

Regular Session, 2011

HOUSE BILL NO. 216

BY REPRESENTATIVE ROY AND SENATOR PERRY

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

CRIMINAL/PROCEDURE: Amends provisions of law regarding probable cause determinations

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Article 230.2(B), relative to probable
3 cause determinations; to provide with respect to release of certain defendants in the
4 absence of a probable cause hearing; to provide for a contradictory hearing to set
5 bail; to provide for the release of defendants in certain circumstances; and to provide
6 for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Code of Criminal Procedure Article 230.2(B) is hereby amended and
9 reenacted to read as follows:

10 Art. 230.2. Probable cause determinations; persons arrested without a warrant and
11 continued in custody; bail

12 * * *

13 B.(1) If a probable cause determination is not timely made in accordance
14 with the provisions of Paragraph A of this Article, ~~the arrested person shall be~~
15 ~~released on his own recognizance.~~ the court, on the request of the state or the
16 defendant, shall immediately order a contradictory hearing for the setting of bail.
17 Failure to commence a bail hearing within forty-eight hours of service of the request
18 for hearing on the opposing party shall result in the release of the defendant on an
19 unsecured personal surety bond as defined in Article 316. A defendant shall not be
20 entitled to a bail hearing pursuant to this Article if a magistrate has made a probable

1 cause determination prior to the hearing. If a magistrate finds probable cause at the
2 hearing, the defendant shall be admitted to bail according to law.

3 (2) Nothing in this Paragraph shall prohibit a court, on its own motion, or on
4 motion of the state or defendant, from increasing or reducing the amount of bail, or
5 requiring new or additional security, at any stage of the proceedings against the
6 defendant, upon a subsequent finding of probable cause for the defendant's initial
7 warrantless arrest, or as provided in Article 342, nor shall anything in this Paragraph
8 preclude the defendant's rearrest and resetting of bond for the same offense or
9 offenses upon the issuance of an arrest warrant based upon a finding of probable
10 cause by a magistrate.

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)]

Roy

HB No. 216

Abstract: Provides procedures for the setting of bail for defendants who are arrested without a warrant and are held without a probable cause hearing.

Present law provides that persons continued or remaining in custody pursuant to an arrest made without a warrant shall be entitled to a determination of probable cause within 48 hours of arrest.

Proposed law retains present law.

Present law provides that the failure to conduct the hearing results in release of the defendant on his own recognizance.

Proposed law changes present law to provide that if the 48-hour hearing is not conducted, the court, on the request of the state or the defendant, shall immediately order a contradictory hearing for the setting of bail. Failure to commence a bail hearing within 48 hours of service of the request for hearing on the opposing party shall result in the release of the defendant on an unsecured personal surety bond.

Proposed law further provides that a defendant shall not be entitled to a bail hearing if a magistrate has made a probable cause determination prior to the hearing. If a magistrate finds probable cause at the hearing, the defendant shall be admitted to bail pursuant to present law.

Proposed law shall not preclude the setting of bail by the court or preclude the defendant's rearrest and resetting of bond for the same offense or offenses upon the issuance of an arrest warrant based upon a finding of probable cause by a magistrate.

(Amends C.Cr.P. Art. 230.2(B))