

2021 Regular Session

HOUSE BILL NO. 303

BY REPRESENTATIVE LYONS

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

BAIL: Provides relative to constructive surrender and non-warrant surrender

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Article 311(3) through (7) and to enact
3 Code of Criminal Procedure Article 311(8), relative to bail; to provide relative to the
4 detention of the defendant; to provide relative to constrictive surrender; to provide
5 for non-warrant affidavit or request for warrant; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Code of Criminal Procedure Article 311(3) through (7) is hereby amended
8 and reenacted and Code of Criminal Procedure Article 311(8) is hereby enacted to read as
9 follows:

10 Art. 311. Definitions

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

12 * * *

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

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

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

3 (b) The surety has provided proof of the defendant's current incarceration to
4 the court in which the bail obligation is in place, to the prosecuting attorney, and to
5 the ~~officer~~ agency originally charged with the defendant's detention.

6 (c) The surety ~~has paid to the officer the reasonable costs of returning the~~
7 ~~defendant to the jurisdiction where the warrant for arrest was issued.~~ satisfies
8 payment of reasonable or actual extradition costs by one of the following conditions:

9 (i) When proof of the defendant's current incarceration has been submitted
10 to the agency originally charged with the defendant's detention, the agency shall pay
11 reasonable costs of returning the defendant to the jurisdiction where the warrant for
12 arrest was issued to the surety. Once the agency originally charged with the
13 defendant's detention has been paid by the surety for reasonable costs of returning
14 the defendant to the jurisdiction where the warrant for arrest was issued, the surety
15 shall provide proof of payment to the court and to the prosecuting attorney.

16 (ii) In cases where the reasonable costs of returning the defendant to the
17 jurisdiction where the warrant for arrest was issued are not immediately known, the
18 agency originally charged with the defendant's detention shall pay the surety within
19 ten business days for the reasonable costs of returning the defendant to the
20 jurisdiction where the warrant for arrest was issued. The agency originally charged
21 with the defendant's detention shall provide the surety with a receipt indicating the
22 date that the surety provided the agency with proof of the defendant's current
23 incarceration, and the agency shall agree to pay the surety within ten business days
24 for reasonable costs of returning the defendant to the jurisdiction where the warrant
25 for arrest was issued. Once the agency originally charged with the defendant's
26 detention has been paid by the surety for reasonable costs of returning the defendant
27 to the jurisdiction where the warrant for arrest was issued, the surety shall provide
28 proof of payment to the court and to the prosecuting attorney.

1 (iii) In cases where the agency originally charged with the defendant's
2 detention shall provide notice to the surety of the actual cost of extradition within ten
3 business days of the defendant's return, the surety shall pay the agency within ten
4 business days of notice of actual costs. Failure of the surety to tender actual costs
5 to the agency within thirty days shall prohibit the agent from executing commercial
6 bail within the jurisdiction until costs have been paid.

7 (5)(a) A non-warrant affidavit or request for warrant occurs when the
8 defendant is found incarcerated in a foreign jurisdiction and a warrant has not been
9 issued by the court or the court's designee where the charges are pending. In such
10 instances, the surety may file an ex parte motion with the court requesting a warrant
11 be issued when the following conditions have been met:

12 (i) The surety files proof of the defendant's breach of the conditions of bail.
13 Evidence of incarceration outside the state of Louisiana shall be proof of the
14 defendant's breach.

15 (ii) The defendant did not have permission from the court to leave the state
16 of Louisiana.

17 (b) The court may, in its discretion, issue a warrant for the defendant's
18 violation of the conditions of the bail obligation.

19 (c) The surety may then file the constructive surrender in accordance with
20 Articles 311 and 331.

21 (d) If the court fails to issue a warrant and the surety proves that the
22 defendant violated the conditions of the bail undertaking, the surety shall be relieved
23 of the bail undertaking.

24 (6) A personal surety is a natural person domiciled in the state of Louisiana
25 who owns property in this state that is subject to seizure and is of sufficient value to
26 satisfy, considering all his property, the amount specified in the bail undertaking.
27 The value of the property shall exclude the amount exempt from execution, and shall
28 be over and above all other liabilities including the amount of any other bail
29 undertaking on which he may be principal or surety. If there is more than one

1 personal surety, then the requirements shall apply to the aggregate value of their
2 property. A personal surety shall not charge a fee or receive any compensation for
3 posting a bail undertaking. A bail undertaking of a personal surety may be
4 unsecured or secured.

5 ~~(6)~~(7) Bail enforcement is the apprehension or surrender by a natural person
6 of a principal who is released on bail or who has failed to appear at any stage of the
7 proceedings to answer the charge before the court in which the principal may be
8 prosecuted.

9 ~~(7)~~(8) A bail enforcement agent is a licensed bail agent who engages in the
10 apprehension or surrender by a natural person of a principal who is released on bail
11 or who has failed to appear at any stage of the proceedings to answer the charge
12 before the court in which the principal may be prosecuted.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 303 Original

2021 Regular Session

Lyons

Abstract: Provides relative to the conditions by which the surety satisfies payment of extradition costs, and provides relative to a non-warrant affidavit or request.

Present law provides that the detention of the defendant is at the request of the surety by the officer originally charged with his detention on the original commitment.

Present law further provides that when the surety has requested the surrender of the defendant, the officer shall acknowledge the surrender by a certificate.

Present law defines constructive surrender and provides the circumstances under which constructive surrender occurs are as follows:

- (1) A warrant for arrest has been issued for the defendant in the jurisdiction in which the bail obligation is in place.
- (2) The surety has provided proof of the defendant's current incarceration to the court in which the bail obligation is in place, to the prosecuting attorney, and to the officer originally charged with the defendant's detention.
- (3) The surety has paid to the officer the reasonable costs of returning the defendant to the jurisdiction where the warrant for arrest was issued.

Proposed law amends present law to provide that the request of the detention of the defendant and acknowledgment of the surrender by certificate are to be made by the agency instead of the officer.

Proposed law changes the present law (C.Cr.P. Art. 311(4)(c)) circumstance by which constructive surrender would occur from when the surety has paid to the officer the reasonable costs of returning the defendant to the jurisdiction where the warrant for arrest was issued to when the surety satisfies payment of reasonable or actual extradition costs by one of the following conditions:

- (1) When proof of the defendant's current incarceration has been submitted to the agency originally charged with the defendant's detention.
- (2) In cases where the reasonable costs of returning the defendant to the jurisdiction where the warrant for arrest was issued are not immediately known.
- (3) In cases where the agency originally charged with the defendant's detention shall provide notice to the surety of the actual cost of extradition within ten business days of the defendant's return.

Proposed law provides for circumstances under which non-warrant affidavit or request would occur, and provides for the conditions by which the surety can file an ex parte motion to request a warrant.

(Amends C.Cr.P. Art. 311(3)-(7); Adds C.Cr.P. Art. 311(8))