2016 Regular Session

HOUSE BILL NO. 1145   (Substitute for House Bill No. 328 by Representative Lopinto)

BY REPRESENTATIVE LOPINTO

COURTS/DISTRICT: Provides sanctions for violations of drug division probation programs

1   AN ACT

2   To amend and reenact R.S. 13:5304(B)(3)(f) and (D)(3), relative to the drug division

3   probation program; to provide penalties for violating conditions of drug division

4   probation; to provide for penalties for a technical violation committed while on drug

5   division probation; to provide for the definition of a "technical violation"; and to

6   provide for related matters.

7   Be it enacted by the Legislature of Louisiana:

8   Section 1. R.S. 13:5304(B)(3)(f) and (D)(3) are hereby amended and reenacted to

9   read as follows:

10   §5304. The drug division probation program

11   *   *   *

12   B. Participation in probation programs shall be subject to the following

13   provisions:

14   *   *   *

15   (3) In offering a defendant the opportunity to request treatment, the court

16   shall advise the defendant of the following:

17   *   *   *

18   (f) If the defendant completes the drug division probation program, and

19   successfully completes all other requirements of his court-ordered probation, the

1   conviction may be set aside and the prosecution dismissed in accordance with the

2   provisions of Code of Criminal Procedure Articles 893 and 894. If the defendant

3   was sentenced at the time of the entry of the plea of guilty, the successful completion

4   of the drug division probation program and the other requirements of probation will

5   result in his discharge from supervision. If the defendant does not successfully

6   complete the drug division probation program, the judge may revoke the probation

7   and impose sentence, or the judge may revoke the probation and order the defendant

8   to serve the sentence previously imposed and suspended, or the judge may revoke

9   the probation and order the defendant to be committed to the custody of the

10   Department of Public Safety and Corrections and be required to serve a sentence of

11   not more than six months without diminution of sentence in the intensive

12   incarceration program pursuant to R.S. 15:574.4.1, or the court may impose any

13   sanction provided by Code of Criminal Procedure Article 900, and extend probation

14   and order that the defendant continue treatment for an additional period, or both.

15   *   *   *

16   D.

17   *   *   *

18   (3)(a) If an individual who has enrolled in a program violates any of the

19   conditions of ~~his~~ probation or ~~his~~ the treatment agreement or appears to be

20   performing unsatisfactorily in the assigned program, or if it appears that the

21   probationer is not benefitting from education, treatment, or rehabilitation, the

22   treatment supervisor, probation officer, or the district attorney may move the court

23   for a hearing to determine if the probationer has violated a condition of probation,

24   whether the probationer should remain in the program or whether the probation

25   should be revoked and the probationer removed from the program and sentenced or

26   ordered to serve any sentence previously imposed. If at the hearing the moving party

27   can show sufficient proof that the probationer has violated ~~his~~ probation or ~~his~~ the

28   treatment agreement and has not shown a willingness to submit to rehabilitation, the

29   probationer may be reprimanded, sanctioned for the violation, removed from the

1   program or ~~his~~ the treatment agreement may be changed to meet the probationer's

2   specific needs.

3   (b) Notwithstanding any other provision of law, if the court finds that the

4   probationer has violated a condition of probation or a provision of the probation

5   agreement, it may:

6   (i) Reprimand and warn the defendant.

7   (ii) Order that the probationer perform community service.

8   (iii) Order that the probationer enter and participate in short or long term

9   treatment.

10   (iv) Order that supervision be intensified.

11   (v) Add additional conditions to the probation.

12   (vi) Order the probationer, as an additional condition of probation, be

13   committed to the custody of the Department of Public Safety and Corrections and be

14   required to serve a sentence of not more than twelve months without diminution of

15   sentence in the intensive incarceration program pursuant to the provisions of R.S.

16   15:574.4.4. Upon successful completion of the program, the defendant shall return

17   to active, supervised probation with the drug division probation program for a period

18   of time equal to the remainder of the original period of probation to successfully

19   complete the drug division probation program, subject to any additional conditions

20   imposed by the court and under the same provisions of law under which the

21   defendant was originally sentenced. If an offender is denied entry into the intensive

22   incarceration program for failure to meet the department's suitability criteria, the

23   department shall notify the drug division probation program court to determine

24   whether the probationer should remain in the program or whether the probation

25   should be revoked and the probationer removed from the program and sentenced or

26   ordered to serve any sentence previously imposed.

27   (vii) Impose a sentence of not more than one hundred eighty days without

28   diminution of sentence or credit for time served for a technical violation of his

29   probation. The term of the sentence for a technical violation shall begin on the date

1   the court orders the sentence. Upon completion of the imposed sentence for the

2   technical violation, the defendant shall return to active and supervised probation with

3   the drug division probation program for a period equal to the remainder of the

4   original period of probation to successfully complete the drug division program,

5   subject to any additional conditions imposed by the court and under the same

6   provisions of law under which the defendant was originally sentenced.

7   (viii) Extend the period of probation, provided the total amount of time

8   served by the defendant on probation for any one offense shall not exceed the

9   maximum period of probation provided by law.

10   (c) A "technical violation", as used in this Paragraph, means any violation

11   except it shall not include any of the following:

12   (i) Being arrested, charged, or convicted of any of the following:

13   (aa) A felony.

14   (bb) At the discretion of the court, a violation of any provision of Title 40

15   of the Louisiana Revised Statutes.

16   (cc) Any intentional misdemeanor directly affecting the person.

17   (dd) At the discretion of the court, any attempt to commit any intentional

18   misdemeanor directly affecting the person.

19   (ee) At the discretion of the court, any attempt to commit any other

20   misdemeanor.

21   (ii) Being in possession of a firearm or other prohibited weapon.

22   (b)(d) If the court finds that the probationer has violated a condition of his

23   or her probation or a provision of his or her the probation agreement and that the

24   probationer should be removed from the probation program, then the court may

25   revoke the probation and sentence the individual in accordance with his or her the

26   guilty plea or, if the individual has been sentenced and the sentence suspended, order

27   the individual to begin serving the sentence.

28   (c) If a defendant who has been admitted to the probation program fails to

29   complete the program and is thereafter sentenced to jail time for the offense, he shall

1   ~~be entitled to credit for the time served in any correctional facility in connection with~~

2   ~~the charge before the court.~~

3   ~~(d)~~(e) At any time and for any appropriate reason, the probationer, his

4   probation officer, the district attorney, or his treatment provider may petition the

5   court to reconsider, suspend, or modify its order for rehabilitation or treatment

6   concerning that probationer.

7   ~~(e)~~(f) The burden of proof at all such hearings shall be the burden of proof

8   required to revoke probation as provided by law.

9   *   *   *

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)]

HB 1145 Original   2016 Regular Session   Lopinto

Abstract: Provides for sanctions for a violation of drug division probation, including a 180-day sanction for a "technical violation".

Present law provides for the establishment of drug division probation courts in certain judicial districts.

Present law provides that defendants sentenced to drug division probation supervision shall be responsible for costs associated with that supervision such as drug testing, treatment programs, or other expenses.

Present law provides that if a defendant violates the terms of the drug division probation, the court may revoke probation and order that the defendant serve the sentence previously imposed or suspended or the court may revoke probation and order the defendant be committed to DPS&C for not more than six months to the intensive incarceration program.

Proposed law provides that if the court finds that the probationer has violated a condition of probation or a provision of the probation agreement, it may:

(1)   Reprimand and warn the defendant.

(2)   Order that the probationer perform community service.

(3)   Order that the probationer enter and participate in short or long term treatment.

(4)   Order that supervision be intensified.

(5)   Add additional conditions to the probation.

(6)   Order the probationer be required to serve a sentence of not more than 12 months without diminution of sentence in the DPS&C intensive incarceration program.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

Proposed law provides that a court may sentence a defendant to incarceration for up to 180 days or impose sanctions provided by present law and extend probation and treatment for technical violations. Defines "technical violation".

(Amends R.S. 13:5304(B)(3)(f) and (D)(3))