

2020 Regular Session

SENATE BILL NO. 326

BY SENATOR BARROW

CRIMINAL PROCEDURE. Provides relative to criminal procedure. (8/1/20)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

AN ACT

To amend and reenact Code of Criminal Procedure Article 875.1(A) and 887(A), to enact Code of Criminal Procedure Article 202(H) and 211(E), and to repeal Code of Criminal Procedure Article 875.1(G), relative to criminal procedure; to provide relative to warrants of arrest; to provide relative to summons issued by a law enforcement officer in lieu of arrest; to provide relative to determinations of financial hardship by the court; to provide relative to costs and fees; to provide relative to requirements for a summons in lieu of arrest for certain offenses; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Article 875.1(A) and 887(A) are hereby amended and reenacted and Code of Criminal Procedure Article 202(H) and 211(E) are hereby enacted to read as follows:

Art. 202. Warrant of arrest; issuance

* * *

H.(1) A magistrate may not issue an arrest warrant for the defendant's failure to appear at the initial court setting unless:

1 (a) The magistrate provides by telephone or regular mail to the
2 defendant notice that includes:

3 (i) A date and time, occurring within the thirty-day period following the
4 date that notice is provided, when the defendant must appear before the justice
5 or judge.

6 (ii) The name and address of the court with jurisdiction in the case.

7 (iii) Information regarding alternatives to the full payment of any fine
8 or costs owed by the defendant, if the defendant is unable to pay that amount.

9 (iv) An explanation of the consequences if the defendant fails to appear
10 before the magistrate as required by this article.

11 (b) The defendant fails to appear before the court as required by this
12 Article.

13 (2)(a) A defendant who receives notice under Subparagraph (1) of this
14 Paragraph may request an alternative date or time to appear before the court
15 if he is unable to appear on the date and time included in the notice.

16 (b) A magistrate shall recall an arrest warrant for the defendant's failure
17 to appear if the defendant voluntarily appears and makes a good faith effort to
18 resolve the arrest warrant before the warrant is executed.

19 * * *

20 Art. 211. Summons by officer instead of arrest and booking

21 * * *

22 E. Any summons issued pursuant to this Article, in addition to any other
23 requirements contained in this Title or other provision of law, shall contain
24 information regarding the alternatives to the full payment of any fine or costs
25 assessed against the person, if the person is convicted of the offense and is
26 unable to pay the fine or costs.

27 * * *

28 Art. 875.1. Determination of substantial financial hardship to the defendant

29 A.(1) The purpose of imposing financial obligations on an offender who is

1 convicted of a criminal offense is to hold the offender accountable for his action, to
 2 compensate victims for any actual pecuniary loss or costs incurred in connection
 3 with a criminal prosecution, to defray the cost of court operations, and to provide
 4 services to offenders and victims. These financial obligations should not create a
 5 barrier to the offender's successful rehabilitation and reentry into society. Financial
 6 obligations in excess of what an offender can reasonably pay undermine the primary
 7 purpose of the justice system which is to deter criminal behavior and encourage
 8 compliance with the law. Financial obligations that cause undue hardship on the
 9 offender should be waived, modified, or forgiven. Creating a payment plan for the
 10 offender that is based upon the ability to pay, results in financial obligations that the
 11 offender is able to comply with and often results in more money collected. Offenders
 12 who are consistent in their payments and in good faith try to fulfill their financial
 13 obligations should be rewarded for their efforts.

14 **(2) Notwithstanding any other provision of this Article or other law to**
 15 **the contrary, during or immediately after imposing a sentence in a case in which**
 16 **the defendant entered a plea in open court, the court shall inquire whether the**
 17 **defendant has sufficient resources or income to immediately pay all or part of**
 18 **the fine and costs. If the court determines that the defendant does not have**
 19 **sufficient resources or income to immediately pay all or part of the fine and**
 20 **costs, the court shall determine whether the fine and costs should be:**

21 **(a) Required to be paid at some later date or in a specified portion at**
 22 **designated intervals.**

23 **(b) Discharged by performing community service under any applicable**
 24 **provision of law.**

25 **(c) Waived in full or in part.**

26 **(d) Satisfied through any combination of methods under this**
 27 **Subparagraph.**

28 * * *

29 Art. 887. Defendant's liability for costs; suspension of costs; no advance costs

1 Section 2. Code of Criminal Procedure Article 875.1(G) is hereby repealed in its
2 entirety.

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

DIGEST

SB 326 Original

2020 Regular Session

Barrow

Present law provides that a warrant of arrest may be issued by any magistrate pursuant to present law, except where a summons is issued under present law, under certain circumstances.

Proposed law retains present law and adds that a magistrate may not issue an arrest warrant for the defendant's failure to appear at the initial court setting unless:

- (1) The magistrate provides by telephone or regular mail to the defendant notice that includes:
 - (a) A date and time, occurring within the 30-day period following the date that notice is provided, when the defendant must appear before the justice or judge.
 - (b) The name and address of the court with jurisdiction in the case.
 - (c) Information regarding alternatives to the full payment of any fine or costs owed by the defendant, if the defendant is unable to pay that amount.
 - (d) An explanation of the consequences if the defendant fails to appear before the magistrate as required.
- (2) The defendant fails to appear before the court as required.

Proposed law provides that a defendant who receives notice under proposed law may request an alternative date or time to appear before the court if he is unable to appear on the date and time included in the notice.

Proposed law provides that a magistrate must recall an arrest warrant for the defendant's failure to appear if the defendant voluntarily appears and makes a good faith effort to resolve the arrest warrant before the warrant is executed.

Present law provides that when it is lawful for a peace officer to arrest a person without a warrant for a misdemeanor, or for a felony charge of theft or illegal possession of stolen things when the thing of value is between \$500 and \$1,000, the officer may issue a written summons instead of making an arrest under certain circumstances.

Proposed law retains present law and adds that, in addition to any requirements contained in present law, the summons must contain information regarding the alternatives to the full payment of any fine or costs assessed against the person, if the person is convicted of the offense and is unable to pay the fine or costs.

Present law provides relative to the court's determination of substantial financial hardship to the defendant. Present law further provides that financial obligations should not create a barrier to the offender's successful rehabilitation and reentry into society, and that financial obligations in excess of what an offender can reasonably pay undermine the primary purpose of the justice system which is to deter criminal behavior and encourage compliance with the

law. Present law further provides that financial obligations that cause undue hardship on the offender should be waived, modified, or forgiven.

Proposed law retains present law and adds that, notwithstanding any other provision of present law to the contrary, during or immediately after imposing a sentence in a case in which the defendant entered a plea in open court, the court is to inquire whether the defendant has sufficient resources or income to immediately pay all or part of the fine and costs. Proposed law further provides that if the court determines that the defendant does not have sufficient resources or income to immediately pay all or part of the fine and costs, the court is to determine whether the fine and costs should be:

- (1) Required to be paid at some later date or in a specified portion at designated intervals.
- (2) Discharged by performing community service under any applicable provision of present law.
- (3) Waived in full or in part.
- (4) Satisfied through any combination of methods provided for in items (1) through (3) above.

Present law provides that present law provisions relative to financial hardship determinations applies only to defendants convicted of offenses classified as felonies.

Proposed law deletes present law.

Present law provides that a defendant who is convicted of an offense or owes a duty of support in a support proceeding is liable for all costs of the prosecution or proceeding, whether or not costs are assessed by the court, and such costs are recoverable by the party or parties who incurred the expense. Present law further provides that such defendant or person is not liable for costs if acquitted or if the prosecution or proceeding is dismissed. Present law further provides that any judge of a district court, parish court, city court, traffic court, juvenile court, family court, or magistrate of a mayor's court within the state is authorized to suspend court costs.

Proposed law retains present law and adds that a defendant charged with a misdemeanor for which the maximum possible punishment is a fine may, in lieu of any other method provided by present law, mail or deliver in person to the court a plea of "guilty" or a plea of "nolo contendere" and a waiver of jury trial if otherwise so entitled. Proposed law further provides that the defendant may also request in writing that the court notify the defendant of the amount of any appeal bond that the court will approve. Proposed law further provides that if the court receives a plea and waiver before the time the defendant is scheduled to appear in court, the court is to dispose of the case without requiring a court appearance by the defendant. Proposed law further provides that if the court receives a plea and waiver after the time the defendant is scheduled to appear in court but at least five business days before a scheduled trial date, the court is to dispose of the case without requiring a court appearance by the defendant. Proposed law further provides that the court is to notify the defendant either in person or by regular mail of the amount of any fine or costs assessed in the case, information regarding the alternatives to the full payment of any fine or costs assessed against the defendant (if the defendant is unable to pay that amount), and, if requested by the defendant, the amount of an appeal bond that the court will approve. Proposed law further provides that, except as otherwise provided by present law, the defendant must pay any fine or court costs assessed or give an appeal bond in the amount stated in the notice before the 31st day after receiving the notice.

Effective August 1, 2020.

(Amends C.Cr.P. Art. 875.1(A) and 887(A); adds C.Cr.P. Art. 202(H) and 211(E); repeals C.Cr.P. Art. 875.1(G))