

2023 Regular Session

HOUSE BILL NO. 109

BY REPRESENTATIVE WILFORD CARTER

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

BAIL: Provides relative to factors in fixing the amount of bail and modifications of bail

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Articles 316(9) and (10) and 319(A) and  
3 to enact Code of Criminal Procedure Article 316(11), relative to bail; to provide  
4 relative to factors in fixing the amount of bail; to provide that the amount of bail  
5 shall be fixed in an amount having regard to the presumption of innocence until the  
6 defendant is proven guilty; to provide relative to modifications of bail; to provide  
7 relative to motions filed to reduce the amount of bail; and to provide for related  
8 matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Code of Criminal Procedure Articles 316(9) and (10) and 319(A) are  
11 hereby amended and reenacted and Code of Criminal Procedure Article 316(11) is hereby  
12 enacted to read as follows:

13 Art. 316. Factors in fixing amount of bail

14 The amount of bail shall be fixed in an amount that will ensure the presence  
15 of the defendant, as required, and the safety of any other person and the community,  
16 having regard to:

17 \* \* \*

18 (9) The presumption of innocence until the defendant is proven guilty.

19 ~~(9)~~ (10) Any other circumstances affecting the probability of the defendant's  
20 appearance.

1                    ~~(10)~~ (11) The type or form of bail.

2     \*           \*           \*

3                    Art. 319. Modifications of bail

4     A.(1) The court having trial jurisdiction over the offense charged, on its own  
5                    motion or on motion of the prosecuting attorney or defendant, for good cause, may  
6                    either increase or reduce the amount of bail, or require new or additional security.

7                    For purposes of this Article, good cause for increase of bail specifically includes but  
8                    is not limited to the rearrest of the defendant on offenses alleged to have been  
9                    committed while out on a bail undertaking. The modification of any bail order  
10                   wherein a bail undertaking has been posted by a criminal defendant and his sureties  
11                   shall upon the modification terminate the liability of the defendant and his sureties  
12                   under the previously existing bail undertaking. A new bail undertaking must be  
13                   posted in the amount of the new bail order.

14     (2) When a written motion to reduce the amount of bail is filed, the motion  
15     shall be heard no later than forty-five days after the motion is filed and served upon  
16     the opposing counsel or party, if unrepresented, unless good cause is shown by the  
17     state or the court. The court shall not be required to set a motion to modify bail for  
18     a contradictory hearing unless the motion alleges facts that, if proved, would warrant  
19     a modification of the existing bail amount or conditions.

20     \*           \*           \*

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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)]

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HB 109 Engrossed

2023 Regular Session

Wilford Carter

**Abstract:** Provides that consideration shall be given to the presumption of innocence until the defendant is proven guilty when setting the amount of bail, and provides relative to the filing of motions to reduce the amount of bail.

Present law (C.Cr.P. Art. 316) requires bail to be fixed in an amount that will ensure the presence of the defendant, as required, and the safety of any other person and the community, having regard to:

- (1) The seriousness of the offense charged, including but not limited to whether the offense is a crime of violence or involves a controlled dangerous substance.
- (2) The weight of the evidence against the defendant.
- (3) The previous criminal record of the defendant.
- (4) The ability of the defendant to give bail.
- (5) The nature and seriousness of the danger to any other person or the community that would be posed by the defendant's release.
- (6) The defendant's voluntary participation in a pretrial drug testing program.
- (7) The absence or presence in the defendant of any controlled dangerous substance.
- (8) Whether the defendant is currently out on a bail undertaking on a previous felony arrest for which he is awaiting institution of prosecution, arraignment, trial, or sentencing.
- (9) Any other circumstances affecting the probability of the defendant's appearance.
- (10) The type or form of bail.

Proposed law retains present law and adds that consideration shall be given to the presumption of innocence until the defendant is proven guilty.

Present law (C.Cr.P. Art. 319(A)) relative to modifications of bail, authorizes 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, to either increase or reduce the amount of bail, or require new or additional security.

Proposed law retains present law and provides that when a written motion to reduce the amount of bail is filed, the motion is required to be heard no later than 45 days after the motion is filed and served upon the opposing counsel or party, if unrepresented, unless good cause is shown by the state or the court. Further provides that the court is not required to set a motion to modify bail for a contradictory hearing unless the motion alleges facts that, if proved, would warrant a modification of the existing bail amount or conditions.

(Amends C.Cr.P. Arts. 316(9) and (10) and 319(A); Adds C.Cr.P. Art. 316(11))

#### Summary of Amendments Adopted by House

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

1. Relative to motions filed to reduce the amount of bail, provide that the motions are written.
2. Change the time period for which a motion to reduce the amount of bail is required to be filed from 30 days to 45 days.
3. Require the motion to be served upon the opposing counsel or party, if unrepresented.
4. Provide that the court is not required to set a motion to modify unless the motion alleges facts that would warrant a modification of the existing bail amount or conditions.