

**ACT No. 609**

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

BY REPRESENTATIVE LOPINTO

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AN ACT

To amend and reenact R.S. 13:5304(B)(1)(b), (3)(f), (5), (6), (11)(c), and (D)(3), (E)(introductory paragraph), (J)(2) and (3), (L)(2) and (N), relative to the drug division probation program; to provide penalties for violating conditions of drug division probation; to provide with respect to drug abuse treatment and addiction treatment; to provide for designated treatment professionals; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 13:5304(B)(1)(b), (3)(f), (5), (6), (11)(c), and (D)(3), (E)(introductory paragraph), (J)(2) and (3), (L)(2) and (N) are hereby amended and reenacted to read as follows:

§5304. The drug division probation program

\* \* \*

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

(1) The district attorney may propose to the court that an individual defendant be screened for eligibility as a participant in the drug division probation program if all of the following criteria are satisfied:

\* \* \*

(b) The district attorney has reason to believe that the individual who is charged suffers from alcohol or drug abuse or addiction.

\* \* \*

1                   (3) In offering a defendant the opportunity to request treatment, the court  
2 shall advise the defendant of the following:

3   \*         \*         \*

4                   (f) If the defendant completes the drug division probation program, and  
5 successfully completes all other requirements of his court-ordered probation, the  
6 conviction may be set aside and the prosecution dismissed in accordance with the  
7 provisions of Code of Criminal Procedure Articles 893 and 894. If the defendant  
8 was sentenced at the time of the entry of the plea of guilty, the successful completion  
9 of the drug division probation program and the other requirements of probation will  
10 result in his discharge from supervision. If the defendant does not successfully  
11 complete the drug division probation program, the judge may revoke the probation  
12 and impose sentence, or the judge may revoke the probation and order the defendant  
13 to serve the sentence previously imposed and suspended, ~~or the judge may revoke  
14 the probation and order the defendant to be committed to the custody of the  
15 Department of Public Safety and Corrections and be required to serve a sentence of  
16 not more than six months without diminution of sentence in the intensive  
17 incarceration program pursuant to R.S. 15:574.4.1, or the court may impose any  
18 sanction provided by Code of Criminal Procedure Article 900, and extend probation  
19 and order that the defendant continue treatment for an additional period, or both.~~

20   \*         \*         \*

21                   (5) The defendant must agree to the drug division probation program. If the  
22 defendant elects to undergo treatment and participate in the drug division probation  
23 program, the court shall order an examination of the defendant by one of the court's  
24 designated licensed treatment ~~programs~~ professionals. Treatment ~~programs~~  
25 professionals shall possess sufficient experience in working with criminal justice  
26 clients with alcohol or drug abuse or addictions, or both, and shall be certified and  
27 approved by the state of Louisiana. The designated treatment ~~program~~ professionals  
28 shall utilize standardized testing and evaluation procedures to determine whether or  
29 not the defendant is an appropriate candidate for a treatment program and shall report  
30 such findings to the court and the district attorney.

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

1           (6) The designated treatment ~~program~~ professionals shall examine the  
 2           defendant, using standardized testing and evaluation procedures, and shall report to  
 3           the court and the district attorney the results of the examination and evaluation along  
 4           with its recommendation as to whether or not the individual is a suitable candidate  
 5           for the drug division probation program. Only those defendants who suffer from  
 6           alcoholism or a drug abuse or addiction, or both, or who are in danger of becoming  
 7           dependent on alcohol or drugs and who are likely to be rehabilitated through  
 8           treatment shall be considered for treatment.

9   \*       \*       \*

10                                   (11)

11   \*       \*       \*

12           (c) A treatment ~~program~~ professional may petition the court to reject a  
 13           referral through the drug division probation program if the treatment ~~program~~  
 14           ~~administrator~~ professional deems the defendant to be inappropriate for admission to  
 15           the treatment program. Additionally, a treatment ~~program~~ professional may petition  
 16           the court for immediate discharge of any individual who fails to comply with  
 17           treatment program rules and treatment expectations or who refuses to constructively  
 18           engage in the treatment process.

19   \*       \*       \*

20                                   D.

21   \*       \*       \*

22           (3)(a) If an individual who has enrolled in a program violates any of the  
 23           conditions of ~~his~~ probation or ~~his~~ the treatment agreement or appears to be  
 24           performing unsatisfactorily in the assigned program, or if it appears that the  
 25           probationer is not benefitting from education, treatment, or rehabilitation, the  
 26           treatment supervisor, probation officer, or the district attorney may move the court  
 27           for a hearing to determine if the probationer has violated a condition of probation,  
 28           whether the probationer should remain in the program, or whether the probation  
 29           should be revoked and the probationer removed from the program and sentenced or  
 30           ordered to serve any sentence previously imposed. If at the hearing the moving party

1 can show sufficient proof that the probationer has violated ~~his~~ the probation or ~~his~~ the  
2 treatment agreement and has not shown a willingness to submit to rehabilitation, the  
3 probationer may be reprimanded, sanctioned for the violation, removed from the  
4 program or ~~his~~ the treatment agreement may be changed to meet the probationer's  
5 specific needs.

6 (b) If the court finds that the probationer has violated a condition of ~~his or~~  
7 ~~her~~ probation or a provision of ~~his or her~~ the probation agreement and that the  
8 probationer should be removed from the probation program, then the court may  
9 revoke the probation and sentence the individual in accordance with ~~his or her~~ the  
10 guilty plea or, if the individual has been sentenced and the sentence suspended, order  
11 the individual to begin serving the sentence.

12 ~~(c) If a defendant who has been admitted to the probation program fails to~~  
13 ~~complete the program and is thereafter sentenced to jail time for the offense, he shall~~  
14 ~~be entitled to credit for the time served in any correctional facility in connection with~~  
15 ~~the charge before the court.~~

16 ~~(d)~~(c) At any time and for any appropriate reason, the probationer, his  
17 probation officer, the district attorney, or his treatment provider may petition the  
18 court to reconsider, suspend, or modify its order for rehabilitation or treatment  
19 concerning that probationer.

20 ~~(e)~~(d) The burden of proof at all such hearings shall be the burden of proof  
21 required to revoke probation as provided by law.

22 E. The appropriate alcohol and drug treatment ~~program~~ professional shall  
23 report the following changes or conditions to the district attorney at any periodic  
24 reporting period specified by the court:

25 \* \* \*

26 J. Each judicial district that establishes a drug division shall adopt written  
27 policies and guidelines for the implementation of a probation program in accordance  
28 with this Chapter. The policies and guidelines shall include provisions concerning  
29 the following:

30 \* \* \*

1                   (2) How to advise the defendant of the program if the court has reason to  
2 believe the defendant may suffer from alcohol or drug abuse or addiction.

3                   (3) What licensed treatment ~~programs~~ professionals are certified by the  
4 court.

5   \*           \*           \*

6                   L.

7   \*           \*           \*

8                   (2) The provisions of Paragraph (1) of this Subsection shall not restrict the  
9 use of patients' records for the purpose of research into the cause and treatment of  
10 alcoholism and drug abuse or addiction, provided that such information shall not be  
11 published in a way that discloses the patient's name and identifying information.

12   \*           \*           \*

13                   N. A record of the fact that an individual has participated in a drug division  
14 probation program shall be ~~sent to the office of the attorney general~~ maintained by  
15 the Supreme Court and shall be made available upon request to any district attorney  
16 for the purpose of determining if an individual has previously participated in a drug  
17 division probation program.

18   \*           \*           \*

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_