

Regular Session, 2013

HOUSE BILL NO. 442

BY REPRESENTATIVE LOPINTO

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CRIMINAL/SENTENCING: Provides relative to sentencing and treatment of certain offenders convicted of certain violations of the Uniform Controlled Dangerous Substances Law

1 AN ACT

2 To enact Subpart 7 of Part II of Chapter 5 of Title 15 of the Louisiana Revised Statutes of

3 1950, to be comprised of R.S. 15:574.61 and 574.62, to enact Code of Criminal

4 Procedure Articles 903 through 903.3, and to repeal R.S. 13:5304(B)(10)(d) and (f),

5 relative to sentencing of certain offenders convicted of certain violations of the

6 Uniform Controlled Dangerous Substances Law; to authorize the development of a

7 substance abuse probation program within the Department of Public Safety and

8 Corrections; to authorize the Department of Public Safety and Corrections to enter

9 into cooperative endeavors or contracts to provide for substance abuse treatment

10 programs; to provide for eligibility for participation in the program; to provide for

11 a court-ordered substance abuse evaluation to determine suitability for participation

12 in the program; to provide for the suspension of certain criminal sentences and court-

13 ordered participation in the program; to provide for rulemaking; to provide for the

14 payment of certain costs by the defendant; to provide for alternative methods of

15 payment of indigent defendants; to enact the Substance Abuse Conditional Release

16 Act; to provide for substance abuse conditional release; to provide for parole

17 supervision following completion of the substance abuse conditional release

18 program; to provide for the duration of the substance abuse treatment program within

19 the Department of Public Safety and Corrections; to provide for eligibility for

1 substance abuse conditional release; to provide for an addiction disorder assessment
2 and a mental health screening to determine suitability for the program; to provide for
3 criteria for removal from participation in the program; to provide for the
4 consequences of failure to complete the substance abuse probation program or the
5 substance abuse conditional release program; to modify disqualification criteria for
6 the drug division probation program; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Code of Criminal Procedure Articles 903 through 903.3 are hereby
9 enacted to read as follows:

10 Art. 903. Substance abuse probation program; authorization

11 A. The secretary of the Department of Public Safety and Corrections is
12 authorized to establish a substance abuse probation program within the department.

13 B. The program shall provide substance abuse counseling and treatment for
14 defendants sentenced to substance abuse probation pursuant to the provisions of
15 Article 903.2 of this Code.

16 C. The department may enter into cooperative endeavors or contracts with
17 the Department of Health and Hospitals, training facilities, and service providers to
18 provide for substance abuse treatment and counseling for defendants participating
19 in the program.

20 D. The department shall adopt rules and guidelines as it deems necessary for
21 the administration and implementation of this program.

22 E. The provisions of this Article shall be implemented only to the extent that
23 funds are available within the department for this purpose and to the extent that is
24 consistent with available resources and appropriate classification criteria.

25 Article 903.1. Substance abuse probation program; eligibility

26 A. In order to be eligible for the substance abuse probation program, the
27 defendant shall not be excluded from participation pursuant to the provisions of
28 Paragraph B of this Article and shall be charged with any of the following offenses:

1 (1) Felony possession of a controlled dangerous substance as defined in R.S.
2 40:966(C), 967(C), 968(C) or 969(C).

3 (2) Except as provided in Subparagraph (3) of this Paragraph, possession
4 with intent to distribute a controlled dangerous substance as defined in R.S.
5 40:966(A), 967(A), 968(A), or 969(A) where the offense involves less than twenty-
6 eight grams of the controlled dangerous substance.

7 (3) Possession with intent to distribute marijuana or synthetic cannabinoids
8 as defined in R.S. 40:966(A) where the offense involves less than one pound of
9 marijuana or synthetic cannabinoids.

10 B. The provisions of this Article shall not apply to any defendant who has
11 been convicted of a crime of violence as defined in R.S. 14:2(B) or a sex offense as
12 defined in R.S. 15:541, or any defendant who has participated in or declined to
13 participate in a drug division probation program as provided for in R.S. 13:5301 et
14 seq.

15 Art. 903.2. Substance abuse probation; sentencing

16 A. Notwithstanding any other provision of law to the contrary, a court shall
17 suspend a sentence and order an eligible defendant to participate in a substance abuse
18 probation program provided by the department pursuant to Article 903 of this Code
19 if the court determines all of the following:

20 (1) The court has reason to believe that the defendant suffers from an
21 addiction to a controlled dangerous substance.

22 (2) The defendant is likely to respond to the substance abuse probation
23 program.

24 (3) Whether the available substance abuse probation program is appropriate
25 to meet the needs of the defendant.

26 (4) The defendant does not pose a threat to the community and it is in the
27 best interest of justice to provide the defendant with treatment as opposed to
28 incarceration or other sanctions.

1 B.(1) The court shall order the department to assign an authorized evaluator
2 to prepare a suitability report. The suitability report shall delineate the nature and
3 degree of the treatment necessary to address the individual defendant's drug or
4 alcohol dependency or addiction, the reasonable availability of such treatment, and
5 the defendant's appropriateness for the program. The district attorney and
6 defendant's attorney shall have an opportunity to provide relevant information to the
7 evaluator to be included in the report.

8 (2) The authorized evaluator shall examine the defendant, using standardized
9 testing and evaluation procedures, and shall provide to the court and the district
10 attorney the results of the examination and evaluation along with its recommendation
11 as to whether the individual is a suitable candidate for the substance abuse probation
12 program.

13 (3) If the court determines that the defendant should be enrolled in the
14 substance abuse probation program, the court shall suspend the execution of the
15 sentence and place the defendant on supervised probation under the terms and
16 conditions of the substance abuse probation program.

17 C.(1) If the judge makes an affirmative finding that the defendant is unlikely
18 to successfully respond to treatment without confinement, the court may impose
19 additional incarceration or conditions of probation including but not limited to long
20 term residential treatment or inpatient treatment either within the department or
21 within the community.

22 (2) The defendant shall be required to participate in alcohol and drug testing
23 at his own expense, unless the court determines that he is indigent.

24 D.(1) If the defendant violates any condition of his probation or if the
25 defendant would benefit from an adjustment to the probation or treatment program,
26 the defendant, the treatment supervisor, the probation officer, the district attorney,
27 or the court, on its own motion, may file a motion to modify the terms and conditions
28 of the probation or file a motion to revoke the defendant's probation. After a
29 contradictory hearing on the motion, the court may do either of the following:

1 (a) Modify the conditions of probation, including ordering the defendant to
2 participate in a drug division probation program pursuant to R.S. 13:5301 et seq.

3 (b) Revoke the defendant's probation and execute the sentence.

4 (2) A defendant placed on probation pursuant to the provisions of this Article
5 shall be subjected to the administrative sanctions provided for in Article 899.1 of this
6 Code.

7 (3) If the defendant's probation is revoked, the defendant shall be required
8 to serve the suspended sentence and shall receive credit for time served in any
9 correctional facility for commission of the crime as otherwise allowable by law.

10 E. The provisions of Article 893(A) and (E)(1)(b) of this Code which
11 prohibit the court from suspending or deferring the imposition of sentences for
12 violations of the Uniform Controlled Dangerous Substances Law or for violations
13 of R.S. 40:966(A), 967(A), 968(A), 969(A), or 970(A) shall not apply to defendants
14 who otherwise meet the eligibility criteria for substance abuse probation programs
15 as authorized by this Article.

16 F. The provisions of this Article shall not be construed to limit the authority
17 of the court to defer a sentence for a violation of the Uniform Controlled Dangerous
18 Substances Law as otherwise provided by law.

19 Art. 903.3. Substance abuse treatment program; cost

20 A. A defendant who is placed under the supervision of the substance abuse
21 probation program shall pay the cost of the treatment program to which he is
22 assigned and the cost of any additional supervision that may be required to the extent
23 of his financial resources as determined by the substance abuse treatment program.

24 B. If the defendant does not have the financial resources to pay all the related
25 costs of the probation program, the court may do either of the following:

26 (1) To the extent practicable, arrange for the defendant to be assigned to a
27 treatment program funded by the state or federal government.

28 (2) With the recommendation of the treatment program, order the defendant
29 to perform supervised work for the benefit of the community in lieu of paying all or

1 a part of the costs related to his treatment and supervision. The work shall be
2 performed for and under the supervising authority of a parish, municipality, or other
3 political subdivision or agency of the state or a charitable organization that renders
4 service to the community or its residents.

5 Section 2. Subpart 7 of Part II of Chapter 5 of Title 15 of the Louisiana Revised
6 Statutes of 1950, comprised of R.S. 15:574.61 and 574.62, is hereby enacted to read as
7 follows:

8 (7) SUBSTANCE ABUSE CONDITIONAL RELEASE

9 §574.61. Short title

10 This Part may be referred to and may be cited as the "Substance Abuse
11 Conditional Release Act".

12 §574.62. Substance abuse conditional release

13 A. The secretary of the Department of Public Safety and Corrections is
14 hereby authorized to release an offender sentenced to the custody of the department
15 to intense parole supervision as provided in R.S. 15:574.4.4, if the offender meets
16 certain requirements provided for in this Section and meets the requirements of any
17 rules or regulations adopted by the secretary in accordance with the provisions of this
18 Section.

19 B. An offender shall be eligible for conditional release pursuant to the
20 provisions of this Section if all of the following conditions are met:

21 (1) The offender is willing to participate in the program.

22 (2) The offender has been convicted and is serving a sentence for a first or
23 second offense possession or possession with the intent to distribute a controlled
24 dangerous substance as defined by Part X of Chapter 4 of Title 40 of the Louisiana
25 Revised Statutes of 1950.

26 (3) The offender has no convictions for a crime of violence as defined by
27 R.S. 14:2 or a sex offense as defined by R.S. 15:541.

28 (4) The offender has not previously been released pursuant to the provisions
29 of this Section.

1 (5) The offender has served at least two years in actual physical custody and
2 is within one year of his projected release date.

3 C.(1) If the offender meets the criteria set forth in Subsection B of this
4 Section, the offender shall be required to undergo an addiction disorder assessment
5 and a mental health screening which shall be reviewed by the secretary of the
6 department and considered by the secretary in determining the offender's suitability
7 to participate in the treatment program. In determining suitability the secretary shall
8 consider all of the following:

9 (a) Whether the offender's release may pose a danger to the general public
10 or to an individual. In making this determination, the secretary shall consider all of
11 the following:

12 (i) The offender's involvement in any gang activity during the offender's
13 term of imprisonment.

14 (ii) The offender's custody classification as defined by the department.

15 (iii) The risk of violence associated with the offender's release.

16 (iv) The availability of sufficient supervision resources as determined by the
17 secretary.

18 (b) Whether the offender has a suitable release plan. In evaluating the
19 release plan, the secretary shall consider all of the following:

20 (i) Plans for aftercare.

21 (ii) Availability of community-based chemical dependency treatment.

22 (iii) Opportunities for gainful employment.

23 (iv) An approved residence plan.

24 (2) If the offender meets the criteria set forth in Subsection B of this Section
25 and the secretary determines that the offender is suitable to participate in the
26 program, the offender shall be required to participate in an addiction disorder
27 treatment program within a facility approved by the department that meets the
28 standards adopted by the secretary or such other program as indicated by the

1 department's risk and needs assessment tool. The program shall last for not less than
2 sixty days nor more than one hundred twenty days.

3 D. The secretary may remove any offender from the program for any of the
4 following:

5 (1) The offender committed a violation of the rules of the program.

6 (2) The offender committed a criminal offense or violated the department
7 disciplinary rules while in the program.

8 (3) The offender presents a risk to himself or others.

9 E. If the offender fails to successfully complete the program or is removed
10 from the program pursuant to Subsection D of this Section, he shall be required to
11 serve the remainder of his sentence as originally imposed. The offender shall not
12 lose any good time earned during his participation in the program.

13 F. If the offender successfully completes the program, the secretary may
14 release the offender to intense parole supervision as provided in R.S. 15:574.4.4 and
15 subject the offender to certain additional conditions imposed by the secretary
16 pursuant to the provisions of this Section.

17 G. Prior to the offender's release pursuant to the provisions of this Section,
18 the offender shall sign a written agreement to comply with all requirements of R.S.
19 15:574.4.4, the requirements of this Section, and any other conditions imposed by
20 the secretary pursuant to the provisions of this Section.

21 H.(1) As a condition of the offender's release pursuant to the provisions of
22 this Section, the secretary shall require the offender to submit to random drug and
23 alcohol testing and electronic monitoring as determined to be necessary by the
24 secretary.

25 (2) If determined by the secretary to be necessary, the secretary may require
26 the offender to participate in further substance abuse treatment while on release
27 pursuant to the provisions of this Section. The offender shall be required to bear the
28 cost of such treatment.

1 (3) The secretary may impose any other conditions deemed necessary to
2 accomplish the goals of this Section.

3 I. When an offender is released pursuant to the provisions of this Section, he
4 shall be released as if released on parole and shall be subject to the provisions
5 relative to parole including R.S. 15:574.4.4 et seq.

6 J. The secretary of the department is hereby authorized to establish rules and
7 regulations to provide for the administration of this Section.

8 Section 3. R.S. 13:5304(B)(10)(d) and (f) are hereby repealed in their entirety.

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)]

Lopinto

HB No. 442

Abstract: Provides relative to sentencing and treatment for certain offenders convicted of certain controlled dangerous substances violations.

Proposed law authorizes the secretary of DPS&C to establish a substance abuse probation program to provide substance abuse counseling and treatment for defendants sentenced to substance abuse probation.

Proposed law authorizes the secretary of DPS&C to enter into cooperative endeavors or contracts with DHH, training facilities, and service providers to provide for substance abuse treatment and counseling for defendants participating in the program.

Proposed law provides that the program shall not apply to any defendant who has been convicted of a crime of violence or any sex offense, or any defendant who has participated in or declined to participate in a drug division probation program as authorized by present law.

Proposed law further provides that in order to be eligible for the substance abuse probation program, the defendant shall be charged with one of the following offenses:

- (1) Felony possession of a controlled dangerous substance.
- (2) Possession with intent to distribute a controlled dangerous substance where the offense involves less than 28 grams of the controlled dangerous substance.
- (3) Possession with intent to distribute marijuana or synthetic cannabinoids where the offense involves less than one pound of marijuana or synthetic cannabinoids.

Proposed law provides that a court shall suspend a sentence and order an eligible defendant to participate in a substance abuse probation program provided by the DPS&C if the court determines all of the following:

- (1) The court has reason to believe that the defendant suffers from an addiction to a controlled dangerous substance.

- (2) The defendant is likely to respond to the substance abuse probation program.
- (3) Whether the available substance abuse probation program is appropriate to meet the needs of the defendant.
- (4) The defendant does not pose a threat to the community and it is in the best interest of justice to provide the defendant with treatment as opposed to incarceration or other sanctions.

Proposed law provides that if an offender is eligible for participation in the program, the court shall order DPS&C to assign an authorized evaluator to prepare a suitability report, which shall delineate the nature and degree of the treatment necessary to address the individual defendant's drug or alcohol dependency or addiction, the reasonable availability of such treatment, and the defendant's appropriateness for the program. The district attorney and defendant's attorney shall have an opportunity to provide relevant information to the evaluator to be included in the report.

Proposed law provides for the substance abuse conditional release program and authorizes the secretary of DPS&C to release an offender sentenced to the custody of the department to intense parole supervision if the offender meets certain requirements.

Proposed law provides that an offender shall be eligible for conditional release if all of the following conditions are met:

- (1) The offender is willing to participate in the program.
- (2) The offender has been convicted and is serving a sentence for a first or second offense possession or possession with the intent to distribute a controlled dangerous substance.
- (3) The offender has no convictions for a crime of violence or a sex offense.
- (4) The offender has not previously been released pursuant to the substance abuse conditional release program.
- (5) The offender has served at least two years in actual physical custody and is within one year of his projected release date.

Proposed law further provides that the offender shall be required to undergo an addiction disorder assessment and a mental health screening which shall be reviewed by the secretary of the department and considered by the secretary in determining the offender's suitability to participate in the treatment program.

Proposed law provides that DPS&C shall determine the suitability of the offender to participate in the program and shall consider whether the offender's release poses a danger to the general public or to an individual and whether the offender has a suitable release plan.

Proposed law provides that a defendant's treatment program shall last for not less than 60 days nor more than 120 days.

Proposed law provides that an offender may be removed from the program if he violates rules of the program, commits a criminal offense while in the program, or presents a risk to himself or others.

Proposed law provides that if the offender is removed from or fails to successfully complete the program, he shall be required to serve the remainder of his sentence as originally imposed and shall not lose any good time earned while participating in the program.

Proposed law provides that upon successful completion of the program the offender may be released as if released on parole and shall be subject to the provisions of present law relative to parole.

Present law authorizes the establishment of a drug division probation program in any district court and provides eligibility requirements for participation in the program.

Proposed law repeals the provisions of the present law eligibility requirements which provide that the defendant cannot have been convicted of aggravated burglary or simple burglary of an inhabited dwelling or cannot be charged with multiple counts of distribution, possession with intent to distribute, production, manufacture, or cultivation of controlled dangerous substances.

(Adds C.Cr.P. Arts. 903-903.3 and R.S. 15:574.61 and 574.62; Repeals R.S. 13:5304(B)(10)(d) and (f))