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## DIGEST

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HB 81 Original

2017 Regular Session

Jordan

**Abstract:** Provides for presumptive pretrial release of a defendant on an unsecured personal surety or bail without surety except under certain circumstances.

Present law provides that except in certain cases, a person in custody who is charged with the commission of an offense is entitled to bail before conviction.

Present law provides that the amount of bail shall be fixed in an amount that will ensure the presence of the defendant and the safety of any other person and the community, having regard to certain considerations including but not limited to the following: (1) the seriousness of the offense charged; (2) the weight of the evidence against the defendant; (3) the previous criminal record of the defendant; (4) the ability of the defendant to give bail; and (5) the nature and seriousness of the danger to any other person or the community that would be posed by the defendant's release.

Present law provides that all bail must be posted in the full amount fixed by the court, and further provides that when the court fixes the amount of bail, a secured bail undertaking may be satisfied by a commercial surety, a cash deposit, or with the court's approval, by a secured personal surety or a bail undertaking secured by the property of the defendant, or by any combination thereof.

Present law defines "unsecured personal surety" as a personal surety where the surety lives and resides in the state of La. without specifically mortgaging or giving a security interest in any property as security to guarantee the surety's performance, and defines "bail without surety" as the release of the defendant on his personal undertaking without the necessity of furnishing a surety.

When the court elects to release the defendant on an unsecured personal surety or a bail without surety, present law requires the court to express that election in the bail order.

Proposed law retains present law but requires a magistrate to order the pretrial release of a defendant on an unsecured personal surety or a bail without surety unless, after consideration of the factors set forth in present law, the magistrate determines that the release would not reasonably ensure the appearance of the defendant, the release would not reasonably ensure that the defendant would refrain from any new criminal conduct, and the release would not reasonably ensure the safety of any other person and the community.

Proposed law provides that this presumptive release of the defendant on an unsecured personal surety or a bail without surety does not apply in certain cases in which present law specifically defines the type of bail undertaking under which the defendant may be released.

(Amends C.Cr.P. Arts. 316 and 321(B))