

2016 Regular Session

SENATE BILL NO. 123

BY SENATOR CLAITOR (On Recommendation of the Louisiana State Law Institute)

CRIMINAL PROCEDURE. Revises and reorganizes Code of Criminal Procedure articles and Revised Statutes relative to bail. (1/1/17)

1 AN ACT
2 To amend and reenact Title VIII of the Code of Criminal Procedure, to be comprised of
3 Articles 311 through 342, R.S. 15:85, and the introductory paragraph of R.S.
4 22:1441(A) and (A)(1) through (5), the introductory paragraph of (C)(2) and
5 (C)(2)(a) through (e), and (D), and to repeal Code of Criminal Procedure Articles
6 327.1, 330.1, 330.2, 330.3, 334.1, 334.2, 334.3, 334.4, 334.5, 334.6, 335.1, 335.2,
7 336.1, 336.2, 343, 344, 345, 346, 347, 348, 349, 349.1, 349.2, 349.3, 349.4, 349.5,
8 349.6, 349.7, 349.8, and 349.9, relative to bail; to provide for the revision and
9 reorganization of bail law; to provide for definitions; to provide for the right to bail;
10 to provide for bail hearings and detention without bail; to provide for the authority
11 to fix bail; to provide schedules of bail and factors in fixing bail; to provide for
12 modification of bail; to provide for conditions, types, and restrictions of bail; to
13 provide for bail with and without surety; to provide for cash deposits; to provide the
14 requirements of the bail undertaking; to provide for notice of required appearance;
15 to provide for discharge of the bail obligation; to provide relative to a defendant's
16 failure to appear and issuance and notice of arrest warrant; to provide for the filing
17 of a rule to show cause; to provide for nonforfeiture situations; to provide for notice

1 and recordation of judgment; to provide for appeals; to provide for enforcement of
2 judgment; to provide relative to failure to satisfy a judgment of bond forfeiture or
3 claim under a criminal bond contract; and to provide for related matters.

4 Be it enacted by the Legislature of Louisiana:

5 Section 1. Title VIII of the Code of Criminal Procedure, to be comprised of Articles
6 311 through 342, is hereby amended and reenacted to read as follows:

7 TITLE VIII. BAIL

8 Art. 311. ~~Bail defined~~ **Definitions**

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

10 **(1) Bail is the security given by a person to assure his a defendant's**
11 **appearance before the proper court whenever required. (Source: Art. 311)**

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

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

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

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

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

28 **(c) The surety has paid to the officer the reasonable costs of returning the**
29 **defendant to the jurisdiction where the warrant for arrest was issued.**

1 (5) A personal surety ~~must be~~ **is** a natural person domiciled in ~~this~~ **the** state
 2 **of Louisiana** who owns property in this state that is subject to seizure and is of
 3 sufficient value to satisfy, considering all his property, the amount specified in the
 4 bail ~~bond~~ **undertaking**. The value of the property ~~of the surety~~ shall exclude
 5 ~~property~~ **the amount** exempt from execution, and shall be over and above all ~~his~~
 6 other liabilities including the amount of any other bail ~~bond~~ **undertaking** on which
 7 he may be principal or surety. ~~When~~ **If** there is more than one personal surety, ~~then~~
 8 the requirements ~~of this Article~~ shall apply to the aggregate value of their property.
 9 ~~No~~ **A** personal surety shall **not** charge a fee or receive any compensation for posting
 10 a ~~personal surety bond~~ **bail undertaking**. (Source: Art. 315) **A bail undertaking of**
 11 **a personal surety may be unsecured or secured.** (Source: Art. 316)
 12 (Source: C.Cr.P. Arts. 311, 315, and 316)

13 Art. 312. ~~Types and elections of bail~~ **Right to bail before and after conviction**

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

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

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

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

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

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

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

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

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

28 **A.** Except as provided in **this Article and** Article 33† **313**, a person in
 29 custody **who is** charged with the commission of an offense is entitled ~~to be admitted~~

1 to bail before conviction, ~~unless the person is charged with a crime of violence as~~
2 ~~defined by law or with production, manufacture, distribution, or dispensing or~~
3 ~~possession with intent to produce, manufacture, distribute, or dispense a controlled~~
4 ~~dangerous substance as defined by the Louisiana Controlled Dangerous Substances~~
5 ~~Law, and after a contradictory hearing, conducted pursuant to the provisions of~~
6 ~~Article 330.1, the judge or magistrate finds by clear and convincing evidence that the~~
7 ~~defendant may flee or poses an imminent danger to any other person or the~~
8 ~~community.~~ (Source: Art. 330)

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

22 (1) ~~Notwithstanding the provisions of Subparagraphs (2) and (3) of this~~
23 ~~Paragraph, after After a contradictory hearing, any a person who voluntarily~~
24 ~~surrenders following revocation or forfeiture of bail may be released on the forfeited~~
25 ~~or revoked previously posted bail undertaking provided the revocation or forfeiture~~
26 ~~of the bail if the motion to revoke bail is rescinded by the court or the arrest~~
27 ~~warrant is recalled and the surety is present or represented at the hearing and~~
28 ~~consents gives written consent. Previous instances of revocation ~~or~~ and forfeiture~~
29 ~~of bail in unrelated cases is are admissible at that contradictory the hearing. The~~

1 relief shall be available only at the first instance of revocation or forfeiture of that
2 bail and within six months of the forfeiture of the bail. This relief is available only
3 once. (Source: Art. 334.3(A)(4))

4 (2) Any person who voluntarily surrenders following revocation forfeiture
5 of bail A person may be released on a new bail undertaking without a
6 contradictory hearing only on bail with a commercial surety and in an amount
7 higher than the original bail. (Source: Art. 334.3(A)(2))

8 C. A defendant who has been surrendered himself under the provisions of
9 Article ~~345~~ 331, or has been rearrested under the provisions of Article ~~346~~ 332, is
10 entitled to bail in accordance with this Code. (Source: Art. 347)

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

13 (1) He is allowed to remain free on a bail ~~obligation~~ undertaking posted
14 prior to conviction by operation of Article ~~326(B)~~ 331(G)(1), and the bail previously
15 fixed is in accordance with all of the applicable provisions of this Article.

16 (2) He is released by virtue of a bail ~~obligation~~ undertaking posted after
17 conviction, ~~which~~ and the bail was fixed in accordance with this Article. (Source:
18 Art. 332(A))

19 E. After conviction and before sentence, bail shall be allowed if the
20 maximum sentence which may be imposed is imprisonment for five years or less.
21 Bail may be allowed pending sentence if the maximum sentence which may be
22 imposed is imprisonment exceeding five years, except when the court has reason to
23 believe, based on competent evidence, that the release of the person convicted will
24 pose a danger to any other person or the community, or that there is a substantial risk
25 that the person convicted might flee. (Source: Art. 332(B))

26 F. After sentence and until final judgment, bail shall be allowed if a sentence
27 of five years or less is actually imposed. Bail may be allowed after sentence and until
28 final judgment if the sentence actually imposed exceeds imprisonment for five years,
29 except when the court has reason to believe, based on competent evidence, that the

1 release of the person convicted will pose a danger to any other person or the
2 community, or that there is a substantial risk that the person convicted might flee.

3 (Source: Art. 332(C))

4 **G.** After conviction of a capital offense, a defendant shall not be allowed bail.

5 (Source: Art. 332(E))

6 **H.** A person held **without bail or unable to post bail** may invoke the
7 supervisory jurisdiction of the court of appeal on a claim that the trial court has
8 improperly refused bail or a reduction of bail in aailable case. (Source: Art. 343)

9 (Source: C.Cr.P. Arts. 330, 332, 334.3, 343, and 347)

10 Art. 313. ~~Surety~~ **Gwen's Law; bail hearings; detention without bail**

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

13 **A.** This ~~Article~~ **Paragraph** may be cited as and referred to as "Gwen's Law".

14 **(1)** A contradictory bail hearing, as provided for in this ~~Article~~ **Paragraph**,
15 may be held prior to setting bail for a person in custody who is charged with
16 domestic abuse battery, violation of protective orders, stalking, or any felony offense
17 involving the use or threatened use of force or a deadly weapon upon the defendant's
18 family member, as defined in R.S. 46:2132 or upon the defendant's household
19 member as defined in R.S. 14:35.3, or upon the defendant's dating partner, as defined
20 in R.S. 46:2151. If the court orders a contradictory hearing, the hearing shall be held
21 within five days from the date of determination of probable cause, exclusive of
22 weekends and legal holidays. At the contradictory hearing, the court shall determine
23 the conditions of bail or whether the defendant should be held without bail pending
24 trial. If the court decides not to hold a contradictory hearing, it shall notify the
25 prosecuting attorney prior to setting bail. (Source: Art. 330.3(B))

26 **(2)** In addition to the factors listed in Article ~~334~~ **316**, in determining whether
27 the defendant should be admitted to bail pending trial, or in determining the
28 conditions of bail, the judge or magistrate shall consider the following:

29 **(a)** The criminal history of the defendant.

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

3 **(c)** Documented history or records of any of the following: substance abuse
4 by the defendant; threats of suicide by the defendant; the defendant's use of force or
5 threats of use of force against any victim; strangulation, forced sex, or controlling the
6 activities of any victim by the defendant; or threats to kill. Documented history or
7 records may include but are not limited to sworn affidavits, police reports, and
8 medical records. (Source: Art. 330.3(C))

9 **(3)** Following the contradictory hearing and based upon the judge's or
10 magistrate's review of the factors set forth in Paragraph ~~€~~ **(A)(2)** of this Article, the
11 judge or magistrate may order that the defendant not be admitted to bail, upon proof
12 by clear and convincing evidence either that the defendant might flee, or that the
13 defendant poses an imminent danger to any other person or the community. (Source:
14 Art. 330.3(D))

15 **(4)** If bail is granted, with or without a contradictory hearing, the judge or
16 magistrate shall comply with the provisions of Article ~~335.1 or 335.2~~ **320**, as
17 applicable. The judge or magistrate shall consider, as a condition of bail, a
18 requirement that the defendant wear an electronic monitoring device and be placed
19 under active electronic monitoring and house arrest. The conditions of the electronic
20 monitoring and house arrest shall be determined by the court and may include but are
21 not limited to limitation of the defendant's activities outside the home and a curfew.
22 The defendant may be required to pay a reasonable supervision fee to the supervising
23 agency to defray the cost of the required electronic monitoring and house arrest. A
24 violation of the conditions of bail may be punishable by revocation of the ~~bond~~ **bail**
25 **undertaking** and the issuance of a bench warrant for the defendant's arrest or
26 remanding of the defendant to custody or a modification of the terms of bail.
27 (Source: Art. 330.3(E))

28 **B.** Upon motion of the prosecutor **prosecuting attorney**, the judge or
29 magistrate may order the temporary detention of ~~the defendant~~ **a person in custody**

1 who is charged with the commission of an offense, for a period of not more than
2 five days, exclusive of weekends and legal holidays, pending the conducting of a
3 contradictory bail hearing. Following the contradictory hearing, upon proof by clear
4 and convincing evidence either that there is a substantial risk that the defendant
5 might flee or that the defendant poses an imminent danger to any other person or the
6 community, the judge or magistrate may order the defendant held without bail
7 pending trial. (Source: Art. 330.1)

8 C. A contradictory bail hearing, as provided for in this Article, shall be held
9 prior to setting bail for a person in custody who is charged with the commission of
10 a sex offense and who has been previously convicted of a sex offense. (Source: Art.
11 330.2(A))

12 (1) The court, after having been given notice of an applicable prior conviction
13 as described in Paragraph F Subparagraph (C)(4) of this Article, shall order a
14 contradictory hearing to be held within five days of receiving notice of the prior
15 conviction, exclusive of weekends and legal holidays. (Source: Art. 330.2(B))

16 (2) At the contradictory hearing the court, in addition to hearing whatever
17 evidence it finds relevant, shall, ~~with the consent~~ on motion of the prosecuting
18 attorney, perform an ~~ex parte~~ in camera examination of the evidence against the
19 accused. (Source: Art. 330.2(C))

20 (3) In addition to the factors listed in Article ~~334 of the Code of Criminal~~
21 Procedure 316, the court shall take into consideration the previous criminal record
22 of the defendant; any potential threat or danger the defendant poses to the victim, the
23 family of the victim, or to any member of the public, especially children; and the
24 court shall give ample consideration to any statistical evidence prepared by the
25 United States Department of Justice relative to the likelihood of the defendant, or any
26 person in general who has been convicted of sexually inappropriate conduct with a
27 prepubescent child under the age of thirteen, to commit similar offenses against
28 juvenile victims in the future. (Source: Art. 330.2(D))

29 (4) For purposes of this Article Paragraph, "sex offense" means any offense

1 as defined as a sex offense in R.S. 15:541 when the victim is under the age of
2 thirteen at the time of commission of the offense and less than ten years have elapsed
3 between the date of the commission of the current offense and the expiration of the
4 maximum sentence of the previous conviction. (Source: Art. 330.2(F))

5 **D.(1)** A person charged with the commission of a capital offense shall not be
6 admitted to bail if the proof is evident and the presumption great that he is guilty of
7 the capital offense. When a person charged with the commission of a capital offense
8 makes an application for admission to bail, the judge shall hold a hearing
9 contradictorily with the state. (Source: Art. 331(A) and (B))

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

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

13 **(b)** After indictment is on the defendant to show that the proof is not evident
14 or the presumption is not great that he is guilty of the capital offense. (Source: Art.
15 331(C))

16 (Source: C.Cr.P. Arts. 330.1, 330.2, 330.3, and 331)

17 Art. 314. ~~Commercial surety~~ **Authority to fix bail; bail order**

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

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

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

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

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

1 jurisdiction.

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

3 (5) Justices of the peace in cases not capital or necessarily punishable at hard
4 labor. (Source: Art. 333)

5 **B.** An order fixing bail shall be in writing, set the type and a single amount
6 of bail for each charge, designate the officer or officers authorized to accept the bail,
7 and shall be signed electronically or by any other means by the magistrate. An
8 order fixing bail may issue on request of the state or defendant, or on the initiative
9 of the ~~judge or~~ magistrate. (Source: Art. 338)

10 Art. 315. ~~Personal surety~~ **Schedules of bail**

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

20 **A.** Unless the bail is fixed by a schedule in accordance with ~~Paragraph B~~ **this**
21 **Article**, the amount of bail ~~in felony cases~~ shall be specifically fixed in each case.
22 **In noncapital felony cases, a bail schedule according to the offense charged may**
23 **be fixed by a district court. In misdemeanor cases, a bail schedule according to**
24 **the offense charged may be fixed by a district, parish or city court for offenses**
25 **committed within its trial jurisdiction.** (Source: Art. 340(A)) When more than one
26 court has trial jurisdiction ~~over an offense~~, the applicable bail schedule shall be that
27 of the court in which the case is to be tried. (Source: Art. 341(A))

28 **B.** The court order setting the bail schedule shall fix the amount of bail for
29 each offense listed, designate the officer or officers authorized to accept the bail, and

1 order that bail be taken in conformity with the schedule. It may also contain a general
 2 provision designating the amount of bail for any **noncapital felony and**
 3 misdemeanor not listed in the schedule. A copy of the schedule shall be sent to all
 4 jails, sheriff's offices, and police stations within the judicial district, parish, or city;
 5 ~~respectively~~. A bail schedule may be revised or rescinded at any time. (Source: Art.
 6 341(B)) The type or form of bail shall not be sent in ~~the a~~ bail schedule. (Source:
 7 Art. 341(A))

8 **C.** A person charged with the commission of a ~~felony~~ **an offense** for which
 9 bail is fixed by a schedule may give bail according to the schedule or demand a
 10 special order fixing bail. **The bail amount fixed by schedule may be modified by**
 11 **the court in accordance with Article 319.** (Source: Art. 340(C))
 12 (Source: C.Cr.P. Arts. 340 and 341)

13 Art. 316. ~~Types of personal surety~~ **Factors in fixing amount of bail**

14 ~~There are two types of personal surety in Louisiana: unsecured, and secured.~~
 15 The amount of bail shall be ~~such that, in the judgment of the court,~~
 16 ~~commissioner, or magistrate, it will insure~~ **fixed in an amount that will ensure** the
 17 presence of the defendant, as required, and the safety of any other person and the
 18 community, having regard to:

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

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

23 **(3)** The previous criminal record of the defendant.

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

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

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

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

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

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

6 **(10)** The type or form of bail.

7 (Source: C.Cr.P. Art. 334)

8 Art. 317. ~~Unsecured personal surety~~ **Organization performing or providing**
9 **pretrial services**

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

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

19 (Source: C.Cr.P. Art. 334.6)

20 Art. 318. ~~Secured personal surety~~ **Juvenile records in fixing bail**

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

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

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

5 ~~C. Failure to comply with the provisions of this Article shall subject the~~
6 ~~violating court to disciplinary action by the Supreme Court of Louisiana upon receipt~~
7 ~~by the judicial administrator of the supreme court of a written complaint,~~
8 ~~subsequently substantiated.~~

9 (Source: C.Cr.P. Art. 337)

10 Art. 319. ~~Conditions for providing a property bond~~ **Modifications of bail**

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

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

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

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

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

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

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

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

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

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

7 A. The court having trial jurisdiction over the offense charged, on its own
8 motion or on motion of the **state prosecuting attorney** or defendant, for good cause,
9 may either increase or reduce the amount of bail, or require new or additional
10 security. For purposes of this Article, good cause for increase of bail specifically
11 includes but is not limited to the rearrest of the defendant on offenses alleged to have
12 been committed while out on ~~bond~~ **a bail undertaking**. The modification of any bail
13 order wherein a bail ~~bond~~ **undertaking** has been posted by a criminal defendant and
14 his sureties shall upon said modification terminate the liability of the defendant and
15 his sureties under the previously existing bail ~~contract~~ **undertaking**. A new bail
16 **undertaking** must be posted in the amount of the new bail order. (Source: Art. 342)

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

21 (Source: Art 328)

22 (Source: C.Cr.P. Arts. 328 and 342)

23 Art. 320. Those who may not be sureties **Conditions of bail undertaking**

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

28 **A. Definitions. For the purpose of this Article:**

29 (1) ~~For the purposes of this Subsubparagraph, "firearm"~~ **"Firearm"** means

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

4 (Source: Art. 335.1(A)(1)(c))

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

12 (Source: Art. 335.1(C)(1))

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

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

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

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

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

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

29 (e) The procedure that the victim is to follow if the defendant violates an

1 order issued under this Article or if global positioning monitoring system equipment
2 fails.

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

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

9 (h) The nonconfidential nature of the victim's communications with the court
10 concerning global positioning system monitoring and the restrictions to be imposed
11 upon the defendant's movements. (Source: Art. 335.1(C)(2))

12 **B. Conditions of bail generally.** ~~Except as provided in Paragraph B, the~~ The
13 condition of the bail undertaking in district, juvenile, parish, and city courts shall be
14 that the defendant will appear at all stages of the proceedings to answer the charge
15 before the court in which he may be prosecuted, will submit himself to the orders and
16 process of the court, and will not leave the state without written permission of the
17 court. (Source: Art. 326(A)) The court may impose any additional ~~condition~~
18 conditions of release that ~~is~~ are reasonably related to assuring the appearance of the
19 defendant before the court and guarding the safety of any other individual or the
20 community. (Source: Art. 335)

21 **C. Operating a vehicle while intoxicated.** The court shall require as a
22 condition of release on bail that any person who is charged with a second or
23 subsequent violation of R.S. 14:32.1, 39.1, 39.2, 98, 98.1, or a parish or municipal
24 ordinance that prohibits the operation of a motor vehicle while under the influence
25 of alcohol or drugs to install an ignition interlock device on any vehicle which he
26 operates. The defendant shall have fifteen days from the date that he is released on
27 bail to comply with this requirement, and the ignition interlock device shall remain
28 on the vehicle or vehicles during the pendency of the criminal proceedings. ~~Failure~~
29 ~~to comply with this condition of release shall result in the revocation of bail and~~

1 ~~reincarceration of the defendant.~~ Under exceptional circumstances, the court may
2 waive the provisions of this Article but shall indicate the reasons therefor to the law
3 enforcement agency who has custody of the alleged offender documentation.
4 (Source: Art. 336.2)

5 **D. Drug offenses and crimes of violence.** Every person arrested for a
6 violation of the Uniform Controlled Dangerous Substances Law or a crime of
7 violence as provided in R.S. 14:2(B) shall be required to submit to a pretrial drug test
8 for the presence of designated substances in accordance with the provisions of this
9 Article and rules of court governing such testing. (Source: Art. 336(A)(1)) Every
10 person arrested for a **any other** felony, ~~not otherwise required to submit to a pretrial~~
11 ~~drug test as provided for in Subparagraph (1) of this Paragraph,~~ may be required to
12 submit to a pretrial drug test for the presence of designated substances in accordance
13 with the provisions of this Article and rules of court governing such testing. (Source:
14 Art. 336(A)(2)) Every person arrested for a misdemeanor may be required to submit
15 to a pretrial drug test for the presence of designated substances in accordance with
16 the provisions of this Article and rules of court governing such testing. (Source: Art.
17 336(A)(3))

18 **E. Pretrial drug testing program.** The court may, and in all municipalities
19 ~~with a population of three hundred thousand or more persons shall,~~ implement a
20 pretrial drug testing program. **All persons released under the provisions of the**
21 **pretrial drug testing program must submit to continued random testing and**
22 **refrain from the use or possession of any controlled dangerous substance or any**
23 **substance designated by the court. A pretrial drug testing program** which shall
24 provide for the following: (Source: Art. 336(B))

25 **(1)** Mandatory participation for all persons arrested for violations of state
26 law. **Additionally, all persons testing positive for the presence of one or more of**
27 **the designated substances set forth in Subparagraph (2) of this Paragraph, who**
28 **are not otherwise required to participate, shall submit to a pretrial drug testing**
29 **program.** (Source: Art. 336(B)(1))

1 (2) Drug testing to determine the presence of ~~phencyclidine (PCP), opiates~~
2 ~~(heroin), cocaine, methadone, amphetamines, or marijuana,~~ **any controlled**
3 **dangerous substance as defined in La. R.S. 40:960** prior to first court appearance
4 and random testing thereafter to verify that the person is drug free. (Source: Art.
5 336(B)(2))

6 (3) Restrictions on the use of any and all test results to ensure that they are
7 used only for the benefit of the court to determine appropriate conditions of release,
8 monitoring compliance with court orders, and assisting in determining appropriate
9 sentences. A form statement shall be signed by the law enforcement agency and the
10 person in custody stipulating that under no circumstances shall the information be
11 used as evidence or as the basis for additional charges. (Source: Art. 336(B)(3))

12 (4) Reasonable testing procedures to ensure the fair administration of the test
13 and protection for the chain of custody for any evidence obtained. (Source: Art.
14 336(B)(4))

15 **F. Implementation of pretrial drug testing program.** The implementation
16 of any pretrial drug testing program authorized pursuant to the provisions of this
17 Article shall be contingent upon receipt by the court requiring the test of sufficient
18 federal or other funding to conduct the testing program in accordance with the
19 provisions of this Article and any rules of court. No elected official who is in any
20 way connected with the administration of the pretrial drug testing program provided
21 for in this Article, either directly or indirectly, shall have any financial interest, either
22 directly or indirectly, in any drug testing company participating in such pretrial drug
23 testing program. All contracts awarded to any drug testing company authorized to
24 conduct the pretrial drug testing program provided for in this Article shall be
25 awarded in accordance with the provisions governing public bids, R.S. 38:2181 et
26 seq. (Source: Art. 336(E), (F) and (G))

27 **G. Domestic offenses, stalking, and sex offenses.** In determining conditions
28 of release of a defendant who is alleged to have committed an offense against the
29 defendant's family or household member, as defined in R.S. 46:2132(4), or against

1 the defendant's dating partner, as defined in R.S. 46:2151, or who is alleged to have
 2 committed the offense of domestic abuse battery under the provisions of R.S.
 3 14:35.3, or who is alleged to have committed the offense of stalking under the
 4 provisions of R.S. 14:40.2, or who is alleged to have committed a sexual assault as
 5 defined in R.S. 46:2184, or who is alleged to have committed the offense of first
 6 degree rape under the provisions of R.S. 14:42, the court shall consider the
 7 previous criminal history of the defendant and whether the defendant poses a
 8 threat or danger to the victim. If the court determines that the defendant poses such
 9 a threat or danger, it shall require as a condition of bail that the defendant refrain
 10 from going to the residence or household of the victim, the victim's school, and the
 11 victim's place of employment or otherwise contacting the victim in any manner
 12 whatsoever, and shall refrain from having any further contact with the victim.
 13 (Source: Art. 335.1(A)(1)(a)) ~~In making a determination relative to the granting of~~
 14 ~~release or the conditions of such release of a defendant who is alleged to have~~
 15 ~~committed the offense of aggravated or first degree rape as provided in R.S.~~
 16 ~~14:42(A)(4), the court shall take into consideration the previous criminal record of~~
 17 ~~the defendant; any potential threat or danger the defendant poses to the victim, the~~
 18 ~~family of the victim, or to any member of the public, especially children; and The~~
 19 court shall also consider any statistical evidence prepared by the United States
 20 Department of Justice relative to the likelihood of such defendant or any person in
 21 general who has raped or molested victims under the age of thirteen years to commit
 22 sexual offenses against a victim under the age of thirteen in the future. (Source: Art.
 23 336.1(A))

24 H. Uniform Abuse Prevention Order. (1) If, as part of a bail restriction, an
 25 order is issued ~~pursuant to the provisions of this Paragraph~~ for purposes of
 26 preventing violent or threatening acts or harassment against, or contact or
 27 communication with or physical proximity to, another person for the purpose
 28 of preventing domestic abuse, stalking, dating violence, or sexual assault, the
 29 judge shall cause to have prepared a Uniform Abuse Prevention Order, as provided

1 in R.S. 46:2136.2(C), shall sign such order, and shall immediately forward it to the
 2 clerk of court for filing, on the next business day after the order is issued. The clerk
 3 of the issuing court shall transmit the Uniform Abuse Prevention Order to the
 4 Judicial Administrator's Office, Louisiana Supreme Court, for entry into the
 5 Louisiana Protective Order Registry, as provided in R.S. 46:2136.2(A), by facsimile
 6 transmission or direct electronic input as expeditiously as possible, but no later than
 7 the end of the next business day after the order is filed with the clerk of court. The
 8 clerk of the issuing court shall also send a copy of the Uniform Abuse Prevention
 9 Order, as provided in R.S. 46:2136.2(C), or any modification thereof, to the chief
 10 law enforcement officer of the parish where the person or persons protected by the
 11 order reside. A copy of the Uniform Abuse Prevention Order shall be retained on file
 12 in the office of the chief law enforcement officer until otherwise directed by the
 13 court. (Source: Art. 335.1(A)(1)(b))

14 ~~(2) Except as provided in Subsubparagraph (d) of this Subparagraph, if, **If,**~~
 15 as part of a bail restriction, an order is issued pursuant to the provisions of this
 16 Paragraph, the court shall also order that the defendant be prohibited from possessing
 17 a firearm for the duration of the Uniform Abuse Prevention Order. (Source: Art.
 18 335.1(A)(1)(c))

19 **I. Global positioning monitoring. (1)** In addition, the court ~~may~~ **shall** order
 20 ~~the a~~ defendant **who is alleged to have committed the offense of first degree rape**
 21 **under the provisions of R.S. 14:42 and may order a defendant who is alleged to**
 22 **have committed an offense against the defendant's family or household**
 23 **member, as defined in R.S. 46:2132(4), or against the defendant's dating**
 24 **partner, as defined in R.S. 46:2151, or who is alleged to have committed the**
 25 **offense of domestic abuse battery under the provisions of R.S. 14:35.3, or who**
 26 **is alleged to have committed the offense of stalking under the provisions of R.S.**
 27 **14:40.2, or who is alleged to have committed a sexual assault as defined in R.S.**
 28 **46:2184** to be equipped with a global positioning monitoring system as a condition
 29 of release on bail ~~pursuant to Paragraph B of this Article.~~ (Source: Art.

1 335.1(A)(2)(a))

2 (a) In determining whether to order a defendant, as a condition of release on
3 bail, to participate in global positioning system monitoring, the court shall consider
4 the likelihood that the defendant's participation in global positioning system
5 monitoring will deter the defendant from seeking to harm, injure, or otherwise
6 threaten the victim prior to trial. (Source: Art. 335.1(A)(2)(b))

7 (b) The defendant shall be released on bail pursuant to the provisions of this
8 Article only if he agrees to pay the cost of the global positioning monitoring system
9 and monitoring fees associated with the device, or agrees to perform community
10 service in lieu of paying such costs. (Source: Art. 335.2(A)(2)(c))

11 (2) If the court orders the defendant to be equipped with a global positioning
12 monitoring system as a condition of release on bail, the court may order the
13 defendant, with the informed consent of the victim, to provide the victim of the
14 charged crime with an electronic receptor device which is capable of receiving the
15 global positioning system information and which notifies the victim if the defendant
16 is located within an established proximity to the victim. The court, in consultation
17 with the victim, shall determine which areas the defendant shall be prohibited from
18 accessing and shall establish the proximity to the victim within which a defendant
19 shall be excluded. In making this determination, the court shall consider a list,
20 provided by the victim, which includes those areas from which the victim desires the
21 defendant to be excluded. (Source: Art. 335.2(B)(1))

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

1 for in this Paragraph. (Source: Art. 335.2(B)(2),(3),(4), and (5))

2 **(4) In addition to electronic monitoring, the court shall consider house**
 3 **arrest.** The conditions of the electronic monitoring and house arrest shall be
 4 determined by the court, and may include but are not be limited to limitation of the
 5 defendant's activities outside of the home and a curfew. (Source: Art. 336.1(B))

6 **J. Crimes of violence. If the defendant has been charged with a crime of**
 7 **violence as defined in R.S. 14:2(B), the court shall require as a condition of bail**
 8 **that the defendant be prohibited from communicating, by electronic**
 9 **communication, in writing, or orally, with a victim of the offense, or with any**
 10 **of the victim's immediate family members while the case is pending. This**
 11 **condition does not apply if the victim consents in person or through a**
 12 **communication through the local prosecuting agency. If an immediate family**
 13 **member of the victim consents in person or through a communication through**
 14 **the local prosecuting agency, then the defendant may contact that person.**

15 **K. Violations.** Violation of such ~~such~~ **any** condition by the defendant shall be
 16 considered as a constructive contempt of court, and shall be grounds for **result in the**
 17 ~~revocation of bail, but does not give rise to a forfeiture~~ **and issuance of a bench**
 18 **warrant for the defendant's arrest or remanding the defendant to custody. The**
 19 **court may also modify bail by either increasing the amount of bail or adding**
 20 **additional conditions of bail.** (Source: Art. 335)

21 (Source: C.Cr.P. Arts. 326, 335, 335.1, 335.2, 336, 336.1, and 336.2)

22 Art. 321. Affidavit of surety **Types of bail; restrictions**

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

1 of the person signing a bail bond.

2 A. The types of bail in Louisiana are:

3 (1) Bail with a commercial surety.

4 (2) Bail with a secured personal surety.

5 (3) Bail with an unsecured personal surety.

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

7 (5) Bail with a cash deposit. (Source: Art. 312(A))

8 B. ~~Except as provided in Paragraphs C and D of this Article, all~~ **All** bail must
9 be posted in the full amount fixed by the court. When the court fixes the amount of
10 bail, a secured bail undertaking may be satisfied by a commercial surety, a cash
11 deposit, or with the court's approval, by a secured personal surety or a ~~bond~~ **bail**
12 **undertaking** secured by the property of the defendant, or by any combination
13 thereof. When the court elects to release the defendant on an unsecured personal
14 surety or a bail without surety, that election shall be expressed in the bail order.
15 (Source: Art. 312(B),(C), and (D))

16 C. ~~Notwithstanding any other provision of law to the contrary, any~~ **Any**
17 defendant who has been arrested for any of the following ~~crimes~~ **offenses** shall not
18 be released by the court on the defendant's own recognizance or on the signature of
19 any other person **on his personal undertaking or with an unsecured personal**
20 **surety**: (Source: Art. 334.4(A))

21 (1) A crime of violence as defined by R.S. 14:2(B). (Source: Art. 334.2(5))

22 (2) ~~The court shall not release any defendant who has been arrested for a~~ **A**
23 felony offense, an element of which is the discharge, use, or possession of a firearm
24 on his personal undertaking without security or with an unsecured personal surety.
25 (Source: Art. 334.1)

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

- 1 330.2(F))
- 2 (4) R.S. 14:32.1 (vehicular homicide). (Source: Art. 334.4(A)(1))
- 3 (5) R.S. 14:35.3 (domestic abuse battery). (Source: Art. 334.2(1))
- 4 (6) R.S. 14:37.7 (domestic abuse aggravated assault). (Source: Art.
- 5 334.2(2))
- 6 (7) R.S. 14:40.3 (cyberstalking), if the person has two prior convictions for
- 7 the same offense. (Source: Art. 334.4(A)(2))
- 8 (8) R.S. 14:44.2 (aggravated kidnapping of a child). (Source: Art.
- 9 334.4(A)(3))
- 10 (9) R.S. 14:46 (false imprisonment). (Source: Art. 334.2(3))
- 11 (10) R.S. 14:46.1 (false imprisonment while the offender is armed with
- 12 a dangerous weapon). (Source: Art. 334.2(4))
- 13 (11) R.S. 14:87.1 (killing a child during delivery). (Source: Art. 334.4(A)(5))
- 14 (12) R.S. 14:87.2 (human experimentation). (Source: Art. 334.4(A)(6))
- 15 (13) R.S. 14:93.3 (cruelty to persons with infirmities), if the person has a
- 16 prior conviction for the same offense. (Source: Art. 334.4(A)(7))
- 17 (14) R.S. 14:98 (operating a vehicle while intoxicated), if the person has a
- 18 prior conviction for the same offense. (Source: Art. 334.4(A)(8))
- 19 (15) R.S. 14:102.1(B) (aggravated cruelty to animals). (Source: Art.
- 20 334.4(A)(9))
- 21 (16) R.S. 14:102.8 (injuring or killing of a police animal). (Source: Art.
- 22 334.4(A)(10))
- 23 (17) R.S. 14:110.1 (jumping bail).
- 24 (18) R.S. 14:110.1.1 (out-of-state bail jumping).
- 25 (19) Violation of an order issued pursuant to R.S. 9:361 et seq., R.S. 9:372,
- 26 R.S. 46:2131 et seq., R.S. 46:2151, Children's Code Article 1564 et seq., Code of
- 27 Civil Procedure Articles 3604 and 3607.1, or Code of Criminal Procedure Articles
- 28 30, 320, and 871.1. (Source: Art. 334.2(6))
- 29 (20) The production, manufacturing, distribution, or dispensing or the

1 possession with the intent to produce, manufacture, distribute or dispense a
2 controlled dangerous substance in violation of R.S. 40:966(B), 967(B), 968(B),
3 969(B), or 970(B) of the Uniform Controlled Dangerous Substances Law. (Source:
4 Art. 334.4(A)(11))

5 **D. There shall be a presumption that any defendant who has either been**
6 **arrested for a new felony offense or has at any time failed to appear in court on**
7 **the underlying felony offense after having been notified in open court shall not**
8 **be released on his own recognizance or on the signature of any other person.**
9 **This presumption may be overcome after contradictory hearing in open court**
10 **only if the judge determines by clear and convincing evidence that the relevant**
11 **factors warrant this type of release.** (Source: Art. 334.4(B))

12 (Source: C.Cr.P. Arts. 312, 330.2, 334.1, 334.2, and 334.4)

13 Art. 322. ~~Declaration of residence by defendant and surety; social security number;~~
14 ~~waiver of notice~~ **Commercial surety**

15 ~~A. The defendant and personal surety signing a bail bond shall write the~~
16 ~~address at which each can be served under their respective signatures and the last~~
17 ~~four digits of their social security number. The defendant and his counsel may, by~~
18 ~~joint affidavit filed of record in the proceeding in which the bond was given, appoint~~
19 ~~his counsel as his agent for service of notice to appear. The appointment shall be~~
20 ~~conclusively presumed to continue until the defendant files of record an affidavit~~
21 ~~revoking or changing the appointment. The affidavit shall include the address at~~
22 ~~which to serve his counsel. A commercial surety shall inscribe its proper mailing~~
23 ~~address on the face of the power of attorney used to execute the bond. The agent or~~
24 ~~bondsman posting the bond shall write his proper mailing address under his~~
25 ~~signature. A bail bond shall not be set aside because of the invalidity of the~~
26 ~~information required by this Article or for the failure to include the information~~
27 ~~required by the provisions of this Article.~~

28 ~~B. Each address provided pursuant to Paragraph A of this Article shall be~~
29 ~~conclusively presumed to continue for all proceedings on the bond until the party~~

1 ~~providing the address changes it by filing a written declaration in the proceeding for~~
2 ~~which the bond was filed.~~

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

5 A surety company authorized to do business in the state of Louisiana may
6 become surety for the release of a person on a bail **undertaking**. The sufficiency of
7 security posted in the form of an appearance bond by a surety company, as required
8 by the provisions of Title 22 of the Louisiana Revised Statutes of 1950, shall be
9 determined solely by the commissioner of insurance. (Source: Art. 314) A contract
10 to indemnify a surety **company** against loss on a bail ~~bond~~ undertaking is valid and
11 enforceable. (Source: Art. 329)

12 (Source: C.Cr.P. Arts. 314 and 329)

13 Art. 323. ~~Signature or declaration of person unable to write~~ **Secured personal**
14 **surety**

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

22 **A.** A secured personal surety is a personal surety who ~~meets all the~~
23 ~~qualifications of law~~ **satisfies all the requirements of Article 311** and specifically
24 mortgages immovable property located in the state of Louisiana. (Source: Art. 318)

25 **B. Bail without surety may be secured by a mortgage on the property of**
26 **the defendant pursuant to this Article or unsecured.** A ~~defendant or a secured~~
27 ~~personal surety, pursuant to Article 312,~~ may establish a legal mortgage over
28 immovable property in favor of the state of Louisiana or the proper political
29 subdivision to secure a bail ~~obligation~~ **undertaking**. (Source: Art. 319(A))

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

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

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

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

9 (4) Attaches to it a copy of the order fixing ~~the bail obligation~~. (Source: Art.
10 319(B))

11 D. The person providing the security shall deliver a certified copy of the
12 recorded statement establishing the mortgage and a mortgage certificate to the officer
13 authorized to receive the bail. The officer may require additional evidence of
14 ownership and value of the mortgaged property including a copy of the current tax
15 assessment. (Source: Art. 319(C))

16 E. (1) The recorder shall cancel the mortgage from his records upon the order
17 of the court. (Source: Art. 319(D)(1))

18 (2) In all other cases, the effect of its recordation shall cease ten years after
19 its recordation unless it is reinscribed in the manner otherwise provided by law.
20 (Source: Art. 319(D)(2))

21 F. Any materially false or incorrect statements made by a person who
22 intentionally and knowingly gives a mortgage or security interest pursuant to this
23 Article shall be prima facie proof of a violation of the provisions of R.S. 14:125,
24 false swearing. (Source: Art. 319(E))

25 (Source: C.Cr.P. Arts. 318 and 319)

26 Art. 324. ~~Cash deposits~~ **Unsecured personal surety**

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

29 ~~(2) The deposit shall consist of any of the following which are equal to the~~

1 amount of the bail:

2 (a) ~~Cash.~~

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

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

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

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

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

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

28 C. ~~After the publication and mailing of the notice by certified mail, the clerk~~
29 ~~of court, or the clerk of the criminal district court in Orleans Parish shall petition the~~

1 court of proper jurisdiction for permission to utilize the funds for the use, operation,
2 and maintenance of the office of the clerk of court or the clerk of criminal district
3 court in Orleans Parish.

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

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

15 A. A person in custody may be released by order of the court on an unsecured
16 personal surety ~~bond~~ **bail undertaking**. An unsecured personal surety is a personal
17 surety where the surety ~~meets all the qualifications of law~~ **satisfies all the**
18 **requirements of Article 311(5)** and lives and resides in the state of Louisiana
19 without specifically mortgaging or giving a security interest in any property as
20 security to guarantee the surety's performance. (Source: Art. 317)

21 B. A personal surety shall execute an affidavit that he possesses the
22 sufficiency and qualifications ~~prescribed by Article 315~~ **of a personal surety** and
23 that he is not disqualified from becoming a surety by Article 320 **327**. The affidavit
24 shall list the number and amount of undischarged bail ~~bonds~~ **undertakings**, if any,
25 entered into by the **personal** surety. The officer accepting the bail may require the
26 **personal** surety to state in his affidavit the nature and value of his property not
27 exempt from execution, and the amount of his liabilities. An officer authorized to
28 accept the bail shall have authority to administer any affidavit required of the person
29 signing a bail ~~bond~~ **undertaking**. (Source: Art. 321)

1 (Source: C.Cr.P. Arts. 317 and 321)

2 Art. 325. Bail without surety

3 A person in custody may be released by order of the court on his personal
4 bail undertaking **pursuant to Article 329** without the necessity of furnishing a
5 surety, **unless otherwise provided in this Title.**

6 Art. 326. ~~Condition of the bail undertaking~~ **Cash deposits**

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

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

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

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

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

1 deposit shall consist of any of the following which are equal to the amount of the
2 bail:

3 **(a)** Cash.

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

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

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

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

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

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

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

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

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

17 (Source: C.Cr.P. Art. 324)

18 Art. 327. ~~Requisites of the bail undertaking~~ **Those who may not be sureties**

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

20 ~~(1) Be in writing.~~

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

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

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

24 ~~B. The bail undertaking shall be enforceable if the above requirements are~~
25 ~~met; and no officer may refuse to accept the posting of a bail bond and releasing a~~
26 ~~defendant on bail if the provisions of Code of Criminal Procedure Article 314 and~~
27 ~~the conditions set by this Article are met. A person shall not be discharged from his~~
28 ~~bail undertaking, nor shall a judgment of forfeiture be stayed, set aside, or reversed,~~
29 ~~nor the collection of any such judgment be barred or defeated by reason of any defect~~

1 ~~of form, omission of a recital, or of a condition of the undertaking, by reason of a~~
2 ~~failure to note or record the default of any defendant or surety, or because of any~~
3 ~~other irregularity.~~

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

8 (Source: C.Cr.P. Art. 320)

9 Art. 328. ~~Substitution of security~~ **Bail undertaking**

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

14 **A.** The bail undertaking shall:

15 **(1)** Be in writing.

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

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

18 **(4)** State a single amount of bail for each charge. (Source: Art. 327(A))

19 **B.** The bail undertaking shall be enforceable if the above requirements are
20 met; and no officer may refuse to accept the posting of a bail ~~bond~~ **undertaking** and
21 releasing a defendant on bail if ~~the provisions of Code of Criminal Procedure Article~~
22 ~~314 and the conditions set by this Article~~ **Title** are met. A person shall not be
23 discharged from his bail undertaking, nor shall a judgment of forfeiture be stayed,
24 set aside, or reversed, nor the collection of any such judgment be barred or defeated
25 by reason of any defect of form, omission of a recital, or of a condition of the
26 undertaking, by reason of a failure to note or record the default of any defendant or
27 surety, or because of any other irregularity. (Source: Art. 327(B)) The bail ~~obligation~~
28 **undertaking** shall run, subject to the provisions of Article 626, in favor of the state
29 of Louisiana, or the city or parish whose ordinance is charged to have been violated,

1 with the proceeds to be disposed of according to law. No error, inaccuracy, or
2 omission in naming the obligee on the ~~bond~~ **bail undertaking** is a defense to an
3 action thereon. (Source: Art. 326(A))

4 (Source: C.Cr.P. Arts. 326 and 327)

5 Art. 329. ~~Contract to indemnify surety~~ **Declaration of residence; waiver of notice**

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

8 **A.** The defendant and personal surety signing a bail ~~bond~~ **undertaking** shall
9 write the address at which each can be served **and mailing address, if different,**
10 under their respective signatures and the last four digits of their social security
11 number. The defendant and his counsel may, **with the Court's approval,** by joint
12 affidavit filed of record in the ~~proceeding~~ **matter** in which the ~~bond~~ **bail**
13 **undertaking** was given, appoint his counsel as his agent ~~for service of~~ **to whom**
14 notice to appear can be sent. The appointment shall be conclusively presumed to
15 continue until the defendant, **with court approval,** files of record an affidavit
16 revoking or changing the appointment. The affidavit shall include the address ~~at~~
17 ~~which to serve his counsel~~ **to which notice to appear can be sent.** A commercial
18 surety shall ~~inscribe~~ **place** its proper mailing address **and electronic address** on the
19 face of the power of attorney used to execute the ~~bond~~ **bail undertaking.** The agent
20 or bondsman posting the ~~bond~~ **bail undertaking** shall ~~write~~ **place** his proper mailing
21 address under his signature. A ~~bail bond~~ **forfeiture judgment** shall not be **denied**
22 **or** set aside because of the invalidity of the information required by this Article or
23 for the failure to include the information required by the provisions of this Article.
24 (Source: Art. 322(A))

25 **B.** When a person who is required to sign his name or to make a declaration
26 in writing under the provisions of this ~~Code~~ **Title** swears that he cannot sign or write,
27 the officer authorized to receive the signature or declaration in writing may, at the
28 request of the person, sign for him or make for him the declaration in writing, with
29 the same binding effect as if the person had himself signed or himself made the

1 declaration in writing; provided that the declaration and signature shall be witnessed
2 and signed by at least two competent witnesses. (Source: Art. 323)

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

9 D. 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~~
12 matter for which the ~~bond~~ bail undertaking was filed. (Source: Art. 322(B))

13 E. Except for the notice required by Article 330, By ~~by~~ signing the ~~bail~~
14 bond undertaking, the defendant and his surety waive any right ~~to~~ of notice ~~to~~
15 appear, ~~except that provided for in Articles 344 and 349.3~~ including actual notice.
16 (Source: Art. 322(C))

17 (Source: C.Cr.P. Arts. 322 and 323)

18 Art. 330. ~~Bail before conviction~~ Notice of defendant's required appearance

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

28 A. When a bail ~~bond~~ undertaking fixes an appearance date, the defendant
29 appears as ordered, and notice of the next appearance date is given to the defendant,

1 no additional notice of that appearance date is required to be given to the defendant
2 or the personal surety or the commercial surety or the agent or bondsman who posted
3 the ~~bond~~ **bail undertaking** for the commercial surety.

4 **B.** When a bail ~~bond~~ **undertaking** does not fix the appearance date, written
5 notice of the time, date, and place the defendant is first ordered by the court to appear
6 shall be given to the defendant or his duly appointed agent and his personal surety
7 or the commercial surety or the agent or bondsman who posted the ~~bond~~ **bail**
8 **undertaking** for the commercial surety.

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

18 **D.** Notice required pursuant to the provisions of this Article to the defendant
19 and the personal surety or the commercial surety or the agent or bondsman who
20 posted the ~~bond~~ **bail undertaking** for the commercial surety shall be made to the
21 address provided pursuant to Article ~~322~~ **329**. Notice may be:

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

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

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

29 (Source: C.Cr.P. Art. 344)

1 Art. 331. ~~Capital offenses~~ **Discharge of bail obligation**

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

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

8 C. The burden of proof:

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

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

13 **A. (1)** Upon conviction and imposition of sentence or the pronouncement of
14 sentence or condition of probation pursuant to Article 894 in misdemeanor cases, the
15 bail undertaking shall cease and the surety shall be relieved of all obligations under
16 the ~~bond~~ **bail undertaking**. (Source: Art. 326(B)(1))

17 **(2)** Upon conviction in any felony case, the bail undertaking shall cease and
18 the surety shall be relieved of all obligations under the ~~bond~~ **bail undertaking**.
19 (Source: Art. 326(B)(2))

20 **(3)** In all cases, if necessary to assure the presence of the defendant at all
21 future stages of the proceedings, the court may in its discretion, in accordance with
22 Article 312 require the defendant to post another ~~bond~~ **bail undertaking** or other
23 acceptable security, or may release the defendant on bail without surety as provided
24 for in Article 325. The court may continue the existing bail undertaking with the
25 written approval of the surety on the ~~bond~~ **bail undertaking**. Such approval must be
26 obtained from the surety after conviction. (Source: Art. 326(B)(3))

27 **B.** When the district attorney dismisses an indictment or information and
28 institutes a subsequent indictment or information for the same offense or for a lesser
29 offense based on the same facts, the court shall reinstate any bail discharged when

1 the district attorney dismissed the initial indictment or information if the surety
2 consents to the reinstatement expressly and in writing. Orleans Parish district judges
3 with criminal jurisdiction sitting en banc may adopt rules effectuating telephonic
4 communication and verification of ~~bonds~~ **bail undertakings** and releases. (Source:
5 Art. 334.5(A) and (B))

6 C. (1) A surety may surrender the defendant ~~or the defendant may surrender~~
7 ~~himself, in open court or to the officer charged with his detention,~~ at any time prior
8 ~~to forfeiture or within the time allowed by law for setting aside a judgment of~~
9 ~~forfeiture of the bail bond.~~ For the purpose of surrendering the defendant, the surety
10 may arrest him. **The surety shall pay a fee of twenty-five dollars to the officer**
11 **charged with the defendant's detention for accepting the surrender, processing**
12 **the paperwork, and giving the surety a certificate of surrender.** Upon ~~the~~
13 ~~surrender of the defendant, the officer shall detain the defendant in his custody as~~
14 ~~upon the original commitment and shall acknowledge the surrender by a certificate~~
15 ~~signed by him and delivered to the surety. The officer shall retain a copy and~~
16 forward a copy of the certificate **of surrender** to the **clerk of court and the**
17 **prosecuting attorney.**

18 ~~(2) After compliance with the provisions of Paragraph F of this Article~~ **Upon**
19 **surrender of the defendant at any time prior to the expiration of one hundred**
20 **eighty days after the notice of warrant for arrest was sent,** the surety shall be
21 fully and finally discharged and relieved, ~~as provided for in Paragraphs C and D of~~
22 ~~this Article,~~ of all obligations under the ~~bond~~ **bail undertaking by operation of law,**
23 **without the need to file a motion or other pleading.** (Source: Art. 345(A))

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

29 E. At any time prior to ~~forfeiture or within the time allowed by law for setting~~

1 ~~aside a judgment for forfeiture of the bail bond~~ **the defendant's failure to appear**
2 **or within one hundred eighty days after the notice of warrant for arrest is sent,**
3 the surety may **file with the clerk of court and** present to the court a certificate of
4 death naming the defendant as the deceased party. The certificate shall be under seal
5 of the authority confirming the defendant's death. **Upon proof that the surety is**
6 **unable to obtain a certificate of death, the surety or the court may invoke a**
7 **contradictory hearing in order to establish proof of death by clear and**
8 **convincing evidence. If the court determines that the defendant is deceased**
9 **thereafter,** the surety shall be fully and finally discharged and relieved of any and
10 all obligations under the ~~bond~~ **bail undertaking.** (Source: Art. 345(E))

11 **F.(1) Forty-five days after the defendant's failure to appear and while**
12 **there is still an active arrest warrant in the proceeding for which the bond was**
13 **posted, the surety or bail bond producer who posted the bond may file with the**
14 **clerk of court where the charges are pending an affidavit requesting the**
15 **defendant be remanded and surrendered upon his appearance before the court.**
16 **The clerk of court shall forward a copy of the affidavit to the court before which**
17 **the charges are pending. The affidavit must meet all the requirements set forth**
18 **in R.S. 22:1585 and be filed before the court where the charges are pending. A**
19 **copy of the affidavit must be provided to the prosecuting attorney.**

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

27 **G. During the period provided for surrendering the defendant** ~~Any time after~~
28 **the defendant's failure to appear and the issuance of the warrant of arrest,** the
29 surety may request that the officer originally charged with the detention of a ~~felony~~

1 defendant place the name of the ~~felony~~ defendant into the National Crime
 2 Information Center registry. **The officer shall determine if the placement of the**
 3 **name is authorized by the rules governing the National Crime Information**
 4 **Center registry within thirty days of the request. If not authorized, the officer**
 5 **shall provide notice to the surety of the reason for nonplacement. If placement**
 6 **is authorized, The the** surety shall pay to that officer a fee of twenty-five dollars for
 7 processing the placement. If; **authorized and** after payment of the twenty-five-dollar
 8 fee, the name of the defendant is removed from the National Crime Information
 9 Center registry without cause during the period provided for surrendering the
 10 defendant, ~~the surety shall be relieved of all obligations under the bond~~ **the period**
 11 **for filing a rule to show cause under Article 349.2 shall be suspended until the**
 12 **name of the defendant is placed back in the registry.** (Source: Art. 345(G))

13 **H.** In the case of any fee required under the provisions of this Article, the
 14 officer charged with the defendant's detention shall provide the surety with a receipt
 15 indicating the amount of the fee collected, the name of the defendant, the purpose of
 16 the fee collected, ~~the date and time the defendant was surrendered;~~ the name of the
 17 person from whom the fee was collected, ~~and~~ information sufficient to identify any
 18 applicable ~~bond~~ **bail undertaking, and the date and time the defendant was**
 19 **surrendered.** (Source: Art. 345(H))

20 **I.** The court shall order the bail ~~bond~~ **obligation** canceled when there is no
 21 further liability thereon. (Source: Art. 348)

22 (Source: C.Cr.P. Arts. 326, 334.5, 345, and 348)

23 Art. 332. ~~Bail after conviction~~ **Court order for arrest of defendant**

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

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

29 ~~(2) He is released by virtue of a bail obligation posted after conviction, which~~

1 ~~bail was fixed in accordance with this Article.~~

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

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

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

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

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

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

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

26 (3) The court is satisfied that the bail should be increased or new or additional
27 security required.

28 (Source: C.Cr.P. Art. 346)

29 Art. 333. ~~Authority to fix bail~~ **Failure to appear; issuance of arrest warrant**

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

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

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

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

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

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

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

15 (Source: C.Cr.P. Art. 349.1)

16 Art. 334. ~~Factors in determining amount of bail~~ **Notice of warrant of arrest**

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

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

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

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

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

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

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

29 ~~(7) The absence or presence of any controlled dangerous substance in the~~

1 defendant's blood at the time of arrest.

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

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

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

8 After entering the fact of the signing of the judgment of bond forfeiture in the
9 court minutes, the clerk of court shall promptly mail notice of the signing of the
10 judgment of bond forfeiture. **After a warrant for arrest is issued, the clerk of**
11 **court shall, within sixty days, send a notice of warrant for arrest to the**
12 **prosecuting attorney.** The notice of the signing of the judgment shall **also** be mailed
13 **sent** by United States certified mail with return receipt affixed thereto **or electronic**
14 **means** to the defendant, **the bail agent or bondsman, if any, and** the personal
15 surety, the agent, or bondsman who posted the bond for the commercial surety, and
16 the commercial surety at the addresses designated in Article 322 or an address
17 registered with the Louisiana Department of Insurance. Notice **shall be sent by**
18 **electronic means or certified mail to the commercial surety. All notices shall be**
19 **sent to the addresses provided pursuant to Article 329 or an address registered**
20 **with the Louisiana Department of Insurance. The notice** to the commercial surety
21 shall include the power of attorney number used to execute the **bail undertaking**
22 bond without which the bond obligation of the commercial surety shall be suspended
23 until the power of attorney number is supplied, provided the commercial surety
24 provides notice to the clerk of court who mailed the notice to the surety of the failure
25 to include such number in the notice by certified mail not later than thirty days
26 following receipt of notice of the judgment. If the power of attorney number is not
27 provided to the commercial surety within thirty days after the date of receipt by the
28 clerk of court of the notice that it was not included in the notice of the judgment, the
29 commercial surety shall be released from the bond obligation. **Failure to include the**

1 power of attorney number shall not affect the validity or enforcement of a
 2 resulting judgment. (Source: Art. 349.3(A)(1)) After ~~mailing~~ sending the notice of
 3 the signing of the judgment of bond forfeiture warrant for arrest, the clerk of court
 4 shall execute an affidavit of the mailing a certificate that notice was sent and place
 5 the affidavit and the return receipts certificate in the record. (Source: Art. 349.3(B))
 6 Failure to ~~mail~~ send notice of the signing of the judgment to the commercial surety
 7 within sixty days after the defendant fails to appear shall release the sureties surety
 8 of all obligations under the bond bail undertaking. (Source: Art. 349.3(C))
 9 (Source: C.Cr.P. Art. 349.3)

10 Art. 335. ~~Other conditions related to the appearance of the defendant~~ Period for
 11 filing a rule to show cause

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

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

26 Art. 336. Release conditioned on participation in pretrial drug testing program Proof
 27 necessary at rule to show cause

28 A.(1) ~~Every person arrested for a violation of the Uniform Controlled~~
 29 ~~Dangerous Substances Law or a crime of violence as provided in R.S. 14:2(B) shall~~

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

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

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

28 (4) The provisions of this Paragraph requiring mandatory pretrial drug testing
29 shall be contingent upon receipt of adequate funding to cover the costs of such

1 testing, as provided in Paragraph E of this Article.

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

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

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

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

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

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

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

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

24 (2) ~~Refrain from the use or possession of any controlled dangerous substance~~
25 ~~or any substance designated by the court.~~

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

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

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

8 **A. The court at a contradictory hearing shall forfeit the bail undertaking**
9 **and sign a judgment of bond forfeiture upon proof of all of the following:**

10 **(1) The bail undertaking.**

11 **(2) The power of attorney, if any.**

12 **(3) Notice to the defendant and the surety as required by Article 334.**

13 **(4) Proof that more than one hundred eighty days have elapsed since the**
14 **notice of warrant for arrest was sent.** (Source: Art. 349.2(A))

15 **B.** ~~The court shall immediately issue a warrant for the arrest of the person~~
16 ~~failing to appear and order a judgment decreeing the forfeiture of the bond and The~~
17 **judgment of bond forfeiture shall be issued** against the defendant and his sureties
18 in solido for the full amount of the ~~bond~~ **bail**. A bail agent who represents the surety
19 as an insurance agent shall not be solidarily liable for the **judgment of bond**
20 ~~forfeiture of a bond~~ against the defendant and his sureties. In the event that a bail
21 agent who represents the surety as an insurance agent is held solidarily liable, then
22 that bail agent may request to be released from the judgment, ~~and~~ **However,** the
23 release of the bail agent shall have no effect on the judgment decreeing the forfeiture
24 of the ~~bond~~ **bail undertaking** against the defendant and his sureties. (Source: Art.
25 349(B) and (C))

26 **C.** The judgment shall include the address and the last four digits of the social
27 security number for the defendant and ~~his~~ **the personal** sureties. A judgment of bond
28 forfeiture shall not be set aside because of the invalidity of the information required
29 by the provisions of this Article or for the failure to include the information required

1 by this Article. (Source: Art. 349.2(B))

2 (Source: C.Cr.P. Arts. 349 and 349.2)

3 Art. 337. ~~Juvenile records to determine bail~~ **Interruption of the period for**
4 **obtaining a bond forfeiture judgment**

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

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

15 ~~C. Failure to comply with the provisions of this Article shall subject the~~
16 ~~violating court to disciplinary action by the Supreme Court of Louisiana upon receipt~~
17 ~~by the judicial administrator of the supreme court of a written complaint,~~
18 ~~subsequently substantiated.~~

19 **An appearance by the defendant shall interrupt the period for obtaining**
20 **a bond forfeiture judgment. An appearance by the defendant does not relieve**
21 **the surety of its bail undertaking obligations.**

22 Art. 338. ~~Form and contents of bail order~~ **Nonforfeiture situations**

23 ~~An order fixing bail shall be in writing, set the type and a single amount of~~
24 ~~bail for each charge, designate the officer or officers authorized to accept the bail,~~
25 ~~and shall be signed by the magistrate. An order fixing bail may issue on request of~~
26 ~~the state or defendant, or on the initiative of the judge or magistrate.~~

27 ~~A. A judgment decreeing the forfeiture of an appearance bond~~ **a bail**
28 **undertaking** ~~shall not be rendered if it is shown to the satisfaction of the court~~
29 **proven, at or prior to the hearing on a rule to show cause,** that the defendant,

1 principal in on the ~~bond~~ **bail undertaking**, ~~is prevented from attending~~ **failed to**
2 **appear in court** because of any of the following: (Source: Art. 349.9(A))

3 **(1) He is The defendant was** serving in the armed forces of the United
4 States. (Source: Art. 349.9(A)(3))

5 **(2) He is The defendant was** a member of the Louisiana National Guard
6 called to duty pursuant to R.S. 29:7. ~~This provision does not apply to appearances~~
7 ~~in a state military court.~~ (Source: Art. 349.9(A)(4))

8 **(3) The defendant was prevented from appearing due to a state of**
9 **emergency declared by the Governor.**

10 **B. There shall be a rebuttable presumption that the calling of the**
11 **defendant to duty pursuant to R.S. 29:7 prevented the defendant, principal on**
12 **the bail undertaking, from attending court.**

13 Comments - 2016

14
15 (a) The term "serving in the armed forces of the United States" refers
16 to service within (1) the armed forces on active duty, (2) the National Guard
17 while on full-time National Guard Duty, or (3) a Reserve Component while
18 performing inactive-duty training. See 10 U.S.C. § 976(a)(1) (2015); see also
19 10 U.S.C. § 101(d) (2015) (defining the terms "active duty," "full-time
20 National Guard duty," and "inactive-duty training").

21
22 (b) Note that federal law currently provides that "[a] court may not
23 enforce a bail undertaking during the period of military service of the
24 principal on the bond when military service prevents the surety from
25 obtaining the attendance of the principal. The court may discharge the surety
26 and exonerate the bail, in accordance with principles of equity and justice,
27 during or after the period of military service of the principal." 50 App. U.S.C.
28 § 513(c) (2015); see also 50 App. U.S.C. § 511 (2015) (defining the terms
29 "military service" and "period of military service").

30
31 (Source: C.Cr.P. Art. 349.9)

32 **Art. 339. Notice of judgment**

33 **A. Notice of the signing of judgment of bond forfeiture shall be mailed**
34 **by the clerk of court to the counsel of record for each party, and to each party**
35 **not represented by counsel pursuant to Code of Civil Procedure Article 1913.**

36 **B. The clerk shall file a certificate in the record showing the date on**
37 **which the notice of the signing of the judgment was mailed.**

38 ~~Art. 340. Amount of bail in felony cases; schedules of bail in noncapital cases~~

1 **Recordation of judgment**

2 A. ~~Unless the bail is fixed by a schedule in accordance with Paragraph B, the~~
3 ~~amount of bail in felony cases shall be specifically fixed in each case. A person shall~~
4 ~~not be released on bail pursuant to a general order which authorizes the sheriff, or~~
5 ~~other officers, to take bail and fixes the amount thereof at a certain sum for particular~~
6 ~~felonies.~~

7 B. ~~A schedule of bail according to the offense charged in noncapital felony~~
8 ~~cases may be fixed by a district court. The court order setting the bail schedule shall~~
9 ~~fix the amount of bail for each offense listed, designate the officer or officers~~
10 ~~authorized to accept the bail, and order that bail be taken in conformity with the~~
11 ~~schedule. It may also contain a general provision designating the amount of bail for~~
12 ~~any noncapital felony not listed in the schedule. A copy of the schedule shall be sent~~
13 ~~to all jails, sheriffs offices, and police stations within the judicial district. A bail~~
14 ~~schedule may be revised or rescinded at any time.~~

15 C. ~~A person charged with the commission of a felony for which bail is fixed~~
16 ~~by a schedule may give bail according to the schedule or demand a special order~~
17 ~~fixing bail.~~

18 D. ~~Bail herein may be set above the scheduled amount if the court deems it~~
19 ~~appropriate or the district attorney moves for good cause to have the bail set above~~
20 ~~the scheduled amount and the court finds it appropriate.~~

21 A. ~~After mailing notice of the signing of the judgment of bond forfeiture, the~~
22 **The** ~~district attorney shall~~ **may** ~~cause the judgment to be recorded in every parish in~~
23 ~~which the recordation may be proper. Every such recordation shall be without cost,~~
24 **pursuant to R.S. 13:4521,** ~~and shall operate as a judicial mortgage against the~~
25 ~~defendant and all his sureties.~~

26 B. ~~Prior to recordation, the district attorney shall verify the inclusion of~~
27 ~~information on the judgment, namely, the address and the last four digits of the~~
28 ~~social security number for the defendant and his~~ **the personal** ~~sureties. Third parties~~
29 ~~may rely upon the accuracy of the information required by the provisions of this~~

1 Article for purposes of distinguishing the identity of the defendant and his sureties.
2 Any judgment of bond forfeiture containing inaccurate information required by the
3 provisions of this Article shall be deemed ineffective as a judicial mortgage to third
4 parties who rely upon that information.

5 (Source: C.Cr.P. Art. 349.4)

6 Art. 341. ~~Schedules of bail in misdemeanor cases~~ **Appeals**

7 ~~A. Schedules of bail according to the offense charged in misdemeanor cases~~
8 ~~may be fixed by district, parish, and city courts for offenses within their respective~~
9 ~~trial jurisdictions. The type or form of bail shall not be set in the bail schedule.~~
10 ~~When more than one court has trial jurisdiction over an offense, the applicable bail~~
11 ~~schedule shall be that of the court in which the case is to be tried.~~

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

19 ~~C. If a bail schedule has been set up and bail has not previously been~~
20 ~~specially fixed, a person charged with the commission of a misdemeanor has the~~
21 ~~right either to give bail according to the bail schedule, or to demand a special order~~
22 ~~fixing type or form of bail and amount of bail.~~

23 **The rights of appeal of a bail undertaking forfeiture judgment shall be**
24 **governed by the Code of Civil Procedure Article 2081 et seq.**

25 (Source: Art. 349.6)

26 Art. 342. ~~Increase or reduction of bail; sufficiency of security~~ **Enforcement of**
27 **judgment**

28 ~~The court having trial jurisdiction over the offense charged, on its own~~
29 ~~motion or on motion of the state or defendant, for good cause, may either increase~~

1 or reduce the amount of bail, or require new or additional security. For purposes of
2 this Article, good cause for increase of bail specifically includes but is not limited
3 to the rearrest of the defendant on offenses alleged to have been committed while out
4 on bond. The modification of any bail order wherein a bail bond has been posted by
5 a criminal defendant and his sureties shall upon said modification terminate the
6 liability of the defendant and his sureties under the previously existing bail contract.
7 A new bail must be posted in the amount of the new bail order.

8 After the delay for filing a suspensive appeal has elapsed or when a
9 judgment becomes final and definitive, the prosecuting attorney may file a rule
10 to show cause in accordance with R.S. 22:1441 or collect the judgment in the
11 same manner as a civil judgment.

12 (Source: C.Cr.P. Art. 349.7)

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

14 §85. Failure to satisfy judgment of bond forfeiture

15 A. If a defendant fails to appear after January 1, 2017, and a judgment of
16 bond forfeiture rendered ~~after June 22, 1993,~~ against a commercial surety company
17 has not been satisfied ~~within two hundred ten days after the date of mailing the~~
18 ~~notice of the signing of the judgment of bond forfeiture for bonds that have a face~~
19 ~~value under fifty thousand dollars, or within four hundred days from mailing the~~
20 ~~notice of the signing of the judgment of bond forfeiture for bonds which have a face~~
21 ~~value of fifty thousand dollars or more, nor has a suspensive appeal or other~~
22 ~~proceeding challenging the bond forfeiture been timely filed~~ **perfected**, the
23 prosecuting attorney may file with the district court, in the parish where the ~~bond~~
24 **bail undertaking** is forfeited, a rule to show cause why that commercial surety
25 company should not be prohibited from executing criminal bail ~~bonds~~ **undertakings**
26 before the court issuing the judgment of bond forfeiture.

27 B. At the rule to show cause, the court may consider only issues which would
28 interrupt the enforceability of the judgment. The court may issue an order enjoining
29 the commercial surety company from posting criminal bail ~~bonds~~ **undertakings**

1 before the court issuing the judgment of bond forfeiture if the judgment ~~is not~~ **has**
2 **not been** satisfied within ten days and if the court finds all of the following:

3 (1) A **defendant failed to appear after January 1, 2017 and a** judgment of
4 bond forfeiture has been rendered, ~~after June 22, 1993,~~ against the commercial
5 surety.

6 (2) Proper notice pursuant to Code of Criminal Procedure Article ~~349.3~~ **339**
7 has been mailed.

8 ~~(4)~~**(3)** The defendant has ~~neither~~ **not** been surrendered, **constructively**
9 **surrendered,** nor appeared within one hundred eighty days of ~~the date of mailing the~~
10 ~~notice of the signing of the judgment of bond forfeiture for bonds that have a face~~
11 ~~value of fifty thousand dollars or more, and the defendant has not been surrendered~~
12 ~~together with ten percent of the total amount of the bond more than one hundred~~
13 ~~eighty days but within two hundred seventy days after the date of mailing the notice~~
14 ~~of the signing of the judgment of bond forfeiture~~ **the execution of the certificate**
15 **that notice of warrant for arrest was sent.**

16 ~~(3)~~**(4)** ~~No~~ **The time delays for taking a suspensive appeal, as set forth in**
17 **Code of Civil Procedure Article 2123, have run and no** suspensive appeal has
18 been taken.

19 (5) ~~Two hundred ten days have passed since the date of mailing the notice of~~
20 ~~the signing of the judgment of bond forfeiture for bonds that have a face value under~~
21 ~~fifty thousand dollars, or four hundred days have passed since the date of mailing the~~
22 ~~notice of the signing of the judgment of bond forfeiture for bonds that have a face~~
23 ~~value of fifty thousand dollars or more.~~

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

29 C. The burden of proof at the hearing shall be upon the commercial surety by

1 a preponderance of evidence and shall be limited to documents contained in the
2 official court record where the judgment was rendered. The surety company may use
3 evidence not contained in the record to show that it did not receive ~~post-forfeiture~~
4 notice **of the signing of the judgment of bond forfeiture** or the ~~post-forfeiture~~
5 ~~notice was not properly mailed.~~

6 Section 3. The introductory paragraph of R.S. 22:1441(A) and (A)(1) through (5),
7 the introductory paragraph of (C)(2) and (C)(2)(a) through (e), and (D) are hereby amended
8 and reenacted to read as follows:

9 §1441. Failure to timely satisfy claim under criminal bond contract

10 A. ~~Any~~ **A** prosecuting attorney may file with **the office of** the commissioner
11 of ~~insurance's office~~ **insurance** a rule to show cause if all the following are true:

12 (1) A **defendant failed to appear after January 1, 2017, and a** judgment
13 of bond forfeiture has been rendered ~~after June 22, 1993,~~ against the commercial
14 surety underwriter.

15 (2) Notice pursuant to Code of Criminal Procedure Article ~~349.3~~ **339** has
16 been mailed.

17 (3) **All time delays for taking a suspensive appeal, as set forth in Code of**
18 **Civil Procedure Article 2123, have run and no** ~~No~~ suspensive appeal has been
19 taken.

20 (4) The defendant has neither been surrendered, **constructively surrendered,**
21 nor appeared within one hundred eighty days of ~~mailing of the notice of the signing~~
22 ~~of the judgment of bond forfeiture~~ **the execution of the certificate that notice of**
23 **warrant for arrest was sent.**

24 (5) More than one hundred eighty days ~~has~~ **have** ~~lapsed from the mailing of~~
25 ~~the notice of the signing of the judgment of bond forfeiture~~ **since the execution of**
26 **the certificate that notice of warrant for arrest was sent.**

27 * * *

28 C.(1) * * *

29 (2) The commissioner shall order the commercial surety underwriter to pay

1 immediately **pay** the judgment of bond forfeiture, if the commissioner finds that all
2 of the following are true:

3 (a) A **defendant failed to appear after January 1, 2017, and a** judgment
4 of bond forfeiture has been rendered ~~after June 22, 1993,~~ against the commercial
5 surety underwriter.

6 (b) Notice pursuant to Code of Criminal Procedure Article ~~349.3~~ **339** has
7 been mailed.

8 (c) ~~No~~ **All time delays for taking a suspensive appeal, as set forth in Code**
9 **of Civil Procedure Article 2123, have run and no** suspensive appeal has been
10 taken.

11 (d) The defendant has neither been surrendered, **constructively surrendered,**
12 nor appeared within one hundred eighty days of ~~mailing of the notice of the signing~~
13 ~~of the judgment of bond forfeiture~~ **the execution of the certificate that notice of**
14 **warrant for arrest was sent.**

15 (e) More than one hundred eighty days ~~has~~ **have** lapsed ~~from the mailing of~~
16 ~~the notice of the signing of the judgment of bond forfeiture~~ **since the execution of**
17 **the certificate that notice of warrant for arrest was sent.**

18 * * *

19 D. The burden of proof at the hearing shall be upon the commercial surety
20 by a preponderance of evidence and shall be limited to documents contained in the
21 official court record where the judgment was rendered. The surety company may use
22 evidence not contained in the record to show that it did not receive ~~post-forfeiture~~
23 notice **of the signing of the judgment of bond forfeiture** ~~or the post-forfeiture~~
24 ~~notice required pursuant to Code of Criminal Procedure Article 349.3 was not~~
25 ~~properly mailed.~~

26 * * *

27 Section 4. Code of Criminal Procedure Articles 327.1, 330.1, 330.2, 330.3, 334.1,
28 334.2, 334.3, 334.4, 334.5, 334.6, 335.1, 335.2, 336.1, 336.2, 343, 344, 345, 346, 347, 348,
29 349, 349.1, 349.2, 349.3, 349.4, 349.5, 349.6, 349.7, 349.8, and 349.9 are hereby repealed

1 in their entirety.

2 Section 5. The provisions of this Act shall become effective on January 1, 2017.

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

DIGEST

SB 123 Original

2016 Regular Session

Claitor

Present law (C.Cr.P. Arts. 311 through 349.9) provides for Title VIII of the Code of Criminal Procedure with respect to bail.

Proposed law (C.Cr.P. Arts. 311 through 342) provides for a revision and reorganization of present law.

Present law (R.S. 15:85) provides for the failure to satisfy a judgment of bond forfeiture.

Proposed law provides for revisions with respect to failure to appear, surrender of the defendant, and the time delays for taking a suspensive appeal, as well as technical corrections to present law based on the reorganization of Title VIII of the Code of Criminal Procedure.

Present law (R.S. 22:1441) provides for the failure to timely satisfy a claim under a criminal bond contract.

Proposed law provides for revisions with respect to failure to appear, the time delays for taking a suspensive appeal, and surrender of the defendant, as well as technical corrections to present law based on the reorganization of Title VIII of the Code of Criminal Procedure.

Effective January 1, 2017.

(Amends C.Cr.P. Art. 311-342, R.S. 15:85, R.S. 22:1441(A)(intro para) and (A)(1) through (5), (C)(2)(intro para) and (C)(2)(a) through (e), and (D); repeals C.Cr.P. Art. 327.1, 330.1, 330.2, 330.3, 334.1, 334.2, 334.3, 334.4, 334.5, 334.6, 335.1, 335.2, 336.1, 336.2, 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)