

2021 Regular Session

SENATE BILL NO. 145

BY SENATOR WARD

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

COURTS. Provides relative to mandatory drug testing, screening, and assessment for drug and specialty court participation for certain offenders. (See Act)

AN ACT

To amend and reenact Code of Criminal Procedure Articles 320(D) and (E)(1) and 893(A)(1)(a), (B)(2), (F), (G), and (H) and R.S. 13:5304(B)(3)(b) and to enact Code of Criminal Procedure Articles 893(B)(1)(c) and (I) and 904 and Subpart V of Part II-A of Chapter 1 of Subtitle I of Title 39 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 39:100.171 and 100.172, relative to mandatory drug testing and screening; to require drug testing and screening of persons arrested for certain offenses; to provide relative to assessment for participation in drug and specialty court programs for certain nonviolent offenders; to provide relative to confidentiality of drug testing and screening records; to establish the Drug and Specialty Court Fund; to provide for the administration and specific uses of the fund; to provide reporting requirements; to provide for effectiveness; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Articles 320(D) and (E)(1) and 893(A)(1)(a), (B)(2), (F), (G), and (H) are hereby amended and reenacted and Code of Criminal Procedure Articles 893(B)(1)(c) and (I) and 904 are hereby enacted to read as follows:

1 Art. 320. Conditions of bail undertaking

2 * * *

3 ~~D. Drug offenses and crimes of violence.~~ **Pretrial drug testing and**
4 **screening for substance use disorders.**

5 **(1)** Every person arrested for a violation of the Uniform Controlled Dangerous
6 Substances Law or a crime of violence as provided in R.S. 14:2(B) shall be required
7 to submit to a pretrial drug test for the presence of designated substances in
8 accordance with the provisions of this Article and rules of court governing such
9 testing. Every person arrested for any other felony may be required to submit to a
10 pretrial drug test for the presence of designated substances in accordance with the
11 provisions of this Article and rules of court governing such testing. Every person
12 arrested for a misdemeanor may be required to submit to a pretrial drug test for the
13 presence of designated substances in accordance with the provisions of this Article
14 and rules of court governing such testing.

15 **(2) Drug testing to determine the presence of any controlled dangerous**
16 **substance identified in the Uniform Controlled Dangerous Substances Law**
17 **should occur within twenty-four hours of the booking of the person, and**
18 **random testing thereafter may be required to verify that the person is drug free.**

19 **(3) All persons testing positive for the presence of one or more substances**
20 **designated in Subparagraph (2) of this Paragraph shall be clinically screened**
21 **utilizing a validated screening tool for the purpose of determining whether the**
22 **person suffers from a substance use disorder and is suitable for a drug or**
23 **specialty court program.**

24 **(4) All persons who receive a positive test result pursuant to**
25 **Subparagraph (2) of this Paragraph and who are deemed suitable for a drug or**
26 **specialty court program pursuant to the screening process set forth in**
27 **Subparagraph (3) of this Paragraph shall be subject to the provisions of Code**
28 **of Criminal Procedure Article 904.**

29 **(5) All records and information provided or obtained pursuant to**

1 Subparagraphs (2) and (3) of this Paragraph shall be deemed confidential and
2 shall not be disclosed to any person who is not connected with the district
3 attorney, counsel for the person tested or screened pursuant to this Paragraph,
4 a treatment professional, or the court, without the consent of the person tested
5 or screened, and such records and information shall not be admissible in any
6 civil or criminal action or proceeding, except for the purposes of determining
7 suitability or eligibility of the person for any drug or specialty court program.

8 (6) Drug and Specialty Court Fund.

9 (a) The costs and expenses of the drug testing required by Subparagraph
10 (2) of this Paragraph and the screening required by Subparagraph (3) of this
11 Paragraph shall be eligible for reimbursement from the Drug and Specialty
12 Court Fund as set forth in R.S. 39:100.171.

13 (b) The mandatory drug testing required by Subparagraph (2) of this
14 Paragraph and the screening required by Subparagraph (3) of this Paragraph
15 shall be enforced to the extent that sufficient monies exist in the fund to
16 reimburse the expenses and costs of these requirements. If the administrator of
17 the fund certifies, in conformity with the certification procedures set forth in
18 R.S. 39:100.172(C), that sufficient monies do not exist for the reimbursement
19 of the expenses and costs of mandatory testing and screening, the provisions of
20 Subparagraphs (2) and (3) of this Paragraph shall cease to be mandatory, but
21 may still be enforced at the discretion of the governing authority responsible for
22 funding those provisions.

23 E. Pretrial drug testing program. The court may implement a pretrial drug
24 testing program. All persons released under the provisions of the pretrial drug testing
25 program must submit to continued random testing and refrain from the use or
26 possession of any controlled dangerous substance or any substance designated by the
27 court. A pretrial drug testing program shall provide for the following:

28 ~~(1) Mandatory participation for all persons arrested for violations of state~~
29 ~~law. Additionally, all~~ **All** persons testing positive for the presence of one or more of

1 the designated substances set forth in Subparagraph (2) of this Paragraph, who are
2 not otherwise required to participate, shall submit to a pretrial drug testing program.

3 * * *

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

5 A.(1)(a) When it appears that the best interest of the public and of the
6 defendant will be served, the court, after a first, second, or third conviction of a
7 noncapital felony, may suspend, in whole or in part, the imposition or execution of
8 either or both sentences, where suspension is allowed under the law, and in either or
9 both cases place the defendant on probation under the supervision of the division of
10 probation and parole. The court shall not suspend the sentence of a second or third
11 conviction of R.S. 14:73.5. Except as provided in Paragraph ~~G~~ **H** of this Article, the
12 period of probation shall be specified and shall not be more than three years, except
13 as provided by Paragraph ~~H~~ **I** of this Article.

14 * * *

15 B.(1) Notwithstanding any other provision of law to the contrary, when it
16 appears that the best interest of the public and of the defendant will be served, the
17 court, after a fourth conviction of a noncapital felony or after a third or fourth
18 conviction of operating a vehicle while intoxicated pursuant to R.S. 14:98, may
19 suspend, in whole or in part, the imposition or execution of the sentence when the
20 defendant was not offered such alternatives prior to his fourth conviction of
21 operating a vehicle while intoxicated and the following conditions exist:

22 * * *

23 **(c) The defendant does not meet the requirements set forth in Paragraph**
24 **F of this Article.**

25 (2)When suspension is allowed under this Paragraph, the defendant shall be
26 placed on probation under the supervision of the division of probation and parole. **If**
27 **the defendant has been sentenced to complete a treatment program, the**
28 **defendant may be placed on probation under the supervision of a probation**
29 **office, agency, or officer designated by the court.** The period of probation shall be

1 specified and shall not be more than three years, except as provided in Paragraph G
2 H of this Article. The suspended sentence shall be regarded as a sentence for the
3 purpose of granting or denying a new trial or appeal.

4 * * *

5 **F.(1) Notwithstanding any other provision of law to the contrary, when**
6 **it appears that the best interest of the public and of the defendant will be served,**
7 **after the conviction of a defendant deemed suitable for a drug or specialty court**
8 **program pursuant to Code of Criminal Procedure Article 904, the court may**
9 **suspend, in whole or in part, the imposition or execution of the sentence when**
10 **all of the following conditions are met:**

11 **(a) The district attorney consents to the suspension of sentence.**

12 **(b) There is an available drug or specialty court program recognized by**
13 **the Louisiana Supreme Court.**

14 **(c) The court orders the defendant to enter and complete any drug or**
15 **specialty court program recognized by the Louisiana Supreme Court.**

16 **(2) If the district attorney does not consent to the suspension of the**
17 **sentence, he shall file his objection with written reasons into the record.**

18 **(3) If the district attorney files an objection into the record, or if the**
19 **court determines that a specialty court program is not available for the**
20 **defendant, the court may sentence the defendant to any sentence provided for**
21 **the offense by law.**

22 **(4) When suspension of sentence is allowed pursuant to this Paragraph,**
23 **the defendant may be placed on probation under the supervision of the division**
24 **of probation and parole, or under the supervision of a probation office, agency,**
25 **or officer designated by the court. The period of probation shall be specified**
26 **and shall not exceed three years, except as provided in Paragraph H of this**
27 **Article. The suspended sentence shall be regarded as a sentence for the purpose**
28 **of granting or denying a motion for new trial or appeal.**

29 **(5) Upon motion of the defendant, if the court finds at the conclusion of**

1 the probationary period that the probation of the defendant has been
2 satisfactory, the court may set the conviction aside and dismiss the prosecution.
3 The dismissal of the prosecution shall have the same effect as an acquittal,
4 except that the conviction may be considered as a prior offense and provide the
5 basis for a subsequent prosecution of the defendant as a habitual offender,
6 except as provided in R.S. 15:529.1(C)(3). The conviction also may be
7 considered as a prior offense for purposes of any other provision of law relating
8 to cumulation of offenses. Dismissal pursuant to this Paragraph shall occur only
9 once with respect to any person.

10 ~~F.G.~~ Nothing contained herein shall be construed as being a basis for
11 destruction of records of the arrest and prosecution of any person convicted of a
12 felony.

13 ~~G.H.~~ If the court, with the consent of the district attorney, orders a defendant
14 to enter and complete a program provided by the drug division of the district court
15 pursuant to R.S. 13:5301, an established driving while intoxicated court or sobriety
16 court program, a mental health court program established pursuant to R.S. 13:5351
17 et seq., a Veterans Court program established pursuant to R.S. 13:5361 et seq., a
18 reentry court established pursuant to R.S. 13:5401, or the Swift and Certain
19 Probation Pilot Program established pursuant to R.S. 13:5371, the court may place
20 the defendant on probation for a period of not more than eight years if the court
21 determines that successful completion of the program may require that period of
22 probation to exceed the three-year limit. The court may not extend the duration of
23 the probation period solely due to unpaid fees and fines. The period of probation as
24 initially fixed or as extended shall not exceed eight years.

25 ~~H.I.~~(1) If a defendant is placed on supervised probation, the division of
26 probation and parole shall submit to the court a compliance report when requested
27 by the court, or when the division of probation and parole deems it necessary to have
28 the court make a determination with respect to "earned compliance credits",
29 modification of terms or conditions of probation, termination of probation,

1 revocation of probation, or other purpose proper under any provision of law.

2 (2) For purposes of this Paragraph:

3 (a) "Compliance" means the full completion of the terms and conditions of
4 probation as imposed by the sentencing judge, except for inability to pay fines, fees,
5 or restitution.

6 (b) "Compliance report" means a report generated and signed by the division
7 of probation and parole that contains clear and concise information relating to the
8 defendant's performance relative to "earned compliance credits", and may contain
9 a recommendation as to early termination.

10 (3) After a review of the compliance report, if it is the recommendation of the
11 division of probation and parole that the defendant is in compliance with the
12 conditions of probation, in accordance with the compliance report, the court shall
13 grant "earned compliance credit" for the time, absent a showing of cause for a denial.

14 (4) The court may terminate probation at any time as "satisfactorily
15 completed" upon the final determination that the defendant is in compliance with the
16 terms and conditions of probation.

17 (5) If the court determines that the defendant has failed to successfully
18 complete the terms and conditions of probation, the court may extend the probation
19 for a period not to exceed two years, for the purpose of allowing the defendant
20 additional time to complete the terms of probation, additional conditions, the
21 extension of probation, or the revocation of probation.

22 (6) Absent extenuating circumstances, the court shall, within ten days of
23 receipt of the compliance report, make an initial determination as to the issues
24 presented and shall transmit the decision to the probation officer. The court shall
25 disseminate the decision to the defendant, the division of probation and parole, and
26 the prosecuting agency within ten days of receipt. The parties shall have ten days
27 from receipt of the initial determination of the court to seek an expedited
28 contradictory hearing for the purpose of challenging the court's determination. If no
29 challenge is made within ten days, the court's initial determination shall become final

1 and shall constitute a valid order of the court.

2 * * *

3 **Art. 904. Mandatory assessment; suitability of defendant for drug or specialty**
4 **court program**

5 **A. A defendant shall be assessed for suitability for participation in a drug**
6 **or specialty court program if all of the following criteria are met:**

7 **(1) The defendant meets the statutory eligibility requirements for**
8 **participation in a drug or specialty court program.**

9 **(2) There is a relationship between the use of alcohol or drugs and the**
10 **offense before the court.**

11 **(3) The defendant has tested positive on a drug test and has been**
12 **screened and determined suitable pursuant to Code of Criminal Procedure**
13 **Article 320(D), or the defendant has been screened and determined suitable**
14 **upon request of the defendant or as ordered by the court.**

15 **B.(1) A defendant who meets the criteria set forth in Paragraph A of this**
16 **Article shall be assessed by a licensed treatment professional designated by the**
17 **court. Treatment professionals shall possess sufficient experience in working**
18 **with clients who have alcohol or drug abuse or addiction issues or mental**
19 **illness, and shall be credentialed or licensed by the state of Louisiana.**

20 **(2) The designated treatment professional shall perform an assessment**
21 **of the defendant, utilizing validated assessment tools, to determine whether the**
22 **defendant is suitable for a treatment program, and shall report to the court, the**
23 **district attorney, the defendant, and counsel for the defendant, the results of the**
24 **assessment and evaluation, along with a recommendation as to whether or not**
25 **the defendant is suitable for a drug or specialty court program.**

26 **(3) The court shall inform the defendant that the designated treatment**
27 **professional may request that the defendant provide the following information**
28 **to the court:**

29 **(a) Information regarding prior criminal charges.**

- 1 **(b) Education, work experience, and training.**
- 2 **(c) Family history, including residence in the community.**
- 3 **(d) Medical and mental health history, including any psychiatric or**
- 4 **psychological treatment or counseling.**
- 5 **(e) Any other information reasonably related to the success of the**
- 6 **treatment program.**

7 **C.(1) All records and information provided by the defendant to the**

8 **designated treatment professional for the purposes of screening or assessment**

9 **shall be deemed confidential and shall not be disclosed to any person who is not**

10 **connected with the treatment professional, treatment facility, district attorney,**

11 **counsel for defendant, or the court, without the consent of the defendant.**

12 **(2) The provisions of Subparagraph (1) of this Paragraph shall not**

13 **restrict the use of records and information for the purposes of research or**

14 **evaluation of the mandatory screening procedures or the effectiveness of any**

15 **drug or specialty court program, provided that the records or information shall**

16 **not be published or otherwise disseminated in any manner that discloses the**

17 **name or identifying information of the defendant.**

18 **D. No statement, or any information obtained therefrom, with respect to**

19 **the specific offenses with which the defendant is charged that is made to any**

20 **designated treatment professional shall be admissible in any civil or criminal**

21 **action or proceeding, except for the purposes of determining the suitability or**

22 **eligibility of the defendant for a drug or specialty court program.**

23 Section 2. R.S. 13:5304(B)(3)(b) is hereby amended and reenacted to read as follows:

24 §5304. The drug division probation program

25 * * *

26 B. Participation in probation programs shall be subject to the following

27 provisions:

28 * * *

29 (3) In offering a defendant the opportunity to request treatment, the court

1 shall advise the defendant of the following:

2 * * *

3 (b) If the defendant requests to undergo treatment and is accepted, the
4 defendant will be placed under the supervision of the drug division probation
5 program for a period of determined by the court, except that the probation period
6 for a defendant convicted of a violation of R.S. 14:98, 98.1, 98.2, or 98.3 shall not
7 be less than twelve months.

8 * * *

9 Section 3. Subpart V of Part II-A of Chapter 1 of Subtitle I of Title 39 of the
10 Louisiana Revised Statutes of 1950, comprised of R.S. 39:100.171 and 100.172, is hereby
11 enacted to read as follows:

12 **SUBPART V. DRUG AND SPECIALTY COURT FUND**

13 **§100.171. Drug and Specialty Court Fund**

14 **A. There is hereby created in the state treasury, as a special fund, the**
15 **Drug and Specialty Court Fund, hereinafter referred to as the "fund".**

16 **B. After compliance with the requirements of Article VII, Section 9(B)**
17 **of the Constitution of Louisiana relative to the Bond Security and Redemption**
18 **Fund, all monies received by the state from any judgment, settlement,**
19 **assessment of civil or criminal penalties, or otherwise collected as a result of a**
20 **case or cause of action against a manufacturer of opioids or any other**
21 **responsible person brought to recover monies expended or anticipated to be**
22 **expended by the state or damages incurred by the state in connection with the**
23 **manufacturing, marketing, distribution, or sale of opioids, shall be deposited**
24 **into the fund.**

25 **C. Monies in the fund shall be invested by the state treasurer in the same**
26 **manner as monies in the state general fund. Interest earned on investment of**
27 **monies in the fund shall be credited to the fund. All unexpended and**
28 **unencumbered monies in the fund at the end of the fiscal year shall remain in**
29 **the fund, and any interest earned on the monies in the fund, shall be credited to**

1 the fund.

2 D. The office of the attorney general shall be the administrator of the
3 fund, hereinafter the "administrator". Monies in the fund shall be appropriated
4 to the administrator to administer the fund in accordance with Subsection E of
5 this Section.

6 E.(1) Monies in the fund shall be disbursed by the administrator to
7 eligible applicants through the award of grants. Any and all monies disbursed
8 from the fund shall be awarded only as deemed appropriate in the
9 administrator's discretion and based upon the individual needs of each entity
10 with respect to compliance with the provisions of this Section.

11 (2) Acceptable uses of the monies in this fund include, but are not limited
12 to the following:

13 (a) Expenses related to the creation, maintenance, operation, expansion,
14 or improvement of any drug or specialty court within the district courts of this
15 state, including expenses incurred by the district courts, district attorneys'
16 offices, public defenders, parish and local governing authorities, and sheriffs'
17 offices related to participants or potential participants in any drug or specialty
18 court in this state, including expenses incurred for the purpose of supervising
19 participants.

20 (b) Expenses related to administering mandatory drug testing and
21 clinical drug screening by law enforcement agencies, including offices of the
22 sheriffs, in accordance with the provisions of Code of Criminal Procedure
23 Article 320(D).

24 (c) Expenses related to drug screening and testing of participants or
25 potential participants in any drug or specialty court program in this state.

26 (d) Expenses related to the services provided by drug or specialty court
27 programs or services received by participants or potential participants in any
28 drug or specialty court program in this state, including services provided
29 directly or through contractual arrangement, that directly relate to the

1 determination of suitability or eligibility for, and participation in, a drug or
2 specialty court program.

3 (e) Expenses related to the creation, maintenance, operation, expansion,
4 or improvement of any drug or alcohol treatment facility, program, or service
5 for individuals in the custody of the Department of Public Safety and
6 Corrections or in the custody of any parish or local correctional facility in this
7 state.

8 (f) Any other expenses directly related to or incurred due to compliance
9 with the provisions of this Section.

10 F. Any monies disbursed to an entity by the administrator that remain
11 unexpended or unencumbered at the end of the fiscal year shall be available for
12 use in the subsequent fiscal year by the entity, subject to the provisions of the
13 grant agreement.

14 **§100.172. Reporting requirements**

15 A. The administrator of the Drug and Specialty Court Fund shall submit
16 an annual report, in accordance with the provisions of R.S. 24:771 et seq., to the
17 Joint Legislative Committee on the Budget no later than August first of each
18 year. The report shall include information from the previous fiscal year relative
19 to the number of grant applications received, recipients of the grants, and
20 amounts of grants awarded.

21 B. The administrator shall submit a notice of the exhaustion or the
22 anticipated exhaustion of all monies received or to be received by the fund, not
23 less than three years prior to the exhaustion or anticipated exhaustion of those
24 funds, to the Joint Legislative Committee on the Budget, the president of the
25 Senate, the speaker of the House of Representatives, and the governor.

26 C. If the amount of monies in the fund is determined at any time to be
27 insufficient to satisfy the expenses and costs of compliance with the provisions
28 of this Subpart, the administrator shall certify the existence of this insufficiency
29 and shall immediately provide notice of this certification to the Joint Legislative

1 **Committee on the Budget, the president of the Senate, the speaker of the House**
 2 **of Representatives, and the governor. Upon certification and notice of the**
 3 **insufficiency of funds, compliance with the provisions of Code of Criminal**
 4 **Procedure Article 320(D) shall cease to be mandatory, but may continue to be**
 5 **enforced at the discretion of the governing authority responsible for funding**
 6 **enforcement of those provisions.**

7 Section 4. The provisions of Sections 1 and 2 of this Act shall take effect and become
 8 operative one year from the date on which the balance of monies received and deposited in
 9 the Drug and Specialty Court Fund created by Section 3 of this Act totals ten million dollars.

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

DIGEST

SB 145 Engrossed

2021 Regular Session

Ward

Present law provides that every person arrested for a violation of the Uniform Controlled Dangerous Substances Law or a crime of violence as defined by present law must submit to a pretrial drug test for the presence of certain controlled substances in accordance with present law and rules of court governing such testing.

Proposed law retains present law and adds the following:

- (1) Drug testing to determine the presence of a controlled dangerous substance should occur within 24 hours of the booking of the person.
- (2) A person testing positive is to be clinically screened for the purposes of determining whether the person suffers from a substance use disorder and is suitable for a drug or specialty court program.
- (3) A person who tested positive and is deemed suitable for a drug or specialty court program is subject to additional provisions of proposed law relative to mandatory assessment.
- (4) Information and records relative to drug testing or screening are confidential and cannot be disclosed to any person who is not connected with the district attorney, counsel for the person tested or screened, a treatment professional, or the court, without the consent of the person tested or screened, and such information is not admissible in any civil or criminal proceeding except for the purposes of determining the person's suitability or eligibility for a drug or specialty court program.
- (5) The costs and expenses of the drug testing and screening required by proposed law are eligible for reimbursement from the Drug and Specialty Court Fund created by proposed law.

Proposed law provides that proposed law relative to mandatory drug testing and screening is to be enforced to the extent that sufficient monies exist in the Drug and Specialty Court Fund to reimburse costs and expenses. Proposed law further provides that if the administrator of the fund certifies that sufficient monies do not exist for reimbursement,

those testing and screening provisions will cease to be mandatory, but may still be enforced at the discretion of the governing authority.

Present law provides that, when it appears that the best interest of the public and of the defendant will be served, after a fourth conviction of a noncapital felony or third or fourth conviction of DWI, the court may suspend the imposition or execution of sentence when the defendant's sentences for his first, second, or third convictions of a noncapital felony were not suspended prior to his fourth conviction of DWI, and the following conditions exist:

- (1) The district attorney consents to the suspension of the sentence.
- (2) The court orders the defendant to complete any of the following:
 - (a) A program provided by the drug division of the district court.
 - (b) An established DWI court or sobriety court program.
 - (c) A mental health court program established by present law.
 - (d) A Veterans Court program established by present law.
 - (e) A reentry court program established by present law.
 - (f) Reside for at least one year in a facility that conforms to the Judicial Agency Referral Residential Facility Regulatory Act established by present law.
 - (g) The Swift and Certain Probation Pilot Program established by present law.

Proposed law retains present law and adds that present law applies only if the defendant does not meet the eligibility criteria for participation in a drug or specialty court program.

Present law provides that when suspension of sentence is allowed after a fourth conviction of a noncapital felony or third or fourth conviction of DWI, the defendant is to be placed on probation under the supervision of the division of probation and parole. Present law further provides that the period of probation cannot be more than three years except as otherwise provided in present law.

Proposed law retains present law and adds that the defendant may be placed on probation under the supervision of a probation office, agency, or officer designated by the court in lieu of supervision by the division of probation and parole.

Proposed law provides that, when it appears that the best interest of the public and of the defendant will be served, after the conviction of a defendant deemed suitable for a drug or specialty court program, the court may suspend, in whole or in part, the imposition or execution of the sentence when all of the following conditions are met:

- (1) The district attorney consents to the suspension of sentence.
- (2) There is an available drug or specialty court program recognized by the La. Supreme Court.
- (3) The court orders the defendant to enter and complete any drug or specialty court program recognized by the La. Supreme Court.

Proposed law provides that if the district attorney does not consent to the suspension of the sentence, he must file his objection with written reasons into the record. Proposed law further provides that if the district attorney files an objection, or if the court determines that a specialty court program is not available, the court may sentence the defendant to any

sentence provided by present law.

Proposed law provides that, when suspension of sentence is allowed pursuant to proposed law, the defendant may be placed on probation, for not more than three years except as provided by present law, under the supervision of the division of probation and parole, or a probation office, agency, or officer designated by the court.

Proposed law provides that, upon motion of the defendant, if the court finds that probation has been satisfactory, the court may set the conviction aside and dismiss the prosecution, which will have the same effect as an acquittal; however, the conviction may be considered a prior offense for purposes of the Habitual Offender Law or any other present law relative to cumulation of offenses. Proposed law further provides that a dismissal pursuant to proposed law can occur only once with respect to any person.

Proposed law provides that a defendant is to be assessed for suitability for participation in a drug or specialty court program if all of the following criteria are met:

- (1) The defendant meets present law eligibility requirements.
- (2) There is a relationship between the use of alcohol or drugs and the offense.
- (3) The defendant has tested positive on a drug test and has been screened and determined suitable for a drug or specialty court program pursuant to proposed law, or upon request of the defendant or order of the court.

Proposed law provides that a defendant who meets these criteria is to be assessed by a licensed treatment professional designated by the court. Proposed law provides that treatment professionals must possess sufficient experience in working with clients who have alcohol or drug abuse or addiction issues or mental illness, and must be credentialed or licensed by the state of Louisiana. Proposed law further provides that the designated treatment professional is to perform an assessment of the defendant to determine whether he is suitable for a treatment program, and must report to the court, the district attorney, the defendant, and counsel for the defendant the results of the assessment, along with a recommendation as to whether the defendant is suitable.

Proposed law provides that the court must inform the defendant that the designated treatment professional may request that the defendant provide the following information to the court regarding prior criminal charges, education, work experience, family history, medical and mental health history, and any other information reasonably related to the success of the treatment program.

Proposed law provides that information provided by the defendant to the designated treatment professional is confidential and cannot be disclosed to any person who is not connected with the treatment professional, treatment facility, district attorney, counsel for defendant, or the court, without the consent of the defendant; however, these records and information may be used for the purposes of research or evaluation of the mandatory screening procedures or the effectiveness of any drug or specialty court program, provided that the information or records are not published with any identifying information. Proposed law further provides that information obtained from the defendant is not admissible in any civil or criminal proceeding, except to determine the defendant's suitability or eligibility for a drug or specialty court program.

Present law provides that the court must advise the defendant that if he requests treatment and is accepted, he will be placed under the supervision of the drug division probation program for a period of at least 12 months.

Proposed law provides that the court is to determine the length of supervision of the defendant rather than a mandatory 12 months, except that for a defendant convicted of a

first, second, or third offense DWI, the period must be at least 12 months.

Proposed law otherwise retains present law.

Proposed law creates the Drug and Specialty Court Fund in the state treasury. Proposed law provides that all monies received by the state from any judgment, settlement, or otherwise collected from any responsible person, to cover monies expended or anticipated to be expended by the state, or damages incurred by the state, in connection with the manufacturing, marketing, distribution, or sale of opioids are to be deposited into the fund.

Proposed law provides that monies in the fund are to be invested by the state treasurer in the same manner as monies in the state general fund, and interest earned is to be credited to the fund. Proposed law further provides that all unexpended and unencumbered monies in the fund at the end of the fiscal year are to remain in the fund.

Proposed law provides that the office of the attorney general is the administrator of the fund, and monies in the fund are to be appropriated to administer the fund in accordance with proposed law. Proposed law further provides that monies in the fund are to be disbursed by the administrator to eligible applicants for the purpose of drug testing and screening through the award of grants. Proposed law further provides that these grants are to be awarded only as deemed appropriate by the administrator, based upon the individual needs of each entity with respect to compliance with proposed law.

Proposed law provides that monies in the fund may be used for the following:

- (1) Expenses related to any drug or specialty court within the district courts of this state, including expenses incurred by the district courts, district attorneys' offices, public defenders, parish and local governing authorities, and sheriffs' offices related to participants or potential participants in any drug or specialty court in this state, including expenses incurred for the purpose of supervising participants.
- (2) Expenses related to administering mandatory drug testing and clinical drug screening by law enforcement agencies, including sheriffs' offices, in accordance with the provisions of proposed law.
- (3) Expenses related to drug screening and testing of participants or potential participants in any drug or specialty court program in this state.
- (4) Expenses related to the services provided by drug or specialty court programs or services received by participants or potential participants in any drug or specialty court program in this state.
- (5) Expenses related to the creation, maintenance, operation, expansion, or improvement of any drug or alcohol treatment facilities, programs, or services for individuals in the custody of the Dept. of Public Safety and Corrections or any parish or local correctional facility in this state.
- (6) Any other expenses directly related to or incurred due to compliance with proposed law.

Proposed law provides that any monies disbursed by the administrator that remain unexpended or unencumbered at the end of the fiscal year are available for use in the subsequent fiscal year by the entity, subject to the provisions of the grant agreement.

Proposed law provides that the administrator of the fund is to submit an annual report to the Joint Legislative Committee on the Budget no later than August first of each year, which is to include information from the previous fiscal year relative to the number of grant applications received, recipients of the grants, and amounts of the grants awarded.

Proposed law provides that the administrator is to submit a notice of the exhaustion or anticipated exhaustion of all monies received or to be received by the fund, no later than three years prior to the exhaustion or anticipated exhaustion, to the Joint Legislative Committee on the Budget, the president of the Senate, the speaker of the House of Representatives, and the governor. Proposed law further provides that if the amount of monies in the fund is determined at any time to be insufficient to satisfy the costs of compliance with proposed law, the administrator is to certify the existence of this insufficiency and provide notice of this certification to these same parties. Proposed law further provides that, upon certification and notice of the insufficiency of funds, compliance with proposed law relative to funding drug and specialty courts will cease to be mandatory, but may continue to be enforced at the discretion of the governing authority.

Proposed law relative to the creation and operation of the Drug and Specialty Court Fund effective 8/1/21.

Proposed law relative to mandatory drug testing and screening and drug and specialty courts will take effect one year from the date on which the balance of monies in the Drug and Specialty Court Fund reaches \$10,000,000.

(Amends C.Cr.P. Art. 320(D) and (E)(1) and 893(A)(1)(a), (B)(2), (F), (G), and (H) and R.S. 13:5304(B)(3)(b); adds C.Cr.P. Art. 893(B)(1)(c) and (I) and 904 and R.S. 39:100.171 and 100.172)