

Regular Session, 2013

HOUSE BILL NO. 367

BY REPRESENTATIVE ADAMS

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

CRIMINAL/SENTENCING: Provides relative to pretrial release

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Articles 334.1, 334.2, 334.4, and 335 and
3 to enact Code of Criminal Procedure Articles 350 and 350.1 and R.S. 44:4(48),
4 relative to the release of a defendant prior to trial; to amend provisions relative to the
5 release of certain defendants prior to trial; to authorize the establishment of local
6 pretrial services programs; to provide a list of services which may be offered by an
7 established pretrial services program; to authorize a pretrial services program to have
8 a pretrial services specialist; to provide for the list of services a pretrial services
9 specialist may provide; to provide relative to the confidentiality of pretrial services
10 information; to provide limited exceptions to the confidentiality of pretrial services
11 information; to provide for definitions; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. Code of Criminal Procedure Articles 334.1, 334.2, 334.4, and 335 are
14 hereby amended and reenacted and Code of Criminal Procedure Articles 350 and 350.1 are
15 hereby enacted to read as follows:

16 Art. 334.1. Felony involving firearm; bail

17 ~~The court shall not release~~ There shall be a rebuttable presumption that any
18 defendant who has been arrested for a felony offense, an element of which is the
19 discharge, use, or possession of a firearm, shall not be released on his personal
20 undertaking without security or with an unsecured personal surety. This presumption

1 (10) R.S. 14:102.8 (injuring or killing of a police animal).

2 (11) The production, manufacturing, distribution, or dispensing or the
3 possession with the intent to produce, manufacture, distribute or dispense a
4 controlled dangerous substance in violation of R.S. 40:966(B), 967(B), 968(B),
5 969(B), or 970(B) of the Uniform Controlled Dangerous Substances Law.

6 B. The presumption provided for in Paragraph A of this Article may be
7 overcome if the judge determines, after a hearing in open court, that a review of the
8 relevant factors warrants this form of pretrial release.

9 * * *

10 Art. 335. Other conditions related to the appearance of defendant

11 The court may impose any additional condition of release that is reasonably
12 related to assuring the appearance of the defendant before the court or the risk posed
13 by the defendant to another individual or the community, including being placed
14 under the supervision of a pretrial services program as defined by Title VIII-A of this
15 Code. Violation of such condition by the defendant shall be considered as a
16 constructive contempt of court, and shall be grounds for revocation of bail, but does
17 not give rise to a forfeiture.

18 * * *

19 VIII-A. PRETRIAL SERVICES

20 Art. 350. Pretrial services programs

21 A. It is the intent of the Louisiana Legislature to provide more effective
22 protection of the public and more efficient administration of the criminal justice
23 system by establishing pretrial services programs in Louisiana to assist the court in
24 making determinations of whether to detain or release a defendant prior to trial, as
25 well as information helpful to the court in setting appropriate bonds, determining
26 conditions of release, and ordering preventive detention. As a cost-saving alternative
27 to traditional approaches to pretrial detention, these pretrial services programs are
28 intended to provide more complete information to the courts for their use in
29 assessing the defendant's risk of re-offending and the risk of the defendant's failure

1 to appear in court. Furthermore, these pretrial services programs will help to provide
2 the necessary services to support and encourage the defendant's return to court for
3 subsequent hearings, as well as help to ensure public safety during the pretrial period
4 by providing supervision services.

5 B.(1) A pretrial services program, which shall have the authority to provide
6 any of the core services provided for in Subparagraph (2) of this Paragraph, may be
7 established in any locality. The entity which establishes the pretrial services
8 program shall specify and define the jurisdiction of the program and the pretrial
9 services that will be provided.

10 (2) Subject to the availability of resources in the locality, each pretrial
11 services program is hereby authorized to, and may provide, any of the following core
12 services:

13 (a) Gather and verify information about any person who is arrested and who
14 is detained in a jail located within the jurisdiction served by the program and provide
15 the information to the court to help in making decisions regarding the release or
16 detention of the defendant or in considerations of bail. This information may be
17 gathered through defendant interviews and investigations which may take place at
18 the defendant's initial appearance or at any point thereafter.

19 (b) Determine whether the defendant is an active member or a veteran of the
20 United States Armed Forces. If the defendant is an active member or a veteran of
21 the United States Armed Forces, the pretrial services program may consult with the
22 United States Department of Veterans Affairs, the Louisiana Department of Veterans
23 Affairs, or any other agency or person with suitable knowledge or experience, for the
24 purpose of providing the defendant with information regarding services for which
25 the defendant may be qualified as an active member or veteran of the armed forces,
26 including federal, state, and local programming, and may assist the defendant in
27 obtaining such services.

1 (c) Obtain, review, and present to the court a summary of the criminal
2 history of the defendant obtained pursuant to federal and state laws regarding access
3 to and dissemination of such records.

4 (d) Prepare and present to the court a pretrial investigation report, with or
5 without recommendations, to assist the court in discharging its duties relative to
6 decisions regarding pretrial release.

7 (e) Supervise and assist all defendants within the pretrial services program
8 jurisdiction who is placed on pretrial supervision by any court within the jurisdiction
9 of the program to help ensure compliance with the terms and conditions of the
10 defendant's pretrial release.

11 (f) Conduct random drug and alcohol tests on any defendant within the
12 pretrial services program jurisdiction for whom the court has ordered such testing or
13 for any defendant within the pretrial services program jurisdiction who has been
14 ordered by the court to refrain from excessive use of alcohol or use of any illegal
15 drug or controlled dangerous substance.

16 (g) Seek a capias from the court for any defendant ordered to the custody or
17 supervision of the pretrial services program who fails to comply with the conditions
18 of bail or supervision when continued liberty or noncompliance presents a risk of
19 flight, a risk to public safety, or a risk to the defendant.

20 (h) Seek an order from the judge which requires the defendant to appear
21 before the court regarding the defendant's failure to comply with the pretrial services
22 program.

23 (i) Provide information necessary to assist law enforcement with the return
24 to custody of a defendant ordered to the custody or supervision of the pretrial
25 services program and for whom a capias has been sought.

26 (j) Keep records and make reports as required by, and as are necessary for
27 the function of, the pretrial services program.

28 (3) Each pretrial services program established pursuant to the provisions of
29 this Article may have a pretrial services specialist who shall serve those areas which

1 are within the jurisdiction of the pretrial services program and who may provide any
2 of the following services, as appropriate, and when the resources are available:

3 (a) Subject to court approval, conduct drug and alcohol screenings, tests, or
4 assessments at the initial investigation of the defendant or during the defendant's
5 release to supervision, and conduct or facilitate the preparation of the screenings,
6 assessments, or tests consistent with best practices in the community.

7 (b) Facilitate placement of the defendant in a substance abuse education or
8 treatment program or other education or treatment service when ordered as a
9 condition of the defendant's pretrial release.

10 (c) Supervise any defendant placed on electronic monitoring as a condition
11 of his release on bail.

12 (d) Prepare the financial statement eligibility determination form for the
13 defendant for the purpose of obtaining indigent defense services.

14 (e) Assess the defendant for appropriate referral to court-approved diversion
15 programs or specialty courts.

16 (f) Subject to approved procedures and if requested by the court, coordinate
17 services for the defendant for court-appointed counsel and, if necessary, for
18 interpreters for defendants who speak a foreign language or who have a hearing
19 impairment.

20 C. For purposes of this Article:

21 (1) "Active member of the United States Armed Forces" shall mean an active
22 member of the United States Army, the United States Marine Corps, the United
23 States Navy, the United States Air Force, the United States Coast Guard, or the
24 National Guard.

25 (2) "Bail" means the pretrial release of a person from custody upon those
26 terms and conditions specified by order of an appropriate court.

27 (3) "Bond" means the posting by a person or his surety of a written promise
28 to pay a specific sum, secured or unsecured, ordered by an appropriate court as a

1 condition of bail to assure performance of the terms and conditions contained in the
2 bail order.

3 (4) "Criminal history" means records and data collected by criminal justice
4 agencies or persons consisting of identifiable descriptions and notations of arrests,
5 detentions, indictments, bills of information or other formal charges, and any
6 deposition arising therefrom.

7 Art. 350.1. Confidentiality of pretrial records and reports

8 A. Information supplied by a defendant during the pretrial services process,
9 including but not limited to information given to a representative of the pretrial
10 services agency during the defendant's interview or subsequent contacts, and
11 information obtained about the defendant by the pretrial services program shall be
12 deemed confidential. The written pretrial services report shall be given only to the
13 court, the attorney for the accused, and the attorney for the state and shall not be
14 made part of the court record. Except as otherwise provided in Paragraph B of this
15 Article, pretrial services information including information in the report shall be used
16 only for judicial proceedings concerning release or detention, setting conditions of
17 release, or reviewing compliance with conditions of release in connection with
18 possible modification or sentencing.

19 B. Pretrial services information is not admissible on the issue of guilt in a
20 criminal judicial proceeding unless such proceeding is a prosecution for perjury.
21 Pretrial services information may be used for purposes of impeachment.

22 C.(1) Pretrial services records and information are protected from disclosure
23 pursuant to R.S. 44:4(48). Except as provided in Subparagraph (2) of this Paragraph,
24 pretrial services information shall not be subject to disclosure and pretrial office
25 employees shall not be subject to subpoena without the written consent of the
26 defendant and with the advice of counsel.

27 (2) Disclosure of pretrial services information may be made only to the
28 following entities in the following circumstances:

1 (a) To law enforcement when the defendant fails to appear in court when
2 required to do so.

3 (b) To law enforcement when the defendant commits a crime while on
4 pretrial release.

5 (c) To law enforcement or any other entity that is ordered by the court to
6 provide pretrial supervision or pretrial services.

7 (d) To the Department of Public Safety and Corrections, corrections services,
8 for purpose of preparing the presentence report or for the purpose of assessing
9 individuals for classification and placement.

10 (e) To an agency designated by law for the purposes of conducting a
11 presentence assessment of the defendant.

12 (f) To any entity who provides contract services to the pretrial services
13 program.

14 (g) To any entity who contracts with or who is hired by the pretrial services
15 program for the purpose of contacting the defendant with regard to court
16 appearances.

17 (h) To any person or entity that conducts an evaluation of the pretrial
18 services program or other related research project pursuant to a written research
19 agreement.

20 D. For purposes of this Article, "pretrial services information" includes any
21 information whether recorded or not, that is obtained or developed by a pretrial
22 services employee in the course of performing a pretrial services investigation,
23 preparing the pretrial services report, performing any post-release or post-detention
24 investigation, contacting the defendant regarding court appearances or providing any
25 pretrial supervision of a defendant. The term does not include any information
26 appearing in the public records of the court.

27 E. Any disclosure of pretrial services information permitted pursuant to the
28 provisions of this Article shall be limited to the minimum information necessary to
29 carry out the purpose of the disclosure. The recipient of any pretrial services

1 information shall utilize procedures to protect the security and confidentiality of all
2 personally identifiable information.

3 Section 2. R.S. 44:4(48) is hereby enacted to read as follows:

4 §4. Applicability

5 This Chapter shall not apply:

6 * * *

7 (48) To pretrial services information as defined in Code of Criminal
8 Procedure Article 350.1(D) unless such information otherwise appears in the public
9 records of the court. Such information is confidential and is subject to disclosure
10 only in the limited circumstances authorized by Code of Criminal Procedure Article
11 350.1(C).

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)]

Adams

HB No. 367

Abstract: Amends provisions relative to release of certain defendants prior to trial, authorizes the creation of local pretrial services programs, provides for the services which may be provided by such programs, and provides for the confidentiality of information obtained through the program.

Present law provides for the following with regard to release on bail:

- (1) Any defendant who has been arrested for a felony offense, an element of which is the discharge, use, or possession of a firearm, shall not be released on his personal undertaking without security or with an unsecured personal surety.
- (2) Any defendant who has been arrested for domestic abuse battery, a crime of violence or for any of the following crimes shall not be released by the court on the defendant's own recognizance or on the signature of any other person: vehicular homicide; cyberstalking, if the person has two prior convictions for the same offense; aggravated kidnapping of a child; violation of protective orders, if the person has a prior conviction for the same offense; killing a child during delivery; human experimentation; cruelty to the infirmed, if the person has a prior conviction for the same offense; operating a vehicle while intoxicated, if the person has a prior conviction for the same offense; aggravated cruelty to animals; injuring or killing of a police animal; or the production, manufacturing, distribution, or dispensing or the possession with the intent to produce, manufacture, distribute, or dispense a controlled dangerous substance.

Proposed law amends present law to provide that these provisions of present law are rebuttable presumptions which may be overcome if it is determined by the judge, after a hearing in open court, that a review of the relevant factors warrants this form of release.

Present law authorizes the court to impose any condition of release that is reasonably related to assuring the appearance of the defendant before the court.

Proposed law retains present law and provides that the court may also impose conditions of release that are reasonably related to the risk posed by the defendant to another individual or to the community, including being placed under the supervision of a pretrial services program as provided by proposed law.

Proposed law authorizes the creation of pretrial services programs, established within any locality, which shall have the authority to provide services to assist the court in making determinations of whether to detain or release a defendant prior to trial, help the court to set appropriate bonds, determine conditions of release, determine whether to order preventive detention, support and encourage the defendant's return to court for subsequent hearings, and ensure public safety during the pretrial period by providing supervision services. Proposed law provides a list of services which may be provided by the pretrial services program.

Proposed law requires the locality to specify and define the jurisdiction of the program and the pretrial services that will be provided.

Proposed law authorizes each pretrial services program established pursuant to the provisions of proposed law to have a pretrial services specialist who shall serve the areas which fall into the jurisdiction of the program and who may provide certain services, when the resources are available, which may include but are not limited to the following:

- (1) Subject to court approval, conduct drug and alcohol screenings, tests, or assessments, and conduct or facilitate the preparation of the screenings, assessments, or tests consistent with best practices in the community.
- (2) Facilitate placement of the defendant in a substance abuse education or treatment program or other education or treatment service when ordered as a condition of the defendant's pretrial release.
- (3) Supervise any defendant placed on electronic monitoring as a condition of his release on bail.
- (4) Prepare the financial statement eligibility determination form for the defendant for the purpose of obtaining indigent defense services.
- (5) Assess the defendant for appropriate referral to court-approved diversion programs or specialty courts.
- (6) Subject to approved procedures and if requested by the court, coordinate services for the defendant for court-appointed counsel and, if necessary, for interpreters for defendants who speak a foreign language or who have a hearing impairment.

Proposed law provides for definitions of "active member of the United States Armed Forces", "bail", "bond", and "criminal history".

Present law provides for a list of exceptions to the "Public Records Law".

Proposed law amends present law to add "pretrial services information" to the list of exceptions to the "Public Records Law". Proposed law defines "pretrial services information", provides for the confidentiality of this information, and provides for the limited circumstances under which this information may be disclosed.

(Amends C.Cr.P. Arts. 334.1, 334.2, 334.4, and 335; Adds C.Cr.P. Arts. 350 and 350.1 and R.S. 44:4(48))