

First Extraordinary Session, 2005

HOUSE BILL NO. 73

BY REPRESENTATIVES MARTINY, LAFLEUR, TOWNSEND, CAZAYOUX,
CRAVINS, GALLOT, HEATON, FAUCHEUX, AND GARY SMITH 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
19 fines assessed or taxed and collected by the affected court conducting emergency
20 sessions of court; and to provide for related matters.

1 Be it enacted by the Legislature of Louisiana:

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

5 TITLE XXXIII. EMERGENCY OR DISASTER PROVISIONS

6 Art. 941. Legislative findings

7 The legislature hereby finds and declares the following:

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

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

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

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

25 Art. 942. Definitions

26 As used in this Title:

27 (1) "Affected court" means any district, parish, city, municipal, traffic,
28 juvenile, or family court having jurisdiction over criminal prosecutions and
29 proceedings for which the Louisiana Supreme Court has made a determination that

1 the court shall conduct emergency sessions outside its parish or territorial jurisdiction
2 as provided for by the provisions of this Title.

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

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

9 Art. 943. Preemption of conflicting provisions

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

12 Art. 944. Emergency sessions of court; criteria

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

26 C. The affected court conducting emergency sessions may retain jurisdiction
27 to complete all matters in progress in the host jurisdiction even though the order
28 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. The
8 supreme court shall give notice at least ten days prior to the conclusion of the
9 emergency session to the chief judge, the district attorney, the chief indigent
10 defender, and the clerk of the affected court.

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

14 Art. 949. Court costs and fees

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

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

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

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

1 Art. 951. Sheriff; law enforcement officer

2 A. The sheriff and any other law enforcement agency or officer or court
3 official having jurisdiction in the affected court shall have all necessary authority and
4 powers to operate within the host jurisdiction in which the affected court is
5 conducting emergency sessions pursuant to Article 944, including the collection of
6 finances, fees, costs, and bonds. This authority shall be limited to those matters being
7 conducted in the emergency session of court.

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

10 Art. 952. Clerk of affected court

11 A. During the period in which the supreme court has ordered emergency
12 sessions of court pursuant to Article 944, the clerk of court of the affected court is
13 authorized to establish an ancillary office in the host jurisdiction in which the
14 emergency sessions of the court are held.

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

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

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

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

28 The indigent defender board of the affected court conducting emergency
29 sessions of court outside of its parish or territorial jurisdiction pursuant to Article 944

1 shall retain its authority for the appointment of attorneys residing in either the parish
2 or territorial jurisdiction of the affected court or in the host jurisdiction to represent
3 indigent defendants in the host jurisdiction that the board would otherwise have
4 exercised in the affected court.

5 Art. 954. Jury pool; emergency sessions

6 A. Upon motion by the district attorney and after a contradictory hearing, the
7 court may summon jurors from the host jurisdiction. The district attorney must show
8 that the interests of justice are served by the approval of such motion.

9 B. The summoning of jurors shall be conducted by the clerk of the host
10 jurisdiction. The cost of summoning jurors and all costs regarding jurors shall be
11 paid by the affected court.

12 Art. 955. Suspension of time limitations in affected courts; ninety days; recision;
13 extensions; exceptions

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

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

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

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

28 E. The provisions of this Article shall not apply to Code of Criminal
29 Procedure Articles 230.1, 230.2, 351, 354, and 362.

1 Art. 956. Appeals; application for supervisory writs

2 An application for a supervisory writ or an appeal from a judgment or ruling
3 of an affected court ordered to conduct emergency sessions shall be taken to the
4 appropriate appellate court which exercised proper appellate or supervisory
5 jurisdiction over the affected court prior to the issuance of the supreme court order.
6 If the appropriate appellate court is also an affected court, an application for a
7 supervisory writ or an appeal from a judgment or ruling of an affected court shall be
8 taken to the host jurisdiction which has been established by supreme court order for
9 the affected appellate court.

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

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

15 Section 4. This Act shall become effective upon signature by the governor or, if not
16 signed by the governor, upon expiration of the time for bills to become law without signature
17 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
18 vetoed by the governor and subsequently approved by the legislature, this Act shall become
19 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 (C.Cr.P. Art. 954) provides that upon motion by the district attorney and after a contradictory hearing, in any criminal trial conducted in the emergency sessions of court, the court may summon jurors from the host jurisdiction. Requires the district attorney to show that the interests of justice are served by the granting of the motion.

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)

Proposed law provides that the supreme court shall give notice at least 10 days prior to the conclusion of the emergency sessions to the chief judge, the district attorney, the chief indigent defender, and the clerk of the affected court.

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

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill.

1. Adds provision requiring the supreme court give notice at least 10 days prior to the conclusion of the emergency sessions to the chief judge, the district attorney, the chief indigent defender, and the clerk of the affected court.
2. Removes provision requiring the consent of the state and the defendant before jury trial can be conducted in host jurisdiction.
3. Adds provision requiring the supreme court to make a reasonable effort to contact the district attorney, the chief indigent defender, and the clerk of the affected court prior to ordering emergency sessions of court.

4. Specifies additional provisions which are not subject to the 90-day suspension of time limitations.
5. Adds provision authorizing the conducting of grand jury proceedings in emergency sessions of the affected court.

House Floor Amendments to the engrossed bill.

1. Provides upon motion of the district attorney and after a contradictory hearing, the court may summon jurors from the host jurisdiction.