



STATE OF LOUISIANA

DRUG AND SPECIALTY COURT COMMISSION

**Meeting of the Commission
Thursday, December 3, 2020 – 1:30 PM
Louisiana Department of Justice, Baton Rouge, Louisiana
Livingston Building, 1st Floor Conference Room**

MEETING AGENDA

- I. Call to Order
- II. Roll Call
- III. Adoption of the Agenda for the December 3, 2020 Commission Meeting
- IV. Approval of Minutes of the November 19, 2020 Commission Meeting
- V. Public Comments
- VI. Continued Discussion and Review of the Proposed Draft Legislation Based Upon All Prior Commission Discussions in Anticipation of Upcoming Commission Submission Deadlines
- VII. Continued Discussion of the Current and Anticipated Funding and Operations of the Various Stakeholders Related to Drug and Specialty Court Programs and the Proposed Draft Legislation
- VIII. Any Other Business Before the Commission
- IX. Adjournment

Zoom ID: 868 6509 4349

Public Comments: 225-326-6077 / dsc@ag.louisiana.gov

2021 Regular Session

SENATE BILL NO.

BY SENATOR WARD

COURTS. Provides relative to mandatory drug testing, screening, and/or assessment for drug and specialty court participation for certain offenders.

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AN ACT

To amend and reenact Code of Criminal Procedure Article 228, 320(D) & (E) and Article 893 and to enact Subpart U of Part II-A of Chapter 1 of Subtitle I of Title 39 of the Louisiana Revised Statutes of 1950, comprised of R.S. 39:100.160 through 100.161 and Code of Criminal Procedure Article 904, relative to requirements of drug screening of arrestees and participation in drug or specialty court programs; to provide for participation in a drug or specialty court program for non-violent offenders with a history of substance abuse or addiction; to establish the Drug and Specialty Court Fund; to provide for the administration of the fund; to provide for specific uses of the fund; and to provide for reporting requirements.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Article 228, 320(D) & (E) and Article 893 are hereby amended and reenacted and Code of Criminal Procedure Article 904 is hereby enacted to read as follows:

Art. 228. Booking of arrested person, submission of booking information summary

* * *

D. Required Drug Testing of Persons Arrested and Booked

(1) Every person arrested and booked for a felony offense shall be drug tested within twenty-four hours of booking to determine the presence of any controlled dangerous substance identified in the Uniform Controlled Substances Law.

1 (2) All persons testing positive for the presence of one or more designated
2 substances set forth in Subparagraph (1) of this Paragraph shall be screened utilizing
3 a validated screening tool for the purpose of determining whether the person suffers
4 from alcoholism or drug abuse or addiction.

5 (3) All persons who receive a positive test result pursuant to Subparagraph (1)
6 of this Paragraph and are deemed suitable pursuant to the screening process set forth
7 in Subparagraph (2) of this Paragraph shall be subject to the provisions set forth in
8 Code of Criminal Procedure Article 904.

9 (4) Any and all records and information provided or obtained pursuant to
10 Subparagraphs (1) & (2) of this Paragraph shall be deemed confidential and shall not
11 be disclosed to any person not connected with the district attorney, counsel for the
12 person, a treatment professional, or the court, without the consent of the person tested
13 or screened, and such records and information shall not be admissible in any civil or
14 criminal action or proceeding, except for the purposes of determining suitability
15 and/or eligibility of the person for any drug or specialty court program.

16 (5) The expenses and costs of the drug testing requirements set forth in
17 Subparagraph (1) and the screening process set forth in Subparagraph (2) shall be
18 eligible for reimbursement from the Drug and Specialty Court Fund as set forth in
19 R.S. 39:100.160.

20 (6) The provisions set forth within this Paragraph requiring mandatory drug
21 testing and/or drug screening shall be mandatorily enforced to the extent that
22 sufficient funds exist in the Drug and Specialty Court Fund to reimburse the expenses
23 and costs of such mandatory requirements. If the administrator of the Drug and
24 Specialty Court Fund certifies that sufficient funds do not exist for the reimbursement
25 of the expenses and costs of such mandatory requirements, the provisions set forth
26 within this Paragraph shall cease to be mandatory but may still be enforced at the
27 discretion of the governing authority responsible for funding such provisions.

1 Art. 320. Conditions of bail undertaking

2 * * *

3 D. ~~Drug offenses and crimes of violence~~ **Offenses Requiring Submission for**
4 **Pretrial Drug Testing**. Every person arrested for a ~~violation of the Uniform Controlled~~
5 ~~Dangerous Substances Law or a crime of violence as provided in R.S. 14:2(B)~~ **a felony**
6 **offense** shall be required to submit to a pretrial drug test for the presence of designated
7 substances in accordance with the provisions of this Article and rules of court governing
8 such testing. ~~Every person arrested for any other felony may be required to submit to a~~
9 ~~pretrial drug test for the presence of designated substances in accordance with the~~
10 ~~provisions of this Article and rules of court governing such testing.~~ Every person arrested
11 for a misdemeanor may be required to submit to a pretrial drug test for the presence of
12 designated substances in accordance with the provisions of this Article and rules of court
13 governing such testing.

14 E. Pretrial drug testing program. The court may implement a pretrial drug testing
15 program. All persons released under the provisions of the pretrial drug testing program
16 must submit to continued random testing and refrain from the use or possession of any
17 controlled dangerous substance or any substance designated by the court. A pretrial drug
18 testing program shall provide for the following:

19 ~~(1) Mandatory participation for all persons arrested for violations of state law.~~
20 ~~Additionally, all~~ **All** persons testing positive for the presence of one or more of the
21 designated substances set forth in Subparagraph (2) of this Paragraph, who are not
22 otherwise required to participate, shall submit to a pretrial drug testing program.

23
24 Art. 893. Suspension and deferral of sentence and probation in felony cases

25 * * *

26 A. (1)(a) When it appears that the best interest of the public and of the defendant will be
27 served, the court, after a first, second, or third conviction of a noncapital felony, may
28 suspend, in whole or in part, the imposition or execution of either or both sentences, where
29 suspension is allowed under the law, and in either or both cases place the defendant on
30 probation under the supervision of the division of probation and parole. The court shall not
31 suspend the sentence of a second or third conviction of R.S. 14:73.5. Except as provided

1 in Paragraph ~~GH~~ of this Article, the period of probation shall be specified and shall not be
2 more than three years, except as provided by Paragraph ~~HI~~ of this Article.

3 * * *

4 B. (1) ...

5 (2) When suspension is allowed under this Paragraph, the defendant shall be placed on
6 probation under the supervision of the division of probation and parole. **If the defendant**
7 **has been sentenced to complete a treatment program, the defendant may be placed**
8 **on probation under the supervision of a probation office, agency, or officer designated**
9 **by the court.** The period of probation shall be specified and shall not be more than three
10 years, except as provided in Paragraph ~~GH~~ of this Article. The suspended sentence shall
11 be regarded as a sentence for the purpose of granting or denying a new trial or appeal.

12 * * *

13 **F. (1) Notwithstanding any other provision of law to the contrary, when it appears**
14 **that the best interest of the public and of the defendant will be served, the court, after**
15 **a conviction of a defendant deemed suitable pursuant to Code of Criminal Procedure**
16 **Article 904, may only suspend, in whole or in part, the imposition or execution of the**
17 **sentence when all of the following conditions are met:**

18 **(a) The district attorney consents to the suspension of the sentence.**

19 **(b) There is an available specialty court program recognized by the Louisiana**
20 **Supreme Court.**

21 **(c) The court orders the defendant to enter and complete any specialty court program**
22 **recognized by the Louisiana Supreme Court.**

23 **(2) If the district attorney does not consent to the suspension of the sentence, the**
24 **district attorney shall file his or her objection with written reasons into the record.**

25 **(3) If the district attorney files an objection into the record or the court determines**
26 **that a specialty court program is not available for the defendant, the court may**
27 **sentence the defendant upon conviction to any legal sentence in accordance with law.**

28 **(4) When suspension is allowed under this Paragraph, the defendant may be placed**
29 **on probation under the supervision of the division of probation and parole or under**
30 **the supervision of a probation office, agency, or officer designated by the court. The**
31 **period of probation shall be specified and shall not be more than three years, except**

1 as provided in Paragraph H of this Article. The suspended sentence shall be regarded
2 as a sentence for the purpose of granting or denying a new trial or appeal.

3 (5) Upon motion of the defendant, if the court finds at the conclusion of the
4 probationary period that the probation of the defendant has been satisfactory, the
5 court may set the conviction aside and dismiss the prosecution. The dismissal of the
6 prosecution shall have the same effect as acquittal, except that the conviction may be
7 considered as a prior offense and provide the basis for subsequent prosecution of the
8 party as a habitual offender except as provided in R.S. 15:529.1(C)(3). The conviction
9 may be considered as a prior offense for purposes of any other law or laws relating to
10 cumulation of offenses. Dismissal under this Paragraph shall occur only once with
11 respect to any person.

12 ~~(F)(G)...~~

13 ~~(G)(H)...~~

14 ~~(H)(I)...~~

15 * * * * *

16 Art. 904. Mandatory Screening and Assessment For Suitability of Defendants for
17 Drug or Specialty Court Programs

18 A. Every defendant shall be assessed for suitability for participation in a drug
19 or specialty court program, if all of the following criteria are met:

20 (1) The defendant meets the minimum statutory eligibility requirements for
21 participation in any drug or specialty court program;

22 (2) There is a relationship between the use of alcohol or drugs and the crime
23 before the court;

24 (3) The defendant has tested positive on a drug test and has been screened and
25 determined suitable as set forth in the Code of Criminal Procedure Article 228(D), or
26 the defendant has been screened and determined suitable upon request of the
27 defendant or the court.

28 B. Every defendant who meets the requirements set forth in Paragraph A shall
29 be assessed by a designated licensed treatment professional. Treatment professionals
30 shall possess sufficient experience in working with clients with alcohol or drug abuse

1 or addictions, or both, or mental illness, and shall be credentialed or licensed by the
2 state of Louisiana.

3 C. The designated treatment professional shall perform an assessment of the
4 defendant, utilizing validated assessment tools, to determine whether the defendant
5 is suitable for a treatment program, and shall report to the court, the district attorney,
6 and the defendant the results of the assessment and evaluation along with a
7 recommendation as to whether or not the individual is a suitable candidate for a drug
8 or specialty court program.

9 D. The court shall inform the defendant that the designated treatment
10 professional may request that the defendant provide the following information to the
11 court:

12 (1) Information regarding prior criminal charges;

13 (2) Education, work experience, and training;

14 (3) Family history, including residence in the community;

15 (4) Medical and mental history, including any psychiatric or psychological
16 treatment or counseling; and

17 (5) Any other information reasonably related to the success of the treatment
18 program.

19 F. (1) Any and all records and information provided by the defendant to the
20 designated treatment professional for the purposes of any screening or assessment
21 shall be deemed confidential and shall not be disclosed to any person not connected
22 with the treatment professional, any treatment facility, the district attorney, or the
23 court, without the consent of the defendant.

24 (2) The provisions of Paragraph (1) of this Subsection shall not restrict the use
25 of such records and information for the purpose of research and/or evaluation of these
26 mandatory screening procedures and/or the effectiveness of any drug or specialty
27 court program, provided that such information or records shall not be published or
28 disclosed in a way that discloses the defendant's name or identifying information.

29 G. No statement, or any information procured therefrom, with respect to the
30 specific offenses with which the defendant is charged, which is made to any designated
31 treatment professional shall be admissible in any civil or criminal action or

1 proceeding, except for the purposes of determining suitability and/or eligibility of the
2 defendant for any drug or specialty court program.

3 Section 2. Subpart U of Part II-A of Chapter 1 of Subtitle I of Title 39 of the Louisiana
4 Revised Statutes of 1950, comprised of R.S. 39:100.160 through 100.161 is hereby enacted to read
5 as follows:

6 **§100.160. Drug and Specialty Court Fund**

7 **A. There is hereby created in the state treasury, as a special fund, the “Drug**
8 **and Specialty Court Fund”, hereinafter referred to as the “fund”.**

9 **B. After compliance with the requirements of Article VII, Section 9(B) of the**
10 **Constitution of Louisiana relative to the Bond Security and Redemption Fund, all**
11 **monies received by the state from any judgment, settlement, assessment of a civil or**
12 **criminal penalty, or otherwise collected as a result of a case or cause of action against**
13 **a manufacturer of opioids or any other responsible person brought to recover monies**
14 **expended or anticipated to be expended by the state or damages incurred by the state**
15 **in connection with the manufacturing, marketing, distribution, or sale of opioids shall**
16 **be deposited into the fund.**

17 **C. Monies in the fund shall be invested in the same manner as monies in the**
18 **general fund. Interest earned on investment of monies in the fund shall be credited to**
19 **the fund. Unexpended and unencumbered monies in the fund at the end of the fiscal**
20 **year shall remain in the fund.**

21 **D. The Louisiana Supreme Court Drug and Specialty Court Office shall be the**
22 **administrator of the fund, hereinafter referred to as the “administrator”. Monies in**
23 **the fund shall be appropriated to the Louisiana Supreme Court Drug and Specialty**
24 **Court Office to administer the funds in accordance with this statute.**

25 **E. Monies in the fund shall be disbursed by the administrator to eligible**
26 **applicants, through the award of grants. Any and all monies disbursed from the fund**
27 **shall only be awarded as deemed appropriate in the administrator’s discretion and**
28 **based upon the individual needs of each entity with respect to compliance with the**
29 **provisions in this Act. Such acceptable uses of the monies in this fund shall include,**
30 **but not be limited to:**

1 (1) expenses related to the creation, maintenance, operation, expansion, or
2 improvement of any drug or specialty court within the district courts in this state,
3 including expenses incurred by the district courts, district attorneys' offices, public
4 defenders' offices, parish and local governing authorities, and sheriffs' offices related
5 to participants or potential participants of any drug or specialty court in this state,
6 including expenses incurred for the purpose of supervision of participants;

7 (2) expenses related to administering mandatory drug testing and/or drug
8 screening by sheriffs' offices, in accordance with the mandates set forth in Louisiana
9 Code of Criminal Procedure Article 228(D);

10 (3) expenses related to drug screening and/or testing of participants or
11 potential candidates for participation in a drug or specialty court programs in this
12 state;

13 (4) expenses related to the services provided by drug or specialty court
14 programs or services received by participants or potential participants of drug and
15 specialty court programs in this state, including services provided directly or through
16 contractual arrangement, that directly or indirectly relates to the determination of
17 suitability or eligibility for and/or participation in a drug or specialty court program;

18 (5) expenses related to the creation, maintenance, operation, expansion, or
19 improvement of any drug or alcohol treatment facilities, programs, or services for
20 individuals in the custody of the Department of Public Safety and Corrections or in
21 the custody of any local or parish correctional facility in this state; and

22 (6) any other expenses directly or indirectly related to or incurred due to
23 compliance with the provisions of this Act.

24 F. Any funds disbursed to an entity by the administrator that remain
25 unexpended or unencumbered at the end of the fiscal year shall be available for use
26 in the subsequent fiscal year by the entity, subject to the provisions of the grant
27 agreement.

28 §100.161. Reporting Requirements

29 A. In accordance with Part II of Chapter 13 of Title 24 of the Louisiana
30 Revised Statutes of 1950, the administrator of the Drug and Specialty Court Fund
31 shall submit an annual report to the Joint Legislative Committee on the Budget no

1 later than August 1st of each year. The report shall include, at a minimum,
2 information from the previous fiscal year on the number of grant applications
3 received, amounts of grant funding distributed, and recipients of the funding.

4 B. The administrator of the Drug and Specialty Court Fund shall also submit
5 a notice to the Joint Legislative Committee on the Budget, the Speaker of the
6 Louisiana House of Representatives, the President of the Louisiana Senate, and the
7 Governor at least three years prior to the exhaustion or anticipated exhaustion of all
8 monies received or to be received in the Drug and Specialty Court Fund.

9 C. If, at any point in time, the amount of monies in the fund is determined to
10 be insufficient to satisfy the expenses and costs of compliance with this Act, the
11 administrator shall certify the existence of this insufficiency and shall immediately
12 provide notice of such certification to Joint Legislative Committee on the Budget, the
13 Speaker of the Louisiana House of Representatives, the President of the Louisiana
14 Senate, and the Governor. Upon certification and notice of this insufficiency,
15 compliance with the provisions in this Act shall cease to be mandatory but may
16 continue to be enforced at the discretion of the governing authority responsible for
17 funding such provisions.

18
19 Section 3. The provisions of Section 1 of this Act shall become effective one year from the
20 date of the receipt and deposit of at least ten million dollars into the Drug and Specialty Court
21 Fund.