

First Extraordinary Session, 2005

HOUSE BILL NO. 73 (DUPLICATE OF SENATE BILL NO. 66)

BY REPRESENTATIVE MARTINY AND SENATOR CHAISSON AND COAUTHORED  
BY REPRESENTATIVES LAFLEUR, TOWNSEND, CAZAYOUX, CRAVINS,  
GALLOT, HEATON, FAUCHEUX, AND GARY SMITH

1 AN ACT

2 To enact Title XXXIII of the Code of Criminal Procedure, to be comprised of Code of  
3 Criminal Procedure Articles 941 through 956, relative to criminal procedure; to  
4 provide for emergency sessions of criminal court; to provide for definitions; to  
5 provide for applicability; to provide for criminal jurisdiction and venue in emergency  
6 sessions of court; to provide for venue for habeas corpus proceedings in certain  
7 circumstances; to provide for criteria for emergency sessions of court; to provide for  
8 the power and authority of the court conducting emergency sessions; to provide for  
9 legislative findings; to provide for powers, duties, and authority of the sheriff  
10 operating in emergency sessions of court; to provide for the powers, duties, and  
11 authority of the clerk of court of an affected court conducting emergency sessions;  
12 to provide for the authority of the district attorney and the indigent defender board  
13 of the affected court conducting emergency sessions of court; to provide with respect  
14 to the summoning of a criminal jury pool; to provide for the suspension of certain  
15 time periods, limitations, and delays in the affected court; to provide for exceptions;  
16 to provide for appeals and the application of supervisory writs from a judgment or  
17 ruling of an affected court conducting emergency sessions of court; to provide for  
18 preemption of conflicting provisions of law; to provide for the court costs, fees, and  
19 fines assessed or taxed and collected by the affected court conducting emergency  
20 sessions of court; and to provide for related matters.

1 Be it enacted by the Legislature of Louisiana:

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

4 TITLE XXXIII. EMERGENCY OR DISASTER PROVISIONS

5 Art. 941. Legislative findings

6 The legislature hereby finds and declares the following:

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

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

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

18 (4) Considering these factors, the Legislature of Louisiana, exercising its  
19 authority vested in Article III and Article VI, Section 3 of the Constitution of  
20 Louisiana, and recognizing the necessity of creating a classification of parishes based  
21 upon the need to conduct emergency sessions of court, does hereby enact the  
22 provisions of this Title to provide for the effective operation and integrity of the  
23 criminal justice system during times of emergency or disaster.

24 Art. 942. Definitions

25 As used in this Title:

26 (1) "Affected court" means any appellate, district, parish, city, municipal,  
27 traffic, juvenile, justice of the peace, or family court having jurisdiction over  
28 criminal prosecutions and proceedings for which the Louisiana Supreme Court has  
29 made a determination that the court shall conduct emergency sessions outside its  
30 parish or territorial jurisdiction as provided for by the provisions of this Title.

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

4                   (3) "Host jurisdiction" means the location or locations in which the  
 5                   Louisiana Supreme Court has ordered the affected court to conduct emergency  
 6                   sessions.

7                   Art. 943. Preemption of conflicting provisions

8                   The provisions of this Title shall preempt and supersede but not repeal any  
 9                   conflicting provisions of this Code or any other provision of law.

10                  Art. 944. Emergency sessions of court; criteria

11                  A. When the supreme court makes the determination that an appellate,  
 12                  district, parish, city, municipal, juvenile, traffic, justice of the peace, or family court  
 13                  having jurisdiction over criminal prosecutions and proceedings shall conduct  
 14                  proceedings outside its parish or territorial jurisdiction, the supreme court may order  
 15                  emergency sessions of court at a location or locations which are both feasible and  
 16                  practicable outside the parish or territorial jurisdiction of that court. This  
 17                  determination shall be based upon emergency or disaster circumstances, including  
 18                  but not limited to the lack of a readily available alternative location to conduct court  
 19                  within the parish, terrorist events, enemy attack, sabotage, or other hostile action, or  
 20                  from fire, flood, earthquake, or other natural or manmade causes resulting in the  
 21                  displacement of thousands of residents and the destruction of or severe damage to  
 22                  courthouses and other facilities supporting the criminal justice system. In making  
 23                  this determination, the supreme court shall make a reasonable effort to consult with  
 24                  the chief judge, the district attorney, the chief indigent defender, and the clerk of the  
 25                  affected court.

26                  B. The supreme court order requiring emergency sessions of court shall  
 27                  name the affected court, the location or locations in which the emergency sessions  
 28                  of that court shall be conducted, and the date on which emergency sessions shall  
 29                  commence.

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

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

7           B. Venue for a writ of habeas corpus for an individual whose physical  
 8           custody has been transferred as a result of the circumstances which are the basis for  
 9           the emergency session shall be in the parish of East Baton Rouge. If the court in  
 10          East Baton Rouge Parish is also an affected court, venue shall be in the host  
 11          jurisdiction which has been established by supreme court order for the affected court  
 12          in East Baton Rouge Parish.

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

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

18          B. All court proceedings, grand jury proceedings, hearings, preliminary  
 19          matters, pretrial hearings, and trials may be conducted in the emergency sessions of  
 20          the affected court.

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

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

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

28          Art. 948. Emergency sessions; length; rescission; continuation; extensions

29          A. Emergency sessions of court shall continue until the supreme court  
 30          withdraws, cancels, or rescinds the order authorizing the emergency sessions. The

1 supreme court shall give notice at least ten days prior to the conclusion of the  
2 emergency session to the chief judge, the district attorney, the chief indigent  
3 defender, and the clerk of the affected court.

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

7 Art. 949. Court costs and fees

8 All court costs, fees, and fines assessed or taxed and collected previously by  
9 the affected court prior to the supreme court order authorizing the conducting of  
10 emergency sessions shall be assessed, taxed, collected, distributed, and retained in  
11 the same amounts by and to the same entities and in the same manner by the affected  
12 court conducting the emergency session in the host jurisdiction.

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

14 A. The district attorney or prosecuting attorney, where applicable, of the  
15 affected court conducting emergency sessions of court outside of its parish or  
16 territorial jurisdiction pursuant to Article 944 shall have entire charge and control of  
17 every criminal prosecution and authority in the host jurisdiction that he would  
18 otherwise have exercised in the affected court.

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

22 Art. 951. Sheriff; law enforcement officer

23 A. The sheriff and any other law enforcement agency or officer or court  
24 official having jurisdiction in the affected court shall have all necessary authority and  
25 powers to operate within the host jurisdiction in which the affected court is  
26 conducting emergency sessions pursuant to Article 944, including the collection of  
27 finances, fees, costs, and bonds. This authority shall be limited to those matters being  
28 conducted in the emergency session of court.

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

1           Art. 952. Clerk of affected court

2                   A. During the period in which the supreme court has ordered emergency  
 3                   sessions of court pursuant to Article 944, the clerk of court of the affected court is  
 4                   authorized to establish an ancillary office in the host jurisdiction in which the  
 5                   emergency sessions of the court are held.

6                   B. The clerk of court of the affected court shall continue to exercise all  
 7                   necessary powers, duties, and authority of his office in order to maintain the effective  
 8                   operation and integrity of the criminal justice system of the affected court in the host  
 9                   jurisdiction, including but not limited to the assessment of fees to which the clerk is  
 10                  entitled. This authority shall be limited to all matters and proceedings within the  
 11                  jurisdiction of the affected court.

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

15                  D. The provisions of this Article are included in the other duties of the clerk  
 16                  provided by law as authorized by Article V, Section 28(A) of the Constitution of  
 17                  Louisiana.

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

19                   The indigent defender board of the affected court conducting emergency  
 20                   sessions of court outside of its parish or territorial jurisdiction pursuant to Article 944  
 21                   shall retain its authority for the appointment of attorneys residing in either the parish  
 22                   or territorial jurisdiction of the affected court or in the host jurisdiction to represent  
 23                   indigent defendants in the host jurisdiction that the board would otherwise have  
 24                   exercised in the affected court.

1           Art. 954. Jury pool; emergency sessions

2                   A. Upon motion by the district attorney and after a contradictory hearing, the  
3 court may summon jurors from the host jurisdiction. The district attorney must show  
4 that the interests of justice are served by the approval of such motion.

5                   B. The summoning of jurors shall be conducted by the clerk of the host  
6 jurisdiction. The cost of summoning jurors and all costs regarding jurors shall be  
7 paid by the affected court.

8           Art. 955. Suspension of time limitations in affected courts; ninety days; rescision;  
9 extensions; exceptions

10                   A. The time periods, limitations, and delays established by the provisions of  
11 the Code of Criminal Procedure, Children's Code Title 15, and Chapter 26 of Title  
12 40 of the Louisiana Revised Statutes of 1950 shall be suspended in the jurisdiction  
13 of the affected court for a period of ninety days following the issuance of an order  
14 authorizing emergency sessions of court as provided for in Article 944.

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

18                   C. The ninety-day suspension may be extended upon a determination by the  
19 supreme court that the continuation of the suspension is necessary.

20                   D. The supreme court may rescind the suspension at any time and for any  
21 jurisdiction within the state upon a determination by the supreme court that the  
22 suspension is no longer necessary.

23                   E. The provisions of this Article shall not apply to Code of Criminal  
24 Procedure Articles 230.1, 230.2, 351, 354, and 362.

25           Art. 956. Appeals; application for supervisory writs

26                   An application for a supervisory writ or an appeal from a judgment or ruling  
27 of an affected court ordered to conduct emergency sessions shall be taken to the  
28 appropriate appellate court which exercised proper appellate or supervisory  
29 jurisdiction over the affected court prior to the issuance of the supreme court order.  
30 If the appropriate appellate court is also an affected court, an application for a

1           supervisory writ or an appeal from a judgment or ruling of an affected court shall be  
 2           taken to the host jurisdiction which has been established by supreme court order for  
 3           the affected appellate court.

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

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

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

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 SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
 PRESIDENT OF THE SENATE

\_\_\_\_\_  
 GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_