

SENATE BILL NO. 93

BY SENATORS MIZELL, ABRAHAM, BARROW, HODGES AND MORRIS

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Arts. 312(A), (B), the introductory  
 3 paragraph of (D), and (1) and (2), and (G)(2)(a), 316(1), (9), and (10), 318, 319(A),  
 4 and 320(J)(1) and to enact Code of Criminal Procedure Arts. 312(G)(2)(c) and (d),  
 5 312.1, 315(D), and 316(11) through (13), relative to bail; to provide relative to bail  
 6 before and after conviction; to provide relative to revocation of bail in certain  
 7 circumstances; to provide for definitions; to provide relative to schedules of bail; to  
 8 provide for minimum amounts of bail for certain offenses; to provide for factors in  
 9 fixing bail; to provide relative to juvenile records in fixing bail; to provide for bail  
 10 conditions for crimes of violence; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Code of Criminal Procedure Arts. 312(A), (B), the introductory paragraph  
 13 of (D), and (1) and (2), and (G)(2)(a), 316(1), (9), and (10), 318, 319(A), and 320(J)(1) are  
 14 hereby amended and reenacted and Code of Criminal Procedure Arts. 312(G)(2)(c) and (d),  
 15 312.1, 315(D), and 316(11) through (13) are hereby enacted to read as follows:

16 Art. 312. Right to bail before and after conviction

17 A. Except as provided in this Article ~~and~~, **Article 312.1**, Article 313, ~~or~~  
 18 **Article 313.1**, a person in custody who is charged with the commission of an offense  
 19 is entitled to bail before conviction.

20 B.~~(1)~~ A person released on a previously posted bail undertaking for **any of**  
 21 **the following shall not be readmitted to bail when the person previously failed**  
 22 **to appear and a warrant for arrest was issued and not recalled or the previous**  
 23 **bail undertaking has been revoked or forfeited:**

24 ~~(1)~~ ~~a~~ **(a)** A crime of violence as defined by R.S. 14:2(B) which carries a  
 25 minimum mandatory sentence of imprisonment upon conviction ~~or~~.

26 ~~(2)~~ ~~the~~ **(b)** **The** production, manufacture, distribution, or dispensing or  
 27 possession with intent to produce, manufacture, distribute, or dispense a controlled  
 28 dangerous substance as defined by the Louisiana Uniform Controlled Dangerous

1 Substances Law, ~~shall not be readmitted to bail when the person previously failed to~~  
 2 ~~appear and a warrant for arrest was issued and not recalled or the previous bail~~  
 3 ~~undertaking has been revoked or forfeited.~~

4 (c) Any offense involving the possession or use of a firearm.

5 (d) Any sex offense as defined by R.S. 15:541.

6 (2) If a person voluntarily appears without confinement by a law enforcement  
 7 officer or bail recovery agent following a motion to revoke bail or issuance of an  
 8 arrest warrant for failure to appear but prior to revocation or forfeiture, then he may  
 9 be released only under one of the following circumstances:

10 ~~(1)~~(a) After a contradictory hearing, a person may be released on the  
 11 previously posted bail undertaking if the motion to revoke bail is rescinded or the  
 12 arrest warrant is recalled and the surety is present or represented at the hearing and  
 13 gives written consent. Previous instances of revocation and forfeiture in unrelated  
 14 cases are admissible at the hearing. This relief is available only once.

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

18 \* \* \*

19 D. A convicted person shall be remanded to jail to await sentence, and shall  
 20 be remanded to custody after sentencing, unless any of the following occur:

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

25 (2) He is released by virtue of a bail undertaking posted after conviction, and  
 26 the bail was fixed in accordance with this Article and other applicable law.  
 27 However, post conviction bail is not authorized pursuant to this Article when  
 28 there is proof of a substantial risk that the person may flee or poses an  
 29 imminent danger to any other person or the community, including when the  
 30 court finds the convicted person is likely to commit other crimes while on bail

1 and is therefore a danger to the community.

2 \* \* \*

3 G.(1) \* \* \*

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

9 \* \* \*

10 (c) This Paragraph applies based on the cumulative maximum sentences  
11 for all crimes for which a person was convicted, provided that any crime for  
12 which the person has been convicted is a sex offense or crime of violence as  
13 defined in this Paragraph.

14 (d) This Paragraph also applies to any person who has been charged as  
15 a habitual offender pursuant to R.S. 15:529.1.

16 \* \* \*

17 Art. 312.1. Revocation of bail upon subsequent felony arrest

18 A. If a defendant is admitted to bail for any crime of violence, any sex  
19 offense, or any crime involving the possession or use of a firearm, the bail for  
20 such offense shall be revoked upon any subsequent arrest for a felony offense  
21 that is not a part of the same transaction, occurrence, or criminal episode which  
22 resulted in the arrest that is the basis for the defendant's current admittance to  
23 bail.

24 B.(1) Prior to booking the defendant, the arresting agency shall conduct  
25 a prompt and diligent search to determine if the defendant is currently on bail  
26 for any crime of violence, any sex offense, or any crime involving the possession  
27 or use of a firearm.

28 (2) The arresting agency shall provide the court with the information  
29 described in Subparagraph (1) of this Paragraph, along with an updated  
30 criminal history with all other booking information, for the court to consider

1 when determining the defendant's entitlement to bail, the amount of bail, and  
2 conditions of bail.

3 C. If the court determines that the defendant is currently on bail for any  
4 crime of violence, any sex offense, or any crime involving the possession or use  
5 of a firearm, the bail for such offense shall be revoked upon any subsequent  
6 arrest for a felony offense that is not a part of the same transaction, occurrence,  
7 or criminal episode which resulted in the arrest that is the basis for the  
8 defendant's current admittance to bail. The court shall enter an order revoking  
9 such prior bail, pending a bail hearing which may be invoked by the state or the  
10 defendant. Either party may seek supervisory review of the granting or denial  
11 of any order that revokes the defendant's prior admittance to bail.

12 D. For the purposes of this Article, the following terms have the  
13 following meanings:

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

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

18 \* \* \*

19 Art. 315. Schedules of bail

20 \* \* \*

21 D. A bail schedule implemented by a district court shall fix the minimum  
22 bail amount for the following offenses, and any court that does not utilize a bail  
23 schedule shall not approve a bail undertaking that is less than the minimum  
24 amount specified for the following offenses:

25 (1) For possession of child sexual abuse materials, R.S. 14:81.1, fifty  
26 thousand dollars.

27 (2) For production of child sexual abuse materials, R.S. 14:81.1, one  
28 hundred thousand dollars.

29 Art. 316. Factors in fixing amount of bail

30 The amount of bail shall be fixed in an amount that will ensure the presence

1 of the defendant, as required, and the safety of any other person and the community,  
2 having regard to:

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

6 \* \* \*

7 (9) Whether a firearm or other dangerous weapon was possessed or used  
8 during the commission of the offense.

9 (10) Whether available resources exist within the jurisdiction to impose  
10 enforceable conditions that would help ensure the defendant's appearance and  
11 protect the community.

12 (11) The likelihood that the defendant, if released on bail, will continue  
13 to commit crimes resulting in harm to any person or the property of another.

14 ~~(9)~~(12) Any other circumstances affecting the probability of defendant's  
15 appearance.

16 ~~(10)~~(13) The type or form of bail.

17 \* \* \*

18 Art. 318. Juvenile records in fixing bail

19 A. For the purpose of fixing bail, a court may make a written request of any  
20 juvenile court for an abstract containing ~~only~~ the pending or adjudicated delinquent  
21 acts of a defendant currently before the requesting court. The ~~request shall be~~  
22 ~~promptly complied with; however,~~ juvenile court shall promptly comply with the  
23 request; however, not more than forty-eight hours, exclusive of Saturdays, Sundays,  
24 and legal holidays, shall lapse before the requested information is deposited ~~in the~~  
25 ~~mail,~~ by means of an email address provided in the written request addressed to  
26 the requesting court.

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

use of the juvenile abstract for the purposes of protecting the confidentiality of the abstract from any individual who is not involved in the relevant proceedings that concern the defendant who is currently before the requesting court.

Art. 319. Modifications of bail

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

\* \* \*

Art. 320. Conditions of bail undertaking

\* \* \*

J.(1) Crimes of violence. Notwithstanding the provisions of Paragraph G of this Article and notwithstanding any other provision of law to the contrary, if the defendant is alleged to have committed a crime of violence as defined in R.S. 14:2(B), the court shall require ~~as a condition~~ the following conditions of bail:

(a)(i) ~~that~~ That the defendant refrain from going to the residence or household of the victim, the victim's school, and the victim's place of employment or otherwise contacting the victim in any manner whatsoever, and shall refrain from having any further contact with the victim. The court shall also require as a condition of bail that the defendant be prohibited from communicating, by electronic communication, in writing, or orally, with a victim of the offense, or with any of the victim's immediate family members.

(ii) This condition does not apply if the victim consents by way of a request

1 to the court and the court issues an order permitting the communication. If an  
 2 immediate family member of the victim consents by way of a request to the court  
 3 and the court issues an order permitting the communication, then the defendant may  
 4 contact that person.

5 **(b) That the defendant, if equipped with a global positioning monitoring**  
 6 **system, comply with the appropriate geographic restrictions, monitoring**  
 7 **conditions, and enforcement provisions of R.S. 15:571.36, 571. 37, and 571.38.**

8 \* \* \*

\_\_\_\_\_  
 PRESIDENT OF THE SENATE

\_\_\_\_\_  
 SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
 GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_