

Regular Session, 2012

SENATE BILL NO. 5

BY SENATOR MURRAY

CRIMINAL PROCEDURE. Provides relative to trial by jury. (8/1/12)

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AN ACT

To amend and reenact Code of Criminal Procedure Article 793, 801, and 808, relative to jury trials; to provide for use of evidence during jury deliberations; to provide for note taking; to provide for evidence in jury room; to provide for jury charges; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Article 793, 801, and 808 are hereby amended and reenacted to read as follows:

Art. 793. ~~Use of~~ **Taking** evidence in to jury room; ~~reading of recorded testimony;~~
~~jurors' notes~~

A. ~~Except as provided in Paragraph B of this Article, a juror must rely upon his memory in reaching a verdict. He shall not be permitted to refer to notes or to have access to any written evidence. Testimony shall not be repeated to the jury. Upon the request of a juror and in the discretion of the court, the jury may take with it or have sent to it any object or document received in evidence when a physical examination thereof is required to enable the jury to arrive at a verdict.~~ **Jurors shall be permitted to take notes and the court shall provide the needed writing**

1 **implements.**

2 B. A juror shall be permitted to take notes when agreement to granting such
 3 permission has been made between the defendant and the state in open court but not
 4 within the presence of the jury. The court shall provide the needed writing
 5 implements. Jurors may, but need not, take notes and such notes may be used during
 6 the jury's deliberations but shall not be preserved for review on appeal. The trial
 7 judge shall ensure the confidentiality of the notes during the course of trial and the
 8 jury's deliberation and shall cause the notes to be destroyed immediately upon return
 9 of the verdict. **Jurors may, but need not, take notes and such notes as are taken**
 10 **may be used during the jury's deliberations. However, such notes shall not be**
 11 **preserved for review on appeal. The trial judge shall ensure the confidentiality**
 12 **of the notes during the course of the trial and the jury's deliberations. At each**
 13 **recess prior to jury deliberation, the court shall collect and maintain any and**
 14 **all notes made by each juror and upon reconvening, the court shall return to**
 15 **each juror his individual notes. Immediately upon return of the jury's verdict,**
 16 **the court shall cause the notes to be destroyed.**

17 C. The lack of consent by either the defendant or the state to allow a juror to
 18 take notes during a trial shall not be communicated to the jury. **The court may**
 19 **allow the jury to take with them any object or writing received in evidence,**
 20 **except depositions and except as otherwise provided in the Louisiana Code of**
 21 **Evidence.**

22 * * *

23 Art. 801. Time for charge; when written charge required

24 A. The court shall charge the jury after the presentation of all evidence and
 25 arguments. The court shall reduce its charge to writing **and read the charge to the**
 26 **jury.** if it is requested to do so by either a defendant or the state prior to the swearing
 27 of the first witness at the trial on the merits. The court's written charge shall be read
 28 to the jury. The court shall deliver a copy thereof to the defendant and to the state
 29 prior to reading it to the jury.

1 B.~~(1)~~ After such written charge is read to the jury, ~~a copy of the written~~
 2 ~~charge shall be delivered to the jury if such delivery is consented to by both the~~
 3 ~~defendant and the state in open court but not in the presence of the jury.~~ **the court**
 4 **shall further instruct the jury that it may take with it or have sent to it a written**
 5 **copy of all charges.**

6 ~~(2) The lack of consent by either the defendant or the state to the delivery of~~
 7 ~~the written charge to the jury shall not be communicated to the jury.~~

8 C. A party may not assign as error the giving or failure to give a jury charge
 9 or any portion thereof unless an objection thereto is made before the jury retires or
 10 within such time as the court may reasonably cure the alleged error. The nature of
 11 the objection and grounds therefor shall be stated at the time of objection. The court
 12 shall give the party an opportunity to make the objection out of the presence of the
 13 jury.

14 * * *

15 Art. 808. Manner of giving further charges after jury retires

16 If the jury or any member thereof, after having retired to deliberate upon the
 17 verdict, desires further charges, the officer in charge shall bring the jury into the
 18 courtroom, and the court shall in the presence of the defendant, his counsel, and the
 19 district attorney, further charge the jury. The further charge may be verbal, but shall
 20 be in writing if requested by any juror. ~~No charge shall be reduced to writing at the~~
 21 ~~request of a juror pursuant to this Article unless consent is obtained from both the~~
 22 ~~defendant and the state in open court but not within the presence of the jury.~~ ~~The lack~~
 23 ~~of consent by either the defendant or the state shall not be communicated to the jury.~~
 24 A copy of the court's written charge shall be delivered to the defendant, the state, and
 25 the jury.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Michelle Ducharme.

DIGEST

Murray (SB 5)

Present law prohibits testimony from being repeated to a jury and, in most instances, restricts a juror from referring to any notes or having access to any written evidence.

Present law provides that upon the request of a juror and in the discretion of the court, the jury may take with it or have sent to it any object or document received in evidence when a physical examination thereof is required to enable the jury to arrive at a verdict.

Present law provides a procedure whereby jurors may be permitted to take notes during a trial.

Present law requires that confidentiality of the notes during the trial and the jury's deliberation shall be preserved by the trial judge. The trial judge will cause the notes to be destroyed immediately upon return of the verdict.

Present law provides that lack of consent by either the defendant or the state to allow a juror to take notes during a trial will not be communicated to the jury.

Proposed law removes the restrictions placed on juror in a criminal case to take notes during the trial and allows jurors to take notes.

Proposed law provides that the trial judge will ensure the confidentiality of the notes during the course of the trial and the jury's deliberations and requires the court to collect and maintain any and all notes made by each juror at each recess and to return to each juror his individual notes upon reconvening.

Proposed law mandates the court to destroy the notes immediately upon return of the verdict.

Proposed law provides that the court may allow the jury to take with them any object or writing received in evidence, except depositions and except as otherwise provided in the La. Code of Evidence.

Effective August 1, 2012.

(Amends C.Cr.P. Art. 793, 801, and 808)