
DIGEST

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Lopinto

HB No. 442

Abstract: Provides relative to sentencing and treatment for certain offenders convicted of certain controlled dangerous substances violations.

Proposed law authorizes the secretary of DPS&C to establish a substance abuse probation program to provide substance abuse counseling and treatment for defendants sentenced to substance abuse probation.

Proposed law authorizes the secretary of DPS&C to enter into cooperative endeavors or contracts with DHH, training facilities, and service providers to provide for substance abuse treatment and counseling for defendants participating in the program.

Proposed law provides that the program shall not apply to any defendant who has been convicted of a crime of violence or any sex offense, or any defendant who has participated in or declined to participate in a drug division probation program as authorized by present law.

Proposed law further provides that in order to be eligible for the substance abuse probation program, the defendant shall be charged with one of the following offenses:

- (1) Felony possession of a controlled dangerous substance.
- (2) Possession with intent to distribute a controlled dangerous substance where the offense involves less than 28 grams of the controlled dangerous substance.
- (3) Possession with intent to distribute marijuana or synthetic cannabinoids where the offense involves less than one pound of marijuana or synthetic cannabinoids.

Proposed law provides that a court shall suspend a sentence and order an eligible defendant to participate in a substance abuse probation program provided by the DPS&C if the district attorney agrees that the defendant should be sentenced to a substance abuse probation program and the court finds all of the following:

- (1) The court has reason to believe that the defendant suffers from an addiction to a controlled dangerous substance.
- (2) The defendant is likely to respond to the substance abuse probation program.

- (3) The available substance abuse probation program is appropriate to meet the needs of the defendant.
- (4) The defendant does not pose a threat to the community and it is in the best interest of justice to provide the defendant with treatment as opposed to incarceration or other sanctions.

Proposed law provides that if an offender is eligible for participation in the program, the court shall order DPS&C to assign an authorized evaluator to prepare a suitability report, which shall delineate the nature and degree of the treatment necessary to address the individual defendant's drug or alcohol dependency or addiction, the reasonable availability of such treatment, and the defendant's appropriateness for the program. The district attorney and defendant's attorney shall have an opportunity to provide relevant information to the evaluator to be included in the report.

Proposed law provides that if the court fails to make all the determinations required by proposed law or if the district attorney does not agree that the defendant should be sentenced to substance abuse probation, the court shall impose the appropriate sentence provided for by present law.

Proposed law provides that these provisions of proposed law shall become null, void, and have no effect on August 1, 2016, and thereafter.

Proposed law provides for the substance abuse conditional release program and authorizes the secretary of DPS&C to release an offender sentenced to the custody of the department to intense parole supervision if the offender meets certain requirements.

Proposed law provides that an offender shall be eligible for conditional release if all of the following conditions are met:

- (1) The offender is willing to participate in the program.
- (2) The offender has been convicted and is serving a sentence for a first or second offense possession or possession with the intent to distribute a controlled dangerous substance.
- (3) The offender has no convictions for a crime of violence or a sex offense.
- (4) The offender has not previously been released pursuant to the substance abuse conditional release program.
- (5) The offender has served at least two years in actual physical custody and is within one year of his projected release date.

Proposed law further provides that the offender shall be required to undergo an addiction disorder assessment and a mental health screening which shall be reviewed by the secretary of the department and considered by the secretary in determining the offender's suitability to participate in the treatment program.

Proposed law provides that DPS&C shall determine the suitability of the offender to participate in the program and shall consider whether the offender's release poses a danger to the general public or to an individual and whether the offender has a suitable release plan.

Proposed law provides that a defendant's treatment program shall last for not less than 60 days nor more than 120 days.

Proposed law provides that an offender may be removed from the program if he violates rules of the program, commits a criminal offense while in the program, or presents a risk to himself or others.

Proposed law provides that if the offender is removed from or fails to successfully complete the program, he shall be required to serve the remainder of his sentence as originally imposed and shall not lose any good time earned while participating in the program.

Proposed law provides that upon successful completion of the program the offender may be released as if released on parole and shall be subject to the provisions of present law relative to parole.

Present law authorizes the establishment of a drug division probation program in any district court and provides eligibility requirements for participation in the program.

Proposed law repeals the provisions of the present law eligibility requirements which provide that the defendant cannot have been convicted of aggravated burglary or simple burglary of an inhabited dwelling or cannot be charged with multiple counts of distribution, possession with intent to distribute, production, manufacture, or cultivation of controlled dangerous substances.

Proposed law adds that possession with intent to distribute a CDS is an offense which may be considered for drug division probation programs.

(Amends R.S. 13:5304(B)(1)(a); Adds C.Cr.P. Arts. 903-903.3 and R.S. 15:574.61 and 574.62; Repeals R.S. 13:5304(B) (10)(d) and (f))

Summary of Amendments Adopted by House

House Floor Amendments to the engrossed bill.

1. Added that a charge of possession with intent to distribute a CDS is an eligible offense for drug court consideration.
2. Added language requiring the consent of the district attorney for sentencing an offender to substance abuse probation.
3. Provided that the proposed provisions regarding the substance abuse probation shall become null, void, and have no effect on August 1, 2016, and thereafter.

