

Regular Session, 2013

HOUSE BILL NO. 442

BY REPRESENTATIVE LOPINTO

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

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AN ACT

To amend and reenact R.S. 13:5304(B)(1)(a) and to enact Subpart 7 of Part II of Chapter 5 of Title 15 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 15:574.61 and 574.62, to enact Code of Criminal Procedure Articles 903 through 903.3, and to repeal R.S. 13:5304(B)(10)(d) and (f), relative to sentencing of certain offenders convicted of certain violations of the Uniform Controlled Dangerous Substances Law; to authorize the development of a substance abuse probation program within the Department of Public Safety and Corrections; to authorize the Department of Public Safety and Corrections to enter into cooperative endeavors or contracts to provide for substance abuse treatment programs; to provide for eligibility for participation in the program; to provide for a court-ordered substance abuse evaluation to determine suitability for participation in the program; to provide for the suspension of certain criminal sentences and court-ordered participation in the program; to provide for rulemaking; to provide for the payment of certain costs by the defendant; to provide for alternative methods of payment of indigent defendants; to enact the Substance Abuse Conditional Release Act; to provide for substance abuse conditional release; to provide for parole supervision following completion of the substance abuse conditional release program; to provide for the duration of the substance abuse treatment program within the Department of Public Safety and Corrections; to provide for eligibility for substance abuse conditional release; to provide for an addiction disorder assessment and a mental health screening to determine suitability for the program; to provide for criteria for removal

1 from participation in the program; to provide for the consequences of failure to
 2 complete the substance abuse probation program or the substance abuse conditional
 3 release program; to modify disqualification criteria for the drug division probation
 4 program; to provide with respect to eligibility criteria for participation in the drug
 5 division probation program; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Code of Criminal Procedure Articles 903 through 903.3 are hereby
 8 enacted to read as follows:

9 Art. 903. Substance abuse probation program; authorization

10 A. The secretary of the Department of Public Safety and Corrections is
 11 authorized to establish a substance abuse probation program within the department.

12 B. The program shall provide substance abuse counseling and treatment for
 13 defendants sentenced to substance abuse probation pursuant to the provisions of
 14 Article 903.2 of this Code.

15 C. The department may enter into cooperative endeavors or contracts with
 16 the Department of Health and Hospitals, training facilities, and service providers to
 17 provide for substance abuse treatment and counseling for defendants participating
 18 in the program.

19 D. The department shall adopt rules and guidelines as it deems necessary for
 20 the administration and implementation of this program.

21 E. The provisions of this Article shall be implemented only to the extent that
 22 funds are available within the department for this purpose and to the extent that is
 23 consistent with available resources and appropriate classification criteria.

24 Article 903.1. Substance abuse probation program; eligibility

25 A. In order to be eligible for the substance abuse probation program, the
 26 defendant shall not be excluded from participation pursuant to the provisions of
 27 Paragraph B of this Article and shall be charged with any of the following offenses:

28 (1) Felony possession of a controlled dangerous substance as defined in R.S.
 29 40:966(C), 967(C), 968(C), or 969(C).

1 (2) Except as provided in Subparagraph (3) of this Paragraph, possession
 2 with intent to distribute a controlled dangerous substance as defined in R.S.
 3 40:966(A), 967(A), 968(A), or 969(A) where the offense involves less than twenty-
 4 eight grams of the controlled dangerous substance.

5 (3) Possession with intent to distribute marijuana or synthetic cannabinoids
 6 as defined in R.S. 40:966(A) where the offense involves less than one pound of
 7 marijuana or synthetic cannabinoids.

8 B. The provisions of this Article shall not apply to any defendant who has
 9 been convicted of a crime of violence as defined in R.S. 14:2(B) or a sex offense as
 10 defined in R.S. 15:541, or any defendant who has participated in or declined to
 11 participate in a drug division probation program as provided for in R.S. 13:5301 et
 12 seq.

13 Art. 903.2. Substance abuse probation; sentencing

14 A. Notwithstanding any other provision of law to the contrary, a court shall
 15 suspend a sentence and order an eligible defendant to participate in a substance abuse
 16 probation program provided by the department pursuant to Article 903 of this Code
 17 if the district attorney agrees that the defendant should be sentenced to a substance
 18 abuse probation and the court finds all of the following:

19 (1) The court has reason to believe that the defendant suffers from an
 20 addiction to a controlled dangerous substance.

21 (2) The defendant is likely to respond to the substance abuse probation
 22 program.

23 (3) The available substance abuse probation program is appropriate to meet
 24 the needs of the defendant.

25 (4) The defendant does not pose a threat to the community, and it is in the
 26 best interest of justice to provide the defendant with treatment as opposed to
 27 incarceration or other sanctions.

28 B.(1) The court shall order the department to assign an authorized evaluator
 29 to prepare a suitability report. The suitability report shall delineate the nature and
 30 degree of the treatment necessary to address the defendant's drug or alcohol

1 dependency or addiction, the reasonable availability of such treatment, and the
2 defendant's appropriateness for the program. The district attorney and the
3 defendant's attorney shall have an opportunity to provide relevant information to the
4 evaluator to be included in the report.

5 (2) The authorized evaluator shall examine the defendant, using standardized
6 testing and evaluation procedures, and shall provide to the court and the district
7 attorney the results of the examination and evaluation along with its recommendation
8 as to whether the defendant is a suitable candidate for the substance abuse probation
9 program.

10 (3) If the court determines that the defendant should be enrolled in the
11 substance abuse probation program, the court shall suspend the execution of the
12 sentence and place the defendant on supervised probation under the terms and
13 conditions of the substance abuse probation program.

14 (4) The defendant shall be required to participate in alcohol and drug testing
15 at his own expense, unless the court determines that he is indigent. If the court
16 determines that the defendant is indigent, it may order the defendant to perform
17 supervised work for the benefit of the community in lieu of paying all or a part of the
18 costs related to the drug and alcohol testing. The work shall be performed for and
19 under the supervising authority of a parish, municipality, or other political
20 subdivision or agency of the state or a charitable organization that renders service to
21 the community or its residents.

22 C. If the judge fails to make all of the determinations provided for in
23 Paragraph A of this Article, or if the district attorney does not agree that the
24 defendant should be sentenced to substance abuse probation, the court shall impose
25 the appropriate sentence provided by law.

26 D.(1) If the defendant violates any condition of his probation or if the
27 defendant would benefit from an adjustment to the probation or treatment program,
28 the defendant, the treatment supervisor, the probation officer, the district attorney,
29 or the court, on its own motion, may file a motion to modify the terms and conditions

1 of the probation or file a motion to revoke the defendant's probation. After a
 2 contradictory hearing on the motion, the court may do either of the following:

3 (a) Modify the conditions of probation, including ordering the defendant to
 4 participate in a drug division probation program pursuant to R.S. 13:5301 et seq.

5 (b) Revoke the defendant's probation and execute the sentence.

6 (2) A defendant placed on probation pursuant to the provisions of this Article
 7 shall be subject to the administrative sanctions provided for in Article 899.1 of this
 8 Code.

9 (3) If the defendant's probation is revoked, the defendant shall be required
 10 to serve the suspended sentence and shall receive credit for time served in any
 11 correctional facility for commission of the crime as otherwise allowable by law.

12 E. The provisions of Article 893(A) and (E)(1)(b) of this Code which
 13 prohibit the court from suspending or deferring the imposition of sentences for
 14 violations of the Uniform Controlled Dangerous Substances Law or for violations
 15 of R.S. 40:966(A), 967(A), 968(A), 969(A), or 970(A) shall not apply to defendants
 16 who otherwise meet the eligibility criteria for substance abuse probation programs
 17 as authorized by this Article.

18 F. The provisions of this Article shall not be construed to limit the authority
 19 of the court to defer a sentence for a violation of the Uniform Controlled Dangerous
 20 Substances Law as otherwise provided by law.

21 Art. 903.3. Substance abuse treatment program; cost

22 A. A defendant who is placed under the supervision of the substance abuse
 23 probation program shall pay the cost of the treatment program to which he is
 24 assigned and the cost of any additional supervision that may be required to the extent
 25 of his financial resources as determined by the substance abuse treatment program.

26 B. If the defendant does not have the financial resources to pay all the related
 27 costs of the probation program, the court may do either of the following:

28 (1) To the extent practicable, arrange for the defendant to be assigned to a
 29 treatment program funded by the state or federal government.

1 (2) With the recommendation of the treatment program, order the defendant
 2 to perform supervised work for the benefit of the community in lieu of paying all or
 3 a part of the costs related to his treatment and supervision. The work shall be
 4 performed for and under the supervising authority of a parish, municipality, or other
 5 political subdivision or agency of the state or a charitable organization that renders
 6 service to the community or its residents.

7 Section 2. Subpart 7 of Part II of Chapter 5 of Title 15 of the Louisiana Revised
 8 Statutes of 1950, comprised of R.S. 15:574.61 and 574.62, is hereby enacted to read as
 9 follows:

10 (7) SUBSTANCE ABUSE CONDITIONAL RELEASE

11 §574.61. Short title

12 This Subpart may be referred to and may be cited as the "Substance Abuse
 13 Conditional Release Act".

14 §574.62. Substance abuse conditional release

15 A. The secretary of the Department of Public Safety and Corrections is
 16 hereby authorized to release an offender sentenced to the custody of the department
 17 to intense parole supervision as provided in R.S. 15:574.4.4, if the offender meets
 18 certain requirements provided for in this Section and meets the requirements of any
 19 rules or regulations adopted by the secretary in accordance with the provisions of this
 20 Section.

21 B. An offender shall be eligible for conditional release pursuant to the
 22 provisions of this Section if all of the following conditions are met:

23 (1) The offender is willing to participate in the program.

24 (2) The offender has been convicted and is serving a sentence for a first or
 25 second offense possession or possession with the intent to distribute a controlled
 26 dangerous substance as defined by Part X of Chapter 4 of Title 40 of the Louisiana
 27 Revised Statutes of 1950.

28 (3) The offender has no convictions for a crime of violence as defined by
 29 R.S. 14:2 or a sex offense as defined by R.S. 15:541.

1 (4) The offender has not previously been released pursuant to the provisions
 2 of this Section.

3 (5) The offender has served at least two years in actual physical custody and
 4 is within one year of his projected release date.

5 C.(1) If the offender meets the criteria set forth in Subsection B of this
 6 Section, the offender shall be required to undergo an addiction disorder assessment
 7 and a mental health screening which shall be reviewed by the secretary of the
 8 department and considered by the secretary in determining the offender's suitability
 9 to participate in the treatment program. In determining suitability the secretary shall
 10 consider all of the following:

11 (a) Whether the offender's release may pose a danger to the general public
 12 or to an individual. In making this determination, the secretary shall consider all of
 13 the following:

14 (i) The offender's involvement in any gang activity during the offender's
 15 term of imprisonment.

16 (ii) The offender's custody classification as defined by the department.

17 (iii) The risk of violence associated with the offender's release.

18 (iv) The availability of sufficient supervision resources as determined by the
 19 secretary.

20 (b) Whether the offender has a suitable release plan. In evaluating the
 21 release plan, the secretary shall consider all of the following:

22 (i) Plans for aftercare.

23 (ii) Availability of community-based chemical dependency treatment.

24 (iii) Opportunities for gainful employment.

25 (iv) An approved residence plan.

26 (2) If the offender meets the criteria set forth in Subsection B of this Section
 27 and the secretary determines that the offender is suitable to participate in the
 28 program, the offender shall be required to participate in an addiction disorder
 29 treatment program within a facility approved by the department that meets the
 30 standards adopted by the secretary or such other program as indicated by the

1 department's risk and needs assessment tool. The program shall last for not less than
2 sixty days nor more than one hundred twenty days.

3 D. The secretary may remove any offender from the program for any of the
4 following:

5 (1) The offender committed a violation of the rules of the program.

6 (2) The offender committed a criminal offense or violated the department
7 disciplinary rules while in the program.

8 (3) The offender presents a risk to himself or others.

9 E. If the offender fails to successfully complete the program or is removed
10 from the program pursuant to Subsection D of this Section, he shall be required to
11 serve the remainder of his sentence as originally imposed. The offender shall not
12 lose any good time earned during his participation in the program.

13 F. If the offender successfully completes the program, the secretary may
14 release the offender to intense parole supervision as provided in R.S. 15:574.4.4 and
15 subject the offender to certain additional conditions imposed by the secretary
16 pursuant to the provisions of this Section.

17 G. Prior to the offender's release pursuant to the provisions of this Section,
18 the offender shall sign a written agreement to comply with all requirements of R.S.
19 15:574.4.4, the requirements of this Section, and any other conditions imposed by
20 the secretary pursuant to the provisions of this Section.

21 H.(1) As a condition of the offender's release pursuant to the provisions of
22 this Section, the secretary shall require the offender to submit to random drug and
23 alcohol testing and electronic monitoring as determined to be necessary by the
24 secretary.

25 (2) If determined by the secretary to be necessary, the secretary may require
26 the offender to participate in further substance abuse treatment while on release
27 pursuant to the provisions of this Section. The offender shall be required to bear the
28 cost of such treatment.

29 (3) The secretary may impose any other conditions deemed necessary to
30 accomplish the goals of this Section.

