

First Extraordinary Session, 2005

HOUSE BILL NO. 73

BY REPRESENTATIVES MARTINY, LAFLEUR, TOWNSEND, CAZAYOUX,
CRAVINS, GALLOT, AND HEATON AND SENATOR CHAISSON

CRIMINAL/PROCEDURE: Provides criminal procedures for administration of criminal justice in times of emergency or disaster (Item #71)

1 AN ACT
2 To enact Title XXXIII of the Louisiana Code of Criminal Procedure, to be comprised of
3 Louisiana Code of Criminal Procedure Articles 941 through 956, relative to criminal
4 procedure; to provide for emergency sessions of criminal court; to provide for
5 definitions; to provide for applicability; to provide for criminal jurisdiction and
6 venue in emergency sessions of court; to provide for venue for habeas corpus
7 proceedings in certain circumstances; to provide for criteria for emergency sessions
8 of court; to provide for the power and authority of the court conducting emergency
9 sessions; to provide for legislative findings; to provide for powers, duties, and
10 authority of the sheriff operating in emergency sessions of court; to provide for the
11 powers, duties, and authority of the clerk of court of an affected court conducting
12 emergency sessions; to provide for the authority of the indigent defender board of
13 the affected court conducting emergency sessions of court; to provide with respect
14 to the summoning of a criminal jury pool; to provide for the suspension of certain
15 time periods, limitations, and delays in the affected court; to provide for exceptions;
16 to provide for appeals and the application of supervisory writs from a judgment or
17 ruling of an affected court conducting emergency sessions of court; to provide for
18 preemption of conflicting provisions of law; to provide for the court costs, fees, and

1 fines assessed or taxed and collected by the affected court conducting emergency
2 sessions of court; and to provide for related matters.

3 Be it enacted by the Legislature of Louisiana:

4 Section 1. Title XXXIII of the Louisiana Code of Criminal Procedure, comprised of
5 Louisiana Code of Criminal Procedure Articles 941 through 956, is hereby enacted to read
6 as follows:

7 TITLE XXXIII. EMERGENCY OR DISASTER PROVISIONS

8 Art. 941. Legislative findings

9 The legislature hereby finds and declares the following:

10 (1) The state of Louisiana could suffer future catastrophic damage through
11 the occurrence of emergencies and disasters of unprecedented size and
12 destructiveness resulting from terrorist events, enemy attack, sabotage, or other
13 hostile action, or from fire, flood, earthquake, or other natural or manmade causes
14 resulting in the displacement of residents or the destruction of or severe damage to
15 courthouses and other facilities supporting the criminal justice system.

16 (2) The magnitude of such catastrophic events may cause a disruption of the
17 criminal justice system in any parish directly impacted by the emergency or disaster.

18 (3) The response to such an emergency or disaster should ensure the
19 continued effective operation and integrity of the state's criminal justice system while
20 minimizing adverse effects on the interests of the defendant and the state.

21 (4) Considering these factors, the Louisiana Legislature, exercising its
22 authority vested in Article III and Article VI, Section 3 of the Louisiana Constitution,
23 and recognizing the necessity of creating a classification of parishes based upon the
24 need to conduct emergency sessions of court, does hereby enact the provisions of this
25 Title to provide for the effective operation and integrity of the criminal justice
26 system during times of emergency or disaster.

27 Art. 942. Definitions

28 As used in this Title:

1 (1) "Affected court" means any district, parish, city, municipal, juvenile, or
2 family court having jurisdiction over criminal prosecutions and proceedings for
3 which the Louisiana Supreme Court has made a determination that the court shall
4 conduct emergency sessions outside its parish or territorial jurisdiction as provided
5 for by the provisions of this Title.

6 (2) "Emergency sessions" means any criminal court proceeding conducted
7 by an affected court as authorized by the provisions of this Title and by order of the
8 Louisiana Supreme Court.

9 (3) "Host jurisdiction" means the location or locations in which the
10 Louisiana Supreme Court has ordered the affected court to conduct emergency
11 sessions.

12 Art. 943. Preemption of conflicting provisions

13 The provisions of this Title shall preempt and supersede but not repeal any
14 conflicting provisions of this Code or any other provision of law.

15 Art. 944. Emergency sessions of court; criteria

16 A. When the supreme court makes the determination that a district, parish,
17 city, municipal, juvenile, or family court having jurisdiction over criminal
18 prosecutions and proceedings shall conduct proceedings outside its parish or
19 territorial jurisdiction, the supreme court may order emergency sessions of court at
20 a location or locations which are both feasible and practicable outside the parish or
21 territorial jurisdiction of that court. This determination shall be based upon
22 emergency or disaster circumstances, including but not limited to the lack of a
23 readily available alternative location to conduct court within the parish, terrorist
24 events, enemy attack, sabotage, or other hostile action, or from fire, flood,
25 earthquake, or other natural or manmade causes resulting in the displacement of
26 thousands of residents and the destruction of or severe damage to courthouses and
27 other facilities supporting the criminal justice system. In making this determination,
28 the supreme court shall make a reasonable effort to consult with the chief judge of
29 the affected court.

1 B. The supreme court order requiring emergency sessions of court shall
2 name the affected court, the location or locations in which the emergency sessions
3 of that court shall be conducted, and the date on which emergency sessions shall
4 commence.

5 Art. 945. Venue; affected court; emergency sessions; habeas corpus

6 A. Venue for criminal prosecutions in an affected court shall be changed by
7 operation of law to the parish where the affected court is ordered to conduct criminal
8 sessions for the duration of the emergency sessions. Criminal proceedings may take
9 place in a parish other than the parish where the crime was committed if the supreme
10 court has ordered emergency sessions of that court in another parish pursuant to
11 Article 944 or as otherwise provided by law.

12 B. Venue for a writ of habeas corpus for an individual whose physical
13 custody has been transferred as a result of the circumstances which are the basis for
14 the emergency session shall be in the parish of East Baton Rouge. If the court in
15 East Baton Rouge Parish is also an affected court, venue shall be in the host
16 jurisdiction which has been established by supreme court order for the affected court
17 in East Baton Rouge Parish.

18 Art. 946. Jurisdiction of affected court conducting emergency sessions

19 A. The affected court conducting emergency sessions outside of its parish
20 or territorial jurisdiction pursuant to Article 944 shall retain jurisdiction over all
21 criminal proceedings and prosecutions that would otherwise be conducted by the
22 affected court.

23 B. All court proceedings, hearings, preliminary matters, pretrial hearings,
24 and trials may be conducted in the emergency sessions of the affected court.

25 C. The affected court conducting emergency sessions may retain jurisdiction
26 to complete all matters in progress in the host jurisdiction even though the order
27 rendered pursuant to Article 944 has been withdrawn, canceled, or rescinded.

1 Art. 947. Affected court conducting emergency sessions; authority and powers

2 An affected court ordered to conduct emergency sessions outside of its parish
3 or territorial jurisdiction pursuant to Article 944 shall retain all authority and powers
4 previously exercised by that court in its parish or territorial jurisdiction.

5 Art. 948. Emergency sessions; length; rescision; continuation; extensions

6 A. Emergency sessions of court shall continue until the supreme court
7 withdraws, cancels, or rescinds the order authorizing the emergency sessions.

8 B. The supreme court may withdraw, cancel, or rescind an order authorizing
9 emergency sessions of court at any time that it determines that the conditions which
10 warranted the issuance of the order no longer exist.

11 Art. 949. Court costs and fees

12 All court costs, fees, and fines assessed or taxed and collected previously by
13 the affected court prior to the supreme court order authorizing the conducting of
14 emergency sessions, shall be assessed, taxed, collected, distributed, and retained in
15 the same amounts by and to the same entities and in the same manner by the affected
16 court conducting the emergency session in the host jurisdiction.

17 Art. 950. Authority of district attorney in emergency sessions of court

18 A. The district attorney or prosecuting attorney, where applicable, of the
19 affected court conducting emergency sessions of court outside of its parish or
20 territorial jurisdiction pursuant to Article 944, shall have entire charge and control
21 of every criminal prosecution and authority in the host jurisdiction that he would
22 otherwise have exercised in the affected court.

23 B. The provisions of this Article are included in the other duties of the
24 district attorney provided by law as authorized by Article V, Section 26(B) of the
25 Louisiana Constitution.

26 Art. 951. Sheriff; law enforcement officer

27 A. The sheriff and any other law enforcement agency or officer or court
28 official having jurisdiction in the affected court shall have all necessary authority and
29 powers to operate within the host jurisdiction in which the affected court is

1 conducting emergency sessions pursuant to Article 944, including the collection of
2 finances, fees, costs, and bonds. This authority shall be limited to those matters being
3 conducted in the emergency session of court.

4 B. The provisions of this Article shall constitute an exception to territorial
5 jurisdiction of the sheriff in the same manner as Articles 204 and 213.

6 Art. 952. Clerk of affected court

7 A. During the period in which the supreme court has ordered emergency
8 sessions of court pursuant to Article 944, the clerk of court of the affected court is
9 authorized to establish an ancillary office in the host jurisdiction in which the
10 emergency sessions of the court are held.

11 B. The clerk of court of the affected court shall continue to exercise all
12 necessary powers, duties, and authority of his office in order to maintain the effective
13 operation and integrity of the criminal justice system of the affected court in the host
14 jurisdiction, including but not limited to the assessment of fees to which the clerk is
15 entitled. This authority shall be limited to all matters and proceedings within the
16 jurisdiction of the affected court.

17 C. If the affected court is located in Orleans Parish, the provisions of this
18 Article shall apply to the recorder of mortgages and register of conveyances for the
19 parish of Orleans.

20 D. The provisions of this Article are included in the other duties of the clerk
21 provided by law as authorized by Article V, Section 28(A) of the Louisiana
22 Constitution.

23 Art. 953. Authority of indigent defender board in emergency sessions of court

24 The indigent defender board of the affected court conducting emergency
25 sessions of court outside of its parish or territorial jurisdiction pursuant to Article 944
26 shall retain its authority for the appointment of attorneys residing in either the parish
27 or territorial jurisdiction of the affected court or in the host jurisdiction to represent
28 indigent defendants in the host jurisdiction that the board would otherwise have
29 exercised in the affected court.

1 Art. 954. Jury pool; emergency sessions

2 A. In any criminal trial conducted pursuant to this Title, with the consent of
3 the state and the defendant, the court may summon jurors from the host jurisdiction.

4 B. The summoning of jurors shall be conducted by the clerk of the host
5 jurisdiction. The cost of summoning jurors and all costs regarding jurors shall be
6 paid by the affected court.

7 Art. 955. Suspension of time limitations in affected courts; ninety days; rescision;
8 extensions; exceptions

9 A. The time periods, limitations, and delays established by the provisions of
10 the Louisiana Code of Criminal Procedure, Louisiana Children's Code Title 15, and
11 Chapter 26 of Title 40 of the Louisiana Revised Statutes of 1950 shall be suspended
12 in the jurisdiction of the affected court for a period of ninety days following the
13 issuance of an order authorizing emergency sessions of court as provided for in
14 Article 944.

15 B. The ninety-day suspension provided for by this Article shall commence
16 to run from the date the supreme court issued its order authorizing the emergency
17 sessions of court or from the date specified therein, whichever is earlier.

18 C. The ninety-day suspension may be extended upon a determination by the
19 supreme court that the continuation of the suspension is necessary.

20 D. The supreme court may rescind the suspension at any time and for any
21 jurisdiction within the state upon a determination by the supreme court that the
22 suspension is no longer necessary.

23 E. The provisions of this Article shall not apply to Code of Criminal
24 Procedure Articles 230.1 and 230.2.

25 Art. 956. Appeals; application for supervisory writs

26 An application for a supervisory writ or an appeal from a judgment or ruling
27 of an affected court ordered to conduct emergency sessions shall be taken to the
28 appropriate appellate court which exercised proper appellate or supervisory
29 jurisdiction over the affected court prior to the issuance of the supreme court order.

1 If the appropriate appellate court is also an affected court, an application for a
 2 supervisory writ or an appeal from a judgment or ruling of an affected court shall be
 3 taken to the host jurisdiction which has been established by supreme court order for
 4 the affected appellate court.

5 Section 2. The provisions of this Act shall have prospective application only.

6 Section 3. If any provision of this Act or the application thereof is held invalid, such
 7 invalidity shall not affect other provisions or applications of this Act which can be given
 8 effect without the invalid provisions or applications, and to this end the provisions of this
 9 Act are hereby declared severable.

10 Section 4. This Act shall become effective upon signature by the governor or, if not
 11 signed by the governor, upon expiration of the time for bills to become law without signature
 12 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 13 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 14 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument.

Martiny

HB No. 73

Abstract: Provides for emergency sessions of criminal court upon order of the Louisiana Supreme Court.

Proposed law defines "affected court", "emergency sessions", and "host jurisdiction". (C.Cr.P. Art. 942)

Proposed law provides for the preemption of conflicting provisions of present law without the repeal of those provisions.

Proposed law provides for criteria for emergency sessions of court. (C.Cr.P. Art. 944)

Proposed law provides for venue for criminal proceedings. (C.Cr.P. Art. 945)

Proposed law provides that venue for a writ of habeas corpus for an individual whose physical custody has been transferred as a result of the circumstances which are the basis for the emergency session shall be in the parish of East Baton Rouge. (C.Cr.P. Art. 945)

Proposed law provides for the jurisdiction and powers of the affected court conducting emergency sessions. (C.Cr.P. Arts. 946 and 947)

Proposed law provides for the length of emergency sessions of court. (C.Cr.P. Art. 948)

Proposed law provides that all court costs, fees, and fines assessed or taxed and collected previously by the affected court prior to the supreme court order authorizing the conducting of emergency sessions shall be assessed, taxed, collected, distributed, and retained in the same amounts by and to the same entities and in the same manner by the affected court conducting the emergency session in the host jurisdiction. (C.Cr.P. Art. 949)

Proposed law provides for the authority of the district, sheriff, clerk of court, and indigent defender board in the affected court conducting emergency sessions. (C.Cr.P. Arts. 950, 951, 952, and 953)

Proposed law provides that in any criminal trial conducted in the emergency sessions of court with the consent of the state and the defendant, the court may summon jurors from the host jurisdiction.

Proposed law provides that the summoning of jurors shall be conducted by the clerk of the host jurisdiction. The cost of summoning jurors and all costs regarding jurors shall be paid by the affected court. (C.Cr.P. Art. 954)

Proposed law provides that the time periods, limitations, and delays established by the provisions of present law affecting the administration of criminal justice shall be suspended in the jurisdiction of the affected court for a period of 90 days following the issuance of an order authorizing emergency sessions of court and that this time period may be extended or rescinded by order of the supreme court. (C.Cr.P. Art. 955)

Proposed law provides for appeals and supervisory writs from decisions of an affected court conducting emergency sessions. (C.Cr.P. Art. 956)

(Adds C.Cr.P. Arts. 941-956)