

Regular Session, 2012

HOUSE BILL NO. 845

BY REPRESENTATIVE LEGER

CRIMINAL/PROCEDURE: Provides with respect to pretrial service programs

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Article 335 and R.S. 44:3(A) and to
3 enact Title XXXIV of the Code of Criminal Procedure, to be comprised of Code of
4 Criminal Procedure Article 961, relative to criminal procedure; to provide for pretrial
5 services programs; to provide that pretrial services programs can be used by the court
6 as a condition of release; to provide that information obtained about a defendant
7 from a pretrial services program shall be deemed confidential and not subject to
8 disclosure; to provide restrictions on the admissibility of pretrial services program
9 information; to provide an exception to the public records law for pretrial service
10 records; to provide for exceptions; to provide for definitions; to provide that pretrial
11 services information or employees of pretrial services programs are not subject to
12 subpoena; and to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. Code of Criminal Procedure Article 335 is hereby amended and reenacted
15 and Title XXXIV of the Code of Criminal Procedure, comprised of Code of Criminal
16 Procedure Article 961, is hereby enacted to read as follows:

17 Art. 335. Other conditions related to the appearance of defendant

18 The court may impose any additional condition of release that is reasonably
19 related to assuring the appearance of the defendant before the court including being
20 placed under the supervision of a pretrial services program. Violation of such

1 condition by the defendant shall be considered as a constructive contempt of court,
2 and shall be grounds for revocation of bail, but does not give rise to a forfeiture.

3 * * *

4 TITLE XXXIV. PRETRIAL SERVICE PROGRAMS

5 Art 961. Pretrial services; confidential information, inadmissibility

6 A.(1) Information supplied by a defendant during the pretrial services
7 process including but not limited to information given to a representative of the
8 pretrial services agency during the defendant's interview or subsequent contacts and
9 information obtained by the pretrial services program regarding the defendant shall
10 be deemed confidential. The written pretrial services report shall be given only to
11 the court, the attorney for the accused, and the attorney for the state and shall not be
12 made part of the court record. Except as otherwise provided in Paragraph (3) of this
13 Subsection, pretrial services information including information in the report shall be
14 used only for judicial proceedings concerning release or detention, setting conditions
15 of release, or reviewing compliance with conditions of release in connection with
16 possible modification or sentencing.

17 (2) Pretrial services information shall not be admissible on the issue of guilt
18 in a criminal proceeding unless such proceeding is a prosecution for perjury. Pretrial
19 services information may be used for purposes of impeachment.

20 (3) The pretrial services function is an investigative function pertaining to
21 pending or anticipated criminal litigation and, as such, pretrial services records and
22 information are protected from disclosure under R.S. 44:3(A)(1).

23 B. Pretrial services information and pretrial office employees shall not be
24 subject to subpoena or disclosure without the written consent of the defendant with
25 the advice of counsel except in any of the following circumstances:

26 (1) To law enforcement officials upon request if the defendant fails to appear
27 in court when required or commits a crime while on pretrial release.

28 (2) To law enforcement officials or other entity ordered by the court to
29 provide pretrial supervision or services.

1 (3) To any entity contracting with the pretrial services office for purposes of
2 contacting the defendant regarding court appearances.

3 (4) To any person or entity conducting an evaluation of the pretrial services
4 program or other related research project pursuant to a written research agreement.

5 B.(1) "Pretrial services information" includes any information whether
6 recorded or not, that is obtained or developed by a pretrial services employee in the
7 course of performing a pretrial services investigation, preparing the pretrial services
8 report, performing any post-release or post-detention investigation, contacting the
9 defendant regarding court appearances, or providing any pretrial supervision of a
10 defendant. The term does not include any information appearing in the public
11 records of the court.

12 (2) "Pretrial services office" is an office or organization which provides
13 pretrial services as defined in this Article.

14 C. Any disclosure of pretrial services information permitted under the
15 provision of this Article shall be limited to the minimum information necessary to
16 carry out the purpose of the disclosure. The recipient of any pretrial services
17 information shall utilize procedures to protect the security and confidentiality of all
18 personally identifiable information.

19 Section 2. R.S. 44:3(A) is hereby amended and reenacted to read as follows:

20 §3. Records of prosecutive, investigative, and law enforcement agencies, and
21 communications districts

22 A. Nothing in this Chapter shall be construed to require disclosures of
23 records, or the information contained therein, held by the offices of the attorney
24 general, district attorneys, sheriffs, police departments, Department of Public Safety
25 and Corrections, marshals, investigators, public health investigators, correctional
26 agencies, communications districts, intelligence agencies, pretrial service programs,
27 or publicly owned water districts of the state, which records are:

28 * * *

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)]

Leger

HB No. 845

Abstract: Provides that pretrial service program information is confidential and not subject to disclosure.

Present law provides that a court may impose any additional condition of release that is reasonably related to assuring the appearance of the defendant before the court.

Proposed law retains present law and adds being placed under the supervision of a pretrial services program as a condition of release.

Proposed law provides that information supplied by a defendant during the pretrial services process including but not limited to information given to a representative of the pretrial services agency during the defendant's interview or subsequent contacts and information obtained by the pretrial services program regarding the defendant shall be deemed confidential.

Proposed law provides that pretrial services information and pretrial office employees shall not be subject to subpoena or disclosure without the written consent of the defendant with the advice of counsel except in any of the following circumstances:

- (1) To law enforcement officials, upon request, if the defendant fails to appear in court when required or commits a crime while on pretrial release.
- (2) To law enforcement officials or other entity ordered by the court, to provide pretrial supervision or services.
- (3) To any entity contracting with the pretrial services office for purposes of contacting the defendant regarding court appearances.
- (4) To any person or entity conducting an evaluation of the pretrial services program or other related research project pursuant to a written research agreement.

Present law provides that certain records held by the following offices or agencies are not subject to disclosure: the attorney general, district attorneys, sheriffs, police departments, Department of Public Safety and Corrections, marshals, investigators, public health investigators, correctional agencies, communications districts, intelligence agencies, or publicly-owned water districts of the state.

Proposed law retains present law and adds pretrial service programs to the list of agencies or offices holding confidential records.

(Amends C.Cr.P. Art. 335 and R.S. 44:3(A); Adds C.Cr.P. Art. 961)