

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)(1)(b), (3)(f), (5), (6), (11)(c), and (D)(3),  
3 (E)(introductory paragraph), (J)(2) and (3), (L)(2) and (N), relative to the drug  
4 division probation program; to provide penalties for violating conditions of drug  
5 division probation; to provide for penalties for a technical violation committed while  
6 on drug division probation; to provide for the definition of a "technical violation";  
7 to provide with respect to drug abuse treatment and addiction treatment; to provide  
8 for designated treatment professionals; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

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

13 §5304. The drug division probation program

14 \* \* \*

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

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

20 \* \* \*

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

3 \* \* \*

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

6 \* \* \*

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

23 \* \* \*

24 (5) The defendant must agree to the drug division probation program. If the  
25 defendant elects to undergo treatment and participate in the drug division probation  
26 program, the court shall order an examination of the defendant by one of the court's  
27 designated licensed treatment programs professionals. Treatment programs  
28 professionals shall possess sufficient experience in working with criminal justice  
29 clients with alcohol or drug abuse or addictions, or both, and shall be certified and

1 approved by the state of Louisiana. The designated treatment ~~program~~ professionals  
2 shall utilize standardized testing and evaluation procedures to determine whether or  
3 not the defendant is an appropriate candidate for a treatment program and shall report  
4 such findings to the court and the district attorney.

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

13 \* \* \*

14 (11)

15 \* \* \*

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

23 \* \* \*

24 D.

25 \* \* \*

26 (3)(a) If an individual who has enrolled in a program violates any of the  
27 conditions of ~~his~~ probation or ~~his~~ the treatment agreement or appears to be  
28 performing unsatisfactorily in the assigned program, or if it appears that the  
29 probationer is not benefitting from education, treatment, or rehabilitation, the

1 treatment supervisor, probation officer, or the district attorney may move the court  
2 for a hearing to determine if the probationer has violated a condition of probation,  
3 whether the probationer should remain in the program, or whether the probation  
4 should be revoked and the probationer removed from the program and sentenced or  
5 ordered to serve any sentence previously imposed. If at the hearing the moving party  
6 can show sufficient proof that the probationer has violated ~~his~~ probation or ~~his~~ the  
7 treatment agreement and has not shown a willingness to submit to rehabilitation, the  
8 probationer may be reprimanded, sanctioned for the violation, removed from the  
9 program or ~~his~~ the treatment agreement may be changed to meet the probationer's  
10 specific needs.

11 (b) Notwithstanding any other provision of law, if the court finds that the  
12 probationer has violated a condition of probation or a provision of the probation  
13 agreement, it may:

14 (i) Reprimand and warn the defendant.

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

16 (iii) Order that the probationer enter and participate in short- or long-term  
17 treatment.

18 (iv) Order that supervision be intensified.

19 (v) Add additional conditions to the probation.

20 (vi) Order the probationer, as an additional condition of probation, be  
21 committed to the custody of the Department of Public Safety and Corrections and be  
22 required to serve a sentence of not more than twelve months without diminution of  
23 sentence in the intensive incarceration program pursuant to the provisions of R.S.  
24 15:574.4.4. Upon successful completion of the program, the defendant shall return  
25 to active, supervised probation with the drug division probation program for a period  
26 of time equal to the remainder of the original period of probation to successfully  
27 complete the drug division probation program, subject to any additional conditions  
28 imposed by the court and under the same provisions of law under which the  
29 defendant was originally sentenced. If an offender is denied entry into the intensive

1 incarceration program for failure to meet the department's suitability criteria, the  
2 department shall notify the drug division probation program court to determine  
3 whether the probationer should remain in the program or whether the probation  
4 should be revoked and the probationer removed from the program and sentenced or  
5 ordered to serve any sentence previously imposed.

6 (vii) Impose a sentence of not more than one hundred eighty days without  
7 diminution of sentence or credit for time served for a technical violation of his  
8 probation. The term of the sentence for a technical violation shall begin on the date  
9 the court orders the sentence. Upon completion of the imposed sentence for the  
10 technical violation, the defendant shall return to active and supervised probation with  
11 the drug division probation program for a period equal to the remainder of the  
12 original period of probation to successfully complete the drug division program,  
13 subject to any additional conditions imposed by the court and under the same  
14 provisions of law under which the defendant was originally sentenced.

15 (viii) Extend the period of probation, provided the total amount of time  
16 served by the defendant on probation for any one offense shall not exceed the  
17 maximum period of probation provided by law.

18 (c) A "technical violation", as used in this Paragraph, means any violation  
19 except it shall not include any of the following:

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

21 (aa) A felony.

22 (bb) At the discretion of the court, a violation of any provision of Title 40  
23 of the Louisiana Revised Statutes.

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

25 (dd) At the discretion of the court, any attempt to commit any intentional  
26 misdemeanor directly affecting the person.

27 (ee) At the discretion of the court, any attempt to commit any other  
28 misdemeanor.

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

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

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

11                  ~~(d)~~(e) At any time and for any appropriate reason, the probationer, his  
12                  probation officer, the district attorney, or his treatment provider may petition the  
13                  court to reconsider, suspend, or modify its order for rehabilitation or treatment  
14                  concerning that probationer.

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

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

20   \*           \*           \*

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

25   \*           \*           \*

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

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

3 \* \* \*

4 L.

5 \* \* \*

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

10 \* \* \*

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

16 \* \* \*

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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)]

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HB 1145 Reengrossed                      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.

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)(1)(b), (3)(f), (5), (6), (11)(c), and (D)(3), (E)(intro. para.), (J)(2) and (3), (L)(2), and (N))

#### Summary of Amendments Adopted by House

##### The House Floor Amendments to the engrossed bill:

1. Provide that the drug probation program applies to drug abuse or drug addiction.
2. Provide that the list of individuals completing the program shall be maintained by the Louisiana Supreme Court.
3. Change language from "licensed treatment program" to "licensed treatment professional" with respect to certain duties and responsibilities.