2022 Updates to the Louisiana Code of Criminal Procedure

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Contents

TITLE IV

SEARCH WARRANTS

Art. 161. Property subject to seizure

A. Except as authorized by Article 163.1 or 163.2, a judge may issue a warrant authorizing the search for and seizure of any thing within the territorial jurisdiction of the court which:

(1) Has been the subject of theft.

(2) Is intended for use or has been used as a means of committing an offense.

(3) May constitute evidence tending to prove the commission of an offense.

B. A judge of a city court located in the city of Bastrop may, only with the consent of the judicial district court, issue a warrant authorizing the search for and seizure of anything within the territorial jurisdiction of the district court.

C. A judge may also issue a search warrant in all other cases specifically provided by law. A justice of the peace may issue a search warrant only in those cases specifically provided by law.

Acts 1993, No. 846, §1; Acts 2005, No. 38, §1; Acts 2011, 1st Ex. Sess., No. 16, §1; Acts 2022, No. 384, §1.

Art. 162.4. Search of a person's place of residence; odor of marijuana

Notwithstanding any provision of law to the contrary, the odor of marijuana alone shall not provide a law enforcement officer with probable cause to conduct a search without a warrant of a person's place of residence.

Acts 2022, No. 473, §1.

Art. 163. Officer to whom directed; time for execution; electronic devices

A. A search warrant shall be directed to any peace officer, who shall execute it and bring any property seized into the court issuing the warrant.

B. A search or seizure shall not be made during the nighttime or on Sunday, unless the warrant expressly so directs.

C. Except as authorized by Article 163.1 or 163.2, or as otherwise provided in this Article, or as otherwise provided by law, a search warrant cannot be lawfully executed after the expiration of the tenth day after its issuance.

D.(1) Any examination or testing of any property seized pursuant to the provisions of this Article shall be at the direction of the attorney general, the district attorney, or the investigating agency.

(2) Notwithstanding any other provision of law to the contrary, any examination or testing of the seized property may be conducted at any time before or during the pendency of any criminal proceeding in which the property may be used as evidence.

E.(1) Notwithstanding any other provision of law to the contrary, if a warrant is issued to search for and seize data or information contained in or on a computer, disk drive, flash drive, cellular telephone, or other electronic communication, or data storage device, the warrant is considered to have been executed within the time allowed in Paragraph C of this Article if the device was seized before the expiration of the time allowed, or if the device was in law enforcement custody at the time of the issuance of the warrant.

(2) Notwithstanding any other provision of law to the contrary, if a device described in Subparagraph (1) of this Paragraph was seized before the expiration of the time allowed in Paragraph C of this Article, or if the device was in law enforcement custody at the time of the issuance of the warrant, any data or information contained in or on the device may be recovered or extracted pursuant to the warrant at any time, and such recovery or extraction shall not be subject to the time limitation in Paragraph C of this Article.

Acts 2005, No. 38, §1; Acts 2012, No. 44, §1; Acts 2019, No. 341, §1; Acts 2022, No. 384, §1.

Art. 163.2. Search warrant for medical records

A. A judge may issue a search warrant authorizing the search for and seizure of the medical records of any person.

B. The warrant may be issued by a judge of either the court of territorial jurisdiction where the investigation for the medical records is being conducted or the court of territorial jurisdiction where the custodian of the medical records may be found. The warrant may be executed in any place the medical records may be found and shall be directed to any peace officer who shall obtain and distribute the medical records as directed in the warrant.

C. A warrant issued pursuant to this Article remains in effect for one hundred eighty days after its issuance.

D.(1) Any examination of any medical records seized pursuant to the provisions of this Article shall be at the direction of the attorney general, the district attorney, or the investigating agency.

(2) Notwithstanding any other provision of law to the contrary, any examination of the medical records may be conducted at any time before or during the pendency of any criminal proceeding in which the medical records may be used as evidence.

Acts 2022, No. 384, §1.

Art. 211. Summons by officer instead of arrest and booking

A.(1) When it is lawful for a peace officer to arrest a person without a warrant for a misdemeanor, or for a felony charge of theft or illegal possession of stolen things when the thing of value is five hundred dollars or more but less than one thousand dollars, he shall issue a written summons instead of making an arrest unless one or more of the following conditions exist:

(a) The officer has reasonable grounds to believe that the person will not appear upon summons.

(b) The officer has reasonable grounds to believe that the person will cause injury to himself or another or damage to property or will continue in the same or a similar offense unless immediately arrested and booked.

(c) There is a necessity to book the person to comply with routine identification procedures.

(d) The officer has ascertained that the person has two or more prior felony convictions.

(2) In any case in which a summons has been issued, a warrant of arrest may later be issued in its place.

B.(1) When a peace officer has reasonable grounds to believe a person has committed the offense of issuing worthless checks as defined by R.S. 14:71, he shall issue a written summons instead of making an arrest unless either of the following conditions exist:

(a) He has reasonable grounds to believe that the person will not appear upon summons.

(b) He has reasonable grounds to believe that the person will cause injury to himself or another or damage to property unless immediately arrested.

(2) In any case in which a summons has been issued, a warrant of arrest may later be issued in its place.

C.(1) When a peace officer has reasonable grounds to believe a person has committed an offense of driving without a valid driver's license, whether physical or electronic, in his possession, the officer shall make every practical attempt based on identifying information provided by the person to confirm that the person has been issued a valid driver's license. If the officer determines that the person has been issued a valid driver's license which is not under revocation, suspension, or cancellation, but that the physical or electronic license is not in his possession, the officer shall issue a written summons to the offender in accordance with law, commanding him to appear and answer the charge.

(2) The provisions of this Article shall in no way limit a peace officer from issuing a citation for operating a motor vehicle without possession of a valid driver's license.

D. When a peace officer has reasonable grounds to believe a person has committed an offense of driving with a driver's license that is under revocation, suspension, or cancellation, the officer may use his discretion to make a custodial arrest or issue a written summons to the offender, in accordance with law, commanding him to appear and answer the charge.

E. The provisions of this Article shall not apply when the officer has reasonable grounds to believe a person committed the offense of domestic abuse battery, battery of a dating partner, violation of a protective order, stalking, or any other offense involving the use or threatened use of force or a deadly weapon upon the defendant's family members, as defined in R.S. 46:2132, upon the defendant's household member, as defined in R.S. 14:35.3, or upon the defendant's dating partner, as defined in R.S. 46:2151.

Amended by Acts 1982, No. 180, §1; Acts 1995, No. 769, §1; Acts 2006, No. 143, §2; Acts 2011, No. 403, §1; Acts 2019, No. 154, §1; Acts 2021, No. 240, §1; Acts 2022, No. 621, §1.

Art. 234. Booking photographs

A. As used in this Article:

(1) "Booking photograph" means a photograph or still, non-video image of an individual generated by a law enforcement agency for identification purposes after arrest or while in the agency's custody.

(2) "Remove-for-pay publication or website" means a publication that requires the payment of a fee or other valuable consideration in order to remove or delete a booking photograph from the publication or which utilizes the publication of booking photographs for profit or to obtain advertising revenue.

B. Except as provided in this Article, a law enforcement officer or agency shall not provide a copy of a booking photograph in any format to a person requesting a copy of that photograph.

C.(1) No law enforcement officer or agency shall publish, release, or disseminate in any format a booking photograph to the public or to a private person or entity unless any of the following occurs:

(a) The individual is a fugitive, and a law enforcement officer or agency determines that releasing or disseminating the booking photograph will assist in apprehending the individual.

(b) A law enforcement officer or agency determines that the individual is an imminent threat to an individual or to public safety and determines that releasing or disseminating the booking photograph will assist in reducing or eliminating the threat.

(c) A judge of a court of competent jurisdiction orders the release or dissemination of the booking photograph based on a finding that the release or dissemination is in furtherance of a legitimate interest.

(d) The individual is convicted of or pleads guilty or nolo contendere to a crime, lesser crime, or lesser included offense as defined in Article 558 in response to the same crime for which he was arrested or if there is criminal litigation related to the same crime that is pending or reasonably anticipated.

(e) The individual is charged with a crime of violence as defined in R.S. 14:2(B), except stalking, or charged with any of the following offenses:

(i) Sex offenses as defined in R.S. 15:541.

(ii) Human trafficking offenses as defined in R.S. 14:46.2 and 46.3.

(iii) Offenses affecting the health and morals of minors, R.S. 14:91 et seq.

(iv) Offenses affecting the health and safety of persons with infirmities, R.S.14:93.3 et seq.

(v) Video voyeurism.

(vi) Cruelty to animals.

(vii) Dogfighting.

(2) Notwithstanding the provisions of Subparagraph (1) of this Paragraph, a law enforcement officer or agency shall provide a copy of a booking photograph to the individual who is the subject of the booking photograph or to the counsel of record for the individual upon request.

(3) A booking photograph published, released, or disseminated by a law enforcement officer or agency, except after the subject of the booking photograph being found guilty or

pleading guilty or nolo contendere as provided in Subsubparagraph (1)(d) of this Paragraph, shall include a disclaimer that states "all persons are presumed innocent until proven guilty".

(4) No law enforcement agency or employee thereof shall be subject to civil action or be held liable when the publication, release, or dissemination was made by mistake of fact or error, or was inadvertent and made in good faith.

D. The publication of a booking photograph of a Louisiana resident constitutes minimum contact with the state and by doing so, the party shall be subject to the jurisdiction of Louisiana courts.

E.(1) A remove-for-pay publication or website shall remove and destroy a booking photograph of an individual who submits a request for removal and destruction within seven calendar days from the day that the individual makes the request if both of the following conditions exist:

(a) The individual in the booking photograph was acquitted of the criminal charge or not prosecuted, or the individual had the criminal charge expunged, vacated, or pardoned.

(b) The individual submits, in relation to the request, evidence of a disposition described in Subsubparagraph (a) of this Subparagraph.

(2)(a) A remove-for-pay publication or website shall not require payment for removal or destruction of the booking photograph.

(b) Any remove-for-pay publication or website that seeks any fee or other valuable consideration for the removal or destruction of a booking photograph shall be subject to prosecution under R.S. 14:66.

(3) If the remove-for-pay publication or website does not remove and destroy the booking photograph, the remove-for-pay publication or website shall be liable for all costs, including reasonable attorney fees, resulting from any legal action that the individual brings in relation to the failure of the remove-for-pay publication or remove-for-pay website to remove and destroy the booking photograph.

Acts 2022, No. 494, §2, eff. June 16, 2022.

Art. 331. Discharge of bail obligation

A.(1) Upon conviction in any case, the bail undertaking shall cease and the surety shall be relieved of all obligations under the bail undertaking by operation of law without the need to file a motion or other pleading. The provisions of this Subparagraph shall not prejudice the state's right to obtain a judgment of bond forfeiture after the elapse of one hundred eighty days following the execution of the certificate that notice of warrant for arrest was sent pursuant to Article 334.

(2) In all cases, if necessary to assure the presence of the defendant at all future stages of the proceedings, the court may in its discretion, in accordance with Article 312 require the defendant to post another bail undertaking or other acceptable security, or may release the defendant on bail without surety as provided for in Article 325. The court may continue the existing bail undertaking with the written approval of the surety on the bail undertaking. Such approval must be obtained from the surety after conviction.

(3) Repealed by Acts 2017, No. 205, §2.

B. When the district attorney dismisses an indictment or information and institutes a subsequent indictment or information for the same offense or for a lesser offense based on the same facts, the court shall reinstate any bail discharged when the district attorney dismissed the initial indictment or information if the surety consents to the reinstatement expressly and in writing. Orleans Parish district judges with criminal jurisdiction sitting en banc may adopt rules effectuating telephonic communication and verification of bail undertakings and releases.

C.(1) A surety may surrender the defendant at any time. For the purpose of surrendering the defendant, the surety may arrest him. The surety shall pay a fee of twenty-five dollars to the officer charged with the defendant's detention for accepting the surrender, processing the paperwork, and giving the surety a certificate of surrender. Upon the surrender of the defendant, the officer shall retain a copy and forward a copy of the certificate of surrender to the clerk of court and the prosecuting attorney.

(2) Upon surrender of the defendant at any time prior to the expiration of one hundred eighty days after the notice of warrant for arrest was sent, the surety shall be fully and finally discharged and relieved of all obligations under the bail undertaking by operation of law, without the need to file a motion or other pleading.

D. A surety may constructively surrender the defendant only within one hundred eighty days of when the notice of warrant for arrest was sent. After the constructive surrender of the defendant, the surety shall be fully and finally discharged and relieved of all obligations under the bail undertaking by operation of law, without the need to file a motion or other pleading.

E. At any time prior to the defendant's failure to appear or within one hundred eighty days after the notice of warrant for arrest is sent, the surety may file with the clerk of court and present to the court a certificate of death naming the defendant as the deceased party. The certificate shall be under seal of the authority confirming the defendant's death. Upon proof that the surety is unable to obtain a certificate of death, the surety or the court may invoke a contradictory hearing in order to establish proof of death by clear and convincing evidence. If the court determines that the defendant is deceased thereafter, the surety shall be fully and finally discharged and relieved of any and all obligations under the bail undertaking.

F.(1) Forty-five days after the defendant's failure to appear and while there is still an active arrest warrant in the proceeding for which the bond was posted, the surety or bail bond producer who posted the bond may file with the clerk of court where the charges are pending an affidavit requesting the defendant be remanded and surrendered upon his appearance before the

court. The clerk of court shall forward a copy of the affidavit to the court before which the charges are pending. The affidavit must meet all the requirements set forth in R.S. 22:1585 and be filed before the court where the charges are pending. A copy of the affidavit must be provided to the prosecuting attorney.

(2) Upon the appearance of the defendant within one hundred eighty days of when the notice of warrant for arrest was sent, the court shall grant the relief requested and remand the defendant to the custody of the officer originally charged with the defendant's detention. Upon remand and payment by the surety of the twenty-five dollar fee to the officer charged with the defendant's detention, the court shall relieve the surety of all obligations under the bail undertaking.

G. Any time after the defendant's failure to appear and the issuance of the warrant of arrest, the surety may request that the officer originally charged with the detention of a defendant place the name of the defendant into the National Crime Information Center registry. The officer shall determine if the placement of the name is authorized by the rules governing the National Crime Information Center registry within thirty days of the request. If not authorized, the officer shall provide notice to the surety of the reason for nonplacement. If placement is authorized, the surety shall pay to that officer a fee of twenty-five dollars for processing the placement. If authorized and after payment of the twenty-five-dollar fee, the name of the defendant is removed from the National Crime Information Center registry without cause during the period provided for surrendering the defendant, the period for filing a rule to show cause under Article 335 shall be suspended until the name of the defendant is placed back in the registry.

H. In the case of any fee required under the provisions of this Article, the officer charged with the defendant's detention shall provide the surety with a receipt indicating the amount of the fee collected, the name of the defendant, the purpose of the fee collected, the name of the person from whom the fee was collected, information sufficient to identify any applicable bail undertaking, and the date and time the defendant was surrendered.

I. In all cases and by operation of law, during the period of time declared by the governor to be a statewide public health emergency due to COVID-19, the time period for the appearance or surrender of a defendant shall be calculated as follows:

(1) For cases when the defendant failed to appear in court and one hundred eighty days from the date the notice of warrant for arrest was sent has not elapsed prior to March 11, 2020, the one-hundred-eighty-day period required before filing a rule to show cause to obtain a judgment of bond forfeiture shall not begin to run until March 17, 2022.

(2) For cases when the defendant failed to appear in court between March 11, 2020, and August 31, 2020, the one-hundred-eighty-day period required before filing a rule to show cause to obtain a judgment of bond forfeiture shall not begin to run until June 1, 2022.

(3) For cases when the defendant failed to appear in court between September 1, 2020, and February 28, 2021, the one-hundred-eighty-day period required before filing a rule to show cause to obtain a judgment of bond forfeiture shall not begin to run until August 1, 2022.

(4) For cases when the defendant failed to appear in court between March 1, 2021, and August 31, 2021, the one-hundred-eighty-day period required before filing a rule to show cause to obtain a judgment of bond forfeiture shall not begin to run until October 1, 2022.

(5) For cases when the defendant failed to appear in court between September 1, 2021, and March 16, 2022, the one-hundred-eighty-day period required before filing a rule to show cause to obtain a judgment of bond forfeiture shall not begin to run until December 1, 2022.

(6) For cases when the defendant failed to appear in court on or after March 17, 2022, the one-hundred-eighty-day period required before filing a rule to show cause to obtain a judgment of bond forfeiture shall begin to run after the notice of warrant for arrest is sent pursuant to Article 335.

J.(1) Additionally, a surety may file a motion in the criminal court of records seeking additional time to surrender a defendant citing specific circumstances related to COVID-19 and pertaining to the defendant in the criminal matter. A motion seeking relief pursuant to this Paragraph shall be filed prior to or at a hearing on a rule to show cause to obtain a judgment of bond forfeiture. The motion shall include all of the following as a bona fide effort of active investigation in the recovery of the defendant:

(a) A sworn affidavit affirming efforts to locate and recover the defendant.

(b) A signed agreement of the engagement contract between the bail bondsman surety and the fugitive recovery team.

(c) Evidence of the last contact between the bail bondsman and either the defendant's next of kin or the indemnitor of the defendant.

(2) If the motion meets the requirements of this Paragraph, the court may grant an additional extension of time not to exceed one hundred eighty days. If the court grants an extension of time, the rule to show cause hearing shall be continued after the expiration of the extension of time. If the motion does not meet the requirements of this Paragraph, the court may deny the motion.

K. In cases which were continued by the court during the time period declared by the governor to be a statewide public health emergency due to COVID-19, it is required that notice of any new date be provided to the defendant or his duly appointed agent and his personal surety or the commercial surety or the agent or bondsman who posted the bail undertaking for the commercial surety in accordance with Article 330(D).

L. The court shall order the bail obligation canceled when there is no further liability thereon.

Acts 1993, No. 834, §1, eff. June 22, 1993; Acts 2016, No. 613, §1, eff. Jan. 1, 2017; Acts 2017, No. 205, §§1, 2; Acts 2020, No. 267, §1; Acts 2022, No. 90, §1, eff. May 24, 2022; Acts 2022, No. 593, §1.

Art. 571.1. Time limitation for certain sex offenses

Except as provided by Article 572, the time within which to institute prosecution of the following sex offenses, regardless of whether the crime involves force, serious physical injury, death, or is punishable by imprisonment at hard labor shall be thirty years: attempted first degree rape, also formerly titled aggravated rape (R.S. 14:27, R.S. 14:42), attempted second degree rape, also formerly titled forcible rape (R.S. 14:27, R.S. 14:42.1), sexual battery (R.S. 14:43.1), second degree sexual battery (R.S. 14:43.2), oral sexual battery (R.S. 14:43.3), human trafficking (R.S. 14:46.2(B)(2) or (3)), trafficking of children for sexual purposes (R.S. 14:46.3), felony carnal knowledge of a juvenile (R.S. 14:80), indecent behavior with juveniles (R.S. 14:81), pornography involving juveniles (R.S. 14:81.1), molestation of a juvenile or a person with a physical or mental disability (R.S. 14:81.2), prostitution of persons under eighteen (R.S. 14:82.1), enticing persons into prostitution (R.S. 14:86), crime against nature (R.S. 14:89), aggravated crime against nature (R.S. 14:89.1), crime against nature by solicitation (R.S. 14:89.2(B)(3)), that involves a victim under eighteen years of age. This thirty-year period begins to run when the victim attains the age of eighteen.

Acts 1993, No. 592, §1, eff. June 15, 1993; Acts 2001, No. 207, §1; Acts 2001, No. 533, §1; Acts 2003, No. 809, §1, eff. July 1, 2003; Acts 2004, No. 676, §3; Acts 2005, No. 186, §1; Acts 2012, No. 446, §5; Acts 2014, No. 602, §2, eff. June 12, 2014; Acts 2016, No. 41, §1; Acts 2022, No. 202, §2.

TITLE XXII

RECUSAL OF JUDGES AND DISTRICT ATTORNEYS

CHAPTER 1. RECUSAL OF JUDGES

Art. 671. Grounds for recusal of judge

A. In a criminal cause, a judge of any trial or appellate court shall be recused upon any of the following grounds:

(1) The judge is biased, prejudiced, or personally interested in the cause to such an extent that the judge would be unable to conduct a fair and impartial trial.

(2) The judge is the spouse of the accused, of the party injured, of an attorney employed in the cause, or of the district attorney; or is related to the accused or the party injured, or to the spouse of the accused or party injured, within the fourth degree; or is related to an attorney employed in the cause or to the district attorney, or to the spouse of either, within the second degree.

(3) The judge has been employed or consulted as an attorney in the cause, or has been associated with an attorney during the latter's employment in the cause.

(4) The judge is a witness in the cause.

(5) The judge performed a judicial act in the cause in another court.

(6) The judge would be unable, for any other reason, to conduct a fair and impartial trial.

B. In a criminal cause, a judge of any trial or appellate court shall also be recused when there exists a substantial and objective basis that would reasonably be expected to prevent the judge from conducting any aspect of the cause in a fair and impartial manner.

C. In any cause in which the state or a political subdivision thereof is interested, the fact that the judge is a citizen of the state or a resident of the political subdivision, or pays taxes thereto, is not a ground for recusal. In any cause in which a religious body or religious corporation is interested, the fact that a judge is a member of the religious body or religious corporation is not alone a ground for recusal.

Acts 1988, No. 515, §3, eff. Jan. 1, 1989; Acts 2022, No. 42, §1.

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

Art. 672. Recusal on court's own motion

A. A judge may recuse himself in any cause in which a ground for recusal exists, whether or not a motion for his recusal has been filed by a party.

B. Prior to the cause being allotted to another judge, a judge who recuses himself for any reason shall contemporaneously file in the record the order of recusal and written reasons that provide the factual basis for recusal under Article 671. The judge shall also provide a copy of the recusal and the written reasons therefor to the judicial administrator of the supreme court.

Acts 2022, No. 42, §1.

Art. 673. Judge may act until recused

A judge has full power and authority to act, even though a ground for recusal exists, until he is recused, or a motion for his recusal is filed. The judge to whom the motion to recuse is assigned shall have full power and authority to act in the cause pending the disposition of the motion to recuse.

Acts 2010, No. 262, §2; Acts 2022, No. 42, §1.

Art. 674. Procedure for recusal of trial judge

A. A party desiring to recuse a trial judge shall file a written motion therefor assigning the ground for recusal under Article 671. The motion shall be filed not later than thirty days after discovery of the facts constituting the ground upon which the motion is based, but in all cases at least thirty days prior to commencement of the trial. In the event that the facts constituting the ground for recusal occur thereafter or the party moving for recusal could not, in the exercise of due diligence, have discovered such facts, the motion to recuse shall be filed immediately after the facts occur or are discovered, but prior to verdict or judgment.

B. If the motion to recuse sets forth facts constituting a ground for recusal under Article 671, not later than seven days after the judge's receipt of the motion from the clerk of court, the judge shall either recuse himself or refer the motion for hearing to another judge or to an ad hoc judge as provided in Article 675.

C. If the motion to recuse is not timely filed in accordance with Paragraph A of this Article or fails to set forth facts constituting a ground for recusal under Article 671, the judge may deny the motion without referring the motion to another judge or to an ad hoc judge for hearing but shall provide written reasons for the denial.

Acts 2022, No. 42, §1.

Art. 675. Selection of ad hoc judge to try motion to recuse

A. In a court having two judges, the judge who is sought to be recused shall refer the motion to recuse to the other judge of that court.

B. In a court having more than two judges, the motion to recuse shall be referred to another judge of the court through a random process as provided by the rules of court.

C. In a court having only one judge, the judge shall make a written request to the supreme court for the appointment of an ad hoc judge to try the motion to recuse.

D. The order of the court appointing an ad hoc judge shall be entered on the minutes of the court, and the clerk of court shall forward a certified copy of the order to the appointed ad hoc judge. The motion to recuse shall be tried promptly in a contradictory hearing in the court in which the cause is pending.

Acts 2001, No. 417, §2; Acts 2022, No. 42, §1.

Art. 676. Ad hoc judge to try cause when judge recused

A. When a judge of a court having more than two judges recuses himself or is recused after a trial of the motion, the matter shall be randomly reassigned to another judge for trial of the cause in accordance with the procedures contained in Article 675.

B. When a judge of a court having two judges recuses himself or is recused after a trial of the motion, the cause shall be tried by the other judge of that court.

C. When the judge of a court having only one judge recuses himself or is recused after a trial of the motion, the supreme court shall appoint an ad hoc judge to try the cause.

D. The ad hoc judge has the same power and authority to dispose of the cause as the recused judge would have.

Amended by Acts 1972, No. 191, §1; Acts 2001, No. 417, §2; Acts 2022, No. 42, §1.

Art. 677. Repealed by Acts 2022, No. 42, §2.

Art. 678. Recusal of ad hoc judge

An ad hoc judge appointed to try a motion to recuse a judge, or appointed to try the cause, may be recused on the grounds and in the manner provided in this Chapter for the recusal of judges.

Acts 2022, No. 42, §1.

Art. 679. Recusal of an appellate judge and a supreme court justice

A. A party desiring to recuse a judge of a court of appeal shall file a written motion therefor assigning the ground for recusal under Article 671. When a written motion is filed to recuse a judge of a court of appeal, the judge may recuse himself or the motion shall be heard by the other judges on the panel to which the cause is assigned, or by all judges of the court, except the judge sought to be recused, sitting en banc.

B. When a judge of a court of appeal recuses himself or is recused, the court shall randomly allot another of its judges to act for the recused judge in the hearing and disposition of the cause.

C. If the motion to recuse fails to set forth facts constituting a ground for recusal under Article 671, the judge may deny the motion without a hearing but shall provide written reasons for the denial.

D. A party desiring to recuse a justice of the supreme court shall file a written motion therefor assigning the ground for recusal under Article 671. When a written motion is filed to recuse a justice of the supreme court, the justice may recuse himself or the motion shall be heard by the other justices of the court.

E. When a justice of the supreme court recuses himself or is recused, the court may have the cause argued before and disposed of by the other justices or appoint a sitting or retired judge

of a district court or of a court of appeal having the qualifications of a justice of the supreme court to sit as a member of the court in the hearing and disposition of the cause.

Acts 1997, No. 887, §1; Acts 2022, No. 42, §1.

CHAPTER 3. REVIEW OF RECUSAL RULING

Art. 684. Review of recusal ruling

A. If a district attorney is recused over the objection of the state, the state may apply for a review of the ruling by supervisory writs. The defendant may not appeal prior to sentence from a ruling recusing or refusing to recuse the district attorney.

B. If a judge is recused over the objection of the state or the defendant, or if a motion by the state or the defendant to recuse a judge is denied, the party's exclusive remedy is to apply for a review of the ruling by supervisory writs. A ruling recusing or refusing to recuse the judge shall not be considered on appeal.

C. Upon ruling on a motion to recuse a judge, the judge shall advise the defendant in open court or in writing that the ruling may be reviewed only by a timely filed supervisory writ to the appellate court and shall not be raised on appeal.

Acts 1997, No. 887, §1; Acts 2022, No. 42, §1.

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 of a child under the age of thirteen.
Guilty of attempted sexual battery of a child under the age of thirteen.
Guilty of sexual battery.
Guilty of attempted sexual battery.
Guilty of molestation of a juvenile or a person with a physical or mental disability with a victim under the age of thirteen.
Guilty of attempted molestation of a juvenile or a person with a physical or mental disability with a victim under the age of thirteen.
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 with a victim under the age of thirteen.
Guilty of attempted indecent behavior with a juvenile with a victim under the age of thirteen.
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.

69. Second Degree Kidnapping When Victim is Sexually Abused:

Guilty.

Guilty of attempted second degree kidnapping.

Guilty of any predicate sex offense or offenses alleged in the indictment or bill of information.

Not guilty.

70. Aggravated Kidnapping of a Child When Victim is Sexually Abused:

Guilty.

Guilty of attempted aggravated kidnapping of a child.

Guilty of any predicate sex offense or offenses alleged in the indictment.

Not guilty.

71. Terrorizing:

Guilty.

Guilty of menacing.

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. 633, §1; Acts 1983, No. 635, §1; Acts 1985, No. 791, §1; Acts 1985, No. 799, §1; Acts 1986, No. 646, §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 17, 1995; Acts 1997, No. 400, §1; Acts 1997, No. 558, §1; Acts 1997, No. 865, §1; Acts 2001, No. 321, §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; Acts 2022, No. 173, §2; Acts 2022, No. 493, §2.

Art. 833. Presence of defendant; misdemeanor prosecution

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

B.(1) A plea of not guilty of a misdemeanor may be allowed to be entered through counsel of record.

(2) A plea of not guilty of a misdemeanor shall be allowed to be entered through counsel of record in the absence of the defendant by the filing of a sworn affidavit in advance of the scheduled arraignment date.

C. The sworn affidavit referenced in Subparagraph (B)(2) of this Article shall include the caption of the case and summons number, citation number or docket number as applicable, and state as follows:

AFFIDAVIT ACCEPTING SERVICE AND

WAIVER OF PRESENCE

BEFORE ME, the undersigned authority, did personally come and appear, _____(CLIENT'S NAME), who after being duly sworn did depose and say:

1.

Affiant acknowledges that he is the defendant in the above captioned criminal matter; that he is aware of all charges pending against him in this matter and that he has retained the services of _____ (ATTORNEY(S) or LAW FIRM) to represent him in these proceedings;

2.

Affiant is aware that he is scheduled to be in court on the _____ day of _____, 20__ at ___ o'clock and that he has the right to be present on that day but expressly wishes to waive this right and to have his legal counsel appear on his behalf;

3.

Affiant is aware that in his absence, additional court dates could be scheduled in these proceedings and he hereby appoints his above named legal counsel as his agent(s) to accept service of notice to appear for those dates on his behalf, that he accepts service of those dates through his counsel and that he expressly waives his appearance for those dates and authorizes his counsel to appear on his behalf;4.

Affiant understands that the court, in its sole discretion, may revoke its acceptance of this waiver and require that affiant personally appear in open court on subsequent court dates; that his counsel will also be notified; that a notice of appearance will be mailed to affiant at his address of record and that affiant's failure to appear at the subsequent court date could result in the issuance of an arrest warrant, a revocation of appearance bond and/or is punishable as contempt of court;

5.

Finally, Affiant acknowledges that his current address is: _____(Street, Apt/Lot No, City, State and Zip Code); and authorizes the court to use this address for all notices, unless changed in writing by affiant.

_____

Affiant

SWORN TO AND SUBSCRIBED BEFORE ME, notary, this ____ day of _____, 20__.

NOTARY PUBLIC

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; Acts 2021, No. 235, §1; Acts 2022, No. 446, §1.

Art. 875.1. Determination of substantial financial hardship to the defendant

A. The purpose of imposing financial obligations on an offender who is convicted of a criminal offense is to hold the offender accountable for his action, to compensate victims for any actual pecuniary loss or costs incurred in connection with a criminal prosecution, to defray the cost of court operations, and to provide services to offenders and victims. These financial obligations should not create a barrier to the offender's successful rehabilitation and reentry into society. Financial obligations in excess of what an offender can reasonably pay undermine the primary purpose of the justice system which is to deter criminal behavior and encourage compliance with the law. Financial obligations that cause undue hardship on the offender should be waived, modified, or forgiven. Creating a payment plan for the offender that is based upon the ability to pay, results in financial obligations that the offender is able to comply with and often results in more money collected. Offenders who are consistent in their payments and in good faith try to fulfill their financial obligations should be rewarded for their efforts.

B. For purposes of this Article, "financial obligations" shall include any fine, fee, cost, restitution, or other monetary obligation authorized by this Code or by the Louisiana Revised Statutes of 1950 and imposed upon the defendant as part of a criminal sentence, incarceration, or as a condition of the defendant's release on probation or parole.

C.(1) Notwithstanding any provision of law to the contrary, prior to ordering the imposition or enforcement of any financial obligations as defined by this Article, the court shall conduct a hearing to determine whether payment in full of the aggregate amount of all the financial obligations to be imposed upon the defendant would cause substantial financial hardship to the defendant or his dependents. The court may consider, among other factors, whether any victim of the crime has incurred a substantial financial hardship as a result of the criminal act or acts and whether the defendant is employed. The court may delay the hearing to determine substantial financial hardship for a period not to exceed ninety days, in order to permit either party to submit relevant evidence.

(2) The defendant or the court may waive the judicial determination of a substantial financial hardship required by the provisions of this Paragraph. If the court waives the hearing on its own motion, the court shall provide reasons, entered upon the record, for its determination that the defendant is capable of paying the fines, fees, and penalties imposed without causing a substantial financial hardship.

D.(1) If the court determines that payment in full of the aggregate amount of all financial obligations imposed upon the defendant would cause substantial financial hardship to the defendant or his dependents, the court shall do either of the following:

(a) Waive all or any portion of the financial obligations, except as provided in Paragraph E of this Article.

(b) Order a payment plan that requires the defendant to make a monthly payment to fulfill the financial obligations.

(2)(a) The amount of each monthly payment for the payment plan ordered pursuant to the provisions of Subsubparagraph (1)(b) of this Paragraph shall be determined by the court after considering all relevant factors, including but not limited to the defendant's average gross daily income for an eight-hour work day.

(b) If the court has ordered restitution, half of the defendant's monthly payment shall be distributed toward the defendant's restitution obligation.

(c) Except as provided in Paragraph E of this Article, during any periods of unemployment, homelessness, or other circumstances in which the defendant is unable to make the monthly payment, the court or the defendant's probation and parole officer is authorized to impose a payment alternative, including but not limited to substance abuse treatment, education, job training, or community service.

(3) If, after the initial determination of the defendant's ability to fulfill his financial obligations, the defendant's circumstances and ability to pay his financial obligations change, the state, the defendant, or the defendant's attorney may file a motion with the court to reevaluate the defendant's circumstances and determine, in the same manner as the initial determination, whether a modification of the monthly financial obligation imposed pursuant to this Article is appropriate under the circumstances.

E. Notwithstanding any other provision of this Article or any other provision of law to the contrary, a court may not waive nor forgive restitution due to a crime victim unless the victim to whom restitution is due consents to such an action.

F. If, at the termination or end of the defendant's term of supervision, any restitution ordered by the court remains outstanding, the balance of the unpaid restitution shall be reduced to a civil money judgment in favor of the person to whom restitution is owed, which may be enforced in the same manner as provided for the execution of judgments in the Code of Civil Procedure. For any civil money judgment ordered under this Article, the clerk shall send notice of the judgment to the last known address of the person to whom the restitution is ordered to be paid.

G. The provisions of this Article shall apply only to defendants convicted of offenses classified as felonies under applicable law.

H. Notwithstanding any provision of this Article or any other law to the contrary, if the financial obligations imposed upon a defendant would cause substantial financial hardship to the defendant or his dependents, the court shall not order that the defendant be incarcerated for his inability to meet those financial obligations. This provision shall apply to defendants convicted of traffic offenses, misdemeanor offenses, or felonies under applicable law.

Acts 2022, No. 219, §§1, 2; Acts 2022, No. 391, §§1, 2.

CHAPTER 2. SUSPENDED SENTENCE AND PROBATION

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

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

(b) The court shall not suspend the sentence of a second or third conviction of R.S. 14:81.1 or 81.2. If the court suspends the sentence of a first conviction of R.S. 14:81.1 or 81.2, the period of probation shall be specified and shall not be more than five years.

(2) The court shall not suspend the sentence of a conviction for an offense that is designated in the court minutes as a crime of violence pursuant to Article 890.3, except a first conviction for an offense with a maximum prison sentence of ten years or less that was not committed against a family member or household member as defined by R.S. 14:35.3, or dating partner as defined by R.S. 46:2151. The period of probation shall be specified and shall not be more than five years.

(3) The suspended sentence shall be regarded as a sentence for the purpose of granting or denying a new trial or appeal.

(4) Supervised release as provided for by Chapter 3-E of Title 15 of the Louisiana Revised Statutes of 1950 shall not be considered probation and shall not be limited by the five-year or three-year period for probation provided for by the provisions of this Paragraph.

B.(1) Notwithstanding any other provision of law to the contrary, when it appears that the best interest of the public and of the defendant will be served, the court, after a fourth or subsequent conviction of a noncapital felony may suspend, in whole or in part, the imposition or execution of the sentence upon consent of the district attorney.

(2) After a third or fourth conviction of operating a vehicle while intoxicated pursuant to R.S. 14:98, the court may suspend, in whole or in part, the imposition or execution of the sentence when the defendant was not offered such alternatives prior to his fourth conviction of operating a vehicle while intoxicated and the following conditions exist:

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

(b) The court orders the defendant to do any of the following:

(i) Enter and complete a program provided by the drug division of the district court pursuant to R.S. 13:5301 et seq.

(ii) Enter and complete an established driving while intoxicated court or sobriety court program.

(iii) Enter and complete a mental health court program established pursuant to R.S. 13:5351 et seq.

(iv) Enter and complete a Veterans Court program established pursuant to R.S. 13:5361 et seq.

(v) Enter and complete a reentry court program established pursuant to R.S. 13:5401.

(vi) Reside for a minimum period of one year in a facility which conforms to the Judicial Agency Referral Residential Facility Regulatory Act, R.S. 40:2851 et seq.

(vii) Enter and complete the Swift and Certain Probation Pilot Program established pursuant to R.S. 13:5371 et seq.

(3) When suspension is allowed under this Paragraph, the defendant shall be placed on probation under the supervision of the division of probation and parole. If the defendant has been sentenced to complete a specialty court program as provided in Subsubparagraph (2)(b) of this Paragraph, the defendant may be placed on probation under the supervision of a probation office, agency, or officer designated by the court, other than the division of probation and parole of the Department of Public Safety and Corrections. The period of probation shall be specified and shall not be more than three years, except as provided in Paragraph G of this Article. The suspended sentence shall be regarded as a sentence for the purpose of granting or denying a new trial or appeal.

C. If the sentence consists of both a fine and imprisonment, the court may impose the fine and suspend the sentence or place the defendant on probation as to the imprisonment.

D. Except as otherwise provided by law, the court shall not suspend a felony sentence after the defendant has begun to serve the sentence.

E.(1)(a) When it appears that the best interest of the public and of the defendant will be served, the court may defer, in whole or in part, the imposition of a sentence after conviction of a first offense noncapital felony under the conditions set forth in this Paragraph. When a conviction is entered under this Paragraph, the court may defer the imposition of sentence and place the defendant on probation under the supervision of the division of probation and parole.

(b) The court shall not defer a sentence under this provision for an offense or an attempted offense that is designated in the court minutes as a crime of violence pursuant to Article 890.3 or that is defined as a sex offense by R.S. 15:541, involving a child under the age of seventeen years or for a violation of the Uniform Controlled Dangerous Substances Law that is punishable by a term of imprisonment of more than ten years or for a violation of R.S. 40:966(A), 967(A), 968(A), 969(A), or 970(A).

(2) Upon motion of the defendant, if the court finds at the conclusion of the probationary period that the probation of the defendant has been satisfactory, the court may set the conviction aside and dismiss the prosecution. The dismissal of the prosecution shall have the same effect as acquittal, except that the conviction may be considered as a first offense and provide the basis for subsequent prosecution of the party as a habitual offender except as provided in R.S. 15:529.1(C)(3). The conviction may be considered as a prior offense for purposes of any other law or laws relating to cumulation of offenses. Dismissal under this Paragraph shall occur only twice with respect to any person.

(3)(a) When a case is accepted into a drug court division probation program pursuant to the provisions of R.S. 13:5304 and at the conclusion of the probationary period the court finds that the defendant has successfully completed all conditions of probation, the court with the concurrence of the district attorney may set aside the conviction and dismiss prosecution, whether the defendant's sentence was suspended under Paragraph A of this Article or deferred under Subparagraph (1) of this Paragraph. The dismissal of prosecution shall have the same effect as an acquittal, except that the conviction may be considered as a first offense and provide the basis for subsequent prosecution of the party as a habitual offender except as provided in R.S. 15:529.1(C)(3). The conviction may be considered as a prior offense for purposes of any other law or laws relating to cumulation of offenses.

(b) The court may extend the provisions of this Paragraph to any person who has previously successfully completed a drug court program and satisfactorily completed all other conditions of probation.

(c) Dismissal under this Paragraph shall have the same effect as an acquittal for purposes of expungement under the provisions of Title XXXIV of this Code and may occur only twice with respect to any person.

(4) When a defendant, who has been committed to the custody of the Department of Public Safety and Corrections to serve a sentence in the intensive incarceration program pursuant to the provisions of Article 895(B)(3), has successfully completed the intensive incarceration program as well as successfully completed all other conditions of parole or probation, and if the defendant is otherwise eligible, the court with the concurrence of the district attorney may set

aside the conviction and dismiss prosecution, whether the defendant's sentence was suspended under Paragraph A of this Article or deferred under Subparagraph (1) of this Paragraph. The dismissal of prosecution shall have the same effect as an acquittal, except that the conviction may be considered as a first offense and provide the basis for subsequent prosecution of the party as a habitual offender except as provided in R.S. 15:529.1(C)(3). The conviction may be considered as a prior offense for purposes of any other law or laws relating to cumulation of offenses. Dismissal under this Subparagraph shall have the same effect as an acquittal for purposes of expungement under the provisions of Title XXXIV of this Code and may occur only twice with respect to any person.

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

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

H.(1) If a defendant is placed on supervised probation, the division of probation and parole shall submit to the court a compliance report when requested by the court, or when the division of probation and parole deems it necessary to have the court make a determination with respect to "earned compliance credits", modification of terms or conditions of probation, termination of probation, revocation of probation, or other purpose proper under any provision of law.

(2) For purposes of this Paragraph:

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

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

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

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

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

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

Amended by Acts 1994, 3rd Ex. Sess., No. 100, §1; Acts 1994, 3rd Ex. Sess., No. 123, §1; Acts 1995, No. 990, §1; Acts 1995, No. 1251, §4; Acts 1996, 1st Ex. Sess., No. 5, §1, eff. April 23, 1996; Acts 1997, No. 696, §1; Acts 2001, No. 403, §5 eff. June 15, 2001; Acts 2001, No. 1206, §3; Acts 2006, No. 242, §2; Acts 2006, No. 581, §1; Acts 2008, No. 104, §1; Acts 2009, No. 168, §1; Acts 2010, No. 801, §2, eff. June 30, 2010; Acts 2015, No. 199, §1; Acts 2016, No. 509, §1; Acts 2016, No. 676, §2, eff. June 17, 2016; Acts 2017, No. 280, §1, eff. Nov. 1, 2017; Acts 2018, No. 508, §1; Acts 2018, No. 668, §2; Acts 2019, No. 386, §2; Acts 2020, No. 70, §1; Acts 2021, No. 61, §1; Acts 2022, No. 615, §2.

NOTE: Acts 2008, No. 104, §2, provides that the provisions of the Act are remedial and therefore shall apply retroactively.

Art. 983. Costs of expungement of a record; fees; collection; exemptions; disbursements

A. Except as provided for in Articles 894 and 984, the total cost to obtain a court order expunging a record shall not exceed five hundred fifty dollars. Payment may be made by United States postal money orders or money orders issued by any state or national bank or by checks issued by a law firm or an attorney.

B. The nonrefundable processing fees for a court order expunging a record shall be as follows:

(1) The Louisiana Bureau of Criminal Identification and Information may charge a processing fee of two hundred fifty dollars for the expungement of any record of arrest when ordered to do so by the court in compliance with the provisions of this Title.

(2) The sheriff may charge a processing fee of fifty dollars for the expungement of any record of arrest when ordered to do so by the court in compliance with the provisions of this Title.

(3) The district attorney may charge a processing fee of fifty dollars for the expungement of any record of arrest when ordered to do so by the court in compliance with the provisions of this Title.

(4) The clerk of court may charge a processing fee not to exceed two hundred dollars to cover the clerk's costs of the expungement.

C. The clerk of court shall collect all processing fees at the time the motion for expungement is filed.

D.(1) The clerk shall immediately direct the collected processing fee provided for in Subparagraph (B)(1) of this Article to the Louisiana Bureau of Criminal Identification and Information, and the processing fee amount shall be deposited immediately upon receipt into the Criminal Identification and Information Dedicated Fund Account.

(2) The clerk shall immediately direct the collected processing fees provided for in Subparagraphs (B)(2) and (3) of this Article to the sheriff and the district attorney, and the processing fee amount shall be remitted immediately upon receipt in equal proportions to the office of the district attorney and the sheriff's general fund.

E. The processing fees provided for by this Article are nonrefundable and shall not be returned even if the court does not grant the motion for expungement.

F. An applicant for the expungement of a record shall not be required to pay any fee to the clerk of court, the Louisiana Bureau of Criminal Identification and Information, sheriff, the district attorney, or any other agency to obtain or execute an order of a court of competent jurisdiction to expunge the arrest from the individual's arrest record if a certification obtained from the district attorney is presented to the clerk of court which verifies that the applicant has no felony convictions and no pending felony charges under a bill of information or indictment and at least one of the following applies:

(1) The applicant was acquitted, after trial, of all charges derived from the arrest, including any lesser and included offense.

(2) The district attorney consents, and the case against the applicant was dismissed or the district attorney declined to prosecute the case prior to the time limitations prescribed in Chapter 1 of Title XVII of this Code, and the applicant did not participate in a pretrial diversion program.

(3) The applicant was arrested and was not prosecuted within the time limitations prescribed in Chapter 1 of Title XVII of this Code and did not participate in a pretrial diversion program.

(4) Repealed by Acts 2022, No. 36, §2.

(5) Concerning the arrest record which the applicant seeks to expunge, the applicant was determined by the district attorney to be a victim of a violation of R.S. 14:67.3 (unauthorized use of "access card"), a violation of R.S. 14:67.16 (identity theft), a violation of R.S. 14:70.4 (access device fraud), or a violation of any other crime which involves the unlawful use of the identity or personal information of the applicant.

G. Notwithstanding any other provision of law to the contrary, a juvenile who has successfully completed any juvenile drug court program operated by a court of this state shall be exempt from payment of the processing fees otherwise authorized by this Article.

H. Human trafficking victim request for certification and application for expungement.

(1) An applicant for the expungement of a record of offense who was a victim of human trafficking, in accordance with R.S. 14:46.2, may request a certification from the prosecuting authority that the offense for which the expungement is sought was committed, in substantial part, as the result of the applicant being a victim of human trafficking in accordance with R.S. 14:46.2.

(2) To obtain certification, the applicant has the burden of establishing by a preponderance of the evidence to the prosecuting authority that the offense was committed, in substantial part, as the result of the applicant being a victim of human trafficking in accordance with R.S. 14:46.2.

(3) The certification shall be prima facie evidence that similar eligible crimes committed within other Louisiana jurisdictions during the time period the applicant was a victim of human trafficking were committed, in substantial part, as the result of the applicant being a victim of human trafficking in accordance with R.S. 14:46.2.

(4) All applicable time delays pertaining to expungement provided by Articles 977 and 978 shall be waived when the certification is presented to the clerk of court with the application for expungement.

(5) An applicant for the expungement of a record of offense who was a victim of human trafficking, in accordance with R.S. 14:46.2, shall not be required to pay any fees relative to the application for expungement to the clerk of court, the Louisiana Bureau of Criminal Identification and Information, the sheriff, the district attorney, or any other agency.

(6) Utilization of the process outlined within this Paragraph shall not preclude any applicant from seeking additional expungement to which the applicant may be entitled, in accordance with law.

(7) The Louisiana District Attorneys Association shall annually submit a report to the legislature, no later than February first, that includes the number of applications for, denials of, and approvals of the certification provided for by this Paragraph for the prior year.

I. Notwithstanding any other provision of law to the contrary, a person who was determined to be factually innocent and entitled to compensation for a wrongful conviction pursuant to the provisions of R.S. 15:572.8 shall be exempt from payment of the processing fees otherwise authorized by this Article.

J. Notwithstanding any other provision of law to the contrary, a person who has been granted a pardon shall be exempt from payment of the processing fees otherwise authorized by this Article. However, no person granted a first offender pardon pursuant to Article IV, Section 5(E)(1) of the Constitution of Louisiana shall be exempt from payment of the processing fees otherwise authorized by this Article.

K. If an application for an expungement of a record includes two or more offenses arising out of the same arrest, including misdemeanors, felonies, or both, the applicant shall be required to pay only one fee as provided for by this Article.

L. Notwithstanding any provision of law to the contrary, an applicant for the expungement of a record, other than as provided in Paragraphs F and G of this Article, may proceed in forma pauperis in accordance with the provisions of Code of Civil Procedure Article 5181 et seq.

Acts 2014, No. 145, §1; Acts 2016, No. 8, §1; Acts 2018, No. 404, §1; Acts 2019, No. 1, §1; Acts 2020, No. 79, §1; Acts 2021, No. 114, eff. July 1, 2022; Acts 2022, No. 36, §§1, 2; Acts 2022, No. 130, §1, eff. May 26, 2022.

Art. 997. Certification of human trafficking victim status

STATE OF LOUISIANA

_____ JUDICIAL DISTRICT FOR THE PARISH OF _____

NO.:_____ DIVISION: _____

STATE OF LOUISIANA

vs.

_____

CERTIFICATION OF HUMAN TRAFFICKING VICTIM STATUS

In accordance with the provisions of Louisiana Code of Criminal Procedure Article 983, the Office of the District Attorney has reviewed and determined that one,

_____,
RACE/ GENDER: _____DOB: _____,
SSN:_____, has established by a preponderance of the evidence proof of status as a victim of human trafficking in accordance with the provisions of R.S. 14:46.2, for the following offense(s), detailed specifically as follows:

(If more than one offense, each relevant offense must be specifically listed in the following format)

OFFENSE:_____

DOCKET NO:_____

CHARGE:_____

DATE OF ARREST:_____

ARRESTING AGENCY:_____

CITY/PARISH OF ARREST:_____

FURTHER, that the above offense(s) for which this Certification issued was committed, in substantial part, as a result of the above-named being a victim of human trafficking, in accordance with R.S. 14:46.2.

FURTHER, this Certification shall be considered as prima facie evidence of the victim's status in similar eligible crimes committed within other Louisiana jurisdictions during the time period in which the above-named was a victim of human trafficking.

FURTHER, all applicable time delays pertaining to expungement contained in Louisiana Code of Criminal Procedure Articles 977 and 978 shall be waived when presented to the clerk of court with an application for expungement of the above-specified offense(s).

FURTHER, any application for expungement of the above-specified offense(s) shall be at no cost to the above-named victim.

_____ _____

DATE DISTRICT ATTORNEY

PARISH OF

_____ JUDICIAL DISTRICT

STATE OF LOUISIANA

Acts 2022, No. 130, §1, eff. May 26, 2022.

Art. 1005. Transfer of firearms; aggregate data collection and reporting

A.(1) The sheriff of each parish shall report on an annual basis to the Louisiana Commission on Law Enforcement and Administration of Criminal Justice the following aggregate data:

(a) The total number of civil orders to transfer firearms received by the sheriff's office pursuant to Article 1002(C)(3).

(b) The total number of criminal orders to transfer firearms received by the sheriff's office pursuant to Article 1002(C)(3).

(c) The total number of proof of transfer forms completed and retained by the sheriff's office as required by Article 1002(D)(1).

(d) The total number of declarations of nonpossession received by the sheriff's office pursuant to Article 1002(E)(1).

(e) The number of firearm transfers completed as required by Article 1002 including:

(i) The total number of firearms transferred to the sheriff's office.

(ii) The total number of firearms transferred to a third-party entity.

(iii) The total number of firearms transferred to contracted storage.

(iv) The total number of firearms transferred via legal sale.

(f) The number of orders received from the court stating that firearms shall be returned to the transferor pursuant to Article 1003(D)(2).

(2) The sheriff shall submit a report to the Louisiana Commission on Law Enforcement and Administration of Criminal Justice regardless of whether the sheriff is able to complete a firearm transfer pursuant to Subparagraph (1) of this Paragraph.

B. Not later than January 1, 2023, the Louisiana Commission on Law Enforcement and Administration of Criminal Justice shall create and distribute a standardized form for use by the sheriff of each parish to use to report all aggregate data fields required by Paragraph A of this Article. The form shall not contain any identifying information of the person who possesses the firearm and shall only contain numerical data provided in Paragraph A of this Article.

C. The Louisiana Commission on Law Enforcement and Administration of Criminal Justice shall identify a single point of contact or web portal to which each sheriff shall submit the completed form created pursuant to Paragraph B of this Article.

D. The sheriff of each parish shall submit the completed form to the Louisiana Commission on Law Enforcement and Administration of Criminal Justice no later than January thirty-first of each calendar year. Each form shall contain the aggregate data for each of the items listed in Paragraph A of this Article for the prior calendar year.

E. The Louisiana Commission on Law Enforcement and Administration of Criminal Justice shall publish the data collected from the sheriff of each parish pursuant to Paragraph D of this Article to the commission's public website by February twenty-eighth of each calendar year.

F. The Louisiana Commission on Law Enforcement and Administration of Criminal Justice shall submit a report containing the information received pursuant to Paragraph D of this Article to the House Committee on Administration of Criminal Justice and the Senate Committee on Judiciary C no later than March first of each calendar year.

Acts 2022, No. 484, §1.