

2016 Regular Session

SENATE BILL NO. 150

BY SENATOR PERRY

CRIMINAL PROCEDURE. Provides relative to mandatory bail hearings for certain defendants. (8/1/16)

1 AN ACT  
2 To enact Code of Criminal Procedure Article 330.4, relative to bail and bail hearings; to  
3 require the detention of a noncitizen defendant pending a bail hearing; to provide  
4 relative to bail hearing procedures; to provide relative to conditions of bail; to  
5 provide relative to revocation of bail and issuance of arrest warrants; and to provide  
6 for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Code of Criminal Procedure Article 330.4 is hereby enacted to read as  
9 follows:

10 **Art. 330.4. Detention of noncitizen defendant pending bail hearing**  
11 **A. A contradictory bail hearing, as provided for in this Article, shall be**  
12 **held prior to setting bail for any person in custody charged with the commission**  
13 **of an offense who is not a citizen of the United States or not lawfully admitted**  
14 **for permanent residence. The hearing shall be held within five days from the**  
15 **date of determination of probable cause, exclusive of weekends and legal**  
16 **holidays. At the contradictory hearing, the court shall determine the conditions**  
17 **of bail or whether the defendant should be held without bail pending trial.**

1            **B. In addition to the factors listed in Article 334, in determining whether**  
2            **the defendant should be admitted to bail pending trial, or in determining the**  
3            **conditions of bail, the judge or magistrate shall consider the following:**

4            **(1) The criminal history of the defendant.**

5            **(2) The potential threat or danger the defendant poses to the victim, the**  
6            **family of the victim, or to any member of the public, especially children.**

7            **(3) Documented history or records, including but not limited to sworn**  
8            **affidavits, police reports, and medical records, regarding any of the following:**

9            **(a) Substance abuse by the defendant.**

10           **(b) Threats of suicide by the defendant.**

11           **(c) The defendant's use of force or threats of use of force against any**  
12           **victim.**

13           **(d) Strangulation, forced sex, or controlling the activities of any victim**  
14           **by the defendant.**

15           **(e) Threats to kill.**

16           **C. Following the contradictory hearing and based upon the judge's or**  
17           **magistrate's review of the factors set forth in Paragraph B of this Article, the**  
18           **judge or magistrate may order that the defendant not be admitted to bail, upon**  
19           **proof by clear and convincing evidence that the defendant might flee, or that the**  
20           **defendant poses an imminent danger to any other person or the community.**

21           **D. If bail is granted, the judge or magistrate shall comply with the**  
22           **provisions of Article 335.1 or 335.2, as applicable. The judge or magistrate shall**  
23           **consider, as a condition of bail, a requirement that the defendant wear an**  
24           **electronic monitoring device and be placed under active electronic monitoring**  
25           **and house arrest. The conditions of the electronic monitoring and house arrest**  
26           **shall be determined by the court and may include but are not limited to**  
27           **limitation of the defendant's activities outside the home and a curfew. The**  
28           **defendant may be required to pay a reasonable supervision fee to the**  
29           **supervising agency to defray the cost of the required electronic monitoring and**

- 1            **house arrest.**
- 2                    **E. Any violation of the conditions of bail may be punishable by**
- 3            **revocation of the bond and the issuance of a bench warrant for the defendant's**
- 4            **arrest or remanding of the defendant to custody or a modification of the terms**
- 5            **of bail.**

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alden A. Clement Jr.

## DIGEST

SB 150 Original

2016 Regular Session

Perry

Proposed law provides that a contradictory bail hearing must be held prior to setting bail for any person in custody charged with the commission of an offense who is not a citizen of the U.S. or not lawfully admitted for permanent residence. Proposed law further provides that this hearing is to be held within five days from the date of determination of probable cause, exclusive of weekends and legal holidays. Proposed law further provides that at the contradictory hearing, the court is to determine the conditions of bail or whether the defendant should be held without bail pending trial.

Proposed law provides that in addition to the factors listed in present law relative to bail, in determining whether the defendant should be admitted to bail pending trial, or in determining the conditions of bail, the judge or magistrate is to consider the following:

- (1) The criminal history of the defendant.
- (2) The potential threat or danger the defendant poses to the victim, the family of the victim, or to any member of the public, especially children.
- (3) Documented history or records, including but not limited to sworn affidavits, police reports, and medical records, regarding: substance abuse or threats of suicide by the defendant; the defendant's use of force or threats of use of force against any victim; strangulation, forced sex, or controlling the activities of any victim; or threats to kill.

Proposed law provides that following the contradictory hearing and based upon the judge's or magistrate's review of the factors set forth in proposed law, the judge or magistrate may order that the defendant not be admitted to bail, upon proof by clear and convincing evidence that the defendant might flee, or that the defendant poses an imminent danger to any other person or the community.

Proposed law provides that if bail is granted, the judge or magistrate is to comply with the provisions of present law relative to offenses committed against a family member or dating partner, sexual assault, or stalking, as applicable.

Proposed law provides that the judge or magistrate must consider, as a condition of bail, a requirement that the defendant wear an electronic monitoring device and be placed under active electronic monitoring and house arrest. Proposed law further provides that the conditions of the electronic monitoring and house arrest are to be determined by the court and may include but are not limited to limitation of the defendant's activities outside the home and a curfew. Proposed law further provides that the defendant may be required to pay a reasonable supervision fee to the supervising agency to defray the cost of the required electronic monitoring and house arrest.

Proposed law provides that any violation of the conditions of bail may be punishable by revocation of the bond and the issuance of a bench warrant for the defendant's arrest or remanding of the defendant to custody or a modification of the terms of bail.

Effective August 1, 2016.

(Adds C.Cr.P. Art. 330.4)