

Regular Session, 2013

SENATE BILL NO. 40

BY SENATOR KOSTELKA (On Recommendation of the Louisiana State Law Institute)

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

CRIMINAL PROCEDURE. Provides relative to the right to waive trial by jury in certain criminal cases. (gov sig)

1 AN ACT  
2 To amend and reenact Code of Criminal Procedure Article 780, relative to trial by jury; to  
3 provide for waiver of the right to trial by jury in certain criminal cases; to provide  
4 procedures and time limits relative to waiver of trial by jury; and to provide for  
5 related matters.  
6 Be it enacted by the Legislature of Louisiana:  
7 Section 1. Code of Criminal Procedure Article 780 is hereby amended and reenacted  
8 to read as follows:  
9 Art. 780. Right to waive trial by jury  
10 A. A defendant charged with an offense other than one punishable by death  
11 may knowingly and intelligently waive a trial by jury and elect to be tried by the  
12 judge. ~~At the time of arraignment, the defendant in such cases shall be informed by~~  
13 ~~the court of his right to waive trial by jury.~~  
14 B. The defendant shall exercise his right to waive trial by jury in accordance  
15 with ~~the time limits set forth in Article 521. However, with permission of the court,~~  
16 ~~he may exercise his right to waive trial by jury at any time prior to the~~  
17 ~~commencement of trial~~ **Article I, Section 17 of the Constitution of Louisiana. The**

1           waiver shall be by written motion filed in the district court not later than forty-  
 2           five days prior to the date the case is set for trial. The motion shall be signed by  
 3           the defendant, and shall also be signed by defendant's counsel unless the  
 4           defendant has waived his right to counsel.

5           C. ~~The defendant may withdraw a waiver of trial by jury unless the court~~  
 6           ~~finds that withdrawal of the waiver would result in interference with the~~  
 7           ~~administration of justice, unnecessary delay, unnecessary inconvenience to~~  
 8           ~~witnesses, or prejudice to the state. **With the consent of the district attorney the**~~  
 9           defendant may waive trial by jury within forty-five days prior to the  
 10           commencement of trial.

11           **D. A waiver of trial by jury is irrevocable and cannot be withdrawn by**  
 12           the defendant.

13           Section 2. This Act shall become effective upon signature by the governor or, if not  
 14           signed by the governor, upon expiration of the time for bills to become law without signature  
 15           by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 16           vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 17           effective on the day following such approval.

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The original instrument and the following digest, which constitutes no part  
 of the legislative instrument, were prepared by Alden A. Clement, Jr.

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#### DIGEST

Kostelka (SB 40)

Present law provides that a criminal defendant in a non-capital case may knowingly and intelligently waive his right to trial by jury.

Proposed law retains present law.

Present law provides that the court must inform the defendant of his right to waive trial by jury.

Proposed law deletes this provision of present law.

Present law provides that the defendant must waive his right to trial by jury pursuant to time limits set forth in present law or with the court's permission at any time prior to the commencement of trial.

Proposed law deletes these provisions of present law and adds that the defendant must exercise his right to waive trial by jury pursuant to present constitution and by written motion not later than 45 days prior to the date his case is set for trial. Proposed law further

provides that this motion must be signed by defendant, and also signed by defendant's counsel unless the defendant has waived his right to counsel.

Present law provides that the defendant may withdraw a waiver of trial by jury unless the court finds that withdrawal of the waiver would result in interference with the administration of justice, unnecessary delay, unnecessary inconvenience to witnesses, or prejudice to the state.

Proposed law deletes this provision of present law and adds that the defendant may waive trial by jury within 45 days prior to the commencement of trial with the consent of the district attorney.

Proposed law provides that the waiver of trial by jury is irrevocable and the defendant cannot withdraw his waiver of trial by jury.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends C.Cr.P. Art. 780)