

Regular Session, 2008

HOUSE BILL NO. 292

BY REPRESENTATIVES WHITE, BOBBY BADON, BALDONE, HENRY BURNS, GALLOT, GISCLAIR, ELBERT GUILLORY, HARDY, HARRISON, HAZEL, HENDERSON, HINES, LAFONTA, MARCHAND, NORTON, NOWLIN, PETERSON, RICHARDSON, RICHMOND, ROY, SIMON, GARY SMITH, JANE SMITH, ST. GERMAIN, TRAHAN, TUCKER, WADDELL, AND WILLIAMS

CRIMINAL/PROCEDURE: Provides for setting aside prosecution and dismissal of certain cases upon successful completion of drug court probation

1 AN ACT

2 To enact Code of Criminal Procedure Article 893(E)(3), relative to the drug court division
3 probation program; to provide for the dismissal of prosecutions upon successful
4 completion; to provide for exceptions; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. Code of Criminal Procedure Article 893(E)(3) is hereby enacted to read
7 as follows:

8 Art. 893. Suspension and deferral of sentence and probation in felony cases

9 * * *

10 E.

11 * * *

12 (3)(a) When a case is accepted into a drug court division probation program
13 pursuant to the provisions of R.S. 13:5304 and at the conclusion of the probationary
14 period the court finds that the defendant has successfully completed all conditions
15 of probation, the court with the concurrence of the district attorney may set aside the
16 conviction and dismiss prosecution, whether the defendant's sentence was suspended
17 under Paragraph A of this Article or deferred under Subparagraph (1) of this
18 Paragraph. The dismissal of prosecution shall have the same effect as an acquittal,
19 except that the conviction may be considered as a first offense and provide the basis
20 for subsequent prosecution of the party as a multiple offender, and shall be

1 considered as a first offense for purposes of any other law or laws relating to
2 cumulation of offenses.

3 (b) The court may extend the provisions of this Paragraph to any person who
4 has previously successfully completed a drug court program and satisfactorily
5 completed all other conditions of probation.

6 (c) Dismissal under this Paragraph shall have the same effect as an acquittal
7 for purposes of expungement under the provisions of R.S. 44:9 and may occur only
8 once with respect to any person.

9 * * *

10 Section 2. The provisions of this Act are deemed to be remedial and therefore shall
11 apply retroactively.

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)]

White

HB No. 292

Abstract: Provides that when a defendant has successfully completed all of the conditions of his probation set forth by a drug court probation program, his prosecution may be dismissed with the concurrence of the district attorney and have the effect of an acquittal, except in any subsequent prosecution of the defendant as a multiple defender as it relates to the laws of cumulation of offenses.

Present law provides that at the conclusion of a probationary period when the defendant has successfully completed the guidelines of his probation, the court may set the conviction aside and dismiss the prosecution.

Present law provides that the dismissal of this prosecution has the same effect of an acquittal, except where it applies to subsequent prosecution of the defendant as a multiple offender and as it applies to the laws relating to cumulation of offenses.

Proposed law retains present law and includes defendants who have completed drug court division probation.

Proposed law requires that the dismissal of prosecution and setting aside of the conviction may only occur with concurrence of the district attorney.

Proposed law provides that dismissal of prosecution as provided for in proposed law shall occur only once with respect to any person.

Proposed law is remedial and is to be applied retroactively.

(Adds C.Cr.P. Art. 893(E)(3))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill.

1. Requires the concurrence of the district attorney in order to set aside the conviction and dismiss the prosecution.