Regular Session, 2011

HOUSE BILL NO. 272

BY REPRESENTATIVES BISHOP, ARNOLD, AUSTIN BADON, BROSSETT, HENDERSON, LEGER, AND STIAES AND SENATOR MORRELL

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

CRIMINAL/ARRESTS: Provides for the issuance of a written summons in lieu of arrest for certain crimes

AN ACT

To amend and reenact Code of Criminal Procedure Articles 211, 211.1, and 211.2 and to repeal Code of Criminal Procedure Articles 211.3, 211.4, 211.5, and 211.6, relative to arrest; to provide relative to the issuance of a written summons in lieu of arrest for certain crimes; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Articles 211, 211.1, and 211.2 are hereby amended and reenacted to read as follows:

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

A.(1) 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 ~~three~~ five hundred dollars or more but less than ~~five hundred~~ one thousand dollars, he ~~may give~~ may issue a written summons instead of making an arrest if all of the following exist:

~~(1)~~(a) The officer has reasonable grounds to believe that the person will appear upon summons~~;~~.

~~(2)~~(b) The officer has no reasonable grounds to believe that the person will cause injury to himself or another or damage to property or will continue in the same or a similar offense unless immediately arrested and booked~~;~~.

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~~(3)~~(c) There is no necessity to book the person to comply with routine identification procedures.

~~(4)~~(d) If an officer issues a summons for a felony described in this Paragraph, the officer issuing the summons ~~shall ascertain~~ has ascertained that the person has no prior criminal convictions.

~~B.~~(2) In any case in which a summons has been issued, a warrant of arrest may later be issued in its place.

B.(1) When a peace officer has reasonable grounds to believe a person has committed the offense of issuing worthless checks as defined by R.S. 14:71, he may issue a written summons instead of making an arrest if all of the following exist:

(a) He has reasonable grounds to believe that the person will appear upon summons.

(b) He has no reasonable grounds to believe that the person will cause injury to himself or another or damage to property unless immediately arrested.

(2) In any case in which a summons has been issued, a warrant of arrest may later be issued in its place.

C.(1) When a peace officer has reasonable grounds to believe a person has committed an offense of littering in violation of the provisions of R.S. 30:2531 through 2531.3, he shall issue a written citation or summons to the offender in accordance with law, commanding him to appear and answer the charge.

(2) For the purposes of this Section, reasonable belief may be based upon an affidavit completed on a form provided by any sheriff or the chief of police of the city of New Orleans for such purpose, containing the sworn statement of any Louisiana citizen of the age of majority, deposing that the citizen witnessed an act of littering, and particularly describing the offender and any vehicle or watercraft involved. Any form provided by a sheriff or the chief shall be pre-addressed and returnable to such sheriff or chief of police.

D.(1) When a peace officer has reasonable grounds to believe a person has committed an offense of driving without a valid driver's license in his possession, the

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officer shall make every practical attempt based on identifying information provided by the person to confirm that the person has been issued a valid driver's license. If the officer determines that the person has been issued a valid driver's license which is not under revocation, suspension, or cancellation, but that the license is not in his possession, the officer shall issue a written summons to the offender in accordance with law, commanding him to appear and answer the charge.

(2) The provisions of this Article shall in no way limit a peace officer from issuing a citation for operating a motor vehicle without physical possession of a valid driver's license.

Art. 211.1. ~~Criminal trespass; summons by officer instead of arrest~~ Persons with outstanding warrant; arrest or release of person

~~When a peace officer has reasonable grounds to believe a person has committed criminal trespass as defined by Section 63 of Title 14 of the Louisiana Revised Statutes of 1950, he shall give a written summons instead of making an arrest if:~~

~~(1) He has reasonable grounds to believe that the person will appear upon summons, and~~

~~(2) He has no reasonable grounds to believe that the person will cause injury to himself or another or damage to property unless immediately arrested.~~

~~In any case in which a summons has been issued, a warrant of arrest may later be issued in its place.~~

A. Notwithstanding the provisions of Article 203, or any other provision of law to the contrary, when a peace officer stops a person who has an outstanding warrant or an attachment for failing to comply with a summons to appear in court on a misdemeanor offense, including a traffic offense, the officer in his discretion, may issue a summons based on such warrant or attachment in lieu of making an arrest if the warrant or attachment is issued in the jurisdiction where the detention occurs, or release the person or arrest the person pursuant to the provisions of Article 207, if

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the warrant or attachment was issued outside the jurisdiction where the detention occurs.

B. Any summons issued pursuant to this Article shall be in writing and shall be issued and signed by a magistrate or a peace officer in the name of the state. It shall state the offense charged and the name of the alleged offender, and shall command him to appear before the court designated in the summons at the time and place stated in the summons and to show proof that the obligation of the outstanding warrant has been fulfilled. A duplicate original of the summons shall be forwarded by the peace officer or a designee of the officer's employing agency to the court that issued the initial warrant within seventy-two hours, excluding weekends, of the issuance of the summons.

C. The provisions of this Article shall not apply to any of the following circumstances:

(1) When the information available to the officer indicates that the warrant or attachment was issued for any of the following offenses:

(a) Any offense involving the operation of a vehicle while intoxicated.

(b) Any offense involving the use or possession of a weapon.

(c) Any offense involving the use of force or violence, except the crime of simple battery unless the warrant or attachment indicates that the battery was prosecuted as a domestic abuse battery as defined in R.S. 14:35.3.

(d) Any offense or bench warrant issued involving the failure to pay a legal child support obligation.

(2) When the offender has an outstanding felony warrant.

D. In addition to any other legal remedies provided by law, any officer of the court may seek the collection of past due court costs, fines, or fees associated with the judicial system from state or federal tax refunds by sending notice to the federal secretary of the treasury or to the state treasurer that a person owes past due court costs, fines, or fees associated with the judicial system. The officer of the court shall comply with all rules and regulations imposed by the federal secretary of the treasury

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or the state treasurer including payment of any fee assessed by the secretary of the treasury or the state treasurer for the cost of applying the offset procedure.

Art. 211.2. ~~Issuing worthless checks; summons by peace officer instead of arrest~~

Contempt; attachment of arrest for failing to appear; summons by peace officer instead of arrest

~~A. When a peace officer has reasonable grounds to believe a person has committed the offense of issuing worthless checks as defined by R.S. 14:71, he may give a written summons instead of making an arrest if:~~

~~(1) He has reasonable grounds to believe that the person will appear upon summons, and~~

~~(2) He has no reasonable grounds to believe that the person will cause injury to himself or another or damage to property unless immediately arrested.~~

~~B. In any case in which a summons has been issued, a warrant of arrest may later be issued in its place.~~

A. Notwithstanding any other provision of law to the contrary, in Orleans Parish, when a peace officer serving a subpoena, summons, or notice to appear in court for a misdemeanor traffic offense or a nonviolent offense, except for possession of illegal weapons and driving under the influence, has reasonable grounds to believe that the conduct of an offender constitutes a direct contempt of court because the offender contumaciously fails to comply with such subpoena, summons, or notice to appear in court, and proof of service of the subpoena, summons, or notice appears of record, then either the court may order the offender attached and brought to court or the peace officer may issue a written citation or summons to the offender commanding him to appear and answer the direct contempt charge.

B. If an order of attachment is issued, it may be executed in any parish by the sheriff of the parish from which the attachment was issued, or by the sheriff of the parish where the offender is found.

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Section 2. Code of Criminal Procedure Articles 211.3, 211.4, 211.5, and 211.6 are hereby repealed in their entirety.

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)]

Bishop HB No. 272

Abstract: Provides for circumstances in which a peace officer is required to, or is authorized to, issue a written summons in lieu of arrest.

Present law provides for the following with regard to the issuance of a written summons or citation in lieu of arrest:

(1) An officer may issue a written summons in lieu of arrest for a misdemeanor or for a felony charge of theft or illegal possession of stolen things when the thing of value is $300 or more but less than $500.

(2) An officer shall issue a written summons in lieu of arrest when the officer has reasonable grounds to believe a person has committed criminal trespass.

(3) An officer may issue a written summons in lieu of arrest when the officer has reasonable grounds to believe a person has committed the offense of issuing worthless checks.

(4) An officer shall issue a citation or written summons in lieu of arrest when the officer has reasonable grounds to believe a person has committed an offense of littering.

(5) An officer shall issue a written summons in lieu of arrest when the officer has reasonable grounds to believe a person has committed an offense of driving without a valid driver's license in his possession and the officer has made every practical attempt to confirm the person has been issued a valid driver's license which is neither under revocation, suspension, or cancellation.

(6) When a peace officer stops a person who has an outstanding warrant or an attachment for failing to comply with a summons to appear in court on a misdemeanor offense, including a traffic offense, the officer in his discretion, may issue a summons based on such warrant or attachment in lieu of making an arrest if the warrant or attachment is issued in the jurisdiction where the detention occurs. If the warrant or attachment was issued outside the jurisdiction where the detention occurs, the officer may release or arrest the person.

(7) In Orleans Parish, when a peace officer serving a subpoena, summons, or notice to appear in court for certain traffic or nonviolent offenses has reasonable grounds to believe that the conduct of an offender constitutes a direct contempt of court because the offender contumaciously fails to comply with such subpoena, summons, or notice to appear in court, and proof of service of the subpoena, summons, or notice appears of record, then either the court may order the offender attached and brought to court or the peace officer may issue a written citation or summons to the offender commanding him to appear and answer the direct contempt charge.

Proposed law changes present law to provide that an officer may issue a written summons in lieu of arrest for a misdemeanor or for a felony charge of theft or illegal possession of

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stolen things when the thing of value is $500 or more but less than $1,000. In all other respects, proposed law retains present law.

(Amends C.Cr.P. Arts. 211, 211.1, and 211.2; Repeals C.Cr.P. Arts. 211.3, 211.4, 211.5, and 211.6)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill.

1. For a misdemeanor or felony charge of theft or illegal possession of stolen things when the thing of value is $500 to $1000, changed provision regarding the issuance of a written summons in lieu of arrest from a mandatory requirement to a permissive authorization.

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