Louisiana Code of Criminal Procedure 2021

About the Book

Formatted and compiled with the practitioners and law students in mind, this edition of the Louisiana Code of Criminal Procedure has easy to read text on letter size pages that reads across the whole page (no dual columns) and a detailed table of contents that allows you to quickly access the provision you need. Contains all articles as amended through the 2020 Legislative Sessions. To browse online, visit **www.LouisianaCodeofCriminalProcedure.com**.

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TITLE I. PRELIMINARY PROVISIONS AND GENERAL POWERS OF COURTS

CHAPTER 1. PRELIMINARY PROVISIONS AND RULES OF CONSTRUCTION

Art. 1. Short title; citation of Code

This Code shall be known as the Louisiana Code of Criminal Procedure and may be cited officially: C.Cr.P.

Art. 2. Purpose and construction

The provisions of this Code are intended to provide for the just determination of criminal proceedings. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable delay.

Art. 3. Procedures not otherwise specified

Where no procedure is specifically prescribed by this Code or by statute, the court may proceed in a manner consistent with the spirit of the provisions of this Code and other applicable statutory and constitutional provisions.

Art. 4. Number; gender

Unless the context clearly indicates otherwise:

(1) Words used in the singular number apply also to the plural; words used in the plural number include the singular; and

(2) Words used in one gender apply also to the other.

Art. 5. Mandatory and permissive language

The word "shall" is mandatory, and the word "may" is permissive.

Art. 6. Conjunctive, disjunctive, or both

Unless the context clearly indicates otherwise:

(1) The word "and" indicates the conjunctive;

(2) The word "or" indicates the disjunctive;

(3) When the article is phrased in the disjunctive, followed by the words "or both," both the conjunctive and disjunctive are intended; and

(4) The word "and" or "or" between the last two items in a series applies to the entire series.

Art. 7. Municipal and parochial officers included

Unless the context clearly indicates the contrary, the term "district attorney" includes a municipal prosecuting officer; the term "sheriff" includes a city or municipal police chief or a city marshall; and other official titles include their counterparts in municipal and parochial governments.

Art. 8. Assistants and deputies included

Unless the context clearly indicates the contrary, official titles, such as clerk of court, coroner, district attorney, and sheriff, include assistants and deputies.

Art. 9. References to Code articles or statutory sections

Unless the context clearly indicates the contrary:

(1) A reference in this Code to a title, chapter, or article, without further designation, means a title, chapter, or article of this Code; and

(2) A reference in this Code to a title, chapter, or article of this code, or to any statutory or constitutional provision, applies to subsequent amendments thereof.

Art. 10. Article headings, source notes, and comments not part of law

The headings of the articles of this Code, and the source notes and comments thereunder do not constitute parts of the law.

Art. 11. Clerical and typographical errors disregarded

Clerical and typographical errors in this Code shall be disregarded when the legislative intent is clear.

Art. 12. Pleading a statute

In pleading a state statute of Louisiana or an ordinance of a political subdivision thereof, a state statute of another state of the United States, or a federal statute, or a right derived therefrom or an obligation created thereby, it is sufficient to refer to the statute or ordinance by an official method of citation, by its title, or in any other manner which identifies the statute or ordinance.

Art. 13. Computation of time

In computing a period of time allowed or prescribed by law or by order of court, the date of the act, event, or default after which the period begins to run is not to be included. The last day of the period is to be included, unless it is a legal holiday, in which event the period runs until the end of the next day which is not a legal holiday.

A half-holiday is considered as a legal holiday.

A legal holiday is to be included in the computation of a period of time allowed or prescribed, except when:

(1) It is expressly excluded;

(2) It would otherwise be the last day of the period; or

(3) The period is less than seven days.

Art. 14. Oath or affirmation in criminal proceedings; witness

A. If a person refuses to take an oath or to make a sworn statement or affidavit required in connection with any criminal proceedings, he may affirm in lieu of swearing, and his affirmation shall fulfill the requirement and shall have the same legal effect as an oath, sworn statement, or affidavit.

B. Before testifying every witness shall be required to declare that he will testify truthfully, by oath or affirmation administered in a form calculated to awaken his conscience and impress his mind with his duty to do so.

Acts 1988, No. 515, §3, eff. Jan. 1, 1989.

Art. 14.1. Filing of pleadings and documents by facsimile transmission

A. Any document in a traffic or criminal action may be filed with the clerk of court by facsimile transmission if permitted by the policy of the clerk of court. Filing shall be deemed complete at the time the facsimile transmission is received by the clerk of court. No later than on the first business day after receiving a facsimile filing, the clerk of court shall transmit to the filing party via facsimile a confirmation of receipt and include a statement of the fees for the facsimile filing and filing of the original document. The facsimile filing fee and transmission fee are incurred upon receipt of the facsimile filing by the clerk of court and payable as provided in Subsection B of this Section. The facsimile filing shall have the same force and effect as filing the original document, if the party complies with Paragraph B of this Article.

B. Within seven days, exclusive of legal holidays, after the clerk of court receives the facsimile filing, all of the following shall be delivered to the clerk of court:

(1) The original document identical to the facsimile filing in number of pages and in content of each page including any attachments, exhibits, and orders. A document not identical to the facsimile filing or which includes pages not included in the facsimile filing shall not be considered the original document.

(2) The fees for the facsimile filing and filing of the original document stated on the confirmation of receipt, if any.

(3) A transmission fee of five dollars, if the defendant had not been declared indigent by the court.

C. If the filing party fails to comply with any of the requirements of Paragraph B of this Article, the facsimile filing shall have no force or effect.

D. Any court district may provide by court rule for any additional requirement or provisions for filings by facsimile transmission.

E. In keeping with the clerk's policy, each clerk of court shall make available the necessary equipment and supplies to accommodate facsimile filing in criminal actions. Purchases for equipment and supplies necessary to accommodate facsimile filings may be funded from any expense fund of the office of the clerk of court as the clerks deem appropriate.

Acts 2001, No. 319, §3; Acts 2016, No. 109, §2.

CHAPTER 2. APPLICATION OF CODE

Art. 15. Courts to which applicable; military not affected

A. The provisions of this Code, except as otherwise specially provided by other statutes, shall govern and regulate the procedure in criminal prosecutions and proceedings in district courts. They also shall govern criminal prosecutions in city, parish, juvenile, and family courts, except insofar as a particular provision is incompatible with the general nature and organization of, or special procedures established or authorized by law for, those courts.

B. This Code shall not affect any power conferred by law upon any court martial, military authority, or military officer to impose or inflict punishment upon offenders.

CHAPTER 3. INHERENT POWERS OF COURTS; CONTEMPT

Art. 16. Jurisdiction and powers of courts

Courts have the jurisdiction and powers over criminal proceedings that are conferred upon them by the constitution and statutes of this state, except as their statutory jurisdiction and powers are restricted, enlarged, or modified by the provisions of this Code.

Art. 17. Inherent power and authority of courts

A court possesses inherently all powers necessary for the exercise of its jurisdiction and the enforcement of its lawful orders, including authority to issue such writs and orders as may be necessary or proper in aid of its jurisdiction. It has the duty to require that criminal proceedings shall be conducted with dignity and in an orderly and expeditious manner and to so control the proceedings that justice is done. A court has the power to punish for contempt.

Art. 18. Adoption of local rules of court

A court may adopt rules for the conduct of criminal proceedings before it, not in conflict with provisions of this Code or of other laws. When a court has more than one judge, its rules shall be adopted or amended by a majority of the judges thereof, sitting en banc.

The rules shall be entered on the minutes of the court, and a copy shall be furnished on request to any attorney licensed to practice law in this state.

Art. 19. Special sessions of court

A court may call a special criminal session at any time, including vacation, and any criminal proceeding or prosecution may be tried or heard during the special session.

Art. 20. Contempt of court; kinds of contempt

A contempt of court is an act or omission tending to obstruct or interfere with the orderly administration of justice, or to impair the dignity of the court or respect for its authority.

Contempts of court are of two kinds, direct and constructive.

Art. 21. Direct contempt

A direct contempt of court is one committed in the immediate view and presence of the court and of which it has personal knowledge; or, a contumacious failure to comply with a subpoena, summons or order to appear in court, proof of service of which appears of record; or, a contumacious failure to comply with an order sequestering a witness.

A direct contempt includes, but is not limited to, any of the following acts:

(1) Contumacious failure, after notice, to appear for arraignment or trial on the day fixed therefor;

(2) Contumacious failure to comply with a subpoena or summons to appear in court, proof of service of which appears of record;

(3) Contumacious violation of an order excluding, separating, or sequestering a witness;

(4) Refusal to take the oath or affirmation as a witness, or refusal of a witness to answer a nonincriminating question when ordered to do so by the court;

(5) Contumacious, insolent, or disorderly behavior toward the judge or an attorney or other officer of the court, tending to interrupt or interfere with the business of the court or to impair its dignity or respect for its authority;

(6) Breach of the peace, boisterous conduct, or violent disturbance tending to interrupt or interfere with the business of the court or to impair its dignity or respect for its authority;

(7) Use of insulting, abusive, or discourteous language by an attorney or other person in open court, or in a motion, plea, brief, or other document filed with the court, in irrelevant criticism of another attorney or of a judge or officer of the court;

(8) Violation of a rule of the court adopted to maintain order and decorum in the court room; or

(9) Contumacious failure to attend court as a member of a jury venire or to serve as a juror after being accepted as such when proof of service of the subpoena appears of record.

Art. 22. Procedure for punishing direct contempt

A person who has committed a direct contempt of court may be found guilty and punished therefor by the court without any trial, after affording him an opportunity to be heard orally by way of defense or mitigation. The court shall render an order reciting the facts constituting the contempt, adjudging the person guilty thereof, and specifying the punishment imposed.

Art. 22.1. Direct contempt; fingerprinting and photographing; exceptions

No person arrested or found guilty for the first offense of direct contempt of court either for failure to attend court as a member of a jury venire when proof of service of the summons appears on the record or for failure to comply with a subpoena to attend court to serve as a witness when proof of service of the subpoena appears on the record shall be subject to fingerprinting or have his photograph taken in any arrest or postsentence procedure.

Acts 1985, No. 937, §2.

Art. 23. Constructive contempt

A constructive contempt of court is any contempt other than a direct one.

A constructive contempt includes, but is not limited to any of the following acts:

(1) Willful neglect or violation of duty by a clerk, sheriff, or other person elected, appointed, or employed to assist the court in the administration of justice;

(2) Willful disobedience of any lawful judgment, order, mandate, writ, or process of court;

(3) Removal or attempted removal of any person or of property in the custody of an officer acting under the authority of a judgment, order, mandate, writ, or process of the court;

(4) Unlawful detention of a witness, the defendant or his attorney, or the district attorney, while going to, remaining at, or returning from the court;

(5) Improper conversation by a juror or venireman with any person relative to the merits of a case which is being, or may be, tried by a jury of which the juror is a member, or of which the venireman may become a member; or receipt by a juror or venireman of a communication from any person with reference to such a case without making an immediate disclosure to the court of the substance thereof;

(6) Assuming to act as a juror, or as an attorney or other officer of the court, without lawful authority;

(7) Willful disobedience by an inferior court, judge, or other official thereof, of the lawful judgment, order, mandate, writ, or process of an appellate court, rendered in connection with an appeal from a judgment or order of the inferior court, or in connection with a review of such judgment or order under a supervisory writ.

Art. 24. Procedure for punishing constructive contempt

A. When a person is charged with committing a constructive contempt, he shall be tried by the judge on a rule to show cause alleging the facts constituting the contempt. The rule may be issued by the court on its own motion or on motion of the district attorney.

B. A certified copy of the motion and of the rule shall be served on the person charged in the manner of a subpoena not less than forty-eight hours prior to the time assigned for trial of the rule.

C. A person charged with committing a constructive contempt of a court of appeal may be found guilty thereof and punished therefor after receiving a notice to show cause, by brief, to be filed not less than forty-eight hours from the date the person receives such notice, why he should not be found guilty of contempt and punished accordingly. Such notice may be sent by certified or registered mail or may be served by the sheriff. The person so charged shall be granted an oral hearing on the charge if he submits a written request to the clerk of the appellate court within forty-eight hours after receiving notice of the charge.

D. If the person charged with contempt is found guilty, the court shall render an order reciting the facts constituting the contempt, adjudging the person charged with the contempt guilty thereof, and specifying the punishment imposed.

Amended by Acts 1984, No. 530, §1.

Art. 25. Penalties for contempt

A. A person may not be adjudged guilty of a contempt of court except for misconduct defined as such, or made punishable as such, expressly by law.

B. Except as otherwise provided in this Article, a court may punish a person adjudged guilty of contempt of court in connection with a criminal proceeding by a fine of not more than five hundred dollars, or by imprisonment for not more than six months, or both.

C. When an attorney is adjudged guilty of a direct contempt of court, the punishment shall be limited to a fine of not more than one hundred dollars, or imprisonment for not more than twenty-four hours, or both; and, for any subsequent direct contempt of the same court by the same offender, a fine of not more than two hundred dollars, or imprisonment for not more than ten days, or both.

D. A justice of the peace may punish a person adjudged guilty of a direct contempt of court by a fine of not more than fifty dollars, or imprisonment in the parish jail for not more than twenty-four hours, or both.

E. When a contempt of court consists of the omission to perform an act which is yet in the power of the person charged with contempt to perform, he may be imprisoned until he performs it, and in such a case this shall be specified in the court's order.

Acts 1991, No. 508, §1.

Art. 25.1. Appointment of interpreter for non-English-speaking persons

A. If a non-English-speaking person who is a principal party in interest or a witness in a proceeding before the court has requested an interpreter, a judge shall appoint, after consultation with the non-English-speaking person or his attorney, a competent interpreter to interpret or to translate the proceedings to him and to interpret or translate his testimony.

B. The court shall order reimbursement to the interpreter for his services at a fixed reasonable amount.

Acts 2008, No. 382, §2.

CHAPTER 4. PEACE BONDS

Art. 26. Power to order peace bonds

A magistrate may order a peace bond in conformity with the provisions of this Chapter.

Art. 27. Application for peace bond; examination

An applicant for a peace bond shall file an affidavit charging that the defendant has threatened or is about to commit a specified breach of the peace. The magistrate with whom the application is filed may examine under oath the complainant and any witnesses produced.

Art. 28. Issuance of summons or warrant of arrest

If the magistrate is satisfied that there is just cause to fear that the defendant is about to commit the threatened offense, he shall issue a summons ordering the defendant to appear before

him at a specified time and date. The magistrate may issue a warrant of arrest when imminent and serious harm is threatened.

Art. 29. Peace bond hearing; costs

A. When a defendant appears before the magistrate, a contradictory hearing to determine the validity of the complaint shall be held immediately either in chambers or in open court. If the magistrate determines that there is just cause to fear that the defendant is about to commit the threatened offense, he may order the defendant to give a peace bond. Otherwise, he shall discharge the defendant.

B. The applicant for a peace bond shall pay as advanced court costs a fee of fifteen dollars for each defendant summoned to a hearing. If the magistrate discharges the defendant, the costs shall be paid by the applicant. If the magistrate orders the defendant to give a peace bond, the costs shall be paid instead by the defendant. However, the court may assess those costs, or any part thereof, against any party, as it may consider equitable. An applicant for a peace bond who is seeking protection from domestic abuse, dating violence, stalking, or sexual assault shall not be required to prepay or be cast with court costs or cost of service or subpoena for the issuance of a peace bond.

C. Costs may be waived for an indigent applicant or defendant who complies with the provisions of Chapter 5 of Book IX of the Louisiana Code of Civil Procedure.1 The proceeds derived from these costs shall be deposited and used by the court in accordance with the provisions of R.S. 13:1899(B).

Amended by Acts 1979, No. 445, §1; Acts 2003, No. 750, §2.

1LSA-C.C.P. Art. 5181 et seq.

Art. 30. The peace bond

A. The peace bond shall be for a specified period, not to exceed six months, and its condition shall be that the defendant will not commit the threatened or any related breach of the peace. The bond shall be for a sum fixed by the magistrate. When fixed by a justice of the peace, the maximum amount of the bond shall not exceed one thousand dollars.

B. If the peace bond is for the purpose of preventing domestic abuse or dating violence, the magistrate shall cause to have prepared a Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), shall sign such order, and shall immediately forward it to the clerk of court for filing on the day that the order is issued. The clerk of the issuing court shall transmit the Uniform Abuse Prevention Order to the Judicial Administrator's Office, Louisiana Supreme Court, for entry into the Louisiana Protective Order Registry, as provided in R.S. 46:2136.2(A), by facsimile transmission or direct electronic input as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court. The clerk of the issuing court shall also send a copy of the Uniform Abuse Prevention Order, as provided in R.S. 46:2136.2(C), or any modification thereof, to the chief law enforcement officer of the parish where the person or persons protected by the order reside by facsimile transmission or direct electronic input as expeditiously as possible, but no later than the end of the next business day after the order is filed with the clerk of court. A copy of the Uniform Abuse Prevention Order

shall be retained on file in the office of the chief law enforcement officer until otherwise directed by the court.

C. The peace bond obligation shall run in favor of the clerk or judge of the court ordering the bond, in favor of the city when ordered by the mayor of a mayor's court, or in favor of the police jury when the bond is ordered by a justice of the peace. The proceeds shall be disposed of in the manner provided by law.

D. The types of security for a peace bond shall be governed by the bail bond rules set forth in Title VIII, as far as applicable.

Amended by Acts 1979, No. 289, §1; Acts 2003, No. 750, §2; Acts 2014, No. 317, §6.

Art. 31. Failure to give peace bond; effect

If the defendant fails to give the peace bond required under Articles 29 and 30, he shall be committed to jail. The defendant may be discharged by the committing or some other magistrate upon giving bond as ordered. The committing magistrate may revoke or modify his order for a peace bond.

A defendant who has been committed for failure to give a peace bond ordered by a justice of the peace may not be held longer than five days.

Art. 32. Forfeiture of peace bond

When the magistrate determines that a breach of the peace in violation of a peace bond has been committed, he shall order a forfeiture of the bond and send notice of the forfeiture by certified mail to the defendant and to his surety. If neither the defendant nor his surety appears within fifteen days to contest the forfeiture, the order shall become final and executory.

Art. 33. Automatic discharge

A peace bond is automatically discharged at the end of thirty days from the expiration of the period specified therein, unless a proceeding to declare a forfeiture has been brought within that time.

TITLE II. DISTRICT ATTORNEY AND ATTORNEY GENERAL

Art. 61. District attorney; powers and duties

Subject to the supervision of the attorney general, as provided in Article 62, the district attorney has entire charge and control of every criminal prosecution instituted or pending in his district, and determines whom, when, and how he shall prosecute.

Art. 62. Authority of attorney general; supervision of district attorney

A. The attorney general shall exercise supervision over all district attorneys in the state.

B. The attorney general has authority to institute and prosecute, or to intervene in any proceeding, as he may deem necessary for the assertion or protection of the rights and interests of the state.

C. In any criminal action or proceeding involving a homicidal death, if deemed necessary for the assertion or protection of the rights and interests of the state, and in accordance with the provisions of Article IV, Section 8 of the Constitution of Louisiana, the attorney general may, with the consent of the district attorney, investigate, prosecute or intervene in the action or proceeding.

Acts 2003, No. 1223, §1.

Art. 63. District attorney; assistance of other counsel

The district attorney may employ or accept the assistance of other counsel in the conduct of a criminal case.

Art. 64. Relationship of district attorney with grand jury

The district attorney is the representative of the state before the grand jury and is its legal advisor. He shall be notified of and have the right to be present at all sessions of the grand jury, except while it is deliberating and voting. He shall examine witnesses before the grand jury.

Art. 65. Defense of prosecution unlawful

It is unlawful for the following officers or their law partners to defend or assist in the defense of any person charged with an offense in any parish of the state:

(1) Any district attorney or assistant district attorney; or

(2) The attorney general or any assistant attorney general, provided that the provisions of this article shall not apply to the law partners of any assistant attorney general not employed to handle criminal matters for the attorney general, when any such law partner is judicially appointed to defend an indigent defendant.

Amended by Acts 1974, No. 220, §1.

Art. 66. Subpoena of witness to appear before attorney general and district attorney

A. Upon written motion of the attorney general or district attorney setting forth reasonable grounds therefor, the court may order the clerk to issue subpoenas directed to the persons named in the motion, ordering them to appear at a time and place designated in the order

for questioning by the attorney general or district attorney respectively, concerning any offense under investigation by him. The court may also order the issuance of a subpoena duces tecum. Service of a subpoena or subpoena duces tecum issued pursuant to this Article upon motion of the attorney general may be made by any commissioned investigator from the attorney general's office, or in conformity with Article 734 of this Code.

B. The contumacious failure or refusal of the person subpoenaed to appear is punishable as a contempt of court.

C. The attorney general or district attorney, respectively, may determine who shall be present during the examination and may order all persons excluded, except counsel for the person subpoenaed.

Amended by Acts 1972, No. 408, §1; Acts 1999, No. 863, §1.

Art. 67. Repealed by Acts 1999, No. 718, §1.

TITLE III.THE CORONER AND OTHER OFFICERS

CHAPTER 1. THE CORONER

Art. 101. Abolition of coroner's jury and inquest; investigation by coroner

The coroner's jury and inquest are abolished.

The coroner shall conduct an investigation concerning the manner and cause of any death when informed that death has resulted from violence or accident, or under suspicious circumstances.

The coroner may conduct an investigation concerning the medical aspects of any case that may involve medical evidence and in which there is a reasonable probability that a criminal statute has been violated and shall do so when ordered by the court. This order may be issued ex parte by the court either on its own motion or on application by the district attorney.

Art. 102. Autopsy

The coroner may perform an autopsy in any death case or cause one to be performed by a competent physician. He shall do so:

(1) When there is a reasonable probability that the violation of a criminal statute has contributed to the death;

(2) When ordered by the court, which order may be issued ex parte by the court either on its own motion or on application by the district attorney;

(3) In all other cases provided by law.

Acts 1987, No. 878, §2.

Art. 103. Subpoena of witnesses; testimony; subpoena duces tecum; issuance

A. The coroner may issue a subpoena or a subpoena duces tecum in the course of an investigation, directing a witness to appear and testify at an open hearing to be held at a time and place designated in the subpoena or directing the production of medical records and other documents relating to a deceased person which are necessary to classify the cause and manner of death. The subpoena shall be served in the same manner and with the same effect as a subpoena for a witness at a trial.

B.(1) The subpoena duces tecum shall be filed in and issued by the district court in the domicile of the coroner, and may be served by a coroner investigator.

(2) Production of the records, or a copy thereof, shall be made at the office of the coroner within five days of service of the subpoena duces tecum.

(3) All records produced pursuant to a subpoena duces tecum issued in accordance with this Paragraph are confidential unless otherwise ordered by the court. However, a subpoena duces tecum for the production of a public record does not alter the public nature of that record.

(4) Any person acting pursuant to and in accordance with the provisions hereof shall be immune from liability for production or disclosure to the coroner of the records identified in the subpoena duces tecum.

(5) Failure to comply with a subpoena duces tecum issued under this Article is punishable as contempt of court.

C. The witness shall be sworn, in accordance with Article 14, by the coroner or another person authorized to administer oaths, and the testimony may be reduced to writing. If the testimony is reduced to writing, the transcript shall be available for inspection by a person requesting it. Failure of a witness to appear is punishable as a constructive contempt of court.

D. No provision of this Article shall be deemed to amend, supersede, or repeal the provisions of R.S. 45:1455 et seq.

Acts 1995, No. 887, §1.

Art. 104. Employment of expert assistants

The coroner may use expert assistants in the conduct of an investigation, or in the performance of an autopsy.

Art. 105. Coroner's report; admissibility in evidence

In a case involving the apparent commission of a crime, the coroner shall make a written report of his investigation to the district attorney within ten days after the completion thereof. In homicide cases the coroner's report shall certify the cause of death.

The report shall be in addition to the procès verbal of an autopsy required by R.S. 13:5715.

A coroner's report and a procès verbal of an autopsy shall be competent evidence of death and the cause thereof, but not of any other fact.

Art. 106. Arrest of criminal suspect

If an investigation by the coroner indicates that a crime has been committed by a person who is not in custody, the coroner may arrest him. The coroner shall deliver the person arrested to a peace officer.

CHAPTER 3. CLERKS, SHERIFFS, CONSTABLES, AND MARSHALS

Art. 131. Duties and powers

Clerks, sheriffs, constables, marshals, stenographers, and other court officers have such powers and perform such duties as are conferred upon them by law.

TITLE XXVI. TRIAL PROCEDURE

CHAPTER 1. GENERAL PROVISIONS

Art. 761. Commencement of trial

A jury trial commences when the first prospective juror is called for examination. A trial by a judge alone commences when the first witness is sworn.

Art. 761.1. Homicide victim's picture; possession by family member in courtroom

In the case of a homicide, and with prior court approval, one member of the victim's family shall be authorized to possess in the courtroom, during the trial of the case a photograph of the deceased victim that is not larger than eight by ten inches and is not inflammatory in nature. Nothing in this Article shall preclude the admission into evidence of a photograph of the victim that the court deems admissible.

Acts 1999, No. 1066, §1.

Art. 762. Place of sessions of court

Sessions of court shall be held at the parish courthouse, if there is more than one courthouse in a parish, sessions may be held at any such courthouse, or sessions may be held at places within the parish other than the courthouse or courthouses in the discretion of the court:

(1) To take the testimony of witnesses who are so incapacitated that they cannot attend the trial in the parish courthouse;

(2) To allow the jury or judge to view the place where the crime or any material part thereof is alleged to have occurred, or to view an object which is admissible in evidence but which is difficult to produce in court. At this view, the court shall not permit the taking of evidence except in connection with the place or object; or

(3) When the courthouse in which the sessions are usually held is unsuitable for use, or there is no courthouse.

Amended by Acts 1992, No. 354, §1.

Art. 763. Proceedings on holidays

Trials and hearings may commence or continue on a holiday or half-holiday in the discretion of the court.

Art. 764. Exclusion of witnesses

The exclusion of witnesses is governed by Louisiana Code of Evidence Article 615.

Acts 1986, No. 968, §1; Acts 1988, No. 515, §3, eff. Jan. 1, 1989.

{{NOTE: SEE ACTS 1988, NO. 515, §12.}}

Art. 765. Normal order of trial

The normal order of trial shall be as follows:

(1) The selection and swearing of the jury;

(2) The reading of the indictment;

(3) The reading of the defendant's plea on arraignment;

(4) The opening statements of the state and of the defendant;

(5) The presentation of the evidence of the state, and of the defendant, and of the state in rebuttal. The court in its discretion may permit the introduction of additional evidence prior to argument;

(6) The argument of the state, the defendant, and the state in rebuttal;

(7) The court's charge;

(8) The announcement of the verdict or mistrial in jury cases, or of the judgment in nonjury cases; and

(9) The discharge of the jury in jury cases.

When there is more than one defendant, the court shall determine the order of trial as between them.

A defendant may waive his opening statement.

Art. 766. Opening statement by state; scope

The opening statement of the state shall explain the nature of the charge, and set forth, in general terms, the nature of the evidence by which the state expects to prove the charge.

Art. 767. Same; prohibition against adverting to confessions

The state shall not, in the opening statement, advert in any way to a confession or inculpatory statement made by the defendant unless the statement has been previously ruled admissible in the case.

Acts 1995, No. 1278, §1.

Art. 768. Same; use of confession or inculpatory statement; notice to defendant prior to opening statement

Unless the defendant has been granted pretrial discovery, if the state intends to introduce a confession or inculpatory statement in evidence, it shall so advise the defendant in writing prior to beginning the state's opening statement. If it fails to do so a confession or inculpatory statement shall not be admissible in evidence.

Amended by Acts 1982, No. 735, §1.

Art. 769. Same; effect on introduction of evidence

Evidence not fairly within the scope of the opening statement of the state shall not be admitted in evidence.

If the state offers evidence that was inadvertently and in good faith omitted from the opening statement, the court, in its discretion may admit the evidence if it finds that the defendant is not taken by surprise or prejudiced in the preparation of his defense.

Art. 770. Prejudicial remarks; basis of mistrial

Upon motion of a defendant, a mistrial shall be ordered when a remark or comment, made within the hearing of the jury by the judge, district attorney, or a court official, during the trial or in argument, refers directly or indirectly to:

(1) Race, religion, color or national origin, if the remark or comment is not material and relevant and might create prejudice against the defendant in the mind of the jury;

(2) Another crime committed or alleged to have been committed by the defendant as to which evidence is not admissible;

(3) The failure of the defendant to testify in his own defense; or

(4) The refusal of the judge to direct a verdict.

An admonition to the jury to disregard the remark or comment shall not be sufficient to prevent a mistrial. If the defendant, however, requests that only an admonition be given, the court shall admonish the jury to disregard the remark or comment but shall not declare a mistrial.

Art. 771. Admonition

In the following cases, upon the request of the defendant or the state, the court shall promptly admonish the jury to disregard a remark or comment made during the trial, or in argument within the hearing of the jury, when the remark is irrelevant or immaterial and of such a nature that it might create prejudice against the defendant, or the state, in the mind of the jury:

(1) When the remark or comment is made by the judge, the district attorney, or a court official, and the remark is not within the scope of Article 770; or

(2) When the remark or comment is made by a witness or person other than the judge, district attorney, or a court official, regardless of whether the remark or comment is within the scope of Article 770.

In such cases, on motion of the defendant, the court may grant a mistrial if it is satisfied that an admonition is not sufficient to assure the defendant a fair trial.

Art. 772. Comment on facts by judge in jury's presence prohibited

The judge in the presence of the jury shall not comment upon the facts of the case, either by commenting upon or recapitulating the evidence, repeating the testimony of any witness, or giving an opinion as to what has been proved, not proved, or refuted.

Art. 773. Order of evidence; foundation

Neither the state nor the defendant can be controlled by the court as to the order in which evidence shall be adduced. The procedure for laying a foundation is provided in the Louisiana Code of Evidence.

Acts 1988, No. 515, §3, eff. Jan. 1, 1989.

{{NOTE: SEE ACTS 1988, NO. 515, §12.}}

Art. 774. Argument; scope

The argument shall be confined to evidence admitted, to the lack of evidence, to conclusions of fact that the state or defendant may draw therefrom, and to the law applicable to the case.

The argument shall not appeal to prejudice.

The state's rebuttal shall be confined to answering the argument of the defendant.

Art. 775. Mistrial; grounds for

A mistrial may be ordered, and in a jury case the jury dismissed, when:

(1) The defendant consents thereto;

(2) The jury is unable to agree upon a verdict;

(3) There is a legal defect in the proceedings which would make any judgment entered upon a verdict reversible as a matter of law;

(4) The court finds that the defendant does not have the mental capacity to proceed;

(5) It is physically impossible to proceed with the trial in conformity with law; or

(6) False statements of a juror on voir dire prevent a fair trial.

Upon motion of a defendant, a mistrial shall be ordered, and in a jury case the jury dismissed, when prejudicial conduct in or outside the courtroom makes it impossible for the defendant to obtain a fair trial, or when authorized by Article 770 or 771.

A mistrial shall be ordered, and in a jury case the jury dismissed, when the state and the defendant jointly move for a mistrial.

Art. 775.1. Automatic stay following order of mistrial

If a judge orders a mistrial, then upon motion of either the state or the defendant, the court shall order an automatic twenty-four-hour stay of all proceedings in which either the state or the defendant may take an emergency writ application to the appropriate reviewing courts with appellate jurisdiction, including the Louisiana Supreme Court. The jury shall not be released pending the stay unless both the state and defendant agree to release the jury.

Acts 2004, No. 413, §1; Acts 2021, No. 17, §1.

Art. 776. Oath of witness

Before a witness is permitted to testify he shall be sworn, in accordance with Article 14.

Art. 777. Recordation of proceedings

A record of the trial proceedings shall be made in accordance with other provisions of law.

Art. 778. Motion for acquittal

In a trial by the judge alone the court shall enter a judgment of acquittal on one or more of the offenses charged, on its own motion or on that of defendant, after the close of the state's evidence or of all the evidence, if the evidence is insufficient to sustain a conviction.

If the court denies a defendant's motion for a judgment of acquittal at the close of the state's case, the defendant may offer its evidence in defense.

Amended by Acts 1975, No. 527, §1.

CHAPTER 2. TRIAL WITHOUT JURY

Art. 779. Trial of misdemeanors

A. A defendant charged with a misdemeanor in which the punishment, as set forth in the statute defining the offense, may be a fine in excess of one thousand dollars or imprisonment for more than six months shall be tried by a jury of six jurors, all of whom must concur to render a verdict.

B. The defendant charged with any other misdemeanor shall be tried by the court without a jury.

Amended by Acts 1968, No. 635, §1; Acts 1974, Ex.Sess., No. 23, §1, eff. Jan. 1, 1975; Acts 1975, 1st Ex.Sess., No. 16, §1, eff. Jan. 28, 1975; Acts 1979, No. 56, §1; Acts 1986, No. 852, §1, eff. July 10, 1986; Acts 1988, No. 202, §1.

Art. 780. Right to waive trial by jury

A. A defendant charged with an offense other than one punishable by death may knowingly and intelligently waive a trial by jury and elect to be tried by the judge.

B. The defendant shall exercise his right to waive trial by jury in accordance with Article I, Section 17 of the Constitution of Louisiana. The waiver shall be by written motion filed in the district court not later than forty-five days prior to the date the case is set for trial. The motion shall be signed by the defendant and shall also be signed by defendant's counsel unless the defendant has waived his right to counsel.

C. With the consent of the district attorney the defendant may waive trial by jury within forty-five days prior to the commencement of trial.

D. A waiver of trial by jury is irrevocable and cannot be withdrawn by the defendant.

Amended by Acts 1974, Ex.Sess., No. 24, §1, eff. Jan. 1, 1975; Acts 1975, 1st Ex.Sess., No. 16, §1, eff. Jan. 28, 1975; Acts 1985, No. 801, §1; Acts 2013, No. 343, §1, eff. June 17, 2013.

Art. 781. Charges in cases tried without a jury

When a case is tried without a jury the state or the defendant may request the court to charge itself in accordance with written charges presented to the court. The requested charges shall be governed by the rules of procedure relative to requested charges in jury cases.

CHAPTER 3. TRIAL BY JURY

SECTION 1. GENERAL PROVISIONS

Art. 782. Number of jurors composing jury; number which must concur; waiver

A. A case in which punishment may be capital shall be tried by a jury of twelve jurors, all of whom must concur to render a verdict. A case for an offense committed prior to January 1, 2019, in which punishment is necessarily confinement at hard labor shall be tried by a jury composed of twelve jurors, ten of whom must concur to render a verdict. A case for an offense committed on or after January 1, 2019, in which the punishment is necessarily confinement at

hard labor shall be tried before a jury of twelve persons, all of whom must concur to render a verdict. A case in which the punishment may be confinement at hard labor shall be tried by a jury composed of six jurors, all of whom must concur to render a verdict.

B. Trial by jury may be knowingly and intelligently waived by the defendant except in capital cases.

Amended by Acts 1974, Ex.Sess., No. 25, §1, eff. Jan. 1, 1975; Acts 1975, 1st Ex.Sess., No. 16, §1, eff. Jan. 28, 1975; Acts 1979, No. 56, §2; Acts 2018, No. 493, §1, eff. Jan. 1, 2019.

Art. 783. Excusing, tendering, and attachment of members of the venire

A. The court may excuse a member of the petit jury venire at any time prior to the time he is sworn as a juror to try a particular case. The panel shall be selected from the remaining members of the petit jury venire. The court, either on its own motion, or that of the state or a defendant, may order the attachment of an absent and unexcused petit jury venireman.

B. If jury service, whether criminal or civil, would result in undue hardship or extreme inconvenience, the district court may excuse a person from such service either prior to or after his selection for the general venire, jury pool, or jury wheel. The court may take such action on its own initiative or on recommendation of an official or employee designated by the court.

C. No person or group of persons shall be automatically excused.

D. In the event a person is excused because jury service would result in undue hardship or extreme inconvenience, the court may order that person's name be placed again in the general venire or in a central jury pool.

Amended by Acts 1976, No. 212, §2; Acts 1977, No. 378, §1.

Art. 784. Method of selecting panel

In selecting a panel, names shall be drawn from the petit jury venire indiscriminately and by lot in open court and in a manner to be determined by the court.

In those judicial district courts, including the Criminal District Court for the parish of Orleans, wherein use of a jury pool has been authorized by law, the petit jury panel shall be selected by random, indiscriminate choice in a manner to be determined by the rules of the court in which the jury panel is selected.

Amended by Acts 1977, No. 556, §1, eff. July 15, 1977.

Art. 785. Tales jurors

A. In a parish other than Orleans having more than one division of court, holding petit jury terms simultaneously, when a petit jury venire of one division is or is about to be exhausted before a trial jury is impaneled, the judge of that division, with the consent of the judge of a division that has not exhausted its petit jury venire, may order the petit jury venire of the latter division or such portion thereof not being used by the latter division, to report to his division to serve as tales jurors. The names of the petit jury veniremen so ordered to report shall be drawn as provided by Article 784 for examination as prospective trial jurors. Those who are impaneled as trial jurors shall serve as though regularly selected as tales jurors. Those who are not selected as trial jurors shall be ordered to report back to the division of court in which they were previously serving as petit jury veniremen.

B. In all other instances, except as provided in Article 409.1 of this code, when the petit jury venire is or is about to be exhausted before a trial jury is impaneled, the judge may order the secretary of the jury commission or the clerk of court to draw indiscriminately and by lot such number of tales jurors from the general venire box as in the opinion of the court may be necessary to complete the impaneling of the trial jury.

C. Immediately after the drawing of tales jurors, they shall be summoned to attend court at such time as the court may direct, and shall be subject to the same duties as petit jurors.

D. In parishes other than Orleans, the judge may order the summoning of tales jurors from among the bystanders or persons in or about the courthouse, in place of the drawing of tales jurors.

E. When called, tales jurors shall be selected for completion of the panel in accordance with Article 784.

Amended by Acts 1975, No. 406, §1; Acts 1975, No. 696, §1.

Art. 786. Examination of jurors

The court, the state, and the defendant shall have the right to examine prospective jurors. The scope of the examination shall be within the discretion of the court. A prospective juror, before being examined, shall be sworn to answer truthfully questions asked him relative to his qualifications to serve as a juror in the case.

Art. 787. Disqualification of petit jurors in particular cases

The court may disqualify a prospective petit juror from service in a particular case when for any reason doubt exists as to the competency of the prospective juror to serve in the case.

Art. 788. Tendering jurors

A. After the examination provided by Article 786, a prospective juror may be tendered first to the state, which shall accept or challenge him. If the state accepts the prospective juror, he shall be tendered to the defendant who shall accept or challenge him. When a prospective juror is accepted by the state and the defendant, he shall be sworn immediately as a juror. This Article is subject to the provisions of Articles 795 and 796.

B. If the court does not require tendering of jurors, it shall by local rule provide for a system of simultaneous exercise of challenges.

Acts 1983, No. 603, §1.

Art. 789. Alternate jurors

A. The court may direct that not more than six jurors in addition to the regular panel be called and impaneled to sit as alternate jurors. Alternate jurors, in the order in which they are called, shall replace jurors who become unable to perform or disqualified from performing their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges for cause, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the principal jurors. If the court determines that alternate jurors are desirable in the case, the court shall determine the number to be chosen. The regular peremptory challenges allowed by law shall not be used

against the alternate jurors. The court shall determine how many additional peremptory challenges shall be allowed, and each defendant shall have an equal number of such challenges. The state shall have as many peremptory challenges as the defense. The additional peremptory challenges may be used only against alternate jurors. Except in capital cases, an alternate juror who does not replace a principal juror may be discharged when the jury retires to consider its verdict.

B. In a capital case, at the conclusion of the guilt phase of the trial, alternate jurors that have not replaced principal jurors shall not be discharged, but shall be sequestered from other members of the jury until the jury has reached a verdict. If a sentencing hearing is mandated, the alternate jurors will be returned to the jury and will hear the evidence presented at the sentencing hearing and will be available to replace principal jurors.

C. If the court, as provided in Paragraph A, replaces a principal juror with an alternate juror after deliberations have begun, the court shall order the jury to begin deliberations anew.

Acts 1995, No. 364, §1; Acts 1995, No. 1273, §1.

Art. 790. Swearing of jurors

When selection of jurors and alternate jurors has been completed, and all issues properly raised under Article 795 have been resolved, the jurors shall then be sworn together to try the case in a just and impartial manner, each to the best of his judgment, and to render a verdict according to the law and the evidence.

Acts 1990, No. 524, §1.

Art. 791. Sequestration of jurors and jury

A. A jury is sequestered by being kept together in the charge of an officer of the court so as to be secluded from outside communication, except as permitted by R.S. 18:1307.2.

B. In capital cases after each juror is sworn he shall be sequestered, unless the state and the defense have jointly moved that the jury not be sequestered.

C. In noncapital cases, the jury shall be sequestered after the court's charge and may be sequestered at any time upon order of the court.

Amended by Acts 1995, No. 475, §1; Acts 1995, No. 1172, §1; Acts 1995, No. 1277, §1.

Art. 792. Selection of foreman

When the jury has retired, the jurors shall select a foreman who shall preside over their deliberations and sign the verdict.

Art. 793. Use of evidence in jury room; reading of recorded testimony; jurors' notes

A. Except as provided in Paragraph B of this Article, a juror must rely upon his memory in reaching a verdict. He shall not be permitted to refer to notes or to have access to any written evidence. Testimony shall not be repeated to the jury. Upon the request of a juror and in the discretion of the court, the jury may take with it or have sent to it any object or document

received in evidence when a physical examination thereof is required to enable the jury to arrive at a verdict.

B. A juror shall be permitted to take notes when agreement to granting such permission has been made between the defendant and the state in open court but not within the presence of the jury. The court shall provide the needed writing implements. Jurors may, but need not, take notes and such notes may be used during the jury's deliberations but shall not be preserved for review on appeal. The trial judge shall ensure the confidentiality of the notes during the course of trial and the jury's deliberation and shall cause the notes to be destroyed immediately upon return of the verdict.

C. The lack of consent by either the defendant or the state to allow a juror to take notes during a trial shall not be communicated to the jury.

Acts 2001, No. 465, §1.

Art. 794. Removal of jury

A. The court may, and at the request of the state or a defendant shall, remove the jury from the courtroom when the court hears matters to be decided by the court alone. The court may remove the jury from the courtroom at any time when considered in the best interest of justice.

B. The removal of the jury when the court is asked to make rulings on evidentiary matters is controlled by the Louisiana Code of Evidence.

Acts 1988, No. 515, §3, eff. Jan. 1, 1989.

{{NOTE: SEE ACTS 1988, NO. 515, § 2.}}

SECTION 2. CHALLENGES

Art. 795. Time for challenges; method; peremptory challenges based on race or gender; restrictions

A. A juror shall not be challenged for cause after having been temporarily accepted pursuant to Article 788(A) unless the challenging party shows that the cause was not known to him prior to that time.

B.(1) Peremptory challenges shall be exercised prior to the swearing of the jury panel.

(2) Peremptory challenges of jurors shall be made and communicated to the court in a side bar conference of the judge, the attorneys conducting the examination and selection of jurors, and the defendant in a case in which the defendant chooses to represent himself. The conference shall be conducted in a manner that only the court, the attorneys, and the defendant in a case in which the defendant chooses to represent himself, are aware of the challenges made until the court announces the challenges without reference to any party or attorney in the case.

C. No peremptory challenge made by the state or the defendant shall be motivated in substantial part on the basis of the race or gender of the juror. If an objection is made that a challenge was motivated in substantial part on the basis of race or gender, and a prima facie case supporting that objection is made by the objecting party, the court shall demand a satisfactory race or gender neutral reason for the exercise of the challenge. Such demand and disclosure shall be made outside of the hearing of any juror or prospective juror. The court shall then determine whether the challenge was motivated in substantial part on the basis of race or gender.

D. The court shall allow to stand each peremptory challenge exercised for a race or gender neutral reason either apparent from the examination or disclosed by counsel when required by the court. The provisions of Paragraph C of this Article and this Paragraph shall not apply when both the state and the defense have exercised a challenge against the same juror.

E. The court shall allow to stand each peremptory challenge for which a satisfactory racially neutral or gender neutral reason is given. Those jurors who have been peremptorily challenged and for whom no satisfactory racially neutral or gender neutral reason is apparent or given may be ordered returned to the panel, or the court may take such other corrective action as it deems appropriate under the circumstances. The court shall make specific findings regarding each such challenge.

Amended by Acts 1986, No. 323, §1; Acts 1990, No. 547, §1; Acts 1990, No. 713, §1; Acts 1993, No. 1019, §1; Acts 2008, No. 669, §1; Acts 2019, No. 235, §1.

Art. 796. Removal of juror after swearing

If it is discovered after a juror has been accepted and sworn that he is incompetent to serve, the court may, at any time before the first witness is sworn, order the juror removed and the panel completed in the ordinary course.

Art. 797. Challenge for cause

The state or the defendant may challenge a juror for cause on the ground that:

(1) The juror lacks a qualification required by law;

(2) The juror is not impartial, whatever the cause of his partiality. An opinion or impression as to the guilt or innocence of the defendant shall not of itself be sufficient ground of challenge to a juror, if he declares, and the court is satisfied, that he can render an impartial verdict according to the law and the evidence;

(3) The relationship, whether by blood, marriage, employment, friendship, or enmity between the juror and the defendant, the person injured by the offense, the district attorney, or defense counsel, is such that it is reasonable to conclude that it would influence the juror in arriving at a verdict;

(4) The juror will not accept the law as given to him by the court; or

(5) The juror served on the grand jury that found the indictment, or on a petit jury that once tried the defendant for the same or any other offense.

Art. 798. Causes for challenge by the state

It is good cause for challenge on the part of the state, but not on the part of the defendant, that:

(1) The juror is biased against the enforcement of the statute charged to have been violated, or is of the fixed opinion that the statute is invalid or unconstitutional;

(2) The juror tendered in a capital case who has conscientious scruples against the infliction of capital punishment and makes it known:

(a) That he would automatically vote against the imposition of capital punishment without regard to any evidence that might be developed at the trial of the case before him;

(b) That his attitude toward the death penalty would prevent or substantially impair him from making an impartial decision as a juror in accordance with his instructions and his oath; or

(c) That his attitude toward the death penalty would prevent him from making an impartial decision as to the defendant's guilt; or

(3) The juror would not convict upon circumstantial evidence.

Amended by Acts 1968, Ex.Sess., No. 13, §1, emerg. eff. Dec. 27, 1968, at 1:00 P.M; Acts 1990, No. 366, §1.

Art. 799. Number of peremptory challenges

In trials of offenses punishable by death or necessarily by imprisonment at hard labor, each defendant shall have twelve peremptory challenges, and the state twelve for each defendant. In all other cases, each defendant shall have six peremptory challenges, and the state six for each defendant.

Acts 1983, No. 495, §1; Acts 1985, No. 952, §1.

Art. 799.1. Challenges; use of all available challenges

Notwithstanding any other provision of law to the contrary, and specifically notwithstanding the provisions of Article 788, in the jury selection process, the state and the defendant may exercise all peremptory challenges available to each side, respectively, prior to the full complement of jurors being seated and before being sworn in by the court, and the state or the defendant may exercise any remaining peremptory challenge to one or more of the jurors previously accepted. No juror shall be sworn in until both parties agree on the jury composition or have exercised all challenges available to them, unless otherwise agreed to by the parties.

Acts 2006, No. 71, §1.

Art. 800. Objection to ruling on challenge for cause

A. A defendant may not assign as error a ruling refusing to sustain a challenge for cause made by him, unless an objection thereto is made at the time of the ruling. The nature of the objection and grounds therefor shall be stated at the time of objection.

B. The erroneous allowance to the state of a challenge for cause does not afford the defendant a ground for complaint, unless the effect of such ruling is the exercise by the state of more peremptory challenges than it is entitled to by law.

Acts 1983, No. 181, §1.

SECTION 3. CHARGING THE JURY

Art. 801. Time for charge; when written charge required

A. The court shall charge the jury after the presentation of all evidence and arguments. The court shall reduce its charge to writing if it is requested to do so by either a defendant or the state prior to the swearing of the first witness at the trial on the merits. The court's written charge shall be read to the jury. The court shall deliver a copy thereof to the defendant and to the state prior to reading it to the jury.

B.(1) After such written charge is read to the jury, a copy of the written charge shall be delivered to the jury if such delivery is consented to by both the defendant and the state in open court but not in the presence of the jury.

(2) The lack of consent by either the defendant or the state to the delivery of the written charge to the jury shall not be communicated to the jury.

C. A party may not assign as error the giving or failure to give a jury charge or any portion thereof unless an objection thereto is made before the jury retires or within such time as the court may reasonably cure the alleged error. The nature of the objection and grounds therefor shall be stated at the time of objection. The court shall give the party an opportunity to make the objection out of the presence of the jury.

Amended by Acts 1982, No. 458, §1; Acts 2001, No. 310, §1.

Art. 802. General charge; scope

The court shall charge the jury:

(1) As to the law applicable to the case;

(2) That the jury is the judge of the law and of the facts on the question of guilt or innocence, but that it has the duty to accept and to apply the law as given by the court; and

(3) That the jury alone shall determine the weight and credibility of the evidence.

Art. 803. Same; charge as to included minor offenses and plea of insanity

When a count in an indictment sets out an offense which includes other offenses of which the accused could be found guilty under the provisions of Article 814 or 815, the court shall charge the jury as to the law applicable to each offense.

When a defendant has specially pleaded insanity in accordance with Article 552, the court shall charge the jury with respect to the law applicable thereto.

Art. 804. Same; charge as to presumption of innocence, reasonable doubt, and several grades of offense

A. In all cases the court shall charge the jury that:

(1) A person accused of crime is presumed by law to be innocent until each element of the crime, necessary to constitute his guilt, is proven beyond a reasonable doubt;

(2) It is the duty of the jury, in considering the evidence and in applying to that evidence the law as given by the court, to give the defendant the benefit of every reasonable doubt arising out of the evidence or out of the lack of evidence in the case; and

(3) It is the duty of the jury if not convinced of the guilt of a defendant beyond a reasonable doubt, to find him not guilty.

The court may, but is not required to, define "the presumption of innocence" or "reasonable doubt" or give any other or further charge upon the same than that contained in this article.

B. When there are several grades of an offense contained in a single count, the court shall charge the jury as to each grade of which the defendant could be found guilty. The court shall in that case also charge the jury that if it has a reasonable doubt as to any or all grades of the offense charged it shall find the defendant not guilty of that grade, or all grades of the offense, as the case may be.

Amended by Acts 1968, No. 144, §1.

Art. 805. Same; charge as to verdict acquitting on account of insanity

The court shall charge the jury that if it acquits a defendant on account of a plea of insanity it shall state that the defendant was found not guilty by reason of insanity.

Art. 806. Prohibited charges

The court shall not charge the jury concerning the facts of the case and shall not comment upon the facts of the case, either by commenting upon or recapitulating the evidence, repeating the testimony of any witness, or giving an opinion as to what has been proved, not proved, or refuted.

Art. 807. Special written charges

The state and the defendant shall have the right before argument to submit to the court special written charges for the jury. Such charges may be received by the court in its discretion after argument has begun. The party submitting the charges shall furnish a copy of the charges to the other party when the charges are submitted to the court.

A requested special charge shall be given by the court if it does not require qualification, limitation, or explanation, and if it is wholly correct and pertinent. It need not be given if it is included in the general charge or in another special charge to be given.

Art. 808. Manner of giving further charges after jury retires

If the jury or any member thereof, after having retired to deliberate upon the verdict, desires further charges, the officer in charge shall bring the jury into the courtroom, and the court shall in the presence of the defendant, his counsel, and the district attorney, further charge the jury. The further charge may be verbal, but shall be in writing if requested by any juror. No charge shall be reduced to writing at the request of a juror pursuant to this Article unless consent is obtained from both the defendant and the state in open court but not within the presence of the jury. The lack of consent by either the defendant or the state shall not be communicated to the jury. A copy of the court's written charge shall be delivered to the defendant, the state, and the jury.

Acts 2001, No. 310, §1.

CHAPTER 4. VERDICTS

Art. 809. Judge to give jury written list of responsive verdicts

After charging the jury, the judge shall give the jury a written list of the verdicts responsive to each offense charged, with each separately stated. The list shall be taken into the jury room for use by the jury during its deliberation.

Art. 810. Form of verdict; delivery of verdict

When a verdict has been agreed upon, the foreman shall write the verdict on the back of the list of responsive verdicts given to the jury and shall sign it. There shall be no formal requirement as to the language of the verdict except that it shall clearly convey the intention of the jury.

The foreman of the jury shall deliver the verdict to the judge in open court.

Art. 811. Receipt and recordation of verdict

If the verdict is correct in form and responsive to the indictment, the court shall order the clerk to receive the verdict, to read it to the jury, and to ask: "Is that your verdict?" If the jury answer "Yes," the court shall order the clerk to record the verdict and shall discharge the jury.

Art. 812. Same; polling and disposition of jury

A. The court shall order the clerk to poll the jury if requested by the state or the defendant. The poll shall be conducted in writing by applying the procedures of this Article, and shall be done in open court.

B.(1) The procedure for the written polling of the jury shall require that the clerk hand to each juror a separate piece of paper containing the name of the juror and the words "Is this your verdict?" Each juror shall write on the slip of paper the words "Yes" or "No" along with his signature. The clerk shall collect the slips of paper, make them available for inspection by the court and counsel, and record the results.

(2) If a sufficient number of jurors as required by law to reach a verdict answer "yes" the clerk shall so inform the court. Upon verification of the results, the court shall order the clerk to record the verdict and order the jury discharged. If an insufficient number required to find a verdict answer "Yes," the court may remand the jury for further deliberation, or the court may declare a mistrial in accordance with Article 775. The polling slips may be placed under seal upon order of the court, which shall state the specific reasons for placing the polling slips under seal. If so ordered the polling slips shall not be released to the public without a subsequent order of the court authorizing their release. If the court orders the release of the polling slips, the names of the jurors shall be redacted.

Amended by Acts 1975, No. 775, §1; Acts 2018, No. 335, §1.

Art. 813. Improper verdict; procedure

If the court finds that the verdict is incorrect in form or is not responsive to the indictment, it shall refuse to receive it, and shall remand the jury with the necessary oral instructions. In such a case the court shall read the verdict, and record the reasons for refusal.

Art. 814. Responsive verdicts; in particular

A. The only responsive verdicts which may be rendered when the indictment charges the following offenses are:

1. First Degree Murder:

Guilty.

Guilty of second degree murder.

Guilty of manslaughter.

Not guilty.

2. Attempted First Degree Murder:
Guilty.
Guilty of attempted second degree murder.
Guilty of attempted manslaughter.
Guilty of aggravated battery.
Guilty of aggravated assault with a firearm.
Not guilty.
3. Second Degree Murder:
Guilty.
Guilty of manslaughter.
Guilty of negligent homicide.
Not guilty.
4. Attempted Second Degree Murder:
Guilty.
Guilty of attempted manslaughter.
Guilty of aggravated battery.
Guilty of aggravated assault with a firearm.
Not guilty.
5. Manslaughter:
Guilty.
Guilty of negligent homicide.
Not guilty.
6. Attempted Manslaughter:
Guilty.
Guilty of aggravated battery.
Not guilty.
7. Negligent Homicide:
Guilty.
Not guilty.
8. Vehicular homicide:
Guilty.
Guilty of negligent homicide.
Not guilty.
9. Vehicular negligent injuring:
Guilty.
Guilty of negligent injuring.
Guilty of operating a vehicle while intoxicated.
Not guilty.
10. First degree vehicular negligent injuring:
Guilty.
Guilty of vehicular negligent injuring.
Guilty of negligent injuring.
Guilty of operating a vehicle while intoxicated.
Not guilty.

11. First degree rape (formerly titled aggravated rape):
Guilty.
Guilty of attempted first degree rape.
Guilty of second degree rape.
Guilty of attempted second degree rape.
Guilty of sexual battery.
Guilty of third degree rape.
Guilty of attempted third degree rape.
Guilty of oral sexual battery.
Not guilty.
12. First degree rape (formerly titled aggravated rape) of a child under the age of thirteen:
Guilty.
Guilty of attempted first degree rape.
Guilty of second degree rape.
Guilty of attempted second degree rape.
Guilty of third degree rape.
Guilty of attempted third degree rape.
Guilty of sexual battery.
Guilty of molestation of a juvenile or a person with a physical or mental disability.
Guilty of attempted molestation of a juvenile or a person with a physical or mental disability.
Guilty of indecent behavior with a juvenile.
Guilty of attempted indecent behavior with a juvenile.
Not guilty.
13. Attempted first degree rape (formerly titled aggravated rape):
Guilty.
Guilty of attempted second degree rape.
Guilty of attempted third degree rape.
Not guilty.
14. Second degree rape (formerly titled forcible rape):
Guilty.
Guilty of attempted second degree rape.
Guilty of third degree rape.
Guilty of attempted third degree rape.
Guilty of sexual battery.
Not guilty.
15. Attempted second degree rape (formerly titled forcible rape):
Guilty.
Guilty of attempted third degree rape.
Not guilty.
16. Third degree rape (formerly titled simple rape):
Guilty.
Guilty of attempted third degree rape.
Guilty of sexual battery.

Not guilty.
17. Attempted third degree rape (formerly titled simple rape):
Guilty.
Not guilty.
18. Aggravated Battery:
Guilty.
Guilty of second degree battery.
Guilty of simple battery.
Not guilty.
19. Disarming of a Peace Officer:
Guilty.
Guilty of attempted disarming of a peace officer.
Guilty of battery of a police officer.
Guilty of aggravated assault.
Not guilty.
20. Aggravated Second Degree Battery:
Guilty.
Guilty of aggravated battery.
Guilty of second degree battery.
Guilty of simple battery.
Not guilty.
21. Second Degree Battery:
Guilty.
Guilty of simple battery.
Not guilty.
22. Vehicular negligent injuring
Guilty.
Not guilty.
23. Aggravated assault:
Guilty.
Guilty of simple assault
Not guilty.
24. Simple Battery:
Guilty.
Not guilty.
25. Aggravated Kidnapping:
Guilty.
Guilty of attempted aggravated kidnapping.
Guilty of second degree kidnapping.
Guilty of attempted second degree kidnapping.
Guilty of simple kidnapping.
Guilty of attempted simple kidnapping.
Not guilty.
26. Attempted Aggravated Kidnapping:

Guilty.
Guilty of attempted second degree kidnapping.
Guilty of attempted simple kidnapping.
Not guilty.
27. Simple Kidnapping:
Guilty.
Guilty of attempted simple kidnapping.
Not guilty.
28. Attempted Simple Kidnapping:
Guilty.
Not guilty.
29. Armed Robbery:
Guilty.
Guilty of attempted armed robbery.
Guilty of first degree robbery.
Guilty of attempted first degree robbery.
Guilty of simple robbery.
Guilty of attempted simple robbery.
Not guilty.
30. Attempted Armed Robbery:
Guilty.
Guilty of attempted first degree robbery.
Guilty of attempted simple robbery.
Not guilty.
31. First Degree Robbery:
Guilty.
Guilty of attempted first degree robbery.
Guilty of simple robbery.
Guilty of attempted simple robbery.
Not guilty.
32. Simple Robbery:
Guilty.
Guilty of attempted simple robbery.
Not guilty.
33. Attempted Simple Robbery:
Guilty.
Not guilty.
34. Theft:
Guilty of theft of property having a value of twenty-five thousand dollars or more.
Guilty of theft of property having a value of five thousand dollars or more, but less than twenty-five thousand dollars.
Guilty of theft of property having a value of one thousand dollars or more, but less than five thousand dollars.
Guilty of theft of property having a value of less than one thousand dollars.

Guilty of attempted theft of property having a value of twenty-five thousand dollars or more.

Guilty of attempted theft of property having a value of five thousand dollars or more, but less than twenty-five thousand dollars.

Guilty of attempted theft of property having a value of one thousand dollars or more, but less than five thousand dollars.

Guilty of attempted theft of property having a value of less than one thousand dollars.

Guilty of unauthorized use of movables having a value in excess of one thousand dollars.

Guilty of unauthorized use of movables having a value of one thousand dollars or less.

Not guilty.

35. Attempted Theft:

Guilty of attempted theft of property having a value of twenty-five thousand dollars or more.

Guilty of attempted theft of property having a value of five thousand dollars or more, but less than twenty-five thousand dollars.

Guilty of attempted theft of property having a value of one thousand dollars or more, but less than five thousand dollars.

Guilty of attempted theft of property having a value of less than one thousand dollars.

Guilty of attempted unauthorized use of movables having a value in excess of one thousand dollars.

Guilty of attempted unauthorized use of movables having a value of one thousand dollars or less.

Not guilty.

36. Aggravated Arson:

Guilty.

Guilty of simple arson where the damage amounted to five hundred dollars or more.

Guilty of simple arson where the damage amounted to less than five hundred dollars.

The simple arson verdicts are responsive only if the words "belonging to another and with damage amounting to _____ dollars" are included in the indictment.

Not guilty.

37. Attempted Aggravated Arson:

Guilty.

Guilty of attempted simple arson where the damage would have amounted to five hundred dollars or more.

Guilty of attempted simple arson where the damage would have amounted to less than five hundred dollars.

The attempted simple arson verdicts are responsive only if the words "belonging to another and with damage that would have amounted to _____ dollars" are included in the indictment.

Not guilty.

38. Simple Arson:

Guilty of simple arson where the damage done amounted to five hundred dollars or more.

Guilty of simple arson where the damage done amounted to less than five hundred dollars.

Not guilty.

39. Attempted Simple Arson:

Guilty of attempted arson where the damage would have amounted to five hundred dollars or more.

Guilty of attempted simple arson where the damage would have amounted to less than five hundred dollars.

Not guilty.

40. Arson With Intent to Defraud:

Guilty.

Not guilty.

41. Attempted Arson With Intent to Defraud:

Guilty.

Not guilty.

42. Aggravated Criminal Damage to Property:

Guilty.

Guilty of simple criminal damage to property where the damage amounted to fifty thousand dollars or more.

Guilty of simple criminal damage to property where the damage amounted to one thousand dollars or more, but less than fifty thousand dollars.

Guilty of simple criminal damage to property where the damage amounted to less than one thousand dollars.

The simple criminal damage to property verdicts are responsive only if the words "belonging to another and with damage amounting to _____ dollars" are included in the indictment.

Not guilty.

43. Attempted Aggravated Criminal Damage to Property:

Guilty.

Guilty of attempted simple criminal damage to property where the damage would have amounted to fifty thousand dollars or more.

Guilty of attempted simple criminal damage to property where the damage would have amounted to one thousand dollars or more, but less than fifty thousand dollars.

Guilty of attempted simple criminal damage to property where the damage would have amounted to less than one thousand dollars.

The attempted simple criminal damage to property verdicts are responsive only if the words "belonging to another and with damage that would have amounted to _____ dollars" are included in the indictment.

Not guilty.

44. Simple Criminal Damage to Property:

Guilty of simple criminal damage to property where the damage done amounted to fifty thousand dollars or more.

Guilty of simple criminal damage to property where the damage done amounted to one thousand dollars or more, but less than fifty thousand dollars.

Guilty of simple criminal damage to property where the damage done amounted to less than one thousand dollars.

Not guilty.

45. Attempted Simple Criminal Damage to Property:

Guilty of attempted simple criminal damage to property where the damage would have amounted to fifty thousand dollars or more.

Guilty of attempted simple criminal damage to property where the damage would have amounted to one thousand dollars or more, but less than fifty thousand dollars.

Guilty of attempted simple criminal damage to property where the damage would have amounted to less than one thousand dollars.

Not guilty.

46. Damage to Property With Intent to Defraud:

Guilty.

Not guilty.

47. Attempted Damage to Property With Intent to Defraud:

Guilty.

Not guilty.

48. Aggravated Burglary:

Guilty.

Guilty of attempted aggravated burglary.

Guilty of simple burglary.

Guilty of attempted simple burglary.

Guilty of simple burglary of an inhabited dwelling.

Guilty of attempted simple burglary of an inhabited dwelling.

Guilty of unauthorized entry of an inhabited dwelling.

Guilty of attempted unauthorized entry of an inhabited dwelling.

Not guilty.

49. Attempted Aggravated Burglary:

Guilty.

Guilty of attempted simple burglary.

Guilty of attempted simple burglary of an inhabited dwelling.

Guilty of attempted unauthorized entry of an inhabited dwelling.

Not guilty.

50. Simple Burglary:

Guilty.

Guilty of attempted simple burglary.

Guilty of unauthorized entry of a place of business.

Guilty of attempted unauthorized entry of a place of business.

Not guilty.

51. Simple Burglary of an Inhabited Dwelling:

Guilty.

Guilty of attempted simple burglary of an inhabited dwelling.

Guilty of unauthorized entry of an inhabited dwelling.

Guilty of attempted unauthorized entry of an inhabited dwelling.

Not guilty.

52. Attempted Simple Burglary:

Guilty.

Not guilty.

53. Aggravated Flight from an Officer:

Guilty.

Guilty of flight from an officer.

Not guilty.

54. Contamination of Water Supplies:

Guilty of contaminating water supplies when the act foreseeably endangered the life or health of human beings.

Guilty of contaminating water supplies when the act did not foreseeably endanger the life or health of human beings.

Not guilty.

55. Attempted Contamination of Water Supplies:

Guilty of attempted contamination of water supplies when the act would foreseeably endanger the life or health of human beings.

Guilty of attempted contamination of water supplies when the act would not foreseeably endanger the life or health of human beings.

Not guilty.

56. Production, Manufacture, Distribution or Dispensation of Controlled Dangerous Substances:

Guilty.

Guilty of attempted production, manufacture, distribution or dispensation of controlled dangerous substances.

Guilty of possession of controlled dangerous substances.

Guilty of attempted possession of controlled dangerous substances.

Not guilty.

57. Possession of Controlled Dangerous Substances With Intent to Produce, Manufacture, Distribute, or Dispense:

Guilty.

Guilty of attempted possession of controlled dangerous substances with intent to produce, manufacture, distribute, or dispense.

Guilty of possession of controlled dangerous substances.

Guilty of attempted possession of controlled dangerous substances.

Not guilty.

58. Possession of Controlled Dangerous Substances:

Guilty.

Guilty of attempted possession of controlled dangerous substances.

Not guilty.

59. Possession of Cocaine:

Guilty.

Guilty of attempted possession of cocaine.

Guilty of possession of drug paraphernalia.

Not guilty.

The possession of drug paraphernalia verdict is responsive only if there is evidence of drug paraphernalia, as defined in R.S. 40:1021, in the charged offense of possession of cocaine.

60. Attempted Production or Manufacture of Controlled Dangerous Substances:

Guilty.

Guilty of attempted possession of controlled dangerous substances.

Not guilty.

61. Attempted Distribution or Dispensation of Controlled Dangerous Substances:

Guilty.

Guilty of possession of controlled dangerous substances.

Guilty of attempted possession of controlled dangerous substances.

Not guilty.

62. Attempted Possession of Controlled Dangerous Substances With Intent to Produce, Manufacture, Distribute or Dispense:

Guilty.

Guilty of attempted possession of controlled dangerous substances.

Not guilty.

63. Creation or Distribution of Counterfeit Controlled Dangerous Substances:

Guilty.

Guilty of attempted creation or distribution of counterfeit controlled dangerous substances.

Not guilty.

64. Possession of Counterfeit Controlled Dangerous Substances With Intent to Distribute:

Guilty.

Guilty of attempted possession of counterfeit controlled dangerous substances with intent to distribute.

Not guilty.

65. Attempted Creation, Distribution, or Possession of Counterfeit Controlled Dangerous Substances With Intent to Distribute:

Guilty.

Not guilty.

66. Conspiracy to Violate any Provision of the Uniform Controlled Dangerous Substances Law:

Guilty.

Not guilty.

67. Cruelty to Persons with Infirmities:

Guilty.

Guilty of attempted cruelty to persons with infirmities.

Guilty of simple battery.

Guilty of assault.

Guilty of negligent injuring.

Not guilty.

68. Solicitation of Crime Against Nature:

Guilty.

Guilty of attempted solicitation of crime against nature.

Guilty of prostitution.

Not guilty.

B.(1) Except as provided in Paragraph A of this Article, responsive verdicts in any other cases arising under the Uniform Controlled Dangerous Substances Law shall be governed by Article 815 of this Code.

(2) For purposes of this Article and Article 815, for any offense arising under the Uniform Controlled Dangerous Substances Law that is graded according to the weight of the substance, the responsive verdicts shall include grades of the offense that are based upon lesser weights than the weight of the substance that is charged in the indictment.

C. Upon motion of the state or the defendant, or on its own motion, the court shall exclude a responsive verdict listed in Paragraph A if, after all the evidence has been submitted, the evidence, viewed in a light most favorable to the state, is not sufficient reasonably to permit a finding of guilty of the responsive offense.

D. Where an offense is graded according to property value or amount of damage, the responsive verdicts shall not include a grade of the offense that is greater than the property value or amount of damage charged in the indictment.

Amended by Acts 1973, No. 126, §1; Acts 1975, No. 334, §1; Acts 1975, No. 335, §1; Acts 1975, No. 336, §§1, 2; Acts 1976, No. 85, §1; Acts 1978, No. 247, §1; Acts 1982, No. 763, §1. Amended by Acts 1983, 1st Ex. Sess., No. 28, §1; Acts 1983, No. 63, §1; Acts 1983, No. 635, §1; Acts 1985, No. 791, §1; Acts 1985, No. 799, §1; Acts 1986, No. 846, §1; Acts 1988, No. 926, §1; Acts. 1988, No. 927, §1; Acts 1988, No. 928, §1; Acts 1991, No. 465, §1; Acts 1992, No. 307, §1; Acts 1995, No. 403, §2, eff. June 15, 1995; Acts 1997, No. 400, §1; Acts 1997, No. 558, §1; Acts 1997, No. 865, §1; Acts 2001, No. 821, §1; Acts 2001, No. 1093, §1; Acts 2003, No. 164, §1; Acts 2003, No. 623, §1; Acts 2003, No. 720, §1; Acts 2004, No. 739, §1; Acts 2006, No. 52, §1; Acts 2006, No. 235, §1; Acts 2010, No. 396, §2; Acts 2014, No. 61, §1; Acts 2014, No. 255, §§2, 4, and 5; Acts 2014, No. 811, §31, eff. June 23, 2014; Acts 2015, No. 184, §6; Acts 2018, No. 680, §1.

Art. 815. Responsive verdicts; in general

In all cases not provided for in Article 814, the following verdicts are responsive:

(1) Guilty;

(2) Guilty of a lesser and included grade of the offense even though the offense charged is a felony, and the lesser offense a misdemeanor; or

(3) Not Guilty.

Art. 816. Verdict acquitting on account of insanity

In addition to the responsive verdicts in Articles 814 and 815, a verdict of not guilty by reason of insanity is responsive if a defendant has specially pleaded insanity in accordance with Article 552.

Art. 817. Qualifying verdicts

A. Except as provided in Paragraph B of this Article, any qualification of or addition to a verdict of guilty, beyond a specification of the offense as to which the verdict is found, is without effect upon the finding.

B. Notwithstanding any other provision of law to the contrary, in addition to a specification of the offense as to which the verdict is found pursuant to Paragraph A of this Article, any fact that increases the maximum or mandatory minimum penalty for a crime, other

than the fact of a prior conviction, may be submitted to the jury, and the verdict may include a specific finding of fact as to that issue.

Amended by Acts 1972, No. 502, §1; Acts 1973, No. 125, §1; Acts 2019, No. 326, §1, eff. June 11, 2019.

Art. 818. Separate verdict for each defendant

If there is more than one defendant on trial, the verdict shall name each defendant and the finding as to him.

Art. 819. Separate verdict for each count

If there is more than one count in an indictment, the jury must find a verdict as to each count, unless it cannot agree on a verdict as to a count.

Art. 820. Application of chapter to cases tried without a jury

All provisions of this Chapter regulating the responsiveness and effect of verdicts shall apply to cases tried without a jury.

Art. 821. Motion for post verdict judgment of acquittal

A. The defendant may move for a post verdict judgment of acquittal following the verdict. A motion for a post verdict judgment of acquittal must be made and disposed of before sentence.

B. A post verdict judgment of acquittal shall be granted only if the court finds that the evidence, viewed in a light most favorable to the state, does not reasonably permit a finding of guilty.

C. If the court finds that the evidence, viewed in a light most favorable to the state, supports only a conviction of a lesser included responsive offense, the court, in lieu of granting a post verdict judgment of acquittal, may modify the verdict and render a judgment of conviction on the lesser included responsive offense.

D. If a post verdict judgment of acquittal is granted or if a verdict is modified, the state may seek review by invoking the supervisory jurisdiction of or by appealing to the appropriate appellate court.

E. If the appellate court finds that the evidence, viewed in a light most favorable to the state, supports only a conviction of a lesser included responsive offense, the court, in lieu of granting a post verdict judgment of acquittal, may modify the verdict and render a judgment of conviction on the lesser included responsive offense.

Added by Acts 1982, No. 144, §1.

Art. 822. Motion for amending or modifying sentence

A.(1) Should the court on its own motion or on motion of the defendant consider setting aside a guilty verdict or a plea of guilty or, after the sentence is imposed, consider amending or modifying the sentence imposed, the district attorney shall be notified and the motion shall be tried contradictorily with the district attorney unless the district attorney waives such contradictory hearing.

(2) Such motions include but are not limited to motions for a new trial, motions in arrest of judgment, motions for amendment, modification, or reconsideration of sentence, and motions for modification of conditions of probation or termination of probation.

B. Additionally, if at any time after sentence is imposed, the defendant seeks the production of all or any portion of the district attorney's file in a criminal proceeding, the request for production shall be presented by written motion, which shall be tried contradictorily with the district attorney.

C. Each motion to set aside a guilty verdict or plea of guilty and each motion to amend or modify a sentence imposed shall be filed, considered, and decided in compliance with Code of Criminal Procedure Articles 881 and 881.1.

Acts 1997, No. 1321, §1; Acts 2001, No. 937, §1.

Art. 831. Presence of defendant when prosecution is for felony

A. Except as may be provided by local rules of court in accordance with Articles 522, 551, and 562, a defendant charged with a felony shall be present at all of the following:

(1) At arraignment.

(2) When a plea of guilty, not guilty, or not guilty and not guilty by reason of insanity is made.

(3) At the calling, examination, challenging, impaneling, and swearing of the jury, and at any subsequent proceedings for the discharge of the jury or of a juror.

(4) At all times during the trial when the court is determining and ruling on the admissibility of evidence.

(5) In trials by jury, at all proceedings when the jury is present, and in trials without a jury, at all times when evidence is being adduced.

(6) At the rendition of the verdict or judgment, unless he voluntarily absents himself.

B. Repealed by Acts 2020, No. 160, §2.

Acts 1990, No. 543, §1; Acts 1990, No. 593, §1; Acts 1997, No. 1015, §1; Acts 2017, No. 406, §1; Acts 2020, No. 160, §2.

Art. 832. Continued presence not required

A. A defendant initially present for the commencement of trial shall not prevent the further progress of the trial, including the return of the verdict, and shall be considered to have waived his right to be present if his counsel is present or if the right to counsel has been waived and either of the following occur:

(1) He voluntarily absents himself after the trial has commenced, whether or not he has been informed by the court of his obligation to be present during the trial.

(2) After being warned by the court that disruptive conduct will cause him to be removed from the courtroom, he persists in conduct which justifies his exclusion from the courtroom.

B. Repealed by Acts 2020, No. 160, §2.

Art. 833. Presence of defendant when prosecution is for misdemeanor

A. The court may permit a defendant charged with a misdemeanor to be arraigned, enter his plea of guilty, or be tried, in his absence.

B. A plea of not guilty of a misdemeanor may always be entered through counsel and in the absence of the defendant.

C. Repealed by Acts 2020, No. 160, §2.

Acts 1990, No. 543, §1; Acts 1990, No. 593, §1; Acts 1997, No. 1015, §1; Acts 2017, No. 406, §1; Acts 2020, No. 160, §2.

Art. 834. When presence of defendant not necessary

The defendant has a right to be present, but his presence is not essential to the validity of any of the following proceedings in a criminal prosecution:

(1) The making, hearing of, or ruling on a preliminary motion or application addressed to the court;

(2) The making, hearing of, or ruling on a motion or application addressed to the court during the trial when the jury is not present; except as provided in Clause (4) of Article 831; and

(3) The making, hearing of, or ruling on a motion or application made after his conviction.

Art. 835. Presence of defendant at pronouncement of sentence

A. Except as provided in Paragraph B of this Article, in felony cases the defendant shall always be present when sentence is pronounced and in misdemeanor cases, the defendant shall be present when sentence is pronounced unless excused by the court. If a sentence is improperly pronounced in the defendant's absence, he shall be resentenced when his presence is secured.

B. Nothing in this Article prohibits the court, by local rule, from providing for a defendant's appearance at the pronouncement of sentence by simultaneous audio-visual transmission in accordance with the provisions of Article 562.

Amended by Acts 2020, No. 160, §1.

Art. 836. Presence of corporation or association

When a corporation, partnership, or other association is a defendant, the requirements of this Title are fulfilled if its counsel is present.

TITLE XXXI. APPEAL

CHAPTER 1. GENERAL DISPOSITIONS

Art. 911. Right to appeal from judgment

Appeal is the exercise of the right of the state or the defendant to have a judgment or ruling reviewed by the proper appellate court. An appeal bond is not required.

Art. 912. Judgments or rulings appealable

A. Only a final judgment or ruling is appealable.

B. The state cannot appeal from a verdict of acquittal. Adverse judgments or rulings from which the state may appeal include, but are not limited to, judgments or rulings on:

(1) A motion to quash an indictment or any count thereof;

(2) A plea of time limitation;

(3) A plea of double jeopardy;

(4) A motion in arrest of judgment;

(5) A motion to change the venue;

(6) A motion to recuse; and

(7) Repealed by Acts 1968, No. 146, §1.

C. The judgments or rulings from which the defendant may appeal include, but are not limited to:

(1) A judgment which imposes sentence;

(2) A ruling upon a motion by the state declaring the present insanity of the defendant; and

(3) Repealed by Acts 1968, No. 146, §1.

Amended by Acts 1968, No. 146, §1.

Art. 912.1. Right of appeal and application for review; defendant

A.(1) The defendant may appeal to the supreme court from a judgment in a capital case in which a sentence of death actually has been imposed.

(2) Except as provided in Code of Criminal Procedure Article 905.9, such defendant may waive his right of appeal. The defendant shall be informed, both in writing and orally, of this right to waive appeal upon appointment of appellate counsel.

B.(1) The defendant may appeal to the court of appeal from a judgment in a criminal case triable by jury, except as provided in Paragraph A or Subparagraph (2) of this Paragraph.

(2) An appeal from a judgment in a criminal case triable by jury from a city court located in the Nineteenth Judicial District, except as provided in Paragraph A of this Article, shall be taken to the Nineteenth Judicial District in the parish of East Baton Rouge.

C.(1) In all other cases not otherwise provided by law, the defendant has the right of judicial review by application to the court of appeal for a writ of review. This application shall

be accompanied by a complete record of all evidence upon which the judgment is based unless the defendant intelligently waives the right to cause all or any portion of the record to accompany the application.

(2) An application for review by the defendant shall not suspend the execution of sentence, unless the defendant is admitted to postconviction bail.

Added by Acts 1974, Ex.Sess., No. 28, §1, eff. Jan. 1, 1975. Amended by Acts 1980, No. 516, §1, eff. July 1, 1982; Acts 1986, No. 443, §1; Acts 2001, No. 1134, §2; Acts 2010, No. 674, §1, eff. Oct. 1, 2010.

Art. 913. Effect of appeal

A. An appeal by the state suspends the ruling or judgment from which the appeal is taken, except when the ruling or judgment requires the release of the defendant.

B. An appeal by the defendant shall not suspend the execution of sentence, unless the defendant is admitted to postconviction bail.

Amended by Acts 1982, No. 736, §1.

CHAPTER 2. PROCEDURE IN LOWER COURT FOR APPEAL

Art. 914. Method and time of appeal

A. A motion for an appeal may be made orally in open court or by filing a written motion with the clerk. The motion shall be entered in the minutes of the court.

B. The motion for an appeal must be made no later than:

(1) Thirty days after the rendition of the judgment or ruling from which the appeal is taken.

(2) Thirty days from the ruling on a motion to reconsider sentence filed pursuant to Article 881.1, should such a motion be filed.

Amended by Acts 1982, No. 14[illegible] §1. Acts 1993, No. 490, §1, eff. June 10, 1993; Acts 2003, No. 949, §1.

Art. 914.1. Designation of record; payment of costs; sanction

A. The party making the motion for appeal shall, at the time the motion is made, request the transcript of that portion of the proceedings necessary, in light of the assignment of errors to be urged. Not later than five days after the motion, the opposing party may designate in writing the transcript of that portion or portions of the proceedings necessary to oppose the appeal.

B. A transcript of any portion of the proceedings which does not relate to anticipated assignment of errors shall not be furnished to a party for purposes of appeal and shall not result in delay of preparation of the appeal record.

C.(1) An attorney who requests a transcript in accordance with this Article must certify there are good grounds for such request in light of the assignment of errors to be urged.

(2) Except in indigent cases, the costs for preparing the transcript must be paid to the court reporter or the appropriate agency and the costs as required for filing the appeal must be paid in the appellate court, both within twenty days of the mailing of notice, including the payment of any additional costs owed upon notice.

(3) Where applicable, if the appellant or appellant's counsel fails to pay the estimated cost for preparing the record including the transcript within the time specified, the trial judge, on his own motion or upon motion by the clerk or by any party, and after a hearing, may do one of the following:

(a) Extend the time within which the costs may be paid not to exceed thirty days with or without penalty to the appellant or his attorney.

(b) Impose a fine not to exceed five hundred dollars upon the appellant or his attorney, or both.

(c) Dismiss the appeal.

D. The trial court or the appellate court may designate additional portions of the transcript of the proceedings which it feels are necessary for full and fair review of the assignment of errors.

Added by Acts 1982, No. 143, §1. Acts 1984, No. 937, §2.

{{NOTE: SEE ALSO ACTS 1984, NO. 937, §3 AND ACTS 1984, NO. 838, §1.}}

Art. 915. Action on a motion for appeal; return; notice

A. When a motion for an appeal is made in conformity with Articles 912, 914, and 914.1 the trial court shall grant or deny the motion within seventy-two hours, exclusive of legal holidays, after the motion is made. The return date shall be seventy-five days from the date the motion for appeal is granted, unless the trial judge fixes a longer period. When a motion for an appeal has been timely made, the appeal shall not be affected by any fault or omission on the part of the trial court.

B. The minute clerk for each section of the trial court shall forward a copy of the notice of appeal to the clerk of the trial court and to the court reporters responsible for preparing the necessary transcripts, within twenty-four hours, exclusive of legal holidays, of the date the appeal is ordered. The clerk of the trial court shall forward a copy of the notice of appeal to the sheriff having custody of the defendant, to the appropriate appellate court, and to each party, within seven days of the date the appeal is ordered. The party moving for the appeal must forward notice that a motion for appeal has been made to the appropriate appellate court within seven days of the date the motion is made. Failure of the minute clerk, the clerk of court, or the party moving for the appeal, to provide notice shall not affect the validity of the appeal.

Amended by Act 1974, No. 207, §1; Acts 1982, No. 143, §1; Acts 1988, No. 525, §1; Acts 1999, No. 706, §1.

Art. 915.1. Appeals; extension of return date; notice

A. The trial court may grant one extension of the return date of not more than thirty days. An extension may not be granted after the return date has passed. The extension may be granted only upon proof presented by the moving party that additional time is necessary due to extenuating circumstances beyond the control of the moving party and that, without the extension, an unusual and undue hardship would be created. A copy of the extension shall be filed with the appellate court and the clerk of the trial court.

B. Subsequent extensions may be granted by the appellate court for sufficient cause or at the request of the court reporter as provided in Article 919. When a subsequent extension is

granted by the appellate court, notice thereof shall be given by mail by the clerk of the trial court to all parties. Failure of the clerk of the trial court to mail such notice shall not affect the validity of the appeal nor will any error or defect which is not imputable to the appellant affect the validity of the appeal.

Acts 1988, No. 525, §1.

Art. 916. Divesting of jurisdiction of trial court

The jurisdiction of the trial court is divested and that of the appellate court attaches upon the entering of the order of appeal. Thereafter, the trial court has no jurisdiction to take any action except as otherwise provided by law and to:

(1) Extend the return day of the appeal, the time for filing assignments of error, or the time for filing per curiam comments in accordance with Articles 844 and 919.

(2) Correct an error or deficiency in the record.

(3) Correct an illegal sentence or take other appropriate action pursuant to a properly made or filed motion to reconsider sentence.

(4) Take all action concerning bail permitted by Title XLVI.

(5) Furnish per curiam comments.

(6) Render an interlocutory order or a definitive judgment concerning a ministerial matter not in controversy on appeal.

(7) Impose the penalty provided by Article 844.

(8) Sentence the defendant pursuant to a conviction under the Habitual Offender Law as set forth in R.S. 15:529.1.

Amended by Acts 1968, No. 147, §1; Acts 1974, No. 207, §1; Acts 1984, No. 527, §1; Acts 1986, No. 851, §1; Acts 1991, No. 38, §2; Acts 1997, No. 642, §1.

{{NOTE: SEE ACTS 1991, NO. 38, §3, FOR SPECIAL EFFECTIVE DATE FOR PARAGRAPH (3).}}

Art. 917. Record on appeal; preparation

The clerk of the trial court shall prepare the record on appeal and lodge it with the appellate court on or before the return date or any extension thereof. The clerk of the trial court shall prepare the record in accordance with the rules of the appellate court. Failure of the Clerk to prepare and lodge the record on appeal either correctly or timely shall not prejudice the appeal, unless such defect or delay is imputable to the appellant.

Amended by Acts 1984, No. 528, §1; Acts 1988, No. 525, §1.

Art. 918. Record on appeal; certified and dated

A. All records and supplemental records prepared for filing in any appellate court shall be certified and dated by the clerk upon completion. The certification shall include the date any transcript was received for inclusion in the record.

B. All transcripts or parts thereof completed for inclusion in the record shall be dated and certified by the court reporter who prepares them. The date of certification by the court reporter

shall be the date on which the transcript was completed and furnished to the clerk for inclusion in the record.

Acts 1988, No. 525, §1.

Art. 919. Record on appeal; preparation and delivery of transcripts

A. Each court reporter assigned to prepare any transcript necessary to complete the appeal record shall deliver the transcript to the clerk of the trial court who has the duty of preparing the record for appeal five days before the return date.

B. Whenever the court reporter cannot deliver the transcript to the clerk of the trial court five days before the return date, the reporter shall file a request for an extension of the return date with the trial court or the appellate court as provided by Article 915.1. Whenever a court reporter has not delivered a transcript five days before the return date, the clerk of the trial court shall file a certificate with the court of appeal, not later than seven days after the return date, advising that the record is ready for lodging except for the lack of delivery of the transcript. In such certificate, the clerk shall include the name and address of each reporter who has failed to deliver a transcript and whether any of the court reporters have requested an extension of the return date.

C. Upon the request of the appellate court when the transcript has not been delivered to the clerk of court, but the record is otherwise ready for lodging, the record shall be lodged. The clerk of the trial court shall include with the record a certificate stating the name and address of each court reporter who is required to prepare and deliver a transcript. Thereafter, the appellate court may issue appropriate orders to any named reporter to expedite the preparation and delivery of any necessary transcripts.

Amended by Acts 1980, No. 547, §1; Acts 1984, No. 524, §1; Acts 1987, No. 726, §1; Acts 1988, No. 525, §1; Acts 1990, No. 706, §1.

Art. 919.1. Record on appeal; contempt

A. Failure of any person to comply with Articles 914 through 919 may subject such person to contempt of court. Such contempt charges may be initiated by the trial court or by the appellate court on the court's own motion or by motion of any party.

B. In any court where the duty of preparing the appellate record is delegated to, or assumed by, an official other than the clerk of court, by court rule or by custom, all of the provisions applicable to the clerk of court regarding the preparation of such a record are equally applicable to such court official.

Acts 1988, No. 525, §1.

CHAPTER 3. PROCEDURE IN APPELLATE COURT

Art. 920. Scope of appellate review

The following matters and no others shall be considered on appeal:

(1) An error designated in the assignment of errors; and

(2) An error that is discoverable by a mere inspection of the pleadings and proceedings and without inspection of the evidence.

Amended by Acts 1974, No. 207, §1.

Art. 921. Matters not grounds for reversal

A judgment or ruling shall not be reversed by an appellate court because of any error, defect, irregularity, or variance which does not affect substantial rights of the accused.

Amended by Acts 1979, No. 86, §1.

Art. 921.1. Notice of decision in criminal appeals

A. In addition to the requirements regarding transmission of notice of judgment and copies of decisions under the Uniform Rules of Louisiana Courts of Appeal, when a decision in an appellate court in a criminal appeal is rendered, the clerk of court shall transmit a notice or copy of the decision to the clerk of court from which the appeal was taken and to the Department of Public Safety and Corrections.

B. When a decision of the supreme court is rendered in a criminal appeal, the clerk of court shall transmit a notice or copy of the decision to the clerk of court from which the appeal was taken and to the Department of Public Safety and Corrections.

Acts 2014, No. 600, §1.

Art. 922. Finality of judgment on appeal

A. Within fourteen days of rendition of the judgment of the supreme court or any appellate court, in term time or out, a party may apply to the appropriate court for a rehearing. The court may act upon the application at any time.

B. A judgment rendered by the supreme court or other appellate court becomes final when the delay for applying for a rehearing has expired and no application therefor has been made.

C. If an application for a rehearing has been made timely, a judgment of the appellate court becomes final when the application is denied.

D. If an application for a writ of review is timely filed with the supreme court, the judgment of the appellate court from which the writ of review is sought becomes final when the supreme court denies the writ.

Acts 1983, No. 451, §1; Acts 1993, No. 976, §1.

Art. 923. Duty of clerk as to final decisions in appellate court

When a decision of an appellate court becomes final, the clerk of court shall transmit a certified copy of the decree to the court from which the appeal was taken. When the judgment is received by the lower court, it shall be filed and executed.