Louisiana Code of Criminal Procedure 2024

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 2023 Legislative Sessions.

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TITLE I. PRELIMINARY PROVISIONS AND GENERAL POWERS OF COURTS

CHAPTER 1. PRELIMINARY PROVISIONS AND RULES OF CONSTRUCTION

Art. 1. Short title; citation of Code

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

Art. 2. Purpose and construction

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

Art. 3. Procedures not otherwise specified

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

Art. 4. Number; gender

Unless the context clearly indicates otherwise:

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

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

Art. 5. Mandatory and permissive language

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

Art. 6. Conjunctive, disjunctive, or both

Unless the context clearly indicates otherwise:

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

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

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

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

Art. 7. Municipal and parochial officers included

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

Art. 8. Assistants and deputies included

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

Art. 9. References to Code articles or statutory sections

Unless the context clearly indicates the contrary:

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

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

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

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

Art. 11. Clerical and typographical errors disregarded

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

Art. 12. Pleading a statute

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

Art. 13. Computation of time

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

A half-holiday is considered as a legal holiday.

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

(1) It is expressly excluded;

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

(3) The period is less than seven days.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TITLE II. DISTRICT ATTORNEY AND ATTORNEY GENERAL

Art. 61. District attorney; powers and duties

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

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

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

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

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

Acts 2003, No. 1223, §1.

Art. 63. District attorney; assistance of other counsel

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

Art. 64. Relationship of district attorney with grand jury

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

Art. 65. Defense of prosecution unlawful

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

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

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

Amended by Acts 1974, No. 220, §1.

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

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

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

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

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

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

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

TITLE III.THE CORONER AND OTHER OFFICERS

CHAPTER 1. THE CORONER

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

The coroner's jury and inquest are abolished.

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

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

Art. 102. Autopsy

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

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

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

(3) In all other cases provided by law.

Acts 1987, No. 878, §2.

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

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

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

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

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

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

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

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

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

Acts 1995, No. 887, §1.

Art. 104. Employment of expert assistants

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

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

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

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

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

Art. 106. Arrest of criminal suspect

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

CHAPTER 3. CLERKS, SHERIFFS, CONSTABLES, AND MARSHALS

Art. 131. Duties and powers

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

TITLE 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.

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 include 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.

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.

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

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

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

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

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

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

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

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

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

Art. 163.1. 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.

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.

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 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;

(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.

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 as defined by R.S. 14:67 or illegal possession of stolen things as provided in R.S. 14:69(B)(4), he may issue a written summons instead of making an arrest if all of the following conditions exist:

(a) The officer has reasonable grounds to believe that the person will appear upon summons.

(b) The officer has no 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 no necessity to book the person to comply with routine identification procedures.

(d) If an officer issues a summons for a felony described in this Paragraph, the officer issuing the summons has ascertained that the person has no prior criminal 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 may issue a written summons instead of making an arrest if both of the following conditions exist:

(a) He has reasonable grounds to believe that the person will appear upon summons.

(b) He has no 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 reasonable 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. 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, the officer shall

make a custodial arrest.

Amended by Acts 1982, No. 180, §1; Acts 1995, No. 769, §1; Acts 2006, No. 143, §2; Acts 2011, No. 403, §1; Acts 2019, No. 154, §1; Acts 2021, No. 240, §1; Acts 2022, No. 621, §1; Acts 2023, No. 438, §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.

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

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.

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 Subparagraph 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.

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).

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.

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, 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.

(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 result 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, 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.

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 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. 225, §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.

(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 cost 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.

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 costs of the proceedings to dispose of unclaimed property shall be deposited in the sheriff's salary fund.

Added by Acts 1975, No. 545, §1.

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 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 offset 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.

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. 7[illegible], §1. Amended by Acts 1977, No. 395, §1; Acts 1984, No. 206, §1; Acts 1985, No. 955, §1; Acts 2001, No. 811, §1; Acts 2018, No. 129, §1.

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

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

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 5[illegible] 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.

(f) The individual is released on a bail undertaking and the law enforcement officer or agency is requested to release or disseminate the booking photograph to the individual's surety agent.

(g) A law enforcement officer or agency determines that releasing or disseminating the booking photograph is necessary for investigative purposes.

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

(3) A booking photograph published, released, or disseminated by a law enforcement officer or agency, except after the subject of the booking photograph being found guilty or pleading guilty or nolo contendere as provided in Subsubparagraph (1)(d) of this Paragraph, shall include a disclaimer that states "all persons are presumed innocent until proven guilty".

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

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

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

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

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

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

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

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

Acts 2022, No. 494, §2, eff. June 16, 2022; Acts 2023, No. 303, §1.

TITLE IX. HABEAS CORPUS

Art. 351. Habeas corpus; definition

Habeas corpus is a writ commanding a person who has another in his custody to produce him before the court and to state the authority for the custody.

"Custody" as used in this Title means detention or confinement as a result of or incidental to an instituted or anticipated criminal proceeding.

The provisions of this Title are not available to persons entitled to file an application for post conviction relief under Title XXXI-A.

Amended by Acts 1980, No. 429, §2, eff. Jan. 1, 1981.

Art. 352. Venue

Habeas corpus proceedings by or on behalf of a person in custody shall be instituted in the parish in which the person is in custody.

Amended by Acts 1980, No. 429, §2, eff. Jan. 1, 1981.

Art. 353. Application for writ; form and contents

An application for a writ of habeas corpus shall be by written petition addressed to a competent court by the person in custody or by some other person in his behalf. If the custody is by virtue of or under pretext of a court order, a copy of such order shall be annexed to the petition, or the petition shall allege that a copy of it has been demanded and refused. The petition shall further allege:

(1) The name of the person in custody and the place of custody if known, or if not known, a statement to that effect;

(2) The name of the custodian if known, or if not known, a designation or description of him as far as possible; and

(3) A statement of facts upon which the petition is based, which statement may be supported by affidavits filed with the petition.

The application shall conclude with a prayer for the issuance of the writ. It shall be signed by the applicant and be accompanied by an affidavit that the allegations contained in the petition are true to the best of the affiant's information and belief.

Amended by Acts 1976, No. 382, §1; Acts 1980, No. 429, §2, eff. Jan. 1, 1981.

Art. 354. Granting of writ; time and place for answer

The court to which the application is presented shall immediately grant a writ of habeas corpus, unless it appears by the petition itself or by the documents annexed to it that the person in custody is not entitled to be set at liberty. The writ may issue at any time on any day, in term time or vacation, and shall fix the place and time for the answer, which shall be as early as practicable, and shall not exceed seventy-two hours from the time of the issuance of the writ.

Amended by Acts 1968, No. 139, §1; Acts 1980, No. 429, §2, eff. Jan. 1, 1981.

Art. 355. Persons authorized to make service; proof of service

A writ of habeas corpus may be served by a person over the age of twenty-one who is capable of testifying. If the writ is served by someone other than a sheriff, the affidavit of the person who served it shall be prima facie proof of such service.

Art. 356. Method of service

Service of the writ may be made on any day by:

(1) Delivering it to the person to whom it is addressed;

(2) Informing him of its contents if he refuses to receive it; or

(3) Attaching the writ to an entrance door of the residence of the person to be served or of the place of custody if such person conceals himself or cannot be found or refuses admittance to the person attempting service.

A writ of habeas corpus, although addressed to a particular person, may be served in the manner provided by this article upon any person who has custody of the person whose release is sought.

Art. 357. Answer; production of person in custody

The person upon whom the writ has been served, whether it is directed to him or not, shall file a written answer, signed and sworn to by him stating whether he has custody of the person named in the writ. If the person is in his custody, he shall produce him and state in his answer his authority for holding the person in custody. If the custody is by virtue of a court order, the document in the possession of the custodian shall be annexed to the answer. The answer and the production of the person in custody shall be made at the place and time designated by the writ.

Art. 358. Transfer of custody; answer

If the custody has been transferred prior to service of the writ, the person upon whom the writ was served shall state in his answer the name and address of the person to whom custody was transferred, the time of and the authority for the transfer, and the place where the person is then in custody.

Art. 359. Nonproduction of person confined; justification

If the person in custody cannot for any reason be brought before the court, the reasons therefor shall be stated in the answer. If the court is satisfied with the reasons stated, the hearing may proceed without his presence. If the court is not satisfied with the reasons stated, it may require the immediate production of the person in custody.

Amended by Acts 1976, No. 448, §1; Acts 1980, No. 429, §2, eff. Jan. 1, 1981.

Art. 360. Hearing

At the time and place fixed in the writ for the answer thereto, the court shall proceed summarily to hear the evidence and reasons adduced by the person in custody and by the custodian. The hearing shall be held in open court and may be held in term time or in vacation, or on a legal holiday.

Art. 361. Custody without court order

If the person in custody is being held not by virtue of a court order, the court, after the hearing, shall discharge or refuse to discharge the person from custody as justice may require.

Art. 362. Custody with court order

If the person in custody is being held by virtue of a court order, relief shall be granted only on the following grounds:

(1) The court has exceeded its jurisdiction;

(2) The original custody was lawful, but by some act, omission, or event which has since occurred, the custody has become unlawful;

(3) The order for the custody is deficient in some legal requisite;

(4) The order for the custody, although legal in form, imposes an illegal custody;

(5) The custodian is not the person allowed by law to detain the person in custody;

(6) He has been denied his right to a hearing in an extradition case, as provided in Article 267; or

(7) He is being held in custody prior to trial in violation of due process of law.

Amended by Acts 1980, No. 429, §2, eff. Jan. 1, 1981

Art. 363. Effect of appeal

The writ of habeas corpus shall not be granted to a convicted person for a cause under Article 362, if he may appeal, or has done so and the appeal is pending.

Art. 364. New warrant; when issued

The court shall issue a new warrant of arrest when it appears that there exists sufficient legal ground for the custody of the person based on an offense with which he may be charged, although the order for the custody may have been rendered in an irregular or unauthorized manner, or may have been executed by an unauthorized person.

Art. 365. Burden of proof

If the person in custody is being held not by virtue of a court order, the custodian shall have the burden of proving the legality of the custody and of showing good cause why the person in custody should not be released.

If the person in custody is being held by virtue of a court order, he shall have the burden of proving the illegality of the custody and that he is entitled to be released.

Art. 366. Custody pendente lite

At the time of issuing the writ the court may render a special order concerning the custody of the person from the time the writ is served until rendition of judgment.

Art. 367. Rearrest after discharge

A person discharged from custody in a habeas corpus proceeding may be rearrested if a legal ground exists therefor.

Art. 368. Disobedience of writ or judgment; contempt

A person who fails to comply with the writ of habeas corpus, or with a judgment rendered on a petition for a writ of habeas corpus may be punished for contempt.

Art. 369. Appeal not permitted

There shall be no appeal from a judgment granting or refusing to grant release upon a petition for a writ of habeas corpus.

Art. 370. Custody pending application for writs

A person in custody shall not be released upon a writ of habeas corpus until forty-eight hours after the judgment ordering the release has been entered or until an application by the state for supervisory writs has been denied, whichever occurs first, if:

(1) The state has announced its intention to apply for supervisory writs; and

(2) The person is being held in custody by virtue of a court order or in connection with a felony.

TITLE X. INSTITUTING CRIMINAL PROSECUTIONS

Art. 381. Nature of criminal prosecution

A criminal prosecution is brought in the name of the state in a court of criminal jurisdiction, for the purpose of bringing to punishment one who has violated a criminal law.

The person injured by the commission of an offense is not a party to the criminal prosecution, and his rights are not affected thereby.

Art. 382. Methods of instituting criminal prosecutions

A. A prosecution for an offense punishable by death, or for an offense punishable by life imprisonment, shall be instituted by indictment by a grand jury. Other criminal prosecutions in a district court shall be instituted by indictment or by information.

B.(1) A prosecution for violation of an ordinance and other criminal prosecutions in a parish court shall be instituted by affidavit or information charging any offense.

(2) A prosecution for violation of an ordinance and other criminal prosecutions in a city court shall be instituted by affidavit or information charging any offense supported by an affidavit.

(3) Criminal prosecutions in a juvenile court or family court shall be instituted by affidavit, information, or indictment.

Amended by Acts 1974, Ex.Sess. No. 19, §1, eff. Jan. 1, 1975; Acts 1989, No. 8, §1; Acts 1994, 3rd Ex. Sess., No. 83, §1.

Art. 383. Indictment

An indictment is a written accusation of crime made by a grand jury. It must be concurred in by not less than nine of the grand jurors, indorsed "a true bill," and the indorsement must be signed by the foreman. Indictments shall be returned into the district court in open court; but when an indictment has been returned for an offense which is within the trial jurisdiction of another court in the parish, the indictment may be transferred to that court.

Art. 384. Information

An information is a written accusation of crime made by the district attorney or the city prosecutor and signed by him. It must be filed in open court in a court having jurisdiction to try the offense, or in the office of the clerk thereof.

Acts 1989, No. 8, §1.

Art. 385. Affidavit

An affidavit is a written accusation of crime made under oath and signed by the affiant. It must be filed in open court in a court having jurisdiction to try the offense, or in the office of the clerk thereof.

Art. 386. Institution of prosecution after discharge at preliminary examination; after failure of grand jury to indict

Discharge of a defendant after a preliminary examination does not preclude the subsequent filing of an indictment, information, or affidavit against him for the same offense.

The failure or refusal of a grand jury to indict a defendant does not preclude a subsequent indictment by the same or another grand jury, or the subsequent filing of an information or affidavit against him, for the same offense.

Art. 387. Additional information required when prosecuting certain offenses

A. When instituting the prosecution of an offense involving a violation of any state law or local ordinance that prohibits the use of force or a deadly weapon against any family member or household member as those terms are defined by R.S. 14:35.3 or that prohibits the use of force or violence against a dating partner as defined by R.S. 14:34.9, the district attorney, or city prosecutor for criminal prosecutions in city court, shall include the following information in the indictment, information, or affidavit:

(1) Date of the offense.

(2) The state identification number of the defendant, if one has been assigned to the defendant for this offense or for any prior offenses.

B. Failure to comply with the provisions of this Article shall not constitute grounds for a motion to quash.

Acts 2015, No. 440, §4; Acts 2017, No. 84, §5.

Art. 388. Additional information provided when prosecuting offenses

A. When instituting the prosecution of an offense involving a violation of any state law or local ordinance, the prosecuting agency, when authorized to provide information, shall include the following information in the indictment, information, or affidavit, if provided by the booking agency:

(1) Date of the offense.

(2) Date of arrest or summons, if a summons was issued in lieu of an arrest.

(3) The state identification number of the defendant, if one has been assigned to the defendant for the offense or for any prior offenses.

(4) Defendant demographic data to include sex, race, and date of birth, if known.

B. The information provided in Paragraph A of this Article may be provided in a separate document submitted with the bill of information, bill of indictment, or summons to the clerk of court.

C. The booking agency shall provide the information provided in Paragraph A of this Article to the prosecuting agency.

D. The clerk of court shall report the information provided in Paragraph A of this Article, along with the disposition and disposition date, to the supreme court.

E. The supreme court is authorized to report the information provided in Paragraph A of this Article, along with the disposition and disposition date, to the Louisiana Bureau of Criminal Identification and Information.

F. Failure to comply with the provisions of this Article shall not constitute grounds for a motion to quash.

Acts 2023, No. 278, §1.

TITLE XI. QUALIFICATIONS AND SELECTION OF GRAND AND PETIT JURORS

Art. 401. General qualifications of jurors

A. In order to qualify to serve as a juror, a person shall meet all of the following requirements:

(1) Be a citizen of the United States and of this state who has resided within the parish in which he is to serve as a juror for at least one year immediately preceding his jury service.

(2) Be at least eighteen years of age.

(3) Be able to read, write, and speak the English language and be possessed of sufficient knowledge of the English language.

(4) Not be under interdiction or incapable of serving as a juror because of a mental or physical infirmity, provided that no person shall be deemed incompetent solely because of the loss of hearing in any degree.

(5) Not be under indictment, incarcerated under an order of imprisonment, or on probation or parole for a felony offense within the five-year period immediately preceding the person's jury service.

B. Notwithstanding any provision in Subsection A, a person may be challenged for cause on one or more of the following:

(1) A loss of hearing or the existence of any other incapacity which satisfies the court that the challenged person is incapable of performing the duties of a juror in the particular action without prejudice to the substantial rights of the challenging party.

(2) When reasonable doubt exists as to the competency of the prospective juror to serve as provided for in Code of Criminal Procedure Article 787.

Amended by Acts 1972, No. 695, §1; Acts 1984, No. 655, §1; Acts 2010, No. 438, §1; Acts 2021, No. 121, §1.

Art. 401.1. Court instructions for interpreter

A. When a person with a hearing loss is among the petit jury venire, the court shall:

(1) Provide an interpreter for the deaf prospective juror. The interpreter shall be sworn in as an officer of the court.

(2) Permit the interpreter to be present and assist a deaf prospective juror during voir dire.

B. When a deaf or hard of hearing person is summoned for jury duty, the court shall:

(1) Provide an interpreter for the deaf juror. The interpreter shall be sworn in as an officer of the court.

(2) Instruct the interpreter, in the presence of the jury, to:

(a) Make true, literal, and complete translations of all testimony and other relevant colloquy to the deaf juror during the deliberations of the jury.

(b) Refrain from participating in any manner in the deliberations of the jury.

(c) Refrain from having any communications, oral or visual, with any member of the jury regarding the deliberations of the jury except for literal translations of jurors' remarks made during deliberations.

(3) Permit the interpreter to be present and assist a deaf juror during the deliberations of the jury.

(4) Give a special instruction to the interpreter not to disclose any portion of the deliberations with any person following a verdict.

(5) Direct all costs relating to the interpreting services provided, including summoning, voir dire process, and empaneling of a juror in all trials, to be paid by the clerk of court's office through the juror and witness fee account.

C. The verdict of the jury shall be valid notwithstanding the presence of the interpreter during deliberations.

D. All costs relating to the interpreting services provided in this Article shall be paid by the clerk of court's office through the juror and witness fee account.

Added by Acts 1984, No. 655, §1. Acts 1988, No. 446, §1; Acts 1988, No. 775, §1; Acts 2017, No. 146, §14.

Art. 402. Repealed by Acts 1974, Ex.Sess., No. 20, §1, eff. January 1, 1975

Art. 403. Exemption from jury service

Exemptions from jury service shall be as provided by rules of the Louisiana Supreme Court pursuant to Section 33(B) of Article V of the Louisiana Constitution of 1974.

Amended by Acts 1968, No. 108, §1; Acts 1970, No. 430, §1; Acts 1972, No. 35, §1; Acts 1972, No. 282, §1; Acts 1972, No. 523, §1; Acts 1974, Ex.Sess., No. 22, §1, eff. Jan. 1, 1975.

Art. 403.1. Disqualification for undue hardship

If the judge who presided over the empaneling of the grand jury finds that a grand juror can no longer serve without undue hardship he may disqualify such juror and a substitute juror shall be selected in the same manner as for the filling of a vacancy.

Added by Acts 1988, No. 467, §1.

Art. 404. Appointment of jury commissions; term of office; oath; quorum; performance of functions of jury commissions in certain parishes

A. Except as otherwise provided in this Article:

(1) The jury commission of each parish shall consist of the clerk of court or a deputy clerk designated by him in writing to act in his stead in all matters affecting the jury commission, and four other members, each having the qualifications set forth in Article 401 and appointed by written order of the district court, who shall serve at the court's pleasure.

(2) Before entering upon their duties, members of the jury commission shall take an oath to discharge their duties faithfully.

(3) Three members of the jury commission shall constitute a quorum.

(4) Meetings of the jury commission shall be open to the public.

B. In the parish of East Baton Rouge the function of the jury commission shall be performed by the judicial administrator of the Nineteenth Judicial District Court or by a deputy judicial administrator designated by him in writing to act in his stead in all matters affecting the jury commission. The judicial administrator or his designated deputy shall have the same powers, duties and responsibilities, and be governed by those provisions of law as presently pertain to jury commissioners which are applicable, including the taking of an oath to discharge their duties

faithfully. The clerk of court of the parish of East Baton Rouge shall perform the duties and responsibilities otherwise imposed upon him by law with respect to jury venires, shall coordinate the jury venire process, and shall receive the compensation generally authorized for a jury commissioner.

C. In Orleans Parish, the jury commission shall be appointed by the judges en banc of the Criminal District Court of the parish of Orleans, and the jury commissioners shall serve at the pleasure of the court.

D. In the parish of Lafourche, the function of the jury commission may be performed by the clerk of court of the parish of Lafourche or by a deputy clerk of court designated by him in writing to act in his stead in all matters affecting the jury commission. The clerk of court or his designated deputy shall have the same powers, duties, and responsibilities, and shall be governed by applicable provisions of law pertaining to jury commissioners. The clerk of court of the parish of Lafourche shall perform the duties and responsibilities otherwise imposed upon him by law with respect to jury venires, shall coordinate the jury venire process, and shall receive the compensation generally authorized for a jury commissioner.

E. In the parish of Terrebonne, the function of the jury commission shall be performed by the clerk of court of Terrebonne Parish or by a deputy clerk of court designated by him in writing to act in his stead in all matters affecting the jury commission. The clerk of court or his designated deputy shall have the same powers, duties, and responsibilities, and shall be governed by all applicable provisions of law pertaining to jury commissioners. The clerk of court of Terrebonne Parish shall perform the duties and responsibilities otherwise imposed upon him by law with respect to jury venires, shall coordinate the jury venire process, and shall receive the compensation generally authorized for a jury commissioner.

F. In the parish of St. Charles, the function of the jury commission shall be performed by the clerk of court of St. Charles Parish or by a deputy clerk of court designated by him in writing to act in his stead in all matters affecting the jury commission. The clerk of court or his designated deputy shall have the same powers, duties, and responsibilities, and shall be governed by all applicable provisions of law pertaining to jury commissioners. The clerk of court of St. Charles Parish shall perform the duties and responsibilities otherwise imposed upon him by law with respect to jury venires, shall coordinate the jury venire process, and shall receive the compensation generally authorized for a jury commissioner.

G. In the parishes of East Feliciana and West Feliciana, the function of the jury commission shall be performed by the clerks of court of East Feliciana Parish and West Feliciana Parish or by a deputy clerk of court designated by the respective clerk in writing to act in his stead in all matters affecting the jury commission. The clerk of court or his designated deputy shall have the same powers, duties, and responsibilities, and shall be governed by all applicable provisions of law pertaining to jury commissioners. The clerks of court of East Feliciana Parish and West Feliciana Parish shall perform the duties and responsibilities otherwise imposed upon him by law with respect to jury venires, shall coordinate the jury venire process, and shall receive the compensation generally authorized for a jury commissioner.

H. In the parishes of Caldwell, Claiborne, DeSoto, Franklin, Union, and Webster, the function of the jury commission shall be performed by the clerks of court of Caldwell Parish, Claiborne Parish, DeSoto Parish, Franklin Parish, Union Parish, and Webster Parish or by a deputy clerk of court designated by the respective clerk in writing to act in his stead in all matters affecting the jury commission. The clerk of court or his designated deputy shall have the same powers, duties, and responsibilities, and shall be governed by all applicable provisions of law pertaining to

jury commissioners. The clerks of court of Caldwell Parish, Claiborne Parish, DeSoto Parish, Franklin Parish, Union Parish, and Webster Parish shall perform the duties and responsibilities otherwise imposed upon him by law with respect to jury venires, shall coordinate the jury venire process, and shall receive the compensation generally authorized for a jury commissioner.

I. In the parish of Tangipahoa, the function of the jury commission shall be performed by the clerk of court of Tangipahoa Parish or by a deputy clerk of court designated by the respective clerk in writing to act in his stead in all matters affecting the jury commission. The clerk of court or his designated deputy shall have the same powers, duties, and responsibilities, and shall be governed by all applicable provisions of law pertaining to jury commissioners. The clerk of court of Tangipahoa Parish shall perform the duties and responsibilities otherwise imposed upon him by law with respect to jury venires, shall coordinate the jury venire process, and shall receive the compensation generally authorized for a jury commissioner.

J. In the parish of Jackson, the function of the jury commission shall be performed by the clerk of court of Jackson Parish or by a deputy clerk of court designated by the respective clerk in writing to act in his stead in all matters affecting the jury commission. The clerk of court or his designated deputy shall have the same powers, duties, and responsibilities, and shall be governed by all applicable provisions of law pertaining to jury commissioners. The clerk of court of Jackson Parish shall perform the duties and responsibilities otherwise imposed upon him by law with respect to jury venires, shall coordinate the jury venire process, and shall receive the compensation generally authorized for a jury commissioner.

Amended by Acts 1975, No. 259, §1; Acts 19[illegible] No. 6[illegible], §1; Acts 2007, No. 94, §1; Acts 2013, No. 100, §1; Acts 2013, No. 156, §1; Acts 2016, [illegible] 23[illegible], §1; Acts 2017, No. 104, §1; Acts 2018, No. 417, §1; Acts 2020, No. 97, §1; Acts 2021, No. [illegible] §1.

Art. 404.1. Powers, duties, and functions of the board of jury commissioners in Orleans Parish

A. Notwithstanding any other law to the contrary, this Article shall apply to the board of jury commissioners in Orleans Parish. In Orleans Parish, there shall be a board of jury commissioners, hereinafter referred to as "the board", composed of five members appointed by the governor, subject to confirmation of the Senate, to serve at his pleasure. The board shall meet at least once every six months and when it is ordered to do so by the court and may meet to select or supplement the general venire for grand and petit jurors. Three members shall constitute a quorum. The board may select a new general venire at any meeting and shall do so when ordered by the court.

B. The board in such parishes may, with the concurrence of the judges of the criminal district court, have subpoenas served through personal or domiciliary service by depositing same in the United States mail, regular, certified, or registered, addressed to the juror at his usual residence or business address. The date of mailing shall be not less than fifteen days prior to the date on which the addressee is subpoenaed to appear. When service is by regular mail, the board of jury commissioners shall retain a record of the date of mailing. In cases of service by regular mail, prior to any contempt citation, the person shall be served by registered or certified mail with return receipt requested. If service is made by registered or certified mail with return receipt

requested, the return receipt shall be retained by the jury commission as proof of proper service and failure of the person to respond to the subpoena so served shall constitute contempt of court.

C. The municipality which the board serves in such parishes shall cooperate with the board to provide the board with records, computer and other equipment, voter registration rolls, tapes, and other items which it needs to compile the general venire of grand jurors and petit jurors at no cost to the board.

D. The board in such parishes shall develop a plan to govern its operation. Such plan shall be approved by a majority of the judges of the criminal district court of such parishes.

E. The board shall have authority over all its employees, subject to supervision by the criminal district court. The board, by majority vote, shall determine all matters relating to its jurisdiction, subject only to the approval of the judges of the district court or criminal district court.

F. The accounting functions of the board and of the jury commission shall be transferred to the judicial administrator of the criminal district court.

G. All procedures and policies developed by the jury commission shall be under the direction and subject to the approval of the criminal district court en banc.

Acts 1985, No. 558, §1; Acts 1987, No. 281, §1; Acts 1991, No. 89, §2; Acts 2011, 1st Ex. Sess., No. 16, §1.

Art. 405. Notice of jury commission meetings

A. Each member of the jury commission shall be notified in writing of the time and place designated for a meeting of the commission, at least twenty-four hours prior to the meeting.

B. The notice shall be issued by one of the members or the secretary of the jury commission in Orleans Parish, and by the clerk of court in all other parishes, and shall be served in the manner provided for service of subpoenas.

Acts 2013, No. 220, §26, eff. June 11, 2013.

Art. 406. Powers of jury commission; penalty for disobedience of commission process

In order to secure qualified jurors, the jury commission may issue subpoenas to compel the attendance of witnesses and the production of evidence relative to the qualifications of prospective jurors. Disobedience of a subpoena of a jury commission is punishable as contempt of court.

Acts 2013, No. 220, §26, eff. June 11, 2013.

Art. 407. Administration of oath to witnesses

A jury commissioner shall administer an oath to each witness appearing before the commission, in accordance with Article 14.

Art. 408. Selection of general venire in parishes other than Orleans

A. In parishes other than Orleans, the jury commission shall select impartially at least three hundred persons having the qualifications to serve as jurors, who shall constitute the general venire. A list of persons so selected shall be prepared and certified by the clerk of court as the general venire list, and said list shall be kept as part of the records of the commission. The name and address of each person on the list shall be written on a separate slip of paper, with no designation as to race or color, which shall be placed in a box labeled "General Venire Box."

B. After the jury commission has selected the general venire, it shall lock and seal the general venire box and deliver it to the clerk of court, as the custodian thereof. Alternatively, the list of persons so selected may be retained in a form suitable for use by a properly programmed electronic device commonly known as a computer.

C. The jury commission shall meet at least once every six months and when ordered by the court, and may meet at any time to select or supplement the general venire. The commission may select a new general venire at any meeting and shall do so when ordered by the court.

Amended by Acts 1968, No. 140, §1; Acts 1972, No. 755, §1.

Art. 408.1. Initial selection of general venire; source

A. In developing a list of all persons who may be called for grand or petit jury duty:

(1) It shall be determined by each judicial district whether the names of prospective jurors shall be drawn exclusively from voter registration lists or also drawn from other sources or lists.

(2) If the district judges of the judicial district, in their discretion, authorize the use of sources other than voter registration lists in developing grand and petit jury lists, a jury commission shall not draw the names of prospective jurors exclusively from voter registration lists, but shall use other sources or lists of prospective jurors as may be legally available.

B. If the district judges authorize the use of a list of persons issued drivers' licenses as a source from which to choose prospective jurors, such list of drivers shall be provided annually at no cost by the Department of Public Safety and Corrections to the respective clerks of court or jury commissions responsible for preparing the list of prospective jurors. However, such a list shall only be provided to parishes that make written request through the parish clerk of court or jury commission.

Acts 1995, No. 933, §1; Acts 1995, No. 1102, §1; Acts 1997, No. 886, §1; Acts 1998, 1st Ex. Sess., No. 124, §1.

Art. 409. Selection of general venire in Orleans Parish

A. In the parish of Orleans, the jury commission shall select impartially at least seven hundred fifty persons having the qualifications to serve as jurors, who shall constitute the general venire.

B. A list of the persons so selected shall be prepared and certified by the commission as the general venire list and shall be kept as part of the records of the commission.

C. The name and address of each person on the list shall be written on a separate slip of paper, with no designation as to race or color, which shall be placed in a box labeled "General Venire Box."

D. No drawing shall be made from a general venire containing fewer than seven hundred fifty names, except when the court orders the drawing of tales jurors.

E. After the jury commission has selected the general venire, it shall lock and seal the general venire box and deliver it to the secretary of the commission, as the custodian thereof.

Amended by Acts 1968, No. 140, §2; Acts 2013, No. 220, §26, eff. June 11, 2013.

Art. 409.1. Orleans parish central jury pool

A. There is hereby created a central jury pool for the Criminal District Court for the Parish of Orleans which shall be administered by the Jury Commission of the Parish of Orleans as hereinafter provided.

B. In order to properly and adequately administer and operate the central jury pool for the Criminal District Court for the Parish of Orleans, the chairman of the Jury Commissioners for the Parish of Orleans shall designate two jury commissioners each month who shall be specifically charged with the responsibility for administering and operating the central jury pool. The chairman of the jury commissioners shall rotate the responsibility for the administration and operation of the central jury pool amongst the other four jury commissioners so that no jury commissioner shall be assigned to the central jury pool for more than six months out of every twelve months.

C. The Criminal District Court for the Parish of Orleans acting en banc shall by majority vote determine the number of jurors to serve in the central jury pool in any given month, the jury days for that month, and all other matters relative to the operating procedures of the central jury pool.

D. The jury commission shall select the number of jurors to serve in the central jury pool as hereinabove determined by the criminal district court acting en banc and by the method now prescribed by law.

E. The provisions of this Act shall be cumulative of and in addition to the method now prescribed by law for the selection of a jury panel for the Criminal District Court for the Parish of Orleans except that those provisions in conflict with this Act are hereby repealed and declared invalid insofar as they apply to the Criminal District Court for the Parish of Orleans.

Acts 1972, No. 41, §§1 to 5.

Art. 409.2. Jefferson Parish central jury pool

A. The judges of the Twenty-Fourth Judicial District Court for the parish of Jefferson, sitting en banc by majority vote may create a central jury pool for criminal and/or civil juries for the Twenty-Fourth Judicial District Court for the parish of Jefferson, which shall be administered by the jury commission for the parish of Jefferson as hereinafter provided.

B. The jury selection shall be administered by the jury commission for the parish of Jefferson as provided by law, except that the provisions of Article 417(B) shall not apply to Jefferson Parish.

C. The judges of the Twenty-Fourth Judicial District Court for the parish of Jefferson, acting en banc shall by majority vote determine the system, method, and number of jurors to serve in the central jury pool for criminal and/or civil juries for a given term whether daily, weekly, or monthly, and may specify jury days for a particular term. Likewise, all other matters relative to the operating procedures of the central jury pool shall be determined by the judges of the Twenty-Fourth Judicial District Court for the parish of Jefferson, acting en banc by a majority vote, including the designation of persons to administer the central jury pool.

D. The jury commission shall select the number of jurors to serve in the central jury pool as hereinabove determined by the judges of the Twenty-Fourth Judicial District Court, acting en banc and by the method now prescribed by law for jury selection.

E. The jurors so selected may serve as jurors in either criminal and/or civil matters in the method and manner prescribed by majority vote of the judges of the Twenty-Fourth Judicial District Court for the parish of Jefferson sitting en banc.

F. The provisions of this section shall be cumulative of and in addition to the method now prescribed by law for the selection of jury panels for the Twenty-Fourth Judicial District Court for the parish of Jefferson, except that those provisions in conflict with this Act are hereby repealed and declared invalid insofar as they apply to the Twenty-Fourth Judicial District Court for the parish of Jefferson.

Added by Acts 1976, No. 232, §1; Acts 1995, No. 1012, §1, eff. June 29, 1995; Acts 1995, No. 1273, §1; Acts 1995, No. 1277, §1.

Art. 409.3. Central jury pools; local rules

A. A district court may, by local rules adopted by majority vote of the judges, create and provide for the manner of administering a central jury pool for criminal and civil cases. The combined Orleans criminal and civil district courts shall be considered a district court for purposes of this Article.

B. Jurors selected to serve in the central jury pool may serve as jurors in either civil or criminal matters, or both.

C. The central jury pool shall be selected at random from persons included within the general venire. The number of persons selected to comprise the central jury pool and their length of service shall be determined pursuant to local court rules.

D. A panel of the central jury pool shall be selected at random from persons in the central jury pool. The number of persons selected to comprise the panel shall be determined pursuant to local court rules but the number shall be no less than three times the number of persons needed to complete the jury and in no event less than ten.

E. The petit jury shall be selected from the one or more central jury pool panels assigned to the court. Persons shall be called from the central jury pool panel at random.

F. Persons selected to serve on a central jury pool panel and not selected to serve on a jury may, pursuant to local court rules, be returned to the central jury pool.

G. The provisions of this Article supplement the methods presently provided by law for selecting jurors.

Added by Acts 1977, No. 372, §1.

Art. 409.4. Nineteenth Judicial District Court central jury pool

A. The Nineteenth Judicial District Court may, by local rules adopted by majority vote of the judges, create and provide for the manner of administering a central jury pool for criminal and civil cases.

B. The central jury pool shall be selected from persons included within the general venire. The number of persons selected to comprise the central jury pool and their length of service shall be determined pursuant to local court rules.

C. Jurors selected to serve in the central jury pool may serve as jurors in either civil or criminal matters, or both.

D. The provisions of this Article supplement the methods presently provided by law for selecting jurors.

Added by Acts 1977, No. 739, §1.

Art. 409.5. One day/one trial jury system

A. A district court may, by local rules adopted by a majority vote of all the judges of that district, create and provide for the manner of administering a one day/one trial jury system for criminal and civil cases. The combined Orleans criminal and civil district courts shall be considered a district court for the purposes of this Article.

B. Unless otherwise provided in this Article, the jurors shall be selected and shall serve in accordance with the provisions of Code of Criminal Procedure Article 409.3.

C. Any juror selected pursuant to this Article shall serve in the central jury pool for a period of not more than one day unless he is selected to serve on a jury or unless extraordinary circumstances warrant, pursuant to local court rules, that he be held over for the continuation of voir dire. Any juror selected to serve on a jury shall serve until he is discharged from the jury.

D. Any district court which adopts rules pursuant to this Article is hereby authorized to provide for (1) audio-visual presentations for the purpose of orienting new jurors and (2) prequalification questionnaires to prospective jurors in order to assist those public officials responsible for selecting qualified jurors for the general venire and central jury pool.

E. No district court may adopt rules pursuant to this Article unless the court has previously determined by majority vote of all the judges that it has sufficient computer availability to assist in the overall management of a one day/one trial jury system.

Added by Acts 1981, No. 178, §1.

Art. 410. Revising and supplementing the general venire

A. At each commission meeting to revise and supplement the general venire, the commission shall examine the general venire list prepared at the previous selection of the general venire and shall delete therefrom the names of those persons who:

(1) Have served as civil or criminal jurors since the previous selection of the general venire; or

(2) Are known to have died or who have become disqualified to serve as jurors since their selection on the general venire.

B. The slips bearing the names of those persons deleted from the general venire list shall be removed from the general venire box.

C. The commission shall then supplement the list prepared at the previous commission meeting and the corresponding slips in the box by selecting a sufficient number of additional persons in compliance with Article 408 or Article 409 of this Code, whichever is applicable. Where the general venire list is maintained in a form suitable for use by a computer, the general venire shall likewise be deleted and supplemented as provided in this Article.

Amended by Acts 1972, No. 755, §1; Acts 2013, No. 220, §26, eff. June 11, 2013; Acts 2014, No. 791, §21.

Art. 411. Drawing of grand jury venire; disposition of slips; jury box; subpoena of persons on grand jury venire

A. Upon order of the court, the jury commission shall select by drawing indiscriminately and by lot from the general venire box the names of a sufficient number of not less than fifty persons from which to empanel a grand jury, with the number to be specified by the court in its order, who shall constitute the grand jury venire. Alternatively, the grand jury venire may be drawn with the use of a properly programmed electronic device. A grand jury venire shall not be drawn from a general venire containing fewer than three hundred names.

B. The slips containing the names of the persons so drawn shall be placed in an envelope which shall be sealed and the words "Grand Jury Venire" written thereon.

C. The sealed envelope shall be placed in a box labeled "Grand Jury Box", which shall be locked and sealed and placed in the custody of the clerk of court for use at the next term of court, subject to the orders of the district court, as hereinafter provided.

D.(1) The clerk shall prepare subpoenas directed to the persons on the grand jury venire, ordering their appearance in court on the date set by the court for the selection of the grand jury, and shall deliver the subpoenas to the sheriff for service.

(2) The sheriff, at the election of the district judges of the judicial district in which the parish lies, may serve such subpoenas by:

(a) Personal or domiciliary service, or by registered, certified, or regular mail addressed to the juror at his usual residence or business address.

(b) When the service is by mail, the date of mailing shall be not less than fifteen days prior to the date on which the addressee is subpoenaed to appear.

(c) When service is by registered or certified mail, the sheriff shall attach to his return the return receipt of delivery from the United States Post Office showing the disposition of the envelope bearing the summons to the juror.

(d) When service is by regular mail, the return shall show the date of mailing. In case of service by regular mail prior to any contempt citation, the person shall be served by registered or certified mail with return receipt requested.

(3) The return, with the attached return receipt of delivery, 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. 141, §1; Acts 1970, No. 297, §1; Acts 1972, No. 755, §1; Acts 1977, No. 552, §1; Acts 1987, No. 281, §1; Acts 2001, No. 281, §1; Acts 2010, No. 347, §1.

Art. 412. Repealed by Acts 2016, No. 389, §3.

Art. 413. Method of impaneling of grand jury; selection of foreman

A. The grand jury shall consist of twelve persons plus no fewer than two nor more than four alternates qualified to serve as jurors, selected or drawn from the grand jury venire.

B. The sheriff or his designee, or the clerk or a deputy clerk of court, or the jury commissioner shall draw indiscriminately and by lot from the envelope containing the remaining names on the grand jury venire a sufficient number of names to complete the grand jury. The envelope containing the remaining names shall be replaced into the grand jury box for use in filling

vacancies as provided in Article 415. The court shall cause a random selection to be made of one person from the impaneled grand jury to serve as foreman of the grand jury.

C. The alternate grand jurors shall receive the charge as provided in Article 432 but shall not be sworn nor become members of the grand jury except as provided in Article 415.

Acts 1990, No. 47, §1; Acts 1999, No. 984, §1; Acts 2001, No. 281, §§1, 2; Acts 2010, No. 347, §1; Acts 2016, No. 389, §1.

Art. 414. Time for impaneling grand juries; period of service

A. A grand jury shall be impaneled twice a year in each parish, except in the parish of Cameron in which at least one grand jury shall be impaneled each year.

B. The court shall fix the time at which a grand jury shall be impaneled, but no grand jury shall be impaneled for more than eight months, nor less than four months, except in the parish of Cameron in which the grand jury may be impaneled for a year.

C. Repealed by Acts 2016, No. 389, §3.

D. A grand jury shall remain in office until a succeeding grand jury is impaneled. A court may not discharge a grand jury or any of its members before the time for the impaneling of a new grand jury, except for legal cause.

Acts 1985, No. 675, §1; Acts 2016, No. 389, §§1, 3.

Art. 415. Method of filling vacancies on grand jury

A. When a vacancy occurs on a grand jury, the court shall fill the vacancy by administering the oath to and seating the first alternate if he is still legally qualified and available, or if he is not, by administering the oath to and seating the second, third, or fourth alternate, if still legally qualified and available, in the order in which the alternates were selected, until the vacancy is filled. If a vacancy occurs and there is no alternate legally qualified and available to fill the vacancy, the vacancy shall be filled by ordering the sheriff or his designee, the clerk or deputy clerk of court, or, in Orleans Parish, the jury commissioner, to draw indiscriminately and by lot from the envelope containing the remaining names on the grand jury venire a sufficient number of names to complete the grand jury. If the names in the envelope are exhausted before the grand jury is completed, or if a vacancy occurs on the grand jury and no names remain in the envelope, the court shall order the jury commission to withdraw indiscriminately and by lot from the general venire box or through the use of a properly programmed electronic device as provided in Article 411, an additional number of names sufficient to complete the grand jury.

B. If the foreman of the grand jury is, for any reason, unable to act, the court shall cause a random selection to be made of one person from the remaining members of the impaneled grand jury to serve as acting foreman or to serve as foreman of the grand jury. An acting foreman has the powers and duties of the foreman.

Acts 1990, No. 47, §1; Acts 2010, No. 347, §1.

Art. 415.1. Selection of additional grand juries

Upon the request of the district attorney, the court shall order one or more additional grand juries to be impaneled. Such additional grand juries shall be selected in the same manner and have

the same qualifications, duties, powers, and responsibilities, and be subject to the same provisions of law which presently govern grand juries, except as to duration and the duty to inspect facilities as provided by R.S. 15:121. However, no grand jury may concurrently conduct an inquiry into any offense or matter or receive evidence of any offense or matter which is under investigation by another grand jury impaneled in the same parish. These additional grand juries shall be impaneled and presided over by the judge who impaneled the existing regular grand jury or a judge appointed by him to act in his absence.

Acts 1990, No. 74, §1; Acts 2012, No. 119, §1, eff. May 14, 2012.

Art. 415.2. Duration of additional grand juries; extension of impanelment

Grand juries impaneled in accordance with Article 415.1 shall remain impaneled for a period not to exceed one year unless discharged sooner by the court upon motion of the district attorney. Provided, however, that prior to the discharge of a grand jury by the court, a grand jury shall return its report on all offenses and matters presented or pending before it as authorized by the provisions of Article 444. Upon the request of the district attorney, the court may extend this time limit for an extra six months.

Added by Acts 1975, 1st Ex.Sess., No. 45, §1, eff. Feb. 20, 1975. Amended by Acts 1975, No. 569, §1.

Art. 416. Drawing petit jury venire in parishes other than Orleans; term of service

A. Upon order of court the jury commission in parishes other than Orleans shall draw a petit jury venire. The commission shall draw indiscriminately and by lot thirty name slips from the general venire box, unless directed by the court order to draw a larger number. The persons whose names are so drawn shall be subject to serve as petit jurors for the first week of the next criminal session of court.

The court also may order the commission to draw indiscriminately and by lot as many additional name slips, not less than thirty, as it may direct for each additional week that a petit jury venire may be required, not to exceed two additional weeks. The persons whose names are so drawn shall be subject to serve as petit jurors for the week for which their names were drawn.

Alternatively, for the purpose of drawing a petit jury venire, the jury commission may use an electronic device, commonly known as a computer, which is programmed to draw indiscriminately and by lot.

B. A petit jury venire for the first week of a session shall not be drawn from a general venire containing less than two hundred fifty names, and no petit jury venire for any subsequent week shall be drawn from a general venire containing less than one hundred fifty names.

The commission shall place the slips bearing the names of the petit jury venire for each week in a separate envelope. It shall seal each envelope and write thereon the words "Petit Jury Venire No. 1," "Petit Jury Venire No. 2," and "Petit Jury Venire No. 3." Each envelope shall be placed in a box labeled "Petit Jury Box."

If a petit jury venire does not serve during the week for which it was drawn, the court may order that it serve during any other week of that session of court.

Amended by Acts 1972, No. 755, §1.

Art. 416.1. One-step qualification/summoning

A. In parishes other than Orleans, at the election of the judges of the judicial district in which the parish lies, the qualification questionnaire, subpoena, and return envelope for each person who may be selected for the petit jury venire shall be prepared by the clerk and delivered in the same computer-generated envelope to the sheriff for service. The sheriff may serve such questionnaire and subpoena by first class mail addressed to such person at his usual residence or business address. The subpoena shall state an appearance date for such person not later than three weeks after the date on which the questionnaire is to be returned.

B. The questionnaire shall contain a section for signature to acknowledge receipt of the accompanying subpoena. The addressee of the subpoena and questionnaire shall fill out, sign, and return the questionnaire in the return envelope by first class mail, within five days of receipt thereof. The signing of the questionnaire shall constitute acknowledgement of receipt of the subpoena and personal service of the subpoena on the addressee.

C. The questionnaire may constitute part of the sheriff's return and may be made part of the record. When served in accordance with this Section, a person may be cited for contempt for failing to appear in response to the subpoena.

Added by Acts 1982, No. 701, §1.

Art. 417. Proces verbal; summoning of petit jurors; parishes other than Orleans

A. In parishes other than Orleans, the clerk of court shall make a proces verbal of the selection of the general venire and of the drawing of the grand jury venire and of the petit jury venire. It shall be certified to by a member of the commission and shall be filed in the clerk's office as a public record.

The clerk shall make a list of the names on the grand jury venire and on the petit jury venire, showing the week for which each petit jury venire is to serve. The lists, together with the general venire list, shall be a part of the proces verbal.

B. The clerk shall cause a copy of the petit jury venire list and grand jury venire list to be published in the official journal of the parish, if there be one, or in some other newspaper published in the parish, or, if there is no official journal or other newspaper in said parish, he shall post a copy of the lists on the door of the courthouse.

C.(1) The clerk shall prepare subpoenas directed to the persons on the petit jury venire and deliver them to the sheriff for service.

(2) The sheriff, at the election of the district judges of the judicial district in which the parish lies, may serve such subpoenas by:

(a) Personal or domiciliary service, or by registered, certified, or regular mail addressed to such juror at his usual residence or business address.

(b) When the service is by mail, the date of mailing shall not be less than fifteen days prior to the date on which the addressee is subpoenaed to appear.

(c) When service is by registered or certified mail, the sheriff shall attach to his return the return receipt of delivery from the United States Post Office showing the disposition of the envelope bearing the summons to the juror.

(d) When service is by regular mail, the return shall show the date of mailing. In case of service by regular mail, prior to any contempt citation, the person shall be served by registered or certified mail with return receipt requested.

(3) The return, with the attached return receipt of delivery, 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 1972, No. 755, §1; Acts 1987, No. 281, §1.

Art. 418. Drawing petit jury venire in Orleans parish; number chosen; term of service; petit jury venire list

A. In Orleans Parish upon order of the court the jury commission shall draw a petit jury venire.

B. The jury commission shall draw indiscriminately and by lot as many name slips from the general venire box as a court may direct, not less than seventy-five, for service as petit jurors during the next monthly session of that judge's section of court.

C. The commission shall prepare a list of the persons drawn which shall constitute the petit jury venire list. This list, together with the name slips drawn, shall be delivered to the judge ordering the drawing.

D. The commission shall prepare subpoenas directed to the persons on the petit jury venire and cause them to be served in accordance with the provisions of Article 404.1(B) or R.S. 15:112, as directed by the court.

Acts 1987, No. 281, §1.

Art. 419. Challenge of venire not permitted except for fraud or irreparable injury or systematic exclusion based on race

A. A general venire, grand jury venire, or petit jury venire shall not be set aside for any reason unless fraud has been practiced or some great wrong committed that would work irreparable injury to the defendant, or unless persons were systematically excluded from the venires solely upon the basis of race.

B. This article does not affect the right to challenge for cause, a juror who is not qualified to serve.

Acts 1987, No. 638, §1.

TITLE XII. THE GRAND JURY

Art. 431. Oath of grand jury

The grand jurors shall take the following oath when impaneled:

"As members of the grand jury, do you solemnly swear or affirm that you will diligently inquire into and true presentment make of all indictable offenses triable within this parish which shall be given you in charge, or which shall otherwise come to your knowledge; that you will keep secret your own counsel and that of your fellows and of the state, and will not, except when authorized by law, disclose testimony of any witness examined before you, nor disclose anything which any grand juror may have said, or how any grand juror may have voted on any matter before you; that you will not indict any person through malice, hatred, or ill will, nor fail to indict any person through fear, favor, affection, or hope of reward or gain; but in all of your indictments you will present the truth, according to the best of your skill and understanding?"

The oath shall be read to the grand jury by the clerk, who shall then ask each juror: "Do you take this oath or affirmation?"

The oath shall be administered to every grand juror appointed to fill a vacancy in the grand jury and to every grand juror who was not present at the taking of the oath by the grand jury.

Art. 432. Charge to grand jury

After the oath is administered to the members of the grand jury, the judge shall charge them orally in open court upon their duties, rights, and powers. Upon completion of the charge the judge shall give the grand jury a written copy of the charge.

At any time thereafter, the judge, on his own initiative or on request of the grand jury, may give the grand jury additional charges concerning their duties, rights, and powers. Such additional charges shall be given in open court, and a written copy thereof shall thereafter be given to the grand jury.

Art. 433. Persons present during grand jury sessions

A.(1) Only the following persons may be present at the sessions of the grand jury:

(a) The district attorney and assistant district attorneys or any one or more of them;

(b) The attorney general and assistant attorneys general or any one or more of them;

(c) The witness under examination;

(d) A person sworn to record the proceedings of and the testimony given before the grand jury; and

(e) An interpreter sworn to translate the testimony of a witness who is unable to speak the English language.

(2) An attorney for a target of the grand jury's investigation may be present during the testimony of said target. The attorney shall be prohibited from objecting, addressing or arguing before the grand jury; however he may consult with his client at anytime. The court shall remove such attorney for violation of these conditions. If a witness becomes a target because of his testimony, the legal advisor to the grand jury shall inform him of his right to counsel and cease questioning until such witness has obtained counsel or voluntarily and intelligently waived his

right to counsel. Any evidence or testimony obtained under the provisions of this Subparagraph from a witness who later becomes a target shall not be admissible in a proceeding against him.

B. No person, other than a grand juror, shall be present while the grand jury is deliberating and voting.

C. A person who is intentionally present at a meeting of the grand jury, except as authorized by Paragraph A of this article, shall be in constructive contempt of court.

Amended by Acts 1972, No. 409, §1; Acts 1986, No. 725, §1; Acts 1992, No. 308, §1; Acts 1999, No. 865, §1.

Art. 434. Secrecy of grand jury meetings; procedures for crimes in other parishes

A. Members of the grand jury, all other persons present at a grand jury meeting, and all persons having confidential access to information concerning grand jury proceedings, shall keep secret the testimony of witnesses and all other matters occurring at, or directly connected with, a meeting of the grand jury. However, after the indictment, such persons may reveal statutory irregularities in grand jury proceedings to defense counsel, the attorney general, the district attorney, or the court, and may testify concerning them. Such persons may disclose testimony given before the grand jury, at any time when permitted by the court to show that a witness committed perjury in his testimony before the grand jury. A witness may discuss his testimony given before the grand jury with counsel for a person under investigation or indicted, with the attorney general or the district attorney, or with the court.

B. Whenever a grand jury of one parish discovers that a crime may have been committed in another parish of the state, the foreman of that grand jury, after notifying his district attorney, shall make that discovery known to the attorney general. The district attorney or the attorney general may direct to the district attorney of another parish any and all evidence, testimony, and transcripts thereof, received or prepared by the grand jury of the former parish, concerning any offense that may have been committed in the latter parish, for use in such latter parish.

C. Any person who violates the provisions of this article shall be in constructive contempt of court.

Amended by Acts 1972, No. 450, §1.

Art. 434.1. Exceptions to grand jury secrecy

A. Notwithstanding the provisions of Article 434, the state may disclose to state or federal prosecutors or law enforcement officers, or to investigators on the staff of the district attorney or attorney general, or to expert witnesses, information and documents provided to a grand jury. Any person to whom such disclosure is made shall not engage in further disclosure of the material and shall use the disclosed material solely for purposes of investigation of criminal offenses and enforcement of criminal laws.

B. The district attorney shall also disclose to the defendant material evidence favorable to the defendant that was presented to the grand jury.

C. The district attorney may also disclose to a witness at trial, including the defendant if the defendant testifies, any statement of the witness before the grand jury that is inconsistent with the testimony of that witness.

Acts 2012, No. 842, §1.

Art. 435. Meetings of grand jury

The grand jury shall meet as directed by the court, or may meet on its own initiative at the direction of nine of its members, at any time and place within the parish. Nine grand jurors shall constitute a quorum, and nine grand jurors must concur to find an indictment.

Amended by Acts 1975, 1st Ex.Sess., No. 45, §2, eff. Feb. 20, 1975.

Art. 436. The foreman; rules of procedure

The foreman of the grand jury shall preside over all hearings. He may delegate duties to other grand jurors and may determine rules of procedure. A grand juror who objects to a rule of procedure made by the foreman may apply to the court for a determination of the matter.

Art. 437. Inquiry into offenses; authority and duties

The grand jury shall inquire into all capital offenses and offenses punishable by life imprisonment triable within the parish. It may inquire into other offenses triable by the district court of the parish, and shall inquire into such offenses when requested to do so by the district attorney or ordered to do so by the court.

Acts 2010, No. 663, §1.

Art. 438. Duty of grand juror having knowledge of offense; investigation

If a grand juror knows or has reason to believe that an offense triable by the district court of the parish has been committed, he shall declare such fact to his fellow jurors, who may investigate it. In such investigation or any subsequent criminal proceeding the grand juror shall be a competent witness.

Art. 439. Subpoena of witnesses to appear before the grand jury

Upon request of the grand jury or the district attorney, the court shall issue a subpoena for a witness to appear before the grand jury to testify when questioned by the grand jury or district attorney, or both, concerning an offense under investigation. Upon request of the grand jury or the district attorney, the court may also issue a subpoena duces tecum. The issuance, service, and return of a subpoena provided for in this article and the effect of the return and the enforcement of the subpoena shall be as provided in Articles 731 through 737.

Art. 439.1. Witnesses; authority to compel testimony and evidence

A. In the case of any individual who has been or may be called to testify or provide other information at any proceeding before or ancillary to a grand jury of the state, at any proceeding before a court of this state, or in response to any subpoena by the attorney general or district attorney, the judicial district court of the district in which the proceeding is or may be held shall issue, in accordance with Subsection B of this article, upon the request of the attorney general together with the district attorney for such district, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in Subsection C of this article.

B. The attorney general together with the district attorney may request an order under Subsection A of this article when in his judgment

(1) the testimony or other information from such individual may be necessary to the public interest; and

(2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self incrimination.

C. The witness may not refuse to comply with the order on the basis of his privilege against self incrimination, but no testimony or other information compelled under the order, or any information directly or indirectly derived from such testimony or other information, may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement or otherwise failing to comply with the order.

D. Whoever refuses to comply with an order as hereinabove provided shall be adjudged in contempt of court and punished as provided by law.

Added by Acts 1972, No. 410, §1.

Art. 440. Administration of oath to witnesses

A witness who is to testify before the grand jury shall first be sworn by the foreman, in accordance with Article 14, to testify truthfully and to keep secret, except as authorized by law, matters which he learns at the grand jury meeting.

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

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

Art. 441. Administration of oath to other persons

Before being permitted to function in their respective capacities, the court shall administer an oath, to persons employed to record and transcribe the testimony and proceedings, and to interpreters, to faithfully perform their duties and keep secret the grand jury proceedings.

Art. 442. Evidence to be received by grand jury

A grand jury shall hear all evidence presented by the district attorney. It may hear evidence for the defendant, but is under no duty to do so.

When the grand jury has reason to believe that other available evidence will explain the charge, it should order the evidence produced.

A grand jury should receive only legal evidence and such as is given by witnesses produced, or furnished by documents and other physical evidence. However, no indictment shall be quashed or conviction reversed on the ground that the indictment was based, in whole or in part, on illegal evidence, or on the ground that the grand jury has violated a provision of this article.

Art. 443. When indictment to be found

The grand jury shall find an indictment, charging the defendant with the commission of an offense, when, in its judgment, the evidence considered by it, if unexplained and uncontradicted, warrants a conviction.

Art. 444. Action by grand jury

A. A grand jury shall have power to act, concerning a matter, only in one of the following ways:

(1) By returning a true bill;

(2) By returning not a true bill; or

(3) By pretermitting entirely the matter investigated.

The grand jury is an accusatory body and not a censor of public morals. It shall make no report or recommendation, other than to report its action as aforesaid.

B. At least nine members of the grand jury must concur in returning "a true bill" or "not a true bill." A matter may be pretermitted by a vote of at least nine members of the grand jury, or as a consequence of the failure of nine of the grand jury members to agree on a finding.

C. A grand jury may make such reports or requests as are authorized by law.

TITLE XIII. INDICTMENT AND INFORMATION

CHAPTER 1. INDICTMENT FORMS

Art. 461. Special definitions

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

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

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

Art. 462. Form of grand jury indictment

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

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

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

Art. 463. Form of information

The information may be in substantially the following form:

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

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

Art. 464. Nature and contents of indictment

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

Art. 465. Specific indictment forms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TITLE XIV-A. PRETRIAL MOTIONS

Art. 521. Time for filing of pretrial motions

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

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

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

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

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

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

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

Acts 1997, No. 1015, §1.

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

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

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

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

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

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

Acts 2010, No. 713, §1.

TITLE XV. MOTION TO QUASH

Art. 531. Motion to quash; nature of motion

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

Art. 532. General grounds for motion to quash

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

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

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

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

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

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

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

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

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

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

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

Acts 2009, No. [illegible] §2.

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

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

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

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

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

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

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

Art. 534. Special grounds for motion to quash information

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

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

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

Art. 535. Time to file motion to quash

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Art. 538. Effect of sustaining motion to quash

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

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

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

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

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

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

TITLE XVI. ARRAIGNMENT AND PLEAS

Art. 551. Arraignment of defendant

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

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

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

Art. 551.1. Substitution of railroad defendant at arraignment

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

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

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

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

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

Art. 552. Pleas at the arraignment

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

(1) Guilty;

(2) Not guilty;

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

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

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

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

Art. 553. Method of pleading

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

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

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

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

Art. 554. Effect of failure to plead

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

Art. 555. Waivers

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

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

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

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

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

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

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

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

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

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

C. The court shall require either:

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

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

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

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

Acts 2001, No. 943, §1; Acts 2017, No. 406, §1; Acts 2020, No. 160, §1.

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

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

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

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

(3) That he has the right to plead not guilty or to persist in that plea if it has already been made, and that he has the right to be tried by a jury and at that trial has the right to the assistance of counsel, the right to confront and cross-examine witnesses against him, and the right not to be compelled to incriminate himself.

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

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

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

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

(ii) The right to vote.

(iii) The right to bear arms.

(iv) The right to due process.

(v) The right to equal protection.

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

(i) College admissions and financial aid.

(ii) Public housing benefits.

(iii) Employment and licensing restrictions.

(iv) Potential sentencing as a habitual offender.

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

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

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

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

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

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

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

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

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

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

Art. 557. Plea of guilty in capital cases

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

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

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

Art. 558. Plea of guilty of lesser included offense

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

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

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

Added by Acts 1983, No. 530, §1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TITLE XXII. RECUSAL OF JUDGES AND DISTRICT ATTORNEYS

CHAPTER 1. RECUSAL OF JUDGES

Art. 671. Grounds for recusal of judge

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

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

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

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

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

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

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

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

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

Acts 1988, No. 915, §3, eff. Jan. 1, 1989; Acts 2022, No. 42, §1.

Art. 672. Recusal on court's own motion

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

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

Acts 2022, No. 42, §1.

Art. 673. Judge may act until recused

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

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

Art. 674. Procedure for recusal of trial judge

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

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

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

Acts 2022, No. 42, §1.

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

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

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

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

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

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

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

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

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

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

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

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

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

Art. 678. Recusal of ad hoc judge

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

Acts 2022, No. 42, §1.

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

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

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

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

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

E. When a justice of the supreme court recuses himself or is recused, the court may have the cause argued before and disposed of by the other justices or appoint a sitting or retired judge of a district court or of a court of appeal having the qualifications of a justice of the supreme court to sit as a member of the court in the hearing and disposition of the cause.

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

CHAPTER 2. RECUSATION OF DISTRICT ATTORNEYS; DISTRICT ATTORNEY AD HOC

Art. 680. Grounds for recusation of district attorney

A district attorney shall be recused when he:

(1) Has a personal interest in the cause or grand jury proceeding which is in conflict with fair and impartial administration of justice;

(2) Is related to the party accused or to the party injured, or to the spouse of the accused or party injured, or to a party who is a focus of a grand jury investigation, to such an extent that it may appreciably influence him in the performance of the duties of his office; or

(3) Has been employed or consulted in the case as attorney for the defendant before his election or appointment as district attorney.

Amended by Acts 1980, No. 195, §1, eff. July 8, 1980.

Art. 681. Procedure for recusation of district attorney

A district attorney may recuse himself, whether a motion for his recusation has been filed or not, in any case in which a ground for recusation exists. A motion to recuse the district attorney shall be in writing and shall set forth the grounds therefor. The motion shall be filed in accordance with Article 521, and shall be tried in a contradictory hearing. If a ground for recusation is established the judge shall recuse the district attorney.

Amended by Acts 1978, No. 735, §2.

Art. 682. Appointment of substitute for a recused district attorney

When a district attorney is recused, or recuses himself, the trial judge shall either appoint an attorney at law, who has the qualifications of a district attorney and is not an assistant to the recused district attorney, to act in the place of the district attorney in the case, or shall notify the attorney general in writing of the recusation. In the latter instance, it shall be the duty of the attorney general to appoint a member of his staff or a district attorney of another district to act in the place of the recused district attorney. The substitute appointed for the recused district attorney shall have all powers of the recused district attorney with reference to the case.

Amended by Acts 1972, No. 652, §1; Acts 2009, No. 271, §1.

Art. 683. Disability or absence of district attorney

When a district attorney is unable to perform his duties for any cause, other than recusation, death, or resignation or removal from office, an assistant district attorney shall act in his place. When the district attorney still holds office and there is no assistant district attorney, the trial judge shall appoint an attorney at law of that district, having the qualifications of a district attorney, to act in his place during his disability or absence. If the trial judge is unable to make the appointment, he shall certify the fact in writing to the attorney general, who shall appoint a district attorney of another district to act in place of the regular district attorney. The temporary district attorney shall have all powers of the district attorney during the time of the disability or absence.

Art. 683.1. Costs of prosecution and investigation

A. Whenever the district attorney of the parish of original jurisdiction and venue is recused or requests another district attorney or the attorney general to undertake a prosecution or an investigation reasonably related to a possible prosecution and such other district attorney or the attorney general actually undertakes same, the costs of such prosecution and investigation shall be borne by the parish of original jurisdiction and venue, which shall reimburse such other district attorney or the attorney general therefor.

B. For the purposes of this Article, "costs of prosecution and investigation" include not only unreimbursed court costs but also the actual costs of travel, including mileage or transportation costs, lodging, and meals, all in accord with the travel regulations of the Division of Administration; the actual costs of experts and expert witnesses, their actual costs of travel, including mileage or transportation costs, lodging, and meals; laboratory fees, and all other actual costs of performing the prosecution and investigation.

Acts 1986, No. 895, §1.

CHAPTER 3. REVIEW OF RECUSAL RULING

Art. 684. Review of recusal ruling

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

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

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

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

TITLE XXIII. DISMISSAL OF PROSECUTION

Art. 691. Dismissal of prosecution by district attorney

The district attorney has the power, in his discretion, to dismiss an indictment or a count in an indictment, and in order to exercise that power it is not necessary that he obtain consent of the court. The dismissal may be made orally by the district attorney in open court, or by a written statement of the dismissal signed by the district attorney and filed with the clerk of court. The clerk of court shall cause the dismissal to be entered on the minutes of the court.

Amended by Acts 1968, No. 142, §1.

Art. 692. Dismissal of indictment after conviction

After conviction, the district attorney is authorized to dismiss an indictment or count thereof only:

(1) When a new trial has been granted.

(2) When a motion in arrest of judgment has been sustained.

Acts 1983, No. 588, §1.

Art. 693. Effect of dismissal

Dismissal by the district attorney of an indictment or of a count of an indictment, discharges that particular indictment or count. The dismissal is not a bar to a subsequent prosecution, except that:

(1) A dismissal entered without the defendant's consent after the first witness is sworn at the trial on the merits, shall operate as an acquittal and bar a subsequent prosecution for the charge dismissed; and

(2) A dismissal entered after a city court conviction has been appealed to the district court for a trial de novo, shall operate as an acquittal and bar a subsequent prosecution for the charge dismissed.

TITLE XXIV. PROCEDURES PRIOR TO TRIAL

CHAPTER 1. SETTING CASES FOR TRIAL

Art. 701. Right to a speedy trial

A. The state and the defendant have the right to a speedy trial.

B. The time period for filing a bill of information or indictment after arrest shall be as follows:

(1)(a) When the defendant is continued in custody subsequent to an arrest, an indictment or information shall be filed within thirty days of the arrest if the defendant is being held for a misdemeanor and within sixty days of the arrest if the defendant is being held for a felony.

(b) When the defendant is continued in custody subsequent to an arrest, an indictment shall be filed within one hundred twenty days of the arrest if the defendant is being held for a felony for which the punishment may be death or life imprisonment.

(2)(a) When the defendant is not continued in custody subsequent to arrest, an indictment or information shall be filed within ninety days of the arrest if the defendant is booked with a misdemeanor and one hundred fifty days of the arrest if the defendant is booked with a felony.

(b) Failure to institute prosecution as provided in Subparagraph (1) of this Paragraph shall result in release of the defendant if, after contradictory hearing with the district attorney, just cause for the failure is not shown. If just cause is shown, the court shall reconsider bail for the defendant. Failure to institute prosecution as provided in this Subparagraph shall result in the release of the bail obligation if, after contradictory hearing with the district attorney, just cause for the delay is not shown.

C. Upon filing of a bill of information or indictment, the district attorney shall set the matter for arraignment within thirty days unless just cause for a longer delay is shown.

D.(1) A motion by the defendant for a speedy trial, in order to be valid, must be accompanied by an affidavit by defendant's counsel certifying that the defendant and his counsel are prepared to proceed to trial within the delays set forth in this Article. Except as provided in Subparagraph (3) of this Paragraph, after the filing of a motion for a speedy trial by the defendant and his counsel, the time period for commencement of trial shall be as follows:

(a) The trial of a defendant charged with a felony shall commence within one hundred twenty days if he is continued in custody and within one hundred eighty days if he is not continued in custody.

(b) The trial of a defendant charged with a misdemeanor shall commence within thirty days if he is continued in custody and within sixty days if he is not continued in custody.

(2) Failure to commence trial within the time periods provided above shall result in the release of the defendant without bail or in the discharge of the bail obligation, if after contradictory hearing with the district attorney, just cause for the delay is not shown.

(3) After a motion for a speedy trial has been filed by the defendant, if the defendant files any subsequent motion which requires a contradictory hearing, the court may suspend, in accordance with Article 580, or dismiss upon a finding of bad faith the pending speedy trial motion. In addition, the period of time within which the trial is required to commence, as set forth by Article 578, may be suspended, in accordance with Article 580, from the time that the subsequent motion is filed by the defendant until the court rules upon such motion.

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 as courts deem proper 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.

Art. 763. Proceedings on holidays

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

Art. 764. Exclusion of witnesses

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

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

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

Art. 765. Normal order of trial

The normal order of trial shall be as follows:

(1) The selection and swearing of the jury;

(2) The reading of the indictment;

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

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

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

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

(7) The court's charge;

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

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

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

A defendant may waive his opening statement.

Art. 766. Opening statement by state; scope

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

Art. 767. Same; prohibition against adverting to confessions

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

Acts 1995, No. 1278, §1.

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

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

Amended by Acts 1982, No. 735, §1.

Art. 769. Same; effect on introduction of evidence

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

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

Art. 770. Prejudicial remarks; basis of mistrial

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

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

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

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

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

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

Art. 771. Admonition

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

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

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

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

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

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

Art. 773. Order of evidence; foundation

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

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

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

Art. 774. Argument; scope

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

The argument shall not appeal to prejudice.

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

Art. 775. Mistrial; grounds for

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

(1) The defendant consents thereto;

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

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

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

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

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

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

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

Art. 775.1. Automatic stay following order of mistrial

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

Acts 2004, No. 413, §1; Acts 2011, No. 37, §1.

Art. 776. Oath of witness

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

Art. 777. Recordation of proceedings

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

Art. 778. Motion for acquittal

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

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

Amended by Acts 1975, No. 527, §1.

in the appellate court without an assignment of errors, the appellate court may adjudge the appellant, his attorney, or both guilty of contempt of court and impose a punishment authorized by law.

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

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

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

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

CHAPTER 1. MOTION FOR NEW TRIAL

Art. 851. Grounds for new trial

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

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

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

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

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

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

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

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

Amended by Acts 1974, No. 20[illegible]; Acts 2014, No. 564, §6.

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

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

Art. 853. Time for filing motion for new trial

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

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

C. When the motion for a new trial is based on Article 851(B)(6) of this Code, the motion may be filed within three years after the verdict or judgment of the trial court, although a sentence

has been imposed or a motion for new trial has been previously filed. However, if an appeal is pending, the court may hear the motion only on remand of the case.

Acts 2014, No. 564, §6.

Art. 854. Newly discovered evidence; necessary allegations

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

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

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

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

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

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

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

A motion for a new trial based on ground (4) of Article 851 shall contain allegations of fact sworn to by the defendant or his counsel, showing:

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

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

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

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

Acts 2014, No. 564, §6.

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

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

Art. 857. Effect of granting new trial

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

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

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

CHAPTER 2. MOTION IN ARREST OF JUDGMENT

Art. 859. Grounds for arrest of judgment

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

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

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

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

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

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

(6) Double jeopardy, if not previously urged;

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

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

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

Amended by Acts 1968, No. 435, §1; Acts 1974, Ex.Sess., No. 26, §1, eff. Jan. 1, 1975.

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

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

Art. 861. Time for filing motion in arrest

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

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

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

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

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

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

TITLE XXXI-A. POST CONVICTION RELIEF

Art. 924. Definitions

As used in this Title:

(1) An "application for post conviction relief" means a petition filed by a person in custody after sentence following conviction for the commission of an offense seeking to have the conviction and sentence set aside.

(2) "Custody" means detention or confinement, or probation or parole supervision, after sentence following conviction for the commission of an offense.

(3) "DNA testing" means any method of testing and comparing deoxyribonucleic acid that would be admissible under the Louisiana Code of Evidence.

(4) "Unknown sample" means a biological sample from an unknown donor constituting evidence of the commission of an offense or tending to prove the identity of the perpetrator of an offense.

Added by Acts 1980, No. 429, §1, eff. Jan. 1, 1981; Acts 2001, No. 1020, §1.

Art. 924.1. Effect of appeal

An application for post conviction relief shall not be entertained if the petitioner may appeal the conviction and sentence which he seeks to challenge or if an appeal is pending.

Added by Acts 1980, No. 429, §1, eff. Jan. 1, 1981.

Art. 925. Venue

Applications for post conviction relief shall be filed in the parish in which the petitioner was convicted.

Added by Acts 1980, No. 429, §1, eff. Jan. 1, 1981.

Art. 926. Petition

A. An application for post conviction relief shall be by written petition addressed to the district court for the parish in which the petitioner was convicted. A copy of the judgment of conviction and sentence shall be annexed to the petition, or the petition shall allege that a copy has been demanded and refused.

B. The petition shall allege:

(1) The name of the person in custody and the place of custody, if known, or if not known, a statement to that effect;

(2) The name of the custodian, if known, or if not known, a designation or description of him as far as possible;

(3) A statement of the grounds upon which relief is sought, specifying with reasonable particularity the factual basis for such relief;

(4) A statement of all prior applications for writs of habeas corpus or for post conviction relief filed by or on behalf of the person in custody in connection with his present custody; and

(5) All errors known or discoverable by the exercise of due diligence.

C. The application shall be signed by the petitioner and be accompanied by his affidavit that the allegations contained in the petition are true to the best of his information and belief.

D. The petitioner shall use the uniform application for post conviction relief approved by the Supreme Court of Louisiana. If the petitioner fails to use the uniform application, the court may provide the petitioner with the uniform application and require its use.

E. Inexcusable failure of the petitioner to comply with the provisions of this Article may be a basis for dismissal of his application.

Added by Acts 1980, No. 429, §1, eff. Jan. 1, 1981.

Art. 926.1. Application for DNA testing

A.(1) Prior to August 31, 2024, a person convicted of a felony may file an application under the provisions of this Article for post-conviction relief requesting DNA testing of an unknown sample secured in relation to the offense for which he was convicted. On or after August 31, 2024, a petitioner may request DNA testing under the rules for filing an application for post-conviction relief as provided in Article 930.4 or 930.8.

(2) Notwithstanding the provisions of Subparagraph (1) of this Paragraph, in cases in which the defendant has been sentenced to death prior to August 1, 2024, the application for DNA testing under the provisions of this Article may be filed at any time.

B. An application filed under the provisions of this Article shall comply with the provisions of Article 926 and shall allege all of the following:

(1) A factual explanation of why there is an articulable doubt, based on competent evidence whether or not introduced at trial, as to the guilt of the petitioner in that DNA testing will resolve the doubt and establish the innocence of the petitioner.

(2) The factual circumstances establishing the timeliness of the application.

(3) The identification of the particular evidence for which DNA testing is sought.

(4) That the applicant is factually innocent of the crime for which he was convicted, in the form of an affidavit signed by the petitioner under penalty of perjury.

C. In addition to any other reason established by legislation or jurisprudence, and whether based on the petition, answer or after contradictory hearing, the court shall dismiss any application filed pursuant to this Article unless it finds all of the following:

(1) There is an articulable doubt based on competent evidence, whether or not introduced at trial, as to the guilt of the petitioner and there is a reasonable likelihood that the requested DNA testing will resolve the doubt and establish the innocence of the petitioner. In making this finding the court shall evaluate and consider the evidentiary importance of the DNA sample to be tested.

(2) The application has been timely filed.

(3) The evidence to be tested is available and in a condition that would permit DNA testing.

D. Relief under this Article shall not be granted when the court finds that there is a substantial question as to the integrity of the evidence to be tested.

E. Relief under this Article shall not be granted solely because there is evidence currently available for DNA testing but the testing was not available or was not done at the time of the conviction.

F. Once an application has been filed and the court determines the location of the evidence sought to be tested, the court shall serve a copy of the application on the district attorney and the law enforcement agency which has possession of the evidence to be tested, including but not limited to sheriffs, the office of state police, local police agencies, and crime laboratories. If the

court grants relief under this Article and orders DNA testing the court shall also issue such orders as are appropriate to obtain the necessary samples to be tested and to protect their integrity. The testing shall be conducted by a laboratory mutually agreed upon by the district attorney and the petitioner. If the parties cannot agree, the court shall designate a laboratory to perform the tests that is accredited in forensic DNA analysis by an accrediting body that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangements for Testing Laboratories (ILAC MRA) and requires conformance to an accreditation program based on the international standard ISO/IEC 17025 with an accreditation scope in the field of forensic science testing in the discipline of biology, and that is compliant with the current version of the Federal Bureau of Investigations Quality Assurance Standards for Forensic DNA Testing Laboratories.

G. If the court orders the testing performed at a private laboratory, the district attorney shall have the right to withhold a sufficient portion of any unknown sample for purposes of his independent testing. Under such circumstances, the petitioner shall submit DNA samples to the district attorney for purposes of comparison with the unknown sample retained by the district attorney. A laboratory selected to perform the analysis shall, if possible, retain and maintain the integrity of a sufficient portion of the unknown sample for replicate testing. If after initial examination of the evidence, but before actual testing, the laboratory decides that there is insufficient evidentially significant material for replicate tests, then it shall notify the district attorney in writing of its finding. If the petitioner and district attorney cannot agree, the court shall determine which laboratory as required by Paragraph F of this Article is best suited to conduct the testing and shall fashion its order to allow the laboratory conducting the tests to consume the entirety of the unknown sample for testing purposes if necessary.

H.(1) The results of the DNA testing ordered under this Article shall be filed by the laboratory with the court and served upon the petitioner and the district attorney. The court may, in its discretion, order production of the underlying facts or data and laboratory notes.

(2) After service of the application on the district attorney and the law enforcement agency in possession of the evidence, no evidence shall be destroyed that is relevant to a case in which an application for DNA testing has been filed until the case has been finally resolved by the court.

(3) After service of the application on the district attorney and the law enforcement agency in possession of the evidence, the clerks of court of each parish and all law enforcement agencies, including but not limited to district attorneys, sheriffs, the office of state police, local police agencies, and crime laboratories shall preserve until August 31, 2024, all items of evidence in their possession which are known to contain biological material that can be subjected to DNA testing, in all cases that, as of August 15, 2001, have been concluded by a verdict of guilty or a plea of guilty.

(4) In all cases in which the defendant has been sentenced to death prior to August 15, 2001, the clerks of court of each parish and all law enforcement agencies, including but not limited to district attorneys, sheriffs, the office of state police, local police agencies, and crime laboratories shall preserve, until the execution of sentence is completed, all items of evidence in their possession which are known to contain biological material that can be subjected to DNA testing.

(5) Notwithstanding the provisions of Subparagraphs (3) and (4) of this Paragraph, after service of the application on the district attorney and the law enforcement agency in possession of the evidence, the clerks of court of each parish and all law enforcement agencies, including but not limited to district attorneys, sheriffs, the office of state police, local police agencies, and crime

laboratories may forward for proper storage and preservation all items of evidence described in Subparagraph (3) of this Paragraph to a laboratory that is accredited by an accrediting body that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangements for Testing Laboratories (ILAC MRA) and requires conformance to an accreditation program based on the international standard ISO/IEC 17025 with an accreditation scope in the field of forensic science testing in the discipline of biology, and that is compliant with the current version of the Federal Bureau of Investigations Quality Assurance Standards for Forensic DNA Testing Laboratories.

(6) Except in the case of willful or wanton misconduct or gross negligence, no clerk of court or law enforcement officer or law enforcement agency, including but not limited to any district attorney, sheriff, the office of state police, local police agency, or crime laboratory which is responsible for the storage or preservation of any item of evidence in compliance with either the requirements of Subparagraph (3) of this Paragraph or R.S. 15:621 shall be held civilly or criminally liable for the unavailability or deterioration of any such evidence to the extent that adequate or proper testing cannot be performed on the evidence.

I. The DNA profile of the petitioner obtained under this Article shall be sent by the district attorney to the state police for inclusion in the state DNA data base established pursuant to R.S. 15:605. The petitioner may seek removal of his DNA record pursuant to R.S. 15:614.

J. The petitioner, in addition to other service requirements, shall mail a copy of the application requesting DNA testing to the Department of Public Safety and Corrections, Corrections Services, office of adult services. If the court grants relief under this Article, the court shall mail a copy of the order to the Department of Public Safety and Corrections, Corrections Services, office of adult services. The Department of Public Safety and Corrections, Corrections Services, office of adult services, shall keep a copy of all records sent to them pursuant to this Subsection and report to the legislature before January 1, 2003, on the number of petitions filed and the number of orders granting relief.

K. There is hereby created in the state treasury a special fund designated as the DNA Testing Post-Conviction Relief for Indigents Fund. The fund shall consist of money specially appropriated by the legislature. No other public money may be used to pay for the DNA testing authorized under the provisions of this Article. The fund shall be administered by the Louisiana Public Defender Board. The fund shall be segregated from all other funds and shall be used exclusively for the purposes established under the provisions of this Article. If the court finds that a petitioner under this Article is indigent, the fund shall pay for the testing as authorized in the court order.

Acts 2001, No. 1020, §1; Acts 2003, No. 823, §1; Acts 2006, No. 120, §1; Acts 2008, No. 297, §1; Acts 2011, No. 250, §2, eff. July 1, 2011; Acts 2014, No. 266, §1; Acts 2019, No. 156, §1.

Art. 926.2. Factual innocence

A. A petitioner who has been convicted of an offense may seek post conviction relief on the grounds that he is factually innocent of the offense for which he was convicted. A petitioner's first claim of factual innocence pursuant to this Article that would otherwise be barred from review on the merits by the time limitation provided in Article 930.8 or the procedural objections provided in Article 930.4 shall not be barred if the claim is contained in an application for post conviction relief filed on or before December 31, 2022, and if the petitioner was convicted after a trial completed to verdict. This exception to Articles 930.4 and 930.8 shall apply only to the claim of

factual innocence brought under this Article and shall not apply to any other claims raised by the petitioner. An application for post conviction relief filed pursuant to this Article by a petitioner who pled guilty or nolo contendere to the offense of conviction or filed by any petitioner after December 31, 2022, shall be subject to Articles 930.4 and 930.8.

B.(1)(a) To assert a claim of factual innocence under this Article, a petitioner shall present new, reliable, and noncumulative evidence that would be legally admissible at trial and that was not known or discoverable at or prior to trial and that is either:

(i) Scientific, forensic, physical, or nontestimonial documentary evidence.

(ii) Testimonial evidence that is corroborated by evidence of the type described in Item (i) of this Subsubparagraph.

(b) To prove entitlement to relief under this Article, the petitioner shall present evidence that satisfies all of the criteria in Subsubparagraph (a) of this Subparagraph and that, when viewed in light of all of the relevant evidence, including the evidence that was admitted at trial and any evidence that may be introduced by the state in any response that it files or at any evidentiary hearing, proves by clear and convincing evidence that, had the new evidence been presented at trial, no rational juror would have found the petitioner guilty beyond a reasonable doubt of either the offense of conviction or of any felony offense that was a responsive verdict to the offense of conviction at the time of the conviction.

(2) A recantation of prior sworn testimony may be considered if corroborated by the evidence required by Subsubparagraph (1)(a) of this Paragraph. However, a recantation of prior sworn testimony cannot form the sole basis for relief pursuant to this Article.

(3) If the petitioner pled guilty or nolo contendere to the offense of conviction, in addition to satisfying all of the criteria in this Paragraph and in any other applicable provision of law, the petitioner shall show both of the following to prove entitlement to relief:

(a) That, by reliable evidence, he consistently maintained his innocence until his plea of guilty or nolo contendere.

(b) That he could not have known of or discovered his evidence of factual innocence prior to pleading guilty or nolo contendere.

C.(1) A grant of post conviction relief pursuant to this Article shall not prevent the petitioner from being retried for the offense of conviction, for a lesser offense based on the same facts, or for any other offense.

(2) If the petitioner waives his right to a jury trial and elects to be tried by a judge, the district judge who granted post conviction relief pursuant to this Article shall be recused and the case shall be allotted to a different judge in accordance with applicable law and rules of court.

(3) If the district judge denied post conviction relief pursuant to this Article and an appellate court later reversed the ruling of the district judge and granted post conviction relief pursuant to this Article, and if the petitioner waives his right to a jury trial and elects to be tried by a judge, upon the petitioner's motion the district judge who denied post conviction relief shall be recused and the case shall be allotted to a different judge in accordance with applicable law and rules of court.

Acts 2021, No. 104, §1.

Art. 926.3. Motion for testing of evidence

A. Upon motion of the state or the petitioner, the district court may order the testing or examination of any evidence relevant to the offense of conviction in the custody and control of the clerk of court, the state, or the investigating law enforcement agency.

B. If the motion is made by the petitioner and the state does not expressly consent to the testing or examination, a motion made under this Article shall be granted only following a contradictory hearing at which the petitioner shall establish that good cause exists for the testing or examination. If the state does not expressly consent to the testing or examination and the motion made under this Article is granted following the contradictory hearing, the district attorney and investigating law enforcement agency shall not be ordered to bear any of the costs associated with the testing or examination.

Acts 2021, No. 104, §1.

Art. 927. Procedural objections; answer

A. If an application alleges a claim which, if established, would entitle the petitioner to relief, the court shall order the custodian, through the district attorney in the parish in which the defendant was convicted, to file any procedural objections he may have, or an answer on the merits if there are no procedural objections, within a specified period not in excess of thirty days. If procedural objections are timely filed, no answer on the merits of the claim may be ordered until such objections have been considered and rulings thereon have become final.

B. In any order of the court requiring a response by the district attorney pursuant to this Article, the court shall render specific rulings dismissing any claim which, if established as alleged, would not entitle the petitioner to relief, and shall order a response only as to such claim or claims which, if established as alleged, would entitle the petitioner to relief.

C. If the court orders an answer filed, the court need not order production of the petitioner except as provided in Article 930.

Acts 1990, No. 423, §1.

Art. 928. Dismissal upon the pleadings

The application may be dismissed without an answer if the application fails to allege a claim which, if established, would entitle the petitioner to relief.

Added by Acts 1980, No. 429, §1, eff. Jan. 1, 1981.

Art. 929. Summary disposition

A. If the court determines that the factual and legal issues can be resolved based upon the application and answer, and supporting documents, including relevant transcripts, depositions, and other reliable documents submitted by either party or available to the court, the court may grant or deny relief without further proceedings.

B. For good cause, oral depositions of the petitioner and witnesses may be taken under conditions specified by the court. The court may authorize requests for admissions of fact and of genuineness of documents. In such matters, the court shall be guided by the Code of Civil Procedure.

Added by Acts 1980, No. 429, §1, eff. Jan. 1, 1981.

Art. 930. Evidentiary hearing

A. An evidentiary hearing for the taking of testimony or other evidence shall be ordered whenever there are questions of fact which cannot properly be resolved pursuant to Articles 928 and 929. The petitioner, in absence of an express waiver, is entitled to be present at such hearing, unless the only evidence to be received is evidence as permitted pursuant to Subsection B of this Section, and the petitioner has been or will be provided with copies of such evidence and an opportunity to respond thereto in writing.

B. Duly authenticated records, transcripts, depositions, documents, or portions thereof, or admissions of facts may be received in evidence.

C. No evidentiary hearing on the merits of a claim shall be ordered or conducted, nor shall any proffer of evidence be received over the objection of the respondent, and no ruling upon procedural objections to the petition shall purport to address the merits of the claim over the objection of the respondent, unless the court has first ruled upon all procedural objections raised by the respondent, and such rulings have become final. Any language in a ruling on procedural objections raised by the respondent which purports to address the merits of the claim shall be deemed as null, void, and of no effect.

Acts 1990, No. 523, §1.

Art. 930.1. Judgment granting or denying relief under Articles 928, 929, and 930

A copy of the judgment granting or denying relief and written or transcribed reasons for the judgment shall be furnished to the petitioner, the district attorney, and the custodian.

Added by Acts 1980, No. 429, §1, eff. Jan. 1, 1981.

Art. 930.2. Burden of proof

The petitioner in an application for post-conviction relief shall have the burden of proving that relief should be granted.

Added by Acts 1980, No. 429, §1, eff. Jan. 1, 1981.

Art. 930.3. Grounds

If the petitioner is in custody after sentence for conviction for an offense, relief shall be granted only on the following grounds:

(1) The conviction was obtained in violation of the constitution of the United States or the state of Louisiana.

(2) The court exceeded its jurisdiction.

(3) The conviction or sentence subjected him to double jeopardy.

(4) The limitations on the institution of prosecution had expired.

(5) The statute creating the offense for which he was convicted and sentenced is unconstitutional.

(6) The conviction or sentence constitute the ex post facto application of law in violation of the constitution of the United States or the state of Louisiana.

(7) The results of DNA testing performed pursuant to an application granted under Article 926.1 proves by clear and convincing evidence that the petitioner is factually innocent of the crime for which he was convicted.

(8) The petitioner is determined by clear and convincing evidence to be factually innocent under Article 926.2.

Added by Acts 1980, No. 429, §1, eff. Jan. 1, 1981; Acts 2001, No. 1020, §1; Acts 2021, No. 104, §1.

Art. 930.4. Repetitive applications

A. Unless required in the interest of justice, any claim for relief which was fully litigated in an appeal from the proceedings leading to the judgment of conviction and sentence shall not be considered.

B. If the application alleges a claim of which the petitioner had knowledge and inexcusably failed to raise in the proceedings leading to conviction, the court shall deny relief.

C. If the application alleges a claim which the petitioner raised in the trial court and inexcusably failed to pursue on appeal, the court shall deny relief.

D. A successive application shall be dismissed if it fails to raise a new or different claim.

E. A successive application shall be dismissed if it raises a new or different claim that was inexcusably omitted from a prior application.

F. If the court considers dismissing an application for failure of the petitioner to raise the claim in the proceedings leading to conviction, failure to urge the claim on appeal, or failure to include the claim in a prior application, the court shall order the petitioner to state reasons for his failure. If the court finds that the failure was excusable, it shall consider the merits of the claim.

G. Notwithstanding any provision of this Title to the contrary, the state may affirmatively waive any procedural objection pursuant to this Article. Such waiver shall be express and in writing and filed by the state into the district court record.

Added by Acts 1980, No. 429, §1, eff. Jan. 1, 1981; Acts 2013, No. 251, §1, eff. Aug. 1, 2014; Acts 2021, No. 104, §1.

Art. 930.5. Custody pending retrial; bail

If a court grants relief under an application for post conviction relief, the court shall order that the petitioner be held in custody pending a new trial if it appears that there are legally sufficient grounds upon which to prosecute the petitioner.

In such a case, the petitioner shall be entitled to bail on the offense as though he has not been convicted of the offense.

Added by Acts 1980, No. 429, §1, eff. Jan. 1, 1981.

Art. 930.6. Review of trial court judgments

A. The petitioner may invoke the supervisory jurisdiction of the court of appeal if the trial court dismisses the application or otherwise denies relief on an application for post conviction relief. No appeal lies from a judgment dismissing an application or otherwise denying relief.

B. If a statute or ordinance is declared unconstitutional, the state may appeal to the supreme court. If relief is granted on any other ground, the state may invoke the supervisory jurisdiction of the court of appeal.

C. Pending the state's application for writs, or pending the state's appeal, the district court or the court of appeal may stay the judgment granting relief.

Added by Acts 1980, No. 429, §1, eff. Jan. 1, 1981; Acts 1985, No. 233, §1.

Art. 930.7. Right to counsel

A. If the petitioner is indigent and alleges a claim which, if established, would entitle him to relief, the court may appoint counsel.

B. The court may appoint counsel for an indigent petitioner when it orders an evidentiary hearing, authorizes the taking of depositions, or authorizes requests for admissions of fact or genuineness of documents, when such evidence is necessary for the disposition of procedural objections raised by the respondent.

C. The court shall appoint counsel for an indigent petitioner when it orders an evidentiary hearing on the merits of a claim, or authorizes the taking of depositions or requests for admissions of fact or genuineness of documents for use as evidence in ruling upon the merits of the claim.

Acts 1990, No. 523, §1.

Art. 930.8. Time limitations; exceptions; prejudicial delay

A. No application for post conviction relief, including applications which seek an out-of-time appeal, shall be considered if it is filed more than two years after the judgment of conviction and sentence has become final under the provisions of Article 914 or 922, unless any of the following apply:

(1) The application alleges, and the petitioner proves or the state admits, that the facts upon which the claim is predicated were not known to the petitioner or his prior attorneys. Further, the petitioner shall prove that he exercised diligence in attempting to discover any post conviction claims that may exist. "Diligence" for the purposes of this Article is a subjective inquiry that shall take into account the circumstances of the petitioner. Those circumstances shall include but are not limited to the educational background of the petitioner, the petitioner's access to formally trained inmate counsel, the financial resources of the petitioner, the age of the petitioner, the mental abilities of the petitioner, and whether the interests of justice will be served by the consideration of new evidence. New facts discovered pursuant to this exception shall be submitted to the court within two years of discovery. If the petitioner pled guilty or nolo contendere to the offense of conviction and is seeking relief pursuant to Article 926.2 and five years or more have elapsed since the petitioner pled guilty or nolo contendere to the offense of conviction, he shall not be eligible for the exception provided for by this Subparagraph.

(2) The claim asserted in the petition is based upon a final ruling of an appellate court establishing a theretofore unknown interpretation of constitutional law and petitioner establishes that this interpretation is retroactively applicable to his case, and the petition is filed within one year of the finality of such ruling.

(3) The application would already be barred by the provisions of this Article, but the application is filed on or before October 1, 2001, and the date on which the application was filed is within three years after the judgment of conviction and sentence has become final.

(4) The person asserting the claim has been sentenced to death.

(5) The petitioner qualifies for the exception to timeliness in Article 926.1.

(6) The petitioner qualifies for the exception to timeliness in Article 926.2.

B. An application for post conviction relief which is timely filed, or which is allowed under an exception to the time limitation as set forth in Paragraph A of this Article, shall be dismissed upon a showing by the state of prejudice to its ability to respond to, negate, or rebut the allegations

of the petition caused by events not under the control of the state which have transpired since the date of original conviction, if the court finds, after a hearing limited to that issue, that the state's ability to respond to, negate, or rebut such allegations has been materially prejudiced thereby.

C. At the time of sentencing, the trial court shall inform the defendant of the prescriptive period for post-conviction relief either verbally or in writing. If a written waiver of rights form is used during the acceptance of a guilty plea, the notice required by this Paragraph may be included in the written waiver of rights.

D. Notwithstanding any provision of this Title to the contrary, the state may affirmatively waive any objection to the timeliness under Paragraph A of this Article of the application for post conviction relief filed by the petitioner. Such waiver shall be express and in writing and filed by the state into the district court record.

Acts 1990, No. 1023, §1, eff. Oct. 1, 1990; Acts 1999, No. 1262, §1; Acts 2004, No. 401, §1; Acts 2013, No. 251, §1, eff. Aug. 1, 2014; Acts 2021, No. 104, §1.

Art. 930.9. Attendance by the petitioner

In the event that the petitioner for post-conviction relief is incarcerated, he may be present at post-conviction relief proceedings by teleconference, video link, or other visual remote technology.

Acts 2008, No. 626, §1.

Art. 930.10. Departure from this Title; post conviction plea agreements

A. Upon joint motion of the petitioner and the district attorney, the district court may deviate from any of the provisions of this Title.

B. Notwithstanding the provisions of Article 930.3 or any provision of law to the contrary, the district attorney and the petitioner may, with the approval of the district court, jointly enter into any post conviction plea agreement for the purpose of amending the petitioner's conviction, sentence, or habitual offender status. The terms of any post conviction plea agreement pursuant to this Paragraph shall be in writing, shall be filed into the district court record, and shall be agreed to by the district attorney and the petitioner in open court. The court shall, prior to accepting the post conviction plea agreement, address the petitioner personally in open court, inform him of and determine that he understands the rights that he is waiving by entering into the post conviction plea agreement, and determine that the plea is voluntary and is not the result of force or threats, or of promises apart from the post conviction plea agreement.

Acts 2021, No. 104, §1.

TITLE XXXII. DEFINITIONS

Art. 931. Courts, judges, and magistrates

Except where the context clearly indicates otherwise, as used in this Code:

(1) "Court" means a court with criminal jurisdiction or its judge. It does not include a mayor's court or a justice of the peace.

(2) "City court" means a city, town, village, or other municipal court, with criminal jurisdiction. It does not include a mayor's court or a justice of the peace.

(3) "Judge" means a judge of a court, as defined in this article.

(4) "Magistrate" means any judge, a justice of the peace, or a mayor of a mayor's court.

Art. 932. Jurors, juries, and jury venires

Except where the context clearly indicates otherwise, as used in this Code:

(1) "Juror" means a grand or a petit juror.

(2) "Petit jury" means the jury that tries a defendant.

(3) "Panel" is a group of persons selected according to law from a grand jury or petit jury venire to serve as a grand jury, or as a petit jury.

Art. 933. Offenses

Except where the context clearly indicates otherwise, as used in this Code:

(1) "Offense" includes both a felony and a misdemeanor.

(2) "Capital offense" means an offense that may be punished by death.

(3) "Felony" means an offense that may be punished by death or by imprisonment at hard labor.

(4) "Misdemeanor" means any offense other than a felony, and includes the violation of an ordinance providing a penal sanction.

Art. 934. Miscellaneous definitions

Except where the context clearly indicates otherwise, as used in this Code:

(1) "Act" includes a failure or omission to perform a legal duty.

(2) "City" means a city, town, village, or other municipality.

(3) "Convicted" means adjudicated guilty after a plea or after trial on the merits.

(4) "Defendant" means a person who has been charged with or accused of an offense.

(5) "District Attorney" includes an assistant district attorney, and where the prosecution is in a city court, includes the prosecuting officer of that court.

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

(7) "Institution of prosecution" means the finding of an indictment, or the filing of an information, or affidavit, which is designed to serve as the basis of a trial.

(8) "Oath" includes affirmation.

(9) "Person" includes an individual, partnership, unincorporated association of individuals, joint stock company, or corporation.

(10) "State" includes a city or other political subdivision of the state.

(11) "Statute" and "criminal law" mean a criminal statute, a constitutional provision, or an ordinance of a city or other political subdivision of the state.

(12) "Trial on the merits" means trial on the issue of guilt or innocence.

TITLE XXXIII. EMERGENCY OR DISASTER PROVISIONS

Art. 941. Legislative findings

The legislature hereby finds and declares the following:

(1) The state of Louisiana could suffer future catastrophic damage through the occurrence of emergencies and disasters of unprecedented size and destructiveness resulting from terrorist events, enemy attack, sabotage, or other hostile action, or from fire, flood, earthquake, or other natural or manmade causes resulting in the displacement of residents or the destruction of or severe damage to courthouses and other facilities supporting the criminal justice system.

(2) The magnitude of such catastrophic events may cause a disruption of the criminal justice system in any parish directly impacted by the emergency or disaster.

(3) The response to such an emergency or disaster should ensure the continued effective operation and integrity of the state's criminal justice system while minimizing adverse effects on the interests of the defendant and the state.

(4) Considering these factors, the Legislature of Louisiana, exercising its authority vested in Article III and Article VI, Section 3 of the Constitution of Louisiana, and recognizing the necessity of creating a classification of parishes based upon the need to conduct emergency sessions of court, does hereby enact the provisions of this Title to provide for the effective operation and integrity of the criminal justice system during times of emergency or disaster.

Acts 2005, 1st Ex. Sess., No. 52, §1, eff. Dec. 6, 2005.

Art. 942. Definitions

As used in this Title:

(1) "Affected court" means any appellate, district, parish, city, municipal, traffic, juvenile, justice of the peace, or family court having jurisdiction over criminal prosecutions and proceedings for which the Louisiana Supreme Court has made a determination that the court shall conduct emergency sessions outside its parish territorial jurisdiction as provided for by the provisions of this Title.

(2) "Emergency sessions" means any criminal court proceeding conducted by an affected court as authorized by the provisions of this Title and by order of the Louisiana Supreme Court.

(3) "Host jurisdiction" means the location or locations in which the Louisiana Supreme Court has ordered the affected court to conduct emergency sessions.

Acts 2005, 1st Ex. Sess., No. 52, §1, eff. Dec. 6, 2005.

Art. 943. Preemption of conflicting provisions

The provisions of this Title shall preempt and supersede but not repeal any conflicting provisions of this Code or any other provision of law.

Acts 2005, 1st Ex. Sess., No. 52, §1, eff. Dec. 6, 2005.

Art. 944. Emergency sessions of court; criteria

A. When the supreme court makes the determination that an appellate, district, parish, city, municipal, juvenile, traffic, justice of the peace, or family court having jurisdiction over criminal prosecutions and proceedings shall conduct proceedings outside its parish or territorial jurisdiction, the supreme court may order emergency sessions of court at a location or locations which are both feasible and practicable outside the parish or territorial jurisdiction of that court. This determination shall be based upon emergency or disaster circumstances, including but not limited to the lack of a readily available alternative location to conduct court within the parish, terrorist events, enemy attack, sabotage, or other hostile action, or from fire, flood, earthquake, or other natural or manmade causes resulting in the displacement of thousands of residents and the destruction of or severe damage to courthouses and other facilities supporting the criminal justice system. In making this determination, the supreme court shall make a reasonable effort to consult with the chief judge, the district attorney, the district public defender, and the clerk of the affected court.

B. The supreme court order requiring emergency sessions of court shall name the affected court, the location or locations in which the emergency sessions of that court shall be conducted, and the date on which emergency sessions shall commence.

Acts 2005, 1st Ex. Sess., No. 52, §1, eff. Dec. 6, 2005; Acts 2007, No. 307, §10.

Art. 945. Venue; affected court; emergency sessions; habeas corpus

A. Venue for criminal prosecutions in an affected court shall be changed by operation of law to the parish where the affected court is ordered to conduct criminal sessions for the duration of the emergency sessions. Criminal proceedings may take place in a parish other than the parish where the crime was committed if the supreme court has ordered emergency sessions of that court in another parish pursuant to Article 944 or as otherwise provided by law.

B. Venue for a writ of habeas corpus for an individual whose physical custody has been transferred as a result of the circumstances which are the basis for the emergency session shall be in the parish of East Baton Rouge. If the court in East Baton Rouge Parish is also an affected court, venue shall be in the host jurisdiction which has been established by supreme court order for the affected court in East Baton Rouge Parish.

Acts 2005, 1st Ex. Sess., No. 52, §1, eff. Dec. 6, 2005.

Art. 946. Jurisdiction of affected court conducting emergency sessions

A. The affected court conducting emergency sessions outside of its parish or territorial jurisdiction pursuant to Article 944 shall retain jurisdiction over all criminal proceedings and prosecutions that would otherwise be conducted by the affected court.

B. All court proceedings, grand jury proceedings, hearings, preliminary matters, pretrial hearings, and trials may be conducted in the emergency sessions of the affected court.

C. The affected court conducting emergency sessions may retain jurisdiction to complete all matters in progress in the host jurisdiction even though the order rendered pursuant to Article 944 has been withdrawn, canceled, or rescinded.

Acts 2005, 1st Ex. Sess., No. 52, §1, eff. Dec. 6, 2005.

Art. 947. Affected court conducting emergency sessions; authority and powers

An affected court ordered to conduct emergency sessions outside of its parish or territorial jurisdiction pursuant to Article 944 shall retain all authority and powers previously exercised by that court in its parish or territorial jurisdiction.

Acts 2005, 1st Ex. Sess., No. 52, §1, eff. Dec. 6, 2005.

Art. 948. Emergency sessions; length; recision; continuation; extensions

A. Emergency sessions of court shall continue until the supreme court withdraws, cancels, or rescinds the order authorizing the emergency sessions. The supreme court shall give notice at least ten days prior to the conclusion of the emergency session to the chief judge, the district attorney, the district public defender, and the clerk of the affected court.

B. The supreme court may withdraw, cancel, or rescind an order authorizing emergency sessions of court at any time that it determines that the conditions which warranted the issuance of the order no longer exist.

Acts 2005, 1st Ex. Sess., No. 52, §1, eff. Dec. 6, 2005; Acts 2006, No. 307, §10.

Art. 949. Court costs and fees

All court costs, fees, and fines assessed or taxed and collected previously by the affected court prior to the supreme court order authorizing the conducting of emergency sessions shall be assessed, taxed, collected, distributed, and retained in the same amounts by and to the same entities and in the same manner by the affected court conducting the emergency session in the host jurisdiction.

Acts 2005, 1st Ex. Sess., No. 52, §1, eff. Dec. 6, 2005.

Art. 950. Authority of district attorney in emergency sessions of court

A. The district attorney or prosecuting attorney, where applicable, of the affected court conducting emergency sessions of court outside of its parish or territorial jurisdiction pursuant to Article 944 shall have entire charge and control of every criminal prosecution and authority in the host jurisdiction that he would otherwise have exercised in the affected court.

B. The provisions of this Article are included in the other duties of the district attorney provided by law as authorized by Article V, Section 26(B) of the Constitution of Louisiana.

Acts 2005, 1st Ex. Sess., No. 52, §1, eff. Dec. 6, 2005.

Art. 951. Sheriff; law enforcement officer

A. The sheriff and any other law enforcement agency or officer or court official having jurisdiction in the affected court shall have all necessary authority and powers to operate within the host jurisdiction in which the affected court is conducting emergency sessions pursuant to Article 944, including the collection of fines, fees, costs, and bonds. This authority shall be limited to those matters being conducted in the emergency session of court.

B. The provisions of this Article shall constitute an exception to territorial jurisdiction of the sheriff in the same manner as Articles 204 and 213.

Acts 2005, 1st Ex. Sess., No. 52, §1, eff. Dec. 6, 2005.

Art. 952. Clerk of affected court

A. During the period in which the supreme court has ordered emergency sessions of court pursuant to Article 944, the clerk of court of the affected court is authorized to establish an ancillary office in the host jurisdiction in which the emergency sessions of the court are held.

B. The clerk of court of the affected court shall continue to exercise all necessary powers, duties, and authority of his office in order to maintain the effective operation and integrity of the criminal justice system of the affected court in the host jurisdiction, including but not limited to the assessment of fees to which the clerk is entitled. This authority shall be limited to all matters and proceedings within the jurisdiction of the affected court.

C. If the affected court is located in Orleans Parish, the provisions of this Article shall apply to the recorder of mortgages and register of conveyances for the parish of Orleans.

D. The provisions of this Article are included in the other duties of the clerk provided by law as authorized by Article V, Section 28(A) of the Constitution of Louisiana.

Acts 2005, 1st Ex. Sess., No. 52, §1, eff. Dec. 6, 2005.

Art. 953. Authority of indigent defender board in emergency sessions of court

The district public defender, or regional director, where applicable, of the affected court conducting emergency sessions of court outside of its parish or territorial jurisdiction pursuant to Article 944 shall retain the authority for the appointment of attorneys residing in either the parish or territorial jurisdiction of the affected court or in the host jurisdiction to represent indigent defendants in the host jurisdiction that would otherwise have been exercised in the affected court.

Acts 2005, 1st Ex. Sess., No. 52, §1, eff. Dec. 6, 2005; Acts 2007, No. 307, §10.

Art. 954. Jury pool; emergency sessions

A. Upon motion by the district attorney and after a contradictory hearing, the court may summon jurors from the host jurisdiction. The district attorney must show that the interests of justice are served by the approval of such motion.

B. The summoning of jurors shall be conducted by the clerk of the host jurisdiction. The cost of summoning jurors and all costs regarding jurors shall be paid by the affected court.

Acts 2005, 1st Ex. Sess., No. 52, §1, eff. Dec. 6, 2005.

Art. 955. Suspension of time limitations in affected courts; ninety days; recision; extensions; exceptions

A. The time periods, limitations, and delays established by the provisions of the Code of Criminal Procedure, Children's Code, Title 15, and Chapter 26 of Title 40 of the Louisiana Revised Statutes of 1950 shall be suspended in the jurisdiction of the affected court for a period of ninety days following the issuance of an order authorizing emergency sessions of court as provided for in Article 944.

B. The ninety-day suspension provided for by this Article shall commence to run from the date the supreme court issued its order authorizing the emergency sessions of court or from the date specified therein, whichever is earlier.

C. The ninety-day suspension may be extended upon a determination by the supreme court that the continuation of the suspension is necessary.

D. The supreme court may rescind the suspension at any time and for any jurisdiction within the state upon a determination by the supreme court that the suspension is no longer necessary.

E. The provisions of this Article shall not apply to Code of Criminal Procedure Articles 230.1, 230.2, 351, 354, and 362.

F. When the supreme court makes the determination and orders an emergency session of court at a location which are both feasible and practical outside the parish or territorial jurisdiction of the affected court, pursuant to Article 944, in addition to the provisions of Paragraph A of this Article, the supreme court may order an extension of time not to exceed four hundred fifty days for the surrender of the defendant as provided for in Code of Criminal Procedure Article 349.8. This extension of time is in addition to the one hundred eighty days provided for in Article 349.8 and the ninety days provided for in Paragraph A of this Article, and also applies to the deadlines for filing motions to set aside judgments of bond forfeiture.

Acts 2005, 1st Ex. Sess., No. 52, §1, eff. Dec. 6, 2005; Acts 2006, No. 466, §2, eff. June 15, 2006; Acts 2010, No. 914, §1.

Art. 956. Appeals; application for supervisory writs

An application for a supervisory writ or an appeal from a judgment or ruling of an affected court ordered to conduct emergency sessions shall be taken to the appropriate appellate court which exercised proper appellate or supervisory jurisdiction over the affected court prior to the issuance of the supreme court order. If the appropriate appellate court is also an affected court, an application for a supervisory writ or an appeal from a judgment or ruling of an affected court shall be taken to the host jurisdiction which has been established by supreme court order for the affected appellate court.

Acts 2005, 1st Ex. Sess., No. 52, §1, eff. Dec. 6, 2005.

Art. 957. Bail during emergency sessions of court; selected offenses

A. Notwithstanding any other provision of law to the contrary, an affected court conducting emergency sessions of court outside of its parish or territorial jurisdiction pursuant to Article 944 may release a defendant on bail through an unsecured personal surety as authorized by Article 317, without proof of a security interest pursuant to the provisions of this Article.

B. The provisions of this Article shall not apply to any defendant who has been arrested for any of the following offenses:

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

(2) A sex offense as defined in R.S. 15:541.

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

(4) A violation of R.S. 14:98, operating a vehicle while intoxicated, or a parish or municipal ordinance that prohibits operating a vehicle while intoxicated, while impaired, or while under the influence of alcohol or any controlled dangerous substance.

C. The affected court may release a defendant on bail through a personal surety without proof of a security interest as required by Article 319 if all of the following conditions are met:

(1) The defendant was arrested for an offense which is not excluded by Paragraph B of this Article.

(2) The personal surety meets the requirements of Articles 315 and 318 for a secured personal surety.

(3) Proof of a security interest cannot be obtained due to emergency or disaster circumstances as provided for in Article 944.

(4) The court requires that the unsecured surety be converted to a commercial surety or secured personal surety as soon as proof of a security interest can be obtained, or within thirty days of issuance of the unsecured bail, whichever occurs earlier. If proof of a security interest cannot be obtained due to emergency or disaster circumstances, the court may extend the period to obtain proof of the security interest for additional thirty-day increments as determined to be necessary by the court.

D. The provisions of this Article shall not be construed to limit the constitutional right to bail or the inherent authority of the court to set bail.

Acts 2010, No. 141, §1.

Art. 958. Suspension of time limitations in declared disaster, emergency, or public health emergency

A. Notwithstanding any provision of law to the contrary, if the governor has declared a disaster or emergency pursuant to the provisions of R.S. 29:721 et seq. or a public health emergency pursuant to R.S. 29:760 et seq., the supreme court is authorized to issue an order, or series of orders as it determines to be necessary and appropriate, that shall have the full force and effect of suspending all time periods, limitations, and delays pertaining to the initiation, continuation, prosecution, defense, appeal, and post-conviction relief of any prosecution of any state or municipal criminal, juvenile, wildlife, or traffic matter within the state of Louisiana including but not limited to any such provisions in this Code, the Children's Code, and Titles 14, 15, 32, 40, and 56 of the Louisiana Revised Statutes of 1950, or in any other provision of Louisiana law, for a determinate period of thirty days except as otherwise provided by this Article.

B. The thirty-day period provided for in this Article shall commence to run from the date the supreme court issues the order or from a particular date specified by the supreme court in the order, whichever is earlier.

C. The thirty-day period provided in Paragraph A of this Article may be extended by further order of the supreme court for additional successive periods with each period not exceeding thirty days.

D. The period of suspension authorized by the provisions of this Article shall terminate upon order of the supreme court or upon termination of the declared disaster, emergency, or public health emergency, whichever is earlier.

E. The provisions of this Article shall not apply to Articles 230.1, 230.2, and 232 and Children's Code Articles 624 and 819.

F. Nothing in this Article shall be construed to negate or impair the application of any other provision of law regarding the suspension or interruption of time periods, limitations, or delays.

Acts 2020, No. 285, §1, eff. June 11, 2020.

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

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, 2019; 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

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 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; exceptions

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. [illegible], §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).

(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.