

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.~~

* * *

D.

* * *

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

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))