

2021 Regular Session

HOUSE BILL NO. 303

BY REPRESENTATIVE LYONS

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  
29           proceedings to answer the charge before the court in which the principal may be  
30           prosecuted.

1                    (~~7~~8) A bail enforcement agent is a licensed bail agent who engages in the  
2                    apprehension or surrender by a natural person of a principal who is released on bail  
3                    or who has failed to appear at any stage of the proceedings to answer the charge  
4                    before the court in which the principal may be prosecuted.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_