

2021 Regular Session

HOUSE BILL NO. 406

BY REPRESENTATIVES BISHOP AND MAGEE

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

CRIMINAL/PROCEDURE: Provides relative to the presence of the defendant in misdemeanor prosecutions

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Article 833 and to enact Code of
3 Criminal Procedure Article 833.1, relative to the presence of the defendant; to
4 provide relative to the presence of the defendant in misdemeanor prosecutions; to
5 require the court to permit such defendants to be arraigned, enter pleas, or be tried
6 in the absence of the defendant; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Code of Criminal Procedure Article 833 is hereby amended and reenacted
9 and Code of Criminal Procedure Article 833.1 is hereby enacted to read as follows:

10 Art. 833. Presence of defendant; misdemeanor prosecution

11 A. The court ~~may~~ shall permit a defendant charged with a misdemeanor to
12 be arraigned, enter his plea of guilty, or be tried, in his absence.

13 B. A plea of not guilty of a misdemeanor may ~~always~~ be entered through
14 counsel ~~and in the absence of the defendant~~. In the absence of the defendant, a plea
15 of not guilty of a misdemeanor shall be entered through counsel. Counsel accepting
16 service and waiving the presence of the defendant shall use the form provided in
17 Article 833.1.

1 Art. 833.1. Affidavit accepting service and waiver of presence form

2 **STATE OF LOUISIANA**
3 **JUDICIAL DISTRICT FOR THE PARISH OF**
4 _____

5 **No.:** _____ **Division: "** _____ **"**
6 **State of Louisiana**
7 **vs.**
8 _____

9 **AFFIDAVIT ACCEPTING SERVICE AND**
10 **WAIVER OF PRESENCE**

11
12 BEFORE ME, the undersigned authority, did personally come and appear,
13 (CLIENT), who after being duly sworn did depose and say:

14 1.
15 Affiant acknowledged that he is the defendant in the above captioned
16 criminal matter; that he is aware of all charges pending against him in this matter and
17 that he has retained the services of _____ (ATTORNEY(S) or LAW FIRM)
18 to represent him in these proceedings;

19 2.
20 Affiant is aware that he is scheduled to be in court on the _____ day of
21 _____, 20 _____ at _____ (TIME) and that he has the right to be present on that day but
22 expressly wished to waive this right and to have his legal counsel appear on his
23 behalf;

24 3.
25 Affiant is aware that in his absence, additional court dates could be scheduled
26 in these proceedings and he hereby appoints his above named legal counsel as his
27 agent(s) to accept service of notice to appear for those dates on his behalf, that he
28 accepts service of those dates through his counsel and that he expressly waives his
29 appearance for those dates and authorizes his counsel to appear on his behalf;

30 4.
31 Affiant understands that the court, in its sole discretion may revoke its
32 acceptance of this waiver and require that affiant personally appear in open court on
33 subsequent court dates; that his counsel will also be notified; that a notice of
34 appearance will be mailed to affiant at his address of record and that defendant's
35 failure to appear at the subsequent court date could result in the issuance of an arrest
36 warrant, a revocation of appearance bond and/or is punishable as contempt of court;

37 5.
38 Finally, Affiant acknowledges that his current address is:
39 _____ (Street, Apt/Lot No, City, State and Zip Code); and authorizes
40 the court to use this address for all notices, unless changed in writing by affiant.

41 _____
42 Affiant

43 SWORN TO AND SUBSCRIBED BEFORE ME, notary, this _____ day of
44 _____, 20 _____.

45 _____
46 **NOTARY PUBLIC"**

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)]

HB 406 Engrossed

2021 Regular Session

Bishop

Abstract: Relative to the presence of the defendant in misdemeanor prosecutions, requires the court to allow the defendant to be arraigned, plead guilty, or be tried in his absence, and further requires pleas of not guilty to be entered through counsel in the absence of the defendant.

Present law authorizes the court to permit a defendant charged with a misdemeanor to be arraigned, enter his plea of guilty, or be tried, in his absence.

Proposed law amends present law to require the court to permit a defendant charged with a misdemeanor to be arraigned, enter his plea of guilty, or be tried, in his absence.

Present law provides that a plea of not guilty of a misdemeanor may always be entered through counsel and in the absence of the defendant.

Proposed law provides that pleas of not guilty of misdemeanors shall be entered through counsel in the absence of the defendant.

Proposed law requires and provides the form counsel is to use when accepting service and waiving the presence of the defendant.

(Amends C.Cr.P. Art. 833; Adds C.Cr.P. Art. 833.1)

Summary of Amendments Adopted by House

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

1. Requires the counsel to use proposed law form when accepting service and waiving the presence of the defendant.
2. Provides the form required by proposed law.