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, relative to the presence of

3   the defendant; to provide relative to the presence of the defendant in misdemeanor

4   prosecutions; to require the court to permit such defendants to be arraigned, enter

5   pleas, or be tried in the absence of the defendant; and to provide for related matters.

6   Be it enacted by the Legislature of Louisiana:

7   Section 1. Code of Criminal Procedure Article 833 is hereby amended and reenacted

8   and Code of Criminal Procedure Article 833.1 is hereby enacted to read as follows:

9   Art. 833. Presence of defendant; misdemeanor prosecution

10   A. The court may permit a an unrepresented or pro se defendant charged

11   with a misdemeanor to be arraigned, enter his plea of guilty, or be tried, in his

12   absence.

13   B. A plea of not guilty of a misdemeanor may always shall be allowed to be

14   entered through counsel and in the absence of the defendant of record and in the

15   absence of the defendant by the filing of a sworn affidavit in advance of the

16   scheduled arraignment date.

1   C. The sworn affidavit referenced in Paragraph B of this Article shall include

2   the caption of the case and summons number, citation number or docket number as

3   applicable, and state as follows:

4   **AFFIDAVIT ACCEPTING SERVICE AND**
5   **WAIVER OF PRESENCE**
6
7   BEFORE ME, the undersigned authority, did personally come and appear,
8   _____ (CLIENT's NAME), who after being duly sworn did depose and say:
9   1.
10   Affiant acknowledges that he is the defendant in the above captioned criminal
11   matter; that he is aware of all charges pending against him in this matter and that he
12   has retained the services of _____ (ATTORNEY(S) or LAW FIRM) to
13   represent him in these proceedings;
14   2.
15   Affiant is aware that he is scheduled to be in court on the   day of
16   _____, 20   at   o'clock and that he has the right to be present on that day but
17   expressly wishes to waive this right and to have his legal counsel appear on his
18   behalf;
19   3.
20   Affiant is aware that in his absence, additional court dates could be scheduled
21   in these proceedings and he hereby appoints his above named legal counsel as his
22   agent(s) to accept service of notice to appear for those dates on his behalf, that he
23   accepts service of those dates through his counsel and that he expressly waives his
24   appearance for those dates and authorizes his counsel to appear on his behalf;
25   4.
26   Affiant understands that the court, in its sole discretion may revoke its
27   acceptance of this waiver and require that affiant personally appear in open court on
28   subsequent court dates; that his counsel will also be notified; that a notice of
29   appearance will be mailed to affiant at his address of record and that affiant's failure
30   to appear at the subsequent court date could result in the issuance of an arrest
31   warrant, a revocation of appearance bond and/or is punishable as contempt of court;
32   5.
33   Finally, Affiant acknowledges that his current address is:
34   _____ (Street, Apt/Lot No, City, State and Zip Code); and authorizes
35   the court to use this address for all notices, unless changed in writing by affiant.

36   _____
37   Affiant

38   SWORN TO AND SUBSCRIBED BEFORE ME, notary, this   day of
39   _____, 20   .

40   _____
41   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 Reengrossed   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 retains present law.

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 of record and in the absence of the defendant by the filing of a sworn affidavit in advance of the scheduled arraignment date.

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)

Summary of Amendments Adopted by House

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

    1.   Require the counsel to use proposed law form when accepting service and waiving the presence of the defendant.

    2.   Provide the form required by proposed law.

    The House Floor Amendments to the engrossed bill:

    1.   Make technical changes to citations.

    2.   Make technical changes to the proposed law affidavit form.

    3.   Specify that the affidavit be filed by the counsel of record in advance of the scheduled arraignment date.

    4.   Specify that the affidavit include the caption of the case and summons number as well as the citation number or docket number, as applicable, in the form provided by proposed law.