 ~~complete the drug division probation program, the judge may revoke the probation~~
28 ~~and impose sentence, or the judge may revoke the probation and order the defendant~~
29 ~~to serve the sentence previously imposed and suspended. The court shall inform the~~

1 defendant that the drug division program or district attorney may request that the
2 defendant provide the following information to the court to determine eligibility and
3 suitability for program admission:

4 (a) Information regarding prior criminal charges.

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

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

7 (d) Medical and mental history, including any psychiatric or psychological
8 treatment or counseling.

9 (e) Any other information reasonably related to the success of the treatment
10 program.

11 ~~(4) The defendant has the right to be represented by counsel at all stages of~~
12 ~~a criminal prosecution and in any court hearing relating to the drug division~~
13 ~~probation program. The defendant shall be represented by counsel during the~~
14 ~~negotiations to determine eligibility to participate in the drug division probation~~
15 ~~program and shall be represented by counsel at the time of the execution of the~~
16 ~~probation agreement, and at any hearing to revoke the defendant's probation and~~
17 ~~discharge him from the program, unless the court finds and the record shows that the~~
18 ~~defendant has knowingly and intelligently waived his right to counsel. The~~
19 ~~defendant shall undergo a program screening by a staff member of the drug division~~
20 ~~probation program that is knowledgeable in specialty court clinical suitability. The~~
21 ~~clinical screening tool shall be validated, evidence based, and include risk and need~~
22 ~~components. The findings of the screening shall be reported to the court, district~~
23 ~~attorney, and the defendant's counsel.~~

24 ~~(5) The defendant must agree to the drug division probation program. If the~~
25 ~~defendant elects to undergo treatment and participate in the drug division probation~~
26 ~~program, the court shall order an examination of the defendant by one of the court's~~
27 ~~designated licensed treatment professionals. Treatment professionals shall possess~~
28 ~~sufficient experience in working with criminal justice clients with alcohol or drug~~
29 ~~abuse or addictions, or both, and shall be certified and approved by the state of~~

1 ~~Louisiana. The designated treatment professionals shall utilize standardized testing~~
2 ~~and evaluation procedures to determine whether or not the defendant is an~~
3 ~~appropriate candidate for a treatment program and shall report such findings to the~~
4 ~~court and the district attorney. The defendant shall meet the suitability requirements~~
5 ~~as defined by best practice standards developed for the drug division probation~~
6 ~~program and adopted by the Louisiana Supreme Court.~~

7 (6) ~~The designated treatment professionals shall examine the defendant,~~
8 ~~using standardized testing and evaluation procedures, and shall report to the court~~
9 ~~and the district attorney the results of the examination and evaluation along with its~~
10 ~~recommendation as to whether or not the individual is a suitable candidate for the~~
11 ~~drug division probation program. Only those defendants who suffer from alcoholism~~
12 ~~or a drug abuse or addiction, or both, or who are in danger of becoming dependent~~
13 ~~on alcohol or drugs and who are likely to be rehabilitated through treatment shall be~~
14 ~~considered for treatment. Upon a determination that the defendant meets the~~
15 ~~eligibility and suitability criteria, the court shall offer a defendant the opportunity~~
16 ~~to participate in the program and undergo treatment. The court shall advise and the~~
17 ~~defendant shall be subject to the following:~~

18 (a) ~~If the defendant is accepted into the drug division probation program,~~
19 ~~then the defendant shall waive the right to a trial. The defendant shall enter a plea~~
20 ~~of guilty to the charge, with the stipulation that sentencing be deferred or that~~
21 ~~sentence be imposed, but suspended, and the defendant be placed on supervised~~
22 ~~probation under the usual conditions of probation and under certain special~~
23 ~~conditions of probation related to the completion of such substance abuse treatment~~
24 ~~programs as are ordered by the court.~~

25 (b) ~~Upon acceptance of the guilty plea, the defendant's case shall be~~
26 ~~transferred to the drug court division, where the defendant shall be under the~~
27 ~~supervision of the drug division probation program for a period of not less than~~
28 ~~twelve months.~~

1 (c) During drug division probation program supervision, the defendant may
2 be required to receive long-term residential treatment, in-patient treatment, or
3 community-based out-patient treatment based on a clinical assessment
4 recommendation and approval by the drug division probation program judge.

5 (d) The court may impose any conditions reasonably related to the complete
6 rehabilitation of the defendant.

7 (e) The defendant shall be required to participate in an alcohol and drug
8 testing program at his own expense, unless the court determines that he is indigent.

9 (f) If the defendant successfully completes all requirements of the drug
10 division probation program and all other requirements of his court-ordered probation,
11 the judge may, on motion of the district attorney or the defendant, order the setting
12 aside of the conviction and dismissal of prosecution within the provisions of Code
13 of Criminal Procedure Articles 893 and 894.

14 (g) If the defendant does not successfully complete the drug division
15 probation program, the judge may revoke the probation and impose sentence, or the
16 judge may revoke the probation and order the defendant to serve the sentence
17 previously imposed and suspended.

18 ~~(7) The court shall inform the defendant that the treatment program examiner~~
19 ~~or district attorney may request that the defendant provide the following information~~
20 ~~to the court:~~

21 ~~(a) Information regarding prior criminal charges.~~

22 ~~(b) Education, work experience, and training.~~

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

24 ~~(d) Medical and mental history, including any psychiatric or psychological~~
25 ~~treatment or counseling.~~

26 ~~(e) Any other information reasonably related to the success of the treatment~~
27 ~~program. The defendant has the right to be represented by counsel at all stages of~~
28 ~~a criminal prosecution and in any court hearing relating to the drug division~~
29 ~~probation program. The defendant shall be represented by counsel during the~~

1 determination of eligibility and suitability to participate in the drug division
2 probation program at the time of the execution of the sentencing agreement and at
3 any subsequent probation revocation hearing to discharge him, unless the court finds
4 and the record shows that the defendant has knowingly and intelligently waived his
5 right to counsel.

6 (8) The designated program shall recommend to the court a ~~preliminary~~
7 ~~length of stay and level of care for the defendant.~~

8 (9) The defendant shall agree to participation in the drug division probation
9 program.

10 ~~(9)~~ (10) Besides the ~~report~~ eligibility and suitability reports submitted by the
11 examiner, the judge and district attorney shall consider the following factors in
12 determining whether drug court probation would be in the interests of justice and of
13 benefit to the defendant and the community:

14 (a) The nature of the crime charged and the circumstances surrounding the
15 crime.

16 (b) Any special characteristics or circumstances of the defendant.

17 (c) Whether the defendant is a first-time offender of an alcohol- or drug-
18 related offense, and, if the defendant has previously participated in this or a similar
19 program, the degree of success attained.

20 (d) Whether there is a probability that the defendant will cooperate with and
21 benefit from probation and treatment through the drug division probation program.

22 (e) Whether the available drug division probation program is appropriate to
23 meet the needs of the defendant.

24 (f) The impact of the defendant's probation and treatment upon the
25 community.

26 (g) Recommendations, if any, of the involved law enforcement agency.

27 (h) Recommendations, if any, of the victim.

28 (i) Provisions for and the likelihood of obtaining restitution from the
29 defendant over the course of his probation.

1 (j) Any mitigating circumstances.

2 (k) Any other circumstances reasonably related to the individual defendant's
3 case.

4 ~~(10)~~ (11) In order to be eligible for the drug division probation program, the
5 defendant ~~must~~ shall satisfy each of the following criteria:

6 (a) The defendant cannot have any prior felony conviction for any offense
7 defined as a homicide in R.S. 14:29.

8 (b) The crime before the court cannot be a crime of violence as defined in
9 R.S. 14:2(B), except a first conviction of an offense with a maximum prison sentence
10 of ten years or less that was not committed against a family member or household
11 member as defined by R.S. 14:35.3, or against a dating partner as defined by R.S.
12 46:2151, or an offense of domestic abuse battery that is punishable by imprisonment
13 at hard labor as provided in R.S. 14:35.3.

14 (c) Other criminal proceedings alleging commission of a crime of violence
15 as defined in R.S. 14:2(B) cannot be pending against the defendant.

16 (d) The crime before the court cannot be a charge of driving under the
17 influence of alcohol or any other drug or drugs that resulted in the death of a person.

18 ~~(10.1)~~ (12) A defendant previously convicted or adjudicated a delinquent for
19 the offense of simple battery shall not be deemed ineligible for the drug division
20 probation program on the sole basis of such status.

21 ~~(11)~~ (13)(a) The judge shall make the final determination of eligibility. If,
22 based on the examiner's report and the recommendations of the district attorney and
23 the defense counsel, the judge determines that the defendant should be enrolled in
24 the drug division probation program, the court shall accept the defendant's guilty plea
25 and suspend or defer the imposition of sentence and place the defendant on probation
26 under the terms and conditions of the drug division probation program. The court
27 also may impose sentence and suspend the execution thereof, placing the defendant
28 on probation under the terms and conditions of the drug division probation program.

1 (b) If the judge determines that the defendant is not qualified for enrollment,
2 the judge shall state for the record the reasons for that determination.

3 (c) A treatment professional may petition the court to reject a referral
4 through the drug division probation program if the treatment professional deems the
5 defendant to be inappropriate for admission to the treatment program. Additionally,
6 a treatment professional may petition the court for immediate discharge of any
7 individual who fails to comply with treatment program rules and treatment
8 expectations or who refuses to constructively engage in the treatment process.

9 (b) If it is determined after screening that the defendant is not qualified for
10 enrollment in the drug division probation program, reasons for that determination
11 shall be provided to the defendant and made part of the record in his case.

12 (c) The office of probation and parole or the district attorney may petition
13 the court for immediate discharge of any individual who fails to comply with
14 treatment program rules and treatment expectations or who refuses to constructively
15 engage in the treatment process.

16 * * *

17 J. Each judicial district that establishes a drug division shall adopt written
18 policies and guidelines for the implementation of a probation program in accordance
19 with this Chapter. The policies and guidelines shall include provisions concerning
20 the following:

21 (1) How to ~~examine~~ screen the defendant initially to determine if he or she
22 is ~~qualified~~ suitable for enrollment.

23 * * *

24 (3) ~~What licensed treatment professionals~~ drug division probation program
25 staff are certified by the court.

26 ~~K. Each drug division shall develop a method of evaluation so that its~~
27 ~~effectiveness can be measured. These evaluations shall be compiled annually and~~
28 ~~transmitted to the judicial administrator of the Supreme Court of Louisiana and shall~~
29 ~~include information on recidivism reduction on the participants in the program.~~

the program, unless the court finds and the record shows that the defendant has knowingly and intelligently waived his right to counsel.

Proposed law changes present law to require that the defendant shall be represented by counsel during the determination of eligibility and suitability to participate in the drug division probation program at the time of the execution of the sentencing and at any subsequent probation revocation hearing to discharge him, unless the court finds and the record shows that the defendant has knowingly and intelligently waived his right to counsel.

Proposed law provides that the defendant shall agree to participation in the drug division probation program.

Present law requires that in determining eligibility for the program, the court shall consider certain factors.

Proposed law includes proposed law suitability and eligibility reports in eligibility determination for the program.

Present law provides that each district court which establishes a drug division shall adopt written policies and guidelines for the implementation of that division and the programs operated by that division. Provides further that the policies and guidelines shall provide for screening individuals to determine eligibility for the program, advising individuals of the availability of the program, and certification by the court of licensed treatment programs.

Proposed law makes changes to the provisions that shall be included in the policies and guidelines.

Present law provides that each drug division shall develop a method of evaluating its effectiveness. Provides further that the evaluations shall be compiled annually and transmitted to the judicial administrator of the La. Supreme Court.

Proposed law provides that each drug division shall implement process and outcome measures promulgated by the La. Supreme Court Drug and Specialty Court Office for assessing program effectiveness. Provides further that the reports of progress and outcome measures shall be transmitted annually to the judicial administrator of the Supreme Court of La.

Proposed law repeals present law.

(Amends R.S. 13:5304(B)(3)-(11), (J)(1) and (3), and (K); Adds R.S. 13:5304(B)(12) and (13); Repeals R.S. 13:5304(B)(10.1))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Judiciary to the original bill:

1. Make technical changes.
2. Change provisions which provide relative to conditions of drug division probation.
3. Change provisions which provide relative to assessing the effectiveness of the drug division probation program.