

2021 Regular Session

HOUSE BILL NO. 303

BY REPRESENTATIVE LYONS

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

BAIL: Provides relative to constructive surrender and non-warrant surrender

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Article 311(4) through (7) and to enact
3 Code of Criminal Procedure Article 311(8), relative to bail; to provide relative to the
4 detention of the defendant; to provide relative to constrictive surrender; to provide
5 for surety's motion and affidavit for issuance of warrant; and to provide for related
6 matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Code of Criminal Procedure Article 311(4) through (7) is hereby amended
9 and reenacted and Code of Criminal Procedure Article 311(8) is hereby enacted to read as
10 follows:

11 Art. 311. Definitions

12 For the purpose of this Title, the following definitions shall apply:

13 * * *

14 (4) A constructive surrender is the detention of the defendant in another
15 parish of the state of Louisiana or a foreign jurisdiction under the following
16 circumstances:

17 (a) A warrant for arrest has been issued for the defendant in the jurisdiction
18 in which the bail obligation is in place.

1 (b) The surety has provided proof of the defendant's current incarceration to
2 the court in which the bail obligation is in place, to the prosecuting attorney, and to
3 the officer originally charged with the defendant's detention.

4 (c) The surety has paid ~~to the officer the reasonable costs of returning the~~
5 ~~defendant to the jurisdiction where the warrant for arrest was issued.~~ reasonable or
6 actual costs of returning the defendant to the jurisdiction where the warrant for arrest
7 was issued by one of the following methods:

8 (i) Upon presentation of proof of the defendant's current incarceration in a
9 foreign jurisdiction to the officer originally charged with the defendant's detention,
10 the officer shall provide the surety with the reasonable or actual costs of returning
11 the defendant to the jurisdiction where the warrant for arrest was issued when the
12 costs are immediately known or can be estimated.

13 (ii) The surety tenders to the officer originally charged with the defendant's
14 detention the reasonable or actual costs of returning the defendant to the jurisdiction
15 where the warrant for arrest was issued.

16 (iii) The surety provides proof of payment to the court and to the prosecuting
17 attorney.

18 (iv)(aa) In cases where the reasonable or actual costs of returning the
19 defendant to the jurisdiction where the warrant for arrest was issued are not
20 immediately known, the officer originally charged with the defendant's detention
21 shall accept the surety's tender of reasonable costs as provided in R.S. 13:5535 for
22 in-state transfers or for estimated costs for out-of-state transfers.

23 (bb) The surety shall provide proof of payment to the court and the
24 prosecuting attorney.

25 (cc) If the actual costs of returning the defendant to the jurisdiction where
26 the warrant for arrest was issued is more than the estimated costs tendered by the
27 surety, the officer originally charged with the defendant's detention may file a rule
28 to show cause with the court to recover the difference.

1 (5) A surety's motion and affidavit for issuance of warrant may be filed when
2 the defendant is found incarcerated in a foreign jurisdiction and a warrant has not
3 been issued by the court or in which the bail obligation is in place. In such instances,
4 the surety may file a motion with the court requesting a warrant be issued when the
5 following conditions have been met:

6 (a) There has been a breach of the bail undertaking.

7 (b) The surety provides proof of the defendant's current incarceration outside
8 of the state of Louisiana. The defendant's incarceration may be used as evidence of
9 a breach of the bail undertaking.

10 (c) The defendant did not have written permission from the court to leave the
11 state of Louisiana.

12 (d) Upon presentation of evidence of the breach of the bail undertaking, the
13 court may issue a warrant for the defendant's violation of the conditions of the bail
14 undertaking.

15 (e) The surety may then file the constructive surrender in accordance with
16 this Article and Article 331.

17 (6) A personal surety is a natural person domiciled in the state of Louisiana
18 who owns property in this state that is subject to seizure and is of sufficient value to
19 satisfy, considering all his property, the amount specified in the bail undertaking.
20 The value of the property shall exclude the amount exempt from execution, and shall
21 be over and above all other liabilities including the amount of any other bail
22 undertaking on which he may be principal or surety. If there is more than one
23 personal surety, then the requirements shall apply to the aggregate value of their
24 property. A personal surety shall not charge a fee or receive any compensation for
25 posting a bail undertaking. A bail undertaking of a personal surety may be
26 unsecured or secured.

27 ~~(6)~~(7) Bail enforcement is the apprehension or surrender by a natural person
28 of a principal who is released on bail or who has failed to appear at any stage of the

1 proceedings to answer the charge before the court in which the principal may be
2 prosecuted.

3 ~~(7)~~(8) A bail enforcement agent is a licensed bail agent who engages in the
4 apprehension or surrender by a natural person of a principal who is released on bail
5 or who has failed to appear at any stage of the proceedings to answer the charge
6 before the court in which the principal may be prosecuted.

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 303 Reengrossed

2021 Regular Session

Lyons

Abstract: Provides relative to the conditions by which the surety satisfies payment of extradition costs, and provides relative to a non-warrant affidavit or request.

Present law provides that the detention of the defendant is at the request of the surety by the officer originally charged with his detention on the original commitment.

Present law further provides that when the surety has requested the surrender of the defendant, the officer shall acknowledge the surrender by a certificate.

Present law defines constructive surrender and provides the circumstances under which constructive surrender occurs are as follows:

- (1) A warrant for arrest has been issued for the defendant in the jurisdiction in which the bail obligation is in place.
- (2) The surety has provided proof of the defendant's current incarceration to the court in which the bail obligation is in place, to the prosecuting attorney, and to the officer originally charged with the defendant's detention.
- (3) The surety has paid to the officer the reasonable costs of returning the defendant to the jurisdiction where the warrant for arrest was issued.

Proposed law changes the present law (C.Cr.P. Art. 311(4)(c)) circumstance by which constructive surrender would occur from when the surety has paid to the officer the reasonable costs of returning the defendant to the jurisdiction where the warrant for arrest was issued to when the surety has paid reasonable or actual costs of returning the defendant to the jurisdiction where the warrant for arrest was issued by one of the following methods:

- (1) Upon proof of the defendant's current incarceration in a foreign jurisdiction to the officer originally charged with the defendant's detention, the officer shall provide the surety with the reasonable or actual costs of returning the defendant to the jurisdiction where the warrant for arrest was issued when the costs are immediately known or can be estimated.
- (2) The surety tenders to the officer originally charged with the defendant's detention the reasonable or actual costs of returning the defendant to the jurisdiction where the warrant for arrest was issued.

- (3) The surety provides proof of payment to the court and to the prosecuting attorney.
- (4) In cases where the reasonable or actual costs of returning the defendant to the jurisdiction where the warrant for arrest was issued are not immediately known, the officer originally charged with the defendant's detention shall accept the surety's tender of reasonable costs as provided in present law for in-state transfers or for estimated costs for out-of-state transfers.

Proposed law provides relative to the payment of costs.

Proposed law provides for circumstances under which a surety's motion and affidavit for issuance of warrant may be filed and provides for the conditions by which the surety can file a motion to request a warrant.

(Amends C.Cr.P. Art. 311(4)-(7); Adds C.Cr.P. Art. 311(8))

Summary of Amendments Adopted by House

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

1. Make technical changes to the title.
2. Reinstate present law references to "officer" from proposed law references to "agency".
3. Reorganize proposed law provisions relative to breach of the bail undertaking.
4. Specify the methods by which constructive surrender occurs when the surety has paid reasonable or actual costs of returning the defendant to the jurisdiction where the warrant for arrest was issued.
5. Provide relative to the depositing of costs in the registry of the court.
6. Specify that the defendant obtain written permission from the court in order to leave the state.

The House Floor Amendments to the engrossed bill:

1. Remove provision that presentation of the proof of the defendant's current incarceration in a foreign jurisdiction be presented within 24 hours.
2. Specify that when the costs are immediately known or can be estimated, the officer shall provide to the surety the reasonable or actual costs.
3. Require the officer originally charged with the defendant's detention to accept the surety's tender of reasonable costs as provided by present law.
4. Change the phrase "registry of the court" to "payment".
5. Authorize the surety to file a motion, and remove reference to an ex parte motion.