

ACT No. 4

2024 Second Extraordinary Session

HOUSE BILL NO. 3

BY REPRESENTATIVES BUTLER, ADAMS, AMEDEE, BACALA, BAGLEY, BAMBURG, BAYHAM, BERAULT, BILLINGS, BOYD, BOYER, BRASS, BRAUD, BROWN, BRYANT, CARLSON, CARRIER, ROBBY CARTER, WILFORD CARTER, CARVER, CHASSION, CHENEVERT, COATES, CREWS, DEVILLIER, DEWITT, DICKERSON, EDMONSTON, EGAN, FIRMENT, FISHER, FONTENOT, FREIBERG, GADBERRY, GREEN, HEBERT, HILFERTY, HORTON, ILLG, JACKSON, MIKE JOHNSON, TRAVIS JOHNSON, KERNER, KNOX, LACOMBE, LAFLEUR, LARVADAIN, MACK, MARCELLE, MCCORMICK, MCFARLAND, MCMAHEN, MCMAKIN, MELERINE, MOORE, NEWELL, ORGERON, OWEN, RISER, SCHAMERHORN, SCHLEGEL, SELDERS, ST. BLANC, STAGNI, TAYLOR, THOMPSON, VENTRELLA, WALTERS, WILDER, WILEY, WYBLE, AND ZERINGUE AND SENATOR REESE

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Articles 320(D) and (E)(introductory
3 paragraph) and (1) and 893(A)(1)(a), (B)(3), and (F) through (H), R.S.
4 13:5304(B)(3)(b), and R.S. 15:529.1(C)(3) and to enact Code of Criminal Procedure
5 Articles 893(B)(2)(c) and (I) and 904, relative to mandatory drug testing and
6 screening; to require drug testing and screening of persons arrested for certain
7 offenses; to provide relative to assessment for participation in drug and specialty
8 court programs for certain nonviolent offenders; to provide relative to confidentiality
9 of drug testing and screening records; to provide relative to the funding for
10 administration of drug and specialty courts; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Code of Criminal Procedure Articles 320(D) and (E)(introductory
13 paragraph) and (1) and 893(A)(1)(a), (B)(3), and (F) through (H) are hereby amended and
14 reenacted and Code of Criminal Procedure Articles 893(B)(2)(c) and (I) and 904 are hereby
15 enacted to read as follows:

16 Art. 320. Conditions of bail undertaking

17 * * *

18 D. ~~Drug offenses and crimes of violence.~~ Pretrial drug testing and screening
19 for substance use disorders.

1 (1) Every person arrested for a violation of the Uniform Controlled
2 Dangerous Substances Law or a crime of violence as provided in R.S. 14:2(B) shall
3 be required to submit to a pretrial drug test for the presence of designated substances
4 in accordance with the provisions of this Article and rules of court governing such
5 testing. Every person arrested for any other felony may be required to submit to a
6 pretrial drug test for the presence of designated substances in accordance with the
7 provisions of this Article and rules of court governing such testing. Every person
8 arrested for a misdemeanor may be required to submit to a pretrial drug test for the
9 presence of designated substances in accordance with the provisions of this Article
10 and rules of court governing such testing.

11 (2) Drug testing to determine the presence of any controlled dangerous
12 substance identified in the Uniform Controlled Dangerous Substances Law shall
13 occur within twenty-four hours of the booking of the person, and random testing
14 thereafter may be required to verify that the person is drug free.

15 (3) All persons testing positive for the presence of one or more substances
16 provided in Subparagraph (2) of this Paragraph shall be clinically screened utilizing
17 a validated screening tool for the purpose of determining whether the person suffers
18 from a substance use disorder and is suitable for a drug or specialty court program.

19 (4) All persons who receive a positive test result pursuant to the drug testing
20 administered pursuant to Subparagraph (2) of this Paragraph and who are considered
21 suitable for a drug or specialty court program pursuant to the screening process set
22 forth in Subparagraph (3) of this Paragraph shall be subject to the provisions of Code
23 of Criminal Procedure Article 904.

24 (5) All records and information provided or obtained pursuant to
25 Subparagraphs (2) and (3) of this Paragraph shall be considered confidential and
26 shall not be, without the consent of the person tested or screened, disclosed to any
27 person who is not connected with the district attorney, counsel for the person tested
28 or screened pursuant to this Paragraph, a treatment professional, or the court. Such
29 records and information shall not be admissible in any civil or criminal action or

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

3 (6) The expenses and costs incurred relative to the mandatory drug testing
4 and the screening required by this Paragraph shall be deemed to be an approved
5 purpose for use of opioid funds. If sufficient funds do not exist for the
6 reimbursement of the expenses and costs of mandatory testing and screening, the
7 provisions of Subparagraphs (2) and (3) of this Paragraph may still be enforced at the
8 discretion of the governing authority responsible for funding those provisions.

9 E. Pretrial drug testing program. The court may implement a pretrial drug
10 testing program. All persons released under the provisions of the pretrial drug
11 testing program ~~must~~ shall submit to continued random testing and refrain from the
12 use or possession of any controlled dangerous substance or any substance designated
13 by the court. A pretrial drug testing program shall provide for the following:

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

18 * * *

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

20 A.(1)(a) When it appears that the best interest of the public and of the
21 defendant will be served, the court, after a first, second, or third conviction of a
22 noncapital felony, may suspend, in whole or in part, the imposition or execution of
23 either or both sentences, where suspension is allowed under the law, and in either or
24 both cases place the defendant on probation under the supervision of the division of
25 probation and parole. The court shall not suspend the sentence of a second or third
26 conviction of R.S. 14:73.5. Except as provided in Paragraph ~~G~~ H of this Article, the
27 period of probation shall be specified and shall not be more than three years, except
28 as provided by Paragraph ~~H~~ I of this Article.

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(2) After a third or fourth conviction of operating a vehicle while intoxicated pursuant to R.S. 14:98, the court may suspend, in whole or in part, the imposition or execution of the sentence when the defendant was not offered such alternatives prior to his fourth conviction of operating a vehicle while intoxicated and the following conditions exist:

* * *

(c) The defendant does not meet the requirements set forth in Paragraph F of this Article.

(3) When suspension is allowed under this Paragraph, the defendant shall be placed on probation under the supervision of the division of probation and parole. If the defendant has been sentenced to complete a specialty court program as provided in Subsubparagraph (2)(b) of this Paragraph, the defendant may be placed on probation under the supervision of a probation office, agency, or officer designated by the court, other than the division of probation and parole of the Department of Public Safety and Corrections. The period of probation shall be specified and shall not be more than three years, except as provided in Paragraph ~~G~~ H of this Article. The suspended sentence shall be regarded as a sentence for the purpose of granting or denying a new trial or appeal.

* * *

F.(1) Notwithstanding any other provision of law to the contrary, 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 pursuant to Code of Criminal Procedure Article 904, the court may suspend, in whole or in part, the imposition or execution of the sentence when all of the following conditions are met:

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

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

1 (c) The court orders the defendant to enter and complete any drug or
2 specialty court program recognized by the Louisiana Supreme Court.

3 (2) If the district attorney does not consent to the suspension of the sentence,
4 he shall file his objection with written reasons into the record.

5 (3) If the district attorney files an objection into the record, or if the court
6 determines that a specialty court program is not available for the defendant, the court
7 may sentence the defendant to any sentence provided for the offense by law.

8 (4) When suspension of sentence is allowed pursuant to this Paragraph, the
9 defendant may be placed on probation under the supervision of the division of
10 probation and parole, or under the supervision of a probation office, agency, or
11 officer designated by the court. The period of probation shall be specified and shall
12 not exceed three years, except as provided in Paragraph H of this Article. The
13 suspended sentence shall be regarded as a sentence for the purpose of granting or
14 denying a motion for new trial or appeal.

15 (5) Upon motion of the defendant, if the court finds at the conclusion of the
16 probationary period that the probation of the defendant has been satisfactory, the
17 court may set the conviction aside and dismiss the prosecution. The dismissal of the
18 prosecution shall have the same effect as an acquittal, except that the conviction may
19 be considered as a first offense and provide the basis for a subsequent prosecution
20 of the party as a habitual offender, except as provided in R.S. 15:529.1(C)(3). The
21 conviction also may be considered as a prior offense for purposes of any other
22 provision of law relating to cumulation of offenses. Dismissal pursuant to this
23 Paragraph shall occur only once with respect to any person.

24 G. Nothing contained herein shall be construed as being a basis for
25 destruction of records of the arrest and prosecution of any person convicted of a
26 felony.

27 G.H. If the court, with the consent of the district attorney, orders a defendant
28 to enter and complete a program provided by the drug division of the district court
29 pursuant to R.S. 13:5301, an established driving while intoxicated court or sobriety
30 court program, a mental health court program established pursuant to R.S. 13:5351

1 et seq., a Veterans Court program established pursuant to R.S. 13:5361 et seq., a
2 reentry court established pursuant to R.S. 13:5401, or the Swift and Certain
3 Probation Pilot Program established pursuant to R.S. 13:5371, the court may place
4 the defendant on probation for a period of not more than eight years if the court
5 determines that successful completion of the program may require that period of
6 probation to exceed the three-year limit. The court may not extend the duration of
7 the probation period solely due to unpaid fees and fines. The period of probation as
8 initially fixed or as extended shall not exceed eight years.

9 ~~H.L.~~(1) If a defendant is placed on supervised probation, the division of
10 probation and parole shall submit to the court a compliance report when requested
11 by the court, or when the division of probation and parole ~~deems~~ considers it
12 necessary to have the court make a determination with respect to "earned compliance
13 credits", modification of terms or conditions of probation, termination of probation,
14 revocation of probation, or other purpose proper under any provision of law.

15 (2) For purposes of this Paragraph:

16 (a) "Compliance" means the full completion of the terms and conditions of
17 probation as imposed by the sentencing judge, except for inability to pay fines, fees,
18 or restitution.

19 (b) "Compliance report" means a report generated and signed by the division
20 of probation and parole that contains clear and concise information relating to the
21 defendant's performance relative to "earned compliance credits", and may contain
22 a recommendation as to early termination.

23 (3) After a review of the compliance report, if it is the recommendation of
24 the division of probation and parole that the defendant is in compliance with the
25 conditions of probation, in accordance with the compliance report, the court shall
26 grant "earned compliance credit" for the time, absent a showing of cause for a denial.

27 (4) The court may terminate probation at any time as "satisfactorily
28 completed" upon the final determination that the defendant is in compliance with the
29 terms and conditions of probation.

1 (5) If the court determines that the defendant has failed to successfully
 2 complete the terms and conditions of probation, the court may extend the probation
 3 for a period not to exceed two years, for the purpose of allowing the defendant
 4 additional time to complete the terms of probation, additional conditions, the
 5 extension of probation, or the revocation of probation.

6 (6) Absent extenuating circumstances, the court shall, within ten days of
 7 receipt of the compliance report, make an initial determination as to the issues
 8 presented and shall transmit the decision to the probation officer. The court shall
 9 disseminate the decision to the defendant, the division of probation and parole, and
 10 the prosecuting agency within ten days of receipt. The parties shall have ten days
 11 from receipt of the initial determination of the court to seek an expedited
 12 contradictory hearing for the purpose of challenging the court's determination. If no
 13 challenge is made within ten days, the court's initial determination shall become final
 14 and shall constitute a valid order of the court.

15 * * *

16 Art. 904. Mandatory assessment; suitability of defendant for drug or specialty court
 17 program

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

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

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

24 (3) The defendant has tested positive on a drug test and has been screened
 25 and determined suitable pursuant to Code of Criminal Procedure Article 320(D), or
 26 the defendant has been screened and determined suitable upon request of the
 27 defendant or as ordered by the court.

28 B.(1) A defendant who meets the criteria set forth in Paragraph A of this
 29 Article shall be assessed by a licensed treatment professional designated by the court.
 30 Treatment professionals shall be credentialed or licensed by the state of Louisiana

1 and possess sufficient experience in working with clients who have alcohol or drug
2 abuse or addiction issues or mental illness.

3 (2) 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 the results of the assessment and
6 evaluation to the court, the district attorney, the defendant, and counsel for the
7 defendant along with a recommendation as to whether or not the defendant is
8 suitable for a drug or specialty court program.

9 (3) 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 (a) Information regarding prior criminal charges.

13 (b) Education, work experience, and training.

14 (c) Family history, including residence in the community.

15 (d) Medical and mental health history, including any psychiatric or
16 psychological treatment or counseling.

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

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

24 (2) The provisions of Subparagraph (1) of this Paragraph shall not restrict
25 the use of records and information for the purposes of research or evaluation of the
26 mandatory screening procedures or the effectiveness of any drug or specialty court
27 program, provided that the records or information shall not be published or otherwise
28 disseminated in any manner that discloses the name or identifying information of the
29 defendant.

1 893(E)(2), (3), ~~or (4)~~, or (F)(5), shall not be considered as a prior conviction for
 2 purposes of enhancing a felony that is not a crime of violence as defined by R.S.
 3 14:2(B) pursuant to the provisions of Paragraph (A)(1) of this Section and shall not
 4 be included in the computation of the five-year time period set forth in Paragraph (1)
 5 of this Subsection, or the ten-year time period as set forth in Paragraph (2) of this
 6 Subsection, for purposes of enhancing a felony that is not a crime of violence as
 7 defined by R.S. 14:2(B) pursuant to the provisions of Paragraph (A)(1) of this
 8 Section.

* * *

10 Section 4. Additional funding for the administration of drug and other specialty
 11 courts shall be subject to appropriation by the legislature.

12 Section 5. This Act shall become effective on July 1, 2024; if vetoed by the governor
 13 and subsequently approved by the legislature, this Act shall become effective on the day
 14 following such approval by the legislature or July 1, 2024, whichever is later.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____