

First Extraordinary Session, 2005

SENATE BILL NO. 66

BY SENATORS CHAISSON, AMEDEE AND MURRAY

CRIMINAL PROCEDURE. Provide for the operation of the criminal justice system during an emergency or disaster. (gov sig)

AN ACT

To enact Title XXXIII of the Louisiana Code of Criminal Procedure, to be comprised of Louisiana Code of Criminal Procedure Articles 941 through 956, relative to criminal procedure; to provide for emergency sessions of criminal court; to provide for definitions; to provide for applicability; to provide for criminal jurisdiction and venue in emergency sessions of court; to provide for venue for habeas corpus proceedings in certain circumstances; to provide for criteria for emergency sessions of court; to provide for the power and authority of the court conducting emergency sessions; to provide for legislative findings; to provide for powers, duties, and authority of the sheriff operating in emergency sessions of court; to provide for the powers, duties, and authority of the clerk of court of an affected court conducting emergency sessions; to provide for the authority of the indigent defender board of the affected court conducting emergency sessions of court; to provide with respect to the summoning of a criminal jury pool; to provide for the suspension of certain time periods, limitations, and delays in the affected court; to provide for exceptions; to provide for appeals and the application of supervisory writs from a judgment or ruling of an affected court conducting emergency sessions of court; to provide for

1 preemption of conflicting provisions of law; to provide for the court costs, fees, and
2 fines assessed or taxed and collected by the affected court conducting emergency
3 sessions of court; and to provide for related matters.

4 Be it enacted by the Legislature of Louisiana:

5 Section 1. Title XXXIII of the Louisiana Code of Criminal Procedure, comprised
6 of Louisiana Code of Criminal Procedure Articles 941 through 956, is hereby enacted to read
7 as follows:

8 **TITLE XXXIII. EMERGENCY OR DISASTER PROVISIONS**

9 **Art. 941. Legislative findings**

10 **The legislature hereby finds and declares the following:**

11 **(1) The state of Louisiana could suffer future catastrophic damage**
12 **through the occurrence of emergencies and disasters of unprecedented size and**
13 **destructiveness resulting from terrorist events, enemy attack, sabotage, or other**
14 **hostile action, or from fire, flood, earthquake, or other natural or manmade**
15 **causes resulting in the displacement of residents or the destruction of or severe**
16 **damage to courthouses and other facilities supporting the criminal justice**
17 **system.**

18 **(2) The magnitude of such catastrophic events may cause a disruption**
19 **of the criminal justice system in any parish directly impacted by the emergency**
20 **or disaster.**

21 **(3) The response to such an emergency or disaster should ensure the**
22 **continued effective operation and integrity of the state's criminal justice system**
23 **while minimizing adverse effects on the interests of the defendant and the state.**

24 **(4) Considering these factors, the Louisiana Legislature, exercising its**
25 **authority vested in Article III and Article VI, Section 3 of the Louisiana**
26 **Constitution, and recognizing the necessity of creating a classification of**
27 **parishes based upon the need to conduct emergency sessions of court, does**
28 **hereby enact the provisions of this Title to provide for the effective operation**
29 **and integrity of the criminal justice system during times of emergency or**

1 **disaster.**

2 **Art. 942. Definitions**

3 **As used in this Title:**

4 **(1) "Affected court" means any district, parish, city, municipal, juvenile,**
5 **or family court having jurisdiction over criminal prosecutions and proceedings**
6 **for which the Louisiana Supreme Court has made a determination that the**
7 **court shall conduct emergency sessions outside its parish or territorial**
8 **jurisdiction as provided for by the provisions of this Title.**

9 **(2) "Emergency sessions" means any criminal court proceeding**
10 **conducted by an affected court as authorized by the provisions of this Title and**
11 **by order of the Louisiana Supreme Court.**

12 **(3) "Host jurisdiction" means the location or locations in which the**
13 **Louisiana Supreme Court has ordered the affected court to conduct emergency**
14 **sessions.**

15 **Art. 943. Preemption of conflicting provisions**

16 **The provisions of this Title shall preempt and supersede but not repeal**
17 **any conflicting provisions of this code or any other provision of law.**

18 **Art. 944. Emergency sessions of court; criteria**

19 **A. When the supreme court makes the determination that an appellate,**
20 **district, parish, traffic, city, municipal, juvenile, justice of the peace, or family**
21 **court having jurisdiction over criminal prosecutions and proceedings shall**
22 **conduct proceedings outside its parish or territorial jurisdiction, the supreme**
23 **court may order emergency sessions of court at a location or locations which are**
24 **both feasible and practicable outside the parish or territorial jurisdiction of that**
25 **court. This determination shall be based upon emergency or disaster**
26 **circumstances, including but not limited to the lack of a readily available**
27 **alternative location to conduct court within the parish, terrorist events, enemy**
28 **attack, sabotage, or other hostile action, or from fire, flood, earthquake, or**
29 **other natural or manmade causes resulting in the displacement of thousands of**

1 residents and the destruction of or severe damage to courthouses and other
2 facilities supporting the criminal justice system. In making this determination,
3 the supreme court shall make a reasonable effort to consult with the chief judge
4 and the district attorney of the affected court.

5 B. The supreme court order requiring emergency sessions of court shall
6 name the affected court, the location or locations in which the emergency
7 sessions of that court shall be conducted, and the date on which emergency
8 sessions shall commence.

9 Art. 945. Venue; affected court; emergency sessions; habeas corpus

10 A. Venue for criminal prosecutions in an affected court shall be changed
11 by operation of law to the parish where the affected court is ordered to conduct
12 criminal sessions for the duration of the emergency sessions. Criminal
13 proceedings may take place in a parish other than the parish where the crime
14 was committed if the supreme court has ordered emergency sessions of that
15 court in another parish pursuant to Article 944 or as otherwise provided by law.

16 B. Venue for a writ of habeas corpus for an individual whose physical
17 custody has been transferred as a result of the circumstances which are the
18 basis for the emergency session shall be in the parish of East Baton Rouge. If
19 the court in East Baton Rouge Parish is also an affected court, venue shall be in
20 the host jurisdiction which has been established by supreme court order for the
21 affected court in East Baton Rouge Parish.

22 Art. 946. Jurisdiction of affected court conducting emergency sessions

23 A. The affected court conducting emergency sessions outside of its
24 parish or territorial jurisdiction pursuant to Article 944 shall retain jurisdiction
25 over all criminal proceedings and prosecutions that would otherwise be
26 conducted by the affected court.

27 B. All court proceedings, hearings, preliminary matters, pretrial
28 hearings, and trials may be conducted in the emergency sessions of the affected
29 court.

1 C. The affected court conducting emergency sessions may retain
2 jurisdiction to complete all matters in progress in the host jurisdiction even
3 though the order rendered pursuant to Article 944 has been withdrawn,
4 canceled, or rescinded.

5 Art. 947. Affected court conducting emergency sessions; authority and powers

6 An affected court ordered to conduct emergency sessions outside of its
7 parish or territorial jurisdiction pursuant to Article 944 shall retain all
8 authority and powers previously exercised by that court in its parish or
9 territorial jurisdiction.

10 Art. 948. Emergency sessions; length; rescision; continuation; extensions

11 A. Emergency sessions of court shall continue until the supreme court
12 withdraws, cancels, or rescinds the order authorizing the emergency sessions.

13 The supreme court shall give notice at least ten days prior to the conclusion of
14 the emergency sessions to the chief judge, the district attorney, and the clerk of
15 court of the affected court.

16 B. The supreme court may withdraw, cancel, or rescind an order
17 authorizing emergency sessions of court at any time that it determines that the
18 conditions which warranted the issuance of the order no longer exist.

19 Art. 949. Court costs and fees

20 All court costs, fees, and fines assessed or taxed and collected previously
21 by the affected court prior to the supreme court order authorizing the
22 conducting of emergency sessions shall be assessed, taxed, collected, distributed,
23 and retained in the same amounts by and to the same entities and in the same
24 manner by the affected court conducting the emergency session in the host
25 jurisdiction.

26 Art. 950. Authority of district attorney in emergency sessions of court

27 A. The district attorney or prosecuting attorney, where applicable, of
28 the affected court conducting emergency sessions of court outside of its parish
29 or territorial jurisdiction pursuant to Article 944 shall have entire charge and

1 control of every criminal prosecution and authority in the host jurisdiction that
2 he would otherwise have exercised in the affected court.

3 B. The provisions of this Article are included in the other duties of the
4 district attorney provided by law as authorized by Article V, Section 26(B) of
5 the Louisiana Constitution.

6 Art. 951. Sheriff; law enforcement officer

7 A. The sheriff and any other law enforcement agency or officer or court
8 official having jurisdiction in the affected court shall have all necessary
9 authority and powers to operate within the host jurisdiction in which the
10 affected court is conducting emergency sessions pursuant to Article 944,
11 including the collection of fines, fees, costs, and bonds. This authority shall be
12 limited to those matters being conducted in the emergency session of court.

13 B. The provisions of this Article shall constitute an exception to
14 territorial jurisdiction of the sheriff in the same manner as Articles 204 and 213.

15 Art. 952. Clerk of affected court

16 A. During the period in which the supreme court has ordered emergency
17 sessions of court pursuant to Article 944, the clerk of court of the affected court
18 is authorized to establish an ancillary office in the host jurisdiction in which the
19 emergency sessions of the court are held.

20 B. The clerk of court of the affected court shall continue to exercise all
21 necessary powers, duties, and authority of his office in order to maintain the
22 effective operation and integrity of the criminal justice system of the affected
23 court in the host jurisdiction, including but not limited to the assessment of fees
24 to which the clerk is entitled. This authority shall be limited to all matters and
25 proceedings within the jurisdiction of the affected court.

26 C. If the affected court is located in Orleans Parish, the provisions of
27 this Article shall apply to the recorder of mortgages and register of conveyances
28 for the parish of Orleans.

29 D. The provisions of this Article are included in the other duties of the

1 clerk provided by law as authorized by Article V, Section 28(A) of the Louisiana
2 Constitution.

3 Art. 953. Authority of indigent defender board in emergency sessions of court

4 The indigent defender board of the affected court conducting emergency
5 sessions of court outside of its parish or territorial jurisdiction pursuant to
6 Article 944 shall retain its authority for the appointment of attorneys residing
7 in either the parish or territorial jurisdiction of the affected court or in the host
8 jurisdiction to represent indigent defendants in the host jurisdiction that the
9 board would otherwise have exercised in the affected court.

10 Art. 954. Jury pool; emergency sessions

11 A. In any criminal trial conducted pursuant to this Title, with the
12 consent of the state and the defendant, the court may summon jurors from the
13 host jurisdiction.

14 B. The summoning of jurors shall be conducted by the clerk of the host
15 jurisdiction. The cost of summoning jurors and all costs regarding jurors shall
16 be paid by the affected court.

17 Art. 955. Suspension of time limitations in affected courts; ninety days;
18 recision; extensions; exceptions

19 A. The time periods, limitations, and delays established by the
20 provisions of the Louisiana Code of Criminal Procedure, Louisiana Children's
21 Code Title 15, and Chapter 26 of Title 40 of the Louisiana Revised Statutes of
22 1950 shall be suspended in the jurisdiction of the affected court for a period of
23 ninety days following the issuance of an order authorizing emergency sessions
24 of court as provided for in Article 944.

25 B. The ninety-day suspension provided for by this Article shall
26 commence to run from the date the supreme court issued its order authorizing
27 the emergency sessions of court or from the date specified therein, whichever
28 is earlier.

29 C. The ninety-day suspension may be extended upon a determination by

1 **the supreme court that the continuation of the suspension is necessary.**

2 **D. The supreme court may rescind the suspension at any time and for**
3 **any jurisdiction within the state upon a determination by the supreme court**
4 **that the suspension is no longer necessary.**

5 **E. The provisions of this Article shall not apply to Code of Criminal**
6 **Procedure Articles 230.1 and 230.2.**

7 **Art. 956. Appeals; application for supervisory writs**

8 **An application for a supervisory writ or an appeal from a judgment or**
9 **ruling of an affected court ordered to conduct emergency sessions shall be taken**
10 **to the appropriate appellate court which exercised proper appellate or**
11 **supervisory jurisdiction over the affected court prior to the issuance of the**
12 **supreme court order. If the appropriate appellate court is also an affected**
13 **court, an application for a supervisory writ or an appeal from a judgment or**
14 **ruling of an affected court shall be taken to the host jurisdiction which has been**
15 **established by supreme court order for the affected appellate court.**

16 Section 2. The provisions of this Act shall have prospective application only.

17 Section 3. If any provision of this Act or the application thereof is held invalid, such
18 invalidity shall not affect other provisions or applications of this Act which can be given
19 effect without the invalid provisions or applications, and to this end the provisions of this
20 Act are hereby declared severable.

21 Section 4. This Act shall become effective upon signature by the governor or, if not
22 signed by the governor, upon expiration of the time for bills to become law without signature
23 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
24 vetoed by the governor and subsequently approved by the legislature, this Act shall become
25 effective on the day following such approval.

The original instrument was prepared by Tracy Sabina Sudduth. The following digest, which does not constitute a part of the legislative instrument, was prepared by Thomas L. Tyler.

DIGEST

Chaisson (SB 66)

Proposed law defines "affected court," "emergency sessions," and "host jurisdiction." (C.Cr.P. Art. 942)

Proposed law provides for the preemption of conflicting provisions of present law without the repeal of those provisions.

Proposed law provides for criteria for emergency sessions of court. (C.Cr.P. Art. 944)

Proposed law provides for venue for criminal proceedings. (C.Cr.P. Art. 945)

Proposed law provides that venue for a writ of habeas corpus for an individual whose physical custody has been transferred as a result of the circumstances which are the basis for the emergency session shall be in the parish of East Baton Rouge. (C.Cr.P. Art. 945)

Proposed law provides for the jurisdiction and powers of the affected court conducting emergency sessions. (C.Cr.P. Arts. 946 and 947)

Proposed law provides for the length of emergency sessions of court. (C.Cr.P. Art. 948)

Proposed law provides that all court costs, fees, and fines assessed or taxed and collected previously by the affected court prior to the supreme court order authorizing the conducting of emergency sessions shall be assessed, taxed, collected, distributed, and retained in the same amounts by and to the same entities and in the same manner by the affected court conducting the emergency session in the host jurisdiction. (C.Cr.P. Art. 949)

Proposed law provides for the authority of the district, sheriff, clerk of court, and indigent defender board in the affected court conducting emergency sessions. (C.Cr.P. Arts. 950, 951, 952, and 953)

Proposed law provides that in any criminal trial conducted in the emergency sessions of court with the consent of the state and the defendant, the court may summon jurors from the host jurisdiction.

Proposed law provides that the summoning of jurors shall be conducted by the clerk of the host jurisdiction. The cost of summoning jurors and all costs regarding jurors shall be paid by the affected court. (C.Cr.P. Art. 954)

Proposed law provides that the time periods, limitations, and delays established by the provisions of present law affecting the administration of criminal justice shall be suspended in the jurisdiction of the affected court for a period of 90 days following the issuance of an order authorizing emergency sessions of court and that this time period may be extended or rescinded by order of the supreme court. (C.Cr.P. Art. 955)

Proposed law provides for appeals and supervisory writs from decisions of an affected court conducting emergency sessions. (C.Cr.P. Art. 956)

(Adds C.Cr.P. Arts. 941-956)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill.

1. Adds traffic courts to the list of courts that may conduct emergency sessions during an emergency or disaster.
2. Requires that the supreme court also shall give notice at least ten days prior to the conclusion of the emergency session to the clerk of court.

Senate Floor Amendments to engrossed bill.

1. Adds appellate and justice of the peace courts to the list of courts that the supreme court can order to hold emergency sessions at locations outside their territorial jurisdiction.