

Regular Session, 2013

HOUSE BILL NO. 442

BY REPRESENTATIVE LOPINTO

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CRIMINAL/SENTENCING: Provides relative to sentencing and treatment of certain offenders convicted of certain violations of the Uniform Controlled Dangerous Substances Law

1 AN ACT

2 To amend and reenact R.S. 13:5304(B)(1)(a) and to enact Subpart 7 of Part II of Chapter 5

3 of Title 15 of the Louisiana Revised Statutes of 1950, to be comprised of R.S.

4 15:574.61 and 574.62, to enact Code of Criminal Procedure Articles 903 through

5 903.3, and to repeal R.S. 13:5304(B)(10)(d) and (f), relative to sentencing of certain

6 offenders convicted of certain violations of the Uniform Controlled Dangerous

7 Substances Law; to authorize the development of a substance abuse probation

8 program within the Department of Public Safety and Corrections; to authorize the

9 Department of Public Safety and Corrections to enter into cooperative endeavors or

10 contracts to provide for substance abuse treatment programs; to provide for

11 eligibility for participation in the program; to provide for a court-ordered substance

12 abuse evaluation to determine suitability for participation in the program; to provide

13 for the suspension of certain criminal sentences and court- ordered participation in

14 the program; to provide for rulemaking; to provide for the payment of certain costs

15 by the defendant; to provide for alternative methods of payment of indigent

16 defendants; to enact the Substance Abuse Conditional Release Act; to provide for

17 substance abuse conditional release; to provide for parole supervision following

18 completion of the substance abuse conditional release program; to provide for the

19 duration of the substance abuse treatment program within the Department of Public

1 Safety and Corrections; to provide for eligibility for substance abuse conditional  
2 release; to provide for an addiction disorder assessment and a mental health  
3 screening to determine suitability for the program; to provide for criteria for removal  
4 from participation in the program; to provide for the consequences of failure to  
5 complete the substance abuse probation program or the substance abuse conditional  
6 release program; to modify disqualification criteria for the drug division probation  
7 program; to provide with respect to eligibility criteria for participation in the drug  
8 division probation program; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Code of Criminal Procedure Articles 903 through 903.3 are hereby  
11 enacted to read as follows:

12 Art. 903. Substance abuse probation program; authorization

13 A. The secretary of the Department of Public Safety and Corrections is  
14 authorized to establish a substance abuse probation program within the department.

15 B. The program shall provide substance abuse counseling and treatment for  
16 defendants sentenced to substance abuse probation pursuant to the provisions of  
17 Article 903.2 of this Code.

18 C. The department may enter into cooperative endeavors or contracts with  
19 the Department of Health and Hospitals, training facilities, and service providers to  
20 provide for substance abuse treatment and counseling for defendants participating  
21 in the program.

22 D. The department shall adopt rules and guidelines as it deems necessary for  
23 the administration and implementation of this program.

24 E. The provisions of this Article shall be implemented only to the extent that  
25 funds are available within the department for this purpose and to the extent that is  
26 consistent with available resources and appropriate classification criteria.

1        Article 903.1. Substance abuse probation program; eligibility

2            A. In order to be eligible for the substance abuse probation program, the  
3        defendant shall not be excluded from participation pursuant to the provisions of  
4        Paragraph B of this Article and shall be charged with any of the following offenses:

5            (1) Felony possession of a controlled dangerous substance as defined in R.S.  
6        40:966(C), 967(C), 968(C) or 969(C).

7            (2) Except as provided in Subparagraph (3) of this Paragraph, possession  
8        with intent to distribute a controlled dangerous substance as defined in R.S.  
9        40:966(A), 967(A), 968(A), or 969(A) where the offense involves less than twenty-  
10       eight grams of the controlled dangerous substance.

11           (3) Possession with intent to distribute marijuana or synthetic cannabinoids  
12        as defined in R.S. 40:966(A) where the offense involves less than one pound of  
13        marijuana or synthetic cannabinoids.

14           B. The provisions of this Article shall not apply to any defendant who has  
15        been convicted of a crime of violence as defined in R.S. 14:2(B) or a sex offense as  
16        defined in R.S. 15:541, or any defendant who has participated in or declined to  
17        participate in a drug division probation program as provided for in R.S. 13:5301 et  
18        seq.

19        Art. 903.2. Substance abuse probation; sentencing

20           A. Notwithstanding any other provision of law to the contrary, a court shall  
21        suspend a sentence and order an eligible defendant to participate in a substance abuse  
22        probation program provided by the department pursuant to Article 903 of this Code  
23        if the district attorney agrees that the defendant should be sentenced to a substance  
24        abuse probation and the court finds all of the following:

25           (1) The court has reason to believe that the defendant suffers from an  
26        addiction to a controlled dangerous substance.

27           (2) The defendant is likely to respond to the substance abuse probation  
28        program.

1           (3) The available substance abuse probation program is appropriate to meet  
2           the needs of the defendant.

3           (4) The defendant does not pose a threat to the community, and it is in the  
4           best interest of justice to provide the defendant with treatment as opposed to  
5           incarceration or other sanctions.

6           B.(1) The court shall order the department to assign an authorized evaluator  
7           to prepare a suitability report. The suitability report shall delineate the nature and  
8           degree of the treatment necessary to address the defendant's drug or alcohol  
9           dependency or addiction, the reasonable availability of such treatment, and the  
10          defendant's appropriateness for the program. The district attorney and the  
11          defendant's attorney shall have an opportunity to provide relevant information to the  
12          evaluator to be included in the report.

13          (2) The authorized evaluator shall examine the defendant, using standardized  
14          testing and evaluation procedures, and shall provide to the court and the district  
15          attorney the results of the examination and evaluation along with its recommendation  
16          as to whether the defendant is a suitable candidate for the substance abuse probation  
17          program.

18          (3) If the court determines that the defendant should be enrolled in the  
19          substance abuse probation program, the court shall suspend the execution of the  
20          sentence and place the defendant on supervised probation under the terms and  
21          conditions of the substance abuse probation program.

22          (4) The defendant shall be required to participate in alcohol and drug testing  
23          at his own expense, unless the court determines that he is indigent. If the court  
24          determines that the defendant is indigent, it may order the defendant to perform  
25          supervised work for the benefit of the community in lieu of paying all or a part of the  
26          costs related to the drug and alcohol testing. The work shall be performed for and  
27          under the supervising authority of a parish, municipality, or other political  
28          subdivision or agency of the state or a charitable organization that renders service to  
29          the community or its residents.

1           C. If the judge fails to make all of the determinations provided for in  
2           Paragraph A of this Article, or if the district attorney does not agree that the  
3           defendant should be sentenced to substance abuse probation, the court shall impose  
4           the appropriate sentence provided by law.

5           D.(1) If the defendant violates any condition of his probation or if the  
6           defendant would benefit from an adjustment to the probation or treatment program,  
7           the defendant, the treatment supervisor, the probation officer, the district attorney,  
8           or the court, on its own motion, may file a motion to modify the terms and conditions  
9           of the probation or file a motion to revoke the defendant's probation. After a  
10          contradictory hearing on the motion, the court may do either of the following:

11           (a) Modify the conditions of probation, including ordering the defendant to  
12          participate in a drug division probation program pursuant to R.S. 13:5301 et seq.

13           (b) Revoke the defendant's probation and execute the sentence.

14           (2) A defendant placed on probation pursuant to the provisions of this Article  
15          shall be subject to the administrative sanctions provided for in Article 899.1 of this  
16          Code.

17           (3) If the defendant's probation is revoked, the defendant shall be required  
18          to serve the suspended sentence and shall receive credit for time served in any  
19          correctional facility for commission of the crime as otherwise allowable by law.

20           E. The provisions of Article 893(A) and (E)(1)(b) of this Code which  
21          prohibit the court from suspending or deferring the imposition of sentences for  
22          violations of the Uniform Controlled Dangerous Substances Law or for violations  
23          of R.S. 40:966(A), 967(A), 968(A), 969(A), or 970(A) shall not apply to defendants  
24          who otherwise meet the eligibility criteria for substance abuse probation programs  
25          as authorized by this Article.

26           F. The provisions of this Article shall not be construed to limit the authority  
27          of the court to defer a sentence for a violation of the Uniform Controlled Dangerous  
28          Substances Law as otherwise provided by law.

1        Art. 903.3. Substance abuse treatment program; cost

2                A. A defendant who is placed under the supervision of the substance abuse  
3        probation program shall pay the cost of the treatment program to which he is  
4        assigned and the cost of any additional supervision that may be required to the extent  
5        of his financial resources as determined by the substance abuse treatment program.

6                B. If the defendant does not have the financial resources to pay all the related  
7        costs of the probation program, the court may do either of the following:

8                        (1) To the extent practicable, arrange for the defendant to be assigned to a  
9        treatment program funded by the state or federal government.

10                      (2) With the recommendation of the treatment program, order the defendant  
11        to perform supervised work for the benefit of the community in lieu of paying all or  
12        a part of the costs related to his treatment and supervision. The work shall be  
13        performed for and under the supervising authority of a parish, municipality, or other  
14        political subdivision or agency of the state or a charitable organization that renders  
15        service to the community or its residents.

16        Section 2. Subpart 7 of Part II of Chapter 5 of Title 15 of the Louisiana Revised  
17        Statutes of 1950, comprised of R.S. 15:574.61 and 574.62, is hereby enacted to read as  
18        follows:

19                      (7) SUBSTANCE ABUSE CONDITIONAL RELEASE

20        §574.61. Short title

21                      This Subpart may be referred to and may be cited as the "Substance Abuse  
22        Conditional Release Act".

23        §574.62. Substance abuse conditional release

24                      A. The secretary of the Department of Public Safety and Corrections is  
25        hereby authorized to release an offender sentenced to the custody of the department  
26        to intense parole supervision as provided in R.S. 15:574.4.4, if the offender meets  
27        certain requirements provided for in this Section and meets the requirements of any  
28        rules or regulations adopted by the secretary in accordance with the provisions of this  
29        Section.

1           B. An offender shall be eligible for conditional release pursuant to the  
2           provisions of this Section if all of the following conditions are met:

3           (1) The offender is willing to participate in the program.

4           (2) The offender has been convicted and is serving a sentence for a first or  
5           second offense possession or possession with the intent to distribute a controlled  
6           dangerous substance as defined by Part X of Chapter 4 of Title 40 of the Louisiana  
7           Revised Statutes of 1950.

8           (3) The offender has no convictions for a crime of violence as defined by  
9           R.S. 14:2 or a sex offense as defined by R.S. 15:541.

10          (4) The offender has not previously been released pursuant to the provisions  
11          of this Section.

12          (5) The offender has served at least two years in actual physical custody and  
13          is within one year of his projected release date.

14          C.(1) If the offender meets the criteria set forth in Subsection B of this  
15          Section, the offender shall be required to undergo an addiction disorder assessment  
16          and a mental health screening which shall be reviewed by the secretary of the  
17          department and considered by the secretary in determining the offender's suitability  
18          to participate in the treatment program. In determining suitability the secretary shall  
19          consider all of the following:

20          (a) Whether the offender's release may pose a danger to the general public  
21          or to an individual. In making this determination, the secretary shall consider all of  
22          the following:

23          (i) The offender's involvement in any gang activity during the offender's  
24          term of imprisonment.

25          (ii) The offender's custody classification as defined by the department.

26          (iii) The risk of violence associated with the offender's release.

27          (iv) The availability of sufficient supervision resources as determined by the  
28          secretary.

1           **(b) Whether the offender has a suitable release plan. In evaluating the**  
2 **release plan, the secretary shall consider all of the following:**

3           **(i) Plans for aftercare.**

4           **(ii) Availability of community-based chemical dependency treatment.**

5           **(iii) Opportunities for gainful employment.**

6           **(iv) An approved residence plan.**

7           **(2) If the offender meets the criteria set forth in Subsection B of this Section**  
8 **and the secretary determines that the offender is suitable to participate in the**  
9 **program, the offender shall be required to participate in an addiction disorder**  
10 **treatment program within a facility approved by the department that meets the**  
11 **standards adopted by the secretary or such other program as indicated by the**  
12 **department's risk and needs assessment tool. The program shall last for not less than**  
13 **sixty days nor more than one hundred twenty days.**

14           **D. The secretary may remove any offender from the program for any of the**  
15 **following:**

16           **(1) The offender committed a violation of the rules of the program.**

17           **(2) The offender committed a criminal offense or violated the department**  
18 **disciplinary rules while in the program.**

19           **(3) The offender presents a risk to himself or others.**

20           **E. If the offender fails to successfully complete the program or is removed**  
21 **from the program pursuant to Subsection D of this Section, he shall be required to**  
22 **serve the remainder of his sentence as originally imposed. The offender shall not**  
23 **lose any good time earned during his participation in the program.**

24           **F. If the offender successfully completes the program, the secretary may**  
25 **release the offender to intense parole supervision as provided in R.S. 15:574.4.4 and**  
26 **subject the offender to certain additional conditions imposed by the secretary**  
27 **pursuant to the provisions of this Section.**

28           **G. Prior to the offender's release pursuant to the provisions of this Section,**  
29 **the offender shall sign a written agreement to comply with all requirements of R.S.**



1 15:574.4.4, the requirements of this Section, and any other conditions imposed by  
2 the secretary pursuant to the provisions of this Section.

3 H.(1) As a condition of the offender's release pursuant to the provisions of  
4 this Section, the secretary shall require the offender to submit to random drug and  
5 alcohol testing and electronic monitoring as determined to be necessary by the  
6 secretary.

7 (2) If determined by the secretary to be necessary, the secretary may require  
8 the offender to participate in further substance abuse treatment while on release  
9 pursuant to the provisions of this Section. The offender shall be required to bear the  
10 cost of such treatment.

11 (3) The secretary may impose any other conditions deemed necessary to  
12 accomplish the goals of this Section.

13 I. When an offender is released pursuant to the provisions of this Section, he  
14 shall be released as if released on parole and shall be subject to the provisions  
15 relative to parole including R.S. 15:574.4.4 et seq.

16 J. The secretary of the department is hereby authorized to establish rules and  
17 regulations to provide for the administration of this Section.

18 Section 3. R.S. 13:5304(B)(1)(a) is hereby amended and reenacted to read as follows:

19 §5304. The drug division probation program

20 \* \* \*

21 B. Participation in probation programs shall be subject to the following  
22 provisions:

23 (1) The district attorney may propose to the court that an individual  
24 defendant be screened for eligibility as a participant in the drug division probation  
25 program if all of the following criteria are satisfied:

26 (a) The individual is charged with a violation of a statute of this state relating  
27 to the use and possession of, or possession with intent to distribute any narcotic  
28 drugs, coca leaves, marijuana, stimulants, depressants, or hallucinogenic drugs, or



- (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.