

2016 Regular Session

SENATE BILL NO. 150

BY SENATORS PERRY AND RISER

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 on a charge
4 involving a fatality; to provide relative to bail hearing procedures; to provide relative
5 to conditions of bail; to provide relative to revocation of bail and issuance of arrest
6 warrants; and to provide 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 who is not a citizen of the**
13 **United States or not lawfully admitted for permanent residence and who is**
14 **charged with the commission of an offense in which there was a fatality. The**
15 **hearing shall be held within five days from the date of determination of**
16 **probable cause, exclusive of weekends and legal holidays. At the contradictory**
17 **hearing, the court shall determine the conditions of bail or whether the**

1 defendant should be held without bail pending trial.

2 B. In determining whether the defendant should be admitted to bail
3 pending trial, or in determining the conditions of bail, the judge or magistrate
4 shall consider the following:

5 (1) The criminal history of the defendant.

6 (2) The nature and seriousness of the danger to any other person or the
7 community that would be posed by the defendant's release.

8 (3) Documented history or records of substance abuse by the defendant.

9 (4) The seriousness of the offense charged and the weight of the evidence
10 against the defendant.

11 (5) The risk that the defendant might flee.

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

17 D. If bail is granted, the judge or magistrate may consider, as a condition
18 of bail, a requirement that the defendant wear an electronic monitoring device
19 and be placed under active electronic monitoring and house arrest. The
20 conditions of the electronic monitoring and house arrest shall be determined by
21 the court and may include but are not limited to limitation of the defendant's
22 activities outside the home and a curfew. The defendant may be required to pay
23 a reasonable supervision fee to the supervising agency to defray the cost of the
24 required electronic monitoring and house arrest.

25 E. Any violation of the conditions of bail may be punishable by
26 revocation of the bond and the issuance of a bench warrant for the defendant's
27 arrest or remanding of the defendant to custody or a modification of the terms
28 of bail.

The original instrument was prepared by Alden A. Clement, Jr. The following digest, which does not constitute a part of the legislative instrument, was prepared by Ann S. Brown.

DIGEST

SB 150 Reengrossed

2016 Regular Session

Perry

Proposed law provides that a contradictory bail hearing must be held prior to setting bail for any person in custody who is not a citizen of the U.S. or not lawfully admitted for permanent residence and who is charged with the commission of an offense involving a fatality.

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. 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 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 nature and seriousness of the danger to any other person or the community that would be posed by the defendant's release.
- (3) Documented history or records of substance abuse by the defendant.
- (4) The seriousness of the offense charged and the weight of the evidence against the defendant.
- (5) The risk that the defendant might flee.

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 may 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. 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. 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)

Summary of Amendments Adopted by SenateCommittee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Change applicability of proposed law from a defendant charged with any offense to a defendant charged with an offense involving a fatality.

Senate Floor Amendments to engrossed bill

1. Provides which defendants shall receive a contradictory bail hearing prior to the setting of bail.
2. Changes the scope of information a judge or magistrate shall consider when determining if a defendant should be admitted to bail or the conditions of bail.
3. Removes the requirement that a judge or magistrate shall comply with the provisions of present law relative to offenses committed against a family member or dating partner, sexual assault, or stalking, as applicable.
4. Technical corrections.