

1 **provided in Paragraph (3) of this Subsection. Forty-eight hours of the sentence**
2 **of imprisonment shall be imposed without benefit of probation, parole, or**
3 **suspension of sentence.** Imposition or execution of **the remainder of the** sentence
4 shall not be suspended unless:

5 (a) The offender is placed on probation with a minimum condition that he
6 serve two days in jail, **undergo an evaluation and treatment as provided in**
7 **Paragraph (1) of this Subsection,** and participate in a court-approved substance
8 abuse program **pursuant to Subparagraph (3)(a) of this Subsection,** and
9 participate in a court-approved driver improvement program; or

10 (b) The offender is placed on probation with a minimum condition that he
11 perform four eight-hour days of court-approved community service activities, at least
12 half of which shall consist of participation in a litter abatement or collection
13 program, **undergo an evaluation and treatment as provided in Paragraph (1) of**
14 **this Subsection,** participate in a court-approved substance abuse program **pursuant**
15 **to Subparagraph (3)(a) of this Subsection,** and participate in a court-approved
16 driver improvement program. An offender, who participates in a litter abatement or
17 collection program pursuant to this Subparagraph, shall have no cause of action for
18 damages against the entity conducting the program or supervising his participation
19 therein, including a municipality, parish, sheriff, or other entity, nor against any
20 official, employee, or agent of such entity, for any injury or loss suffered by him
21 during or arising out of his participation in the program, if such injury or loss is a
22 direct result of the lack of supervision or act or omission of the supervisor, unless the
23 injury or loss was caused by the intentional or grossly negligent act or omission of
24 the entity or its official, employee, or agent.

25 (2)(a) **On a first conviction if** ~~If~~ the offender had a blood alcohol
26 concentration of 0.15 percent or more by weight based on grams of alcohol per one
27 hundred cubic centimeters of blood, ~~at least forty-eight hours of the sentence~~
28 ~~imposed pursuant to Paragraph (B)(1) of this Subsection shall be served without the~~
29 ~~benefit of parole, probation, or suspension of sentence. Imposition or execution of~~

1 the remainder of the sentence shall not be suspended unless the offender complies
2 with Subparagraph (B)(1)(a) or (b) of this Subsection the offender shall be fined
3 not less than five hundred dollars nor more than one thousand dollars, and shall
4 be imprisoned for not less than three days nor more than six months. Three
5 days of the sentence of imprisonment shall be imposed without benefit of
6 probation, parole, or suspension of sentence.

7 (b) On a first conviction if ~~if~~ the offender had a blood alcohol concentration
8 of 0.20 percent or more by weight based on grams of alcohol per one hundred cubic
9 centimeters of blood, the offender shall be fined not less than seven hundred fifty
10 dollars nor more than one thousand dollars ~~and at least forty-eight hours of the~~
11 ~~sentence imposed pursuant to Paragraph (B)(1) of this Subsection shall be served~~
12 ~~without the benefit of parole, probation, or suspension of sentence. Imposition or~~
13 ~~execution of the remainder of the sentence shall not be suspended unless the offender~~
14 ~~complies with Subparagraph (B)(1)(a) or (b) of this Subsection~~ and shall be
15 imprisoned for not less than five days nor more than six months. Five days of
16 the sentence of imprisonment shall be imposed without benefit of probation,
17 parole, or suspension of sentence.

18 (c) Notwithstanding the provisions of Paragraph (1) of this Subsection,
19 on a conviction of a first offense when the crime of vehicular homicide occurs
20 in violation of R.S. 14:32.1, or first degree vehicular negligent injuring in
21 violation of R.S. 14:39.2, the offender shall be imprisoned with or without hard
22 labor for not less than one year nor more than five years, and shall be fined two
23 thousand dollars. The sentence of imprisonment imposed shall be without
24 benefit of probation, parole, or suspension of sentence.

25 (d) The offender shall immediately undergo an evaluation by the
26 Department of Health and Hospitals, office of behavioral health to determine
27 the nature and extent of the offender's substance abuse disorder and shall
28 participate in any treatment plan recommended by the office of behavioral
29 health.

1 **(3)(a) The evaluation required by Paragraph (1) of this Subsection shall**
2 **be conducted by the Department of Health and Hospitals, office of behavioral**
3 **health, or by a licensed mental health professional, either as an independent**
4 **practitioner or as an employee of a provider agency, acting within the scope of**
5 **his practice, to determine the nature and extent of the offender's substance use**
6 **disorder. The Department of Health and Hospitals, office of behavioral health,**
7 **shall maintain information regarding best practices for the treatment of such**
8 **substance use disorders, and shall publish such information on its website.**
9 **Each licensed mental health professional conducting the evaluation required by**
10 **this Paragraph shall follow the best practices published by the Department of**
11 **Health and Hospitals, office of behavioral health.**

12 **(b) The Department of Health and Hospitals, office of behavioral health,**
13 **shall establish and maintain on its website a registry of licensed mental health**
14 **professionals who are willing to provide such evaluation services.**

15 **(c) The licensed mental health professional shall recommend a treatment**
16 **plan based upon the evaluation, and the offender shall comply with such**
17 **treatment plan. Any treatment plan recommended pursuant to Paragraph (1)**
18 **of this Subsection may include either treatment in a licensed inpatient or**
19 **residential facility or participation in substance abuse treatment in an alcohol**
20 **and drug abuse program provided by a drug division subject to the applicable**
21 **provisions of R.S. 13:5301 et seq., if the offender is otherwise eligible to**
22 **participate in such program.**

23 **(d) It shall be the responsibility of the offender to obtain the evaluation**
24 **and treatment. All costs of evaluation and treatment shall be borne by the**
25 **offender, unless the offender has been declared indigent.**

26 C.(1) On a conviction of a second offense, notwithstanding any other
27 provision of law to the contrary except as provided in Paragraph (3) of this
28 Subsection, regardless of whether the second offense occurred before or after the
29 first conviction, the offender shall be fined not less than ~~seven hundred fifty~~ **one**

1 **thousand** dollars, nor more than ~~one~~ **two** thousand dollars, ~~and~~ shall be imprisoned
2 for not less than thirty days nor more than six months, **and shall be ordered to**
3 **undergo an evaluation and participate in a treatment program as provided in**
4 **Paragraph (4) of this Subsection.** At least ~~forty-eight hours~~ **fifteen days** of the
5 sentence imposed shall be served without benefit of parole, probation, **home**
6 **incarceration,** or suspension of sentence. **Upon completion of the portion of the**
7 **sentence imposed without benefit of parole, probation, home incarceration, or**
8 **suspension of sentence, nothing** ~~Nothing~~ herein shall prohibit a court from
9 sentencing a defendant to home incarceration, if otherwise allowed under the
10 provisions of Article 894.2 of the Code of Criminal Procedure. Imposition or
11 execution of the remainder of the sentence shall not be suspended unless:

12 (a) The offender is placed on probation with a minimum condition that he
13 serve fifteen days in jail, **undergo an evaluation and treatment as provided in**
14 **Paragraph (1) of this Subsection,** and participate in a court-approved substance
15 abuse program **pursuant to Subparagraph (4)(a) of this Subsection** and participate
16 in a court-approved driver improvement program; or

17 (b) The offender is placed on probation with a minimum condition that he
18 perform thirty eight-hour days of court-approved community service activities, at
19 least half of which shall consist of participation in a litter abatement or collection
20 program, **undergo an evaluation and treatment as provided in Paragraph (1) of**
21 **this Subsection,** and participate in a court-approved substance abuse program
22 **pursuant to Subparagraph (4)(a) of this Subsection,** and participate in a court-
23 approved driver improvement program. An offender, who participates in a litter
24 abatement or collection program pursuant to this Subparagraph, shall have no cause
25 of action for damages against the entity conducting the program or supervising his
26 participation therein, including a municipality, parish, sheriff, or other entity, nor
27 against any official, employee, or agent of such entity, for any injury or loss suffered
28 by him during or arising out of his participation therein, if such injury or loss is a
29 direct result of the lack of supervision or act or omission of the supervisor, unless the

1 injury or loss was caused by the intentional or grossly negligent act or omission of
2 the entity or its official, employee, or agent.

3 * * *

4 (3)(a) Notwithstanding the provisions of Paragraph (1) of this Subsection, on
5 a conviction of a second offense when the first offense **or second offense** was for the
6 crime of vehicular homicide in violation of R.S. 14:32.1, or first degree vehicular
7 negligent injuring in violation of R.S. 14:39.2, the offender shall be imprisoned with
8 or without hard labor for not less than ~~one year~~ **two years** nor more than five years,
9 and shall be fined two thousand dollars. ~~At least six months of the~~ **The** sentence of
10 imprisonment imposed shall be without benefit of probation, parole, or suspension
11 of sentence. ~~Imposition or execution of the remainder of the sentence shall not be~~
12 ~~suspended unless the provisions of Subparagraph (1)(a) or (b) of this Subsection are~~
13 ~~complied with.~~

14 **(b) The offender shall immediately undergo an evaluation by the**
15 **Department of Health and Hospitals, office of behavioral health to determine**
16 **the nature and extent of the offender's substance abuse disorder and shall**
17 **participate in any treatment plan recommended by the office of behavioral**
18 **health.**

19 **(4)(a) The evaluation required by Paragraph (1) of this Subsection shall**
20 **be conducted by the Department of Health and Hospitals, office of behavioral**
21 **health, or by a licensed mental health professional, either as an independent**
22 **practitioner or as an employee of a provider agency, acting within the scope of**
23 **his practice, to determine the nature and extent of the offender's substance use**
24 **disorder. The Department of Health and Hospitals, office of behavioral health,**
25 **shall maintain information regarding best practices for the treatment of such**
26 **substance use disorders, and shall publish such information on its website.**
27 **Each licensed mental health professional conducting the evaluation required by**
28 **this Paragraph shall follow the best practices published by the Department of**
29 **Health and Hospitals, office of behavioral health.**

1 **(b) The Department of Health and Hospitals, office of behavioral health,**
2 **shall establish and maintain on its website a registry of licensed mental health**
3 **professionals who are willing to provide such evaluation services.**

4 **(c) The licensed mental health professional shall recommend a treatment**
5 **plan based upon the evaluation, and the offender shall comply with such**
6 **treatment plan. Any treatment plan recommended pursuant to Paragraph (1)**
7 **of this Subsection may include either treatment in a licensed inpatient or**
8 **residential facility or participation in substance abuse treatment in an alcohol**
9 **and drug abuse program provided by a drug division subject to the applicable**
10 **provisions of R.S. 13:5301 et seq., if the offender is otherwise eligible to**
11 **participate in such program.**

12 **(d) It shall be the responsibility of the offender to obtain the evaluation**
13 **and treatment. All costs of evaluation and treatment shall be borne by the**
14 **offender, unless the offender has been declared indigent.**

15 D.(1)(a) On a conviction of a third offense, notwithstanding any other
16 provision of law to the contrary and regardless of whether the offense occurred
17 before or after an earlier conviction, the offender shall be imprisoned with or without
18 hard labor for not less than ~~one year~~ **three years** nor more than ~~five~~ **ten** years and
19 shall be fined two thousand dollars. One year of the sentence of imprisonment shall
20 be imposed without benefit of probation, parole, or suspension of sentence. The
21 court, in its discretion, may suspend all or any part of the remainder of the sentence
22 of imprisonment. If any portion of the sentence is suspended, the offender shall be
23 placed on supervised probation with the Department of Public Safety and
24 Corrections, division of probation and parole, for a period of time equal to the
25 remainder of the sentence of imprisonment, which probation shall commence on the
26 day after the offender's release from custody.

27 (b) Any offender placed on probation pursuant to the provisions of this
28 Subsection shall be required as a condition of probation to participate in thirty eight-
29 hour days of court-approved community service activities and to submit to and

1 complete either of the following requirements:

2 (i) To immediately undergo an evaluation by **a licensed mental health**
3 **professional, who is an employee of** the Department of Health and Hospitals, office
4 of behavioral health, **following the best practices published by the office of**
5 **behavioral health,** to determine the nature and extent of the offender's substance
6 abuse disorder and to participate in any treatment plan recommended by the office
7 of behavioral health, including treatment in an inpatient facility approved by the
8 office for a period of not less than four weeks followed by outpatient treatment
9 services for a period not to exceed twelve months, **or as determined by medical**
10 **necessity criteria.**

11 * * *

12 **(4) It shall be the responsibility of the offender to obtain the evaluation**
13 **and treatment. All costs of evaluation and treatment shall be borne by the**
14 **offender, unless the offender has been declared indigent.**

15 E.(1)(a) * * *

16 (b) Any offender placed on probation pursuant to the provisions of this
17 Subsection shall be required, as a condition of probation, to participate in forty eight-
18 hour days of court-approved community service activities and to submit to and
19 complete either of the following requirements:

20 (i) To immediately undergo an evaluation by **a licensed mental health**
21 **professional, who is an employee of** the Department of Health and Hospitals, office
22 of behavioral health, **following the best practices published by the office of**
23 **behavioral health,** to determine the nature and extent of the offender's substance
24 abuse disorder and to participate in any treatment plan recommended by the office
25 of behavioral health, including treatment in an inpatient facility approved by the
26 office for a period of not less than four weeks followed by outpatient treatment
27 services for a period not to exceed twelve months, **or as determined by medical**
28 **necessity criteria.**

29 * * *

1 **(5) It shall be the responsibility of the offender to obtain the evaluation**
 2 **and treatment. All costs of evaluation and treatment shall be borne by the**
 3 **offender, unless the offender has been declared indigent.**

4 * * *

5 Section 2. This Act shall become effective upon signature by the governor or, if not
 6 signed by the governor, upon expiration of the time for bills to become law without signature
 7 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 8 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 9 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Alden A. Clement, Jr.

DIGEST

Perry (SB 687)

Present law provides relative to the crime of operating a vehicle while intoxicated and provides penalties.

Present law provides that on a first conviction of operating a vehicle while intoxicated, the offender is to be fined not less than \$300 nor more than \$1,000, and imprisoned for not less than 10 days nor more than six months. Present law further provides that imposition or execution of sentence can be suspended under certain circumstances.

Proposed law provides that the offender is to be fined not less than \$300 nor more than \$1,000, and imprisoned for not less than 48 hours nor more than six months, and undergo an evaluation by the Dept. of Health and Hospitals (DHH) and, at the court's discretion, participate in any treatment program recommended by DHH. Proposed law further provides that first offenders who are placed on probation under certain circumstances are also required to undergo an evaluation by DHH. Proposed law further provides that at least 48 hours of the sentence of imprisonment must be served without benefit of probation, parole, or suspension of sentence. Proposed law further provides that the remainder of the sentence cannot be suspended unless certain conditions relative to evaluation and treatment are met.

Present law provides that on a first conviction, in addition to other present law penalties, if the offender had a blood alcohol concentration of 0.15 percent or more, then at least 48 hours of the sentence must be served without the benefit of parole, probation, or suspension of sentence, and imposition or execution of the remainder of the sentence cannot be suspended unless the offender complies with certain provisions of present law.

Proposed law provides that on a first conviction, if the offender had a blood alcohol concentration of 0.15 percent or more, he is to be fined not less than \$500 nor more than \$1,000, and imprisoned for not less than three days nor more than six months. Proposed law further provides that three days of the sentence of imprisonment must be imposed without benefit of probation, parole, or suspension of sentence.

Present law provides that on a first conviction, in addition to other present law penalties, if the offender had a blood alcohol concentration of 0.20 percent or more, then the offender shall be fined not less than \$750 nor more than \$1,000, and at least 48 hours of the sentence

imposed must be served without the benefit of parole, probation, or suspension of sentence, and imposition or execution of the remainder of the sentence cannot be suspended unless the offender complies with certain provisions of present law.

Proposed law provides that on a first conviction, if the offender had a blood alcohol concentration of 0.20 percent or more, he is to be fined not less than \$750 dollars nor more than \$1,000, and imprisoned for not less than five days nor more than six months. Proposed law further provides that five days of the sentence of imprisonment must be imposed without benefit of probation, parole, or suspension of sentence.

Proposed law provides that on a conviction of a first offense when the crime of vehicular homicide or first degree vehicular negligent injuring occurs, the offender is to be imprisoned with or without hard labor for not less than one year nor more than five years, without benefit of probation, parole, or suspension of sentence, and is to be fined \$2,000. Proposed law further provides that the offender must immediately undergo an evaluation by DHH to determine the nature and extent of the offender's substance abuse disorder and the offender must participate in any treatment plan recommended by DHH.

Present law provides that on a conviction of a second offense of operating a vehicle while intoxicated, and regardless of whether the second offense occurred before or after the first conviction, the offender is to be fined not less than \$750 nor more than \$1,000, and is to be imprisoned for not less than 30 days nor more than six months. Present law further provides that at least 48 hours of the sentence is to be served without benefit of parole, probation, or suspension of sentence. Present law further provides that the offender may be sentenced to home incarceration, and provides that imposition or execution of sentence can be suspended under certain circumstances.

Proposed law provides that on a second conviction, the offender is to be fined not less than \$1,000 nor more than \$2,000, and imprisoned for not less than 30 days nor more than six months. Proposed law further provides that persons convicted of a second offense must undergo an evaluation by the DHH to determine the nature and extent of the offender's substance use disorder and to participate in any treatment program recommended by the office, which may include either treatment in an inpatient facility or substance abuse treatment in an alcohol and drug abuse program provided by a drug division pursuant to present law. Proposed law further provides that at least 15 days of the sentence of imprisonment is to be served without benefit of parole, probation, home incarceration, or suspension of sentence. Proposed law further provides that upon completion of the portion of the sentence that cannot be suspended, the offender may serve home incarceration if otherwise eligible for home incarceration under present law. Proposed law further provides that the remainder of the sentence cannot be suspended unless certain conditions relative to evaluation and treatment are met. Proposed law further provides that second offenders who are placed on probation under certain circumstances are also required to undergo an evaluation by DHH.

Proposed law provides that the evaluation required by proposed law is to be conducted by DHH or by a licensed mental health professional, either as an independent practitioner or as an employee of a provider agency, acting within the scope of his practice, to determine the nature and extent of the offender's substance use disorder. Proposed law further provides that DHH is to maintain information regarding best practices for the treatment of such substance use disorders, and is to publish such information on its website. Proposed law further provides that each licensed mental health professional conducting the evaluation required by this Paragraph is to follow the best practices published by DHH.

Proposed law provides that DHH is to establish and maintain on its website a registry of licensed mental health professionals who are willing to provide such evaluation services.

Proposed law provides that the licensed mental health professional is to recommend a treatment plan based upon the evaluation, and the offender must comply with such treatment

plan. Proposed law further provides that any treatment plan recommended may include either treatment in a licensed inpatient or residential facility or participation in substance abuse treatment in an alcohol and drug abuse program provided by a drug division subject to the applicable provisions of present law, if the offender is otherwise eligible to participate in such program.

Proposed law provides that it is the offender's responsibility to obtain the evaluation and treatment plan, and all costs of evaluation and treatment will be borne by the offender, unless the offender has been declared indigent.

Proposed law otherwise retains present law.

Present law provides that on a conviction of a third offense of operating a vehicle while intoxicated, the offender is to be imprisoned with or without hard labor for not less than one year nor more than five years and fined \$2,000. Present law further provides that one year of the sentence of imprisonment is to be imposed without benefit of probation, parole, or suspension of sentence.

Proposed law provides that on a third conviction, the offender is to be imprisoned, with or without hard labor, for not less than three years nor more than 10 years and fined \$2,000.

Proposed law otherwise retains present law.

Present law provides that persons convicted of third and fourth and subsequent offense operating a vehicle while intoxicated who are placed on probation, in addition to other present law requirements, are required to either undergo an evaluation by the DHH to determine the nature and extent of the offender's substance abuse disorder and to participate in any treatment plan recommended by DHH, including treatment in an inpatient facility approved by the office, or to participate in substance abuse treatment in an alcohol and drug abuse program provided by a drug division pursuant to present law.

Proposed law retains present law, and adds that it is the responsibility of the offender to obtain the evaluation and treatment, and to bear all costs of evaluation and treatment unless the offender has been declared indigent.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 14:98(B)(1) and (2), (C)(1) and (3), (D)(1)(a) and (b)(i), and (E)(1)(b)(i); adds R.S. 14:98(B)(3), (C)(4), (D)(4), and (E)(5))

Summary of Amendments Adopted by Senate

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

1. Deletes provisions that no part of the sentence of imprisonment for first offense DWI under various circumstances can be suspended.
2. Adds provisions requiring that a certain period of the sentence of imprisonment for first offense DWI under certain circumstances must be served without benefit of probation, parole, or suspension of sentence.
3. Deletes provisions that no part of the sentence of imprisonment for second offense DWI can be suspended.
4. Adds provisions requiring substance abuse evaluation and treatment for second offense DWI.

5. Deletes provision that no part of the sentence of imprisonment for third offense DWI can be suspended.
6. Deletes provision that no part of the sentence of imprisonment for fourth offense DWI can be suspended.