HLS 18RS-395 ORIGINAL

2018 Regular Session

HOUSE BILL NO. 259

1

BY REPRESENTATIVE JORDAN

BAIL: Provides for presumptive pretrial release of a defendant on an unsecured personal surety or bail without surety except under certain circumstances

AN ACT

2 To amend and reenact Code of Criminal Procedure Articles 316 and 321(B), relative to bail; 3 to provide for presumptive pretrial release of a defendant on an unsecured personal 4 surety or bail without surety; to provide for exceptions; to provide factors for the 5 court to consider in determining whether to release the defendant in this manner; to 6 provide for certain requirements; and to provide for related matters. 7 Be it enacted by the Legislature of Louisiana: 8 Section 1. Code of Criminal Procedure Articles 316 and 321(B) are hereby amended 9 and reenacted to read as follows: 10 Art. 316. Factors Presumption of unsecured release; factors in fixing amount of bail 11 A. Except as provided in Articles 312(B) and 321, a magistrate shall order 12 the pretrial release of a defendant on an unsecured personal surety or bail without 13 surety unless, after consideration of the factors set forth in Paragraph B of this 14 Article, the magistrate determines that the release would not reasonably ensure the 15 appearance of the defendant, the release would not reasonably ensure that the 16 defendant would refrain from any new criminal conduct, and the release would not 17 reasonably ensure the safety of any other person and the community. If the 18 defendant is released on an unsecured personal surety or bail without surety, the 19 magistrate shall expressly state in the bail order that the defendant was released under these terms. 20

CODING: Words in struck through type are deletions from existing law; words underscored are additions.

1	B. The amount of bail shall be fixed in an amount that will ensure the
2	presence of the defendant, as required, and the safety of any other person and the
3	community, having regard to:
4	(1) The seriousness of the offense charged, including but not limited to
5	whether the offense is a crime of violence or involves a controlled dangerous
6	substance.
7	(2) The weight of the evidence against the defendant.
8	(3) The previous criminal record of the defendant.
9	(4) The ability of the defendant to give bail.
10	(5) The nature and seriousness of the danger to any other person or the
1	community that would be posed by the defendant's release.
12	(6) The defendant's voluntary participation in a pretrial drug testing program.
13	(7) The absence or presence in the defendant of any controlled dangerous
14	substance.
15	(8) Whether the defendant is currently out on a bail undertaking on a
16	previous felony arrest for which he is awaiting institution of prosecution,
17	arraignment, trial, or sentencing.
18	(9) Any other circumstances affecting the probability of defendant's
19	appearance.
20	(10) The type or form of bail.
21	* * *
22	Art. 321. Types of bail; restrictions
23	* * *
24	B. All bail must be posted in the full amount fixed by the court. When the
25	court fixes the amount of bail, a secured bail undertaking may be satisfied by a
26	commercial surety, a cash deposit, or with the court's approval, by a secured personal
27	surety or a bail undertaking secured by the property of the defendant, or by any
28	combination thereof When the court elects to release the defendant on an unsecured

1 personal surety or a bail without surety, that election shall be expressed in the bail

2 order.

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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 259 Original

2018 Regular Session

Jordan

Abstract: Provides for presumptive pretrial release of a defendant on an unsecured personal surety or bail without surety except under certain circumstances.

<u>Present law</u> provides that except in certain cases, a person in custody who is charged with the commission of an offense is entitled to bail before conviction.

<u>Present law</u> provides that the amount of bail shall be fixed in an amount that will ensure the presence of the defendant and the safety of any other person and the community, having regard to certain considerations including but not limited to the following: (1) the seriousness of the offense charged; (2) the weight of the evidence against the defendant; (3) the previous criminal record of the defendant; (4) the ability of the defendant to give bail; and (5) the nature and seriousness of the danger to any other person or the community that would be posed by the defendant's release.

<u>Present law</u> provides that all bail must be posted in the full amount fixed by the court, and further provides that when the court fixes the amount of bail, a secured bail undertaking may be satisfied by a commercial surety, a cash deposit, or with the court's approval, by a secured personal surety or a bail undertaking secured by the property of the defendant, or by any combination thereof.

<u>Present law</u> defines "unsecured personal surety" as a personal surety where the surety lives and resides in the state of La. without specifically mortgaging or giving a security interest in any property as security to guarantee the surety's performance, and defines "bail without surety" as the release of the defendant on his personal undertaking without the necessity of furnishing a surety.

When the court elects to release the defendant on an unsecured personal surety or a bail without surety, <u>present law</u> requires the court to express that election in the bail order.

<u>Proposed law</u> retains <u>present law</u> but requires a magistrate to order the pretrial release of a defendant on an unsecured personal surety or a bail without surety unless, after consideration of the factors set forth in <u>present law</u>, the magistrate determines that the release would not reasonably ensure the appearance of the defendant, the release would not reasonably ensure that the defendant would refrain from any new criminal conduct, and the release would not reasonably ensure the safety of any other person and the community.

<u>Proposed law</u> provides that this presumptive release of the defendant on an unsecured personal surety or a bail without surety does not apply in certain cases in which <u>present law</u> specifically defines the type of bail undertaking under which the defendant may be released.

(Amends C.Cr.P. Arts. 316 and 321(B))