Louisiana Code of Criminal Procedure 2022

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 2021 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 a 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 or 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.

F. The filings as provided in this Article and all other provisions of this Code may be transmitted electronically in accordance with a system established by a clerk of court or by the Louisiana Clerks' Remote Access Authority. When such a system is established, the clerk of court shall adopt and implement procedures for the electronic filing and storage of any pleading, document, or exhibit. Furthermore, in a parish that accepts electronic filings covered under this Paragraph, the official record shall be the electronic record. A pleading or document filed electronically is deemed filed on the date and time stated on the confirmation of electronic filing

sent from the system, if the clerk of court accepts the electronic filing. Public access to electronically filed pleadings and documents shall be in accordance with the rules governing access to written filings.

Acts 2001, No. 319, §3; Acts 2016, No. 109, §2; Acts 2021, No. 341, §1.

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 any 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. 882, §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 advance 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 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 XIII. INDICTMENT AND INFORMATION

CHAPTER 1. INDICTMENT FORMS

Art. 461. Special definitions

In this Title the terms enumerated shall have the designated meanings:

"Writing" and "written" include words printed, painted, typed, engraved, lithographed, photographed, or otherwise copied, traced, or made visible to the eye.

"Indictment" includes affidavit and information, unless it is the clear intent to restrict that word to the finding of a grand jury.

Art. 462. Form of grand jury indictment

The indictment by a grand jury may be in substantially the following form:

In the (Here state the name of the court.) on the _____ day of _____, 19__. State of Louisiana v. A.B. (Here state the name or description of the accused.)

The grand jury of the Parish of _____, charges that A.B. (Here state the name or description of the accused.) committed the offense of _____, in that (Here set forth the offense and transaction according to the rules stated in this Title. The particulars of the offense may be added with a view to avoiding the necessity for a bill of particulars.) contrary to the law of the State of Louisiana and against the peace and dignity of the same.

Art. 463. Form of information

The information may be in substantially the following form:

In the (Here state the name of the court.) on the _____ day of _____, 19__. State of Louisiana v. A.B. (Here state the name or description of the accused.).

X.Y., District Attorney for the Parish of _____, charges that A.B. (Here state the name or description of the accused) committed the offense of _____, in that (Here set forth the offense and transaction according to the rules stated in this Title. The particulars of the offense may be added with a view to avoiding the necessity for a bill of particulars.) contrary to the law of the state of Louisiana and against the peace and dignity of the same.

Art. 464. Nature and contents of indictment

The indictment shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged. It shall state for each count the official or customary citation of the statute which the defendant is alleged to have violated. Error in the citation or its omission shall not be ground for dismissal of the indictment or for reversal of a conviction if the error or omission did not mislead the defendant to his prejudice.

Art. 465. Specific indictment forms

A. The following forms of charging offenses may be used, but any other forms authorized by this title may also be used:

1. Abortion--A.B. committed abortion on C.D.

2. Aggravated Arson--A.B. committed aggravated arson of a dwelling (or structure, watercraft, or movable, as the case may be). If the words "belonging to another and with the damage amounting to _____ dollars" are added, simple arson will be included in the charge.

3. Simple Arson--A.B. committed simple arson of _____ (state the property burned or damaged) with the damage amounting to _____ dollars.

4. Arson with Intent to Defraud--A.B. committed arson of _____ (state the property burned or damaged) with intent to defraud C.D.

5. Aggravated Assault--A.B. assaulted C.D. with a dangerous weapon.

6. Simple Assault--A.B. assaulted C.D.

7. Attempt--A.B. attempted to _____ (commit theft of one rifle--state property subject of the theft; rob C.D.; or murder C.D.; as the case may be).

8. Aggravated Battery--A.B. committed a battery with a dangerous weapon upon C.D.

9. Simple Battery--A.B. committed a battery upon C.D.

10. Bigamy--A.B. committed bigamy with C.D.

11. Public Bribery--A.B. committed public bribery by giving (or offering to give) _____ dollars (or describe property) to C.D., _____, (state official status of person bribed); or, A.B., _____, (state official status of A.B.), committed public bribery by receiving (or offering to receive) _____ dollars (or describe property) from C.D.

12. Bribery of Voters--A.B. bribed C.D., a voter, by giving him (or offering him) _____ dollars (or describe property); or A.B., a voter, committed bribery of voters by receiving (or offering to receive) _____ dollars (or describe property) from C.D.

13. Aggravated Burglary--A.B. committed aggravated burglary of the dwelling of C.D.; or A.B. committed aggravated burglary of a warehouse (or other structure, watercraft, or movable, as the case may be) belonging to C.D.

14. Simple Burglary--A.B. committed simple burglary of the houseboat (or other structure, watercraft, or movable, as the case may be) belonging to C.D.

15. Carnal Knowledge of a Juvenile--A.B. committed carnal knowledge of C.D., a juvenile.

16. Crime Against Nature--A.B. committed crime against nature with C.D. by _____ (describe the act).

17. Criminal Conspiracy--A.B. conspired with C.D. to _____ (commit theft of one rifle--state property subject of the theft; murder E.F.; or rob E.F.; as the case may be).

18. Aggravated Criminal Damage to Property--A.B. committed aggravated criminal damage to _____ (state the structure, watercraft, or movable). If the words "belonging to another and with the damage amounting to _____ dollars" are added, simple criminal damage to property will be included in the charge.

19. Simple Criminal Damage to Property--A.B. committed simple criminal damage to _____ (state the property damaged) with the damage amounting to _____ dollars.

20. Damage to Property with Intent to Defraud--A.B. damaged _____ (state the property damaged) with intent to defraud C.D.

21. Cruelty to Juveniles--A.B. committed cruelty to C.D., a juvenile, by _____ (describe act of cruelty).

22. Aggravated Escape--A.B. committed aggravated escape from C.D., a _____ (state official status of person escaped from); or A.B. committed aggravated escape from _____ (state place of official detention).

23. Simple Escape--A.B. escaped from C.D., a _____ (state official status of person escaped from); or A.B. escaped from _____ (state place of official detention).

24. Forgery--A.B. forged a _____ (promissory note, or other instrument) by _____ (state nature of defendant's act).

25. False Imprisonment--A.B. falsely imprisoned C.D.

26. Incest--A.B. committed incest with C.D., his _____ (state relationship).

27. Public Intimidation--A.B. committed public intimidation upon C.D., a _____ (state official status of person intimidated).

28. Issuing Worthless Checks--A.B. issued a worthless check to _____ (state name of payee) in the amount of _____ dollars.

29. Aggravated Kidnapping--A.B. committed aggravated kidnapping of C.D.

30. Simple Kidnapping--A.B. kidnapped C.D.

31. First Degree Murder--A.B. committed first degree murder of C.D.

32. Second Degree Murder--A.B. committed second degree murder of C.D.

33. Manslaughter--A.B. unlawfully killed C.D.

34. Negligent Homicide--A.B. negligently killed C.D.

35. Negligent Injuring--A.B. negligently injured C.D.

36. Perjury--A.B. committed perjury on the trial of C.D. for a felony (or on the trial of C.D. for a misdemeanor; or in a civil case between C.D. and E.F.; or at a _____ hearing; as the case may be) by testifying as follows: _____ (set forth the testimony).

37. False Swearing--A.B. made a false statement under oath for _____ (set forth purpose of making the statement) as follows: _____ (set forth the false statement).

38. Prostitution--A.B. committed prostitution.

39. Aggravated Rape or First Degree Rape--A.B. committed aggravated or first degree rape upon C.D.

40. Simple Rape or Third Degree Rape--A.B. committed simple or third degree rape upon C.D.

41. Receiving Stolen Things--A.B. received stolen things, viz., _____ (state property received) of a value of _____ dollars.

42. Armed Robbery--A.B., while armed with a dangerous weapon, robbed C.D.

43. Simple Robbery--A.B. robbed C.D.

44. Theft--A.B. committed theft of _____ (state property stolen) of a value of _____ dollars.

45. Theft of Cattle, etc.--A.B. committed theft of _____ (describe animal or animals stolen).

46. Unauthorized Use of Movables--A.B. committed unauthorized use of _____ (describe the movable).

B. The indictment, in addition to the necessary averments of the appropriate specific form hereinbefore set forth, may also include a statement of additional facts pertaining to the offense

charged. If this is done it shall not affect the sufficiency of the specific indictment form authorized by this article.

Amended by Acts 1973, No. 128, §1; Acts 2015, No. 184, §6.

CHAPTER 2. SPECIAL ALLEGATIONS

Art. 466. Name of defendant

In an indictment it is sufficient for the purpose of identifying the defendant to state his true name, or to state the name, appellation, or nickname by which he is known, or if no better way of identifying him is practicable, to state a fictitious name, or to describe him as a person whose name is unknown, or in any other manner. In stating the true name or the name by which the defendant is known or a fictitious name, it is sufficient to state a surname, a surname and one or more given names, or a surname and one or more abbreviations or initials of a given name or names.

If the true name of a defendant identified in the indictment otherwise than by his true name is disclosed by the evidence or is otherwise discovered, the court shall cause the indictment to be amended to show his true name, and the proceedings shall continue against the defendant in his true name.

In no case is it necessary to aver or prove that the true name of the defendant is unknown to the grand jury, complainant, or prosecuting officer.

Art. 467. Naming corporation, partnership or other unincorporated association

If the defendant is a corporation, it is sufficient to state the corporate name of the defendant in an indictment, or to state any name or designation by which it has been or is known or by which it may be identified, without an averment that it is a corporation or that it was incorporated according to law.

If the defendant is a partnership or other association of persons not incorporated, it is sufficient to state any corporate name of the partnership or association, or to state any name or designation by which it is known, or to state the names of all the persons in the partnership or association, or to state the name of one or more persons in the partnership or association referring to the other or others as "another" or "others." It is not necessary to state the legal form of the partnership or association.

Art. 468. Date and time

The date or time of the commission of the offense need not be alleged in the indictment, unless the date or time is essential to the offense.

If the date or time is not essential to the offense, an indictment shall not be held insufficient if it does not state the proper date or time, or if it states the offense to have been committed on a day subsequent to the finding of the indictment, or on an impossible day.

All allegations of the indictment and bill of particulars shall be considered as referring to the same date or time, unless otherwise stated.

Art. 469. Venue and place

It is not necessary to state any venue in the body of the indictment, but the state, parish, or other jurisdiction where the indictment is filed shall be taken to be the venue for the offense charged in the indictment.

The place of the commission of the offense need not be alleged in the indictment unless the place of commission is essential to the offense. All allegations in the indictment and bill of particulars shall be considered as referring to the same place, unless stated otherwise.

Art. 470. Value, price, or damage

Value, price, or amount of damage need not be alleged in the indictment, unless such allegation is essential to charge or determine the grade of the offense.

Art. 471. Ownership

Ownership, or the name of the owner of property, need not be alleged in the indictment, unless such ownership or name of the owner is essential to the offense.

Art. 472. General intent

In offenses requiring only a general criminal intent, the indictment need not allege that the act was intentionally done.

Art. 473. Identification of victim

When the name of the person injured is substantial and not merely descriptive, such as when the injury is to the person, as in murder, rape, or battery, the indictment shall state the true name of the victim or the name, appellation, or nickname by which he is known. If the name, appellation, or nickname of the victim is not known, it is sufficient to so state and to describe him as far as possible. In stating any name of a victim it is sufficient to state a surname, a surname and one or more given names, or a surname and one or more abbreviations or initials of a given name or names.

Art. 474. Property described as money

When it is necessary to make an averment in an indictment as to money, treasury notes or certificates, banknotes or other securities intended to circulate as money, it is sufficient to describe them or any of them as money, without specifying the particular character, denomination, kind, species, or nature thereof.

Art. 475. Description of written instruments and printed objects

When it is necessary to make an averment in an indictment relative to any instrument or object which consists wholly or in part of writing or figures, pictures or designs, it is sufficient to describe the instrument or object by any name or description by which it is usually known or by which it may be identified, or by its purport, without setting forth a copy or facsimile of the whole or any part thereof.

Art. 476. Description of spoken or written matter

When it is necessary to make an averment in an indictment relative to any words, whether spoken, written or otherwise recorded, or to any plan, map, or picture, it is sufficient to set forth the words by their general purport, or to describe the plan, map, or picture generally, without setting forth a copy or facsimile thereof.

Art. 477. Meaning of words and phrases

The words and phrases used in an indictment or bill of particulars are to be construed according to their usual meaning and acceptation. Words and phrases which have been defined by law or which have otherwise acquired a legal meaning are to be construed according to their legal meaning.

Art. 478. Judgments and other determinations

Where a judgment or other determination of, or a proceeding before, any court or official, civil or military, is referred to in an indictment, it is unnecessary to allege the facts conferring jurisdiction on the court or official. It is sufficient to allege generally that the judgment or determination was given or made or the proceeding had, in such manner as identifies the judgment, determination or proceeding.

Art. 479. Exceptions

An indictment shall not be invalid or insufficient for the reason that it fails to negative an exception, excuse, or proviso contained in the statute creating or defining the offense. An exception, excuse, or proviso must be urged by way of defense.

Art. 480. Conjunctive charging

If an offense may be committed by doing one or more of several acts, or by one or more of several means, or with one or more of several intents, or with one or more of several results, two or more of such acts, means, intents, or results may be charged conjunctively in a single count of an indictment, or set forth conjunctively in a bill of particulars, and proof of any one of the acts, means, intents, or results so charged or set forth will support a conviction.

Art. 481. Theft

An indictment for theft may include several counts against the same defendant for distinct acts of theft, and the aggregate amount of the thefts shall determine the grade of the offense charged. If a defendant misappropriates money or other things of value, which were entrusted to him by virtue of his office, employment, or any fiduciary relationship, he may be charged in one count with theft of the aggregate amount misappropriated by him during the entire time of his holding the office, employment, or fiduciary relationship.

Art. 482. Alternative offenses; special joinder rules

A. An indictment for theft may also contain a count for receiving stolen things, and the defendant may be convicted of either offense. When two or more persons are jointly indicted for these offenses, any or all of the persons indicted may be found guilty of either of the offenses charged. The district attorney shall not be required to elect between the two offenses charged.

B. An indictment for manslaughter may also contain a count for abortion and the jury may convict of either offense. The district attorney shall not be required to elect between the two offenses charged.

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

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

Art. 483. Allegations of prior convictions

If it is necessary to allege a prior conviction in an indictment, it is sufficient to allege the name or nature of the offense and the fact, date, and court of the conviction.

An indictment shall not contain an allegation of a prior conviction of the defendant unless such allegation is necessary to fully charge the offense.

CHAPTER 3. BILL OF PARTICULARS

Art. 484. Bill of particulars

A motion for a bill of particulars may be filed of right in accordance with Article 521. The court, on its own motion or on motion of the defendant, may require the district attorney to furnish a bill of particulars setting forth more specifically the nature and cause of the charge against the defendant.

Supplemental bills of particulars or a new bill may be ordered by the court at least seven days before the trial begins.

When a bill of particulars is furnished, it shall be filed of record and a copy of the bill shall be given to the defendant.

Amended by Acts 19[illegible], No. 735, §2; Acts 1981, No. 440, §1.

Art. 485. Effect of inconsistent or limiting allegations of bill of particulars

If it appears from the bill of particulars furnished under Article 484, together with any particulars appearing in the indictment, that the offense charged in the indictment was not committed, or that the defendant did not commit it, or that there is a ground for quashing the indictment, the court may on its own motion, and on motion of the defendant shall, order that the indictment be quashed unless the defect is cured. The defect will be cured if the district attorney furnishes, within a period fixed by the court and not to exceed three days from the order, another bill of particulars which either by itself or together with any particulars appearing in the indictment so states the particulars as to make it appear that the offense charged was committed by the defendant, or that there is no ground for quashing the indictment, as the case may be.

CHAPTER 4. DEFECTS; AMENDMENT

Art. 486. Repugnancy; surplusage

An indictment that charges an offense in accordance with the provisions of this Title shall not be invalid or insufficient because it contains repugnant allegations. Unnecessary allegations may be disregarded as surplusage.

Art. 487. Defective indictment; amendment

A. An indictment that charges an offense in accordance with the provisions of this Title shall not be invalid or insufficient because of any defect or imperfection in, or omission of, any matter of form only, or because of any miswriting, misspelling, or improper English, or because of the use of any sign, symbol, figure, or abbreviation, or because any similar defect, imperfection, omission, or uncertainty exists therein. The court may at any time cause the indictment to be amended in respect to any such formal defect, imperfection, omission, or uncertainty.

Before the trial begins the court may order an indictment amended with respect to a defect of substance. After the trial begins a mistrial shall be ordered on the ground of a defect of substance.

B. Nothing contained herein shall be construed to prohibit the defendant from entering a plea of guilty to a crime nonresponsive to the original indictment when such a plea is acceptable to the district attorney, and in such case, the district attorney shall not be required to file a new indictment to charge the crime to which the plea is offered.

Amended by Acts 1970, No. 679, §1.

Art. 487.1. Indictment for driving while intoxicated; amendment

An indictment which charges operating a vehicle while intoxicated may be amended at any time prior to commencement of the trial to charge a second, third, or fourth offense thereof regardless of whether such second, third, or fourth offense occurred before or after an earlier conviction of operating a vehicle while intoxicated.

Added by Acts 1978, No. 682, §2.

Art. 488. Variances; amendment

When there is a variance between the allegations of an indictment or bill of particulars which state the particulars of the offense, and the evidence offered in support thereof, the court may order the indictment or bill of particulars amended in respect to the variance, and then admit the evidence.

Art. 489. Continuance where amendment prejudicial

If it is shown, on motion of the defendant, that the defendant has been prejudiced in his defense on the merits by the defect, imperfection, omission, uncertainty, or variance, with respect to which an amendment is made, the court shall grant a continuance for a reasonable time. In

determining whether the defendant has been prejudiced in his defense upon the merits, the court shall consider all the circumstances of the case and the entire course of the prosecution. If it becomes necessary to discharge the original jury from further consideration of the case, the trial before a new jury will not constitute double jeopardy.

CHAPTER 5. JOINDER RULES

Art. 490. Counts

Counts are charges of crime joined in the same indictment. Recitals in one count may be incorporated in subsequent counts by means of a clear and distinct reference. The conclusion of the indictment applies to all counts stated therein.

Art. 491. Arts. 491, 492 Repealed by Acts 1975, No. 528, §1

Art. 493. Joinder of offenses

Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan; provided that the offenses joined must be triable by the same mode of trial.

Amended by Acts 1975, No. 528, §2.

Art. 493.1. Joinder of misdemeanors; penalties

Whenever two or more misdemeanors are joined in accordance with Article 493 in the same indictment or information, the maximum aggregate penalty that may be imposed for the misdemeanors shall not exceed imprisonment for more than six months or a fine of more than one thousand dollars, or both.

Acts 1992, No. 413, §1, eff. June 17, 1992.

Art. 493.2. Joinder of felonies, mode of trial

Notwithstanding the provisions of Article 493, offenses in which punishment is necessarily confinement at hard labor may be charged in the same indictment or information with offenses in which the punishment may be confinement at hard labor, provided that the joined offenses are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan. Cases so joined shall be tried by a jury composed of twelve jurors, ten of whom must concur to render a verdict.

Acts 1997, No. 559, §1.

Art. 494. Joinder of defendants

Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or

transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

Amended by Acts 1975, No. 528, §2.

Art. 495. Objections to misjoinder

The objections of misjoinder of defendants or misjoinder of offenses may be urged only by a motion to quash the indictment.

Amended by Acts 1975, No. 528, §2.

Art. 495.1. Severance of offenses

If it appears that a defendant or the state is prejudiced by a joinder of offenses in an indictment or bill of information or by such joinder for trial together, the court may order separate trials, grant a severance of offenses, or provide whatever other relief justice requires.

Added by Acts 1975, No. 528, §3. Amended by Acts 1978, No. 466, §1.

CHAPTER 6. PROCEDURE AFTER INDICTMENT

Art. 496. Warrant of arrest on indictment or information

A. When an indictment has been found against a defendant who is not in custody or at large on bail for the offense charged, the court shall issue a warrant for the defendant's arrest, unless the court issues a summons pursuant to Article 497.

B. When an information has been filed against a defendant who is not in custody or at large on bail for the offense charged, the court shall issue a warrant for the defendant's arrest if the information is accompanied by one or more affidavits which establish probable cause to believe that an offense has been committed and that the defendant named in the information committed it, unless the court issues a summons pursuant to Article 497.

Acts 2011, No. 216, §1; Acts 2012, No. 216, §1.

Art. 497. Summons in misdemeanor cases

If an offense charged by indictment or information is a misdemeanor, the court may issue a summons, instead of a warrant of arrest, if it has reasonable ground to believe that the person will appear in response to a summons. If the court issues a summons, it may later issue a warrant of arrest in place of the summons.

Art. 498. Copy of indictment or information

A certified copy of the indictment or information shall be furnished by the clerk of court to a defendant upon his request. Failure to furnish a correct copy of the indictment or information shall not affect the validity of the criminal prosecution, unless the defendant was substantially prejudiced thereby.

Art. 499. AIDS testing of the accused

A. A person against whom charges have been filed for a sex offense as defined in R.S. 15:541 either by indictment or information shall, at the direction of the court, undergo a medical procedure or test designed to determine or aid in determining whether the person has a sexually transmitted disease, or is infected with the acquired immune deficiency syndrome (AIDS) virus, the human immuno deficiency virus (HIV-1) infection, any antibodies to such viruses, or with any other probable causative agent of AIDS.

B. The court shall include in its order the designation of an appropriate facility for the procedure, and shall require that the result be reported to the court. The court may in its discretion provide the results to the victim of the offense, and shall provide them to health authorities in accordance with law.

C. The state shall not use the fact that the medical procedure or test was performed on the alleged offender under this Article, or the results thereof, in any criminal proceeding arising out of the alleged offense.

Acts 1991, No. 316, §1; Acts 2006, No. 23, §1.

TITLE XIV. RIGHT TO COUNSEL

Art. 511. Right to counsel

The accused in every instance has the right to defend himself and to have the assistance of counsel. His counsel shall have free access to him, in private, at reasonable hours.

Art. 512. Assignment of counsel in capital cases

When a defendant charged with a capital offense appears for arraignment without counsel, the court shall provide counsel for his defense in accordance with the provisions of R.S. 15:141 et seq. Such counsel must be assigned before the defendant pleads to the indictment, but may be assigned earlier. Counsel assigned in a capital case must have been admitted to the bar for at least five years. An attorney with less experience may be assigned as assistant counsel.

Amended by Acts 1976, No. 653, §2; Acts 2010, No. 861, §2.

Art. 513. Assignment of counsel in other cases

In the case of an offense punishable by imprisonment, when the defendant appears for arraignment without counsel, the court shall inform him before he pleads to the indictment of his right to have counsel appointed to defend him if he is indigent. When a defendant states under oath that he desires counsel but is indigent, and the court finds the statement of indigency to be true, before the defendant pleads to the indictment, the court shall provide counsel for the defendant, in accordance with R.S. 15:141 et seq.

Amended by Acts 1974, Ex.Sess. No. 23, §1, eff. Jan. 1, 1975; Acts 1976, No. 653, §2; Acts 2010, No. 861, §2.

Art. 514. Minute entry regarding counsel

The minutes of the court must show either that the defendant was represented by counsel or that he was informed by the court of the defendant's right to counsel, including the right to court-appointed counsel, and that he waived such right.

Amended by Acts 1981, No. 135, §1.

Art. 515. Substitution of counsel

Assignment of counsel shall not deprive the defendant of the right to engage other counsel at any stage of the proceedings in substitution of counsel assigned by the court. The court may assign other counsel in substitution of counsel previously assigned or specially assigned to assist the defendant at the arraignment.

Art. 516. Belated pleas and motions; when authorized

When a defendant has pleaded at the arraignment without counsel, counsel subsequently appointed or procured before trial shall be given a reasonable time within which to withdraw any motion, plea, or waiver made by the defendant, and to enter any other motion or plea.

Art. 517. Joint representation of co-defendants; duty of court

A. Whenever two or more defendants have been jointly charged in a single indictment or have moved to consolidate their indictments for a joint trial, and are represented by the same retained or appointed counsel or by retained or appointed counsel who are associated in the practice of law, the court shall inquire with respect to such joint representation and shall advise each defendant on the record of his right to separate representation.

B. Unless it appears that there is good cause to believe that no conflict of interest is likely to arise, the court shall take such measures as may be appropriate to protect each defendant's right to counsel.

Acts 1997, No. 889, §1.

TITLE XIV-A. PRETRIAL MOTIONS

Art. 521. Time for filing of pretrial motions

A. Pretrial motions shall be made or filed within thirty days after receipt of initial discovery, unless a different time is provided by law or fixed by the court upon a showing of good cause why thirty days is inadequate.

B. Upon written motion at any time and a showing of good cause, the court shall allow additional time to file pretrial motions.

C. If by pretrial motion the state or the defendant requests discovery or disclosure of evidence favorable to the defendant, then the court shall fix a time by which the state or the defendant shall respond to the motion.

Added by Acts 1978, No. 735, §1; Amended by Acts 1981, No. 440, §1; Acts 2012, No. 842, §1; Acts 2020, No. 252, §1.

Art. 522. Hearings on motions; audio-visual appearance

A. If provided by local rule of the court, a defendant's appearance at the seventy-two hour hearing and the initial setting of bail may be by simultaneous transmission through audio-visual electronic equipment.

B. If provided by local rule of the court and approved by the defense counsel, a defendant's appearance at any pretrial motion or at any hearing on a pretrial motion, except as provided in Paragraph A of this Article, may be by simultaneous transmission through audio-visual electronic equipment.

Acts 1997, No. 1015, §1.

Art. 523. Notice for hearing of pretrial motions; dismissal

A. When the court sets a date for a contradictory hearing of any pretrial motion filed by the defendant, in addition to any other method of service provided for by law, notice of the date of such hearing may be served upon the defendant by mailing notice to the counsel of record.

B. Failure of a defendant who is not incarcerated, or failure of his attorney, to appear for the hearing of a pretrial motion filed by the defendant shall be grounds for dismissal by the court.

C. On oral or written motion of the district attorney, the court may dismiss the defendant's pretrial motion upon either of the following:

(1) The second failure to appear by the defendant or his counsel, after actual notice, for the hearing of a pretrial motion filed by the defendant, when the hearing for such motion was previously reset due to the defendant's failure to appear on the date that the hearing was originally set.

(2) The first failure to appear by the defendant or his counsel, after actual notice, for the hearing of a pretrial motion filed by the defendant, when the defendant has previously failed to appear in court for any other proceeding in the case.

Acts 2010, No. 713, §1.

TITLE XV. MOTION TO QUASH

Art. 531. Motion to quash; nature of motion

All pleas or defenses raised before trial, other than mental incapacity to proceed, or pleas of "not guilty" and of "not guilty and not guilty by reason of insanity," shall be urged by a motion to quash.

Art. 532. General grounds for motion to quash

A motion to quash may be based on one or more of the following grounds:

(1) The indictment fails to charge an offense which is punishable under a valid statute.

(2) The indictment fails to conform to the requirements of Chapters 1 and 2 of Title XIII. In such case the court may permit the district attorney to amend the indictment to correct the defect.

(3) The indictment is duplicitous or contains a misjoinder of defendants or offenses. In such case the court may permit the district attorney to sever the indictment into separate counts or separate indictments.

(4) The district attorney failed to furnish a sufficient bill of particulars when ordered to do so by the court. In such case the court may overrule the motion if a sufficient bill of particulars is furnished within the delay fixed by the court.

(5) A bill of particulars has shown a ground for quashing the indictment under Article 485.

(6) Trial for the offense charged would constitute double jeopardy.

(7) The time limitation for the institution of prosecution or for the commencement of trial has expired.

(8) The court has no jurisdiction of the offense charged.

(9) The general venire or the petit jury venire was improperly drawn, selected, or constituted.

(10) The individual charged with a violation of the Uniform Controlled Dangerous Substances Law has a valid prescription for that substance.

Acts 2009, No. 265, §2.

Art. 533. Special grounds for motion to quash grand jury indictment

A motion to quash an indictment by a grand jury may also be based on one or more of the following grounds:

(1) The manner of selection of the general venire, the grand jury venire, or the grand jury was illegal.

(2) An individual grand juror was not qualified under Article 401.

(3) A person, other than a grand juror, was present while the grand jurors were deliberating or voting, or an unauthorized person was present when the grand jury was examining a witness.

(4) Less than nine grand jurors were present when the indictment was found.

(5) The indictment was not indorsed "a true bill," or the endorsement was not signed by the foreman of the grand jury.

Art. 534. Special grounds for motion to quash information

A motion to quash an information may also be based on one or more of the following grounds:

(1) The information was not signed by the district attorney; or was not properly filed.

(2) The offense is not one for which prosecution can be instituted by an information.

Art. 535. Time to file motion to quash

A. A motion to quash may be filed of right at any time before commencement of the trial, when based on the ground that:

(1) The offense charged is not punishable under a valid statute;

(2) The indictment does not conform with the requirements of Chapters 1 and 2 of Title XIII;

(3) Trial for the offense charged would constitute double jeopardy;

(4) The time limitation for the institution of prosecution has expired;

(5) The court has no jurisdiction of the offense charged;

(6) The information charges an offense for which prosecution can be instituted only by a grand jury indictment.

(7) The individual charged with a violation of the Uniform Controlled Dangerous Substances Law has a valid prescription for the substance.

These grounds may be urged at a later stage of the proceedings in accordance with other provisions of this Code.

B. A motion to quash on the ground that the time limitation for commencement of trial has expired may be filed at any time before commencement of trial.

C. A motion to quash on grounds other than those stated in Paragraphs A and B of this Article shall be filed in accordance with Article 521.

D. The grounds for a motion to quash under Paragraphs B and C are waived unless a motion to quash is filed in conformity with those provisions.

E. The court may, in order to avoid a continuance, defer a hearing on a motion to quash until the end of the trial.

Amended by Acts 1978, No. 735, §2; Acts 2009, No. 265, §2.

Art. 536. Form and contents of motion to quash; place to file

A motion to quash shall be in writing, signed by the defendant or his attorney, and filed in open court or in the office of the clerk of court. It shall specify distinctly the grounds on which it is based. The court shall hear no objection based on grounds not stated in the motion.

Art. 537. Trial of issues arising on motion to quash

All issues, whether of law or fact, that arise on a motion to quash shall be tried by the court without a jury.

Art. 538. Effect of sustaining motion to quash

The court shall order the defendant discharged from custody or bail, as to that charge, when it sustains a motion to quash based upon the ground that:

(1) The offense is not punishable under a valid statute;

(2) Trial for the offense charged would constitute double jeopardy;

(3) The time limitation for the institution of prosecution or for the commencement of trial has expired; or

(4) The court has no jurisdiction of the offense charged.

In other cases, when a motion to quash is sustained, the court may order that the defendant be held in custody or that his bail be continued for a specified time, pending the filing of a new indictment.

TITLE XVI. ARRAIGNMENT AND PLEAS

Art. 551. Arraignment of defendant

A. The arraignment consists of the reading of the indictment to the defendant by the clerk in open court, and the court calling upon the defendant to plead. Reading of the indictment may be waived by the defendant at the discretion and with the permission of the court. The arraignment and the defendant's plea shall be entered in the minutes of the court and shall constitute a part of the record.

B. The court may, by local rule, provide for the defendant's appearance at the arraignment and the entry of his plea by way of simultaneous transmission through audio-visual electronic equipment.

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

Art. 551.1. Substitution of railroad defendant at arraignment

A. Subject to the provisions of Paragraph D, at arraignment and upon verified motion of the railroad employer of an employee-defendant charged with a violation of a parish or municipal ordinance, the railroad employer shall be substituted as defendant in the proceedings in accordance with the provisions of Paragraphs B and C.

B. Any railroad employer seeking to be substituted as the defendant in any proceeding citing its employee for a violation of any parish or municipal ordinance must file a verified motion setting forth the facts that the defendant is its employee, and at the time of the violation, the defendant was in the employ of the railroad employer and was performing his duties and functions in the course and scope of his employment which caused the violation, in accordance with the rules and regulations or instructions of the employer.

C. Subject to the provisions of Paragraph D, upon the timely filing of the motion to substitute defendant by the railroad employer, the railroad employer shall be substituted as the defendant in the proceedings, the individual employee shall be dismissed as a defendant, and the charges against the individual employee shall be erased from the record, at which time the railroad defendant shall be the sole defendant and entity responsible for the violation of the parish or municipal ordinance as originally cited.

D. The provisions of this Article shall not apply to or be available in prosecutions involving the alleged consumption of alcohol or controlled dangerous substances.

Acts 1993, No. 360, §1, eff. June 3, 1993.

Art. 552. Pleas at the arraignment

There are four kinds of pleas to the indictment at the arraignment:

(1) Guilty;

(2) Not guilty;

(3) Not guilty and not guilty by reason of insanity; or

(4) Nolo contendere, which plea a court may in its discretion accept only if the offense charged is not a capital offense. If a court accepts such a plea, it shall impose sentence or place the defendant on probation, or release him during his good behavior, in accordance with the laws

applicable to the offense. A sentence imposed upon a plea of nolo contendere is a conviction and may be considered as a prior conviction and provide a basis for prosecution or sentencing under laws pertaining to multiple offenses, and shall be a conviction for purposes of laws providing for the granting, suspension or revocation of licenses to operate motor vehicles.

Amended by Acts 1972, No. 453, §1; Acts 1977, No. 534, §1.

Art. 553. Method of pleading

A. Except when otherwise provided under Paragraph B of this Article or by local rule in accordance with Articles 551 and 562, the defendant in a felony case shall plead in person. In misdemeanor cases, the defendant may plead not guilty through counsel, may plead guilty through counsel with consent of the court, may appear and enter his plea of guilty by way of simultaneous audio-visual transmission in accordance with local rules of court and Articles 551 and 562, and may plead and be arraigned in accordance with procedures established according to R.S. 32:57(C). A corporation may plead through counsel in all cases. The plea shall be made in open court and shall be immediately entered in the minutes of the court. A failure to enter a plea in the minutes shall not affect the validity of any proceeding in the case.

B. By rule adopted pursuant to R.S. 13:472, the judge of the district court or a majority of the judges in a multi-district court may permit the defendant in a noncapital felony case to waive formal arraignment and enter a plea of not guilty without pleading in person. The rule shall require that the plea be in writing and shall set forth the filing procedure. Any formal defect shall not affect the validity of the proceeding.

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

Acts 1980, No. 570, §1; Acts 1990, No. 543, §1; Acts 1990, No. 593, §1; Acts 1997, No. 1011, §1; Acts 2003, No. 206, §1; Acts 2007, No. 406, §1; Acts 2020, No. 160, §§1, 2.

Art. 554. Effect of failure to plead

A defendant shall plead when arraigned. If he stands mute, refuses to plead, or pleads evasively, a plea of not guilty shall be entered of record. When a defendant is a corporation and fails to appear for arraignment when summoned, a plea of not guilty shall be entered of record.

Art. 555. Waivers

Any irregularity in the arraignment, including a failure to read the indictment, is waived if the defendant pleads to the indictment without objecting thereto. A failure to arraign the defendant or the fact that he did not plead, is waived if the defendant enters upon the trial without objecting thereto, and it shall be considered as if he had pleaded not guilty.

Art. 556. Plea of guilty or nolo contendere in misdemeanor cases; duty of court

A. Except as otherwise provided in Paragraph B of this Article or in R.S. 32:57 or in any other applicable law, in a misdemeanor case, if the defendant is not represented by counsel of record, the court shall not accept a plea of guilty or nolo contendere without first determining

that the plea is voluntary and is made with an understanding of the nature of the charge and of his right to be represented by counsel.

B. In a misdemeanor case in which the court determines that a sentence of imprisonment will actually be imposed or in which the conviction can be used to enhance the grade or statutory penalty for a subsequent offense, the court shall not accept a plea of guilty or nolo contendere without first addressing the defendant personally in open court and informing him of, and determining that he understands, all of the following:

(1) The nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law.

(2) If the defendant is not represented by an attorney, that he has the right to be represented by an attorney at every stage of the proceeding against him and, if financially unable to employ counsel, one will be appointed to represent him.

(3) That he has the right to have a trial, and if the maximum penalty provided for the offense exceeds imprisonment for six months or a fine of one thousand dollars, a right to trial by a jury or by the court, at his option.

(4) At that trial he has the right to confront and cross-examine witnesses against him and the right not to be compelled to incriminate himself.

(5) That if he pleads guilty or nolo contendere there will not be a further trial of any kind, so that by pleading guilty or nolo contendere he waives the right to a trial.

C. The court shall require either:

(1) That a verbatim record of the proceeding at which the defendant enters a plea be made.

(2) That a form reflecting the court's advice to the defendant and the court's inquiry into the voluntariness of the plea be signed by the court and the defendant and filed in the record at the time of the plea.

D. Any variance from the procedure required by this Article which does not affect substantial rights of the defendant shall not invalidate the plea.

E. Nothing in this Article prohibits the court, by local rule, from providing for a defendant's appearance at the entry of his plea of guilty or nolo contendere by simultaneous audio-visual transmission.

Acts 2001, No. 243, §1; Acts 2017, No. 406, §1; Acts 2020, No. 160, §1.

Art. 556.1. Plea of guilty or nolo contendere in felony cases; duties of the court and defense counsel

A. In a felony case, the court shall not accept a plea of guilty or nolo contendere without first addressing the defendant personally in open court and informing him of, and determining that he understands, all of the following:

(1) The nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law.

(2) If the defendant is not represented by an attorney, that he has the right to be represented by an attorney at every stage of the proceeding against him and, if financially unable to employ counsel, one will be appointed to represent him.

(3) That he has the right to plead not guilty or to persist in that plea if it has already been made, and that he has the right to be tried by a jury and at that trial has the right to the assistance

of counsel, the right to confront and cross-examine witnesses against him, and the right not to be compelled to incriminate himself.

(4) That if he pleads guilty or nolo contendere there will not be a further trial of any kind, so that by pleading guilty or nolo contendere he waives the right to a trial.

(5) That if he pleads guilty or nolo contendere, he may be subject to additional consequences or waivers of constitutional rights in the following areas as a result of his plea to be informed as follows:

(a) Defense counsel or the court shall inform him regarding:

(i) Potential deportation, for a person who is not a United States citizen.

(ii) The right to vote.

(iii) The right to bear arms.

(iv) The right to due process.

(v) The right to equal protection.

(b) Defense counsel or the court may inform him of additional direct or potential consequences impacting the following:

(i) College admissions and financial aid.

(ii) Public housing benefits.

(iii) Employment and licensing restrictions.

(iv) Potential sentencing as a habitual offender.

(v) Standard of proof for probation or parole revocation.

(c) Failure to adhere to the provisions of Subsubparagraphs (a) and (b) of this Subparagraph shall not be considered an error, defect, irregularity, or variance affecting the substantial rights of the accused and does not constitute grounds for reversal pursuant to Article 921.

(d) It shall be sufficient to utilize a form which conveys this information to the client and the form shall constitute prima facie evidence that the content was conveyed and understood.

B. In a felony case, the court shall not accept a plea of guilty or nolo contendere without first addressing the defendant personally in open court and determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement.

C.(1) The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the district attorney and the defendant or his attorney. If a plea agreement has been reached by the parties, the court, on the record, shall require the disclosure of the agreement in open court or, on a showing of good cause, in camera, at the time the plea is offered.

(2) The court shall further inquire of the defendant and his attorney whether the defendant has been informed of all plea offers made by the state.

D. In a felony case a verbatim record shall be made of the proceedings at which the defendant enters a plea of guilty or nolo contendere.

E. Any variance from the procedures required by this Article which does not affect substantial rights of the accused shall not invalidate the plea.

F. Nothing in this Article prohibits the court, by local rule, from providing for a defendant's appearance at the entry of his plea of guilty or nolo contendere by simultaneous audio-visual transmission in accordance with the provisions of Article 562.

Acts 1997, No. 1061, §1; Acts 2001, No. 243, §1; Acts 2017, No. 406, §1; Acts 2019, No. 158, §1; Acts 2020, No. 160, §1; Acts 2021, No. 271, §1.

Art. 557. Plea of guilty in capital cases

A. A court shall not receive an unqualified plea of guilty in a capital case. However, with the consent of the court and the state, a defendant may plead guilty with the stipulation either that the court shall impose a sentence of life imprisonment without benefit of probation, parole, or suspension of sentence without conducting a sentencing hearing, or that the court shall impanel a jury for the purpose of conducting a hearing to determine the issue of penalty in accordance with the applicable provisions of this Code.

B. If a defendant makes an unqualified plea, the court shall order a plea of not guilty entered for him.

Amended by Acts 1973, No. 134, §1; Acts 1995, No. 434, §1.

Art. 558. Plea of guilty of lesser included offense

The defendant, with the consent of the district attorney, may plead guilty of a lesser offense that is included in the offense charged in the indictment.

Art. 558.1. Adjudication of not guilty by reason of insanity

The court may adjudicate a defendant not guilty by reason of insanity without trial, when the district attorney consents and the court makes a finding based upon expert testimony that there is a factual basis for the plea.

Added by Acts 1983, No. 530, §1.

Art. 559. Withdrawal or setting aside of plea of guilty

A. Upon motion of the defendant and after a contradictory hearing, which may be waived by the state in writing, the court may permit a plea of guilty to be withdrawn at any time before sentence.

B. The court shall not accept a plea of guilty of a felony within forty-eight hours of the defendant's arrest. When such a plea has been accepted within the forty-eight hour period, the court, upon a motion filed by the defendant within thirty days after the plea was entered, shall set aside the plea and any sentence imposed thereon.

C. The admissibility of a withdrawn plea of guilty and the facts surrounding it, is governed by Louisiana Code of Evidence Article 410.

Acts 1988, No. 515, §3, eff. Jan. 1, 1989; Acts 2014, No. 85, §1.

{{NOTE: See Acts 1988, No. 515, §12, regarding effectiveness and applicability.}}

Art. 560. Change of plea of not guilty to guilty

A defendant may at any time withdraw a plea of not guilty and plead guilty, subject to the limitations stated in Articles 556 through 559.

Art. 561. Change of plea of "not guilty" to "not guilty and not guilty by reason of insanity"

The defendant may withdraw a plea of "not guilty" and enter a plea of "not guilty and not guilty by reason of insanity," within ten days after arraignment. Thereafter, the court may, for good cause shown, allow such a change of plea at any time before the commencement of the trial.

A. In a case where the offense is a noncapital felony or a misdemeanor, the defendant, who is confined in a jail, prison, or other detention facility in Louisiana, may, with the court's consent and the consent of the district attorney, appear at the entry of his plea of guilty, at any revocation hearing for a probation violation, including any hearing for a contempt of court, and at sentencing by simultaneous audio-visual transmission if the court, by local rule, provides for the defendant's appearance in this manner and the defendant waives his right to be physically present at the proceeding.

B. In a capital case, the defendant may not enter his plea by simultaneous audio-visual transmission.

C. If the defendant is represented by an attorney during the proceeding in which a simultaneous audio-visual transmission system is used, the attorney may elect to be present either in the courtroom with the presiding judicial officer or in the place where the defendant is confined. Upon request by the defendant or the attorney representing the defendant, the court shall provide the opportunity for confidential communication between the defendant and the attorney representing him at any time prior to or during the proceeding.

D. The law enforcement agency who has custody of the defendant at the time of the proceeding shall obtain the fingerprints of the defendant for purposes of Article 871. The fingerprints may be taken electronically or in ink and converted to electronic format.

Acts 2017, No. 406, §1; Acts 2020, No. 160, §1.

TITLE XXVIII. BILL OF EXCEPTIONS

Art. 841. Bill of exceptions unnecessary; objections required

A. An irregularity or error cannot be availed of after verdict unless it was objected to at the time of occurrence. A bill of exceptions to rulings or orders is unnecessary. It is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take, or of his objections to the action of the court, and the grounds therefor.

B. The requirement of an objection shall not apply to the court's ruling on any written motion.

C. The necessity for and specificity of evidentiary objections are governed by the Louisiana Code of Evidence.

Amended by Acts 1974, No. 207, §1; Acts 1988, No. 515, §3, eff. Jan. 1, 1989.

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

Art. 842. Codefendants; presumption as to objections

If an objection has been made when more than one defendant is on trial, it shall be presumed, unless the contrary appears, that the objection has been made by all the defendants.

Amended by Acts 1974, No. 207, §1.

Art. 843. Recording of proceedings

In felony cases, in cases involving violation of an ordinance enacted pursuant to R.S. 14:143(B), and on motion of the court, the state, or the defendant in other misdemeanor cases tried in a district, parish, or city court, the clerk or court stenographer shall record all of the proceedings, including the examination of prospective jurors, the testimony of witnesses, statements, rulings, orders, and charges by the court, and objections, questions, statements, and arguments of counsel.

Amended by Acts 1974, No. 207, §1; Acts 1975, No. 118, §1, eff. July 7, 1975; Acts 2001, No. 944, §3.

Art. 844. Assignment of errors; sanctions for failure to file timely

A. The party appealing shall file with the appellate court a written designation of those errors which are to be urged on appeal and furnish a copy to the trial judge and all counsel. This assignment of errors shall be filed in accordance with the uniform rules of the appropriate appellate court.

B. If the appellant fails to comply with these provisions and fails to secure an extension in accordance with Article 916(1), the trial judge on his own motion or motion of the clerk or any party or upon referral by the appellate court and after hearing shall either:

(1) Extend the time within which the assignment of errors shall be filed.

(2) Impose a fine not to exceed five hundred dollars upon the appellant or his attorney or both if the failure is found by the court to be arbitrary and capricious.

C. If the record is not lodged in the appellate court within sixty days after the motion for the appeal is made or within the extended time granted by the proper court or if the record is lodged in the appellate court without an assignment of errors, the appellate court may adjudge the appellant, his attorney, or both guilty of contempt of court and impose a punishment authorized by law.

D. The trial judge may submit such per curiam comments as he desires.

Amended by Acts 1974, No. 207, §1; Acts 1980, No. 537, §1; Acts 1981, No. 296, §1; Acts 1984, No. 527, §1; Acts 1997, No. 642, §1.

Art. 845. Repealed by Acts 1982, No. 143, §3

TITLE XXIX. MOTIONS FOR NEW TRIAL AND IN ARREST OF JUDGMENT

CHAPTER 1. MOTION FOR NEW TRIAL

Art. 851. Grounds for new trial

A. The motion for a new trial is based on the supposition that injustice has been done the defendant, and, unless such is shown to have been the case the motion shall be denied, no matter upon what allegations it is grounded.

B. The court, on motion of the defendant, shall grant a new trial whenever any of the following occur:

(1) The verdict is contrary to the law and the evidence.

(2) The court's ruling on a written motion, or an objection made during the proceedings, shows prejudicial error.

(3) New and material evidence that, notwithstanding the exercise of reasonable diligence by the defendant, was not discovered before or during the trial, is available, and if the evidence had been introduced at the trial it would probably have changed the verdict or judgment of guilty.

(4) The defendant has discovered, since the verdict or judgment of guilty, a prejudicial error or defect in the proceedings that, notwithstanding the exercise of reasonable diligence by the defendant, was not discovered before the verdict or judgment.

(5) The court is of the opinion that the ends of justice would be served by the granting of a new trial, although the defendant may not be entitled to a new trial as a matter of strict legal right.

(6) The defendant is a victim of human trafficking or trafficking of children for sexual purposes and the acts for which the defendant was convicted were committed by the defendant as a direct result of being a victim of the trafficking activity.

Amended by Acts 1974, No. 207, §1; Acts 2014, No. 564, §6.

Art. 852. Form, content, and trial of motion for new trial

A motion for a new trial shall be in writing, shall state the grounds upon which it is based, and shall be tried contradictorily with the district attorney.

Art. 853. Time for filing motion for new trial

A. Except as otherwise provided by this Article, a motion for a new trial must be filed and disposed of before sentence. The court, on motion of the defendant and for good cause shown, may postpone the imposition of sentence for a specified period in order to give the defendant additional time to prepare and file a motion for a new trial.

B. When the motion for a new trial is based on Article 851(B)(3) of this Code, the motion may be filed within one year after verdict or judgment of the trial court, although a sentence has been imposed or a motion for a new trial has been previously filed. However, if an appeal is pending, the court may hear the motion only on remand of the case.

C. When the motion for a new trial is based on Article 851(B)(6) of this Code, the motion may be filed within three years after the verdict or judgment of the trial court, although a sentence has been imposed or a motion for new trial has been previously filed. However, if an appeal is pending, the court may hear the motion only on remand of the case.

Acts 2014, No. 564, §6.

Art. 854. Newly discovered evidence; necessary allegations

A motion for a new trial based on ground (3) of Article 851 shall contain allegations of fact, sworn to by the defendant or his counsel, showing:

(1) That notwithstanding the exercise of reasonable diligence by the defendant, the new evidence was not discovered before or during the trial;

(2) The names of the witnesses who will testify and a concise statement of the newly discovered evidence;

(3) The facts which the witnesses or evidence will establish; and

(4) That the witnesses or evidence are not beyond the process of the court, or are otherwise available.

The newly discovered whereabouts or residence of a witness do not constitute newly discovered evidence.

Art. 855. Errors discovered after verdict or judgment of guilty; necessary allegations

A motion for a new trial based on ground (2) of Article 851 shall contain allegations of fact sworn to by the defendant or his counsel, showing:

(1) The specific nature of the error or defect complained of; and

(2) That, notwithstanding the exercise of reasonable diligence by the defense, the error or defect was not discovered before or during the trial.

Art. 855.1. Conviction based on acts committed as a victim of trafficking

A motion for new trial based on Article 851(B)(6) of this Code shall be available only to persons convicted of violating R.S. 14:82, 83.3, 83.4, 89, or 89.2 prior to August 1, 2014, and shall contain allegations of fact sworn to by the defendant or counsel of the defendant, showing that the defendant was convicted of the offense which was committed as a direct result of being a victim of human trafficking or trafficking of children for sexual purposes, or a victim of an offense which would constitute human trafficking or trafficking of children for sexual purposes regardless of the date of conviction. The motion shall provide information showing a rational and causal connection between the acts for which the defendant was convicted and the acts upon which the defendant bases his status as a victim.

Acts 2014, No. 564, §6.

Art. 856. Motion to urge all available grounds; exceptions

A motion for a new trial shall urge all grounds known and available to the defendant at the time of the filing of the motion. However, the court may permit the defendant to supplement his original motion by urging an additional ground, or may permit the defendant to file an additional motion for a new trial, prior to the court's ruling on the motion.

Art. 857. Effect of granting new trial

The effect of granting a new trial is to set aside the verdict or judgment and to permit retrial of the case with as little prejudice to either party as if it had never been tried.

Art. 858. Review of ruling on motion for new trial

Neither the appellate nor supervisory jurisdiction of the supreme court may be invoked to review the granting or the refusal to grant a new trial, except for error of law.

CHAPTER 2. MOTION IN ARREST OF JUDGMENT

Art. 859. Grounds for arrest of judgment

The court shall arrest the judgment only on one or more of the following grounds:

(1) The indictment is substantially defective, in that an essential averment is omitted;

(2) The offense charged is not punishable under a valid statute;

(3) The court is without jurisdiction of the case;

(4) The tribunal that tried the case did not conform with the requirements of Articles 779, 780 and 782 of this code;

(5) The verdict is not responsive to the indictment or is otherwise so defective that it will not form the basis of a valid judgment;

(6) Double jeopardy, if not previously urged; or

(7) The prosecution was not timely instituted, if not previously urged.

(8) The prosecution was for a capital offense or for an offense punishable by life imprisonment, but was not instituted by a grand jury indictment.

Improper venue may not be urged by a motion in arrest of judgment.

Amended by Acts 1968, No. 147, §1; Acts 1974, Ex.Sess., No. 26, §1, eff. Jan. 1, 1975.

Art. 860. Form, content, and trial of motion in arrest

A motion in arrest of judgment shall be in writing, shall state the ground upon which it is based, and shall be tried contradictorily with the district attorney.

Art. 861. Time for filing motion in arrest

A motion in arrest of judgment must be filed and disposed of before sentence. The court, on motion of the defendant and for cause shown, may postpone the imposition of sentence for a specified period in order to give the defense additional time to prepare and file a motion in arrest of judgment.

Art. 862. Effect of sustaining motion in arrest of judgment

If the judgment is arrested because of a defect in the indictment, the indictment shall be dismissed and the defendant shall be discharged as to that indictment. However, a new indictment may be filed within the time limitation stated in Article 576.

If the judgment is arrested because the court is without jurisdiction of the case, the defendant shall be discharged, but may be tried by a court of proper jurisdiction.

If the judgment is arrested because the wrong type of tribunal tried the case, or because the verdict is not responsive to the indictment or is otherwise fatally defective, the defendant shall be remanded to custody or bail to await a new trial.

If the judgment is arrested on any other ground, the defendant shall be discharged.