

Regular Session, 2005

HOUSE BILL NO. 53

BY REPRESENTATIVE LAFLEUR

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

DWI: Amends penalty provisions for third and subsequent convictions of driving while intoxicated

1 AN ACT

2 To amend and reenact R.S. 14:98(D)(1)(a), (b)(introductory paragraph), (c), and (d), and
3 (3)(a)(introductory paragraph), (b), and (c), and (E)(1)(a), (b)(introductory
4 paragraph), (c), and (d), and (3)(a)(introductory paragraph), (b), and (c), and (4)(a),
5 relative to operating a vehicle while intoxicated; to provide with respect to criminal
6 penalties for third, fourth, and subsequent offenders; to provide for the court's
7 discretion in sentencing such offenders with respect to length of imprisonment,
8 substance abuse treatment, and home incarceration; and to provide for related
9 matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 14:98(D)(1)(a), (b)(introductory paragraph), (c), and (d), and
12 (3)(a)(introductory paragraph), (b), and (c), and (E)(1)(a), (b)(introductory paragraph), (c),
13 and (d), and (3)(a)(introductory paragraph), (b), and (c), and (4)(a) is hereby amended and
14 reenacted to read as follows:

15 §98. Operating a vehicle while intoxicated

16 * * *

17 D.(1)(a) On a conviction of a third offense, notwithstanding any other
18 provision of law to the contrary and regardless of whether the offense occurred
19 before or after an earlier conviction, the offender shall be imprisoned with or without
20 hard labor for not less than one year nor more than five years and shall be fined two
21 thousand dollars. Thirty days of the sentence of imprisonment shall be imposed

1 without benefit of probation, parole, or suspension of sentence. The court, in its
2 discretion, may suspend all or any part of the remainder of the sentence of
3 imprisonment ~~shall be suspended~~, and, if any part is suspended, the offender shall be
4 placed on supervised probation with the Department of Public Safety and
5 Corrections, division of probation and parole, for a period of time equal to the
6 remainder of the sentence of imprisonment, which probation shall commence on the
7 day after the offender's release from custody.

8 (b) The offender ~~shall~~ may be required as a condition of probation to submit
9 to and complete any court-approved substance abuse treatment program including
10 but not limited to either of the following requirements:

11 (i) To immediately undergo an evaluation by the Department of Health and
12 Hospitals, office for addictive disorders to determine the nature and extent of the
13 offender's substance abuse disorder and to participate in any treatment plan
14 recommended by the office for addictive disorders, including treatment in an
15 inpatient facility approved by the office for a period of not less than four weeks
16 followed by outpatient treatment services for a period not to exceed twelve months.

17 (ii) To participate in substance abuse treatment in an alcohol and drug abuse
18 program provided by a drug division subject to the applicable provisions of R.S.
19 13:5301 et seq. if the offender is otherwise eligible to participate in such program.

20 (c) In addition to ~~the requirements set forth in Subparagraph (b) of this~~
21 ~~Paragraph~~, the offender ~~shall~~ may be placed in a home incarceration program
22 approved by the division of probation and parole for a period of time ~~not less than~~
23 ~~six months and not~~ to be determined by the court but in no case shall an offender be
24 sentenced to home incarceration for more than the remainder of the sentence of
25 imprisonment.

26 (d) If the offender is required to participate in substance abuse treatment or
27 home incarceration and fails to complete the substance abuse treatment ~~required by~~
28 ~~the provisions of this Paragraph~~ or violates any other condition of probation,
29 including conditions of home incarceration, his probation may be revoked, and he

1 be placed on supervised probation with the Department of Public Safety and
2 Corrections, division of probation and parole, for a period of time not to exceed five
3 years, which probation shall commence on the day after the offender's release from
4 custody.

5 (b) The offender ~~shall~~ may be required, as a condition of probation, to submit
6 to and complete any court-approved substance abuse treatment program including
7 but not limited to either of the following requirements:

8 (i) To immediately undergo an evaluation by the Department of Health and
9 Hospitals, office for addictive disorders to determine the nature and extent of the
10 offender's substance abuse disorder and to participate in any treatment plan
11 recommended by the office for addictive disorders, including treatment in an
12 inpatient facility approved by the office for a period of not less than four weeks
13 followed by outpatient treatment services for a period not to exceed twelve months.

14 (ii) To participate in substance abuse treatment in an alcohol and drug abuse
15 program provided by a drug division subject to the applicable provisions of R.S.
16 13:5301 et seq. if the offender is otherwise eligible to participate in such program.

17 (c) In addition ~~to the requirements set forth in Subparagraph (b) of this~~
18 ~~Paragraph~~, the offender ~~shall~~ may be placed in a home incarceration program
19 approved by the division of probation and parole for a period of time ~~not less than~~
20 ~~one year nor~~ to be determined by the court but in no case shall an offender be
21 sentenced to home incarceration for more than the remainder of the term of
22 supervised probation.

23 (d) If the offender is required to participate in substance abuse treatment or
24 home incarceration and fails to complete the substance abuse treatment required by
25 the provisions of this Paragraph or violates any other condition of probation,
26 including conditions of home incarceration, his probation may be revoked, and he
27 may be ordered to serve the balance of the sentence of imprisonment, without credit
28 for time served under home incarceration.

29 * * *

1 (3)(a) An offender sentenced to home incarceration during probation ~~shall~~
2 may be subject to special conditions to be determined by the court, which ~~shall~~
3 may include but is not ~~be~~ limited to the following:

4 (i) Electronic monitoring.

5 (ii) Curfew restrictions.

6 (iii) Home visitation at least once per month by the Department of Public
7 Safety and Corrections for the first six months. After the first six months, the level
8 of supervision will be determined by the department based upon a risk assessment
9 instrument.

10 (b) The court ~~shall~~ may also require the offender to obtain employment and
11 to participate in a court-approved driver improvement program at his expense. The
12 activities of the offender outside of his home shall be limited to traveling to and from
13 work, church services, Alcoholics Anonymous meetings, or a court-approved driver
14 improvement program.

15 (c) Offenders sentenced to home incarceration ~~required~~ under the provisions
16 of this Section shall be subject to all other applicable provisions of Code of Criminal
17 Procedure Article 894.2.

18 (4)(a) If the offender has previously been ~~required to participate in~~ sentenced
19 to substance abuse treatment and home incarceration pursuant to Subsection D of this
20 Section, the offender shall not be sentenced to substance abuse treatment and home
21 incarceration for a fourth or subsequent offense, but shall be imprisoned at hard labor
22 for not less than ten nor more than thirty years, and at least three years of the
23 sentence shall be imposed without benefit of suspension of sentence, probation, or
24 parole.

25 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument.

LaFleur

HB No. 53

Abstract: Gives the courts discretion in sentencing a third or subsequent DWI offender with respect to terms of imprisonment, participation in substance abuse treatment programs, and home incarceration programs.

Present law provides that persons convicted of a third DWI offense shall be imprisoned with or without hard labor for one to five years, with 30 days imposed without benefit of probation, parole, or suspension of sentence. Provides that persons convicted of a fourth or subsequent offense shall be imprisoned for 10 to 30 years, with 60 days imposed without benefit of probation, parole, or suspension of sentence. In both cases, present law requires the remainder of the sentence to be suspended and requires the offender to be placed on supervised probation with the Dept. of Public Safety and Corrections (DPS&C).

Proposed law deletes provisions which require the remainder of the sentence to be suspended and provides for the court's discretion in suspending all or any part of the remainder of the sentence. Provides that if any part of the remainder of the sentence is suspended, then the offender shall be on supervised probation with DPS&C.

Present law requires third, fourth, and subsequent offenders to participate in either a drug court treatment program or a substance abuse treatment program recommended by the office for addictive disorders, including a minimum of four weeks inpatient treatment. Following substance abuse treatment, present law requires those offenders to participate in a home incarceration program for not less than six months nor more than the remainder of the sentence of imprisonment.

Proposed law authorizes, but does not require, those offenders to participate in any court approved substance abuse program, including but not limited to drug court treatment programs and inpatient substance abuse treatment. With regard to home incarceration, proposed law authorizes, but does not require, participation in a home incarceration program.

Present law provides that if an offender fails to complete substance abuse treatment or violates a condition of probation, including conditions of home incarceration, his probation may be revoked, and he may be ordered to serve the balance of imprisonment, without credit for time served under home incarceration.

Proposed law provides that if an offender is required to participate in substance abuse treatment or home incarceration and fails to complete the program or violates any other condition of probation, his probation may be revoked, and he may be ordered to serve the balance of imprisonment, without credit for time served under home incarceration.

Present law provides that an offender sentenced to home incarceration during probation shall be subject to special conditions which shall include the following: electronic monitoring, curfew restrictions, and home visitation by DPS&C. Further requires the court to require the offender to obtain employment and participate in court-approved driver improvement programs. Imposes other restrictions on the activities of the offender, including travel to work, church services, Alcoholics Anonymous meetings, etc.

Proposed law provides that present law conditions of probation and restrictions on the activities of the offender are discretionary and not mandatory.

(Amends R.S. 14:98(D)(1)(a), (b)(intro. para.), (c), and (d), and (3)(a)(intro. para.), (b), and (c), and (E)(1)(a), (b)(intro. para.), (c), (d), and (3)(a)(intro. para.), (b), (c), and (4)(a))