Louisiana Code of Criminal Procedure 2023

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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 2022 Legislative Sessions.

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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. Issuance of warrant; affidavit; description

A. A search warrant may issue only upon probable cause established to the satisfaction of the judge, by the affidavit of a credible person, reciting facts establishing the cause for issuance of the warrant.

B. In any application for warrant, an affidavit containing the electronic signature of the applicant shall satisfy the constitutional requirement that the testimony of the applicant be made under oath, provided that such signature is made under penalty of perjury and in compliance with R.S. 9:2603.1(D).

C. A search warrant shall particularly describe the person or place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search or seizure.

Amended by Acts 1974, Ex. Sess. No. 15, §1, eff. Jan. 1, 1975; Acts 2010, No. 58, §2.

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Art. 162.1. Warrant issued upon oral testimony

A. In addition to the provisions of Article 162, a search warrant may issue only upon probable cause established to the satisfaction of the judge by the sworn oral testimony of a credible person reciting facts establishing the cause for issuance of the warrant.

B. The sworn oral testimony may be communicated to the judge, and the oath may be administered by the judge, by telephone, radio, or such other electronic method of communication deemed appropriate by the judge. If the judge determines that the warrant should issue, he shall order the applicant to affix a facsimile of his signature to the warrant which the applicant has prepared and to note thereon the date and time of the determination. The sworn oral testimony, the contents of the warrant issued, the order to affix the signature facsimile, and the date and time of the determination shall be electronically recorded by the judge, who shall cause the recording to be transcribed and fixed in the record within seven days. The judge shall certify the accuracy of the transcription.

C. A search warrant shall particularly describe the person or place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search or seizure.

D. The testimony may also be communicated to the judge by facsimile transmission signed by the applicant, after the administration of the oath by the judge by telephone, radio, or such other electronic method of communication deemed appropriate by the judge. The judge shall certify on the facsimile transmission the date and time of the administration of the oath. If the judge determines that the warrant should issue, he shall affix his signature to the warrant which the applicant has prepared and forwarded to him by facsimile transmission. The judge shall transmit to the applicant, by facsimile transmission, the warrant which he has executed together with the written testimony and certification of oath. The original application for the warrant with the applicant's signature and the facsimile copy with the original signature of the judge shall be preserved in the same manner as an original warrant signed by both the applicant and the judge.

Acts 1991, No. 84, §1; Acts 1999, No. 895, §1.

Art. 162.2. Warrant issued upon electronic testimony

A. In addition to the provisions of Articles 162 and 162.1, a search warrant may issue upon probable cause established to the satisfaction of the judge by the electronic testimony of a credible person reciting facts establishing the cause for issuance of the warrant.

B. For purposes of this Section, the following words shall have the following meanings:

(1) "Electronic signature" shall include any electronic means indicating that the person originating an electronic document adopts the contents of the document, and that the person who claims to have written the electronic document is in fact the person who wrote it.

(2) "Electronic testimony" shall mean any method of communication, whether wired or wireless or any combination thereof, in which text or images may be transferred electronically from one person to another and includes but shall not be limited to text messages and electronic mail.

C. The submission of electronic testimony to a judge pursuant to the provisions of this Article shall contain the electronic signature of the applicant, the applicant's full name and occupation, and a telephone number and electronic address which may be used by the judge to contact the applicant.

D. Any electronic testimony presented to a judge shall serve as the equivalent of the applicant having been administered an oath or affirmation, swearing that the facts contained in the electronic testimony are true and correct to the best of his knowledge, subject to the penalties for perjury or false swearing.

E. Accompanying the electronic testimony shall be an electronic facsimile of the search warrant. If the judge finds probable cause and approves the issuance of the warrant, he shall affix his electronic signature to the warrant and return it immediately to the applicant.

F. It shall be the responsibility of the applicant to create a written reproduction of his electronic testimony, including its electronic signature, and a written reproduction of the warrant, including the judge's electronic signature, and preserve the written reproductions in the same manner as an original warrant signed by both the applicant and the judge within forty-eight hours from the time the warrant was issued.

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G. Telephonic communication between the judge and the affiant relatively contemporaneously with the application for the warrant shall satisfy the requirements of R.S. 9:2603.1(D).

Acts 2012, No. 169, §1.

Art. 162.3. No-knock warrant

A. No law enforcement officer shall seek, execute, or participate in the execution of a no-knock warrant, except in cases where both of the following apply:

(1) The affidavit supporting the request for the warrant establishes probable cause that exigent circumstances exist requiring the warrant to be executed in a no-knock manner. For purposes of this Subparagraph, exigent circumstances shall include circumstances where the surprise of a no-knock entry is necessary to protect life and limb of the law enforcement officers and the occupants.

(2) The copy of the warrant being executed that is in the possession of law enforcement officers to be delivered as provided in Paragraph C of this Article includes the judge's signature.

B. A search warrant authorized under this Article shall require that a law enforcement officer be recognizable and identifiable as a uniformed law enforcement officer and provide audible notice of his authority and purpose reasonably expected to be heard by occupants of such place to be searched prior to the execution of such search warrant.

C. After entering and securing the place to be searched and prior to undertaking any search or seizure pursuant to the search warrant, the executing law enforcement officer shall read and give a copy of the search warrant to the person to be searched or the owner of the place to be searched or, if the owner is not present, to any occupant of the place to be searched. If the place to be searched is unoccupied, the executing law enforcement officer shall leave a copy of the search warrant suitably affixed to the place to be searched.

D. Search warrants authorized under this Article shall be executed only from sunrise to sunset except in either of the following instances:

(1) A judge authorizes the execution of such search warrant at another time for good cause shown.

(2) The search warrant is for the withdrawal of blood. A search warrant for the withdrawal of blood may be executed at any time of day.

E. Any evidence obtained from a search warrant in violation of this Article shall not be admitted into evidence for prosecution.

F. For purposes of this Article, "no-knock warrant" means a warrant issued by a judge that allows law enforcement to enter a property without immediate prior notification of the residents, such as by knocking or ringing a doorbell.

G. For the purposes of this Article, only a district court judge may issue a no-knock warrant.

Acts 2021, No. 430, §2.

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.

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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.

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Art. 163.1. Search of a person for bodily samples; warrants; execution

A. A judge may issue a search warrant authorizing the search of a person for bodily samples to obtain deoxyribonucleic acid (DNA) or other bodily samples.

B. The warrant may be executed any place the person is found and shall be directed to any peace officer who shall obtain and distribute the bodily samples as directed in the warrant.

C. A warrant authorizing the search of a person for bodily samples remains in effect for one hundred eighty days after its issuance.

D.(1) Any examination or testing of any bodily samples 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 bodily samples may be conducted at any time before or during the pendency of any criminal proceeding in which the samples may be used as evidence.

Acts 2005, No. 38, §1; Acts 2012, No. 44, §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. 164. Means and force in executing warrant

In order to execute a search warrant a peace officer may use such means and force as are authorized for arrest by Title V.*

*C.Cr.P. Art. 201 et seq.

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Art. 165. Authority of peace officer in executing a search warrant

While in the course of executing a search warrant, a peace officer may make photographs, lift fingerprints, seize things whether or not described in the warrant that may constitute evidence tending to prove the commission of any offense, and perform all other acts pursuant to his duties.

Art. 166. Receipt for seized property

When a peace officer seizes property under a warrant he shall give a receipt to the person from whom the property is taken, describing the property in detail. In the absence of such person, the peace officer shall leave the receipt in the place where the property was seized.

Art. 167. Custody of seized property; disposition

When property is seized pursuant to a search warrant, it shall be retained under the direction of the judge. If seized property is not to be used as evidence or is no longer needed as evidence, it shall be disposed of according to law, under the direction of the judge.

TITLE V. ARREST

Art. 201. Arrest defined

Arrest is the taking of one person into custody by another. To constitute arrest there must be an actual restraint of the person. The restraint may be imposed by force or may result from the submission of the person arrested to the custody of the one arresting him.

Art. 202. Warrant of arrest; issuance

A. A warrant of arrest may be issued by any magistrate pursuant to this Paragraph or as provided in Paragraph D of this Article and, except where a summons is issued under Article 209 of this Code, shall be issued when all of the following occur:

(1) The person making the complaint executes an affidavit specifying, to his best knowledge and belief, the nature, date, and place of the offense, and the name and surname of the offender if known, and of the person injured if there be any. An affidavit containing the electronic signature of the applicant shall satisfy the constitutional requirement that the testimony of the applicant be made under oath, provided that such signature is made under penalty of perjury and in compliance with R.S. 9:2603.1(D).

(2) The magistrate has probable cause to believe that an offense was committed and that the person against whom the complaint was made committed it.

B.(1) A justice of the peace shall not have the authority to issue a warrant for the arrest of a peace officer for acts performed while in the course and scope of his official duties.

(2) A justice of the peace shall not issue a warrant for the arrest of an administrator of any public or private elementary, secondary, high school, vocational-technical school, college, university, or licensed child day care center in this state or a teacher in any public or private elementary, secondary, high school, vocational-technical school, college, or university in this state who is acting in the course and scope of his official duties, unless an independent investigation into the allegations has been conducted and the investigator's findings support the allegations contained in the affidavit required by Subparagraph (A)(1) of this Article.

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C. When complaint is made before a magistrate of the commission of an offense in another parish, the magistrate shall also immediately notify the district attorney of the parish in which the offense is alleged to have been committed.

D. A warrant of arrest may be issued when the person making the complaint executes an oath specifying, to his best knowledge and belief, the nature, date, and place of the offense, and the name and surname of the offender if known, and of the person injured if there be any, using telephone and facsimile transmission equipment under all of the following conditions:

(1) The oath is made during a telephone conversation with the magistrate, after which the declarant shall sign his or her declaration in support of the warrant of probable cause for arrest. The proposed warrant and all supporting declarations and attachments shall then be transmitted to the magistrate utilizing facsimile transmission equipment.

(2) The magistrate shall confirm with the declarant the receipt of the warrant and the supporting declarations and attachments. The magistrate shall verify that all the pages sent have

been received, that all pages are legible, and that the declarant's signature is acknowledged as genuine.

(3) If the magistrate has probable cause to believe that an offense was committed and that the person against whom the complaint was made committed it and decides to issue the warrant, he or she shall:

(a) Sign the warrant.

(b) Note on the warrant the exact date and time of the issuance of the warrant.

(c) Indicate on the warrant that the oath of the declarant was administered orally over the telephone. The completed warrant, as signed by the magistrate, shall be deemed to be the original warrant.

(d) The magistrate shall transmit via facsimile transmission equipment the signed warrant to the declarant who shall telephonically acknowledge its receipt. The magistrate shall then telephonically authorize the declarant to write the words "duplicate original" on the copy of the completed warrant transmitted to the declarant, and this document shall be deemed to be a duplicate original warrant.

(4) The warrant shall be in the form required by Article 203 of this Code.

E. Notwithstanding any other provision of law to the contrary, after December 31, 2010, a justice of the peace shall not have the authority to issue a warrant for arrest unless he has received a certificate of completion from the Attorney General's Arrest Warrants Course for Justices of the Peace pursuant to R.S. 49:251.4.

F. Notwithstanding any other provisions of law to the contrary, no magistrate shall have the authority to issue a warrant of arrest for a school employee, as defined by R.S. 17:16(G), for any misdemeanor act allegedly committed on school premises or at a school-sanctioned event during the course and scope of the school employee's employment. In all such instances, a summons shall be issued to the school employee pursuant to Article 209 of this Code.

G. Notwithstanding any other provision of law to the contrary, no magistrate shall have the authority to issue a warrant for the arrest of a school employee, as defined by R.S. 17:16(G), for any misdemeanor allegedly committed upon a student during the course and scope of the school employee's employment regardless of whether the act is alleged to have occurred on or off the school campus. In all such instances, a summons shall be issued to the school employee pursuant to Article 209 of this Code.

Amended by Acts 1980, No. 535, §1; Acts 1997, No. 783, §1; Acts 2003, No. 650, §1; Acts 2004, No. 833, §1; Acts 2009, No. 222, §1; Acts 2010, No. 58, §2; Acts 2014, No. 670, §1, eff. June 18, 2014; Acts 2014, No. 723, §1, eff. June 18, 2014.

Art. 203. Form and contents of warrant

The warrant of arrest shall:

(1) Be in writing and be in the name of the State of Louisiana;

(2) State the date when issued and the municipality or parish where issued;

(3) State the name of the person to be arrested, or, if his name is unknown, designate the person by any name or description by which he can be identified with reasonable certainty;

(4) State the offense charged against the person to be arrested;

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(5) Command that the person against whom the complaint was made be arrested and booked; and

(6) Be signed by the magistrate with the title of his office.

The warrant of arrest may specify the amount of bail in noncapital cases when the magistrate has authority to fix bail.

Art. 204. Execution of warrant

The warrant shall be directed to all peace officers in the state. It shall be executed only by a peace officer, and may be executed in any parish by any peace officer having authority in the territorial jurisdiction where the person arrested is found, or by any peace officer having authority in one territorial jurisdiction in this state who enters another jurisdiction in close pursuit of the person arrested.

Art. 205. Effective period

A warrant of arrest remains in effect until executed.

Art. 206. Procedure when warrant defective

A warrant of arrest shall not be quashed or abated, and a person in custody for an offense shall not be discharged from custody, because of any informality or defect in the warrant, but the warrant may be amended, so as to remedy the informality or defect.

Art. 207. Procedure when arrest made for offense triable in another parish

When an arrest under a warrant occurs in a parish other than that in which the alleged offense was committed, the person arrested shall be booked and imprisoned in the parish where he was arrested until he gives bail or is transferred to the parish where the offense is alleged to have been committed. A person awaiting transfer shall not be detained in custody in the parish of his arrest for a longer period than ten days.

Art. 208. Summons; defined

A summons is an order in writing, issued and signed by a magistrate or a peace officer in the name of the state, stating the offense charged and the name of the alleged offender, and commanding him to appear before the court designated in the summons at the time and place stated in the summons.

Art. 209. When summons may be issued by magistrate

When a complaint is made of the commission of a misdemeanor and the requirements of Article 202 are met, the magistrate may issue a summons instead of a warrant of arrest, if he has reasonable ground to believe that the person against whom the complaint is made will appear upon a summons. In a case where a summons has been issued, a warrant of arrest may be issued later in its place.

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Art. 210. Service of summons

The service of a summons is made in the same manner as a citation in a civil action.

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

Sample

2011, No. 403, §1; Acts 2019, No. 154, §1; Acts 2021, No. 240, §1; Acts 2022, No. 621, §1.

Art. 211.1. Persons with outstanding warrant; arrest or release of person

A. Notwithstanding the provisions of Article 203, or any other provision of law to the contrary, when a peace officer stops a person who has an outstanding warrant or an attachment for failing to comply with a summons to appear in court on a misdemeanor offense, including a traffic offense, the officer in his discretion, may issue a summons based on such warrant or attachment in lieu of making an arrest if the warrant or attachment is issued in the jurisdiction where the detention occurs, or release the person or arrest the person pursuant to the provisions of Article 207, if the warrant or attachment was issued outside the jurisdiction where the detention occurs.

B. Any summons issued pursuant to this Article shall be in writing and shall be issued and signed by a magistrate or a peace officer in the name of the state. It shall state the offense charged and the name of the alleged offender, and shall command him to appear before the court designated in the summons at the time and place stated in the summons and to show proof that the obligation of the outstanding warrant has been fulfilled. A duplicate original of the summons shall be forwarded by the peace officer or a designee of the officer's employing agency to the court that issued the initial warrant within seventy-two hours, excluding weekends, of the issuance of the summons.

C. The provisions of this Article shall not apply to any of the following circumstances:

(1) When the information available to the officer indicates that the warrant or attachment was issued for any of the following offenses:

(a) Any offense involving the operation of a vehicle while intoxicated.

(b) Any offense involving the use or possession of a weapon.

(c) Any offense involving the use of force or violence, except the crime of simple battery unless the warrant or attachment indicates that the battery was prosecuted as a domestic abuse battery as defined in R.S. 14:35.3.

(d) Any offense or bench warrant issued involving the failure to pay a legal child support obligation.

(2) When the offender has an outstanding felony warrant.

D. In addition to any other legal remedies provided by law, any officer of the court may seek the collection of past due court costs, fines, or fees associated with the judicial system from state or federal tax refunds by sending notice to the federal secretary of the treasury or to the state treasurer that a person owes past due court costs, fines, or fees associated with the judicial system. The officer of the court shall comply with all rules and regulations imposed by the federal secretary of the treasury or the state treasurer including payment of any fee assessed by the secretary of the treasury or the state treasurer for the cost of applying the offset procedure.

Added by Acts 1981, No. 244, §1; Acts 2011, No. 403, §1.

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Art. 211.2. Contempt; attachment of arrest for failing to appear; summons by peace officer instead of arrest

A. Notwithstanding any other provision of law to the contrary, in Orleans Parish, when a peace officer serving a subpoena, summons, or notice to appear in court for a misdemeanor traffic offense or a nonviolent offense, except for possession of illegal weapons and driving under the influence, has reasonable grounds to believe that the conduct of an offender constitutes a direct contempt of court because the offender contumaciously fails to comply with such subpoena, summons, or notice to appear in court, and proof of service of the subpoena, summons, or notice appears of record, then either the court may order the offender attached and brought to court or the peace officer may issue a written citation or summons to the offender commanding him to appear and answer the direct contempt charge.

B. If an order of attachment is issued, it may be executed in any parish by the sheriff of the parish from which the attachment was issued, or by the sheriff of the parish where the offender is found.

Added by Acts 1982, No. 520, §1; Acts 2011, No. 403, §1.

Art. 211.3. Summons by officer instead of arrest and booking; improper supervision of a minor by parent or legal guardian

A. When a peace officer has reasonable grounds to believe that a person has committed the offense of improper supervision of a minor by parent or legal custodian as defined in R.S. 14:92.2, he may issue a written summons instead of making an arrest unless any of the following conditions exist:

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

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

(3) It is necessary to book the person to comply with routine identification procedures.

B. In any case in which a summons has been issued, a warrant of arrest may later be issued in its place. If the offender fails to appear pursuant to the summons, the court shall immediately issue a warrant for the arrest of the offender.

Acts 2019, No. 290, §2.

Art. 211.4. Repealed by Acts 2011, No. 403, §2.

Art. 211.5. Repealed by Acts 2011, No. 403, §2.

Art. 211.6. Repealed by Acts 2011, No. 403, §2.

Art. 212. Securing jurisdiction over corporation, partnership, or other unincorporated association

A. When a corporation, or partnership, or other association of persons not incorporated, is charged with the commission of an offense, the court before which the case is to be tried shall

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issue a summons stating the offense charged and ordering the defendant to appear before the court at a time and place stated in the summons.

B. The summons is served in the same manner as the citation of a corporation, or partnership, or other association of persons not incorporated, in a civil action.

C. If the corporation, or partnership, or other association of persons not incorporated, fails to appear as ordered, a plea of not guilty shall be entered by the court. Without further process, the trial shall be held and the court shall proceed to judgment and sentence as though the defendant had appeared.

Art. 213. Arrest by officer without warrant; when lawful

A. A peace officer may, without a warrant, arrest a person when any of the following occur:

(1) The person to be arrested has committed an offense in his presence, and if the arrest is for a misdemeanor, it must be made immediately or on close pursuit.

(2) The person to be arrested has committed a felony, although not in the presence of the officer.

(3) The peace officer has reasonable cause to believe that the person to be arrested has committed an offense, although not in the presence of the officer.

(4) The peace officer has received positive and reliable information that another peace officer from this state holds an arrest warrant, or a peace officer of another state or the United States holds an arrest warrant for a felony offense.

B. A peace officer making an arrest pursuant to this Article who is in close pursuit of the person to be arrested may enter another jurisdiction in this state and make the arrest.

C. Notwithstanding any other provisions of law to the contrary, no magistrate shall have the authority to issue a warrant of arrest for a school employee, as defined by R.S. 17:16(G), for any misdemeanor act allegedly committed on school premises or at a school-sanctioned event during the course and scope of the school employee's employment. In all such instances, a summons shall be issued to the school employee pursuant to Article 209 of this Code.

D.(1) Except as provided in Paragraph (2) of this Subsection, and notwithstanding any other provision of law to the contrary, no peace officer shall have the authority to arrest a school employee, as defined by R.S. 17:16(G), for any misdemeanor allegedly committed upon a student during the course and scope of the school employee's employment regardless whether the act is alleged to have occurred on or off the school campus. In all such instances, a summons shall be issued to the school employee pursuant to Article 209 of this Code.

(2) A peace officer may arrest a school employee as defined in R.S. 17:16(G) and as provided in Subsection A of this Section in either of the following instances:

(a) The peace officer personally witnesses an alleged violation of R.S. 14:35 committed upon a student by a school employee, whether on or off campus.

(b) The peace officer receives a complaint of an alleged violation of R.S. 14:35 committed upon a student by a school employee, whether alleged to have occurred on or off campus, and there is physical evidence of a resulting injury to the student which is personally witnessed by the officer.

Amended by Acts 1972, No. 646, §1; Acts 1981, No. 613, §1; Acts 2014, No. 670, §1, eff. June 18, 2014; Acts 2014, No. 723, §1, eff. June 18, 2014.

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Art. 214. Arrest by private person; when lawful

A private person may make an arrest when the person arrested has committed a felony, whether in or out of his presence.

Art. 215. Detention and arrest of shoplifters

A.(1) A peace officer, merchant, or a specifically authorized employee or agent of a merchant, may use reasonable force to detain a person for questioning on the merchant's premises, for a length of time, not to exceed sixty minutes, unless it is reasonable under the circumstances that the person be detained longer, when he has reasonable cause to believe that the person has committed a theft of goods held for sale by the merchant, regardless of the actual value of the goods. The merchant or his employee or agent may also detain such a person for arrest by a peace officer. The detention shall not constitute an arrest.

(2) A peace officer may, without a warrant, arrest a person when he has reasonable grounds to believe the person has committed a theft of goods held for sale by a merchant, regardless of the actual value of the goods. A complaint made to a peace officer by a merchant or a merchant's employee or agent shall constitute reasonable cause for the officer making the arrest.

(3)(a) A merchant or a specifically authorized employee or agent of a merchant who has reasonable cause to believe that a person has committed a theft of goods held for sale by the merchant, is not precluded from offering such person the opportunity to complete a theft prevention program in lieu of reporting the suspected theft to law enforcement. The provisions of this Subparagraph apply only to those merchants who employ at least twenty-five persons.

(b)(i) A provider of a theft prevention program may charge a fee of not more than five hundred dollars for participation in the program and may not exclude a person otherwise eligible to participate in the program on the basis of the person's race, national origin, religion, sex, or the ability to pay the fee.

(ii) A provider of a theft prevention program that charges a fee to participate in the program may reduce or waive the fee based upon the inability of a participant to pay.

(iii) A provider of a theft prevention program shall maintain records of the criteria described in Item (i) of this Subsubparagraph for a period of not less than three years without including personal identifying information. This report shall be made available to the district attorney upon request.

(iv) A provider of a theft prevention program shall provide to the district attorney, upon request, its criteria for a person's participation in its theft prevention program.

(v) A merchant or a specifically authorized employee or agent of a merchant that offers a person the opportunity to complete a theft prevention program shall provide a copy of the written offer to the district attorney upon request.

(vi) Nothing in this Subparagraph shall preclude a district attorney or court from offering a theft prevention program in compliance with the provisions of this Subparagraph.

(c) The participant shall not be required to sign an admission of guilt nor sign any binding agreement in connection with participation in the theft prevention program.

(d) Any person who successfully completes a theft prevention program pursuant to this Subparagraph shall not be subject to any additional civil penalties under any other provision of law.

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B. If a merchant utilizes electronic devices which are designed to detect the unauthorized removal of marked merchandise from the store, and if sufficient notice has been posted to advise the patrons that such a device is being utilized, a signal from the device to the merchant or his employee or agent indicating the removal of specially marked merchandise shall constitute a sufficient basis for reasonable cause to detain the person.

C. As used in this Article, the following definitions apply:

(1) "Reasonable under the circumstances" shall be construed in such a manner so as to include the value of the merchandise in question, the location of the store, the length of time taken for law enforcement personnel to respond, the cooperation of the person detained, and any other relevant circumstances to be considered with respect to the length of time a person is detained.

(2) "Theft prevention program" is a pre-arrest program designed to address the underlying causes of theft, reduce the occurrences of theft, and promote accountability and reconciliation between the person suspected of theft and the merchant, and may be provided by the merchant or an independent third-party provider.

Acts 1983, No. 187, §1; Acts 1987, No. 632, §1; Acts 2018, No. 61, §1.

Art. 215.1. Temporary questioning of persons in public places; frisk and search for weapons

A. A law enforcement officer may stop a person in a public place whom he reasonably suspects is committing, has committed, or is about to commit an offense and may demand of him his name, address, and an explanation of his actions.

B. When a law enforcement officer has stopped a person for questioning pursuant to this Article and reasonably suspects that he is in danger, he may frisk the outer clothing of such person for a dangerous weapon. If the law enforcement officer reasonably suspects the person possesses a dangerous weapon, he may search the person.

C. If the law enforcement officer finds a dangerous weapon, he may take and keep it until the completion of the questioning, at which time he shall either return it, if lawfully possessed, or arrest such person.

D. During detention of an alleged violator of any provision of the motor vehicle laws of this state, an officer may not detain a motorist for a period of time longer than reasonably necessary to complete the investigation of the violation and issuance of a citation for the violation, absent reasonable suspicion of additional criminal activity. However, nothing herein shall prohibit a peace officer from compelling or instructing the motorist to comply with administrative or other legal requirements of Title 32 or Title 47 of the Louisiana Revised Statutes of 1950.

Added by Acts 1968, No. 305, §1. Amended by Acts 1982, No. 686, §1; Acts 1983, 1st Ex. Sess., No. 32, §1; Acts 1997, No. 759, §3, eff. July 10, 1997.

Art. 215.2. Detaining of persons on premises of correctional institution for questioning about contraband; detention for arrest

A. A specifically authorized employee of a correctional institution may use reasonable force to detain a person for questioning on the premises of a correctional institution for a length of time not to exceed one hour, when he has reasonable cause to believe that the person is carrying contraband as defined in R.S. 14:402(D).

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B. The specifically authorized employee, when he has reasonable cause to believe that the person is carrying contraband as defined in R.S. 14:402(D), may also detain such a person for arrest by a peace officer or for the procurement of a search warrant. The detention shall not constitute an arrest.

Added by Acts 1984, No. 236, §1.

Art. 216. Time and place of making arrest

An arrest may be made on any day and at any time of the day or night, and at any place.

Art. 217. Method of arrest by officer under warrant

A peace officer, when making an arrest by virtue of a warrant, shall inform the person to be arrested of his authority and of the fact that a warrant has been issued for his arrest, unless he flees or forcibly resists before the officer has an opportunity to inform him, or unless the giving of such information would imperil the arrest. The officer need not have the warrant in his possession at the time of the arrest, but after the arrest, if the person arrested so requests, the warrant shall be shown to him as soon as practicable.

Art. 218. Method of arrest without warrant

A peace officer, when making an arrest without a warrant, shall inform the person to be arrested of his intention to arrest him, of his authority, and of the cause of the arrest. A private person, when making an arrest, shall inform the person to be arrested of his intention to arrest him and of the cause of the arrest.

The officer or private person making the arrest need not so inform the person to be arrested if the person is then engaged in the commission of an offense, or is pursued immediately after its commission or after an escape, or flees or forcibly resists before the officer or person making the arrest has an opportunity to so inform him, or when the giving of the information would imperil the arrest.

Art. 218.1. Advice of reasons for arrest or detention and of rights

When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of the reason for his arrest or detention, his right to remain silent, his right against self incrimination, his right to the assistance of counsel and, if indigent, his right to court appointed counsel.

Added by Acts 1974, Ex.Sess., No. 27, §1, eff. Jan. 1, 1975.

Art. 219. Officer may summon assistance

A peace officer making a lawful arrest may call upon as many persons as he considers necessary to aid him in making the arrest. A person thus called upon shall be considered a peace officer for such purposes.

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Art. 220. Submission to arrest; use of force

A person shall submit peaceably to a lawful arrest. The person making a lawful arrest may use reasonable force to effect the arrest and detention, and also to overcome any resistance or threatened resistance of the person being arrested or detained.

Art. 221. Blood and saliva testing

A.(1) Following arrest if an offender is charged by bill of information or indicted by a grand jury for intentionally exposing a police officer to AIDS virus as defined in R.S. 14:43.5, or battery upon a police officer as defined in R.S. 14:34.2, the police officer may be tested to determine whether the police officer is infected with a sexually transmitted disease, or is infected with acquired immune deficiency syndrome (AIDS), the human immunodeficiency virus (HIV), HIV-1 antibodies, or any other probable causative agent of AIDS, or other infectious disease resulting from this exposure, or viral hepatitis.

(2) For purposes of this Article, "police officer" means a commissioned police officer, sheriff, deputy sheriff, marshal, deputy marshal, correctional officer, constable, wildlife enforcement agent, and probation and parole officer.

B.(1) If testing is requested by the police officer, as provided in Paragraph A of this Article, the testing shall be performed at a state hospital or other facility as determined by the Louisiana Department of Health or as provided by law.

(2) If the police officer tested under the provisions of this Paragraph tests positive for AIDS, HIV, HIV-1 antibodies, or any other probable causative agent of AIDS, viral hepatitis, or other infectious disease, the police officer, upon request, shall be provided with the following services:

(a) Counseling regarding HIV, viral hepatitis, or other infectious disease.

(b) Referral to appropriate health care and support services. These services shall be provided in accordance with applicable state law and the regulations governing the specific programs under which the services are to be provided.

(3) The cost associated with this testing and services shall be paid by the employing law enforcement agency of the police officer. The agency may seek reimbursement for these expenses from the offender.

C.(1) If the police officer tested under the provisions of Paragraph B tests positive for AIDS, HIV, HIV-1 antibodies, or any other probable causative agent of AIDS, viral hepatitis, or other infectious disease, then the offender who may have exposed the officer shall submit to a test designed to determine whether the offender is infected with a sexually transmitted disease, or is infected with acquired immune deficiency syndrome (AIDS), the human immunodeficiency virus (HIV), HIV-1 antibodies, or any other probable causative agent of AIDS, viral hepatitis, or other infectious disease.

(2) The procedure or test shall be performed by a qualified physician or other qualified person who shall report any positive result to the chief administrator of the jail or correctional facility, if the offender is incarcerated, and shall also notify the offender, regardless of the results. If the offender is incarcerated, the test may be administered at the place of incarceration or the offender may be transferred to an appropriate testing facility and returned to incarceration following the testing procedure.

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(3) If the offender tested under the provisions of this Paragraph tests positive for AIDS, HIV, HIV-1 antibodies, or any other probable causative agent of AIDS, viral hepatitis, or other infectious disease, upon request, he shall be provided with the following services:

(a) Counseling regarding HIV, viral hepatitis, or other infectious disease.

(b) Referral to appropriate health care and support services. These services shall be provided in accordance with applicable state law and the regulations governing the specific programs under which the services are to be provided.

(4) The costs associated with this testing shall be paid by the offender.

Acts 1997, No. 1012, §1.

Art. 222. Blood and saliva testing; expedited, nonincriminating procedure

A. Any person who commits any act which exposes a law enforcement officer to a serious infectious disease by any means resulting in contact with the officer during the course and scope of an arrest or through the investigation and handling of evidence related to the arrest for any offense shall be required to submit within seventy-two hours of the exposure to a test designed to determine whether he is infected with a sexually transmitted disease, acquired immune deficiency syndrome (AIDS), the human immunodeficiency virus (HIV), HIV-1 antibodies, any other probable causative agent of AIDS, viral hepatitis, or any other serious infectious disease.

B. Any law enforcement officer who believes he has been the victim of an act which has exposed him to a serious infectious disease as provided in Paragraph A of this Article shall notify by affidavit, subject to penalty for false swearing, the criminal district court that the exposure has occurred. The court may order the testing, as provided in this Article.

C. The court shall include in its order the designation of an appropriate facility for the procedure and shall require that the results be reported to the court. The court shall provide the results to the law enforcement officer and the alleged offender and shall provide them to health authorities in accordance with law.

D. 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.

E. For purposes of this Article:

(1) "Act" means spitting, biting, or scratching; the throwing of blood or other bodily substances by any means; and any other method of intentional or non-intentional exposure to blood or other bodily substances.

(2) "Law enforcement officer" means a commissioned police officer, sheriff, deputy sheriff, marshal, deputy marshal, correctional officer, constable, wildlife enforcement agent, probation and parole officer, or any officer of the court. "Law enforcement officer" includes a civilian employee of the Louisiana State Police Crime Laboratory or any other forensic laboratory while engaged in the performance of the employee's lawful duties. "Law enforcement officer" also includes any licensed emergency medical services practitioner as defined by R.S. 40:1131 and any firefighter regularly employed by a fire department of any municipality, parish, or fire protection district of the state or any volunteer firefighter of the state.

F. The costs associated with testing as authorized by this Article shall be paid by the offender.

G. If the person tested under the provisions of this Article tests positive for a sexually transmitted disease, AIDS, HIV, HIV-1 antibodies, any other probable causative agent of AIDS,

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viral hepatitis, or any other serious infectious disease, the court shall inform that person of available counseling, healthcare, and support services.

Acts 1999, No. 1247, §1; Acts 2018, No. 118, §1.

Art. 223. Identification of minor or dependent children upon arrest; required inquiry; guidelines

A. A state or local law enforcement officer who arrests a person shall, at the time of the arrest, do all of the following if practicable:

(1) Inquire whether the person is a parent or guardian of a minor or dependent child under the care, custody, or control of the arrested person at the time of the arrest, who may be at risk as a result of the arrest.

(2) Ascertain whether a child is present, relying on all available information including any information received from emergency call operators and any indications at the scene of arrest that a child may be present or at another location.

(3) Permit an arrested person a reasonable opportunity, including providing access to telephone numbers stored in a mobile telephone or other location, to make alternate arrangements for the care of a child under his care, custody, or control, including a child who is not present at the scene of the arrest, and to provide a partner organization with contact information of a preferred alternate caregiver.

(4) Provide an arrested person the opportunity to speak with a child who is present, prior to such caregiver being transported to a police facility. If such an opportunity is not practicable, having a police officer explain to such child, using age appropriate language, that such child did nothing wrong and that the child will be safe and cared for.

(5) Make reasonable efforts to ensure the safety of minor or dependent children at risk as a result of an arrest in accordance with guidelines established pursuant to R.S. 40:2405.9.

B. Law enforcement officers are not required to adhere to the guidelines of Paragraph A of this Article if any of the following circumstances are present:

(1) The arrested caregiver presents a threat of serious bodily injury or death to himself, others, or the law enforcement officer.

(2) The arrested caregiver is in the act of committing a crime of violence as defined in R.S. 14:2(B).

(3) The law enforcement officer has exercised due diligence, based on all available information, and ascertains that no minor children are under the arrested person's care, custody, or control.

Acts 2021, No. 126, §2.

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Art. 224. Forcible entry in making arrest

In order to make an arrest, a peace officer, who has announced his authority and purpose, may break open an outer or inner door or window of any vehicle, watercraft, aircraft, dwelling or other structure, movable or immovable, where the person to be arrested is or is reasonably believed to be, if he is refused or otherwise obstructed from admittance. The peace officer need not announce his authority and purpose when to do so would imperil the arrest.

Art. 225. Duty of peace officer as to weapons and incriminating articles

A peace officer making an arrest shall take from the person arrested all weapons and incriminating articles which he may have about his person. He shall deliver these articles and all other evidence seized incidental to the arrest to the sheriff, chief of police, or other officer before whom the person arrested is taken.

Art. 226. Duty of private person after making arrest

A private person who has made an arrest shall immediately turn the prisoner and all effects removed from him over to a peace officer.

Art. 227. Rearrest after escape

If a person lawfully arrested escapes or is rescued, the person from whose custody he escaped or was rescued may pursue and retake him immediately without a warrant at any time and in any place within the state. He may use the same means to retake as are authorized for an arrest.

Art. 227.1. Prevention of escape; use of force

A guard or other law enforcement officer is justified in the reasonable use of force, to prevent the escape from a state correctional facility, parish prison, or the physical custody of a guard or other law enforcement officer of a person under sentence or awaiting trial.

Acts 1985, No. 792, §1; Acts 1987, No. 790, §1.

Art. 228. Booking of arrested person, submission of booking information summary

A. It is the duty of every peace officer making an arrest, or having an arrested person in his custody, promptly to conduct the person arrested to the nearest jail or police station and cause him to be booked.

B. A person is booked by an entry, in a book kept for that purpose, showing his name and address, a list of any property taken from him, the date and time of booking, and the submission of a booking information summary as provided for in Paragraph C of this Article to the person making the entry in the police or jail book. Every jail and police station shall keep a book for the listing of the above information as to each prisoner received. The book and booking information summaries shall always be open for public inspection. The person booked shall be imprisoned unless he is released on bail.

C.(1) At the time of booking, the peace officer causing the arrested person to be booked shall deliver to the person at the jail or police station who accepts custody of the arrestee a booking information summary which shall include at least the following information:

(a) The proper legal name of the arrestee, if known.

(b) The charge or charges upon which the person was arrested and the name of the person making the arrest.

(c) A short recitation of the facts or events which caused the defendant to be arrested.

(d) The names of all other persons arrested as a result of the same events or facts.

(2) If the peace officer presenting an arrestee for booking is unable to submit a complete booking information summary, he shall provide the person receiving custody of the arrestee a

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written statement or form, explaining why a complete booking information summary cannot be presented.

Acts 1992, No. 672, §1.

Art. 228.1. Disposal of property of prisoners; Orleans Parish

Any property taken from a prisoner in any of the penal institutions under the jurisdiction of the criminal sheriff for the parish of Orleans shall, after 90 days from the release of said prisoner, be disposed of in the following manner:

(1) There shall be notice of the sheriff's right to dispose of the property in ninety days on the entry of the list of property made at the time the person is incarcerated. Provided however, this provision shall not apply to property in possession of the sheriff at the effective date of this Act.

(2) After the passage of ninety days from the release of the prisoner, and providing the property is not needed for any legal reason by the sheriff, and it remains unclaimed, the criminal sheriff of Orleans Parish may petition the Criminal District Court for the parish of Orleans or any court of proper jurisdiction for the disposal of said property in any lawful manner, at his discretion.

(3) Before the criminal sheriff petitions said court he shall cause an advertisement of his intention to seek approval of the court to be placed in the newspaper designated as the official journal of the city of New Orleans one time at least ten days prior to filing of his petition. In the petition for disposal the sheriff shall set forth a brief description of the items to be disposed of, the court in which the proceedings will be filed, the title of the proceedings, and method or methods of intended disposal.

(4) The petition of the sheriff shall make specific recommendations as to the method of disposal for each item of unclaimed property and pray for the court to order its disposal.

(5) The court shall order the property disposed of in the manner contained in the sheriff's petition or order the disposal of the property in any legal manner within the sole discretion of the court.

(6) The costs of the proceeding to dispose of unclaimed property shall be derived from the disposal of the property as provided under this subsection.

(7) Any funds remaining after payment of the cost of the proceedings to dispose of unclaimed property shall be deposited in the criminal court fund account which shall be used in defraying the expenses of the criminal district courts of Orleans Parish.

Added by Acts 1974, No. 285, §1.

Art. 228.2. Disposal of property of prisoners; Orleans Parish excepted

A. Any property taken from a prisoner in any of the penal institutions under the jurisdiction of any sheriff, Orleans excepted, which is in the possession of the sheriff on July 31, 2001, shall, after ninety days from the release of said prisoner, be disposed of, if unclaimed, in the following manner:

(1) There shall be notice of the sheriff's right to dispose of the property in ninety days on the entry of the list of property made at the time the person was incarcerated. Provided however, this provision shall not apply to property in possession of the sheriff on September 12, 1975.

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(2) After the passage of ninety days from the release of the prisoner, any sheriff may petition the court having proper jurisdiction for the disposal of said property in any lawful manner, at his discretion.

(3) Before any sheriff petitions said court, he shall cause an advertisement of his intention to seek approval of the court to be placed in the newspaper designated as the official journal of the parish one time at least ten days prior to filing of his petition and shall mail a copy of the advertisement to the prisoner at his last known address, postage prepaid. In the petition for disposal the sheriff shall set forth a brief description of the items to be disposed of, the court in which the proceedings will be filed, the title of the proceedings, and method or methods of intended disposal.

(4) The petition of the sheriff shall make specific recommendations as to the method of disposal for each item of unclaimed property and pray for the court to order its disposal.

(5) The court shall order the property disposed of in the manner contained in the sheriff's petition or order the disposal of the property in any legal manner within the sole discretion of the court.

(6) The costs of the proceedings to dispose of unclaimed property shall be derived from the disposal of the property as provided under this Subsection.

(7) Any funds remaining after payment of the costs of the proceedings to dispose of unclaimed property shall be deposited in the sheriff's salary fund.

B. Any property taken from a prisoner in any of the penal institutions under the jurisdiction of any sheriff, Orleans excepted, after July 31, 2001, shall be disposed of after ninety days from the release or transfer of the prisoner, if unclaimed, in the following manner:

(1) The sheriff shall make a notation on the property list of the prisoner at the time of incarceration that he has the right to dispose of unclaimed property as provided in this Paragraph.

(2) The sheriff or an officer acting on his behalf shall provide written notice of the sheriff's right to dispose of unclaimed property to each prisoner upon the release or transfer of such prisoner. The sheriff or officer shall require the prisoner to sign the written notice acknowledging the sheriff's right to dispose of such property. In the event that the prisoner refuses to sign the acknowledgment, the sheriff or officer shall make a notation on the written notice that the prisoner refused to sign the acknowledgment of such right.

(3) After notice is given to the prisoner and after the expiration of ninety days from the date of release or transfer of the prisoner, if the property of the prisoner remains unclaimed, the sheriff may dispose of such property in any lawful manner at his discretion, including but not limited to authorizing the unclaimed property to be destroyed, donated to a charitable organization, or put into lawful use within the institution from which the inmate was released or transferred. Any legal tender which remains unclaimed shall be placed in a fund for the benefit of all inmates at such institution. A record of the disposition of all unclaimed property shall be maintained for a period of two years from the date of disposal.

C. For the purposes of this Article, "unclaimed property" means property that a prisoner leaves at a correctional institution or fails to take upon his release or transfer from the institution and to which no claim is made within ninety days of his release or transfer from the institution.

Added by Acts 1975, No. 544, §1; Acts 2001, No. 1123, §1, eff. June 28, 2001.

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Art. 228.3. Disposal of unclaimed property seized in any criminal investigation; Orleans Parish excepted

Any unclaimed property seized in connection with any criminal investigation under the jurisdiction of any sheriff, Orleans excepted, shall, if it remains unclaimed for more than one year after its use or from the time it was last used in connection with any criminal proceeding, be disposed of in the following manner:

(1) After the lapse of one year any sheriff may petition the court having proper jurisdiction for the disposal of said property in any lawful manner.

(2) Before any sheriff petitions said court he shall cause an advertisement of his intention to seek approval of the court to be placed in the newspaper designated as the official journal of the parish one time at least ten days prior to filing of his petition, and shall mail a copy of the advertisement to the last known owner at his last known address, postage prepaid. In the petition for disposal the sheriff shall set forth a brief description of the items to be disposed of, the court in which the proceedings will be filed, the title of the proceedings, and method or methods of intended disposal.

(3) The petition of the sheriff shall make specific recommendations as to the method of disposal for each item of unclaimed property and pray for the court to order its disposal.

(4) The court shall order the property disposed of in the manner contained in the sheriff's petition or order the disposal of the property in any legal manner within the sole discretion of the court.

(5) The costs of the proceedings to dispose of unclaimed property shall be derived from the disposal of the property as provided under this Subsection.

(6) Any funds remaining after payment of the cost of the proceedings to dispose of unclaimed property shall be deposited in the sheriff's salary fund.

Added by Acts 1975, No. [illegible], §[illegible]

Art. 228.4. Disposal of noncontraband unclaimed property seized in criminal investigations

Any noncontraband unclaimed property seized in connection with any criminal investigation under the jurisdiction of any district attorney, municipal police department, or state investigative agency shall, if it remains unclaimed for more than one year after its seizure and provided it is not needed in any criminal proceeding, be disposed of in the following manner:

(1) After the lapse of one year, the district attorney of the parish in which the noncontraband property is located is authorized to petition any court in that parish having proper jurisdiction for the disposal of the property in any lawful manner. Any petition filed pursuant to this Article shall be without cost and on behalf of the district attorney, municipal police department, or state investigative agency which has custody of the noncontraband property.

(2)(a) Before any district attorney petitions the court, he shall cause an advertisement of his intention to seek approval of the court to be placed in the newspaper designated as the official journal of the parish one time at least ten days prior to filing of his petition, and he shall mail a copy of the advertisement to the last known owner of the property at his last known address, postage prepaid, if the owner is known. If the owner of the property is unknown, no such notice shall be mailed. In the petition for disposal, the district attorney shall set forth a brief description

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of the property to be disposed of, the court in which the proceedings will be filed, the title of the proceedings, and method or methods of intended disposal.

(b) The district attorney shall have a duty to determine if any of the property for which disposal is sought is subject to a prior recorded mortgage, lien or security interest held by a federally insured financial institution defined herein as an "interest holder". If an "interest holder's" name and address are required by law to be recorded with the parish clerk of court, the motor vehicle division of the Department of Public Safety and Corrections, the vessel division of the Department of Wildlife and Fisheries, or another state or federal agency to perfect an interest in the property, and the "interest holder's" current address is not known, he shall mail a copy of the notice by certified mail, return receipt requested, to any address of record with any of the described agencies, or if the "interest holder's" address is not on record, he shall notify the "interest holder" by publication as required in Subparagraph (a) of this Paragraph.

(3) The petition of the district attorney shall make specific recommendations as to the manner of disposal for each item of unclaimed noncontraband property and pray for the court to order its disposal.

(4) The court shall order the disposal of the noncontraband property according to the specific recommendations contained in the district attorney's petition or in any legal manner within the sole discretion of the court. If the manner of disposal ordered by the court is not in accordance with the manner contained in the district attorney's petition, the district attorney may withdraw the petition.

(5) All items of property designated by the court for sale shall be sold either by public sale, without appraisal, or by public auction conducted by a licensed auctioneer, without appraisal.

(6) If the manner of disposal ordered by the court generates any direct revenue, the proceeds shall be distributed in the following order of priority:

(a) For satisfaction of the costs of the proceedings to dispose of noncontraband unclaimed property.

(b) Thirty percent to the district attorney to defer the expenses of bringing any such action before the court.

(c) The remaining funds to the investigative agency that stored, maintained, insured, or bore the administrative costs as is related to maintaining the property seized in criminal investigations.

(7) Weapons released to the district attorney, municipal police department, or state investigative agency by the court pursuant to this Article shall become the property of that office, department, or agency and may be disposed of or issued in any manner which that office, department, or agency deems appropriate.

Acts 2010, No. 976, §1.

Art. 229. Duties of officer in charge

The officer in charge of the jail or police station shall immediately inform the prisoner booked:

(1) Of the charge against him;

(2) Of his rights to communicate with and procure counsel; and

(3) Of his right to request a preliminary examination when he is charged with a felony.

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The officer in charge shall, within forty-eight hours from the time of the booking, notify the district attorney in writing of all persons booked for violation of state statutes, and shall furnish without cost a certified copy of any booking entry to any person requesting it.

Art. 230. Rights of person arrested

The person arrested has, from the moment of his arrest, a right to procure and confer with counsel and to use a telephone or send a messenger for the purpose of communicating with his friends or with counsel.

Art. 230.1. Maximum time for appearance before judge for the purpose of appointment of counsel; court discretion to fix bail at the appearance; extension of time limit for cause; effect of failure of appearance

A. The sheriff or law enforcement officer having custody of an arrested person shall bring him promptly, and in any case within seventy-two hours from the time of the arrest, before a judge for the purpose of appointment of counsel. Saturdays, Sundays, and legal holidays shall be excluded in computing the seventy-two-hour period referred to herein. The defendant shall appear in person unless the court by local rule provides for such appearance by telephone or audio-video electronic equipment. However, upon a showing that the defendant is incapacitated, unconscious, or otherwise physically or mentally unable to appear in court within seventy-two hours, then the defendant's presence is waived by law, and a judge shall appoint counsel to represent the defendant within seventy-two hours from the time of arrest.

B. At this appearance, if a defendant has the right to have the court appoint counsel to defend him, the court shall assign counsel to the defendant. The court may also, in its discretion, determine or review a prior determination of the amount of bail.

C. If the arrested person is not brought before a judge in accordance with the provisions of Paragraph A of this Article, he shall be released on his own recognizance.

D. The failure of the sheriff or law enforcement officer to comply with the requirements herein shall have no effect whatsoever upon the validity of the proceedings thereafter against the defendant.

Added by Acts 1972, No. 700, §1. Amended by Acts 1977, No. 395, §1; Acts 1984, No. 206, §1; Acts 1985, No. 955, §1; Acts 2006, No. 811, §1; Acts 2018, No. 129, §1.

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Art. 230.2. Probable cause determinations; persons arrested without a warrant and continued in custody; bail

A. A law enforcement officer effecting the arrest of a person without a warrant shall promptly complete an affidavit of probable cause supporting the arrest of the person and submit it to a magistrate. Persons continued or remaining in custody pursuant to an arrest made without a warrant shall be entitled to a determination of probable cause within forty-eight hours of arrest. The probable cause determination shall be made by a magistrate and shall not be an adversary proceeding. The determination may be made without the presence of the defendant and may be made upon affidavits or other written evidence, which may be transmitted to the magistrate by means of facsimile transmission or other electronic means. A magistrate's determination of probable cause hereunder shall not act as a waiver of a person's right to a preliminary examination pursuant to Article 292.

B.(1) If a probable cause determination is not timely made in accordance with the provisions of Paragraph A of this Article, the arrested person shall be released on his own recognizance.

(2) Nothing in this Paragraph shall preclude the defendant's rearrest and resetting of bond for the same offense or offenses upon the issuance of an arrest warrant based upon a finding of probable cause by a magistrate.

Acts 1992, No. 674, §1; Acts 2010, No. 260, §1; Acts 2011, No. 83, §1.

Art. 231. Close pursuit of person from another state; authority to arrest

A state, county, or city peace officer of another state of the United States who enters this state in close pursuit of a person and continues within this state in close pursuit to arrest him on the ground that he is reasonably believed to have committed a felony in the other state, shall have the same authority to arrest and hold the person in custody as has a peace officer of this state to arrest and hold a person in custody on the ground that he is reasonably believed to have committed a felony in this state.

This article shall not be construed so as to make unlawful any arrest in this state that would otherwise be lawful.

Art. 232. Same; arrested person taken before judge for hearing

An officer making an arrest under Article 231 shall, without unnecessary delay, take the person arrested before a judge of the parish in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the judge determines that the arrest was lawful he shall, subject to rights of bail as stated in Article 271, commit the person arrested to jail for a period of time, not exceeding thirty days, to await the issuance of an extradition warrant by the governor of this state. If the judge determines that the arrest was unlawful he shall discharge the person arrested.

Art. 233. Electronic signature of offender; requirements

A. Law enforcement agencies are authorized to utilize the electronic signature of any offender. The signature may be captured by any generally accepted method or process of electronic signature capture, including the use of devices which capture and convert analog writing to electronic or digital form.

B. If any provision of law requires a signature or any record, bail undertaking, summons, or affidavit to be signed, acknowledged, verified, or made under oath by a criminal offender, the requirement is satisfied if the electronic signature of the offender, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

C. For purposes of this Section, "electronic signature" shall mean an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

Acts 2010, No. 583, §1

Art. 234. Booking photographs

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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

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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.

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TITLE V-A. EYEWITNESS IDENTIFICATION PROCEDURES

Art. 251. Legislative intent

A. The legislature finds that police investigations are strengthened by the use of best practices for investigative procedures, which increase the ability of law enforcement to keep communities safe and apprehend those suspected of criminal activity, reduce erroneous eyewitness identifications, and enhance the reliability and objectivity of eyewitness identification.

B. The legislature further finds that policies and procedures to improve the accuracy of eyewitness identifications, such as those recommended by the Louisiana Sheriff's Executive Management Institute (LSEMI) and the Federal Bureau of Investigation, would help to ensure that the integrity of Louisiana criminal justice investigations is strengthened and enhanced so as to convict the guilty and protect the innocent.

Acts 2018, No. 466, §1, eff. May 23, 2018.

Art. 252. Definitions

For purposes of this Title:

(1) "Administrator" means the person conducting the photo or live lineup.

(2) "Blind" means conducted in such a way that the administrator does not know the identity of the suspect.

(3) "Blinded" means conducted in such a way that the administrator may know who the suspect is, but does not know which lineup member is being viewed by the eyewitness.

(4) "Criminal justice entity" means any government agency or subunit thereof, or private agency that, through statutory authorization or a legal formal agreement with a governmental unit or agency, has the power of investigation, arrest, detention, prosecution, adjudication, treatment, supervision, rehabilitation, or release of persons suspected, charged, or convicted of a crime.

(5) "Eyewitness" means a person who observes another person at or near the scene of an offense.

(6) "Filler" means either a person or a photograph of a person who is not suspected of an offense but is included in an identification procedure.

(7) "Folder shuffle method" means a blinded procedure in which the suspect photos and nonsuspect or filler photos are each placed in separate folders for a total of six photographs and shuffled together along with four blank folders and handed to the eyewitness one at a time so that the administrator cannot see which photograph the eyewitness is viewing.

(8) "Live lineup" means an identification procedure in which a group of persons, including the suspected perpetrator of an offense and other persons not suspected of the offense, is displayed to an eyewitness for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator.

(9) "Photo lineup" means an identification procedure in which an array of photographs, including a photograph of the suspected perpetrator of an offense and additional photographs of other persons not suspected of the offense, is displayed to an eyewitness either in hard copy form or via computer or similar device for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator.

(10) "Suspect" means a person believed by law enforcement to be the possible perpetrator of an offense.

Acts 2018, No. 466, §1, eff. May 23, 2018.

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Art. 253. Eyewitness identification procedures

A.(1) No later than January 30, 2019, any criminal justice entity conducting eyewitness identifications shall either adopt the LSEMI model policy or draft its own policy that minimally comports to key best practices as outlined in this Article.

(2) Each criminal justice entity that administers eyewitness identification procedures shall provide a copy of its written policies to the Louisiana Commission on Law Enforcement and Administration of Criminal Justice no later than March 1, 2019.

B. For any criminal justice entity that elects to draft its own policy on eyewitness identification procedures, these policies shall:

(1) Be based on all of the following:

(a) Credible field, academic, or laboratory research on eyewitness memory.

(b) Relevant policies, guidelines, and best practices designed to reduce erroneous eyewitness identifications and to enhance the reliability and objectivity of eyewitness identifications.

(c) Other relevant information as appropriate.

(2) Include the following information regarding evidence-based practices:

(a) Procedures for selecting photograph and live lineup filler photographs or participants to ensure that the photographs or participants:

(i) Are consistent in appearance with the description of the alleged perpetrator.

(ii) Do not make the suspect noticeably stand out.

(b) Instructions given to a witness before conducting a photograph or live lineup identification procedure shall include a statement that the person who committed the offense may or may not be present in the procedure.

(c) Procedures for documenting and preserving the results of a photograph or live lineup identification procedure, including the documentation of witness statements, regardless of the outcome of the procedure.

(d) Procedures for administering a photograph or live lineup identification procedure to an illiterate person or a person with limited English language proficiency.

(e) For a live lineup identification procedure, if practicable, procedures for assigning an administrator who is unaware of which member of the live lineup is the suspect in the case or alternative procedures designed to prevent opportunities to influence the witness.

(f) For a photograph identification procedure, procedures for assigning an administrator who is capable of administering a photograph array in a blind manner or in a blinded manner consistent with other proven or supported best practices designed to prevent opportunities to influence the witness.

(g) Any other procedures or best practices supported by credible research or commonly accepted as a means to reduce erroneous eyewitness identifications and to enhance the objectivity and reliability of eyewitness identifications.

(3) Provide that a witness who makes an identification based on a photograph or live lineup identification procedure be asked immediately after the procedure to state, in the witness's own words, how confident the witness is in making the identification. A law enforcement agency shall document in accordance with Subsubparagraph (2)(c) of this Paragraph any statement made under this Subparagraph.

C. Not later than December thirty-first of each odd-numbered year, the institute shall review the model policy and training materials adopted under this Article and shall modify the

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policy and materials as appropriate while maintaining the requirements outlined in Paragraph B of this Article.

D. Not later than December thirty-first of each even-numbered year, each law enforcement agency shall review its policy adopted under this Article and shall modify that policy as appropriate while maintaining the requirements outlined in Paragraph B of this Article.

E. Failure to conduct a photograph or live lineup identification procedure in substantial compliance with the model policy or any other policy adopted under this Article shall not bar the admission of eyewitness identification testimony.

F. A video record of identification procedures shall be made or, if a video record is not practicable, an audio record shall be made. If neither a video nor audio record are practicable, the reasons shall be documented in writing, and the lineup administrator shall make a full and complete written record of the lineup in accordance with Subsubparagraph (B)(2)(c) of this Article.

G. The written eyewitness identification procedures of a criminal justice entity shall be made available, in writing, to the public upon request.

H. Evidence of failure to comply with any of the provisions of this Article:

(1) May be considered by the district court in adjudicating motions to suppress an eyewitness identification.

(2) May be admissible in support of any claim of eyewitness misidentification, as long as the evidence is otherwise admissible.

Acts 2018, No. 466, §1, eff. May 23, 2018

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TITLE VI. EXTRADITION

Art. 261. Special definitions

In this Title:

(1) "Crime" means any offense denounced by a state statute and does not include an offense denounced by a local ordinance.

(2) "Governor" includes any person performing the functions of governor by authority of the law of this state.

(3) "Executive authority" includes the governor, and any person performing the functions of governor in a state other than this state.

(4) "Indictment" is limited in meaning to the finding of a grand jury.

(5) "Judge" means any judge of a district court with criminal jurisdiction.

(6) "State," when used with reference to a state other than this state, means any state or territory of the United States of America, and includes the District of Columbia.

Art. 262. Extradition of wanted criminals

Subject to the provisions of this Title, it is the duty of the governor of this state to have arrested and delivered to the executive authority of any other state any person charged with any felony in that state, or wanted for sentencing or to serve sentence after conviction of a crime, who has fled from justice and who is found in this state.

Acts 2003, No. 1118, §1.

Art. 262.1. Extradition of persons not physically present in demanding state at the time of commission of crime

Subject to the provisions of this Title, the governor may, in his discretion, have arrested and delivered to the executive authority of any other state any person physically present in this state who commits an act which intentionally results in a criminal offense in the demanding state and who is thereafter charged with such offense even though such person was not physically present in that state at the time of the commission of the crime, and has not fled therefrom.

Acts 2003, No. 1118, §1.

Art. 263. Form of demand for extradition; necessary papers

A demand for the extradition of a person wanted in another state shall not be recognized by the governor unless the demand is in writing and states the purpose for which he is wanted. The demand must be accompanied by:

(1) A statement of facts by the prosecuting officer having jurisdiction of the crime, and by a copy of an indictment found or of an information filed in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or

(2) A copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed

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has escaped from confinement or has broken the terms of his bail, probation, parole, furlough, or reprieve.

The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of the indictment, information, affidavit, judgment of conviction, or sentence must be authenticated by the executive authority making the demand.

Art. 264. Investigation of demand by governor

When a demand is made upon the governor of this state by the executive authority of another state for surrender of a person wanted by the other state, the governor may call upon the attorney general, a district attorney, or other official or agency in this state to investigate or assist in investigating the demand, and to report to him the situation of and circumstances surrounding the person so demanded, and whether or not he ought to be surrendered.

Art. 265. Governor's warrant; issuance and recitals

If the governor decides that a demand for extradition should be complied with, he shall sign a warrant of arrest directed to any peace officer for execution. The warrant shall recite facts showing substantial compliance with Article 263, but an incomplete recital of facts shall not invalidate the warrant if a proper basis for its issuance exists.

Art. 266. Governor's warrant; execution and recall

The governor's warrant authorizes any peace officer to arrest the accused at any time and at any place he may be found in the state. The peace officer shall have authority to command the aid of other peace officers or persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this Title, to the designated agent of the demanding state. The governor may recall his warrant of arrest or may issue another warrant at any time.

Acts 1997, No. 1321, §1; Acts 2001, No. 822, §1.

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Art. 267. Rights of accused; extradition hearing

A person arrested upon the governor's warrant shall not be delivered over to the agent appointed by the executive authority to receive him unless he shall first be taken before a judge, or in Orleans Parish, before a judge, a magistrate judge, or a commissioner of the magistrate section of the criminal district court, who shall inform him of the demand made for his surrender, of the crime with which he is charged, of his right to procure legal counsel, and of his right to an extradition hearing. If the prisoner or his counsel states that he desires an extradition hearing, the court shall assign as early a day as practicable for the hearing, to be held in open court. At least one full day shall intervene between the assignment and the day fixed for the hearing. Notice of the time and place of the hearing shall be given to the district attorney of the parish in which the hearing is to be held. If an extradition hearing is not requested, the prisoner shall be delivered promptly to the agent of the demanding state.

Acts 1986, No. 935, §1.

Art. 268. Issues at extradition hearing; resulting orders

A. The grounds for discharge at the extradition hearing are that:

(1) The accused is not the person mentioned in the governor's warrant, in the requisition, or in the judgment of conviction, sentence, indictment, information, or affidavit which is the basis of the requisition;

(2) The governor's warrant is not signed; or

(3) A requirement of Art. 263 has not been met.

B. The guilt or innocence of the accused as to the crime of which he is charged is not an issue at the hearing. Unless one of the grounds for discharge is proven, the accused shall, without further delay, be delivered into the custody of the designated agent of the demanding state.

C. The court may commit the accused for an additional thirty-day period, to enable the demanding state to furnish the proper and necessary papers, if a ground for discharge under Subparagraph (2) or (3) under Paragraph (A) has been established. If some other ground for discharge is established the accused shall, without further delay, be released.

Art. 269. Arrest prior to demand for extradition; issuance of warrant

A judge may issue a warrant for the arrest of a person in this state, prior to a demand for extradition in conformity with Article 263, when on the oath or affidavit of a credible person, taken before a judge or clerk of court, the person to be arrested is charged with:

(1) Being a fugitive from justice of another state;

(2) Commission of a crime in another state; or

(3) Having been convicted of a crime in another state, and having escaped from confinement or having broken the terms of his bail, probation, parole, furlough, or reprieve.

In this article, "judge" means any judge of a district, city, or parish court with criminal jurisdiction.

Amended by Acts 1970, No. 2[illegible]2, §1.

Art. 270. Commitment to await extradition

A. The judge shall commit the accused for thirty days if it appears, after a hearing in open court pursuant to Article 269, that there is reasonable ground to hold him awaiting extradition. The order of commitment shall recite the accusation. The accused shall be imprisoned in the parish jail until the term of his commitment expires or he is otherwise legally discharged, unless he gives bail as provided in Article 271.

B. The judge may extend the commitment of the accused for an additional period, not to exceed sixty days, if such additional period of commitment is for the purpose of awaiting receipt of the extradition requisition or other necessary or proper papers needed for the extradition of the accused.

Amended by Acts 1982, No. 470, §1; Acts 2005, No. 358, §1.

Art. 271. Bail in extradition cases

A.(1) A judge may admit to bail a person arrested for extradition, or to await extradition, unless the offense with which the accused is charged is punishable by death or by life imprisonment under the laws of the state in which it was committed or unless the offender is charged as a parole

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or probation violator, is a convict charged with escape, or the offender is serving a sentence with the department of corrections in the state from which he has been extradited. Under no circumstances shall such an accused be admitted to bail.

(2) Except as otherwise provided in Subparagraph (1) of this Paragraph, if the accused is charged with a crime of violence as defined in R.S. 14:2(B) or with the production, manufacture, distribution, or dispensing or possession with intent to produce, manufacture, distribute, or dispense a controlled dangerous substance as defined by the Uniform Controlled Dangerous Substances Law, the accused shall not be bailable if, after a contradictory hearing, the judge or magistrate finds by clear and convincing evidence that there is a substantial risk that the person may flee or poses an imminent danger to any person or the community.

B. A governor's warrant issued under Article 265 shall be presumed to be valid. Notwithstanding the provisions of Paragraph A of this Article, once a warrant is issued, the person named in the warrant shall be held in custody at all times thereafter and shall not be eligible for release on bail.

C. After the extradition proceedings have been held or waived, the agent appointed by the executive authority to receive the prisoner shall have thirty days to do so. If no such agent appears within thirty days, the person arrested for extradition may be discharged.

Acts 1983, No. 584, §1; Acts 2001, No. 846, §1; Acts 2003, No. 1118, §1; Acts 2005, No. 358, §1; Acts 2008, No. 617, §1.

Art. 272. Persons under criminal prosecution or sentence in this state at time of requisition

If a criminal prosecution against the demanded person is pending under the laws of this state, or if he has been convicted in a court of this state but has not completely satisfied his sentence, the governor may, in his discretion, surrender him on demand of the executive authority of the other state. The surrender must be pursuant to a re-extradition agreement, and:

(1) If a prosecution is pending, the district attorney must agree to the surrender; or

(2) If the person demanded has been convicted but has not been sentenced, the court of the conviction must agree to the surrender.

Acts 2003, No. 1118, §1.

Art. 273. Waiver of extradition proceedings

A. A demanded person arrested in this state may waive the issuance and service of the warrant required by Articles 265 and 266 and all other requirements incidental to extradition proceedings, by consenting in writing in the presence of the judge to return to the demanding state. Before such waiver is executed or subscribed to by the demanded person, the judge shall inform him of his rights to the issuance and service of a warrant of extradition and to an extradition hearing. When a waiver has been executed the judge shall direct the officer having the person in custody to deliver him immediately to the accredited agent of the demanding state, with a copy of the waiver.

B. The waiver procedure of Paragraph A of this Article is not exclusive and does not in any way preclude the state's return of a probationer or parolee to another state with which the state of Louisiana has entered into a compact for out-of-state probation and parole supervision, under

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the authority of R.S. 15:574.14(3), or a probation or parole absconder who has signed a waiver of extradition as a condition of probation or parole.

Amended by Acts 1984, No. 139, §1.

Art. 274. Application for issuance of requisition

When a district attorney desires the return to this state of a person wanted to be tried for a crime, he shall present to the governor a written application for a requisition for the return of the person charged. The application shall state the name of the person wanted, the crime with which he is charged, and the approximate time, place, and circumstances of its commission. It shall also specify the state in which he is believed to be and his probable location in that state at the time the application is made. The application shall recommend a peace officer or other person as agent to receive the accused. It shall certify that, in the opinion of the district attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

Art. 275. Application for return of wanted fugitive

When the return to this state of a person convicted of a crime who has escaped from confinement or broken the terms of his bail, probation, parole, furlough, or reprieve is desired, the governor shall be presented with a written application for a requisition for his return. The application may be made by a district attorney or the attorney general, and shall state the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation, parole, furlough, or reprieve. It shall specify the state in which he is believed to be and his probable location in that state at the time the application is made. It shall also recommend a peace officer or other person as agent to receive the person sought.

Art. 276. Documents to be filed with application for requisition

The application for requisition shall be verified by affidavit, executed in duplicate, and accompanied by two certified copies of all documents that are required for extradition by the law of the state from which the wanted person is to be returned. One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the required documents, shall be filed in the office of the secretary of state. The other copies of all papers shall be forwarded with the governor's requisition. Failure to meet the requirements of this article, or of Articles 274 and 275, will not invalidate a requisition issued by the governor.

Art. 277. Appointment of agents to receive prisoner

When the governor issues a requisition for extradition he shall also issue a warrant under the seal of the state, to an agent, commanding him to receive the person to be extradited and to deliver him to the proper authority.

Art. 278. Re-extradition agreements

When the return to this state of a person wanted in this state to be tried for a crime is desired, and the person is imprisoned or is held under criminal proceedings pending against him

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in another state, the governor may enter into a re-extradition agreement with the executive authority of the other state for the purpose of procuring the extradition of the person before the conclusion of the proceedings or his term of sentence in the other state. The agreement shall be upon the condition that the person extradited will be returned to the other state without further extradition proceedings, upon the request of the executive authority of that state and at the expense of this state.

Art. 279. Extradition costs and expenses

A. Whenever a person has been released on bail pursuant to a commercial surety bond and is subsequently located in another state, the reasonable and necessary expenses incurred in having that person returned to the parish in which charges are pending against him, whether through extradition proceedings or otherwise, shall be paid by the commercial surety provided that the surety was given notice of extradition or waiver of extradition and was provided seventy-two hours to return the person to the parish at his cost. Payment of these expenses shall be due within thirty days after written notice thereof has been given to the surety at the address provided pursuant to Code of Criminal Procedure Article 322. The commercial surety shall not be relieved of his obligation on the bond until the commercial surety has paid said reasonable and necessary costs for the return of the wanted person.

B. Except as provided in Paragraph A of this Article, the necessary and reasonable expenses connected with an extradition in all other cases shall be paid by the authority for whom it was requested.

Acts 2003, No. 954, §1.

Art. 280. Immunity of extradited person from service of process in civil actions

A person brought into this state by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions until he has been convicted or has pleaded guilty in the criminal proceeding, or, if acquitted or otherwise discharged, until three days after the acquittal or discharge.

Art. 281. No right of asylum; immunity from other criminal prosecutions

After a person has been brought back to this state by, or after waiver of, extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

Acts 2003, No. 1118, §1.

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Art. 291. Authority to conduct preliminary examinations

The following magistrates, throughout their several territorial jurisdictions, shall have authority to conduct preliminary examinations of persons accused of felonies, with authority to bail or discharge, as follows:

(1) District courts having criminal jurisdiction, in all cases;

(2) City or parish courts having criminal jurisdiction, in cases not capital; and

(3) Justices of the peace in cases not capital or necessarily punishable at hard labor.

Art. 292. Order for preliminary examination before and after indictment

The court, on request of the state or the defendant, shall immediately order a preliminary examination in felony cases unless the defendant has been indicted by a grand jury.

After the defendant has been indicted by a grand jury, the court may rescind its order for a preliminary examination.

An order for a preliminary examination in felony cases may be granted by the court at any time, either on its own motion or on request of the state or of the defendant before or after the defendant has been indicted by a grand jury.

Amended by Acts 1974, Ex.Sess. No. 16, §1, eff. Jan. 1, 1975.

Art. 293. Time for examination; procurement of counsel

When a preliminary examination is ordered, the court shall conduct the examination promptly but shall allow the defendant a reasonable time to procure counsel.

Art. 294. Examination of witnesses; transcript of testimony

A. At the preliminary examination the state and the defendant may produce witnesses, who shall be examined in the presence of the defendant and shall be subject to cross-examination. The defendant may also testify, subject to cross-examination. A record of the preliminary examination proceedings shall be made.

B. Except upon an order issued by the court pursuant to a motion filed by the defendant, a defendant who is charged with a crime against a juvenile may not subpoena the victim to testify at the preliminary examination.

C. A transcript of the testimony of the witnesses, including that of the defendant, may be made by the court or under its direction and, if made, shall be signed and certified by the person taking the testimony.

D. Upon motion of the state or the defendant, a transcript of the preliminary examination proceedings may be made. The cost of the transcript preparation under this Paragraph shall be paid by the party making the motion, unless the party is an indigent defendant.

E. The procedures set forth in Articles 322 through 329 of the Louisiana Children's Code and R.S. 15:440.1 and 283, relative to those procedures which provide protection for children who are victims of physical or sexual abuse, shall apply to all trial and pretrial procedures.

Acts 1986, No. 1029, §1; Acts 1994, 3rd Ex. Sess., No. 142, §1.

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Art. 295. Admissibility of transcripts in other proceedings

A. The transcript of the testimony of a defendant who testified at the preliminary examination is admissible against him upon the trial of the case or, if relevant, in any subsequent judicial proceeding.

B. The transcript of testimony of any other witness who testified at the preliminary examination is admissible for any purpose in any subsequent proceeding in the case, on behalf of either party, if the court finds that the witness is dead, too ill to testify, cannot be found, or is otherwise unavailable for testimony, and that the absence of the witness was not procured by the party offering the testimony.

C. The transcript of testimony given by a person at a preliminary examination may be used by any party in a subsequent judicial proceeding for the purpose of impeaching or contradicting the testimony of such person as a witness.

Amended by Acts 1982, No. 554, §1.

Art. 296. Scope of preliminary examination before and after indictment

If the defendant has not been indicted by a grand jury for the offense charged, the court shall, at the preliminary examination, order his release from custody or bail if, from the evidence adduced, it appears that there is not probable cause to charge him with the offense or with a lesser included offense. If the defendant is ordered held upon a finding of probable cause, the court shall fix his bail if he is entitled to bail.

After an indictment has been found by a grand jury, the preliminary examination shall be limited to the perpetuation of testimony and the fixing of bail.

Art. 297. Transmission of transcripts and other evidence

After the preliminary examination, unless the court has ordered the release of the defendant upon a finding that there is not probable cause to charge him with an offense, the court shall transmit, without delay, to the clerk of the court having jurisdiction of the offense:

(1) The transcript of the testimony of the witnesses, including that of the defendant if he testified;

(2) The order rendered after the examination, or a certified copy thereof; and

(3) All articles or objects admitted in evidence.

Art. 298. Effect of informality in proceedings

A person ordered held in custody following a preliminary examination shall not be discharged on a writ of habeas corpus or by other process because of any informality or error in the commitment or the proceedings prior thereto that does not substantially prejudice him. No preliminary examination shall be held invalid for any purpose because of an informality or error that does not substantially prejudice the defendant.

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TITLE VIII. BAIL

Art. 311. Definitions

For the purpose of this Title, the following definitions shall apply:

(1) Bail is the security given by a person to assure a defendant's appearance before the proper court whenever required.

(2) An appearance is a personal appearance before the court or the court's designee, where the charges are pending.

(3) A surrender is the detention of the defendant at the request of the surety by the officer originally charged with his detention on the original commitment. When the surety has requested the surrender of the defendant, the officer shall acknowledge the surrender by a certificate of surrender signed by him and delivered to the surety.

(4) A constructive surrender is the detention of the defendant in another parish of the state of Louisiana or a foreign jurisdiction under the following circumstances:

(a) A warrant for arrest has been issued for the defendant in the jurisdiction in which the bail obligation is in place.

(b) The surety has provided proof of the defendant's current incarceration to the court in which the bail obligation is in place, to the prosecuting attorney, and to the officer originally charged with the defendant's detention.

(c) The surety has paid reasonable or actual costs of returning the defendant to the jurisdiction where the warrant for arrest was issued by one of the following methods:

(i) Upon presentation of proof of the defendant's current incarceration in a foreign jurisdiction to the officer originally charged with the defendant's detention, the officer shall provide the surety with the reasonable or actual costs of returning the defendant to the jurisdiction where the warrant for arrest was issued when the costs are immediately known or can be estimated.

(ii) The surety tenders to the officer originally charged with the defendant's detention the reasonable or actual costs of returning the defendant to the jurisdiction where the warrant for arrest was issued.

(iii) The surety provides proof of payment to the court and to the prosecuting attorney.

(iv)(aa) In cases where the reasonable or actual costs of returning the defendant to the jurisdiction where the warrant for arrest was issued are not immediately known, the officer originally charged with the defendant's detention shall accept the surety's tender of reasonable costs as provided in R.S. 13:5535 for in-state transfers or for estimated costs for out-of-state transfers.

(bb) The surety shall provide proof of payment to the court and the prosecuting attorney.

(cc) If the actual costs of returning the defendant to the jurisdiction where the warrant for arrest was issued are more than the estimated costs tendered by the surety, the officer originally charged with the defendant's detention may file a rule to show cause with the court to recover the difference.

(5) A surety's motion and affidavit for issuance of warrant may be filed when the defendant is found incarcerated in a foreign jurisdiction and a warrant has not been issued by the court or in which the bail obligation is in place. In such instances, the surety may file a motion with the court requesting a warrant be issued when the following conditions have been met:

(a) There has been a breach of the bail undertaking.

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(b) The surety provides proof of the defendant's current incarceration outside of the state of Louisiana. The defendant's incarceration may be used as evidence of a breach of the bail undertaking.

(c) The defendant did not have written permission from the court to leave the state of Louisiana.

(d) Upon presentation of evidence of the breach of the bail undertaking, the court may issue a warrant for the defendant's violation of the conditions of the bail undertaking.

(e) The surety may then file the constructive surrender in accordance with this Article and Article 331.

(6) A personal surety is a natural person domiciled in the state of Louisiana who owns property in this state that is subject to seizure and is of sufficient value to satisfy, considering all his property, the amount specified in the bail undertaking. The value of the property shall exclude the amount exempt from execution, and shall be over and above all other liabilities including the amount of any other bail undertaking on which he may be principal or surety. If there is more than one personal surety, then the requirements shall apply to the aggregate value of their property. A personal surety shall not charge a fee or receive any compensation for posting a bail undertaking. A bail undertaking of a personal surety may be unsecured or secured.

(7) Bail enforcement is the apprehension or surrender by a natural person of a principal who is released on bail or who has failed to appear at any stage of the proceedings to answer the charge before the court in which the principal may be prosecuted.

(8) A bail enforcement agent is a licensed bail agent who engages in the apprehension or surrender by a natural person of a principal who is released on bail or who has failed to appear at any stage of the proceedings to answer the charge before the court in which the principal may be prosecuted.

(9) The originating jurisdiction is the jurisdiction where the warrant for the arrest was issued and where the charges are pending.

(10) The executing jurisdiction is the jurisdiction where the defendant is arrested and incarcerated on a warrant of arrest.

Acts 2016, No. 613, §1, eff. Jan. 1, 2017; Acts 2020, No. 267, §1; Acts 2021, No. 197, §1; Acts 2021, No. 243, §1.

Art. 312. Right to bail before and after conviction

A. Except as provided in this Article and Article 313, a person in custody who is charged with the commission of an offense is entitled to bail before conviction.

B. A person released on a previously posted bail undertaking for (1) a crime of violence as defined by R.S. 14:2(B) which carries a minimum mandatory sentence of imprisonment upon conviction or (2) the production, manufacture, distribution, or dispensing or possession with intent to produce, manufacture, distribute, or dispense a controlled dangerous substance as defined by the Louisiana Uniform Controlled Dangerous Substances Law, shall not be readmitted to bail when the person previously failed to appear and a warrant for arrest was issued and not recalled or the previous bail undertaking has been revoked or forfeited. If a person voluntarily appears without confinement by a law enforcement officer or bail recovery agent following a motion to revoke bail or issuance of an arrest warrant for failure to appear but prior to revocation or forfeiture, then he may be released only under one of the following circumstances:

(1) After a contradictory hearing, a person may be released on the previously posted bail undertaking if the motion to revoke bail is rescinded or the arrest warrant is recalled and the surety

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is present or represented at the hearing and gives written consent. Previous instances of revocation and forfeiture in unrelated cases are admissible at the hearing. This relief is available only once.

(2) A person may be released on a new bail undertaking without a contradictory hearing only on bail with a commercial surety and in an amount higher than the original bail.

C. A defendant who has been surrendered under the provisions of Article 331, or has been rearrested under the provisions of Article 332, is entitled to bail in accordance with this Code.

D. A convicted person shall be remanded to jail to await sentence unless any of the following occur:

(1) He is allowed to remain free on a bail undertaking posted prior to conviction by operation of Article 331(A), and the bail previously fixed is in accordance with all of the applicable provisions of this Article.

(2) He is released by virtue of a bail undertaking posted after conviction, and the bail was fixed in accordance with this Article.

E. After conviction and before sentence, bail shall be allowed if the maximum sentence which may be imposed is imprisonment for five years or less. Bail may be allowed pending sentence if the maximum sentence which may be imposed is imprisonment exceeding five years, except when the court has reason to believe, based on competent evidence, that the release of the person convicted will pose a danger to any other person or the community, or that there is a substantial risk that the person convicted might flee.

F. After sentence and until final judgment, bail shall be allowed if a sentence of five years or less is actually imposed. Bail may be allowed after sentence and until final judgment if the sentence actually imposed exceeds imprisonment for five years, except when the court has reason to believe, based on competent evidence, that the release of the person convicted will pose a danger to any other person or the community, or that there is a substantial risk that the person convicted might flee.

G.(1) After conviction of a capital offense, a defendant shall not be allowed bail.

(2)(a) After conviction of any crime punishable by imprisonment for twenty-five years or more that is both a sex offense and a crime of violence, there shall be a rebuttable presumption that the release of the person convicted will pose a danger to another person or the community and that there is a substantial risk that the person convicted might flee.

(b) For purposes of this Paragraph:

(i) "Crime of violence" means any offense defined or enumerated as a crime of violence in R.S. 14:2(B).

(ii) "Sex offense" means any offense that requires registration and notification pursuant to R.S. 15:540 et seq.

H. A person held without bail or unable to post bail may invoke the supervisory jurisdiction of the court of appeal on a claim that the trial court has improperly refused bail or a reduction of bail in a bailable case.

Acts 1993, No. 834, §1, eff. June 22, 1993; Acts 1994, 3rd Ex. Sess., No. 52, §1, eff. Sept. 1, 1994; Acts 2010, No. 914, §1; Acts 2016, No. 613, §1, eff. Jan. 1, 2017; Acts 2018, No. 484, §1, eff. May 25, 2018.

Art. 313. Gwen's Law; bail hearings; detention without bail

A.(1) This Paragraph may be cited as and referred to as "Gwen's Law".

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(2) A contradictory bail hearing, as provided for in this Paragraph, may be held prior to setting bail for a person in custody who is charged with domestic abuse battery, violation of protective orders, stalking, or any felony offense involving the use or threatened use of force or a deadly weapon upon the defendant's family member, as defined in R.S. 46:2132 or 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. If the court orders a contradictory hearing, the hearing shall be held within five days from the date of determination of probable cause, exclusive of weekends and legal holidays. At the contradictory hearing, the court shall determine the conditions of bail or whether the defendant should be held without bail pending trial. If the court decides not to hold a contradictory hearing, it shall notify the prosecuting attorney prior to setting bail.

(3) In addition to the factors listed in Article 316, in determining whether the defendant should be admitted to bail pending trial, or in determining the conditions of bail, the judge or magistrate shall consider the following:

(a) The criminal history of the defendant.

(b) The potential threat or danger the defendant poses to the victim, the family of the victim, or to any member of the public, especially children.

(c) Documented history or records of any of the following: substance abuse by the defendant; threats of suicide by the defendant; the defendant's use of force or threats of use of force against any victim; strangulation, forced sex, or controlling the activities of any victim by the defendant; or threats to kill. Documented history or records may include but are not limited to sworn affidavits, police reports, and medical records.

(4) Following the contradictory hearing and based upon the judge's or magistrate's review of the factors set forth in Subparagraph (A)(3) of this Article, the judge or magistrate may order that the defendant not be admitted to bail, upon proof by clear and convincing evidence either that the defendant might flee, or that the defendant poses an imminent danger to any other person or the community.

(5) If bail is granted, with or without a contradictory hearing, the judge or magistrate shall comply with the provisions of Article 320, as applicable. The judge or magistrate shall consider, as a condition of bail, a requirement that the defendant wear an electronic monitoring device and be placed under active electronic monitoring and house arrest. The conditions of the electronic monitoring and house arrest shall be determined by the court and may include but are not limited to limitation of the defendant's activities outside the home and a curfew. The defendant may be required to pay a reasonable supervision fee to the supervising agency to defray the cost of the required electronic monitoring and house arrest. A violation of the conditions of bail may be punishable by revocation of the bail undertaking and the issuance of a bench warrant for the defendant's arrest or remanding of the defendant to custody or a modification of the terms of bail.

B. Upon motion of the prosecuting attorney, the judge or magistrate may order the temporary detention of a person in custody who is charged with the commission of an offense, for a period of not more than five days, exclusive of weekends and legal holidays, pending the conducting of a contradictory bail hearing. Following the contradictory hearing, upon proof by clear and convincing evidence either that there is a substantial risk that the defendant might flee or that the defendant poses an imminent danger to any other person or the community, the judge or magistrate may order the defendant held without bail pending trial.

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C.(1) A contradictory bail hearing, as provided for in this Article, shall be held prior to setting bail for a person in custody who is charged with the commission of a sex offense and who has been previously convicted of a sex offense.

(2) The court, after having been given notice of an applicable prior conviction as described in Subparagraph (5) of this Paragraph, shall order a contradictory hearing to be held within five days of receiving notice of the prior conviction, exclusive of weekends and legal holidays.

(3) At the contradictory hearing the court, in addition to hearing whatever evidence it finds relevant, shall, on motion of the prosecuting attorney, perform an in camera examination of the evidence against the accused.

(4) In addition to the factors listed in Article 316, the court shall take into consideration the previous criminal record of the defendant; any potential threat or danger the defendant poses to the victim, the family of the victim, or to any member of the public, especially children; and the court shall give ample consideration to any statistical evidence prepared by the United States Department of Justice relative to the likelihood of the defendant, or any person in general who has been convicted of sexually inappropriate conduct with a prepubescent child under the age of thirteen, to commit similar offenses against juvenile victims in the future.

(5) For purposes of this Paragraph, "sex offense" means any offense as defined as a sex offense in R.S. 15:541 when the victim is under the age of thirteen at the time of commission of the offense and less than ten years have elapsed between the date of the commission of the current offense and the expiration of the maximum sentence of the previous conviction.

D.(1) A person charged with the commission of a capital offense shall not be admitted to bail if the proof is evident and the presumption great that he is guilty of the capital offense. When a person charged with the commission of a capital offense makes an application for admission to bail, the judge shall hold a hearing contradictorily with the state.

(2) The burden of proof at the contradictory bail hearing:

(a) Prior to indictment is on the state to show that the proof is evident and the presumption great that the defendant is guilty of the capital offense.

(b) After indictment is on the defendant to show that the proof is not evident or the presumption is not great that he is guilty of the capital offense.

Amended by Acts 1974, Ex.Sess. No. 17, §1, eff. Jan. 1, 1975; Acts 1993, No. 834, §1, eff. June 22, 1993; Acts 2010, No. 914, §1; Acts 2016, No. 613, §1, eff. Jan. 1, 2017.

Art. 313.1. Detention of noncitizen defendant pending bail hearing

A. A contradictory bail hearing, as provided for in this Article, shall be held prior to setting bail for any person in custody who is not a citizen of the United States or not lawfully admitted for permanent residence and who is charged with the commission of an offense in which there was a fatality. The hearing shall be held within five days from the date of determination of probable cause, exclusive of weekends and legal holidays. At the contradictory hearing, the court shall determine the conditions of bail or whether the defendant should be held without bail pending trial.

B. In determining whether the defendant should be admitted to bail pending trial, or in determining the conditions of bail, the judge or magistrate shall consider the following:

(1) The criminal history of the defendant.

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(2) The nature and seriousness of the danger to any other person or the community that would be posed by the defendant's release.

(3) Documented history or records of substance abuse by the defendant.

(4) The seriousness of the offense charged and the weight of the evidence against the defendant.

(5) The risk that the defendant might flee.

C. Following the contradictory hearing and based upon the judge's or magistrate's review of the factors set forth in Paragraph B of this Article, the judge or magistrate may order that the defendant not be admitted to bail, upon proof by clear and convincing evidence that the defendant might flee, or that the defendant poses an imminent danger to any other person or the community.

D. If bail is granted, the judge or magistrate may consider, as a condition of bail, a requirement that the defendant wear an electronic monitoring device and be placed under active electronic monitoring and house arrest. The conditions of the electronic monitoring and house arrest shall be determined by the court and may include but are not limited to limitation of the defendant's activities outside the home and a curfew. The defendant may be required to pay a reasonable supervision fee to the supervising agency to defray the cost of the required electronic monitoring and house arrest.

E. Any violation of the conditions of bail may be punishable by revocation of the bond and the issuance of a bench warrant for the defendant's arrest or remanding of the defendant to custody or a modification of the terms of bail.

Acts 2016, No. 474, §1.

Art. 314. Authority to fix bail; bail order

A. The following magistrates, throughout their several territorial jurisdictions, shall have authority to fix bail:

(1) District courts and their commissioners having criminal jurisdiction, in all cases.

(2) City or parish courts and municipal and traffic courts of New Orleans having criminal jurisdiction, in cases not capital.

(3) Mayor's courts and traffic courts in criminal cases within their trial jurisdiction.

(4) Juvenile and family courts in criminal cases within their trial jurisdiction.

(5) Justices of the peace in cases not capital or necessarily punishable at hard labor.

B. An order fixing bail shall be in writing, set the type and a single amount of bail for each charge, designate the officer or officers authorized to accept the bail, and shall be signed electronically or by any other means by the magistrate. An order fixing bail may issue on request of the state or defendant, or on the initiative of the magistrate.

Amended by Acts 1974, Ex.Sess. No. 18, §1, eff. Jan. 1, 1975; Acts 1981, No. 438, §1; Acts 1993, No. 834, §1, eff. June 22, 1993; Acts 2016, No. 613, 1, eff. Jan. 1, 2017.

Art. 315. Schedules of bail

A. Unless the bail is fixed by a schedule in accordance with this Article, the amount of bail shall be specifically fixed in each case. In noncapital felony cases, a bail schedule according to the offense charged may be fixed by a district court. In misdemeanor cases, a bail schedule according to the offense charged may be fixed by a district, parish or city court for offenses committed within

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its trial jurisdiction. When more than one court has trial jurisdiction, the applicable bail schedule shall be that of the court in which the case is to be tried.

B. The court order setting the bail schedule shall fix the amount of bail for each offense listed, designate the officer or officers authorized to accept the bail, and order that bail be taken in conformity with the schedule. It may also contain a general provision designating the amount of bail for any noncapital felony and misdemeanor not listed in the schedule. A copy of the schedule shall be sent to all jails, sheriff's offices, and police stations within the judicial district, parish, or city. A bail schedule may be revised or rescinded at any time. The type or form of bail shall not be sent in a bail schedule.

C. A person charged with the commission of an offense for which bail is fixed by a schedule may give bail according to the schedule or demand a special order fixing bail. The bail amount fixed by schedule may be modified by the court in accordance with Article 319.

Acts 1993, No. 834, §1, eff. June 22, 1993; Acts 1994, 3rd Ex. Sess., No. 52, §1, eff. Sept. 1, 1994; Acts 2010, No. 914, §1; Acts 2016, No. 613, §1, eff. Jan. 1, 2017.

Art. 316. Factors in fixing amount of bail

The amount of bail shall be fixed in an amount that will ensure the presence of the defendant, as required, and the safety of any other person and the community, having regard to:

(1) The seriousness of the offense charged, including but not limited to whether the offense is a crime of violence or involves a controlled dangerous substance.

(2) The weight of the evidence against the defendant.

(3) The previous criminal record of the defendant.

(4) The ability of the defendant to give bail.

(5) The nature and seriousness of the danger to any other person or the community that would be posed by the defendant's release.

(6) The defendant's voluntary participation in a pretrial drug testing program.

(7) The absence or presence in the defendant of any controlled dangerous substance.

(8) Whether the defendant is currently out on a bail undertaking on a previous felony arrest for which he is awaiting institution of prosecution, arraignment, trial, or sentencing.

(9) Any other circumstances affecting the probability of defendant's appearance.

(10) The type or form of bail.

Acts 1993, No. 834, §1, eff. June 22, 1993; Acts 2016, No. 613, §1, eff. Jan. 1, 2017.

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Art. 317. Organization performing or providing pretrial services

Any organization which is contracted, employed, or which receives public funds to perform or provide pretrial services, such as screening of any defendant, shall verify all background information provided by a defendant or otherwise obtained by the organization regarding the defendant.

Amended by Acts 1982, No. 276, §1; Acts 1987, No. 500, §1; Acts 1991, No. 72, §1; Acts 1992, No. 401, §1; Acts 1993, No. 834, §1, eff. June 22, 1993; Acts 2003, No. 222, §1; Acts 2016, No. 613, §1, eff. Jan. 1, 2017.

Art. 318. Juvenile records in fixing bail

A. For the purpose of fixing bail, a court may make a written request of any juvenile court for an abstract containing only the delinquent acts of a defendant currently before the requesting court. The request shall be promptly complied with; however, not more than forty-eight hours, exclusive of Saturdays, Sundays, and legal holidays, shall lapse before the requested information is deposited in the mail, addressed to the requesting court.

B. The requesting court shall not copy, duplicate, or otherwise reproduce such juvenile records, and these shall be deposited in the mail and addressed to the issuing juvenile court within seventy-two hours, exclusive of Saturdays, Sundays, and legal holidays, after bail is determined.

Acts 1993, No. 834, §1, eff. June 22, 1993; Acts 2010, No. 914, §1; Acts 2016, No. 613, §1, eff. Jan. 1, 2017.

Art. 319. Modifications of bail

A. The court having trial jurisdiction over the offense charged, on its own motion or on motion of the prosecuting attorney or defendant, for good cause, may either increase or reduce the amount of bail, or require new or additional security. For purposes of this Article, good cause for increase of bail specifically includes but is not limited to the rearrest of the defendant on offenses alleged to have been committed while out on a bail undertaking. The modification of any bail order wherein a bail undertaking has been posted by a criminal defendant and his sureties shall upon the modification terminate the liability of the defendant and his sureties under the previously existing bail undertaking. A new bail undertaking must be posted in the amount of the new bail order.

B. The defendant or his surety may, at any time before a breach of the bail undertaking and with approval of the court in which the prosecution is pending, substitute another form of security authorized by this Code. The original security, including a surety, shall be released when the substitution of security is made.

Amended by Acts 1979, No. 16[illegible], §1; Acts 1993, No. 834, §1, eff. June 22, 1993; Acts 1994, 3rd Ex. Sess., No. 52, §1, eff. Sept. [illegible], 1994; Acts 2010, No. 914, §1; Acts 2016, No. 613, §1, eff. Jan. 1, 2017.

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Art. 320. Conditions of bail undertaking

A. Definitions. For the purpose of this Article:

(1) "Firearm" means any pistol, revolver, rifle, shotgun, machine gun, submachine gun, black powder weapon, or assault rifle that is designed to fire or is capable of firing fixed cartridge ammunition or from which a shot or projectile is discharged by an explosive.

(2) "Global positioning monitoring system" means a system that electronically determines and reports the location of an individual by means of an ankle bracelet transmitter or similar device worn by the individual that transmits latitude and longitude data to monitoring authorities through global positioning satellite technology but does not contain or operate any global positioning system technology or radio frequency identification technology or similar technology that is implanted in or otherwise invades or violates the corporeal body of the individual.

(3) "Immediate family member" means the spouse, mother, father, aunt, uncle, sibling, or child of the victim, whether related by blood, marriage, or adoption.

(4) "Informed consent" means that the victim was given information concerning all of the following before consenting to participate in global positioning system monitoring:

(a) The victim's right to refuse to participate in global positioning system monitoring and the process for requesting the court to determine the victim's participation after it has been ordered.

(b) The manner in which the global positioning monitoring system technology functions and the risks and limitations of that technology, and the extent to which the system will track and record the victim's location and movements.

(c) The boundaries imposed on the defendant during the global positioning system monitoring.

(d) Sanctions that the court may impose on the defendant for violating an order issued under this Article.

(e) The procedure that the victim is to follow if the defendant violates an order issued under this Article or if global positioning monitoring system equipment fails.

(f) Identification of support services available to assist the victim to develop a safety plan to use if the court's order issued under this Article is violated or if the global positioning monitoring system equipment fails.

(g) Identification of community services available to assist the victim in obtaining shelter, counseling, education, child care, legal representation, and other help in addressing the consequences and effects of domestic violence or stalking.

(h) The nonconfidential nature of the victim's communications with the court concerning global positioning system monitoring and the restrictions to be imposed upon the defendant's movements.

B. Conditions of bail generally. The conditions of the bail undertaking in district, juvenile, parish, and city courts shall be that the defendant will appear at all stages of the proceedings to answer the charge before the court in which he may be prosecuted, will submit himself to the orders and process of the court, and will not leave the state without written permission of the court. The court may impose any additional conditions of release that are reasonably related to assuring the appearance of the defendant before the court and guarding the safety of any other individual or the community.

C. Operating a vehicle while intoxicated. The court shall require as a condition of release on bail that any person who is charged with a second or subsequent violation of R.S. 14:32.1, 39.1, 39.2, 98, 98.6, or a parish or municipal ordinance that prohibits the operation of a motor vehicle while under the influence of alcohol or drugs to install an ignition interlock device on any vehicle which he operates. The defendant shall have fifteen days from the date that he is released on bail to comply with this requirement, and the ignition interlock device shall remain on the vehicle or vehicles during the pendency of the criminal proceedings. Under exceptional circumstances, the court may waive the provisions of this Article but shall indicate the reasons therefor to the law enforcement agency who has custody of the alleged offender documentation.

D. Drug offenses and crimes of violence. Every person arrested for a violation of the Uniform Controlled Dangerous Substances Law or a crime of violence as provided in R.S. 14:2(B) shall be required to submit to a pretrial drug test for the presence of designated substances in accordance with the provisions of this Article and rules of court governing such testing. Every person arrested for any other felony may be required to submit to a pretrial drug test for the presence of designated substances in accordance with the provisions of this Article and rules of court governing such testing. Every person arrested for a misdemeanor may be required to submit

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to a pretrial drug test for the presence of designated substances in accordance with the provisions of this Article and rules of court governing such testing.

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

(1) Mandatory participation for all persons arrested for violations of state law. Additionally, all persons testing positive for the presence of one or more of the designated substances set forth in Subparagraph (2) of this Paragraph, who are not otherwise required to participate, shall submit to a pretrial drug testing program.

(2) Drug testing to determine the presence of any controlled dangerous substance identified in the Uniform Controlled Substances Law prior to first court appearance and random testing thereafter to verify that the person is drug free.

(3) Restrictions on the use of any and all test results to ensure that they are used only for the benefit of the court to determine appropriate conditions of release, monitoring compliance with court orders, and assisting in determining appropriate sentences. A form statement shall be signed by the law enforcement agency and the person in custody stipulating that under no circumstances shall the information be used as evidence or as the basis for additional charges.

(4) Reasonable testing procedures to ensure the fair administration of the test and protection for the chain of custody for any evidence obtained.

F. Implementation of pretrial drug testing program. The implementation of any pretrial drug testing program authorized pursuant to the provisions of this Article shall be contingent upon receipt by the court requiring the test of sufficient federal or other funding to conduct the testing program in accordance with the provisions of this Article and any rules of court. No elected official who is in any way connected with the administration of the pretrial drug testing program provided for in this Article, either directly or indirectly, shall have any financial interest, either directly or indirectly, in any drug testing company participating in such pretrial drug testing program. All contracts awarded to any drug testing company authorized to conduct the pretrial drug testing program provided for in this Article shall be awarded in accordance with the provisions governing public bids, R.S. 38:2181 et seq.

G. Domestic offenses, stalking, and sex offenses.

(1) In determining conditions of release of a defendant who is alleged to have committed an offense against the defendant's family or household member, as defined in R.S. 46:2132, or against the defendant's dating partner, as defined in R.S. 46:2151, or who is alleged to have committed the offense of domestic abuse battery under the provisions of R.S. 14:35.3, or who is alleged to have committed the offense of battery of a dating partner under the provisions of R.S. 14:34.9, or who is alleged to have committed the offense of stalking under the provisions of R.S. 14:40.2, or who is alleged to have committed the offense of cyberstalking under the provisions of R.S. 14:40.3, or who is alleged to have committed the offense of violation of protective orders under the provisions of R.S. 14:79, or who is alleged to have committed the offense of unlawful communications under the provisions of R.S. 14:285, or who is alleged to have committed a sexual assault as defined in R.S. 46:2184, the court shall consider the previous criminal history of the defendant and whether the defendant poses a threat or danger to the victim. If the court determines that the defendant poses such a threat or danger, it shall require as a condition of bail that the defendant refrain from going to the residence or household of the victim, the victim's school, and

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the victim's place of employment or otherwise contacting the victim in any manner whatsoever, and shall refrain from having any further contact with the victim. The court shall also require as a condition of bail that the defendant be prohibited from communicating, by electronic communication, in writing, or orally, with a victim of the offense or with any of the victim's immediate family members. This condition shall not apply if the victim consents by way of a request to the court and the court issues an order permitting the communication. If an immediate family member of the victim consents by way of a request to the court and the court issues an order permitting the communication, then the defendant may contact that person. The court shall also consider any statistical evidence prepared by the United States Department of Justice relative to the likelihood of such defendant or any person in general who has raped or molested victims under the age of thirteen years to commit sexual offenses against a victim under the age of thirteen in the future.

(2) If the defendant is alleged to have committed any of the offenses included in Subparagraph (1) of this Paragraph and is denied bail or is unable to post bail and is therefore incarcerated prior to trial, the court may issue an order under this Paragraph prohibiting the defendant from communicating, by electronic communication, in writing, or orally, with a victim of the offense, or with any of the victim's immediate family members. This condition shall not apply if the victim consents by way of a request to the court and the court issues an order permitting the communication. If an immediate family member of the victim consents by way of a request to the court and the court issues an order permitting the communication, then the defendant may contact that person.

(3) In all cases, the court shall issue and shall file into the record any order issued pursuant to this Paragraph and shall serve the defendant with the order by personal service. The court shall also comply with the provisions of Paragraph H of this Article.

H. Uniform Abuse Prevention Order.

(1) If the court issues any order pursuant to any of the provisions of this Article prohibiting the defendant from contacting or communicating with the victim or the victim's immediate family members, the judge 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 next business day after 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. 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.

(2) If, as part of any order issued pursuant to any of the provisions of this Article, an order is issued pursuant to the provisions of this Paragraph, the court shall also order that the defendant be prohibited from possessing a firearm for the duration of the Uniform Abuse Prevention Order.

I. Global positioning monitoring. (1)(a) In addition, the court shall order a defendant who is alleged to have committed the offense of first degree rape under the provisions of R.S. 14:42, and may order a defendant who is alleged to have committed an offense enumerated in Paragraph

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G or J of this Article, to be equipped with a global positioning monitoring system as a condition of release on bail.

(b) In determining whether to order a defendant, as a condition of release on bail, to participate in global positioning system monitoring, the court shall consider the likelihood that the defendant's participation in global positioning system monitoring will deter the defendant from seeking to harm, injure, or otherwise threaten the victim prior to trial.

(c) The defendant shall be released on bail pursuant to the provisions of this Article only if he agrees to pay the cost of the global positioning monitoring system and monitoring fees associated with the device, or agrees to perform community service in lieu of paying such costs.

(2) If the court orders the defendant to be equipped with a global positioning monitoring system as a condition of release on bail, the court may order the defendant, with the informed consent of the victim, to provide the victim of the charged crime with an electronic receptor device which is capable of receiving the global positioning system information and which notifies the victim if the defendant is located within an established proximity to the victim. The court, in consultation with the victim, shall determine which areas the defendant shall be prohibited from accessing and shall establish the proximity to the victim within which a defendant shall be excluded. In making this determination, the court shall consider a list, provided by the victim, which includes those areas from which the victim desires the defendant to be excluded.

(3) The victim shall be furnished with telephone contact information for the local law enforcement agency in order to request immediate assistance if the defendant is located within that proximity to the victim. The court shall order the global positioning monitoring system provider to program the system to notify local law enforcement if the defendant violates the order. The victim, at any time, may request that the court terminate the victim's participation in the global positioning monitoring system of the defendant. The court shall not impose sanctions on the victim for refusing to participate in global positioning system monitoring provided for in this Paragraph.

(4) In addition to electronic monitoring, the court shall consider house arrest. The conditions of the electronic monitoring and house arrest shall be determined by the court, and may include but are not be limited to limitations on the defendant's activities outside of the home and a curfew.

J.(1) Crimes of violence. Notwithstanding the provisions of Paragraph G of this Article and notwithstanding any other provision of law to the contrary, if the defendant is alleged to have committed a crime of violence as defined in R.S. 14:2(B), the court shall require as a condition of bail that the defendant refrain from going to the residence or household of the victim, the victim's school, and the victim's place of employment or otherwise contacting the victim in any manner whatsoever, and shall refrain from having any further contact with the victim. The court shall also require as a condition of bail that the defendant be prohibited from communicating, by electronic communication, in writing, or orally, with a victim of the offense, or with any of the victim's immediate family members. This condition does not apply if the victim consents by way of a request to the court and the court issues an order permitting the communication. If an immediate family member of the victim consents by way of a request to the court and the court issues an order permitting the communication, then the defendant may contact that person.

(2) Notwithstanding the provisions of Paragraph G of this Article and notwithstanding any other provision of law to the contrary, if a defendant alleged to have committed an offense included in Subparagraph (1) of this Paragraph is denied bail or is unable to post bail and is therefore incarcerated prior to trial, the court shall nevertheless issue an order under this Paragraph prohibiting the defendant from communicating, by electronic communication, in writing, or orally,

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with a victim of the offense, or with any of the victim's immediate family members. This condition shall not apply if the victim consents by way of a request to the court and the court issues an order permitting the communication. If an immediate family member of the victim consents by way of a request to the court and the court issues an order permitting the communication, then the defendant may contact that person.

(3) In all cases, the court shall issue and shall file into the record any order issued pursuant to this Paragraph and shall serve the defendant with the order by personal service. The court shall also comply with the provisions of Paragraph H of this Article.

K. Violations. Violation of any condition by the defendant shall be considered as a constructive contempt of court, and shall result in the revocation of bail and issuance of a bench warrant for the defendant's arrest or remanding the defendant to custody. The court may also modify bail by either increasing the amount of bail or adding additional conditions of bail.

L. Under no circumstances shall any court deny the issuance of a protective order pursuant to any provision of this Article on the ground that a protective order has already been issued under any other provision of law. Any protective order issued pursuant to this Article shall remain in effect for the time that the criminal case is pending until sentencing unless the person protected by the protective order moves the court to dissolve the protective order as to that person and the court grants the motion to dissolve the protective order as to that person.

Acts 1993, No. 834, §1, eff. June 22, 1993; Acts 2016, No. 613, §1, eff. Jan. 1, 2017; Acts 2017, No. 90, §2; Acts 2020, No. 246, §1.

Art. 321. Types of bail; restrictions

A. The types of bail are:

(1) Bail with a commercial surety.

(2) Bail with a secured personal surety.

(3) Bail with an unsecured personal surety.

(4) Bail without surety.

(5) Bail with a cash deposit.

B. All bail must be posted in the full amount fixed by the court. When the court fixes the amount of bail, a secured bail undertaking may be satisfied by a commercial surety, a cash deposit, or with the court's approval, by a secured personal surety or a bail undertaking secured by the property of the defendant, or by any combination thereof. When the court elects to release the defendant on an unsecured personal surety or a bail without surety, that election shall be expressed in the bail order.

C. Any defendant who has been arrested for any of the following offenses shall not be released on his personal undertaking or with an unsecured personal surety:

(1) A crime of violence as defined by R.S. 14:2(B).

(2) A felony offense, an element of which is the discharge, use, or possession of a firearm.

(3) A sex offense as defined by R.S. 15:541 when the victim is under the age of thirteen at the time of commission of the offense and less than ten years have elapsed between the date of the commission of the current offense and the expiration of the maximum sentence of the previous conviction.

(4) R.S. 14:32.1 (vehicular homicide).

(5) R.S. 14:35.3 (domestic abuse battery) or R.S. 14:34.9 (battery of a dating partner).

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(6) R.S. 14:37.7 (domestic abuse aggravated assault) or R.S. 14:34.9.1 (aggravated assault upon a dating partner).

(7) R.S. 14:40.3 (cyberstalking), if the person has two prior convictions for the same offense.

(8) R.S. 14:44.2 (aggravated kidnapping of a child).

(9) R.S. 14:46 (false imprisonment).

(10) R.S. 14:46.1 (false imprisonment while the offender is armed with a dangerous weapon).

(11) R.S. 14:87.1 (killing a child during delivery).

(12) R.S. 14:87.2 (human experimentation).

(13) R.S. 14:93.3 (cruelty to persons with infirmities), if the person has a prior conviction for the same offense.

(14) R.S. 14:98 (operating a vehicle while intoxicated), if the person has a prior conviction for the same offense.

(15) R.S. 14:102.1(B) (aggravated cruelty to animals).

(16) R.S. 14:102.8 (injuring or killing of a police animal).

(17) R.S. 14:110.1 (jumping bail).

(18) R.S. 14:110.1.1 (out-of-state bail jumping).

(19) Violation of an order issued pursuant to R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2131 et seq., R.S. 46:2151, Children's Code Article 1564 et seq., Code of Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles 30, 320, and 871.1.

(20) The production, manufacturing, distribution, or dispensing or the possession with the intent to produce, manufacture, distribute or dispense a controlled dangerous substance in violation of R.S. 40:966(B), 967(B), 968(B), 969(B), or 970(B) of the Uniform Controlled Dangerous Substances Law.

D. There shall be a presumption that any defendant who has either been arrested for a new felony offense or has at any time failed to appear in court on the underlying felony offense after having been notified in open court shall not be released on his own recognizance or on the signature of any other person. This presumption may be overcome after contradictory hearing in open court only if the judge determines by clear and convincing evidence that the relevant factors warrant this type of release.

Amended by Acts 1979, No. 704, §1; Acts 1991, No. 102, §1; Acts 1992, No. 314, §1; Acts 1993, No. 834, §1, eff. June 22, 1993; Acts 2016, No. 613, §1, eff. Jan. 1, 2017; Acts 2020, No. 246, §1.

Art. 322. Commercial surety

A surety company authorized to do business in the state of Louisiana may become surety for the release of a person on a bail undertaking. The sufficiency of security posted in the form of an appearance bond by a surety company, as required by the provisions of Title 22 of the Louisiana Revised Statutes of 1950, shall be determined solely by the commissioner of insurance. A contract to indemnify a surety company against loss on a bail undertaking is valid and enforceable.

Acts 1985, No. 232, §1; Acts 1993, No. 834, §1, eff. June 22, 1993; Acts 2006, No. 246, §1; Acts 2010, No. 710, §1; Acts 2010, No. 914, §§1, 5; Acts 2016, No. 613, §1, eff. Jan. 1, 2017.

Art. 323. Secured personal surety

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A. A secured personal surety is a personal surety who satisfies all the requirements of Article 311(5) and specifically mortgages immovable property located in the state of Louisiana.

B. Bail without surety may be secured by a mortgage on the immovable property of the defendant pursuant to this Article or unsecured. A secured personal surety may establish a mortgage over immovable property in favor of the state of Louisiana or the proper political subdivision to secure a bail undertaking. The security shall apply only to and be limited to that immovable property specifically described in the mortgage.

C. The mortgage is established upon the recordation of a written mortgage, in authentic form satisfactory to the officer authorized to receive the bail, in the mortgage records of the parish where the immovable is located that:

(1) Contains the name and signature of the person making the mortgage.

(2) Describes the immovable and declares that a mortgage is given over it as security for the performance of the bail obligation.

(3) Certifies that the person making the mortgage owns the immovable and states its value, in excess of the amount of all encumbrances against it.

(4) Attaches to it a copy of the order fixing bail.

D. The person providing the security shall deliver a certified copy of the recorded statement establishing the mortgage and a mortgage certificate to the officer authorized to receive the bail. The officer may require additional evidence of ownership and value of the mortgaged property including a copy of the current tax assessment.

E.(1) The recorder shall cancel the mortgage from his records upon the order of the court.

(2) In all other cases, the effect of its recordation shall cease ten years after its recordation unless it is reinscribed in the manner otherwise provided by law.

F. Any materially false or incorrect statements made by a person who intentionally and knowingly gives a mortgage or security interest pursuant to this Article shall be prima facie proof of a violation of the provisions of R.S. 14:125, false swearing.

Acts 1988, No. 579, §1; Acts 1993, No. 834, §1, eff. June 22, 1993; Acts 2016, No. 613, §1, eff. Jan. 1, 2017; Acts 2017, No. [illegible]72, §1, eff. June 12, 2017.

Art. 324. Unsecured personal surety

A. A person in custody may be released by order of the court on an unsecured personal surety bail undertaking. An unsecured personal surety is a personal surety where the surety satisfies all the requirements of Article 311(5) and lives and resides in the state of Louisiana without specifically mortgaging or giving a security interest in any property as security to guarantee the surety's performance.

B. A personal surety shall execute an affidavit that he possesses the sufficiency and qualifications of a personal surety and that he is not disqualified from becoming a surety by Article 327. The affidavit shall list the number and amount of undischarged bail undertakings, if any, entered into by the personal surety. The officer accepting the bail may require the personal surety to state in his affidavit the nature and value of his property not exempt from execution, and the amount of his liabilities. An officer authorized to accept the bail shall have authority to administer any affidavit required of the person signing a bail undertaking.

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Acts 1993, No. 834, §1, eff. June 22, 1993; Acts 1994, 3rd Ex. Sess., No. 52, §1, eff. Sept. 1, 1994; Acts 2000, 1st Ex. Sess., No. 95, §1; Acts 2011, 1st Ex. Sess., No. 16, §1; Acts 2016, No. 613, §1, eff. Jan. 1, 2017.

Art. 325. Bail without surety

A person in custody may be released by order of the court on his personal bail undertaking without the necessity of furnishing a surety, unless otherwise provided in this Title.

Acts 1993, No. 834, §1, eff. June 22, 1993; Acts 2016, No. 613, §1, eff. Jan. 1, 2017.

Art. 325.1. Repealed by Acts 1983, No. 256, §1.

Art. 326. Condition of the bail undertaking

A. Except as provided in Paragraph B, the condition of the bail undertaking in district, juvenile, parish, and city courts shall be that the defendant will appear at all stages of the proceedings to answer the charge before the court in which he may be prosecuted, will submit himself to the orders and process of the court, and will not leave the state without written permission of the court. The bail obligation shall run, subject to the provisions of Article 626, in favor of the state of Louisiana, or the city or parish whose ordinance is charged to have been violated, with the proceeds to be disposed of according to law. No error, inaccuracy, or omission in naming the obligee on the bond is a defense to an action thereon.

B.(1) Upon conviction and imposition of sentence or the pronouncement of sentence or condition of probation pursuant to Article 894 in misdemeanor cases, the bail undertaking shall cease and the surety shall be relieved of all obligations under the bond.

(2) Upon conviction in any felony case, the bail undertaking shall cease and the surety shall be relieved of all obligations under the bond.

(3) 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 332 require the defendant to post another bond 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 bond. Such approval must be obtained from the surety after conviction.

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Art. 326. Cash deposits

A.(1) In lieu of a surety the defendant may furnish a bail undertaking, secured by a deposit with an officer authorized to accept the bail. The deposit shall consist of any of the following which are equal to the amount of the bail:

(a) Cash.

(b) A certified or cashier's check on any state or national bank.

(c) Bonds of the United States government negotiable by delivery.

(d) Bonds of the state of Louisiana or any political subdivision thereof negotiable by delivery.

(e) United States postal money orders or money orders issued by any state or national bank.

(2) The court in the parishes of St. John the Baptist and St. Charles, by written rule, may alter the percentage amount of bail to be deposited with the officer authorized to accept the bail undertaking and authorize the officer to charge an administrative fee, not to exceed fifteen dollars, for processing the bail undertaking.

B. Upon final disposition of all cases in which a deposit of money, checks, bonds, or money orders has been made pursuant to this Article, and the deposits have remained unclaimed for a period of one year from the date of the final disposition, the officer authorized to accept the bail shall apply and use one-half of such funds for the operation and maintenance of the office of the clerk of court, or the office of the clerk of the criminal district court, or the office of the clerk of the criminal district court in Orleans Parish, and one-half to the local governing authority after advertising his intention to so utilize the funds by publication in the official parish journal of a notice to the public containing an itemized list of all of such funds on deposit, containing the names and last known addresses of defendants and the docket numbers of the cases involved. The publication shall be made once within thirty days after the final disposition of the case as aforesaid. The clerk shall also send a notice by certified mail to each of such defendants at the last known address of the defendant. Any interest earned on the funds deposited for bail shall be disbursed as provided in Paragraph E of this Article.

C. After the publication and mailing of the notice by certified mail, the clerk of court, or the clerk of the criminal district court in Orleans Parish shall petition the court of proper jurisdiction for permission to utilize the funds for the use, operation, and maintenance of the office of the clerk of court or the clerk of criminal district court in Orleans Parish.

D. When bail has been given in conformity with this Article, the money, check, bond, or money order shall not be subject to garnishment, attachment, or seizure under any legal process. An assignment or sale thereof by the owner, to be valid, must be in the form of an authentic act and filed in the proceedings in the court having jurisdiction to discharge the bail. The property shall remain on deposit and the assignment or sale shall be contingent upon the nonforfeiture of the bail.

E. When money, checks, or money orders have been given for bail in conformity with this Article, those funds may be deposited by the officer authorized to accept bail into an interest-bearing account established exclusively for the deposit of such funds. Interest earned on the deposits in the account shall be used solely for the operation and maintenance of the office of the clerk of court.

Acts 1993, No. 834, §1, eff. June 22, 1993; Acts 2004, No. 496, §1; Acts 2010, No. 914, §1; Acts 2016, No. 613, §1, eff. Jan. 1, 2017.

Art. 327. Those who may not be sureties

A person shall not be released on bail for which an attorney at law, a judge, or ministerial officer of a court becomes a surety or provides money or property for bail; but the invalidity of such bail shall not be a defense to an action to forfeit and enforce the bail.

Acts 1993, No. 834, §1, eff. June 22, 1993; Acts 1999, No. 1272, §1; Acts 2016, No. 613, §1, eff. Jan. 1, 2017.

Art. 327.1. Repealed by Acts 2016, No. 613, §4, eff. Jan. 1, 2017.

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Art. 328. Substitution of security

The defendant or his surety may, at any time before a breach of the bail undertaking and with approval of the court in which the prosecution is pending, substitute another form of security authorized by this Code. The original security, including a surety, shall be released when the substitution of security is made.

NOTE: Art. 328 as amended by Acts 2016, No. 613, §1, eff. Jan. 1, 2017.

Art. 328. Bail undertaking

A. The bail undertaking shall:

(1) Be in writing.

(2) State the court before which the defendant is bound to appear.

(3) Be entered into before an officer who is authorized to take it.

(4) State a single amount of bail for each charge.

B. The bail undertaking shall be enforceable if the above requirements are met; and no officer may refuse to accept the posting of a bail undertaking and releasing a defendant on bail if the conditions set by this Title are met. A person shall not be discharged from his bail undertaking, nor shall a judgment of forfeiture be stayed, set aside, or reversed, nor the collection of any such judgment be barred or defeated by reason of any defect of form, omission of a recital, or of a condition of the undertaking, by reason of a failure to note or record the default of any defendant or surety, or because of any other irregularity. The bail undertaking shall run, subject to the provisions of Article 626, in favor of the state of Louisiana, or the city or parish whose ordinance is charged to have been violated, with the proceeds to be disposed of according to law. No error, inaccuracy, or omission in naming the obligee on the bail undertaking is a defense to an action thereon.

Acts 1993, No. 834, §1, eff. June 22, 1993; Acts 2016, No. 613, §1, eff. Jan. 1, 2017.

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Art. 329. Declaration of residence; waiver of notice

A. The defendant and personal surety signing a bail undertaking shall write the address at which each can be served and mailing address, if different, under their respective signatures and the last four digits of their social security number. The defendant and his counsel may, with the court's approval, by joint affidavit filed of record in the matter in which the bail undertaking was given, appoint his counsel as his agent to whom notice to appear can be sent. The appointment shall be conclusively presumed to continue until the defendant, with court approval, files of record an affidavit revoking or changing the appointment. The affidavit shall include the address to which notice to appear can be sent. A commercial surety shall place its proper mailing address and electronic address on the face of the power of attorney used to execute the bail undertaking. The agent or bondsman posting the bail undertaking shall place his proper mailing address under his signature. A bond forfeiture judgment shall not be denied or set aside because of the invalidity of the information required by this Article or for the failure to include the information required by the provisions of this Article.

B. When a person who is required to sign his name or to make a declaration in writing under the provisions of this Title swears that he cannot sign or write, the officer authorized to receive the signature or declaration in writing may, at the request of the person, sign for him or make for him the declaration in writing, with the same binding effect as if the person had himself signed or himself made the declaration in writing; provided that the declaration and signature shall be witnessed and signed by at least two competent witnesses.

C. When a person who is required to sign his name or to make a declaration in writing under the provisions of this Title indicates that he cannot speak or write the English language, the officer authorized to receive the signature or declaration in writing may provide either an interpreter or a written form in the person's native language, enabling him to sign his name or make a declaration in writing.

D. Each address provided pursuant to Paragraph A of this Article shall be conclusively presumed to continue for all proceedings until the party providing the address changes it by filing a written declaration in the matter for which the bail undertaking was filed.

E. Except for the notice required by Article 330, by signing the bond undertaking, the defendant and his surety waive any right of notice to appear, including actual notice.

Acts 1993, No. 834, §1, eff. June 22, 1993; Acts 2016, No. 613, §1, eff. Jan. 1, 2017.

Art. 330. Notice of defendant's required appearance

A. When a bail undertaking fixes an appearance date, the defendant appears as ordered, and notice of the next appearance date is given to the defendant, no additional notice of that appearance date is required to be given to the defendant or the personal surety or the commercial surety or the agent or bondsman who posted the bail undertaking for the commercial surety.

B. When a bail undertaking does not fix the appearance date, written notice of the time, date, and place the defendant is first ordered by the court to appear shall be given 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.

C. If the defendant appears as ordered and the proceeding is continued to a specific date, the defendant and the personal surety or the commercial surety or the agent or bondsman who posted the bail undertaking for the commercial surety and who has been given initial notice pursuant to Paragraph A or B of this Article, need not be given notice of the new appearance date. If the defendant fails to appear as ordered, or the proceeding is not continued to a specific date, the defendant or his duly appointed agent, the personal surety or the agent or bondsman who posted the bail undertaking for the commercial surety shall be given notice of the new appearance date.

D. Notice required pursuant to the provisions of this Article to the defendant and the personal surety or the commercial surety or the agent or bondsman who posted the bail undertaking for the commercial surety shall be made to the address provided pursuant to Article 329. Notice may be:

(1) Delivered by an officer designated by the court at least two days prior to the appearance date.

(2) Mailed by United States first class mail or by electronic means in accordance with Article 329 at least five days prior to the appearance date.

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E. Failure to give the notice required by this Article relieves the surety from liability on a judgment of bond forfeiture for the nonappearance of the defendant on that particular date.

Acts 1992, No. 254, §1; Acts 1993, No. 834, §1, eff. June 22, 1993; Acts 1997, No. 1305, §1; Acts 1997, No. 1498, §1, eff. Nov. 5, 1998; Acts 2016, No. 613, §1, eff. Jan. 1, 2017.

Art. 330.1. Posting bail when arrested outside of originating jurisdiction

A. Notwithstanding any provisions of law to the contrary, a person who is arrested and booked in an executing jurisdiction pursuant to a warrant for arrest issued by the originating jurisdiction may be released from custody when bail is posted under the following conditions:

(1) The amount of the bail obligation is included on the warrant for arrest. If the warrant for arrest does not include the amount of the bail obligation, the amount may be set within forty-eight hours by anyone in the originating jurisdiction who is authorized to set bail pursuant to Article 314. If a personal surety undertaking is authorized, the personal surety undertaking shall be in accordance with either Article 323 or 324.

(2) There are no holds, court orders, or other legal impediments that would prohibit the release of the arrested person from custody.

(3) The executing jurisdiction does not object. If the executing jurisdiction objects, the originating jurisdiction shall comply with existing provisions of law relative to bail. The originating jurisdiction shall retain the right to transport or to have the person in custody transported to the originating jurisdiction for the purpose of posting bail in the originating jurisdiction.

(4) Written notice shall be provided to the executing jurisdiction when bail is posted in the originating jurisdiction and release from custody is authorized. When released, the executing jurisdiction shall provide notice in accordance with Article 330 to the arrested person. The originating jurisdiction shall deliver to the executing jurisdiction the information necessary to provide such notice to the arrested person. The notice shall include the date, time, and location of any required court appearances as well as any conditions of bail. Notwithstanding any provisions of law to the contrary, an electronic copy, digital copy, or photocopy of the arrested person's signature on the notice shall be the equivalent of an original signature.

B. The provisions of this Article shall not apply to warrants for sex offenses, homicides and crimes resulting in a death or deaths, felony domestic violence offenses, and aggravated offenses.

Acts 2021, No. 243, §1.

Art. 330.2. Repealed by Acts 2016, No. 613, §4, eff. Jan. 1, 2017.

Art. 330.3. Repealed by Acts 2016, No. 613, §4, eff. Jan. 1, 2017.

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.

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(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

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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

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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. 332. Court order for arrest of defendant

The court in which the defendant is held to answer may issue a warrant for the arrest and commitment of the defendant who is at large on bail when any of the following are true:

(1) There has been a breach of the bail undertaking.

(2) It appears that a surety has become insufficient, is dead, cannot be found, or has ceased to meet the qualifications of law or does not own adequate immovable property within the state.

(3) The court has determined that the bail should be increased or new or additional security required.

Acts 1993, No. 834, §1, eff. June 22, 1993; Acts 1997, No. 1305, §1;Acts 1997, No. 1498, §1, eff. Nov. 5, 1998; Acts 2010, No. 914, §1; Acts 2016, No. 613, §1, eff. Jan. 1, 2017.
NOTE: Art. 333 eff. until Jan.1, 2017. See Acts 2016, No. 613, §1.

Art. 333. Authority to fix bail

The following magistrates, throughout their several territorial jurisdictions, shall have authority to fix bail:

(1) District courts having criminal jurisdiction, in all cases.

(2) City or parish courts and municipal and traffic courts of New Orleans having criminal jurisdiction, in cases not capital.

(3) Mayor's courts and traffic courts in criminal cases within their trial jurisdiction.

(4) Juvenile and family courts in criminal cases within their trial jurisdiction.

(5) Justices of the peace in cases not capital or necessarily punishable at hard labor.

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NOTE: Art. 333 as amended by Acts 2016, No. 613, §1, eff. Jan. 1, 2017.

Art. 333. Failure to appear; issuance of arrest warrant

If at the time fixed for appearance the defendant, who was properly noticed, fails to appear as required by the court, the court shall, on its own motion or on motion of the prosecuting attorney, immediately issue a warrant for the arrest of the defendant.

Amended by Acts 1975, No. 781, §1; Acts 1993, No. 834, §1, eff. June 22, 1993; Acts 2004, No. 833, §1; Acts 2016, No. 613, §1, eff. Jan. 1, 2017.

NOTE: Art. 334 eff. until Jan 1, 2017. See Acts 2016, No. 613, §1.

Art. 334. Factors in determining amount of bail

The amount of bail shall be such that, in the judgment of the court, commissioner, or magistrate, it will insure the presence of the defendant, as required, and the safety of any other person and the community, having regard to:

(1) The seriousness of the offense charged, including but not limited to whether the offense is a crime of violence or involves a controlled dangerous substance.

(2) The weight of the evidence against the defendant.

(3) The previous criminal record of the defendant.

(4) The ability of the defendant to give bail.

(5) The nature and seriousness of the danger to any other person or the community that would be posed by the defendant's release.

(6) The defendant's voluntary participation in a pretrial drug testing program.

(7) The absence or presence of any controlled dangerous substance in the defendant's blood at the time of arrest.

(8) Whether the defendant is currently out on bond on a previous felony arrest for which he is awaiting institution of prosecution, arraignment, trial, or sentencing.

(9) Any other circumstances affecting the probability of defendant's appearance.

(10) The type or form of bail.

NOTE: Art. 334 as amended by Acts 2016, No. 613, §1, eff. Jan.1, 2017.

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Art. 334. Notice of warrant of arrest

After a warrant for arrest is issued, the clerk of court shall, within sixty days, send a notice of warrant for arrest to the prosecuting attorney. The notice shall also be sent by United States mail or electronic means to the defendant, the bail agent or bondsman, if any, and the personal surety. Notice shall be sent by electronic means or by certified mail return receipt requested to the commercial surety. All notices shall be sent to the addresses provided pursuant to Article 329 or an address registered with the Louisiana Department of Insurance. The notice to the commercial surety shall include the power of attorney number used to execute the bail undertaking. Failure to include the power of attorney number shall not affect the validity or enforcement of a resulting judgment. After sending the notice of warrant for arrest, the clerk of court shall execute a certificate

that notice was sent and place the certificate in the record. Failure to send notice to the commercial surety within sixty days shall release the surety of all obligations under the bail undertaking.

Acts 1993, No. 834, §1, eff. June 22, 1993; Acts 1995, No. 853, §1; Acts 2016, No. 613, §1, eff. Jan. 1, 2017.

Art. 334.1. Repealed by Acts 2016, No. 613, §4, eff. Jan. 1, 2017.

Art. 334.2. Repealed by Acts 2016, No. 613, §4, eff. Jan. 1, 2017.

Art. 334.3. Repealed by Acts 2016, No. 613, §4, eff. Jan. 1, 2017.

Art. 334.4. Repealed by Acts 2016, No. 613, §4, eff. Jan. 1, 2017.

Art. 334.5. Repealed by Acts 2016, No. 613, §4, eff. Jan. 1, 2017.

Art. 334.6. Repealed by Acts 2016, No. 613, §4, eff. Jan. 1, 2017.

Art. 335. Other conditions related to the appearance of defendant

The court may impose any additional condition of release that is reasonably related to assuring the appearance of the defendant before the court. Violation of such condition by the defendant shall be considered as a constructive contempt of court, and shall be grounds for revocation of bail, but does not give rise to forfeiture.

NOTE: Art. 335 as amended by Acts 2016, No. 613, §1, eff. Jan. 1, 2017.

Art. 335. Rule to show cause; bond forfeiture

If the defendant fails to make an appearance and has not been surrendered or constructively surrendered within one hundred eighty days of the execution of the certificate that notice of warrant for arrest was sent, the prosecuting attorney may file a rule to show cause requesting that a bond forfeiture judgment be rendered. The rule to show cause shall be mailed to the defendant and served on all other parties against whom a judgment is sought. The rule to show cause shall be set for a contradictory hearing. The time period for filing a rule to show cause to obtain a judgment of bond forfeiture does not begin until after the notice of warrant for arrest is sent.

Acts 1993, No. 834, §1, eff. June 22, 1993; Acts 2016, No. 613, §1, eff. Jan. 1, 2017.

Art. 335.1. Repealed by Acts 2016, No. 613, §4, eff. Jan. 1, 2017.

Acts 1994, 3rd Ex. Sess., No. 70, §3; Acts 1999, No. 963, §3; Acts 2003, No. 750, §2; Acts 2010, No. 126, §1; Acts 2014, No. 318, §1; Acts 2015, No. 242, §1; Acts 2016, No. 613, §4, eff. Jan. 1, 2017.

Art. 335.2. Repealed by Acts 2016, No. 613, §4, eff. Jan. 1, 2017.

Art. 336. Release conditioned on participation in pretrial drug testing program

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A.(1) Every person arrested for a violation of the Uniform Controlled Dangerous Substances Law or a crime of violence as provided in R.S. 14:2(B) shall be required to submit to a pretrial drug test for the presence of designated substances in accordance with the provisions of this Article and rules of court governing such testing. A person arrested for the above referenced crimes, who tests positive for the presence of one or more of the designated substances set forth in Subparagraph (2) of Paragraph B of this Article or any person arrested for a violation of R.S. 40:961 through 1036, if released by order of court on his personal surety, shall meet the requirements of Article 315 for a personal surety and shall, as a condition of bail, be required to participate in a pretrial drug testing program.

(2) Every person arrested for a felony, not otherwise required to submit to a pretrial drug test as provided for in Subparagraph (1) of this Paragraph, may be required to submit to a pretrial drug test for the presence of designated substances in accordance with the provisions of this Article and rules of court governing such testing. A person arrested for a felony who tests positive for the presence of one or more of the designated substances set forth in Subparagraph (2) of Paragraph B of this Article or any person arrested for a violation of R.S. 40:961 through 1036, if released by order of court on his personal surety, shall meet the requirements of Article 315 for a personal surety and may, as a condition of bail, be required to participate in a pretrial drug testing program.

(3) Every person arrested for a misdemeanor may be required to submit to a pretrial drug test for the presence of designated substances in accordance with the provisions of this Article and rules of court governing such testing. A person arrested for a misdemeanor who tests positive for the presence of one or more of the designated substances set forth in Subparagraph (2) of Paragraph B of this Article or any person arrested for a violation of R.S. 40:961 through 1036, if released by order of court on his personal surety, shall meet the requirements of Article 315 for a personal surety and may, as a condition of bail, be required to participate in a pretrial drug testing program.

(4) The provisions of this Paragraph requiring mandatory pretrial drug testing shall be contingent upon receipt of adequate funding to cover the costs of such testing, as provided in Paragraph E of this Article.

B. The court may, and in all municipalities with a population of three hundred thousand or more persons shall, implement a pretrial drug testing program which shall provide for the following:

(1) Mandatory participation for all persons arrested for violations of state law.

(2) Drug testing to determine the presence of phencyclidine (PCP), opiates (heroin), cocaine, methadone, amphetamines, or marijuana, prior to first court appearance and random testing thereafter to verify that the person is drug free.

(3) Restrictions on the use of any and all test results to ensure that they are used only for the benefit of the court to determine appropriate conditions of release, monitoring compliance with court orders, and assisting in determining appropriate sentences. A form statement shall be signed by the law enforcement agency and the person in custody stipulating that under no circumstances shall the information be used as evidence or as the basis for additional charges.

(4) Reasonable testing procedures to ensure the fair administration of the test and protection for the chain of custody for any evidence obtained.

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TITLE XXV. COMPULSORY PROCESS

CHAPTER 1. GENERAL SECTION; SUBPOENAS

Art. 731. Issuance of subpoenas

A. The court shall issue subpoenas for the compulsory attendance of witnesses at hearings or trials when requested to do so by the state or the defendant. Clerks of court may issue subpoenas except as provided in Article 739.

B. The court and the clerks of court are authorized to place their signatures by electronic means on all subpoenas issued pursuant to this Chapter.

Amended by Acts 1980, No. 286, §1; Acts 2001, No. 54, §1; Acts 2007, No. 29, §1; Acts 2010, No. 58, §2.

Art. 732. Subpoena duces tecum

A subpoena may order a person to produce at the trial or hearing, books, papers, documents, or any other tangible things in his possession or under his control, if a reasonably accurate description thereof is given; but the court shall vacate or modify the subpoena if it is unreasonable or oppressive.

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Art. 732.1. Subpoena duces tecum regarding sex offenses against victims who are minors

A. The Department of Public Safety and Corrections, office of state police, the office of the attorney general, any agency that is a member of the Department of Justice Internet Crimes Against Children Task Force, or the sheriff's office investigating any sex offense as defined in R.S. 15:541 where the victim is a minor or the offender reasonably believes that the victim is a minor, shall have the administrative authority to issue in writing and cause to be served a subpoena requiring the production and testimony described in Paragraph B of this Article upon reasonable cause to believe that an Internet service account, or online identifier as defined in R.S. 15:541(20), has been used in the commission of the offense, or in the exploitation or attempted exploitation of children.

B. Except as provided in Paragraph C of this Article, a subpoena issued under this Article may require the production of the following records or other documentation relevant to the investigation:

(1) Electronic mail address.
(2) Internet username.
(3) Internet protocol address.
(4) Name of account holder.
(5) Billing and service address.
(6) Telephone number.
(7) Account status.
(8) Method of access to the Internet.
(9) Automatic number identification records if access is by modem.

C. The following information shall not be subject to disclosure pursuant to an administrative subpoena issued pursuant to the provisions of this Article but shall be subject to disclosure pursuant to other lawful process:

(1) In-transit electronic communications.

(2) Account memberships related to Internet groups, newsgroups, mailing lists, or specific areas of interest.

(3) Account passwords.

(4) Account content, including electronic mail in any form, address books, contacts, financial records, web surfing history, Internet proxy content, or files or other digital documents stored with the account or pursuant to use of the account.

D. A subpoena issued pursuant to this Article shall describe the objects required to be produced and shall prescribe a return date with a reasonable period of time within which the objects can be assembled and made available.

E. If no case or proceeding arises from the production of records or other documentation pursuant to this Section and the time limitation for initiation of prosecution has expired, the Department of Public Safety and Corrections, office of state police, the sheriff's office, or the office of the attorney general shall destroy the records and documentation.

F. Except as provided in this Article, any information, records, or data reported or obtained pursuant to a subpoena authorized by the provisions of this Article shall remain confidential and shall not be disclosed unless in connection with a criminal case related to the subpoenaed materials.

G. Any administrative subpoena issued pursuant to this Article shall comply with the provisions of 18 U.S.C. 2703(c)(2).

Acts 2010, No. 514, §1.

Art. 732.2. Subpoena duces tecum regarding human trafficking offenses

A. The Department of Public Safety and Corrections, office of state police, the office of the attorney general, the police department, or the sheriff's office investigating any offense or attempt to commit any offense described in Subparagraphs (1) and (2) of this Paragraph shall have the administrative authority to issue in writing and cause to be served a subpoena requiring the production and testimony described in Paragraph B of this Article upon reasonable cause to believe that an internet service account, or online identifier as defined in R.S. 15:541, has been used in the commission or attempted commission of the following:

(1) A person is a victim of human trafficking pursuant to R.S. 14:46.2, or the offender reasonably believes that the person is a victim of human trafficking.

(2) A person is a victim of trafficking of children for sexual purposes pursuant to R.S. 14:46.3, or the offender reasonably believes that the person is a minor.

B. Except as provided in Paragraph C of this Article, a subpoena issued under this Article may require the production of the following records or other documentation relevant to the investigation:

(1) Electronic mail address.

(2) Internet username.

(3) Internet protocol address.

(4) Name of account holder.

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(5) Billing and service address.

(6) Telephone number.

(7) Account status.

(8) Method of access to the internet.

(9) Automatic number identification records if access is by modem.

C. The following information shall not be subject to disclosure pursuant to an administrative subpoena issued pursuant to the provisions of this Article but shall be subject to disclosure pursuant to other lawful process:

(1) In-transit electronic communications.

(2) Account memberships related to internet groups, newsgroups, mailing lists, or specific areas of interest.

(3) Account passwords.

(4) Account content, including electronic mail in any form, address books, contacts, financial records, web surfing history, internet proxy content, or files or other digital documents stored with the account or pursuant to use of the account.

D. A subpoena issued pursuant to this Article shall describe the objects required to be produced and shall prescribe a return date with a reasonable period of time within which the objects can be assembled and made available.

E. If no case or proceeding arises from the production of records or other documentation pursuant to this Section and the time limitation for initiation of prosecution has expired, the Department of Public Safety and Corrections, office of state police, the office of the attorney general, or the sheriff's office shall destroy the records and documentation.

F. Except as provided in this Article, any information, records, or data reported or obtained pursuant to a subpoena authorized by the provisions of this Article shall remain confidential and shall not be disclosed unless in connection with a criminal case related to the subpoenaed materials.

G. Any administrative subpoena issued pursuant to this Article shall comply with the provisions of 18 U.S.C. 2703(c)(2).

Acts 2021, No. 1[illegible], §1.

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Art. 733. Form

A subpoena shall state the name of the court and the title of the case and shall command the attendance of a witness at a time and place specified.

Acts 1986, No. 505, §1.

Art. 734. Service of subpoena by sheriff; investigators

A. The sheriff of any parish in which the witness may be found or of the parish in which the proceeding is pending shall serve the subpoena and make a return thereof without delay.

B. When the attorney general is involved in the conduct of a criminal case, investigators who are employed by the attorney general and who are commissioned law enforcement officers may serve any subpoena or subpoena duces tecum which is issued in that case. If an investigator who is employed by the attorney general serves a subpoena or a subpoena duces tecum under this Article, the investigator shall execute the return of service provided for in Article 736.

C. When the district attorney is involved in the investigation or prosecution of a criminal case, investigators who are employed by that district attorney and who are P.O.S.T. certified commissioned law enforcement officers may serve any subpoena or subpoena duces tecum which is issued in that case. Each investigator who serves a subpoena or subpoena duces tecum under the provisions of this Article shall execute the return of service required by Article 736.

Acts 2001, No. 304, §1; Acts 2001, No. 441, §1; Acts 2004, No. 499, §1.

Art. 735. Types of service

A. Unless otherwise directed by the state or defendant, subpoenas shall be served by domiciliary service, personal service, or United States mail as provided in Paragraph B. Personal service is made when the sheriff tenders the subpoena to the witness. Domiciliary service is made when the sheriff leaves the subpoena at the dwelling house or usual abode of the witness with a person of suitable age and discretion residing therein as a member of the domiciliary establishment of the witness.

B.(1) The criminal sheriff for the parish of Orleans and all other sheriffs throughout the state may serve all subpoenas directed to him to be served by mailing the said subpoenas in the United States Post Office, by either certified mail, return receipt requested, or first class mail to the addressee at the address listed on the subpoena.

(2) Service by first class mail shall include a request that the enclosed return form be signed by the addressee and mailed to the sheriff. If a signed return is not received by the sheriff, the subpoena shall be served by domiciliary or personal service as provided in Paragraph A.

(3) Service by mail shall be considered personal service if the certified return receipt or the return form is signed by the addressee. Service by mail shall be considered domiciliary service if the certified return receipt or the return form is signed by anyone other than the addressee.

C. The criminal sheriff of the parish of Orleans and all other sheriffs throughout the state are hereby authorized to make service of subpoenas to law enforcement officers through the law enforcement officer's ranking officer or their designated representative, which, upon service thereof, shall have the same legal effect as if domiciliary service had been made upon the law enforcement officer named therein. This service shall be made at the district stations or departmental headquarters of said law enforcement agency. Service may consist of individual subpoenas or may consist of lists which include officer's name and badge number, case title, name of court, and date of commanded appearance. Such lists may be served by the sheriff or his deputies by means of electronic transfer to printing devices located in the district stations or departmental headquarters. The ranking officer, or his designated representative, shall sign for such subpoenas or indicate receipt by electronic verification code, and shall be required to notify the law enforcement officer named therein of receipt of the subpoenas or list.

D. This type of subpoena service shall be known as departmental subpoena service of law enforcement officers, and shall not be construed to replace domiciliary or personal service for said officers, but shall be an additional method of service.

Amended by Acts 1968, No. 512, §1; Acts 1970, No. 116, §1; Acts 1974, No. 641, §1; Acts 1988, No. 294, §1; Acts 1989, No. 338, §1.

Art. 736. Return of subpoena by sheriff

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A. The sheriff shall endorse on a copy of the subpoena the date, place, type of service, and sufficient other data to show service in compliance with law. When the witness cannot be found, the sheriff must set out in his return every fact that in his opinion justifies the return. He shall sign and return the copy promptly after the service to the court that issued the subpoena. The return, when received by the clerk, shall form part of the record and shall be considered prima facie correct.

B. The criminal sheriff for the Parish of Orleans when serving subpoenas under the provisions of Paragraph A of Article 735 of the Louisiana Code of Criminal Procedure shall endorse on a copy of the subpoena the date and time of mailing, and shall attach the return receipt of delivery from the United States Post Office showing the disposition of the envelope bearing the subpoena. He shall return the copy and the attached receipt to the court that issued the subpoena. The return, when received by the clerk, shall form part of the record and shall be considered prima facie correct and shall constitute sufficient basis for an action to cite persons for contempt for failure to appear in response thereto.

Amended by Acts 1968, No. 511, §1.

Art. 737. Contempt; attachment of witnesses failing to appear

Contumacious failure to comply with a subpoena, proof of service of which appears of record, constitutes a direct contempt of the court which issued the subpoena, and the court may order the witness attached and brought to court immediately.

If an order of attachment is issued, it may be executed in any parish by the sheriff of the parish from which the attachment was issued, or by the sheriff of the parish where the witness is found.

CHAPTER 2. RESTRICTIONS ON SUBPOENAS

Art. 738. Number of witnesses allowed

At a trial or hearing, each defendant in a misdemeanor case shall be allowed to summon six witnesses at the expense of the parish, and in a felony case sixteen witnesses. A defendant shall have the right of compulsory process for additional witnesses at his own expense.

Acts 2001, No. 1119, §1.

Art. 739. Indigent defendant

If a defendant is indigent and unable to pay for witnesses desired by him in addition to those summoned at the expense of the parish, he shall make a sworn application to the court for the additional witnesses. The application must allege that the testimony is relevant and material and not cumulative and that the defendant cannot safely go to trial without it.

The court shall make a private inquiry into the facts, and if satisfied that the defendant is entitled to the privilege, it shall render an order permitting the defendant to subpoena additional witnesses at the expense of the parish. If the application is denied, the court shall state the reasons for the denial in writing, which shall become part of the record.

Art. 740. Restrictions on subpoenas; members of the legislature and personnel

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No subpoena or order compelling discovery shall issue to compel the attendance of a member of the Louisiana Legislature, or legislative employee, except in strict conformity with the provision of R.S. 13:3667.1 and no subpoena or order compelling discovery shall issue to compel the attendance of a member or former member of the Louisiana Legislature, or legislative employee, except in strict conformity with the provision of R.S. 13:3667.3. For purposes of this Article, "legislative employee" means the clerk of the House of Representatives, the secretary of the Senate, and employees of the House of Representatives, the Senate, and the Legislative Bureau.

Acts 2006, No. 690, §3, eff. June 29, 2006; Acts 2008, No. 374, §2, eff. June 21, 2008; Acts 2012, No. 519, §2.

CHAPTER 3. OBTAINING WITNESSES FROM OUTSIDE THE STATE

Art. 741. Method of obtaining a witness from another state

If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence in this state, is a material witness in a prosecution pending in a court of record in this state, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness shall be required. This certificate shall be presented to a judge of a court of record in the county (parish) in which the witness is found.

If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state, the judge may direct that the witness be forthwith brought before him. The judge being satisfied of the desirability of custody and delivery, for which determination the certificate shall be prima facie proof, may order that the witness be forthwith taken into custody and delivered to an officer of this state. The order shall be sufficient authority for the officer to take the witness into custody and hold him unless and until he may be released by bail, recognizance, or order of the judge issuing the certificate.

If the witness is summoned to attend and testify in this state he shall be tendered the sum of ten cents a mile for each mile and five dollars for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within the state a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If the witness fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record of this state.

Sample

Art. 742. Method of summoning a witness in this state to testify in another state

If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in this state, certifies under seal of court that there is a criminal prosecution pending in that court, or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in the prosecution or grand jury investigation, and that his presence will be required for a specified

number of days, upon presentation of the certificate to any judge of a court of record in the parish (county) in which the person is, the judge shall fix a time and place for a hearing and shall make an order directing the witness to appear at a time and place certain for the hearing.

If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, the judge may, in lieu of notification of the hearing, direct that the witness be forthwith brought before him for the hearing. The judge at the hearing being satisfied of the desirability of custody and delivery, for which determination the certificate shall be prima facie proof of desirability may, in lieu of issuing subpoena or summons, order that the witness be forthwith taken into custody and delivered to an officer of the requesting state.

If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of ten cents a mile for each mile and five dollars for each day, that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided by law for the punishment of any witness who disobeys a summons issued from a court of record in this state.

Art. 743. Exemption from arrest and service of process

If a person comes into this state in obedience to a summons directing him to attend and testify in this state, he shall not, while in this state pursuant to such summons or order, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

If a person passes through this state while going to another state in obedience to a summons or order to attend and testify in that state or while returning therefrom, he shall not, while so passing through this state be subject to arrest, or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons or order.

Art. 744. Witness; state; defined

"Witness" as used in Articles 741 through 743 shall include a person whose testimony is relevant and material and desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

"State" shall include any territory of the United States and the District of Columbia.

Art. 745. Uniformity of interpretation

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Articles 741 through 744 shall be so interpreted and construed as to effect their general purpose to make uniform the law of the states which enact similar provisions.

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TITLE XXVI. TRIAL PROCEDURE

CHAPTER 1. GENERAL PROVISIONS

Art. 761. Commencement of trial

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

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

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

Acts 1999, No. 1066, §1.

Art. 762. Place of sessions of court

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

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

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

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

Amended by Acts 1972, No. 354, §1.

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Art. 763. Proceedings on holidays

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

Art. 764. Exclusion of witnesses

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

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

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

Art. 765. Normal order of trial

The normal order of trial shall be as follows:

(1) The selection and swearing of the jury;

(2) The reading of the indictment;

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

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

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

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

(7) The court's charge;

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

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

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

A defendant may waive his opening statement.

Art. 766. Opening statement by state; scope

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

Art. 767. Same; prohibition against adverting to confessions

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

Acts 1995, No. 1278, §1.

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

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

Amended by Acts 1982, No. 735, §1.

Art. 769. Same; effect on introduction of evidence

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

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

Art. 770. Prejudicial remarks; basis of mistrial

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

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

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

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

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

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

Art. 771. Admonition

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

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

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

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

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

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

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Art. 773. Order of evidence; foundation

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

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

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

Art. 774. Argument; scope

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

The argument shall not appeal to prejudice.

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

Art. 775. Mistrial; grounds for

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

(1) The defendant consents thereto;

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

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

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

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

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

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

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

Art. 775.1. Automatic stay following order of mistrial

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

Acts 2004, No. 413, §1; Acts 2011, No. 37, §1.

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Art. 776. Oath of witness

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

Art. 777. Recordation of proceedings

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

Art. 778. Motion for acquittal

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

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

Amended by Acts 1975, No. 527, §1.

CHAPTER 2. TRIAL WITHOUT JURY

Art. 779. Trial of misdemeanors

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

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

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

Art. 780. Right to waive trial by jury

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

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

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

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

Amended by Acts 1974, Ex.Sess., No. 24, §1, eff. Jan. 1, 1975; Acts 1975, 1st Ex.Sess., No. 16, §1, eff. Jan. 28, 1975; Acts 1995, No. 801, §1; Acts 2013, No. 343, §1, eff. June 17, 2013.

Art. 781. Charges in cases tried without a jury

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

CHAPTER 3. TRIAL BY JURY

SECTION 1. GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

Amended by Acts 1976, No. 212, §2; Acts 1977, No. 578, §1.

Art. 784. Method of selecting panel

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

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

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

Art. 785. Tales jurors

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

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

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

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

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

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

Art. 786. Examination of jurors

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

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Art. 787. Disqualification of petit jurors in particular cases

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

Art. 788. Tendering jurors

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

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

Acts 1983, No. 603, §1.

Art. 789. Alternate jurors

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

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

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

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

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

Art. 790. Swearing of jurors

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

Acts 1990, No. 524, §1.

Art. 791. Sequestration of jurors and jury

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

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

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

Amended by Acts 1991, No. 475, §1; Acts 1995, No. 1172, §1; Acts 1995, No. 1277, §1.

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Art. 792. Selection of foreman

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

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

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

B. A juror shall be permitted to take notes when agreement to granting such permission has been made between the defendant and the state in open court but not within the presence of

the jury. The court shall provide the needed writing implements. Jurors may, but need not, take notes and such notes may be used during the jury's deliberations but shall not be preserved for review on appeal. The trial judge shall ensure the confidentiality of the notes during the course of trial and the jury's deliberation and shall cause the notes to be destroyed immediately upon return of the verdict.

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

Acts 2001, No. 465, §1.

Art. 794. Removal of jury

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

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

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

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

SECTION 2. CHALLENGES

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

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

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

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

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

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

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

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

Art. 796. Removal of juror after swearing

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

Art. 797. Challenge for cause

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

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

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

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

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

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

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Art. 798. Causes for challenge by the state

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

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

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

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

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

TITLE XXXV. DOMESTIC VIOLENCE PREVENTION FIREARM TRANSFER

Art. 1001. Definitions

As used in this Title:

(1) "Dating partner" shall have the same meaning as provided in R.S. 46:2151 or R.S. 14:34.9.

(2) "Family member" shall have the same meaning as provided in R.S. 46:2132 or R.S. 14:35.3.

(3) "Firearm" means any pistol, revolver, rifle, shotgun, machine gun, submachine gun, black powder weapon, or assault rifle which is designed to fire or is capable of firing fixed cartridge ammunition or from which a shot or projectile is discharged by an explosive.

(4) "Household member" shall have the same meaning as provided in R.S. 46:2132 or R.S. 14:35.3.

(5) "Other law enforcement agency" shall include any local or municipal police force, the constable, and state police.

(6) "Sheriff" means the sheriff of the jurisdiction in which the order was issued, unless the person resides outside of the jurisdiction in which the order is issued. If the person resides outside of the jurisdiction in which the order is issued, "sheriff" means the sheriff of the parish in which the person resides.

Acts 2018, No. 367, §3, eff. Oct. 1, 2018; Acts 2019, No. 427, §3.

Art. 1001.1. Duties of the sheriff; other law enforcement agencies

Notwithstanding any provision of law to the contrary, the sheriff may enter into an agreement with any other law enforcement agency to have that law enforcement agency assume the duties of the sheriff under this Title.

Acts 2019, No. 427, §3.

Art. 1002. Transfer of firearms

A.(1) When a person has any of the following, the judge shall order the transfer of all firearms and the suspension of a concealed handgun permit of the person:

(a) A conviction of domestic abuse battery (R.S. 14:35.3).

(b) A second or subsequent conviction of battery of a dating partner (R.S. 14:34.9).

(c) A conviction of battery of a dating partner that involves strangulation (R.S. 14:34.9(K)).

(d) A conviction of battery of a dating partner when the offense involves burning (R.S. 14:34.9(L)).

(e) A conviction of possession of a firearm or carrying a concealed weapon by a person convicted of domestic abuse battery and certain offenses of battery of a dating partner (R.S. 14:95.10).

(f) A conviction of domestic abuse aggravated assault (R.S. 14:37.7).

(g) A conviction of aggravated assault upon a dating partner (R.S. 14:34.9.1).

(h) A conviction of any felony crime of violence enumerated or defined in R.S. 14:2(B), for which a person would be prohibited from possessing a firearm pursuant to R.S. 14:95.1, and which has as an element of the crime that the victim was a family member, household member, or dating partner.

(i) A conviction of any felony crime of violence enumerated or defined in R.S. 14:2(B), for which a person would be prohibited from possessing a firearm pursuant to R.S. 14:95.1, and in

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which the victim of the crime was determined to be a family member, household member, or dating partner.

(2) Upon issuance of an injunction or order under any of the following circumstances, the judge shall order the transfer of all firearms and the suspension of a concealed handgun permit of the person who is subject to the injunction or order:

(a) The issuance of a permanent injunction or a protective order pursuant to a court-approved consent agreement or pursuant to the provisions of R.S. 9:361 et seq., R.S. 9:372, R.S. 46:2136, 2151, or 2173, Children's Code Article 1570, Code of Civil Procedure Article 3607.1, or Articles 30, 320, or 871.1 of this Code.

(b) The issuance of a Uniform Abuse Prevention Order that includes terms that prohibit the person from possessing a firearm or carrying a concealed weapon.

B.(1) The order to transfer firearms and suspend a concealed handgun permit shall be issued by the court at the time of conviction for any of the offenses listed in Subparagraph (A)(1) of this Article or at the time the court issues an injunction or order under any of the circumstances listed in Subparagraph (A)(2) of this Article.

(2) In the order to transfer firearms and suspend a concealed handgun permit the court shall inform the person subject to the order that he is prohibited from possessing a firearm and carrying a concealed weapon pursuant to the provisions of 18 U.S.C. 922(g)(8) and Louisiana law.

C. At the same time an order to prohibit a person from possessing a firearm or carrying a concealed weapon is issued, the court shall also cause all of the following to occur:

(1) Require the person to state in open court or complete an affidavit stating the number of firearms in his possession and the location of all firearms in his possession.

(2) Require the person to complete a firearm information form that states the number of firearms in his possession, the type of each firearm, and the location of each firearm.

(3) Transmit a copy of the order to transfer firearms and a copy of the firearm information form to the sheriff of the parish or the sheriff of the parish of the person's residence.

D.(1) The court shall, on the record and in open court, order the person to transfer all firearms in his possession to the sheriff no later than forty-eight hours, exclusive of legal holidays, after the order is issued and a copy of the order and firearm information form required by Paragraph C of this Article is sent to the sheriff. If the person is incarcerated at the time the order is issued, he shall transfer his firearms no later than forty-eight hours after his release from incarceration, exclusive of legal holidays. At the time of transfer, the sheriff and the person shall complete a proof of transfer form. The proof of transfer form shall contain the quantity of firearms transferred. The sheriff shall retain a copy of the form and provide the person with a copy. The proof of transfer form shall attest that the person is not currently in possession of firearms in accordance with the provisions of this Title and is currently compliant with state and federal law, but shall not include the date on which the transfer occurred.

(2) Within ten days of transferring his firearms, exclusive of legal holidays, the person shall file the proof of transfer form with the clerk of court of the parish in which the order was issued. The proof of transfer form shall be maintained by the clerk of court under seal.

E.(1) If the person subject to the order to transfer firearms and suspend a concealed handgun permit issued pursuant to Paragraph A of this Article does not possess firearms, at the time the order is issued, the person shall complete a declaration of nonpossession form which shall be filed in the court record and a copy shall be provided to the sheriff.

(2) Within five days of the issuance of the order pursuant to Paragraph A of this Article, exclusive of legal holidays, the person shall file the declaration of nonpossession with the clerk of court of the parish in which the order was issued.

F. Notwithstanding the provisions of Paragraph E of this Article or any other provision of law to the contrary, if the person subject to the order to transfer firearms and suspend a concealed handgun permit issued pursuant to Paragraph A of this Article possessed firearms at the time of the qualifying incident giving rise to the duty to transfer his firearms pursuant to this Title, but transferred or sold his firearms to a third party prior to the court's issuance of the order, that third-party transfer shall be declared in open court. The person subject to the order to transfer firearms and suspend a concealed handgun permit shall within ten days after issuance of the order, exclusive of legal holidays, execute along with the third party and a witness a proof of transfer form that complies with the provisions of Paragraph D of this Article and with Article 1003(A)(1)(a). The proof of transfer form need not be signed by the sheriff and shall be filed, within ten days after the date on which the proof of transfer form is executed, by the person subject to the order with the clerk of court of the parish in which the order was issued. The proof of transfer form shall be maintained by the clerk of court under seal.

G. The failure to provide the information required by this Title, the failure to timely transfer firearms in accordance with the provisions of this Title, or both, may be punished as contempt of court. Information required to be provided in order to comply with the provisions of this Title cannot be used as evidence against that person in a future criminal proceeding, except as provided by the laws on perjury or false swearing.

H. On motion of the district attorney or of the person transferring his firearms, and for good cause shown, the court shall conduct a contradictory hearing with the district attorney to ensure that the person has complied with the provisions of this Title.

I. For the purposes of this Title, a person shall be deemed to be in possession of a firearm if that firearm is subject to his dominion and control.

Acts 2018, No. 367, §3, eff. Oct. 1, 2018; Acts 2019, No. 427, §3.

Art. 1002.1. Designation of crime of violence against family member, household member, or dating partner

Notwithstanding the provisions of Articles 814 and 817 and any other provision of law to the contrary, when a person is charged with any felony crime of violence enumerated or defined in R.S. 14:2(B), for which the person would be prohibited from possessing a firearm pursuant to R.S. 14:95.1 if convicted, the district attorney may allege in the indictment or bill of information that the victim of the crime was a family member, household member, or dating partner for the purpose of invoking the provisions of this Title, including Article 1002(A)(1)(i). If the person pleads guilty to the indictment or bill of information, the fact that the victim was a family member, household member, or dating partner shall be deemed admitted. If the matter proceeds to trial, the issue of whether the victim was a family member, household member, or dating partner shall be submitted to the jury and the verdict shall include a specific finding of fact as to that issue in addition to a specification of the offense as to which the verdict is found.

Acts 2019, No. 427, §3.

Art. 1003. Transfer or storage of transferred firearms

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A. The sheriff of each parish shall be responsible for oversight of firearm transfers in his parish. For each firearm transferred pursuant to this Title, the sheriff shall offer all of the following options to the transferor:

(1)(a) Allow a third party to receive and hold the transferred firearms. The third party shall complete a firearms acknowledgment form that, at a minimum, informs the third party of the relevant state and federal laws, lists the consequences for noncompliance, and asks if the third party is able to lawfully possess a firearm. No firearm shall be transferred to a third party living in the same residence as the transferor at the time of transfer. The sheriff shall prescribe the manner in which firearms are transferred to a third party.

(b) If a firearm is transferred to a third party pursuant to the provisions of this Subparagraph, the sheriff shall advise the third party that return of the firearm to the person before the person is able to lawfully possess the firearms pursuant to state or federal law may result in the third party being charged with a crime.

(2) Store the transferred firearms in a storage facility with which the sheriff has contracted for the storage of transferred firearms or with the sheriff. The sheriff may charge a reasonable fee for the storage of such firearms.

(3) Oversee the legal sale of the transferred firearms to a third party. The sheriff may contract with a licensed firearms dealer for such purpose. The sheriff may charge a reasonable fee to oversee the sale of firearms.

B. The sheriff shall prepare a receipt for each firearm transferred and provide a copy to the person transferring the firearms. The receipt shall include the firearm manufacturer and firearm serial number. The receipt shall be signed by the officer accepting the firearms and the person transferring the firearms. The sheriff may require the receipt to be presented before returning a transferred firearm.

C. The sheriff shall keep a record of all transferred firearms including but not limited to the name of the person transferring the firearm, the manufacturer, model, serial number, and the manner in which the firearm is stored.

D.(1) When the person is no longer prohibited from possessing a firearm under state or federal law, the person whose firearms were transferred pursuant to the provisions of this Title may file a motion with the court seeking an order for the return of the transferred firearms.

(2) Upon reviewing the motion, if the court determines that the person is no longer prohibited from possessing a firearm under state or federal law, the court shall issue an order stating that the firearms transferred pursuant to the provisions of this Title shall be returned to the person. The order shall include the date on which the person is no longer prohibited from possessing a firearm and a copy of the order shall be sent to the sheriff. However, all outstanding fees shall be paid to the sheriff prior to the firearms being returned.

(3) No sheriff or third party to whom the firearms were transferred pursuant to the provisions of this Title, shall return a transferred firearm prior to receiving the order issued by the court pursuant to the provisions of this Paragraph.

(4) If the person refuses to pay outstanding fees to the sheriff or fails to file a motion with the court seeking an order for the return of the transferred firearms within one year of the expiration of the prohibition on possessing firearms under state or federal law, the sheriff may send, by United States mail to the person's last known address, a notice informing the person that if he does not pay the outstanding fees to the sheriff or file a motion with the court seeking an order for the return of the transferred firearms within ninety days, the firearms shall be forfeited to the sheriff. If, after ninety days from the mailing of the notice, the person does not pay the outstanding fees to the

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sheriff or file a motion with the court seeking an order for the return of the transferred firearms, the sheriff may file a motion seeking a court order declaring that the firearms are forfeited to the sheriff, who may thereafter dispose of the firearms at his discretion.

E. The sheriff shall exercise due care to preserve the quality and function of all firearms transferred under the provisions of this Title. However, the sheriff shall not be liable for damage to firearms except for cases of willful or wanton misconduct or gross negligence. In addition, the sheriff shall not be liable for damage caused by the third party to whom the firearms were transferred pursuant to the provisions of this Title.

F. Nothing in this Title shall be construed to prohibit the sheriff, consistent with constitutional requirements, from obtaining a search warrant to authorize testing or examination upon any firearm so as to facilitate any criminal investigation or prosecution. Notwithstanding Article 163(C) or any other provision of law to the contrary, the testing or examination of the firearms pursuant to the search warrant may be conducted at any time before or during the pendency of any criminal proceeding in which the firearms, or the testing or examination of the firearms, may be used as evidence, and shall not be subject to the ten-day period in Article 163(C).

G. Not sooner than three years after the date on which a firearm or firearms are returned pursuant to the provisions of this Article, the person may file a motion with the court requesting that the records relative to the firearm or firearms held by the clerk of court and by the sheriff be destroyed. After a contradictory hearing with the sheriff and the district attorney, which may be waived by the sheriff or the district attorney, the court, if the person is no longer prohibited from possessing firearms under state or federal law and if the firearm or firearms have actually been returned, shall order that the records held by the clerk of court and by the sheriff relative to the returned firearm or firearms be destroyed.

Acts 2018, No. 367, §3, eff. Oct. 1, 2018; Acts 2019, No. 427, §3.

Art. 1003.1. Public records; exception

Notwithstanding any provision of law to the contrary, any records held by the sheriff or any other law enforcement agency pursuant to this Title shall be confidential and shall not be considered a public record pursuant to the Public Records Law.

Acts 2019, No. 427, §3.

Art. 1004. Implementation

The sheriff, clerk of court, and district attorney of each parish shall develop forms, policies, and procedures no later than January 1, 2019, regarding the communication of convictions and orders issued between agencies, procedures for the acceptance of transferred firearms, procedures for the storage of transferred firearms, return of transferred firearms, the proof of transfer form, the declaration of nonpossession form, and any other form, policy, or procedure necessary to effectuate the provisions of this Title.

Acts 2018, No. 367, §3, eff. Oct. 1, 2018.

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).

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(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.

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