RÉSUMÉ DIGEST

SB 145 **2021 Regular Session** **Ward**

Present law provides that every person arrested for a violation of the Uniform Controlled Dangerous Substances Law or a crime of violence as defined by present law must submit to a pretrial drug test for the presence of certain controlled substances in accordance with present law and rules of court governing such testing.

Proposed law would retain present law and add the following:

(1) Drug testing to determine the presence of a controlled dangerous substance should occur within 24 hours of the booking of the person.

(2) A person testing positive is to be clinically screened for the purposes of determining whether the person suffers from a substance use disorder and is suitable for a drug or specialty court program.

(3) A person who tested positive and is considered suitable for a drug or specialty court program is subject to additional provisions of proposed law relative to mandatory assessment.

(4) Information and records relative to drug testing or screening are confidential and cannot be disclosed to any person who is not connected with the district attorney, counsel for the person tested or screened, a treatment professional, or the court, without the consent of the person tested or screened, and such information is not admissible in any civil or criminal proceeding except for the purposes of determining the person's suitability or eligibility for a drug or specialty court program.

(5) The costs and expenses of the drug testing and screening required by proposed law are eligible for reimbursement from the Drug and Specialty Court Fund created by proposed law.

Proposed law would provide that proposed law relative to mandatory drug testing and screening is to be enforced to the extent that sufficient monies exist in the Drug and Specialty Court Fund to reimburse costs and expenses. Proposed law would further provide that if the administrator of the fund certifies that sufficient monies do not exist for reimbursement, those testing and screening provisions will cease to be mandatory, but may still be enforced at the discretion of the governing authority.

Present law provides that, when it appears that the best interest of the public and of the defendant will be served, after a fourth conviction of a noncapital felony or third or fourth conviction of DWI, the court may suspend the imposition or execution of sentence when the defendant's sentences for his first, second, or third convictions of a noncapital felony were not suspended prior to his fourth conviction of DWI, and the following conditions exist:

(1) The district attorney consents to the suspension of the sentence.

(2) The court orders the defendant to complete any of the following:

(a) A program provided by the drug division of the district court.

(b) An established DWI court or sobriety court program.

(c) A mental health court program established by present law.

(d) A Veterans Court program established by present law.

(e) A reentry court program established by present law.

(f) Reside for at least one year in a facility that conforms to the Judicial Agency Referral Residential Facility Regulatory Act established by present law.

(g) The Swift and Certain Probation Pilot Program established by present law.

Proposed law would retain present law and add that present law applies only if the defendant does not meet the eligibility criteria for participation in a drug or specialty court program.

Present law provides that when suspension of sentence is allowed after a fourth conviction of a noncapital felony or third or fourth conviction of DWI, the defendant is to be placed on probation under the supervision of the division of probation and parole. Present law further provides that the period of probation cannot be more than three years except as otherwise provided in present law.

Proposed law would retain present law and add that the defendant may be placed on probation under the supervision of a probation office, agency, or officer designated by the court in lieu of supervision by the division of probation and parole.

Proposed law would provide that, when it appears that the best interest of the public and of the defendant will be served, after the conviction of a defendant considered suitable for a drug or specialty court program, the court may suspend, in whole or in part, the imposition or execution of the sentence when all of the following conditions are met:

(1) The district attorney consents to the suspension of sentence.

(2) There is an available drug or specialty court program recognized by the La. Supreme Court.

(3) The court orders the defendant to enter and complete any drug or specialty court program recognized by the La. Supreme Court.

Proposed law would provide that if the district attorney does not consent to the suspension of the sentence, he must file his objection with written reasons into the record. Proposed law would further provide that if the district attorney files an objection, or if the court determines that a specialty court program is not available, the court may sentence the defendant to any sentence provided by present law.

Proposed law would provide that, when suspension of sentence is allowed pursuant to proposed law, the defendant may be placed on probation, for not more than three years except as provided by present law, under the supervision of the division of probation and parole, or a probation office, agency, or officer designated by the court.

Proposed law would provide that, upon motion of the defendant, if the court finds that probation has been satisfactory, the court may set the conviction aside and dismiss the prosecution, which will have the same effect as an acquittal; however, the conviction may be considered a prior offense for purposes of the Habitual Offender Law or any other present law relative to cumulation of offenses. Proposed law would further provide that a dismissal pursuant to proposed law can occur only once with respect to any person.

Proposed law would provide that a defendant is to be assessed for suitability for participation in a drug or specialty court program if all of the following criteria are met:

(1) The defendant meets present law eligibility requirements.

(2) There is a relationship between the use of alcohol or drugs and the offense.

(3) The defendant has tested positive on a drug test and has been screened and determined suitable for a drug or specialty court program pursuant to proposed law, or upon request of the defendant or order of the court.

Proposed law would provide that a defendant who meets these criteria is to be assessed by a licensed treatment professional designated by the court. Proposed law would provide that treatment professionals must possess sufficient experience in working with clients who have alcohol or drug abuse or addiction issues or mental illness, and must be credentialed or licensed by the state of Louisiana. Proposed law would further provide that the designated treatment professional is to perform an assessment of the defendant to determine whether he is suitable for a treatment program, and must report to the court, the district attorney, the defendant, and counsel for the defendant the results of the assessment, along with a recommendation as to whether the defendant is suitable.

Proposed law would provide that the court must inform the defendant that the designated treatment professional may request that the defendant provide the following information to the court regarding prior criminal charges, education, work experience, family history, medical and mental health history, and any other information reasonably related to the success of the treatment program.

Proposed law would provide that information provided by the defendant to the designated treatment professional is confidential and cannot be disclosed to any person who is not connected with the treatment professional, treatment facility, district attorney, counsel for defendant, or the court, without the consent of the defendant; however, these records and information may be used for the purposes of research or evaluation of the mandatory screening procedures or the effectiveness of any drug or specialty court program, provided that the information or records are not published with any identifying information. Proposed law would further provide that information obtained from the defendant is not admissible in any civil or criminal proceeding, except to determine the defendant's suitability or eligibility for a drug or specialty court program.

Present law provides that the court must advise the defendant that if he requests treatment and is accepted, he will be placed under the supervision of the drug division probation program for a period of at least 12 months.

Proposed law would provide that the court is to determine the length of supervision of the defendant rather than a mandatory 12 months, except that for a defendant convicted of a first, second, or third offense DWI, the period must be at least 12 months.

Proposed law otherwise retains present law.

Proposed law would create the Drug and Specialty Court Fund in the state treasury. Proposed law would provide that all monies received by the state from any judgment, settlement, or otherwise collected from any responsible person, to cover monies expended or anticipated to be expended by the state, or damages incurred by the state, in connection with the manufacturing, marketing, distribution, or sale of opioids are to be deposited into the fund.

Proposed law would provide that monies in the fund are to be invested by the state treasurer in the same manner as monies in the state general fund, and interest earned is to be credited to the fund. Proposed law would further provide that all unexpended and unencumbered monies in the fund at the end of the fiscal year are to remain in the fund.

Proposed law would provide that the office of the attorney general is the administrator of the fund, and monies in the fund are to be appropriated to administer the fund in accordance with proposed law. Proposed law further provides that monies in the fund are to be disbursed by the administrator to eligible applicants for the purpose of drug testing and screening through the award of grants. Proposed law further provides that these grants are to be awarded only as considered appropriate by the administrator, based upon the individual needs of each entity with respect to compliance with proposed law.

Proposed law would provide that monies in the fund may be used for the following:

(1) Expenses related to any drug or specialty court within the district courts of this state, including expenses incurred by the district courts, district attorneys' offices, public defenders, parish and local governing authorities, and sheriffs' offices related to participants or potential participants in any drug or specialty court in this state, including expenses incurred for the purpose of supervising participants.

(2) Expenses related to administering mandatory drug testing and clinical drug screening by law enforcement agencies, including sheriffs' offices, in accordance with new law.

(3) Expenses related to drug screening and testing of participants or potential participants in any drug or specialty court program in this state.

(4) Expenses related to the services provided by drug or specialty court programs or services received by participants or potential participants in any drug or specialty court program in this state.

(5) Expenses related to the creation, maintenance, operation, expansion, or improvement of any drug or alcohol treatment facilities, programs, or services for individuals in the custody of the Dept. of Public Safety and Corrections or any parish or local correctional facility in this state.

(6) Any other expenses directly related to or incurred due to compliance with proposed law.

Proposed law would provide that any monies disbursed by the administrator that remain unexpended or unencumbered at the end of the fiscal year are available for use in the subsequent fiscal year by the entity, subject to the provisions of the grant agreement.

Proposed law would provide that the administrator of the fund is to submit an annual report to the Joint Legislative Committee on the Budget no later than August first of each year, which is to include information from the previous fiscal year relative to the number of grant applications received, recipients of the grants, and amounts of the grants awarded.

Proposed law would provide that the administrator is to submit a notice of the exhaustion or anticipated exhaustion of all monies received or to be received by the fund, no later than three years prior to the exhaustion or anticipated exhaustion, to the Joint Legislative Committee on the Budget, the president of the Senate, the speaker of the House of Representatives, and the governor. Proposed law would further provide that if the amount of monies in the fund is determined at any time to be insufficient to satisfy the costs of compliance with proposed law, the administrator is to certify the existence of this insufficiency and provide notice of this certification to these same parties. Proposed law further provides that, upon certification and notice of the insufficiency of funds, compliance with proposed law relative to funding drug and specialty courts will cease to be mandatory, but may continue to be enforced at the discretion of the governing authority.

Proposed law relative to the creation and operation of the Drug and Specialty Court Fund would have become effective August 1, 2021.

Proposed law relative to mandatory drug testing and screening and drug and specialty courts would take effect one year from the date on which the balance of monies in the Drug and Specialty Court Fund reaches $10,000,000.

(Proposed to amend C.Cr.P. Art. 320(D) and (E)(1) and 893(A)(1)(a), (B)(2), (F), (G), and (H) and R.S. 13:5304(B)(3)(b); add C.Cr.P. Art. 893(B)(1)(c) and (I) and 904 and R.S. 39:100.171 and 100.172)

VETO MESSAGE: "Please be advised that I have vetoed Senate Bill 145 of the 2021 Regular Session.

This bill purports to enhance access to drug and specialty courts throughout the state through a dedicated funding stream derived from proceeds recovered by the State from any settlement against opioid manufacturers. Although a worthwhile cause, this bill falls woefully short of accomplishing the intended purpose.

Senate Bill 145 would require 'all monies received by the state,' outside of what is constitutionally required to go through the bond security and redemption fund, to be deposited into the Drug and Specialty Court Fund. The plain language of the bill would give the administrator of the fund (designated as the Office of the Attorney General) sole discretion in making a determination as to what is 'considered appropriate' in awarding grants to 'eligible applicants,' contrary to testimony by the Attorney General in Senate Committee that the role of the Office of the Attorney General would be purely administrative and would only act to disperse money from the fund to the Louisiana Commission on Law Enforcement and the Louisiana Supreme Court Drug and Specialty Court Office. The legislation fails, however, to define 'eligible applicant' or what is 'appropriate.' Furthermore, while the bill provides for acceptable uses of the money, it does not provide that the acceptable uses are limited to those contained in the bill, meaning the acceptable uses of the money in the fund are without limitation. Practically, the bill requires the legislature to appropriate all of the money in the fund to the Office of the Attorney General and grants sole authority to the office to determine how much and to whom the money is to be dispersed without limitation.

Further, it provides for no safeguards or checks that the money will be spent to enhance access to drug and specialty courts throughout the state.

In addition to the fatal defects discussed above, the bill creates confusion between whether costs and expenses of local law enforcement agencies to conduct mandatory drug testing are reimbursable through the fund or may be paid for through a grant from the fund. Reimbursement would require the responsible agency to pay for the expense out of their own operating budget and then seek reimbursement. The same cost-prohibitive problem that exists today for law enforcement agencies to conduct drug testing continues to exist under this reimbursement model. Because the bill fails to define 'eligible applicant,' it is unclear whether or not a law enforcement agency would be able to apply for a grant through the fund. Even more confusing is that a person who tests positive is required to be screened for a substance use disorder and also for whether the person is a suitable candidate for participation in a drug court or specialty program, and if the person is determined suitable for the program, then they have to be reassessed to determine whether or not they are suitable, one of the criteria being that they were already determined suitable in the first screening. Except for the twenty-four-hour period after booking within which the mandatory testing has to occur, there is no timeline established for any of the steps along the way. There are too many unknowns and uncertainties for this to be implemented by each jurisdiction equally across the board.

It is important to note that the Louisiana Supreme Court Drug and Specialty Court Office runs an extremely successful program. It works now with federal and state partners to ensure accountability, promote best practices in existing specialty court programs, assists with planning efforts of jurisdictions establishing new specialty court programs, awards funds annually to programs around the state, and monitors each program's operations throughout the year. Certainly, the office, which has been charged with these tasks for more than two decades, is in the best position to determine the needs of each jurisdiction when it comes to enhancing access to drug and specialty courts throughout the state. For this reason, and the many others discussed above, I have vetoed Senate Bill 145."