

Regular Session, 2013

SENATE BILL NO. 179

BY SENATOR CLAITOR

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CRIMINAL PROCEDURE. Provides relative to bail. (gov sig)

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Articles 311, 312, 313, 314, 315, 316,

3 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333,

4 334, 335, and 336 and R.S. 15:85, and to repeal Code of Criminal Procedure Articles

5 327.1, 330.1, 330.2, 334.1, 334.2, 334.3, 334.4, 334.5, 335.1, 335.2, 336.1, 336.2,

6 337, 338, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 349.1, 349.2, 349.3,

7 349.4, 349.5, 349.6, 349.7, 349.8 and 349.9, relative to bail; to provide definitions;

8 to provide relative to authority to fix bail, bail schedules, surrender of the defendant,

9 and judgments of bond forfeiture and appeals; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Code of Criminal Procedure Articles 311, 312, 313, 314, 315, 316, 317,

12 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335,

13 and 336 are hereby amended and reenacted to read as follows:

14 Art. 311. Bail defined

15 ~~Bail is the security given by a person to assure his appearance before the~~

16 ~~proper court whenever required.~~

17 **A. Bail is an order of the court establishing the amount, type, and**

1 **conditions of bond for the release of the defendant from jail.**

2 **B. Every bail order shall be in writing and signed by a judge or**
3 **magistrate, set the type and a single amount of bail for each charge, designate**
4 **the officer or officers authorized to accept the bail, and set forth other**
5 **conditions of the bond in accordance with law. A bail order may issue on**
6 **request of the state or defendant, or on the initiative of the judge or magistrate.**

7 Art. 312. Types and elections of bail **Bail before and after conviction**

8 A. ~~The types of bail in Louisiana are:~~

9 (1) ~~Bail with a commercial surety.~~

10 (2) ~~Bail with a secured personal surety.~~

11 (3) ~~Bail with an unsecured personal surety.~~

12 (4) ~~Bail without surety, with or without security.~~

13 (5) ~~Bail with a cash deposit.~~

14 B. ~~Except as provided in Paragraphs C and D of this Article, all bail must be~~
15 ~~posted in the full amount fixed by the court.~~

16 C. ~~When the court fixes the amount of bail, a secured bail undertaking may~~
17 ~~be satisfied by a commercial surety, a cash deposit, or with the court's approval, by~~
18 ~~a secured personal surety or a bond secured by the property of the defendant, or by~~
19 ~~any combination thereof.~~

20 D. ~~When the court elects to release the defendant on an unsecured personal~~
21 ~~surety or a bail without surety, that election shall be expressed in the bail order.~~

22 **A. Except as otherwise provided in this Article, a person in custody**
23 **charged with the commission of an offense is entitled to be admitted to bail**
24 **before conviction.**

25 **B. A person charged with a capital offense shall not be admitted to bail**
26 **if the proof is evident and the presumption is great that he is guilty of the**
27 **offense. The defendant may apply for a contradictory bail hearing. For**
28 **purposes of the bail hearing, the return of a true bill of indictment shall create**
29 **a presumption of guilt.**

1 C.(1) A defendant charged with a crime of violence, or with production,
2 manufacture, distribution, or dispensing or possession with intent to produce,
3 manufacture, distribute, or dispense a controlled dangerous substance as
4 defined by the Uniform Controlled Dangerous Substances Law may, upon
5 motion of the prosecutor, be detained for not more than five days, exclusive of
6 weekends and legal holidays, pending contradictory bail hearing. The defendant
7 shall be detained pending contradictory bail hearing if he is charged with a
8 crime of violence listed in R.S. 14:2(B), or if the defendant is in custody or in
9 court following the issuance of a warrant for his failure to appear in court.

10 (2) Following the contradictory hearing, upon proof by clear and
11 convincing evidence either that there is a substantial risk that the defendant
12 might flee or that the defendant poses an imminent danger to any other person
13 or the community, the judge or magistrate shall order the defendant held
14 without bail.

15 (3) Upon proof by clear and convincing evidence that the defendant
16 failed to appear at his criminal proceedings as notified, there shall be a
17 presumption that the defendant is a substantial flight risk.

18 D. Except as otherwise provided in this Article, a defendant is entitled
19 to bail after conviction if the maximum sentence that may be imposed is
20 imprisonment for five years or less, or if a sentence of five years or less has
21 actually been imposed. Bail may be allowed if the maximum sentence that may
22 be imposed is imprisonment exceeding five years, or if the sentence actually
23 imposed exceeds imprisonment for five years.

24 Art. 313. Surety

25 ~~Surety as used in this Title is a legal suretyship pursuant to the provisions of~~
26 ~~the Louisiana Civil Code.~~

27 A. Every bail order shall permit the defendant to post a cash bond,
28 commercial surety bond, or secured personal surety bond. A bail order may,
29 except as provided in this Article, permit the defendant to post an unsecured

1 personal surety bond or a recognizance bond, or may specify a combination of
2 the types of bonds permitted for a single charge.

3 B. The court shall not release any defendant on an unsecured personal
4 surety bond or recognizance bond if the defendant is arrested for or charged
5 with any of the following crimes:

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

7 (2) The production, manufacture, distribution, or dispensing or
8 possession with intent to produce, manufacture, distribute, or dispense a
9 controlled dangerous substance as defined by the Uniform Controlled
10 Dangerous Substances Law.

11 (3) Any felony offense, an element of which is the discharge, use, or
12 possession of a firearm.

13 Art. 314. Commercial surety Conditions of bail

14 ~~A surety company authorized to do business in the state of Louisiana may~~
15 ~~become surety for the release of a person on bail. The sufficiency of security posted~~
16 ~~in the form of an appearance bond by a surety company, as required by the~~
17 ~~provisions of Title 22 of the Louisiana Revised Statutes of 1950, shall be determined~~
18 ~~solely by the commissioner of insurance.~~

19 A. As conditions of every bail bond, the defendant shall submit himself
20 to the orders and process of the court, shall not leave the state without written
21 permission of the court, and shall not commit any crime. The court may impose
22 any additional condition of release that is reasonably related to assuring the
23 appearance of the defendant before the court.

24 B. The court shall require any person charged with a second or
25 subsequent violation of R.S. 14:32.1 (vehicular homicide), R.S. 14:39.1
26 (vehicular negligent injuring), R.S. 14:39.2 (first degree vehicular negligent
27 injuring), R.S. 14:98 (operating a vehicle while intoxicated), R.S. 14:98.1
28 (underage driving under the influence), or a parish or municipal ordinance that
29 prohibits the operation of a motor vehicle while under the influence of alcohol

1 or drugs, to install an ignition interlock device on any vehicle that he operates
2 as a condition of bail. The defendant shall have fifteen days from the date that
3 he is released on bail to comply with this requirement, and the ignition interlock
4 device shall remain on the vehicle or vehicles during the pendency of the
5 criminal proceedings. Under exceptional circumstances, the court may waive
6 the provisions of this Paragraph but shall indicate the reasons for such waiver
7 to the law enforcement agency that has custody of the alleged offender's
8 documentation.

9 C. The court shall require any person indicted for the crime of
10 aggravated rape (R.S. 14:42) to wear an electronic monitoring device and to be
11 placed under active electronic monitoring under conditions set by the court. The
12 defendant may be required to pay a reasonable supervision fee to the
13 supervising agency to defray the cost of the required electronic monitoring.

14 D.(1) Every person arrested for a crime may be required, and every
15 person arrested for a violation of the Uniform Controlled Dangerous Substances
16 Law or a crime of violence as defined in R.S. 14:2(B) shall be required to submit
17 to a pretrial drug test. Every such person who tests positive for the presence of
18 one or more of the designated substances set forth in Subparagraph (2)(b) of
19 this Paragraph, shall, as a condition of bail, be required to participate in a
20 pretrial drug testing program, to submit to continued random testing, and to
21 refrain from the use or possession of any controlled dangerous substance or any
22 substance designated by the court, as conditions of bail.

23 (2) The court may, and in all municipalities with a population of three
24 hundred thousand or more persons shall, implement a pretrial drug testing
25 program that shall provide for the following:

26 (a) Mandatory participation for all persons arrested for violations of
27 state law.

28 (b) Drug testing to determine the presence of phencyclidine (PCP),
29 opiates (heroin), cocaine, methadone, amphetamines, or marijuana, prior to the

1 first court appearance and random testing thereafter to verify that the person
2 is drug free.

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

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

12 (e) The implementation of any pretrial drug testing program authorized
13 pursuant to the provisions of this Paragraph shall be contingent upon receipt
14 of sufficient funding by the court requiring the test. All contracts awarded to
15 any drug testing company authorized to conduct the pretrial drug testing
16 program provided for in this Paragraph shall be awarded in accordance with
17 the provisions governing public contracts, R.S. 38:2181 et seq. No elected
18 official who is in any way connected with the administration of the pretrial drug
19 testing program provided for in this Paragraph, either directly or indirectly,
20 shall have any financial interest, either directly or indirectly, in any drug testing
21 company participating in such pretrial drug testing program.

22 E. The court shall consider whether the defendant poses a threat or
23 danger to a victim of the criminal offense. If the court determines that the
24 defendant poses such a threat or danger, it shall require as a condition of bail
25 that the defendant refrain from going to the residence or household of the
26 victim, the victim's school, and the victim's place of employment, or otherwise
27 contacting the victim in any manner whatsoever, and shall refrain from having
28 any further contact with the victim. If the victim is a family member, household
29 member, or dating partner of the defendant, the court shall issue and transmit

1 a Uniform Abuse Prevention Order in accordance with R.S. 46:2136.2. In
 2 addition, the court may order the defendant to be equipped with a global
 3 positioning monitoring system as a condition of bail and assess the cost of the
 4 defendant's participation and monitoring to the defendant.

5 F. Upon the defendant's failure to meet any of the conditions of his bail,
 6 the court may order his bond revoked and may remand the defendant or issue
 7 a warrant for his arrest.

8 Art. 315. Personal surety Authority to fix bail

9 A personal surety must be a natural person domiciled in this state who owns
 10 property in this state that is subject to seizure and is of sufficient value to satisfy,
 11 considering all his property, the amount specified in the bail bond. The value of the
 12 property of the surety shall exclude property exempt from execution, and shall be
 13 over and above all his other liabilities including the amount of any other bail bond
 14 on which he may be principal or surety. When there is more than one personal
 15 surety, the requirements of this Article shall apply to the aggregate value of their
 16 property. No personal surety shall charge a fee or receive any compensation for
 17 posting a personal surety bond.

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

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

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

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

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

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

29 Art. 316. Types of personal surety Schedules of bail

1 ~~There are two types of personal surety in Louisiana: unsecured, and secured.~~

2 **A. Unless the bail is fixed by a schedule in accordance with Paragraph**
3 **B of this Article, the amount of bail in criminal cases shall be specifically fixed**
4 **in each case.**

5 **B. A schedule of bail according to the offense charged in noncapital**
6 **criminal cases may be fixed by a district court. The court order setting the bail**
7 **schedule shall fix the amount of bail for each offense listed, designate the officer**
8 **or officers authorized to accept the bail, and order that bail be taken in**
9 **conformity with the schedule. It may also contain a general provision**
10 **designating the amount of bail for any noncapital felony not listed in the**
11 **schedule. A copy of the schedule shall be sent to all jails, sheriffs' offices, and**
12 **police stations within the jurisdiction of the court. When more than one court**
13 **has trial jurisdiction over an offense, the applicable bail schedule shall be that**
14 **schedule of the court in which the case is to be tried. A bail schedule may be**
15 **revised or rescinded at any time.**

16 **C. A person charged with the commission of a crime for which bail is**
17 **fixed by a schedule may give bail according to the schedule. If such a person**
18 **has not furnished bail, then the person shall be brought before the court for a**
19 **contradictory hearing to determine bail within seventy-two hours after arrest,**
20 **exclusive of weekends and holidays.**

21 **D. Bail herein may be set above or below the scheduled amount if the**
22 **court deems it appropriate or the district attorney moves for good cause to have**
23 **the bail set above the scheduled amount and the court finds it appropriate.**

24 Art. 317. ~~Unsecured personal surety~~ **Factors in determining amount of bail**

25 ~~A person in custody may be released by order of the court on an unsecured~~
26 ~~personal surety bond. An unsecured personal surety is a personal surety where the~~
27 ~~surety meets all the qualifications of law and lives and resides in the state of~~
28 ~~Louisiana without specifically mortgaging or giving a security interest in any~~
29 ~~property as security to guarantee the surety's performance.~~

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

5 (1) The seriousness of the offense charged.

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

7 (3) The previous criminal record of the defendant.

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

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

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

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

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

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

20 (10) The type or form of bail.

21 Art. 318. Secured personal surety Juvenile records to determine bail

22 ~~A secured personal surety is a personal surety who meets all the~~
23 ~~qualifications of law and specifically mortgages immovable property located in the~~
24 ~~state of Louisiana.~~

25 A. For the purpose of fixing bail, a magistrate may make a written
26 request of any juvenile court for an abstract containing only the delinquent acts
27 of a defendant currently before the requesting magistrate. The request shall be
28 promptly complied with; however, not more than forty-eight hours, exclusive
29 of weekends and legal holidays, shall lapse before the requested information is

1 deposited in the mail, addressed to the requesting court.

2 B. The requesting court shall not copy, duplicate, or otherwise reproduce
3 such juvenile records, and these shall be deposited in the mail and addressed to
4 the issuing juvenile court within seventy-two hours, exclusive of weekends and
5 legal holidays, after delivery of the request.

6 Art. 319. Conditions for providing a property bond Increase or reduction of bail;
7 sufficiency of security

8 ~~A. A defendant or a secured personal surety, pursuant to Article 312, may~~
9 ~~establish a legal mortgage over immovable property in favor of the state of Louisiana~~
10 ~~or the proper political subdivision to secure a bail obligation.~~

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

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

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

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

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

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

25 ~~D.(1) The recorder shall cancel the mortgage from his records upon the order~~
26 ~~of the court.~~

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

29 ~~E. Any materially false or incorrect statements made by a person who~~

1 intentionally and knowingly gives a mortgage or security interest pursuant to this
2 Article shall be prima facie proof of a violation of the provisions of R.S. 14:125,
3 false swearing.

4 **The court having trial jurisdiction over the offense charged, on its own**
5 **motion or on motion of the state or defendant, for good cause at a contradictory**
6 **hearing, may either increase or reduce the amount of bail, modify the conditions**
7 **of a bail order, or require new or additional security. For purposes of this**
8 **Article, good cause for increase of bail specifically includes but is not limited to**
9 **the re-arrest of the defendant on offenses alleged to have been committed while**
10 **out on bond. The modification of any bail order wherein a bail bond has been**
11 **posted by a defendant and his sureties shall upon said modification terminate**
12 **the liability of the defendant and his sureties under the previously existing bail**
13 **contract. A new bail must be posted in the amount of the new bail order.**

14 Art. 320. Those who may not be sureties **Remedy for refusal of bail or excessive**
15 **bail**

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

20 **A person held may invoke the supervisory jurisdiction of the court of**
21 **appeal on a claim that the trial court has improperly refused bail or a reduction**
22 **of bail in aailable case.**

23 Art. 321. Affidavit of surety **Bail bond defined; termination of bond obligation**

24 A personal surety shall execute an affidavit that he possesses the sufficiency
25 and qualifications prescribed by Article 315 and that he is not disqualified from
26 becoming a surety by Article 320. The affidavit shall list the number and amount of
27 undischarged bail bonds, if any, entered into by the surety. The officer accepting the
28 bail may require the surety to state in his affidavit the nature and value of his
29 property not exempt from execution, and the amount of his liabilities. An officer

1 authorized to accept the bail shall have authority to administer any affidavit required
2 of the person signing a bail bond.

3 A. A bail bond is a contract under private signature between the
4 defendant and his sureties as solidary obligors, and the state of Louisiana as
5 obligee. The bond shall be in writing, be entered into before an officer who is
6 authorized to take it, and state a single amount of bail for each charge.

7 B. The obligation of the bail bond is that the defendant shall appear in
8 court as notified pursuant to Article 328. The surety assumes all risks that the
9 defendant may not appear.

10 C. The obligation of the bond shall run from the execution of the bond
11 contract, and shall terminate by written order of conviction, acquittal,
12 modification of bail, or revocation of the bond. The obligation shall terminate
13 upon dismissal of the charge by the prosecution, unless within three days,
14 exclusive of weekends and holidays, the defendant is charged with the same
15 crime or another crime of the same or lesser class arising out of the same
16 incident or matter. The obligation shall terminate upon surrender of the
17 defendant under Article 334.

18 D. Orleans Parish district judges with criminal jurisdiction sitting en
19 banc may adopt rules effectuating telephonic communication and verification
20 of bonds and releases.

21 E. Nothing in this Article limits the court's authority to increase or
22 reduce bail pursuant to Article 319.

23 Art. 322. Declaration of residence by defendant and surety; social security number;
24 waiver of notice Cash bond

25 ~~A. The defendant and personal surety signing a bail bond shall write the~~
26 ~~address at which each can be served under their respective signatures and the last~~
27 ~~four digits of their social security number. The defendant and his counsel may, by~~
28 ~~joint affidavit filed of record in the proceeding in which the bond was given, appoint~~
29 ~~his counsel as his agent for service of notice to appear. The appointment shall be~~

1 ~~conclusively presumed to continue until the defendant files of record an affidavit~~
2 ~~revoking or changing the appointment. The affidavit shall include the address at~~
3 ~~which to serve his counsel. A commercial surety shall inscribe its proper mailing~~
4 ~~address on the face of the power of attorney used to execute the bond. The agent or~~
5 ~~bondsman posting the bond shall write his proper mailing address under his~~
6 ~~signature. A bail bond shall not be set aside because of the invalidity of the~~
7 ~~information required by this Article or for the failure to include the information~~
8 ~~required by the provisions of this Article.~~

9 ~~B. Each address provided pursuant to Paragraph A of this Article shall be~~
10 ~~conclusively presumed to continue for all proceedings on the bond until the party~~
11 ~~providing the address changes it by filing a written declaration in the proceeding for~~
12 ~~which the bond was filed.~~

13 ~~C. By signing the bail bond, the defendant and his surety waive any right to~~
14 ~~notice, except that provided for in Articles 344 and 349.3.~~

15 ~~D. Repealed by Acts 2010, No. 914, §5, eff. August 15, 2010.~~

16 ~~E. Repealed by Acts 2010, No. 914, §5, eff. August 15, 2010.~~

17 **A. The security pledged for a cash bond shall be in the form of cash,**
18 **certified check, cashier's check, or money order, and deposited with the officer**
19 **authorized to accept the bail.**

20 **B. The courts in the parishes of St. John the Baptist and St. Charles, by**
21 **written rule, may alter the percentage amount of bail to be deposited with the**
22 **officer authorized to accept the bond and authorize the officer to charge an**
23 **administrative fee, not to exceed fifteen dollars, for processing the bond.**

24 **C. Upon final disposition of all cases in which a cash bond has been**
25 **made pursuant to this Article, and the deposit has remained unclaimed for a**
26 **period of one year from the date of the final disposition, the officer authorized**
27 **to accept said bail shall apply and use one-half of such funds for the operation**
28 **and maintenance of the office of the clerk of court, or the office of the clerk of**
29 **the criminal district court in Orleans Parish, and remit one-half of such funds**

1 to the local governing authority after advertising his intention to so utilize the
 2 funds by publication in the official parish journal of a notice to the public
 3 containing an itemized list of all of such funds on deposit, containing the names
 4 and last known addresses of defendants and the docket numbers of the cases
 5 involved. The publication shall be made once within thirty days after the final
 6 disposition of the case. The clerk shall also send a notice by certified mail to
 7 each such defendant at the last known address of the defendant. Any interest
 8 earned on the funds deposited for bail shall be disbursed as provided in
 9 Paragraph E of this Article.

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

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

21 Art. 323. ~~Signature or declaration of person unable to write~~ Commercial surety

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

29 A. A surety company authorized to do business in the state of Louisiana

1 may become surety for the release of a person on bail. The sufficiency of
 2 security posted in the form of an appearance bond by a surety company, as
 3 required by the provisions of Title 22 of the Louisiana Revised Statutes of 1950,
 4 shall be determined solely by the commissioner of insurance.

5 B. A contract to indemnify a commercial surety against loss on a bail
 6 bond is valid and enforceable.

7 Art. 324. Cash deposits Qualifications and affidavit of personal surety

8 ~~A.(1) In lieu of a surety the defendant may furnish his personal undertaking,~~
 9 ~~secured by a deposit with an officer authorized to accept the bail.~~

10 ~~(2) The deposit shall consist of any of the following which are equal to the~~
 11 ~~amount of the bail:~~

12 ~~(a) Cash.~~

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

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

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

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

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

23 ~~B. Upon final disposition of all cases in which a deposit of money, checks,~~
 24 ~~bonds, or money orders has been made pursuant to this Article, and said deposits~~
 25 ~~have remained unclaimed for a period of one year from the date of the final~~
 26 ~~disposition, the officer authorized to accept said bail shall apply and use one-half of~~
 27 ~~such funds for the operation and maintenance of the office of the clerk of court, or~~
 28 ~~the office of the clerk of the criminal district court, or the office of the clerk of the~~
 29 ~~criminal district court in Orleans Parish, and one-half to the local governing authority~~

1 after advertising his intention to so utilize the funds by publication in the official
2 parish journal of a notice to the public containing an itemized list of all of such funds
3 on deposit, containing the names and last known addresses of defendants and the
4 docket numbers of the cases involved. The publication shall be made once within
5 thirty days after the final disposition of the case as aforesaid. The clerk shall also
6 send a notice by certified mail to each of such defendants at the last known address
7 of the defendant. Any interest earned on the funds deposited for bail shall be
8 disbursed as provided in Paragraph E of this Article.

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

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

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

25 **A. A personal surety must be a natural person domiciled in the state of**
26 **Louisiana who owns property in this state that is subject to seizure and is of**
27 **sufficient value to satisfy the amount specified in the bail bond over and above**
28 **all other liabilities. No attorney, judge, or ministerial officer of a court may act**
29 **as a personal surety for a bail bond, and no person may charge a fee or receive**

1 anything of value to act as a personal surety.

2 B. A personal surety shall execute an affidavit that he possesses the
3 sufficiency and qualifications required in Paragraph A of this Article, and the
4 officer accepting the bail may require the surety to state in his affidavit the
5 nature and value of his property not exempt from execution, and the amount of
6 his liabilities. Any defect in the sufficiency or qualifications of the surety shall
7 not be a defense to an action to forfeit or revoke a bail bond, nor to an action to
8 enforce a judgment.

9 Art. 325. ~~Bail without surety~~ Secured personal surety bond

10 ~~A person in custody may be released by order of the court on his personal~~
11 ~~bail undertaking without the necessity of furnishing a surety.~~

12 A. The security required for a secured personal bond shall be a
13 promissory note in the amount of the bond, due on demand to the state of
14 Louisiana or prosecuting municipality, and paraphed for identification with an
15 act of mortgage recorded in favor of the state of Louisiana or prosecuting
16 municipality and duly recorded in the parish where the mortgaged immovable
17 is located.

18 B. The person providing security shall bring a mortgage certificate and
19 tax assessment for the immovable, along with the recorded act of mortgage and
20 promissory note securing the bail bond, to the prosecuting attorney.

21 C. The amount of the bond secured may not exceed the amount of the tax
22 assessment less all inscriptions against the property as stated in the mortgage
23 certificate. Before recordation, the mortgage must be deemed sufficient by
24 signature of the prosecuting attorney, who shall retain the promissory note.

25 D. The recorder shall not cancel the mortgage from his records without
26 receipt of the canceled promissory note or an affidavit from the prosecuting
27 attorney that the secured obligation has been extinguished.

28 E. Any materially false or incorrect statements made by a person who
29 gives a mortgage or security interest pursuant to this Article shall be prima

1 **facie proof of a violation of the provisions of R.S. 14:132.**

2 Art. 326. ~~Condition of the bail undertaking~~ **Recognizance bond**

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

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

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

18 (3) ~~In all cases, if necessary to assure the presence of the defendant at all~~
19 ~~future stages of the proceedings, the court may in its discretion, in accordance with~~
20 ~~Article 332 require the defendant to post another bond or other acceptable security,~~
21 ~~or may release the defendant on bail without surety as provided for in Article 325.~~
22 ~~The court may continue the existing bail undertaking with the written approval of the~~
23 ~~surety on the bond. Such approval must be obtained from the surety after conviction.~~

24 **Except as otherwise provided by law, a person in custody may be**
25 **released by bail order on a recognizance bond without the necessity of**
26 **furnishing a surety.**

27 Art. 327. ~~Requisites of the bail undertaking~~ **Declaration of residence by defendant**
28 **and surety; social security number; waiver of notice**

29 A. ~~The bail undertaking shall:~~

- 1 ~~(1) Be in writing.~~
- 2 ~~(2) State the court before which the defendant is bound to appear.~~
- 3 ~~(3) Be entered into before an officer who is authorized to take it.~~
- 4 ~~(4) State a single amount of bail for each charge.~~

5 ~~B. The bail undertaking shall be enforceable if the above requirements are~~
6 ~~met, and no officer may refuse to accept the posting of a bail bond and releasing a~~
7 ~~defendant on bail if the provisions of Code of Criminal Procedure Article 314 and~~
8 ~~the conditions set by this Article are met. A person shall not be discharged from his~~
9 ~~bail undertaking, nor shall a judgment of forfeiture be stayed, set aside, or reversed,~~
10 ~~nor the collection of any such judgment be barred or defeated by reason of any defect~~
11 ~~of form, omission of a recital, or of a condition of the undertaking, by reason of a~~
12 ~~failure to note or record the default of any defendant or surety, or because of any~~
13 ~~other irregularity.~~

14 **A. The defendant and personal surety signing a bail bond shall write the**
15 **address at which each can be served under their respective signatures and the**
16 **last four digits of their social security numbers. A commercial surety shall**
17 **inscribe its proper mailing address on the face of the power of attorney used to**
18 **execute the bond. A bail bond shall not be set aside because of the invalidity of**
19 **the information required by this Article or for the failure to include the**
20 **information required by the provisions of this Article.**

21 **B. Each address provided pursuant to Paragraph A of this Article shall**
22 **be conclusively presumed to continue for all proceedings on the bond until the**
23 **party providing the address changes it by filing a written declaration in the**
24 **proceeding for which the bond was filed.**

25 **C. By signing the bail bond, the defendant and his surety waive any right**
26 **to notice, except that provided for in Articles 328 and 332, and including actual**
27 **notice under Article 579(A)(3), and waive any objection to the jurisdiction of the**
28 **court in an action to forfeit the bond.**

29 Art. 328. Substitution of security **Right to notice of time and place of defendant's**

1 **required appearance**

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

6 **A. Notice to a defendant of a court appearance date may be provided on**
7 **the bond or in open court, or may be made as follows to the address provided**
8 **pursuant to Article 327:**

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

11 **(2) Mailed by United States first class mail at least three days prior to**
12 **the appearance date.**

13 **B. A surety for a defendant is not entitled to notice of the defendant's**
14 **court appearance dates, and shall remain diligently informed of the public**
15 **records relating to the defendant's case. However, the surety is entitled to**
16 **assert a defense of improper notice to the defendant in the summary proceeding**
17 **provided in Article 335.**

18 Art. 329. ~~Contract to indemnify surety~~ **Court order for arrest of defendant**

19 ~~A contract to indemnify a surety against loss on a bail bond is valid and~~
20 ~~enforceable.~~

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

24 **(1) There has been a breach or revocation of the bail undertaking.**

25 **(2) The surety has become insufficient, is dead, cannot be found, or has**
26 **ceased to meet the qualifications of law or does not own adequate immovable**
27 **property within the state.**

28 **(3) The court is satisfied that the bail should be increased or new or**
29 **additional security required.**

1 Art. 330. ~~Bail before conviction~~ **Failure to appear; issuance of arrest warrant**

2 ~~Except as provided in Article 331, a person in custody charged with the~~
3 ~~commission of an offense is entitled to be admitted to bail before conviction unless~~
4 ~~the person is charged with a crime of violence as defined by law or with production,~~
5 ~~manufacture, distribution, or dispensing or possession with intent to produce,~~
6 ~~manufacture, distribute, or dispense a controlled dangerous substance as defined by~~
7 ~~the Louisiana Controlled Dangerous Substances Law, and after a contradictory~~
8 ~~hearing, conducted pursuant to the provisions of Article 330.1, the judge or~~
9 ~~magistrate finds by clear and convincing evidence that the defendant may flee or~~
10 ~~poses an imminent danger to any other person or the community.~~

11 **If at the time fixed for appearance the defendant fails to appear as**
12 **required by the court, the court may, or shall on motion of the prosecuting**
13 **attorney, immediately and forthwith issue a warrant for the arrest of the**
14 **defendant.**

15 Art. 331. ~~Capital offenses~~ **Bond forfeiture hearing**

16 ~~A. A person charged with the commission of a capital offense shall not be~~
17 ~~admitted to bail if the proof is evident and the presumption great that he is guilty of~~
18 ~~the capital offense.~~

19 ~~B. When a person charged with the commission of a capital offense makes~~
20 ~~an application for admission to bail, the judge shall hold a hearing contradictorily~~
21 ~~with the state.~~

22 ~~C. The burden of proof:~~

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

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

27 **Upon motion of the prosecuting attorney, and upon hearing of evidence**
28 **of the bail contract notice to the defendant as required by Article 328, and the**
29 **defendant's failure to appear as required, the bond shall be forfeited, and the**

1 **court shall forthwith render a money judgment against the defendant and his**
2 **sureties, in solido, in the amount of the bond.**

3 Art. 332. ~~Bail after conviction~~ **Notice of judgment**

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

6 (1) ~~He is allowed to remain free on a bail obligation posted prior to~~
7 ~~conviction by operation of Article 326(B), and the bail previously fixed is in~~
8 ~~accordance with all of the applicable provisions of this Article.~~

9 (2) ~~He is released by virtue of a bail obligation posted after conviction, which~~
10 ~~bail was fixed in accordance with this Article.~~

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

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

24 D. ~~In those instances above in which bail shall be allowed, the court shall~~
25 ~~consider whether the release of the person convicted or sentenced will pose a danger~~
26 ~~to any other person or the community in determining the amount of bail.~~

27 E. ~~After conviction of a capital offense, a defendant shall not be allowed bail.~~

28 **A. The clerk of court shall mail notice of the signing of the judgment of**
29 **bond forfeiture to the judgment debtors within sixty days of the signing of the**

1 **judgment.**

2 **B. After mailing the notice of the signing of the judgment of bond**
3 **forfeiture, the clerk of court shall execute an affidavit of the mailing and place**
4 **the affidavit in the record.**

5 **C. Failure to mail notice of the signing of the judgment within sixty days**
6 **of the signing of the judgment shall be a defense that may be raised against the**
7 **judgment in the summary proceeding provided for in Article 335, but shall not**
8 **extinguish the obligation of the bond.**

9 **D. After the mailing of notice of the signing of the judgment, the district**
10 **attorney may cause the judgment to be recorded in any parish without cost.**

11 Art. 333. Authority to fix bail **Deposit; enforcement of judgment; satisfaction**

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

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

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

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

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

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

22 **A. The sureties shall deposit with the prosecuting attorney the full**
23 **principal amount of the judgment of bond forfeiture within sixty days after the**
24 **mailing of notice of the signing of judgment.**

25 **B. The judgment of bond forfeiture shall be deemed satisfied if the**
26 **defendant appears in court or is surrendered under Article 334 within sixty**
27 **days after the mailing of notice of the signing of judgment. If the deposit has**
28 **been timely made as required under Paragraph A of this Article, then the**
29 **judgment of bond forfeiture shall be deemed satisfied if the defendant appears**

1 in court or is surrendered under Article 334 within one hundred eighty days of
 2 the mailing of notice of the signing of judgment, and the deposit shall be
 3 returned to the sureties by the prosecuting attorney immediately upon request.
 4 The bond obligation shall continue except as otherwise provided by law.

5 C. If the sureties fail to make a timely deposit as required under
 6 Paragraph A of this Article, then the judgment of bond forfeiture shall be
 7 executed by the prosecuting attorney in the same manner as any other money
 8 judgment, and the prosecuting attorney shall be entitled to reasonable attorney
 9 fees in the amount of twenty-five percent of judgment.

10 D. If after a deposit is made the defendant does not appear in court and
 11 is not surrendered under Article 334 within one hundred eighty days after the
 12 mailing of notice of the signing of judgment, then the deposit shall immediately
 13 be applied in satisfaction of the judgment.

14 Art. 334. Factors in determining amount of bail **Surrender of defendant**

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

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

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

22 (3) ~~The previous criminal record of the defendant.~~

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

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

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

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

29 (8) ~~Whether the defendant is currently out on bond on a previous felony~~

1 ~~arrest for which he is awaiting institution of prosecution, arraignment, trial, or~~
2 ~~sentencing.~~

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

5 ~~(10) The type or form of bail.~~

6 **A. A surety may surrender the defendant within the surrender period,**
7 **which shall be at any time before sixty days after the mailing of notice of the**
8 **signing of judgment or, after a timely deposit as required under Article 333, at**
9 **any time before one hundred eighty days after the mailing of notice of the**
10 **signing of judgment. The surrender may be made in any of the following ways:**

11 **(1) By delivering the defendant to the custody of the officer originally**
12 **charged with his detention during the surrender period. For the purpose of**
13 **surrendering the defendant, the surety may arrest him. Upon surrender of the**
14 **defendant, the officer shall detain the defendant in his custody as upon the**
15 **original commitment and shall acknowledge the surrender by a certificate**
16 **signed by him and delivered to the surety. The officer shall retain and forward**
17 **a copy of the certificate to the court.**

18 **(2) By obtaining a certificate of surrender from the officer originally**
19 **charged with the defendant's detention while the defendant is currently in the**
20 **custody of the officer and during the surrender period.**

21 **(3) By constructively surrendering a defendant incarcerated in another**
22 **parish or county within the continental United States. To do so, the surety must**
23 **file a motion in summary proceeding within the surrender period, certifying**
24 **that the defendant is currently incarcerated and that the surety has paid the**
25 **deposit required under Article 333. The court shall grant the motion upon**
26 **certification by the prosecuting attorney that the deposit has been paid and**
27 **upon presentation of proof that the defendant is currently incarcerated. An**
28 **order granting the motion shall constitute a surrender of the defendant as of the**
29 **date that the motion was filed, reserving to the state the right to deduct its**

1 reasonable costs of extradition from the deposit.

2 B. During the period provided for surrendering the defendant, the surety
3 may request that the officer originally charged with the detention of a felony
4 defendant place the name of the felony defendant into the National Crime
5 Information Center registry. The surety shall pay to that officer a fee of
6 twenty-five dollars for processing the placement.

7 Art. 335. ~~Other conditions related to the appearance of defendant~~ Defenses to be
8 raised after forfeiture

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

14 A. The defendant and his sureties shall be entitled to assert defenses to
15 a judgment of bond forfeiture after the judgment is signed, by use of summary
16 proceedings in the criminal matter before the trial court that issued the
17 judgment of bond forfeiture within sixty days after the date of mailing the
18 notice of the signing of the judgment of bond forfeiture. The institution or
19 pendency of such proceedings shall not affect the enforceability of the judgment
20 nor the requirement of a timely deposit under Article 333.

21 B. The inability of the defendant to appear on the date for which his
22 bond was forfeited shall be a defense against the judgment as provided in
23 Paragraph A of this Article if the inability was due to any of the following
24 circumstances:

25 (1) The defendant had a physical disability, illness, or injury.

26 (2) The defendant was serving in the armed forces of the United States.

27 (3) The defendant was a member of the Louisiana National Guard called
28 to duty pursuant to R.S. 29:7. This provision does not apply to appearances in
29 a state military court.

* * *

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

Appeals

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

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

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

1 order of court on his personal surety, shall meet the requirements of Article 315 for
2 a personal surety and may, as a condition of bail, be required to participate in a
3 pretrial drug testing program.

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

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

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

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

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

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

23 C. If the person fails to comply with the pretrial drug testing program rules,
24 the court may hold him in contempt and impose sanctions the court deems
25 appropriate, including the posting of additional bail.

26 D. No person shall be released under the provisions of the pretrial drug
27 testing program unless he agrees to do the following:

28 (1) Submit to continued random testing to verify that he is drug free.

29 (2) Refrain from the use or possession of any controlled dangerous substance

1 ~~or any substance designated by the court.~~

2 ~~E. The implementation of any pretrial drug testing program authorized~~
3 ~~pursuant to the provisions of this Article shall be contingent upon receipt by the court~~
4 ~~requiring the test of sufficient federal or other funding to conduct the testing program~~
5 ~~in accordance with the provisions of this Article and any rules of court.~~

6 ~~F. No elected official who is in any way connected with the administration~~
7 ~~of the pretrial drug testing program provided for in this Article, either directly or~~
8 ~~indirectly, shall have any financial interest, either directly or indirectly, in any drug~~
9 ~~testing company participating in such pretrial drug testing program.~~

10 ~~G. All contracts awarded to any drug testing company authorized to conduct~~
11 ~~the pretrial drug testing program provided for in this Article shall be awarded in~~
12 ~~accordance with the provisions governing public bids, R.S. 38:2181 et seq.~~

13 **A. The defendant and his sureties shall have the right to a suspensive**
14 **appeal from the judgment of bond forfeiture, which shall be perfected within**
15 **thirty days after the date of mailing the notice of the signing of the judgment.**
16 **The security for the appeal shall be equal to the amount of the judgment.**

17 **B. The defendant and his sureties shall have the right to a devolutive**
18 **appeal from the judgment of bond forfeiture, which shall be perfected within**
19 **sixty days after the date of mailing the notice of the signing of the judgment.**

20 **C. All appeals shall be proper in the court having appellate jurisdiction**
21 **over the court issuing the judgment of bond forfeiture.**

22 Section 2. R.S. 15:85 is hereby amended and reenacted to read as follows:

23 §85. Failure to satisfy judgment of bond forfeiture

24 ~~A. If a judgment of bond forfeiture rendered after June 22, 1993, against a~~
25 ~~commercial surety company has not been satisfied within two hundred ten days after~~
26 ~~the date of mailing the notice of the signing of the judgment of bond forfeiture for~~
27 ~~bonds that have a face value under fifty thousand dollars, or within four hundred~~
28 ~~days from mailing the notice of the signing of the judgment of bond forfeiture for~~
29 ~~bonds which have a face value of fifty thousand dollars or more, nor has a suspensive~~

1 appeal or other proceeding challenging the bond forfeiture been timely filed, **If a**
 2 **judgment forfeiting a commercial surety bond becomes subject to execution**
 3 **under Code of Criminal Procedure Article 333(C), then** the prosecuting attorney
 4 may **additionally** file with the district court, in the parish where the bond is
 5 forfeited, a rule to show cause why that commercial surety company should not be
 6 prohibited from executing criminal bail bonds before the court issuing the judgment
 7 of bond forfeiture.

8 B. At the rule to show cause, the court may consider only issues ~~which~~ **that**
 9 would interrupt the enforceability of the judgment. The court ~~may~~ **shall** issue an
 10 order enjoining the commercial surety company from posting criminal bail bonds
 11 before the court issuing the judgment of bond forfeiture if ~~the judgment is not~~
 12 ~~satisfied within ten days and if~~ the court finds all of the following:

13 (1) A judgment of bond forfeiture has been rendered, ~~after June 22, 1993,~~
 14 against the commercial surety.

15 (2) Proper notice pursuant to Code of Criminal Procedure Article ~~349.3~~ **332**
 16 has been mailed.

17 (3) No suspensive appeal has been ~~taken~~ **perfected**.

18 (4) The defendant has neither been surrendered nor appeared within ~~one~~
 19 ~~hundred eighty~~ **sixty** days of the date of mailing the notice of the signing of the
 20 judgment, ~~of bond forfeiture for bonds that have a face value of fifty thousand~~
 21 ~~dollars or more, and the defendant has not been surrendered together with ten percent~~
 22 ~~of the total amount of the bond more than one hundred eighty days but within two~~
 23 ~~hundred seventy days after the date of mailing the notice of the signing of the~~
 24 ~~judgment of bond forfeiture.~~

25 (5) ~~Two hundred ten~~ **Sixty** days have passed since the date of mailing the
 26 notice of the signing of the judgment ~~of bond forfeiture for bonds that have a face~~
 27 ~~value under fifty thousand dollars, or four hundred days have passed since the date~~
 28 ~~of mailing the notice of the signing of the judgment of bond forfeiture for bonds that~~
 29 ~~have a face value of fifty thousand dollars or more.~~ **and the surety has failed to**

1 **make a timely deposit as required under Code of Criminal Procedure Article**
2 **333.**

3 (6) The judgment of bond forfeiture has not been satisfied by payment, ~~of the~~
4 ~~full amount for bonds that have a face value under fifty thousand dollars, or has not~~
5 ~~been satisfied by the surrender or the appearance of the defendant together with~~
6 ~~payment in cash of ten percent of the total bond amount for bonds that have a face~~
7 ~~value of fifty thousand dollars or more, if applicable.~~

8 C. The burden of proof at the hearing shall be upon the commercial surety by
9 a preponderance of evidence and shall be limited to documents contained in the
10 official court record where the judgment was rendered. The surety company may use
11 evidence not contained in the record to show that ~~it did not receive post-forfeiture~~
12 ~~notice or~~ the post-forfeiture notice was not properly mailed.

13 Section 3. Code of Criminal Procedure Articles 327.1, 330.1, 330.2, 334.1, 334.2,
14 334.3, 334.4, 334.5, 335.1, 335.2, 336.1, 336.2, 337, 338, 340, 341, 342, 343, 344, 345, 346,
15 347, 348, 349, 349.1, 349.2, 349.3, 349.4, 349.5, 349.6, 349.7, 349.8 and 349.9 are hereby
16 repealed in their entirety.

17 Section 4. This Act shall become effective upon signature by the governor or, if not
18 signed by the governor, upon expiration of the time for bills to become law without signature
19 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
20 vetoed by the governor and subsequently approved by the legislature, this Act shall become
21 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Alden A. Clement, Jr.

DIGEST

Present law defines "bail" as the security given by a person to assure his appearance before
the proper court whenever required.

Proposed law deletes present law and defines "bail" as an order of the court establishing the
amount, type, and conditions of bond for the release of the defendant from jail.

Present law defines "surety" as a legal suretyship pursuant to the provisions of present law.

Proposed law deletes present law.

Present law provides that a personal surety must be a natural person domiciled in this state who owns property in this state that is subject to seizure and is of sufficient value to satisfy, considering all his property, the amount specified in the bail bond.

Proposed law retains present law and further provides that no attorney, judge, or ministerial officer of a court may act as a personal surety for a bail bond, and no person may charge a fee or receive anything of value to act as a personal surety.

Proposed law provides that any defect in the sufficiency or qualifications of the surety are not a defense to an action to forfeit or revoke a bail bond, nor to an action to enforce a judgment.

Present law provides that the defendant and personal surety signing a bail bond must write the address at which each can be served under their respective signatures and the last four digits of their social security numbers. Present law further provides that a bail bond cannot be set aside because of the invalidity of this information or for the failure to include this information. Present law further provides that by signing the bail bond, the defendant and his surety waive any right to notice.

Proposed law retains present law and adds that by signing the bail bond, the defendant and his surety also waive any objection to the jurisdiction of the court in an action to forfeit the bond.

Present law provides that in lieu of a surety the defendant may furnish his personal undertaking, secured by a deposit with an officer authorized to accept the bail, which deposit can consist of cash, certified or cashier's check, bonds of the U.S. government, the state, or any political subdivision thereof negotiable by delivery, U.S. postal money orders or money orders issued by any state or national bank.

Proposed law deletes present law and provides that the security required for a secured personal bond must be a promissory note in the amount of the bond, due on demand to the state or prosecuting municipality, and paraphed for identification with an act of mortgage recorded in favor of the state or prosecuting municipality and duly recorded in the parish where the mortgaged immovable is located.

Proposed law provides that every bail order must permit the defendant to post a cash bond, commercial surety bond, or secured personal surety bond. Proposed law further provides that a bail order may, except as provided in proposed law, permit the defendant to post an unsecured personal surety bond or a recognizance bond, or may specify a combination of the types of bonds permitted for a single charge.

Proposed law provides that, except as otherwise provided by proposed law, a person in custody may be released by bail order on a recognizance bond without the necessity of furnishing a surety.

Present law provides that the courts in the parishes of St. John the Baptist and St. Charles, by written rule, may alter the percentage amount of bail to be deposited with the officer authorized to accept the bond and authorize the officer to charge an administrative fee, not to exceed \$15, for processing the bond.

Proposed law retains present law.

Present law provides that upon final disposition of all cases in which a deposit of money, checks, bonds, or money orders has been made pursuant to present law, and said deposits have remained unclaimed for a period of one year from the date of the final disposition, the officer authorized to accept said bail is to apply and use one-half of such funds for the operation and maintenance of the office of the clerk of court, or the office of the clerk of the criminal district court, or the office of the clerk of the criminal district court in Orleans

Parish, and one-half to the local governing authority, after advertising his intention to so utilize the funds by publication once within 30 days of final disposition of the case in the official parish journal and notice to each defendant.

Proposed law retains present law as to cash bonds on deposit after final disposition of a case.

Present law provides that after the publication and mailing of notice by certified mail, the clerk of court, or the clerk of the criminal district court in Orleans Parish, is to petition the court of proper jurisdiction for permission to utilize the funds for the use, operation, and maintenance of the office of the clerk of court or the clerk of criminal district court in Orleans Parish.

Proposed law retains present law.

Present law provides that when bail has been given in conformity with present law, the money, check, bond, or money order is not subject to garnishment, attachment, or seizure under any legal process.

Proposed law deletes present law.

Present law provides that when money, checks, or money orders have been given for bail in conformity with present law, those funds may be deposited by the officer authorized to accept bail into an interest-bearing account established exclusively for the deposit of such funds, and interest earned on the deposits in the account can be used solely for the operation and maintenance of the office of the clerk of court.

Proposed law deletes present law.

Present law provides that a person in custody may be released by order of the court on his personal bail undertaking without the necessity of furnishing a surety.

Proposed law deletes present law.

Present law provides that the condition of the bail undertaking in district, juvenile, parish, and city courts is that the defendant will appear at all stages of the proceedings to answer the charge before the court in which he may be prosecuted, will submit himself to the orders and process of the court, and will not leave the state without written permission of the court.

Proposed law deletes present law and provides that the obligation of a bail bond is that the defendant will appear in court as notified pursuant to proposed law.

Present law provides that the surety assumes all risks that the defendant may not appear.

Proposed law retains present law.

Proposed law provides that the obligation of the bond runs from the execution of the bond contract, and terminates by written order of conviction, acquittal, modification of bail, or revocation of the bond. Proposed law further provides that the obligation terminates upon either dismissal of the charge by the prosecution, unless within three days the defendant is charged with the same crime or another crime of the same or lesser class arising out of the same incident or matter, or surrender of the defendant.

Present law provides that a bail undertaking must be in writing, state the court before which the defendant is bound to appear, be entered into before an officer who is authorized to take it, and state a single amount of bail for each charge.

Proposed law deletes present law as to a bail undertaking, and further provides that a bail bond must be in writing, be entered into before an officer who is authorized to take it, and

state a single amount of bail for each charge.

Proposed law defines "bail bond" as a contract under private signature between the defendant and his sureties as solidary obligors and the state of Louisiana as obligee.

Proposed law deletes additional provisions of present law relative to a bail undertaking.

Present law provides that if an order is issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person for the purpose of preventing domestic abuse, stalking, or dating violence, the judge is to cause to have prepared a Uniform Abuse Prevention Order as provided for in present law.

Proposed law retains present law.

Present law provides that the defendant or his surety may, at any time before a breach of the bail undertaking and with approval of the court, substitute another form of security authorized by present law.

Proposed law deletes present law.

Present law provides that a contract to indemnify a surety against loss on a bail bond is valid and enforceable.

Proposed law retains present law.

Present law provides that a person in custody charged with the commission of an offense is entitled to be admitted to bail except under certain circumstances set forth in present law.

Proposed law retains present law.

Present law provides that the court is to require as a condition of release on bail that any person who is charged with a second or subsequent violation of certain present law crimes relative to operating a vehicle while intoxicated or vehicular homicide to install an ignition interlock device on any vehicle which he operates.

Proposed law retains present law.

Present law provides that bail can be denied before conviction if the defendant is charged with a crime of violence as defined by present law or with certain violations of the Uniform Controlled Dangerous Substances Law, and after a contradictory hearing the judge or magistrate finds by clear and convincing evidence that the defendant may flee or poses an imminent danger to any other person or the community.

Proposed law retains present law.

Present law provides that, upon motion of the prosecutor, the judge or magistrate may order the temporary detention of the defendant, for a period of not more than five days, exclusive of weekends and legal holidays, pending the conducting of a contradictory bail hearing.

Proposed law retains present law.

Present law provides that following the contradictory hearing, upon proof by clear and convincing evidence either that there is a substantial risk that the defendant might flee or that the defendant poses an imminent danger to any other person or the community, the judge or magistrate may order the defendant held without bail pending trial.

Proposed law retains present law and further provides that, upon proof by clear and

convincing evidence that the defendant failed to appear at his criminal proceedings as notified, there is a presumption that the defendant is a substantial flight risk.

Present law provides that a person charged with the commission of a capital offense cannot be admitted to bail if the proof is evident and the presumption great that he is guilty of the capital offense.

Proposed law retains present law and further provides that for purposes of the bail hearing, the return of a true bill of indictment creates a presumption of guilt.

Present law provides relative to bail hearings for certain sex offenders.

Proposed law deletes present law.

Present law provides that a person is to be remanded to jail to await sentence unless he is allowed to remain free on a bail obligation posted prior to conviction and the bail previously fixed is in accordance with all applicable provisions of present law or he is released by virtue of a bail obligation posted after conviction fixed in accordance with present law.

Proposed law deletes present law.

Present law provides relative to bail after conviction and before sentence, and bail pending sentence, based on the maximum sentence of imprisonment that may be imposed or that has been imposed.

Proposed law deletes present law and provides that a defendant is entitled to bail after conviction if the maximum sentence that may be imposed is imprisonment for five years or less, or if a sentence of five years or less has actually been imposed, and may be allowed if the maximum sentence that may be imposed is imprisonment exceeding five years, or if the sentence actually imposed exceeds imprisonment for five years.

Present law provides that the following magistrates, throughout their several territorial jurisdictions, have the authority to fix bail:

- (1) District courts having criminal jurisdiction, in all cases.
- (2) City or parish courts and municipal and traffic courts of New Orleans having criminal jurisdiction, in cases not capital.
- (3) Mayor's courts and traffic courts in criminal cases within their trial jurisdiction.
- (4) Juvenile and family courts in criminal cases within their trial jurisdiction.
- (5) Justices of the peace in cases not capital or necessarily punishable at hard labor.

Proposed law retains present law.

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

- (1) The seriousness of the offense charged, including but not limited to whether the offense is a crime of violence or involves a controlled dangerous substance.
- (2) The weight of the evidence against the defendant.
- (3) The previous criminal record of the defendant.

- (4) The ability of the defendant to give bail.
- (5) The nature and seriousness of the danger to any other person or the community that would be posed by the defendant's release.
- (6) The defendant's voluntary participation in a pretrial drug testing program.
- (7) The absence or presence of any controlled dangerous substance in the defendant's blood at the time of arrest.
- (8) Whether the defendant is currently out on bond on a previous felony arrest for which he is awaiting institution of prosecution, arraignment, trial, or sentencing.
- (9) Any other circumstances affecting the probability of defendant's appearance.
- (10) The type or form of bail.

Proposed law retains present law.

Present law provides that the court cannot release any defendant who has been arrested for a felony offense, an element of which is the discharge, use, or possession of a firearm on his personal undertaking without security or with an unsecured personal surety. Present law further provides that any defendant who has been arrested for domestic abuse battery or for a crime of violence as defined in present law cannot be released by the court on his own recognizance or on the signature of any other person.

Proposed law retains present law.

Present law provides that no person released on bail or released on the signature of any other person where bail has been revoked, or is subject to forfeiture, may be readmitted to bail or released on the signature of any other person on those same charges if that person did not voluntarily surrender following the revocation or forfeiture. Present law further provides that any person who voluntarily surrenders following revocation or forfeiture of bail may be released only on bail with a commercial surety and in an amount higher than the original bail.

Proposed law deletes present law.

Present law enumerates various crimes for which a defendant's release on his own recognizance is prohibited.

Proposed law deletes present law and provides that the court cannot release any defendant on an unsecured personal surety bond or recognizance bond if the defendant is arrested for or charged with a crime of violence as defined in present law or certain violations of the Uniform Controlled Dangerous Substances Law.

Present law provides relative to the reinstatement of bail following dismissal of a case by the prosecution.

Proposed law deletes present law.

Present law provides that Orleans Parish district judges with criminal jurisdiction sitting en banc may adopt rules effectuating telephonic communication and verification of bonds and releases.

Proposed law retains present law.

Present law provides that the court may impose any additional condition of release that is

reasonably related to assuring the appearance of the defendant before the court.

Proposed law retains present law.

Present law provides relative to bail for offenses against a family or household member or dating partner including provisions for forfeiture, arrest, and modification, and relative to conditions for release relative to a charge of stalking, aggravated rape, or operating a vehicle while intoxicated.

Proposed law deletes present law specific to bail and conditions of release for certain present law offenses, and instead provides that the court is to consider whether the defendant poses a threat or danger to a victim of the criminal offense, and if the court determines that the defendant poses such a threat or danger, it is to require as a condition of bail that the defendant refrain further contact with the victim. Proposed law further provides that if the victim is a family member, household member, or dating partner of the defendant, the court is to issue and transmit a Uniform Abuse Prevention Order in accordance with present law. Proposed law further requires that the court may order the defendant to be equipped with a global positioning monitoring system as a condition of bail and assess the cost of the defendant's participation and monitoring to the defendant.

Proposed law provides that the court is to require any person indicted for the crime of aggravated rape to wear an electronic monitoring device and to be placed under active electronic monitoring under conditions set by the court.

Present law provides that every person arrested for a violation of the Uniform Controlled Dangerous Substances Law or a crime of violence as provided in present law is required to submit to a pretrial drug test. Present law further provides that a person arrested for these present law crimes who tests positive for the presence of one or more designated substances or any person arrested for a violation of the Uniform Controlled Dangerous Substances Law is required as a condition of bail to participate in a pretrial drug testing program.

Proposed law retains present law.

Present law provides that the court may, and in all municipalities with a population of 300,000 or more persons must, implement a pretrial drug testing program that provides for:

- (1) Mandatory participation for all persons arrested for violations of state law.
- (2) Drug testing to determine the presence of phencyclidine (PCP), opiates (heroin), cocaine, methadone, amphetamines, or marijuana, prior to first court appearance and random testing thereafter.
- (3) Restrictions on the use of any and all test results to ensure that they are used only for the benefit of the court.
- (4) Reasonable testing procedures to ensure the fair administration of the test and protection for the chain of custody.

Proposed law retains present law.

Present law provides that no person can be released under the provisions of the pretrial drug testing program unless he agrees to submit to continued random testing and to refrain from the use or possession of any controlled dangerous substance or any substance designated by the court.

Proposed law retains present law.

Present law provides that implementation of any pretrial drug testing program is contingent

upon receipt by the court of sufficient funding to conduct the testing program.

Proposed law retains present law.

Present law provides that no elected official who is in any way connected with the administration of the pretrial drug testing program can have any financial interest in any drug testing company participating in such pretrial drug testing program.

Proposed law retains present law.

Present law provides that all contracts awarded to any drug testing company authorized to conduct the pretrial drug testing program must be awarded in accordance with present law governing public bids.

Proposed law retains present law.

Present law provides that for purpose of fixing bail, a magistrate may make a written request of any juvenile court for an abstract containing only the delinquent acts of a defendant currently before the requesting magistrate, which records cannot be copied, duplicated, or otherwise reproduced.

Proposed law retains present law.

Present law provides that an order fixing bail must be in writing, set the type and a single amount of bail for each charge, designate the officer or officers authorized to accept the bail, and be signed by the magistrate.

Proposed law retains present law.

Present law provides that unless the bail is fixed by a schedule in accordance with present law, the amount of bail in felony cases is to be specifically fixed in each case. Present law further provides that schedules of bail according to the offense charged in misdemeanor cases may be fixed by the district, parish, and city courts.

Proposed law deletes present law so as to eliminate the distinction between felonies and misdemeanors, and provides that unless the bail is fixed by a schedule in accordance with proposed law, the amount of bail in criminal cases is to be specifically fixed in each case. Proposed law provides that a schedule of bail according to the offense charged in non-capital cases may be fixed by a district court, and that the bail schedule may be revised or rescinded at any time. Proposed law further provides that a copy of the schedule is to be sent to all jails, sheriff's offices, and police stations within the jurisdiction of the court.

Present law provides that the type or form of bail cannot be set in the bail schedule.

Proposed law deletes present law.

Proposed law provides that a person charged with a crime for which bail is fixed by a schedule may give bail according to the schedule, and if such a person has not furnished bail, then the person must be brought before the court for a contradictory hearing within 72 hours after arrest.

Present law provides that bail may be set above the scheduled amount if the court deems it appropriate or if the district attorney moves for good cause to have the bail set above the scheduled amount and the court finds it appropriate.

Proposed law retains present law.

Present law provides that the court having trial jurisdiction over the offense charged, on its

own motion or on motion of the state or defendant, for good cause at a contradictory hearing, may either increase or reduce the amount of bail, modify the conditions of a bail order, or require new or additional security.

Proposed law retains present law.

Present law provides that a person held may invoke the supervisory jurisdiction of the court of appeal on a claim that the trial court has improperly refused bail or a reduction of bail in aailable case.

Proposed law retains present law.

Proposed law deletes present law relative to notice and provides that notice to a defendant of a court appearance date may be provided on the bond or in open court, or may be made as follows to the address provided pursuant to proposed law:

- (1) Delivered by an officer designated by the court at least two days prior to the appearance date.
- (2) Mailed by United States first class mail at least three days prior to the appearance date.

Proposed law provides that a surety for a defendant is not entitled to notice of the defendant's court appearance dates, and is to remain diligently informed of the public records relating to the defendant's case.

Present law provides that a surety may surrender the defendant or the defendant may surrender himself, in open court or to the officer charged with his detention, at any time prior to forfeiture or within the time allowed by law for setting aside a judgment of forfeiture of the bail bond.

Proposed law deletes present law and provides that a surety may surrender the defendant within the surrender period, which must be at any time before 60 days after the mailing of notice of the signing of judgment of forfeiture or, after a timely deposit with the prosecuting attorney as required by proposed law, at any time before 180 days after the mailing of notice of the signing of judgment.

Present law provides that for the purpose of surrendering the defendant, the surety may arrest him.

Proposed law retains present law.

Proposed law provides that the surrender of the defendant may be made in any of the following ways:

- (1) By delivering the defendant to the custody of the officer originally charged with his detention during the surrender period.
- (2) By obtaining a certificate of surrender from the officer originally charged with the defendant's detention while the defendant is currently in the custody of the officer and during the surrender period.
- (3) By constructively surrendering a defendant incarcerated in another parish or county within the continental United States by filing a motion in summary proceeding within the surrender period.

Present law provides that during the period provided for surrendering the defendant, the surety may request that the officer originally charged with the detention of a felony

defendant place the name of the felony defendant into the National Crime Information Center registry for a \$25 processing fee.

Proposed law retains present law.

Present law provides that if after payment of the \$25 the name of the defendant is removed from the National Crime Information Center registry without cause during the period provided for surrendering the defendant, the surety is relieved of all obligations under the bond.

Proposed law deletes present law.

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

- (1) There has been a breach of the bail undertaking.
- (2) It appears that a surety has become insufficient, is dead, cannot be found, or has ceased to meet the qualifications of law or does not own adequate immovable property within the state.
- (3) The court is satisfied that the bail should be increased or new or additional security required.

Proposed law retains present law.

Present law provides that a defendant who has surrendered himself under the provisions of present law or has been rearrested under the provisions of present law is entitled to bail.

Proposed law deletes present law.

Present law provides that the court is to immediately issue a warrant for the arrest of the person failing to appear and order a judgment decreeing the forfeiture of the bond against the defendant and his sureties in solido for the full amount of the bond.

Proposed law retains present law.

Present law provides that if at the time fixed for appearance the defendant fails to appear as required by the court, the judge may, or must on motion of the prosecuting attorney, issue a warrant for the arrest of the defendant.

Proposed law retains present law.

Present law provides that upon motion of the prosecuting attorney, notice to the defendant, and the defendant's failure to appear, a bond will be forfeited and a judgment signed.

Proposed law retains present law and adds that the judgment of bond forfeiture is to be issued against the defendant and his sureties, in solido, in the amount of the bond.

Present law provides that after entering the fact of the signing of the judgment of bond forfeiture in the court minutes, the clerk of court is to promptly mail notice of the signing of the judgment.

Proposed law changes the time to mail notice of the judgment of bond forfeiture from "promptly" to "within 60 days" and adds that the notice is to be mailed to the judgment debtors. Proposed law otherwise retains present law.

Present law provides that after mailing the notice of the signing of the judgment, the clerk of court is to execute an affidavit of the mailing and place the affidavit and the return receipts in the record.

Proposed law retains present law.

Present law provides that failure to mail notice of the signing of the judgment within 60 days after the defendant fails to appear releases the sureties of all obligations under the bond.

Proposed law deletes present law and provides that failure to mail notice of the signing of the judgment within 60 days of the signing of the judgment is a defense that may be raised against the judgment in the summary proceeding provided for in proposed law but does not extinguish the obligation of the bond.

Present law provides that after mailing notice of the signing of the judgment of bond forfeiture, the district attorney must cause the judgment to be recorded in every parish in which the recordation may be proper without cost.

Proposed law deletes present law and provides that after the mailing of notice of the signing of the judgment, the district attorney may cause the judgment to be recorded in any parish without cost.

Present law provides that the defendant and his sureties are entitled to assert defenses and actions in nullity by use of summary proceedings in the criminal matter within 60 days after the date of mailing the notice of the signing of the judgment of bond forfeiture.

Proposed law retains present law.

Present law provides that any summary proceeding brought by the defendant or his sureties within the 60-day period is to be determined by the court within 180 days of the date of mailing the notice of the signing of the judgment of bond forfeiture.

Proposed law retains present law and adds that the institution or pendency of such summary proceedings does not affect the enforceability of the judgment nor the requirement of a timely deposit with the prosecuting attorney under proposed law.

Present law provides that the defendant and his sureties have the right to suspensive and devolutive appeals from the judgment of bond forfeiture.

Proposed law retains present law.

Present law provides relative to the enforcement of a judgment of bond forfeiture and satisfaction of judgment.

Proposed law deletes present law and provides the following procedure for the enforcement of a judgment of bond forfeiture:

- (1) The sureties are to deposit with the prosecuting attorney the full principal amount of the judgment of bond forfeiture within 60 days after the mailing of notice of the signing of judgment.
- (2) The judgment of bond forfeiture will be deemed satisfied if either the defendant appears in court or is surrendered under proposed law within 60 days after the mailing of notice of the signing of judgment, or the defendant appears in court or is surrendered under proposed law within 180 days of the mailing of notice of the signing of judgment, if the deposit with the prosecuting attorney has been timely made as required under proposed law.

- (3) If the sureties fail to make a timely deposit as required under proposed law, then the judgment of bond forfeiture will be executed by the prosecuting attorney in the same manner as any other money judgment, and the prosecuting attorney will be entitled to reasonable attorney's fees in the amount of 25% of the judgment.
- (4) If after a deposit is made the defendant does not appear in court and is not surrendered within 180 days after the mailing of notice of the signing of judgment, then the deposit will immediately be applied in satisfaction of the judgment.

Present law provides that a judgment decreeing the forfeiture of an appearance bond cannot be rendered if it is shown to the satisfaction of the court that the defendant is prevented from attending because of any of the following:

- (1) He has a physical disability, illness, or injury.
- (2) He is being detained in the jail or penitentiary of another jurisdiction.
- (3) He is serving in the armed forces of the United States.
- (4) He is a member of the Louisiana National Guard called to duty pursuant to present law.

Proposed law provides that the defendant being unable to attend is a defense against the judgment of bond forfeiture rather than a bar to rendering of judgment, and deletes from present law the cause of being detained in a jail or penitentiary of another jurisdiction.

Proposed law otherwise retains present law.

Present law provides procedures relative to failure to satisfy a judgment of bond forfeiture.

Proposed law deletes certain date-specific provisions of present law.

Proposed law provides that if a judgment forfeiting a commercial surety bond becomes subject to execution under proposed law, then the prosecuting attorney may additionally file a rule to show cause why the commercial surety company should not be prohibited from executing criminal bail bonds before the court issuing the judgment of bond forfeiture.

Proposed law provides that at the rule to show cause the court must issue an order enjoining the commercial surety company from posting criminal bail bonds if the court finds all of the following:

- (1) A judgment of bond forfeiture has been rendered against the commercial surety.
- (2) Proper notice has been mailed.
- (3) No suspensive appeal has been perfected.
- (4) The defendant has neither been surrendered nor appeared within 60 days (rather than 180 days in present law) of the date of mailing the notice of the signing of the judgment.
- (5) 60 days (rather than 200 days in present law) have passed since the date of mailing the notice of the signing of the judgment and the surety has failed to make a timely deposit as required under proposed law.
- (6) The judgment of bond forfeiture has not been satisfied by payment.

Present law provides that the surety company may use evidence not contained in the record

to show that it did not receive post-forfeiture notice or the post-forfeiture notice was not properly mailed.

Proposed law deletes present law reference to evidence not contained in the record to show that the surety company did not receive post-forfeiture notice, and otherwise retains present law.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends C.Cr.P. Arts. 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, and 336 and R.S. 15:85; repeals C.Cr.P. Arts. 327.1, 330.1, 330.2, 334.1, 334.2, 334.3, 334.4, 334.5, 335.1, 335.2, 336.1, 336.2, 337, 338, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 349.1, 349.2, 349.3, 349.4, 349.5, 349.6, 349.7, 349.8 and 349.9)