2021 Updates to the Louisiana Code of Criminal Procedure

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Contents

Art. 14.1. Filing of pleadings and documents by facsimile or electronic transmission

A. Any document in a traffic or criminal action may be filed with the clerk of court by facsimile transmission if permitted by the policy of the clerk of court. Filing shall be deemed complete at the time the facsimile transmission is received by the clerk of court. No later than on the first business day after receiving a facsimile filing, the clerk of court shall transmit to the filing party via facsimile a confirmation of receipt and include a statement of the fees for the facsimile filing and filing of the original document. The facsimile filing fee and transmission fee are incurred upon receipt of the facsimile filing by the clerk of court and payable as provided in Subsection B of this Section. The facsimile filing shall have the same force and effect as filing the original document, if the party complies with Paragraph B of this Article.

B. Within seven days, exclusive of legal holidays, after the clerk of court receives the facsimile filing, all of the following shall be delivered to the clerk of court:

(1) The original document identical to the facsimile filing in number of pages and in content of each page including any attachments, exhibits, and orders. A document not identical to the facsimile filing or which includes pages not included in the facsimile filing shall not be considered the original document.

(2) The fees for the facsimile filing and filing of the original document stated on the confirmation of receipt, if any.

(3) A transmission fee of five dollars, if the defendant had not been declared indigent by the court.

C. If the filing party fails to comply with any of the requirements of Paragraph B of this Article, the facsimile filing shall have no force or effect.

D. Any court district may provide by court rule for any additional requirement or provisions for filings by facsimile transmission.

E. In keeping with the clerk's policy, each clerk of court shall make available the necessary equipment and supplies to accommodate facsimile filing in criminal actions. Purchases for equipment and supplies necessary to accommodate facsimile filings may be funded from any expense fund of the office of the clerk of court as the clerks deem appropriate.

F. The filings as provided in this Article and all other provisions of this Code may be transmitted electronically in accordance with a system established by a clerk of court or by the Louisiana Clerks' Remote Access Authority. When such a system is established, the clerk of court shall adopt and implement procedures for the electronic filing and storage of any pleading, document, or exhibit. Furthermore, in a parish that accepts electronic filings covered under this Paragraph, the official record shall be the electronic record. A pleading or document filed electronically is deemed filed on the date and time stated on the confirmation of electronic filing sent from the system, if the clerk of court accepts the electronic filing. Public access to electronically filed pleadings and documents shall be in accordance with the rules governing access to written filings.

Acts 2001, No. 319, §3; Acts 2016, No. 109, §2; Acts 2021, No. 341, §1.

Art. 162.3. No-knock warrant

A. No law enforcement officer shall seek, execute, or participate in the execution of a no-knock warrant, except in cases where both of the following apply:

(1) The affidavit supporting the request for the warrant establishes probable cause that exigent circumstances exist requiring the warrant to be executed in a no-knock manner. For purposes of this Subparagraph, exigent circumstances shall include circumstances where the surprise of a no-knock entry is necessary to protect life and limb of the law enforcement officers and the occupants.

(2) The copy of the warrant being executed that is in the possession of law enforcement officers to be delivered as provided in Paragraph C of this Article includes the judge's signature.

B. A search warrant authorized under this Article shall require that a law enforcement officer be recognizable and identifiable as a uniformed law enforcement officer and provide audible notice of his authority and purpose reasonably expected to be heard by occupants of such place to be searched prior to the execution of such search warrant.

C. After entering and securing the place to be searched and prior to undertaking any search or seizure pursuant to the search warrant, the executing law enforcement officer shall read and give a copy of the search warrant to the person to be searched or the owner of the place to be searched or, if the owner is not present, to any occupant of the place to be searched. If the place to be searched is unoccupied, the executing law enforcement officer shall leave a copy of the search warrant suitably affixed to the place to be searched.

D. Search warrants authorized under this Article shall be executed only from sunrise to sunset except in either of the following instances:

(1) A judge authorizes the execution of such search warrant at another time for good cause shown.

(2) The search warrant is for the withdrawal of blood. A search warrant for the withdrawal of blood may be executed at any time of day.

E. Any evidence obtained from a search warrant in violation of this Article shall not be admitted into evidence for prosecution.

F. For purposes of this Article, "no-knock warrant" means a warrant issued by a judge that allows law enforcement to enter a property without immediate prior notification of the residents, such as by knocking or ringing a doorbell.

G. For the purposes of this Article, only a district court judge may issue a no-knock warrant.

Acts 2021, No. 430, §2.

Art. 211. Summons by officer instead of arrest and booking

A.(1) When it is lawful for a peace officer to arrest a person without a warrant for a misdemeanor, or for a felony charge of theft or illegal possession of stolen things when the thing of value is five hundred dollars or more but less than one thousand dollars, he shall issue a written summons instead of making an arrest unless one or more of the following conditions exist:

(a) The officer has reasonable grounds to believe that the person will not appear upon summons.

(b) The officer has reasonable grounds to believe that the person will cause injury to himself or another or damage to property or will continue in the same or a similar offense unless immediately arrested and booked.

(c) There is a necessity to book the person to comply with routine identification procedures.

(d) The officer has ascertained that the person has two or more prior felony convictions.

(2) In any case in which a summons has been issued, a warrant of arrest may later be issued in its place.

B.(1) When a peace officer has reasonable grounds to believe a person has committed the offense of issuing worthless checks as defined by R.S. 14:71, he shall issue a written summons instead of making an arrest unless either of the following conditions exist:

(a) He has reasonable grounds to believe that the person will not appear upon summons.

(b) He has reasonable grounds to believe that the person will cause injury to himself or another or damage to property unless immediately arrested.

(2) In any case in which a summons has been issued, a warrant of arrest may later be issued in its place.

C.(1) When a peace officer has reasonable grounds to believe a person has committed an offense of driving without a valid driver's license, whether physical or electronic, in his possession, the officer shall make every practical attempt based on identifying information provided by the person to confirm that the person has been issued a valid driver's license. If the officer determines that the person has been issued a valid driver's license which is not under revocation, suspension, or cancellation, but that the physical or electronic license is not in his possession, the officer shall issue a written summons to the offender in accordance with law, commanding him to appear and answer the charge.

(2) The provisions of this Article shall in no way limit a peace officer from issuing a citation for operating a motor vehicle without possession of a valid driver's license.

D. When a peace officer has reasonable grounds to believe a person has committed an offense of driving with a driver's license that is under revocation, suspension, or cancellation, the officer may use his discretion to make a custodial arrest or issue a written summons to the offender, in accordance with law, commanding him to appear and answer the charge.

Amended by Acts 1982, No. 180, §1; Acts 1995, No. 769, §1; Acts 2006, No. 143, §2; Acts 2011, No. 403, §1; Acts 2019, No. 154, §1; Acts 2021, No. 240, §1.

Art. 223. Identification of minor or dependent children upon arrest; required inquiry; guidelines

A. A state or local law enforcement officer who arrests a person shall, at the time of the arrest, do all of the following if practicable:

(1) Inquire whether the person is a parent or guardian of a minor or dependent child under the care, custody, or control of the arrested person at the time of the arrest, who may be at risk as a result of the arrest.

(2) Ascertain whether a child is present, relying on all available information including any information received from emergency call operators and any indications at the scene of arrest that a child may be present or at another location.

(3) Permit an arrested person a reasonable opportunity, including providing access to telephone numbers stored in a mobile telephone or other location, to make alternate arrangements for the care of a child under his care, custody, or control, including a child who is not present at the scene of the arrest, and to provide a partner organization with contact information of a preferred alternate caregiver.

(4) Provide an arrested person the opportunity to speak with a child who is present, prior to such caregiver being transported to a police facility. If such an opportunity is not practicable, having a police officer explain to such child, using age appropriate language, that such child did nothing wrong and that the child will be safe and cared for.

(5) Make reasonable efforts to ensure the safety of minor or dependent children at risk as a result of an arrest in accordance with guidelines established pursuant to R.S. 40:2405.9.

B. Law enforcement officers are not required to adhere to the guidelines of Paragraph A of this Article if any of the following circumstances are present:

(1) The arrested caregiver presents a threat of serious bodily injury or death to himself, others, or the law enforcement officer.

(2) The arrested caregiver is in the act of committing a crime of violence as defined in R.S. 14:2(B).

(3) The law enforcement officer has exercised due diligence, based on all available information, and ascertains that no minor children are under the arrested person's care, custody, or control.

Acts 2021, No. 126, §2.

TITLE VIII. BAIL

Art. 311. Definitions

For the purpose of this Title, the following definitions shall apply:

(1) Bail is the security given by a person to assure a defendant's appearance before the proper court whenever required.

(2) An appearance is a personal appearance before the court or the court's designee, where the charges are pending.

(3) A surrender is the detention of the defendant at the request of the surety by the officer originally charged with his detention on the original commitment. When the surety has requested the surrender of the defendant, the officer shall acknowledge the surrender by a certificate of surrender signed by him and delivered to the surety.

(4) A constructive surrender is the detention of the defendant in another parish of the state of Louisiana or a foreign jurisdiction under the following circumstances:

(a) A warrant for arrest has been issued for the defendant in the jurisdiction in which the bail obligation is in place.

(b) The surety has provided proof of the defendant's current incarceration to the court in which the bail obligation is in place, to the prosecuting attorney, and to the officer originally charged with the defendant's detention.

(c) The surety has paid reasonable or actual costs of returning the defendant to the jurisdiction where the warrant for arrest was issued by one of the following methods:

(i) Upon presentation of proof of the defendant's current incarceration in a foreign jurisdiction to the officer originally charged with the defendant's detention, the officer shall provide the surety with the reasonable or actual costs of returning the defendant to the jurisdiction where the warrant for arrest was issued when the costs are immediately known or can be estimated.

(ii) The surety tenders to the officer originally charged with the defendant's detention the reasonable or actual costs of returning the defendant to the jurisdiction where the warrant for arrest was issued.

(iii) The surety provides proof of payment to the court and to the prosecuting attorney.

(iv)(aa) In cases where the reasonable or actual costs of returning the defendant to the jurisdiction where the warrant for arrest was issued are not immediately known, the officer originally charged with the defendant's detention shall accept the surety's tender of reasonable costs as provided in R.S. 13:5535 for in-state transfers or for estimated costs for out-of-state transfers.

(bb) The surety shall provide proof of payment to the court and the prosecuting attorney.

(cc) If the actual costs of returning the defendant to the jurisdiction where the warrant for arrest was issued are more than the estimated costs tendered by the surety, the officer originally charged with the defendant's detention may file a rule to show cause with the court to recover the difference.

(5) A surety's motion and affidavit for issuance of warrant may be filed when the defendant is found incarcerated in a foreign jurisdiction and a warrant has not been issued by the court or in which the bail obligation is in place. In such instances, the surety may file a motion with the court requesting a warrant be issued when the following conditions have been met:

(a) There has been a breach of the bail undertaking.

(b) The surety provides proof of the defendant's current incarceration outside of the state of Louisiana. The defendant's incarceration may be used as evidence of a breach of the bail undertaking.

(c) The defendant did not have written permission from the court to leave the state of Louisiana.

(d) Upon presentation of evidence of the breach of the bail undertaking, the court may issue a warrant for the defendant's violation of the conditions of the bail undertaking.

(e) The surety may then file the constructive surrender in accordance with this Article and Article 331.

(6) A personal surety is a natural person domiciled in the state of Louisiana who owns property in this state that is subject to seizure and is of sufficient value to satisfy, considering all his property, the amount specified in the bail undertaking. The value of the property shall exclude the amount exempt from execution, and shall be over and above all other liabilities including the amount of any other bail undertaking on which he may be principal or surety. If there is more than one personal surety, then the requirements shall apply to the aggregate value of their property. A personal surety shall not charge a fee or receive any compensation for posting a bail undertaking. A bail undertaking of a personal surety may be unsecured or secured.

(7) Bail enforcement is the apprehension or surrender by a natural person of a principal who is released on bail or who has failed to appear at any stage of the proceedings to answer the charge before the court in which the principal may be prosecuted.

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

(9) The originating jurisdiction is the jurisdiction where the warrant for the arrest was issued and where the charges are pending.

(10) The executing jurisdiction is the jurisdiction where the defendant is arrested and incarcerated on a warrant for arrest.

Acts 2016, No. 613, §1, eff. Jan. 1, 2017; Acts 2020, No. 267, §1; Acts 2021, No. 197, §1; Acts 2021, No. 243, §1.

Art. 330.1. Posting bail when arrested outside of originating jurisdiction

A. Notwithstanding any provisions of law to the contrary, a person who is arrested and booked in an executing jurisdiction pursuant to a warrant for arrest issued by the originating jurisdiction may be released from custody when bail is posted under the following conditions:

(1) The amount of the bail obligation is included on the warrant for arrest. If the warrant for arrest does not include the amount of the bail obligation, the amount may be set within forty-eight hours by anyone in the originating jurisdiction who is authorized to set bail pursuant to Article 314. If a personal surety undertaking is authorized, the personal surety undertaking shall be in accordance with either Article 323 or 324.

(2) There are no holds, court orders, or other legal impediments that would prohibit the release of the arrested person from custody.

(3) The executing jurisdiction does not object. If the executing jurisdiction objects, the originating jurisdiction shall comply with existing provisions of law relative to bail. The originating jurisdiction shall retain the right to transport or to have the person in custody transported to the originating jurisdiction for the purpose of posting bail in the originating jurisdiction.

(4) Written notice shall be provided to the executing jurisdiction when bail is posted in the originating jurisdiction and release from custody is authorized. When released, the executing jurisdiction shall provide notice in accordance with Article 330 to the arrested person. The originating jurisdiction shall deliver to the executing jurisdiction the information necessary to provide such notice to the arrested person. The notice shall include the date, time, and location of any required court appearances as well as any conditions of bail. Notwithstanding any provisions of law to the contrary, an electronic copy, digital copy, or photocopy of the arrested person's signature on the notice shall be the equivalent of an original signature.

B. The provisions of this Article shall not apply to warrants for sex offenses, homicides and crimes resulting in a death or deaths, felony domestic violence offenses, and aggravated offenses.

Acts 2021, No. 243, §1.

TITLE XI
QUALIFICATIONS AND SELECTION OF GRAND AND PETIT JURORS

Art. 401. General qualifications of jurors

A. In order to qualify to serve as a juror, a person shall meet all of the following requirements:

(1) Be a citizen of the United States and of this state who has resided within the parish in which he is to serve as a juror for at least one year immediately preceding his jury service.

(2) Be at least eighteen years of age.

(3) Be able to read, write, and speak the English language and be possessed of sufficient knowledge of the English language.

(4) Not be under interdiction or incapable of serving as a juror because of a mental or physical infirmity, provided that no person shall be deemed incompetent solely because of the loss of hearing in any degree.

(5) Not be under indictment, incarcerated under an order of imprisonment, or on probation or parole for a felony offense within the five-year period immediately preceding the person's jury service.

B. Notwithstanding any provision in Subsection A, a person may be challenged for cause on one or more of the following:

(1) A loss of hearing or the existence of any other incapacity which satisfies the court that the challenged person is incapable of performing the duties of a juror in the particular action without prejudice to the substantial rights of the challenging party.

(2) When reasonable doubt exists as to the competency of the prospective juror to serve as provided for in Code of Criminal Procedure Article 787.

Amended by Acts 1972, No. 695, §1. Acts 1984, No. 655, §1; Acts 2010, No. 438, §1; Acts 2021, No. 121, §1.

Art. 404. Appointment of jury commissions; term of office; oath; quorum; performance of functions of jury commissions in certain parishes

A. Except as otherwise provided in this Article:

(1) The jury commission of each parish shall consist of the clerk of court or a deputy clerk designated by him in writing to act in his stead in all matters affecting the jury commission, and four other members, each having the qualifications set forth in Article 401 and appointed by written order of the district court, who shall serve at the court's pleasure.

(2) Before entering upon their duties, members of the jury commission shall take an oath to discharge their duties faithfully.

(3) Three members of the jury commission shall constitute a quorum.

(4) Meetings of the jury commission shall be open to the public.

B. In the parish of East Baton Rouge the function of the jury commission shall be performed by the judicial administrator of the Nineteenth Judicial District Court or by a deputy judicial administrator designated by him in writing to act in his stead in all matters affecting the jury commission. The judicial administrator or his designated deputy shall have the same powers, duties and responsibilities, and be governed by those provisions of law as presently pertain to jury commissioners which are applicable, including the taking of an oath to discharge their duties faithfully. The clerk of court of the parish of East Baton Rouge shall perform the duties and responsibilities otherwise imposed upon him by law with respect to jury venires, shall coordinate the jury venire process, and shall receive the compensation generally authorized for a jury commissioner.

C. In Orleans Parish, the jury commission shall be appointed by the judges en banc of the Criminal District Court of the parish of Orleans, and the jury commissioners shall serve at the pleasure of the court.

D. In the parish of Lafourche, the function of the jury commission may be performed by the clerk of court of the parish of Lafourche or by a deputy clerk of court designated by him in writing to act in his stead in all matters affecting the jury commission. The clerk of court or his designated deputy shall have the same powers, duties, and responsibilities, and shall be governed by applicable provisions of law pertaining to jury commissioners. The clerk of court of the parish of Lafourche shall perform the duties and responsibilities otherwise imposed upon him by law with respect to jury venires, shall coordinate the jury venire process, and shall receive the compensation generally authorized for a jury commissioner.

E. In the parish of Terrebonne, the function of the jury commission shall be performed by the clerk of court of Terrebonne Parish or by a deputy clerk of court designated by him in writing to act in his stead in all matters affecting the jury commission. The clerk of court or his designated deputy shall have the same powers, duties, and responsibilities, and shall be governed by all applicable provisions of law pertaining to jury commissioners. The clerk of court of Terrebonne Parish shall perform the duties and responsibilities otherwise imposed upon him by law with respect to jury venires, shall coordinate the jury venire process, and shall receive the compensation generally authorized for a jury commissioner.

F. In the parish of St. Charles, the function of the jury commission shall be performed by the clerk of court of St. Charles Parish or by a deputy clerk of court designated by him in writing to act in his stead in all matters affecting the jury commission. The clerk of court or his designated deputy shall have the same powers, duties, and responsibilities, and shall be governed by all applicable provisions of law pertaining to jury commissioners. The clerk of court of St. Charles Parish shall perform the duties and responsibilities otherwise imposed upon him by law with respect to jury venires, shall coordinate the jury venire process, and shall receive the compensation generally authorized for a jury commissioner.

G. In the parishes of East Feliciana and West Feliciana, the function of the jury commission shall be performed by the clerks of court of East Feliciana Parish and West Feliciana Parish or by a deputy clerk of court designated by the respective clerk in writing to act in his stead in all matters affecting the jury commission. The clerk of court or his designated deputy shall have the same powers, duties, and responsibilities, and shall be governed by all applicable provisions of law pertaining to jury commissioners. The clerks of court of East Feliciana Parish and West Feliciana Parish shall perform the duties and responsibilities otherwise imposed upon him by law with respect to jury venires, shall coordinate the jury venire process, and shall receive the compensation generally authorized for a jury commissioner.

H. In the parishes of Caldwell, Claiborne, DeSoto, Franklin, Union, and Webster, the function of the jury commission shall be performed by the clerks of court of Caldwell Parish, Claiborne Parish, DeSoto Parish, Franklin Parish, Union Parish, and Webster Parish or by a deputy clerk of court designated by the respective clerk in writing to act in his stead in all matters affecting the jury commission. The clerk of court or his designated deputy shall have the same powers, duties, and responsibilities, and shall be governed by all applicable provisions of law pertaining to jury commissioners. The clerks of court of Caldwell Parish, Claiborne Parish, DeSoto Parish, Franklin Parish, Union Parish, and Webster Parish shall perform the duties and responsibilities

otherwise imposed upon him by law with respect to jury venires, shall coordinate the jury venire process, and shall receive the compensation generally authorized for a jury commissioner.

I. In the parish of Tangipahoa, the function of the jury commission shall be performed by the clerk of court of Tangipahoa Parish or by a deputy clerk of court designated by the respective clerk in writing to act in his stead in all matters affecting the jury commission. The clerk of court or his designated deputy shall have the same powers, duties, and responsibilities, and shall be governed by all applicable provisions of law pertaining to jury commissioners. The clerk of court of Tangipahoa Parish shall perform the duties and responsibilities otherwise imposed upon him by law with respect to jury venires, shall coordinate the jury venire process, and shall receive the compensation generally authorized for a jury commissioner.

J. In the parish of Jackson, the function of the jury commission shall be performed by the clerk of court of Jackson Parish or by a deputy clerk of court designated by the respective clerk in writing to act in his stead in all matters affecting the jury commission. The clerk of court or his designated deputy shall have the same powers, duties, and responsibilities, and shall be governed by all applicable provisions of law pertaining to jury commissioners. The clerk of court of Jackson Parish shall perform the duties and responsibilities otherwise imposed upon him by law with respect to jury venires, shall coordinate the jury venire process, and shall receive the compensation generally authorized for a jury commissioner.

Amended by Acts 1975, No. 259, §1; Acts 1993, No. 632, §1; Acts 2007, No. 94, §1; Acts 2013, No. 100, §1; Acts 2013, No. 156, §1; Acts 2016, No. 232, §1; Acts 2017, No. 104, §1; Acts 2018, No. 417, §1; Acts 2020, No. 97, §1; Acts 2021, No. 84, §1.

Art. 556.1. Plea of guilty or nolo contendere in felony cases; duties of the court and defense counsel

A. In a felony case, the court shall not accept a plea of guilty or nolo contendere without first addressing the defendant personally in open court and informing him of, and determining that he understands, all of the following:

(1) The nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law.

(2) If the defendant is not represented by an attorney, that he has the right to be represented by an attorney at every stage of the proceeding against him and, if financially unable to employ counsel, one will be appointed to represent him.

(3) That he has the right to plead not guilty or to persist in that plea if it has already been made, and that he has the right to be tried by a jury and at that trial has the right to the assistance of counsel, the right to confront and cross-examine witnesses against him, and the right not to be compelled to incriminate himself.

(4) That if he pleads guilty or nolo contendere there will not be a further trial of any kind, so that by pleading guilty or nolo contendere he waives the right to a trial.

(5) That if he pleads guilty or nolo contendere, he may be subject to additional consequences or waivers of constitutional rights in the following areas as a result of his plea to be informed as follows:

(a) Defense counsel or the court shall inform him regarding:

(i) Potential deportation, for a person who is not a United States citizen.

(ii) The right to vote.

(iii) The right to bear arms.

(iv) The right to due process.

(v) The right to equal protection.

(b) Defense counsel or the court may inform him of additional direct or potential consequences impacting the following:

(i) College admissions and financial aid.

(ii) Public housing benefits.

(iii) Employment and licensing restrictions.

(iv) Potential sentencing as a habitual offender.

(v) Standard of proof for probation or parole revocations.

(c) Failure to adhere to the provisions of Subsubparagraphs (a) and (b) of this Subparagraph shall not be considered an error, defect, irregularity, or variance affecting the substantial rights of the accused and does not constitute grounds for reversal pursuant to Article 921.

(d) It shall be sufficient to utilize a form which conveys this information to the client and the form shall constitute prima facie evidence that the content was conveyed and understood.

B. In a felony case, the court shall not accept a plea of guilty or nolo contendere without first addressing the defendant personally in open court and determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement.

C.(1) The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the district attorney and the defendant or his attorney. If a plea agreement has been reached by the parties, the court, on the record, shall require the disclosure of the agreement in open court or, on a showing of good cause, in camera, at the time the plea is offered.

(2) The court shall further inquire of the defendant and his attorney whether the defendant has been informed of all plea offers made by the state.

D. In a felony case a verbatim record shall be made of the proceedings at which the defendant enters a plea of guilty or nolo contendere.

E. Any variance from the procedures required by this Article which does not affect substantial rights of the accused shall not invalidate the plea.

F. Nothing in this Article prohibits the court, by local rule, from providing for a defendant's appearance at the entry of his plea of guilty or nolo contendere by simultaneous audio-visual transmission in accordance with the provisions of Article 562.

Acts 1997, No. 1061, §1; Acts 2001, No. 243, §1; Acts 2017, No. 406, §1; Acts 2019, No. 158, §1; Acts 2020, No. 160, §1; Acts 2021, No. 271, §1.

Art. 573. Running of time limitations; exception

The time limitations established by Article 572 shall not commence to run as to the following offenses until the relationship or status involved has ceased to exist when:

(1) The offense charged is based on the misappropriation of any money or thing of value by one who, by virtue of his office, employment, or fiduciary relationship, has been entrusted therewith or has control thereof.

(2) The offense charged is extortion or false accounting committed by a public officer or employee in his official capacity.

(3) The offense charged is public bribery.

(4) The offense charged is a felony crime of violence as defined in R.S. 14:2(B) or cruelty to juveniles as defined in R.S. 14:93 and the victim is under eighteen years of age, unless a longer period of limitation is established by Article 571.1 or any other provision of law.

Added by Acts 1982, No. 753, §1; Acts 1987, No. 587, §1; Acts 1988, No. 436, §1; Acts 1988, No. 693, §1; Acts 1993, No. 592, §1, eff. June 15, 1993; Acts 2021, No. 142, §1.

Art. 573.1. Running of time limitations; exception; persons with infirmities

A. The time limitations established by Article 572 shall not commence to run as to any crime wherein the victim is a person with infirmities until the crime is discovered by a competent victim, or in the case of an incompetent victim, by a law enforcement officer. This shall include but is not limited to the crimes of simple battery of persons with infirmities (R.S. 14:35.2), cruelty to persons with infirmities (R.S. 14:93.3), exploitation of persons with infirmities (R.S. 14:93.4), sexual battery of persons with infirmities (R.S. 14:93.5), and abuse of persons with infirmities through electronic means (R.S. 14:283.3).

B.(1) "Law enforcement officer" shall mean any employee of the state, a political subdivision, a municipality, a sheriff, or other public agency whose permanent duties include the making of arrests, the performing of searches and seizures, or the execution of criminal warrants, and who is responsible for the prevention or detection of crime or for the enforcement of the penal, traffic, or highway laws of this state.

(2) "Person with infirmities" shall mean a person who suffers from a mental or physical disability, including those associated with advanced age, which renders the person incapable of adequately providing for his personal care. The term "person with infirmities" may include but is not limited to any individual who is an outpatient or resident of a nursing home, facility for persons with intellectual disabilities, mental health facility, hospital, or other residential facility, or a recipient of home or community-based care or services.

Acts 2010, No. 317, §1; Acts 2014, No. 811, §31, eff. June 23, 2014; Acts 2021, No. 72, §1.

Art. 644. Appointment of sanity commission; examination of defendant

A. Within seven days after a mental examination is ordered, the court shall appoint a sanity commission to examine and report upon the mental condition of the defendant. The sanity commission shall consist of at least two and not more than three members who are licensed to practice medicine in Louisiana, who have been in the actual practice of medicine for not less than three consecutive years immediately preceding the appointment, and who are qualified by training or experience in forensic evaluations. The court may appoint, in lieu of one physician, a clinical psychologist or medical psychologist who is licensed to practice psychology in Louisiana, who

has been engaged in the practice of clinical or counseling psychology for not less than three consecutive years immediately preceding the appointment, and who is qualified by training or experience in forensic evaluations. Every sanity commission shall have at least one psychiatrist as a member of the commission, unless one is not reasonably available, in which case, the commission shall have at least one clinical psychologist as a member of the commission. No more than one member of the sanity commission shall be the coroner or any of his deputies.

B. The members of the sanity commission appointed to make the examination shall have free access to the defendant at all reasonable times. The court shall subpoena witnesses to attend the examination at the request of the defendant, the commission, or any member thereof.

C. For the purpose of the mental examination, the court may order a defendant previously released on bail to appear for mental examinations and hearings in the same manner as other criminal proceedings.

D.(1) The court, in any judicial district which enters into a cooperative endeavor agreement with the local mental health unit, in lieu of appointing a sanity commission as provided in Paragraph A, may appoint the local mental health unit to examine and report on the mental condition of the defendant. If the local mental health unit is ordered to conduct the examination, it shall form a clinical team, consisting of at least two but not more than three members, to conduct the examination. The clinical team shall be composed of one or more licensed physicians with at least three years experience in the study of psychiatry in an approved United States General Psychiatry Residency Program; if only one such licensed physician is a member of the clinical team, the remaining members of the clinical team may be composed of clinical psychologists, medical psychologists, or licensed clinical social workers, who are qualified by training or experience in forensic evaluations.

(2)(a) With respect to all other provisions of the Code of Criminal Procedure in which the term "sanity commission" is designated, it shall also mean and include, for the exclusive purpose of this Article, a clinical team designated by the local health unit to conduct the examination of the defendant in accordance with this Paragraph.

(b) "Local mental health unit" as used in this Paragraph shall mean a legislatively created Human Services Authority.

Acts 1975, No. 325, §1; Acts 1987, No. 577, §1; Acts 1990, No. 488, §1; Acts 1994, 3rd Ex. Sess., No. 67, §1, eff. July 7, 1994; Acts 1997, No. 1222, §1; Acts 1999, No. 1309, §10, eff. Jan. 1, 2000; Acts 2009, No. 251, §1, eff. Jan. 1, 2010; Acts 2021, No. 238, §2.

TITLE XXIV. PROCEDURES PRIOR TO TRIAL
CHAPTER 1. SETTING CASES FOR TRIAL

Art. 701. Right to a speedy trial

A. The state and the defendant have the right to a speedy trial.

B. The time period for filing a bill of information or indictment after arrest shall be as follows:

NOTE: Subsubparagraph (B)(1)(a) eff. until Jan. 1, 2022. See Acts 2021, No. 252.

(1)(a) When the defendant is continued in custody subsequent to an arrest, an indictment or information shall be filed within forty-five days of the arrest if the defendant is being held for a misdemeanor and within sixty days of the arrest if the defendant is being held for a felony.

NOTE: Subsubparagraph (B)(1)(a) as amended by Acts 2021, No. 252, eff. Jan. 1, 2022.

(1)(a) When the defendant is continued in custody subsequent to an arrest, an indictment or information shall be filed within thirty days of the arrest if the defendant is being held for a misdemeanor and within sixty days of the arrest if the defendant is being held for a felony.

(b) When the defendant is continued in custody subsequent to an arrest, an indictment shall be filed within one hundred twenty days of the arrest if the defendant is being held for a felony for which the punishment may be death or life imprisonment.

(2)(a) When the defendant is not continued in custody subsequent to arrest, an indictment or information shall be filed within ninety days of the arrest if the defendant is booked with a misdemeanor and one hundred fifty days of the arrest if the defendant is booked with a felony.

(b) Failure to institute prosecution as provided in Subparagraph (1) of this Paragraph shall result in release of the defendant if, after contradictory hearing with the district attorney, just cause for the failure is not shown. If just cause is shown, the court shall reconsider bail for the defendant. Failure to institute prosecution as provided in this Subparagraph shall result in the release of the bail obligation if, after contradictory hearing with the district attorney, just cause for the delay is not shown.

C. Upon filing of a bill of information or indictment, the district attorney shall set the matter for arraignment within thirty days unless just cause for a longer delay is shown.

D.(1) A motion by the defendant for a speedy trial, in order to be valid, must be accompanied by an affidavit by defendant's counsel certifying that the defendant and his counsel are prepared to proceed to trial within the delays set forth in this Article. Except as provided in Subparagraph (3) of this Paragraph, after the filing of a motion for a speedy trial by the defendant and his counsel, the time period for commencement of trial shall be as follows:

(a) The trial of a defendant charged with a felony shall commence within one hundred twenty days if he is continued in custody and within one hundred eighty days if he is not continued in custody.

(b) The trial of a defendant charged with a misdemeanor shall commence within thirty days if he is continued in custody and within sixty days if he is not continued in custody.

(2) Failure to commence trial within the time periods provided above shall result in the release of the defendant without bail or in the discharge of the bail obligation, if after contradictory hearing with the district attorney, just cause for the delay is not shown.

(3) After a motion for a speedy trial has been filed by the defendant, if the defendant files any subsequent motion which requires a contradictory hearing, the court may suspend, in accordance with Article 580, or dismiss upon a finding of bad faith the pending speedy trial motion. In addition, the period of time within which the trial is required to commence, as set forth by Article 578, may be suspended, in accordance with Article 580, from the time that the subsequent motion is filed by the defendant until the court rules upon such motion.

E. "Just cause" as used in this Article shall include any grounds beyond the control of the State or the Court.

F. A motion for a speedy trial filed by the defendant, but not verified by the affidavit of his counsel, shall be set for contradictory hearing within thirty days.

Amended by Acts 1981, No. 181, §1; Acts 1982, No. 462, §1; Acts 1993, No. 682, §1; Acts 2007, No. 295, §1; Acts 2018, No. 259, §1; Acts 2021, No. 252, §1, eff. Jan. 1, 2022.

Art. 732.2. Subpoena duces tecum regarding human trafficking offenses

A. The Department of Public Safety and Corrections, office of state police, the office of the attorney general, the police department, or the sheriff's office investigating any offense or attempt to commit any offense described in Subparagraphs (1) and (2) of this Paragraph shall have the administrative authority to issue in writing and cause to be served a subpoena requiring the production and testimony described in Paragraph B of this Article upon reasonable cause to believe that an internet service account, or online identifier as defined in R.S. 15:541, has been used in the commission or attempted commission of the following:

(1) A person is a victim of human trafficking pursuant to R.S. 14:46.2, or the offender reasonably believes that the person is a victim of human trafficking.

(2) A person is a victim of trafficking of children for sexual purposes pursuant to R.S. 14:46.3, or the offender reasonably believes that the person is a minor.

B. Except as provided in Paragraph C of this Article, a subpoena issued under this Article may require the production of the following records or other documentation relevant to the investigation:

(1) Electronic mail address.

(2) Internet username.

(3) Internet protocol address.

(4) Name of account holder.

(5) Billing and service address.

(6) Telephone number.

(7) Account status.

(8) Method of access to the internet.

(9) Automatic number identification records if access is by modem.

C. The following information shall not be subject to disclosure pursuant to an administrative subpoena issued pursuant to the provisions of this Article but shall be subject to disclosure pursuant to other lawful process:

(1) In-transit electronic communications.

(2) Account memberships related to internet groups, newsgroups, mailing lists, or specific areas of interest.

(3) Account passwords.

(4) Account content, including electronic mail in any form, address books, contacts, financial records, web surfing history, internet proxy content, or files or other digital documents stored with the account or pursuant to use of the account.

D. A subpoena issued pursuant to this Article shall describe the objects required to be produced and shall prescribe a return date with a reasonable period of time within which the objects can be assembled and made available.

E. If no case or proceeding arises from the production of records or other documentation pursuant to this Section and the time limitation for initiation of prosecution has expired, the

Department of Public Safety and Corrections, office of state police, the office of the attorney general, or the sheriff's office shall destroy the records and documentation.

F. Except as provided in this Article, any information, records, or data reported or obtained pursuant to a subpoena authorized by the provisions of this Article shall remain confidential and shall not be disclosed unless in connection with a criminal case related to the subpoenaed materials.

G. Any administrative subpoena issued pursuant to this Article shall comply with the provisions of 18 U.S.C. 2703(c)(2).

Acts 2021, No. 18, §1.

Art. 833. Presence of defendant; misdemeanor prosecution

A. The court may permit an unrepresented or pro se defendant charged with a misdemeanor to be arraigned, enter his plea of guilty, or be tried, in his absence.

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

C. The sworn affidavit referenced in Paragraph B of this Article shall include the caption of the case and summons number, citation number or docket number as applicable, and state as follows:

AFFIDAVIT ACCEPTING SERVICE AND
WAIVER OF PRESENCE

BEFORE ME, the undersigned authority, did personally come and appear, _____(CLIENT'S NAME), who after being duly sworn did depose and say:

1.

Affiant acknowledges that he is the defendant in the above captioned criminal matter; that he is aware of all charges pending against him in this matter and that he has retained the services of _____ (ATTORNEY(S) or LAW FIRM) to represent him in these proceedings;

2.

Affiant is aware that he is scheduled to be in court on the _____ day of _____, 20__ at ___ o'clock and that he has the right to be present on that day but expressly wishes to waive this right and to have his legal counsel appear on his behalf;

3.

Affiant is aware that in his absence, additional court dates could be scheduled in these proceedings and he hereby appoints his above named legal counsel as his agent(s) to accept service of notice to appear for those dates on his behalf, that he accepts service of those dates through his counsel and that he expressly waives his appearance for those dates and authorizes his counsel to appear on his behalf;4.

Affiant understands that the court, in its sole discretion, may revoke its acceptance of this waiver and require that affiant personally appear in open court on subsequent court dates; that his counsel will also be notified; that a notice of appearance will be mailed to affiant at his address of record and that affiant's failure to appear at the subsequent court date could result in the issuance of an arrest warrant, a revocation of appearance bond and/or is punishable as contempt of court;

5.

Finally, Affiant acknowledges that his current address is: _____(Street, Apt/Lot No, City, State and Zip Code); and authorizes the court to use this address for all notices, unless changed in writing by affiant.

_____

Affiant

SWORN TO AND SUBSCRIBED BEFORE ME, notary, this ____ day of _____, 20__.

_____

NOTARY PUBLIC

Acts 1990, No. 543, §1; Acts 1990, No. 593, §1; Acts 1997, No. 1015, §1; Acts 2017, No. 406, §1; Acts 2020, No. 160, §2; Acts 2021, No. 235, §1.

NOTE: Art. 875.1 eff. until Aug. 1, 2022. See Acts 2021, No. 313.

Art. 875.1. Determination of substantial financial hardship to the defendant

A. The purpose of imposing financial obligations on an offender who is convicted of a criminal offense is to hold the offender accountable for his action, to compensate victims for any actual pecuniary loss or costs incurred in connection with a criminal prosecution, to defray the cost of court operations, and to provide services to offenders and victims. These financial obligations should not create a barrier to the offender's successful rehabilitation and reentry into society. Financial obligations in excess of what an offender can reasonably pay undermine the primary purpose of the justice system which is to deter criminal behavior and encourage compliance with the law. Financial obligations that cause undue hardship on the offender should be waived, modified, or forgiven. Creating a payment plan for the offender that is based upon the ability to pay, results in financial obligations that the offender is able to comply with and often results in more money collected. Offenders who are consistent in their payments and in good faith try to fulfill their financial obligations should be rewarded for their efforts.

B. For purposes of this Article, "financial obligations" shall include any fine, fee, cost, restitution, or other monetary obligation authorized by this Code or by the Louisiana Revised Statutes of 1950 and imposed upon the defendant as part of a criminal sentence, incarceration, or as a condition of the defendant's release on probation or parole.

C.(1) Notwithstanding any provision of law to the contrary, prior to ordering the imposition or enforcement of any financial obligations as defined by this Article, the court shall determine whether payment in full of the aggregate amount of all the financial obligations to be imposed upon the defendant would cause substantial financial hardship to the defendant or his dependents.

(2) The defendant may not waive the judicial determination of a substantial financial hardship required by the provisions of this Paragraph.

D.(1) If the court determines that payment in full of the aggregate amount of all financial obligations imposed upon the defendant would cause substantial financial hardship to the defendant or his dependents, the court shall do either of the following:

(a) Waive all or any portion of the financial obligations.

(b) Order a payment plan that requires the defendant to make a monthly payment to fulfill the financial obligations.

(2)(a) The amount of each monthly payment for the payment plan ordered pursuant to the provisions of Subsubparagraph (1)(b) of this Paragraph shall be equal to the defendant's average gross daily income for an eight-hour work day.

(b) If the court has ordered restitution, half of the defendant's monthly payment shall be distributed toward the defendant's restitution obligation.

(c) During any periods of unemployment, homelessness, or other circumstances in which the defendant is unable to make the monthly payment, the court or the defendant's probation and parole officer is authorized to impose a payment alternative, including but not limited to any of the following: substance abuse treatment, education, job training, or community service.

(3) If, after the initial determination of the defendant's ability to fulfill his financial obligations, the defendant's circumstances and ability to pay his financial obligations change, the defendant or his attorney may file a motion with the court to reevaluate the defendant's circumstances and determine, in the same manner as the initial determination, whether under the defendant's current circumstances payment in full of the aggregate amount of all the financial obligations imposed upon the defendant would cause substantial financial hardship to the defendant or his dependents. Upon such motion, if the court determines that the defendant's current circumstances would cause substantial financial hardship to the defendant or his dependents, the court may either waive or modify the defendant's financial obligation, or recalculate the amount of the monthly payment made by the defendant under the payment plan set forth in Subsubparagraph (1)(b) of this Paragraph.

E. If a defendant is ordered to make monthly payments under a payment plan established pursuant to the provisions of Subsubparagraph (D)(1)(b) of this Article, the defendant's outstanding financial obligations resulting from his criminal conviction are forgiven and considered paid-in-full if the defendant makes consistent monthly payments for either twelve consecutive months or consistent monthly payments for half of the defendant's term of supervision, whichever is longer.

F. If, at the termination or end of the defendant's term of supervision, any restitution ordered by the court remains outstanding, the balance of the unpaid restitution shall be reduced to a civil money judgment in favor of the person to whom restitution is owed, which may be enforced in the same manner as provided for the execution of judgments pursuant to the Code of Civil Procedure. For any civil money judgment ordered under this Article, the clerk shall send notice of the judgment to the last known address of the person to whom the restitution is ordered to be paid.

G. The provisions of this Article shall apply only to defendants convicted of offenses classified as felonies under applicable law.

NOTE: Art. 875.1 as repealed by Acts 2021, No. 313, eff. Aug. 1, 2022.

Art. 875.1. Repealed by Acts 2021, No. 313, §2, eff. Aug. 1, 2022.

NOTE: Art. 875.2 as enacted by Acts 2021, No. 313, eff. Aug. 1, 2022.

Art. 875.2. Determination of substantial financial hardship to the defendant

A. The purpose of imposing financial obligations on an offender who is convicted of a criminal offense is to hold the offender accountable for his action, to compensate victims for any actual pecuniary loss or costs incurred in connection with a criminal prosecution, to defray the cost of court operations, and to provide services to offenders and victims. These financial obligations should not create a barrier to the offender's successful rehabilitation and reentry into society. Financial obligations in excess of what an offender can reasonably pay undermine the primary purpose of the justice system which is to deter criminal behavior and encourage compliance with the law. Financial obligations that cause undue hardship on the offender should be waived, modified, or forgiven. Creating a payment plan for the offender that is based upon the ability to pay results in financial obligations that the offender is able to comply with and often results in more money collected. Offenders who are consistent in their payments and in good faith try to fulfill their financial obligations should be rewarded for their efforts.

B. For purposes of this Article, "financial obligations" shall include any fine, fee, cost, restitution, or other monetary obligation authorized by this Code or by the Louisiana Revised Statutes of 1950 and imposed upon the defendant as part of a criminal sentence, incarceration, or as a condition of the defendant's release on probation or parole.

C.(1) Notwithstanding any provision of law to the contrary, prior to ordering the imposition or enforcement of any financial obligations as defined by this Article, the court shall determine whether payment in full of the aggregate amount of all of the financial obligations to be imposed upon the defendant would cause substantial financial hardship to the defendant or his dependents.

(2) The defendant may not waive the judicial determination of a substantial financial hardship required by the provisions of this Paragraph.

D.(1) If the court determines that payment in full of the aggregate amount of all financial obligations imposed upon the defendant would cause substantial financial hardship to the defendant or his dependents, the court shall do either of the following:

(a) Waive all or any portion of the financial obligations.

(b) Order a payment plan that requires the defendant to make a monthly payment to fulfill the financial obligations.

(2)(a) The amount of each monthly payment for the payment plan ordered pursuant to the provisions of Subsubparagraph (1)(b) of this Paragraph shall be equal to the defendant's average gross daily income for an eight-hour work day.

(b) If the court has ordered restitution, half of the defendant's monthly payment shall be distributed toward the defendant's restitution obligation.

(c) During any periods of unemployment, homelessness, or other circumstances in which the defendant is unable to make the monthly payment, the court or the defendant's probation and parole officer is authorized to impose a payment alternative, including but not limited to substance abuse treatment, education, job training, or community service.

(3) If after the initial determination of the defendant's ability to fulfill his financial obligations the defendant's circumstances and ability to pay his financial obligations change, the defendant or his attorney may file a motion with the court to reevaluate the defendant's circumstances and determine, in the same manner as the initial determination, whether under the defendant's current circumstances payment in full of the aggregate amount of all of the financial obligations imposed upon the defendant would cause substantial financial hardship to the

defendant or his dependents. Upon such motion, if the court determines that the defendant's current circumstances would cause substantial financial hardship to the defendant or his dependents, the court may either waive or modify the defendant's financial obligation or recalculate the amount of the monthly payment made by the defendant under the payment plan set forth in Subsubparagraph (1)(b) of this Paragraph.

E. If a defendant is ordered to make monthly payments under a payment plan established pursuant to the provisions of Subsubparagraph (D)(1)(b) of this Article, the defendant's outstanding financial obligations resulting from his criminal conviction are forgiven and considered paid-in-full if the defendant makes consistent monthly payments for either twelve consecutive months or consistent monthly payments for half of the defendant's term of supervision, whichever is longer.

F. If at the termination or end of the defendant's term of supervision, any restitution ordered by the court remains outstanding, the balance of the unpaid restitution shall be reduced to a civil money judgment in favor of the person to whom restitution is owed, which may be enforced in the same manner as provided for the execution of judgments pursuant to the Code of Civil Procedure. For any civil money judgment ordered under this Article, the clerk shall send notice of the judgment to the last known address of the person to whom the restitution is ordered to be paid.

G. The provisions of this Article shall apply only to defendants convicted of offenses classified as felonies under applicable law.

Acts 2021, No. 313, §1, eff. Aug. 1, 2022.

Art. 883.2. Restitution to victim

A. In all cases in which the court finds an actual pecuniary loss to a victim, or in any case where the court finds that costs have been incurred by the victim in connection with a criminal prosecution, the trial court shall order the defendant to provide restitution to the victim as a part of any sentence that the court shall impose.

B. Additionally, if the defendant agrees as a term of a plea agreement, the court shall order the defendant to provide restitution to other victims of the defendant's criminal conduct, although those persons are not the victim of the criminal charge to which the defendant pleads. Such restitution to other persons may be ordered pursuant to Article 895 or 895.1 of this Code or any other provision of law permitting or requiring restitution to victims.

C. The court shall order that all restitution payments be made by the defendant to the victim through the court's designated intermediary, and in no case shall the court order the defendant to deliver or send a restitution payment directly to a victim, unless the victim consents.

NOTE: Paragraph D eff. until Aug. 1, 2022. See Acts 2017, No. 260; Acts 2021, No. 313.

D. Notwithstanding any other provision of law to the contrary, if the defendant is found to be indigent and therefore unable to make restitution in full at the time of conviction, the court may order a periodic payment plan consistent with the person's financial ability.

NOTE: Paragraph D as amended by Acts 2017, No. 260, eff. Aug. 1, 2022. See Acts 2021, No. 313.

D. Notwithstanding any other provision of law to the contrary, if the defendant is found to be indigent and therefore unable to make restitution in full at the time of conviction, the court may order a periodic payment plan pursuant to the provisions of Article 875.1.

Acts 1999, No. 783, §3, eff. Jan. 1, 2000; Acts 1999, No. 988, §1; Acts 2007, No. 22, §1; Acts 2010, No. 160, §1; Acts 2014, No. 180, §1; Acts 2017, No. 260, §1, eff. Aug. 1, 2018; Acts 2018, No. 137, §1, eff. Aug. 1, 2018; Acts 2018, No. 668, §4, eff. Aug. 1, 2018; Acts 2019, No. 253, §2; Acts 2021, No. 313, §3A, see Act.

NOTE: Art. 884 eff. until Aug. 1, 2022. See Acts 2017, No. 260; Acts 2021, No. 313.

Art. 884. Sentence of fine with imprisonment for default

If a sentence imposed includes a fine or costs, the sentence shall provide that in default of payment thereof the defendant shall be imprisoned for a specified period not to exceed one year; provided that where the maximum prison sentence which may be imposed as a penalty for a misdemeanor is six months or less, the total period of imprisonment upon conviction of the offense, including imprisonment for default in payment of a fine or costs, shall not exceed six months for that offense.

NOTE: Art. 884 as amended by Acts 2017, No. 260, eff. Aug. 1, 2022. See Acts 2021, No. 313.

A. If a sentence imposed includes a fine or costs, the sentence shall provide that in default of payment thereof the defendant shall be imprisoned for a specified period not to exceed one year; provided that where the maximum prison sentence which may be imposed as a penalty for a misdemeanor is six months or less, the total period of imprisonment upon conviction of the offense, including imprisonment for default in payment of a fine or costs, shall not exceed six months for that offense.

B. The provisions of this Article do not apply if the court has determined, pursuant to the provisions of Article 875.1, that payment in full of the aggregate amount of all financial obligations imposed upon the defendant would cause substantial financial hardship to the defendant or his dependents. In such cases, the provisions of Article 875.1 shall apply.

Amended by Acts 1968, Ex.Sess., No. 12, §1, emerg. eff. Dec. 27, 1968 at 11:00 A.M; Acts 2017, No. 260, §1, eff. Aug. 1, 2018; Acts 2018, No. 137, §1, eff. Aug. 1, 2018; Acts 2018, No. 668, §4, eff. Aug. 1, 2018; Acts 2019, No. 253, §2; Acts 2021, No. 313, §3A, see Act.

Art. 885.1. Suspension of driving privileges; failure to pay criminal fines

A. When a fine is levied against a person convicted of any criminal offense, including any violation of the Louisiana Highway Regulatory Act or any municipal or parish ordinance regulating traffic, and the court grants the defendant an extension of time to pay the fine, if at the expiration of the extended period granted by the court, the defendant shows that he is financially unable to pay the fine, the judge of the court having jurisdiction shall grant the person an extension of time, not to exceed one hundred eighty days, in which to pay the fine, or offer the person, in lieu of paying the fine, the alternative of performing community service as set by the judge.

B. If, at the expiration of the one-hundred-eighty-day period granted by the judge pursuant to Paragraph A of this Article, the judge determines that the defendant has either willfully not paid the fine or has not performed the community service, the judge may do either of the following:

(1) For any offense that involves the operation of any motor vehicle, aircraft, watercraft, or other means of conveyance as a necessary element of proof in the commission of the offense,

order the person's driver's license to be surrendered to the sheriff or official of the court collecting fines, and the sheriff or official of the court designated to collect fines shall forward the license to the Department of Public Safety and Corrections.

(2) Grant the person an extension of time to either pay the fine or perform the community service.

C. If the person's license is surrendered pursuant to Subparagraph (B)(1) of this Article, upon receipt of the defendant's surrendered driver's license, the department shall suspend the driver's license of the defendant. The suspension shall begin when the department receives written notification from the court, and the department shall send immediate written notification to the defendant informing him of the suspension of driving privileges.

D. The department shall not reinstate, return, reissue, or renew a driver's license in its possession pursuant to this Article until payment of the fine and any additional administrative cost, fee, or penalty required by the judge having the jurisdiction and any other cost, fee, or penalty required by the department in accordance with R.S. 32:414(H) or other applicable cost, fee, or penalty provision.

E. Notwithstanding any provision of law to the contrary, if the person against whom the fine is levied is financially unable to pay the fine, the provisions of this Article shall not apply and the judge of the court shall not order that the person's driver's license be surrendered for failure to pay such fine, unless the court determines that the defendant is financially able but has willfully refused to pay the fine, or to perform the community service ordered as an alternative to the fine pursuant to the provisions of this Article.

Acts 2003, No. 364, §1; Acts 2017, No. 260, §1, eff. Aug. 1, 2018; Acts 2018, No. 137, §1, eff. Aug. 1, 2018; Acts 2018, No. 668, §4, eff. Aug. 1, 2018; Acts 2019, No. 111, §1; Acts 2019, No. 253, §1.

NOTE: See Acts 2021, No. 313, §§ 3B and 4.

NOTE: Art. 888 eff. until Aug. 1, 2022. See Acts 2017, No. 260; Acts 2021, No. 313.

Art. 888. Costs and fines; payment

Costs and any fine imposed shall be payable immediately; provided, however, that in cases involving the violation of any traffic law or ordinance, the court having jurisdiction may grant the defendant five judicial days after rendition of judgment to pay any costs and any fine imposed.

NOTE: Art. 888 as amended by Acts 2017, No. 260, eff. Aug. 1, 2022. See Acts 2021, No. 313.

Costs and any fine imposed shall be payable immediately except as provided in Article 875.1 relative to the determination of the defendant's ability to pay; provided, however, that in cases involving the violation of any traffic law or ordinance, the court having jurisdiction may grant the defendant five judicial days after rendition of judgment to pay any costs and any fine imposed.

Amended by Acts 1968, No. 368, §1; Acts 2017, No. 260, §1, eff. Aug. 1, 2018; Acts 2018, No. 137, §1, eff. Aug. 1, 2018; Acts 2018, No. 668, §4, eff. Aug. 1, 2018; Acts 2019, No. 253, §2; Acts 2021, No. 313, §§3A and 5B.

CHAPTER 2. SUSPENDED SENTENCE AND PROBATION

Art. 893. Suspension and deferral of sentence and probation in felony cases

A.(1)(a) When it appears that the best interest of the public and of the defendant will be served, the court, after a first, second, or third conviction of a noncapital felony, may suspend, in whole or in part, the imposition or execution of either or both sentences, where suspension is allowed under the law, and in either or both cases place the defendant on probation under the supervision of the division of probation and parole. The court shall not suspend the sentence of a second or third conviction of R.S. 14:73.5. Except as provided in Paragraph G of this Article, the period of probation shall be specified and shall not be more than three years, except as provided by Paragraph H of this Article.

(b) The court shall not suspend the sentence of a second or third conviction of R.S. 14:81.1 or 81.2. If the court suspends the sentence of a first conviction of R.S. 14:81.1 or 81.2, the period of probation shall be specified and shall not be more than five years.

(2) The court shall not suspend the sentence of a conviction for an offense that is designated in the court minutes as a crime of violence pursuant to Article 890.3, except a first conviction for an offense with a maximum prison sentence of ten years or less that was not committed against a family member or household member as defined by R.S. 14:35.3, or dating partner as defined by R.S. 46:2151. The period of probation shall be specified and shall not be more than five years.

(3) The suspended sentence shall be regarded as a sentence for the purpose of granting or denying a new trial or appeal.

(4) Supervised release as provided for by Chapter 3-E of Title 15 of the Louisiana Revised Statutes of 1950 shall not be considered probation and shall not be limited by the five-year or three-year period for probation provided for by the provisions of this Paragraph.

B.(1) Notwithstanding any other provision of law to the contrary, when it appears that the best interest of the public and of the defendant will be served, the court, after a fourth or subsequent conviction of a noncapital felony may suspend, in whole or in part, the imposition or execution of the sentence upon consent of the district attorney.

(2) After a third or fourth conviction of operating a vehicle while intoxicated pursuant to R.S. 14:98, the court may suspend, in whole or in part, the imposition or execution of the sentence when the defendant was not offered such alternatives prior to his fourth conviction of operating a vehicle while intoxicated and the following conditions exist:

(a) The district attorney consents to the suspension of the sentence.

(b) The court orders the defendant to do any of the following:

(i) Enter and complete a program provided by the drug division of the district court pursuant to R.S. 13:5301 et seq.

(ii) Enter and complete an established driving while intoxicated court or sobriety court program.

(iii) Enter and complete a mental health court program established pursuant to R.S. 13:5351 et seq.

(iv) Enter and complete a Veterans Court program established pursuant to R.S. 13:5361 et seq.

(v) Enter and complete a reentry court program established pursuant to R.S. 13:5401.

(vi) Reside for a minimum period of one year in a facility which conforms to the Judicial Agency Referral Residential Facility Regulatory Act, R.S. 40:2851 et seq.

(vii) Enter and complete the Swift and Certain Probation Pilot Program established pursuant to R.S. 13:5371 et seq.

(3) When suspension is allowed under this Paragraph, the defendant shall be placed on probation under the supervision of the division of probation and parole. The period of probation shall be specified and shall not be more than three years, except as provided in Paragraph G of this Article. The suspended sentence shall be regarded as a sentence for the purpose of granting or denying a new trial or appeal.

C. If the sentence consists of both a fine and imprisonment, the court may impose the fine and suspend the sentence or place the defendant on probation as to the imprisonment.

D. Except as otherwise provided by law, the court shall not suspend a felony sentence after the defendant has begun to serve the sentence.

E.(1)(a) When it appears that the best interest of the public and of the defendant will be served, the court may defer, in whole or in part, the imposition of a sentence after conviction of a first offense noncapital felony under the conditions set forth in this Paragraph. When a conviction is entered under this Paragraph, the court may defer the imposition of sentence and place the defendant on probation under the supervision of the division of probation and parole.

(b) The court shall not defer a sentence under this provision for an offense or an attempted offense that is designated in the court minutes as a crime of violence pursuant to Article 890.3 or that is defined as a sex offense by R.S. 15:541, involving a child under the age of seventeen years or for a violation of the Uniform Controlled Dangerous Substances Law that is punishable by a term of imprisonment of more than ten years or for a violation of R.S. 40:966(A), 967(A), 968(A), 969(A), or 970(A).

(2) Upon motion of the defendant, if the court finds at the conclusion of the probationary period that the probation of the defendant has been satisfactory, the court may set the conviction aside and dismiss the prosecution. The dismissal of the prosecution shall have the same effect as acquittal, except that the conviction may be considered as a first offense and provide the basis for subsequent prosecution of the party as a habitual offender except as provided in R.S. 15:529.1(C)(3). The conviction may be considered as a prior offense for purposes of any other law or laws relating to cumulation of offenses. Dismissal under this Paragraph shall occur only twice with respect to any person.

(3)(a) When a case is accepted into a drug court division probation program pursuant to the provisions of R.S. 13:5304 and at the conclusion of the probationary period the court finds that the defendant has successfully completed all conditions of probation, the court with the concurrence of the district attorney may set aside the conviction and dismiss prosecution, whether the defendant's sentence was suspended under Paragraph A of this Article or deferred under Subparagraph (1) of this Paragraph. The dismissal of prosecution shall have the same effect as an acquittal, except that the conviction may be considered as a first offense and provide the basis for subsequent prosecution of the party as a habitual offender except as provided in R.S. 15:529.1(C)(3). The conviction may be considered as a prior offense for purposes of any other law or laws relating to cumulation of offenses.

(b) The court may extend the provisions of this Paragraph to any person who has previously successfully completed a drug court program and satisfactorily completed all other conditions of probation.

(c) Dismissal under this Paragraph shall have the same effect as an acquittal for purposes of expungement under the provisions of Title XXXIV of this Code and may occur only twice with respect to any person.

(4) When a defendant, who has been committed to the custody of the Department of Public Safety and Corrections to serve a sentence in the intensive incarceration program pursuant to the provisions of Article 895(B)(3), has successfully completed the intensive incarceration program as well as successfully completed all other conditions of parole or probation, and if the defendant is otherwise eligible, the court with the concurrence of the district attorney may set aside the conviction and dismiss prosecution, whether the defendant's sentence was suspended under Paragraph A of this Article or deferred under Subparagraph (1) of this Paragraph. The dismissal of prosecution shall have the same effect as an acquittal, except that the conviction may be considered as a first offense and provide the basis for subsequent prosecution of the party as a habitual offender except as provided in R.S. 15:529.1(C)(3). The conviction may be considered as a prior offense for purposes of any other law or laws relating to cumulation of offenses. Dismissal under this Subparagraph shall have the same effect as an acquittal for purposes of expungement under the provisions of Title XXXIV of this Code and may occur only twice with respect to any person.

F. Nothing contained herein shall be construed as being a basis for destruction of records of the arrest and prosecution of any person convicted of a felony.

G. If the court, with the consent of the district attorney, orders a defendant to enter and complete a program provided by the drug division of the district court pursuant to R.S. 13:5301, an established driving while intoxicated court or sobriety court program, a mental health court program established pursuant to R.S. 13:5351 et seq., a Veterans Court program established pursuant to R.S. 13:5361 et seq., a reentry court established pursuant to R.S. 13:5401, or the Swift and Certain Probation Pilot Program established pursuant to R.S. 13:5371, the court may place the defendant on probation for a period of not more than eight years if the court determines that successful completion of the program may require that period of probation to exceed the three-year limit. The court may not extend the duration of the probation period solely due to unpaid fees and fines. The period of probation as initially fixed or as extended shall not exceed eight years.

H.(1) If a defendant is placed on supervised probation, the division of probation and parole shall submit to the court a compliance report when requested by the court, or when the division of probation and parole deems it necessary to have the court make a determination with respect to "earned compliance credits", modification of terms or conditions of probation, termination of probation, revocation of probation, or other purpose proper under any provision of law.

(2) For purposes of this Paragraph:

(a) "Compliance" means the full completion of the terms and conditions of probation as imposed by the sentencing judge, except for inability to pay fines, fees, or restitution.

(b) "Compliance report" means a report generated and signed by the division of probation and parole that contains clear and concise information relating to the defendant's performance relative to "earned compliance credits", and may contain a recommendation as to early termination.

(3) After a review of the compliance report, if it is the recommendation of the division of probation and parole that the defendant is in compliance with the conditions of probation, in accordance with the compliance report, the court shall grant "earned compliance credit" for the time, absent a showing of cause for a denial.

(4) The court may terminate probation at any time as "satisfactorily completed" upon the final determination that the defendant is in compliance with the terms and conditions of probation.

(5) If the court determines that the defendant has failed to successfully complete the terms and conditions of probation, the court may extend the probation for a period not to exceed two years, for the purpose of allowing the defendant additional time to complete the terms of probation, additional conditions, the extension of probation, or the revocation of probation.

(6) Absent extenuating circumstances, the court shall, within ten days of receipt of the compliance report, make an initial determination as to the issues presented and shall transmit the decision to the probation officer. The court shall disseminate the decision to the defendant, the division of probation and parole, and the prosecuting agency within ten days of receipt. The parties shall have ten days from receipt of the initial determination of the court to seek an expedited contradictory hearing for the purpose of challenging the court's determination. If no challenge is made within ten days, the court's initial determination shall become final and shall constitute a valid order of the court.

Amended by Acts 1994, 3rd Ex. Sess., No. 100, §1; Acts 1994, 3rd Ex. Sess., No. 123, §1; Acts 1995, No. 990, §1; Acts 1995, No. 1251, §4; Acts 1996, 1st Ex. Sess., No. 5, §1, eff. April 23, 1996; Acts 1997, No. 696, §1; Acts 2001, No. 403, §5 eff. June 15, 2001; Acts 2001, No. 1206, §3; Acts 2006, No. 242, §2; Acts 2006, No. 581, §1; Acts 2008, No. 104, §1; Acts 2009, No. 168, §1; Acts 2010, No. 801, §2, eff. June 30, 2010; Acts 2015, No. 199, §1; Acts 2016, No. 509, §1; Acts 2016, No. 676, §2, eff. June 17, 2016; Acts 2017, No. 280, §1, eff. Nov. 1, 2017; Acts 2018, No. 508, §1; Acts 2018, No. 668, §2; Acts 2019, No. 386, §2; Acts 2020, No. 70, §1; Acts 2021, No. 61, §1.

NOTE: Acts 2008, No. 104, §2, provides that the provisions of the Act are remedial and therefore shall apply retroactively.

Art. 893.2. Discharge, use, or possession of firearm in commission of a felony or a specifically enumerated misdemeanor; submission to jury

If a motion was filed by the state in compliance with Article 893.1, a determination shall be made as to whether a firearm was discharged, or used during the commission of the felony or specifically enumerated misdemeanor, or actually possessed during the commission of a felony which is a crime of violence as defined by R.S. 14:2(B); felony theft; simple burglary; simple burglary of an inhabited dwelling; unauthorized entry of an inhabited dwelling; production, manufacturing, distribution, dispensing, or possession with intent to produce, manufacture, distribute, or dispense a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Law; or specifically enumerated misdemeanor and whether the mandatory minimum sentencing provisions of Article 893.3 have been shown to be applicable. Such determination is a specific finding of fact to be submitted to the jury and proven by the state beyond a reasonable doubt.

Acts 1988, No. 319, §1; Acts 1999, No. 575, §1; Acts 2019, No. 326, §1, eff. June 11, 2019; Acts 2021, No. 349, §1.

Art. 894. Suspension and deferral of sentence; probation in misdemeanor cases

A.(1) Notwithstanding any other provision of this Article to the contrary, when a defendant has been convicted of a misdemeanor, except criminal neglect of family, or stalking, the court may suspend the imposition or the execution of the whole or any part of the sentence imposed, provided suspension is not prohibited by law, and place the defendant on unsupervised probation or probation supervised by a probation office, agency, or officer designated by the court, other than the division of probation and parole of the Department of Public Safety and Corrections, upon such conditions as the court may fix. Such suspension of sentence and probation shall be for a period of two years or such shorter period as the court may specify.

(2) When a suspended sentence in excess of six months is imposed, the court may place the defendant on probation under the supervision of the Department of Public Safety and Corrections, division of probation and parole, for a period of not more than two years and under such conditions as the court may specify.

(3) When a defendant has been convicted of the misdemeanor offense of operating a vehicle while intoxicated, second offense, the court may suspend the imposition or the execution of the whole or any part of the sentence imposed and place the defendant on unsupervised or supervised probation upon such conditions as the court may fix, where suspension is not prohibited under the law. Such suspension of sentence and probation shall be for a period of two years or such shorter period as the court may specify.

(4) The court may suspend, reduce, or amend a misdemeanor sentence after the defendant has begun to serve the sentence.

(5) At the time that any defendant petitions the court to set aside any plea for operating a vehicle while intoxicated pursuant to this Article, the court shall order the clerk of court to mail to the Department of Public Safety and Corrections, office of motor vehicles, a certified copy of the record of the plea, fingerprints of the defendant, and proof of the requirements as set forth in Code of Criminal Procedure Article 556.1 which shall include the defendant's date of birth, social security number, and driver's license number. An additional fifty dollar court cost shall be assessed at this time against the defendant and paid to the Department of Public Safety and Corrections, office of motor vehicles, for the costs of storage and retrieval of the records.

(6) When a case is assigned to the drug division probation program pursuant to the provisions of R.S. 13:5304, with the consent of the district attorney, the court may place the defendant on probation for a period of not more than eight years if the court determines that successful completion of the program may require that the period of probation exceed the two-year limit. If necessary to assure successful completion of the drug division probation program, the court may extend the duration of the probation period. The period of probation as initially fixed or as extended shall not exceed eight years.

(7) When a case is assigned to an established driving while intoxicated court or sobriety court program certified by the Louisiana Supreme Court Drug Court Office, the National Highway Traffic Safety Administration, or the Louisiana Highway Safety Commission, with the consent of the district attorney, the court may place the defendant on probation for a period of not more than eight years if the court determines that the successful completion of the program may require that the period of probation exceed the two-year limit. If necessary to assure successful completion of the driving while intoxicated court or sobriety court program, the court may extend the duration of the probation period. The period of probation as initially fixed or as extended shall not exceed eight years.

B.(1) When the imposition of sentence has been deferred by the court, as authorized by this Article, and the court finds at the conclusion of the period of deferral that the defendant has not been convicted of any other offense during the period of the deferred sentence, and that no criminal charge is pending against him, the court may set the conviction aside and dismiss the prosecution. However, prior to setting aside any conviction and dismissing the prosecution for any charge for operating a vehicle while intoxicated, the court shall require proof in the form of a certified letter from the Department of Public Safety and Corrections, office of motor vehicles, that the requirements of Subparagraph (A)(5) of this Article have been complied with.

(2) The dismissal of the prosecution shall have the same effect as an acquittal, except that the conviction may be considered as a prior offense and provide the basis for subsequent prosecution of the party as a multiple offender. Discharge and dismissal under this provision for the offense of operating a vehicle while intoxicated may occur only once with respect to any person during a ten-year period.

(3) Discharge and dismissal pursuant to the provisions of this Subparagraph may occur on a single subsequent prosecution and conviction which occurs during the ten-year period provided for in Subparagraph (B)(2) of this Article if the following conditions are met:

(a) The offender has successfully completed a driving while intoxicated court or sobriety court program pursuant to Subparagraph (A)(7) of this Article.

(b) The conditions imposed by the court pursuant to the provisions of Subparagraph (A)(3) of this Article have been met.

C. Nothing contained herein shall be construed as being a basis for destruction of records of the arrest and prosecution of any person convicted of a misdemeanor.

D.(1) The Department of Public Safety and Corrections, office of motor vehicles, shall serve as a repository for the records referred to in Subparagraph (A)(5) of this Article for any plea for operating a vehicle while intoxicated entered pursuant to the provisions of this Article. The department shall maintain records for a period of ten years. The department shall respond by certified mail to a request by any court, prosecuting agency, or defendant seeking certified copies of the records or verification that the records are in the possession of the department.

(2) The records maintained by the department pursuant to this Article shall be confidential, except as otherwise provided in this Article. Certified copies of the records maintained by the department shall be admissible only in a subsequent prosecution for operating a vehicle while intoxicated and shall not be used for any other purpose.

(3)(a) The Department of Insurance is hereby authorized to expend from any surplus it derives from a fiscal year an amount not to exceed three hundred thousand dollars to the office of motor vehicles to fully implement and maintain the electronic database established in this Paragraph.

(b) The Department of Insurance is further authorized to enter into cooperative endeavor agreements with the Louisiana State Supreme Court, any district attorney's office, or any clerk of court's office for training and usage of the database created by this Paragraph.

Acts 1972, No. 514, §1; Acts 1972, No. 651, §1; Acts 1975, No. 608, §1; Acts 1978, No. 570, §3; Acts 1982, No. 270, §1; Acts 1986, No. 184, §1; Acts 1987, No. 59, §1; Acts 1989, No. 35, §1; Acts 1990, No. 89, §1; Acts 1995, No. 1251, §4; Acts 1996, 1st Ex. Sess., No. 5, §1, eff. April 23, 1996; Acts 1999, No. 1168, §1; Acts 2004, No. 730, §1; Acts 2007, No. 62, §2; Acts 2008, No. 451, §1, eff. June 25, 2008; Acts 2012, No. 670, §1; Acts 2015, No. 199, §1; Acts 2021, No. 124, §1.

NOTE: Acts 1996, 1st Ex. Sess., No. 5, §1, adding Article 894(B) was retroactive to Aug. 15, 1995.

Art. 894.4. Probation; extension

Probation shall neither be revoked nor extended based solely upon the defendant's inability to pay fines, fees, or restitution to the victim.

Acts 2006, No. 823, §1; Acts 2010, No. 808, §1; Acts 2017, No. 260, §1, eff. Aug. 1, 2018; Acts 2018, No. 137, §1, eff. Aug. 1, 2018; Acts 2018, No. 668, §1, eff. Aug. 1, 2019, §4, eff. Aug. 1, 2018; Acts 2021, No. 313, §§3B and 4, see Act.

Art. 895.1. Probation; restitution; judgment for restitution; fees

NOTE: Subparagraph (A)(1) eff. until Aug. 1, 2022. See Acts 2017, No. 260, and Acts 2021, No. 313.

A.(1) When a court places the defendant on probation, it shall, as a condition of probation, order the payment of restitution in cases where the victim or his family has suffered any direct loss of actual cash, any monetary loss pursuant to damage to or loss of property, or medical expense. The court shall order restitution in a reasonable sum not to exceed the actual pecuniary loss to the victim in an amount certain. However, any additional or other damages sought by the victim and available under the law shall be pursued in an action separate from the establishment of the restitution order as a civil money judgment provided for in Subparagraph (2) of this Paragraph. The restitution payment shall be made, in discretion of the court, either in a lump sum or in monthly installments based on the earning capacity and assets of the defendant.

NOTE: Subparagraph (A)(1) as amended by Acts 2017, No. 260, eff. Aug. 1, 2022. See Acts 2021, No. 313.

A.(1) When a court places the defendant on probation, it shall, as a condition of probation, order the payment of restitution in cases where the victim or his family has suffered any direct loss of actual cash, any monetary loss pursuant to damage to or loss of property, or medical expense. The court shall order restitution in a reasonable sum not to exceed the actual pecuniary loss to the victim in an amount certain. However, any additional or other damages sought by the victim and available under the law shall be pursued in an action separate from the establishment of the restitution order as a civil money judgment provided for in Subparagraph (2) of this Paragraph. If the court has determined, pursuant to the provisions of Article 875.1, that payment in full of the aggregate amount of all financial obligations imposed upon the defendant would cause substantial financial hardship to the defendant or his dependents, restitution payments shall be made pursuant to the provisions of Article 875.1.

NOTE: Subsubparagraph (A)(2)(a) eff. until Aug. 1, 2022. See Acts 2017, No. 260, and Acts 2021, No. 313.

(2)(a) The order to pay restitution together with any order to pay costs or fines, as provided in this Article, is deemed a civil money judgment in favor of the person to whom restitution, costs, or fines is owed, if the defendant is informed of his right to have a judicial determination of the amount and is provided with a hearing, waived a hearing, or stipulated to the amount of the restitution, cost, or fine ordered. In addition to proceedings had by the court which orders the restitution, cost, or fine, the judgment may be enforced in the same manner as a money judgment

in a civil case. Likewise, the judgment may be filed as a lien as provided by law for judgment creditors. Prior to the enforcement of the restitution order, or order for costs or fines, the defendant shall be notified of his right to have a judicial determination of the amount of restitution, cost, or fine. Such notice shall be served personally by the district attorney's office of the respective judicial district in which the restitution, cost, or fine is ordered.

NOTE: Subsubparagraph (A)(2)(a) as amended by Acts 2017, No. 260, eff. Aug. 1, 2022. See Acts 2021, No. 313.

(2)(a) The order to pay restitution together with any order to pay costs or fines, as provided in this Article, is deemed a civil money judgment in favor of the person to whom restitution, costs, or fines is owed, if the defendant is informed of his right to have a judicial determination of the amount and is provided with a hearing. In addition to proceedings by the court which orders the restitution, cost, or fine, the judgment may be enforced in the same manner as a money judgment in a civil case. Likewise, the judgment may be filed as a lien as provided by law for judgment creditors. Prior to the enforcement of the restitution order, or order for costs or fines, the defendant shall be notified of his right to have a judicial determination of the amount of restitution, cost, or fine. Such notice shall be served personally by the district attorney's office of the respective judicial district in which the restitution, cost, or fine is ordered.

(b) In addition to the powers under R.S. 13:1336, the Criminal District Court for the Parish of Orleans shall have the authority to order the payment of restitution as provided in this Paragraph. The enforcement of the judgment for restitution shall be filed in the Civil District Court for the Parish of Orleans.

(3) The court which orders the restitution shall provide written evidence of the order which constitutes the judgment.

(4) The court may suspend payment of any amount awarded hereunder and may suspend recordation of any judgment hereunder during the pendency of any civil suit instituted to recover damages, from said defendant brought by the victim or victims which arises out of the same act or acts which are the subject of the criminal offense contemplated hereunder.

(5) The amount of any judgment by the court hereunder, shall be credited against the amount of any subsequent civil judgment against the defendant and in favor of the victim or victims, which arises out of the same act or acts which are the subject of the criminal offense contemplated hereunder.

B. When a court suspends the imposition or the execution of a sentence and places the defendant on probation, it may in its discretion, order placed, as a condition of probation, an amount of money to be paid by the defendant to any or all of the following:

(1) To the indigent defender program for that court.

(2) To the criminal court fund to defray the costs of operation of that court.

(3) To the sheriff and clerk of court for costs incurred.

(4) To a law enforcement agency for the reasonable costs incurred in arresting the defendant, in felony cases involving the distribution of or intent to distribute controlled dangerous substances.

(5) To the victim to compensate him for his loss and inconvenience. Such an amount may be in addition to any amounts ordered to be paid by the defendant under Paragraph A herein.

(6) To a duly incorporated crime stoppers organization for the reasonable costs incurred in obtaining information which leads to the arrest of the defendant.

(7) To a local public or private nonprofit agency involved in drug abuse prevention and treatment for supervising a treatment program ordered by the court for a particular defendant, provided that such agency is qualified as a tax-exempt organization under Section 501(c) of the Internal Revenue Code of the United States. Any nonprofit agency receiving money under the provisions of this Paragraph must be licensed by the Louisiana Department of Health in the supervision of drug abuse prevention and treatment.

C.(1) When the court places the defendant on supervised probation, it shall order as a condition of probation a monthly fee of not less than sixty nor more than one hundred ten dollars payable to the Department of Public Safety and Corrections or such other probation office, agency, or officer as designated by the court, to defray the cost of supervision which includes salaries for probation and parole officers. If the probation supervision services are rendered by an agency other than the department, the fee may be ordered payable to that agency. These fees are only to supplement the level of funds that would ordinarily be available from regular state appropriations or any other source of funding.

(2) When the court places the defendant on unsupervised probation, it shall order as a condition of probation a monthly fee of not more than one dollar payable to the Department of Public Safety and Corrections or such other probation office, agency, or officer as designated by the court.

D. The court may, in lieu of the monthly supervision fee provided for in Paragraph C of this Article, require the defendant to perform a specified amount of community service work each month if the court finds the defendant is unable to pay the minimum supervision fee provided for in Paragraph C of this Article.

E. When the court places any defendant convicted of a violation of the Uniform Controlled Dangerous Substances Law, R.S. 40:966 through 1034, on any type of probation, it shall order as a condition of probation a fee of not less than fifty nor more than one hundred dollars, payable to the Louisiana Commission on Law Enforcement and Administration of Criminal Justice to be credited to the Drug Abuse Education and Treatment Dedicated Fund Account and used for the purposes provided in R.S. 15:1224.

F. When the court places the defendant on supervised probation, it shall order as a condition of probation the payment of a monthly fee of eleven dollars. The monthly fee established in this Paragraph shall be in addition to the fee established in Paragraph C of this Article and shall be collected by the Department of Public Safety and Corrections and shall be transmitted, deposited, appropriated, and used in accordance with the following provisions:

(1) The monthly fee established in this Paragraph shall be deposited immediately upon receipt in the state treasury.

(2) After compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund, and prior to monies being placed in the state general fund, the treasurer shall credit an amount equal to that deposited as required by Subparagraph (1) of this Paragraph to a special agency account to be retained for future appropriation as provided in this Article which is hereby created in the state treasury to be known as the "Sex Offender Registry Technology Dedicated Fund Account". The monies in this account shall be used solely as provided in Subparagraph (3) of this Paragraph and only in the amounts appropriated by the legislature. Monies deposited into this account shall be categorized as fees and self-generated revenue for the sole purpose of reporting related to the executive budget, supporting

documents, and general appropriations bills and shall be available for annual appropriations by the legislature.

(3) The monies in the Sex Offender Registry Technology Dedicated Fund Account shall be appropriated as follows:

(a) For Fiscal Year 2006-2007, the amount of one hundred ninety thousand dollars to the Department of Public Safety and Corrections, office of state police, to be used in the administration of programs for the registration of sex offenders in compliance with federal and state laws, and support of community notification efforts by local law enforcement agencies. For Fiscal Years 2007-2008 through 2009-2010, the amount to be appropriated under this Subparagraph shall be twenty-five thousand dollars. For Fiscal Years 2010-2011, and thereafter, the amount to be appropriated to the Department of Public Safety and Corrections, office of state police, shall be twenty-five thousand dollars for the purposes of maintaining and administering the programs for the registration of sex offenders pursuant to this Subparagraph and special law enforcement initiatives.

(b) For Fiscal Year 2010-2011 and each year thereafter, an amount equal to fifteen percent of the total residual monies available for appropriation from the account shall be appropriated to the Department of Public Safety and Corrections, office of adult services, division of probation and parole.

(c) For Fiscal Year 2010-2011 through Fiscal Year 2013-2014, residual monies available for appropriation after satisfying the requirements of Subsubparagraphs (a) and (b) of this Subparagraph shall be appropriated to the Department of Justice, office of the attorney general. Of that residual amount, one hundred fifty thousand dollars shall be allocated to the office of the attorney general of which fifty thousand dollars shall be allocated for personnel and other costs to assist and monitor sheriff participation in utilization of the computer system, and one hundred thousand dollars of which shall be allocated to the cost of maintenance of the computer system which shall interface with the computer systems of the sheriffs of the parishes for registration of sex offenders and child predators.

(d) For Fiscal Year 2014-2015, and thereafter, residual monies available for appropriation after satisfying the requirements of Subsubparagraphs (a) and (b) of this Subparagraph shall be appropriated to the Department of Justice, office of the attorney general. Of that residual amount, two hundred and fifty thousand dollars shall be allocated to the office of the attorney general of which one hundred and fifty thousand dollars shall be allocated for personnel and other costs to assist and monitor sheriff participation in utilization of the computer system and the administration of the sex offender and child predator registration and notification laws as set forth in R.S. 15:540 et seq., and one hundred thousand dollars of which shall be allocated to the cost of maintenance of the computer system of the sheriffs of the parishes for registration of sex offenders and child predators.

(e) After providing for the allocations in Subsubparagraphs (a), (b), (c), and (d) of this Subparagraph, the remainder of the residual monies in the Sex Offender Registry Technology Dedicated Fund Account shall, pursuant to an appropriation to the office of the attorney general, be distributed to the sheriff of each parish, based on the population of convicted sex offenders, sexually violent predators, and child predators who are residing in the parish and who are active sex offender registrants or active child predator registrants in the respective parishes according to the State Sex Offender and Child Predator Registry. These funds shall be used to cover the costs associated with sex offender registration and compliance. Population data necessary to implement

the provisions of this Subparagraph shall be as compiled and certified by the undersecretary of the Department of Public Safety and Corrections on the first day of June of each year. No later than thirty days after the Revenue Estimating Conference recognizes the prior year account balance, the office of the attorney general shall make these distributions, which are based on the data certified by the undersecretary of the Department of Public Safety and Corrections, to the recipient sheriffs who are actively registering offenders pursuant to this Paragraph.

Acts 1983, No. 13, §1; Acts 1984, No. 940, §1; Acts 1984, No. 136, §1; Acts 1985, No. 863, §1, eff. July 23, 1985; Acts 1986, No. 745, §1; Acts 1987, No. 59, §1; Acts 1988, No. 208, §1; Acts 1989, No. 832, §1; Acts 1990, No. 53, §1; Acts 1990, No. 89, §1; Acts 1990, No. 188, §1; Acts 1994, 3rd Ex. Sess., No. 60, §1; Acts 1998, 1st Ex. Sess., No. 138, §1; Acts 1999, No. 587, §1; Acts 2000, 1st Ex. Sess., No. 84, §1; Acts 2001, No. 964, §1; Acts 2006, No. 502, §1; Acts 2006, No. 663, §4, eff. June 29, 2006; Acts 2007, No. 460, §1, eff. July 11, 2007; Acts 2010, No. 760, §1; Acts 2011, No. 218, §1; Acts 2011, No. 219, §1; Acts 2014, No. 524, §5; Acts 2014, No. 631, §1; Acts 2016, No. 601, §5, eff. June 17, 2016; Acts 2017, No. 260, §1, eff. Aug. 1, 2018; Acts 2018, No. 137, §1, eff. Aug. 1, 2018; Acts 2018, No. 267, §2; Acts 2018, No. 612, §19, eff. July 1, 2020; Acts 2018, No. 668, §4, eff. Aug. 1, 2018; Acts 2019, No. 404, §§1, 14,15, and 19 eff. July 1, 2020; Acts 2019, No. 253, §2; Acts 2021, No. 125, §1; Acts 2021, No. 313, §§3A and 5B, see Act.

Art. 895.5. Restitution recovery division; district attorneys; establishment

A. Restitution recovery division. Notwithstanding any other provision of law to the contrary, each district attorney may establish a special division in the office designated as the "restitution recovery division" for the administration, collection, and enforcement of victim restitution, victim compensation assessments, probation fees, and payments in civil or criminal proceedings ordered by the court and payable to the state or to crime victims, judgments entered which have not been otherwise vacated, or judicial relief given from the operation of the order or judgment.

B. Notification to district attorneys of nonpayment of restitution. The Department of Public Safety and Corrections, division of probation and parole, may notify the district attorney in writing when any probation fees, victim's restitution, victim's compensation, or like payments to any civil or criminal proceeding ordered by the court to be paid to the division have not been paid or are in default for a period of ninety days or more, and the default has not been vacated. Upon written notification to the district attorney, the restitution recovery division of the office of the district attorney may collect or enforce the collection of any funds that have not been paid or that are in default which, at the discretion of the district attorney, are appropriate to be processed.

NOTE: Paragraph C eff. until Aug. 1, 2022. See Acts 2017, No. 260, and Acts 2021, No. 313.

C. Compliance enforcement. The district attorney may take all lawful action necessary to require compliance with court-ordered payments, including filing a petition for revocation of probation, filing a petition to show cause for contempt of court, or institution of any other civil or criminal proceedings which may be authorized by law or by rule of court. In addition, the district attorney may issue appropriate notices to inform the defendant of his noncompliance and of the penalty for noncompliance. In the event that the district attorney institutes any other civil or

criminal proceedings pursuant to this Paragraph, the defendant shall be charged costs of court and such costs shall be added to the amount due.

NOTE: Paragraph C as amended by Acts 2017, No. 260, eff. Aug. 1, 2022. See Acts 2021, No. 313.

C. Compliance enforcement. (1) Except as provided in Subparagraph (2) of this Paragraph, the district attorney may take all lawful action necessary to require compliance with court-ordered payments, including filing a petition for revocation of probation, filing a petition to show cause for contempt of court, or institution of any other civil or criminal proceedings which may be authorized by law or by rule of court. In addition, the district attorney may issue appropriate notices to inform the defendant of his noncompliance and of the penalty for noncompliance. In the event that the district attorney institutes any other civil or criminal proceedings pursuant to this Paragraph, the defendant shall be charged costs of court and such costs shall be added to the amount due.

(2) If a court authorizes a payment plan to collect financial obligations associated with a criminal case and the defendant fails to make a payment, the court shall serve the defendant with a citation for a rule to show cause why the defendant should not be found in contempt of court for failure to comply with the payment plan. This citation shall include the following notice:

"If you make a payment toward the above listed fines and fees on or before _____, you will not have to come to court for this matter.

IMPORTANT NOTICE REGARDING THE HEARING ON THE RULE TO SHOW CAUSE FOR PROOF OF SATISFACTION OF FINANCIAL OBLIGATION:"

(a) At the rule to show cause hearing, the court will evaluate your ability to pay the fines and fees listed above.

(b) You are ordered to bring any documentation or information that you want the court to consider in determining your ability to pay.

(c) Your failure to make a payment toward the ordered financial obligation may result in your incarceration only if the court finds, after a hearing, that you had the ability to pay and willfully refused to do so.

(d) You have the right to be represented by counsel (attorney/lawyer) of your choice. If you cannot afford counsel, you have the right to be represented by a court-appointed lawyer at no cost to you. However, you must apply for a court-appointed lawyer at least seven (7) days before this court date by going to the public defender's office. There is a forty-dollar ($40) application fee.

(e) If you are unable to make a payment toward the ordered financial obligation, you may request payment alternatives including but not limited to community service, a reduction of the amount owed, or both.

(f) During the hearing, you will have a meaningful opportunity to explain why you have not paid the above-listed amounts by presenting evidence and testimony."

(3) If after the hearing provided for by Subparagraph (2) of this Paragraph, the court continues to authorize a payment plan, the defendant shall be served with the same notice provided for in Subparagraph (2) of this Paragraph regarding the consequences and due process for the willful failure to pay.

D. Collection fee. As provided for in Paragraph A of this Article, when an amount payable to the state or to a crime victim has not been satisfied in accordance with Article 888, or when a matter has been transferred to the district attorney as provided in Paragraph B of this Article, the district attorney may assess a collection fee of twenty percent of the funds due, which shall be

added to the amount of funds due. Any fees collected pursuant to this Paragraph shall be distributed to the district attorney's restitution recovery division to be expended for lawful purposes for the operation of the office of the district attorney. Funds provided to the district attorney by this provision shall not reduce the amount payable to the district attorney under any other provision of law or reduce or affect the amounts of funding allocated by law to the budget of the district attorney. The funds shall be audited as other state funds are audited. This provision shall not affect the right of the office of the district attorney to proceed with the prosecution of any violation as currently provided by law.

E. Intent. The provisions of this Article are supplemental to any procedures for the enforcement and collection of any sums or forfeitures ordered by the court and shall not be construed to repeal any law not in direct conflict with this provision.

Acts 2009, No. 164, §1; Acts 2012, No. 531, §1, eff. June 5, 2012; Acts 2017, No. 260, §1, eff. Aug. 1, 2018; Acts 2018, No. 137, §1, eff. Aug 1, 2018; Acts 2018, No. 668, §4, eff. Aug. 1, 2018; Acts 2019, No. 253, §2; Acts 2021, No. 313, §§3A and 5B, see Act.

Art. 905.5.1. Intellectual disability

A. Notwithstanding any other provisions of law to the contrary, no person with an intellectual disability shall be subjected to a sentence of death.

B. Any capital defendant who claims to have an intellectual disability shall file written notice thereof within the time period for filing of pretrial motions as provided by Article 521 of this Code.

C.(1) Any defendant in a capital case making a claim of intellectual disability shall prove the allegation by a preponderance of the evidence. The jury shall try the issue of intellectual disability of a capital defendant during the capital sentencing hearing unless the state and the defendant agree that the issue is to be tried by the judge. If the state and the defendant agree, the issue of intellectual disability of a capital defendant may be tried prior to trial by the judge alone.

(2) Any pretrial determination by the judge that a defendant does not have an intellectual disability shall not preclude the defendant from raising the issue at the penalty phase, nor shall it preclude any instruction to the jury pursuant to this Article.

D. Once the issue of intellectual disability is raised by the defendant, and upon written motion of the district attorney, the defendant shall provide the state, within time limits set by the court, any and all medical, correctional, educational, and military records, raw data, tests, test scores, notes, behavioral observations, reports, evaluations, and any other information of any kind reviewed by any defense expert in forming the basis of his opinion that the defendant has an intellectual disability.

E. By filing a notice relative to a claim of intellectual disability under this Article, the defendant waives all claims of confidentiality and privilege to, and is deemed to have consented to the release of, any and all medical, correctional, educational, and military records, raw data, tests, test scores, notes, behavioral observations, reports, evaluations, expert opinions, and any other such information of any kind or other records relevant or necessary to an examination or determination under this Article.

F. When a defendant makes a claim of intellectual disability under this Article, the state shall have the right to an independent psychological and psychiatric examination of the defendant. A psychologist or medical psychologist conducting such examination must be licensed by the

Louisiana State Board of Examiners of Psychologists or the Louisiana State Board of Medical Examiners, whichever is applicable. If the state exercises this right, and upon written motion of the defendant, the state shall provide the defendant, within time limits set by the court, any and all medical, correctional, educational, and military records, and all raw data, tests, test scores, notes, behavioral observations, reports, evaluations, and any other information of any kind reviewed by any state expert in forming the basis of his opinion that the defendant does not have an intellectual disability. If the state fails to comply with any such order, the court may impose sanctions as provided by Article 729.5 of this Code.

G. If the defendant making a claim of intellectual disability fails to comply with any order issued pursuant to Paragraph D of this Article, or refuses to submit to or fully cooperate in any examination by experts for the state pursuant to either Paragraph D or F of this Article, upon motion by the district attorney, the court shall neither conduct a pretrial hearing concerning the issue of intellectual disability nor instruct the jury of the prohibition of executing defendants with intellectual disabilities.

H.(1) "Intellectual disability", formerly referred to as "mental retardation", is a disability characterized by all of the following deficits, the onset of which must occur during the developmental period:

(a) Deficits in intellectual functions such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing.

(b) Deficits in adaptive functioning that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility; and that, without ongoing support, limit functioning in one or more activities of daily life including, without limitation, communication, social participation, and independent living, across multiple environments such as home, school, work, and community.

(2) A diagnosis of one or more of the following conditions does not necessarily constitute an intellectual disability:

(a) Autism.
(b) Behavioral disorders.
(c) Cerebral palsy and other motor deficits.
(d) Difficulty in adjusting to school.
(e) Emotional disturbance.
(f) Emotional stress in home or school.
(g) Environmental, cultural, or economic disadvantage.
(h) Epilepsy and other seizure disorders.
(i) Lack of educational opportunities.
(j) Learning disabilities.
(k) Mental illness.
(l) Neurological disorders.
(m) Organic brain damage occurring after age eighteen.
(n) Other disabling conditions.
(o) Personality disorders.
(p) Sensory impairments.
(q) Speech and language disorders.

(r) A temporary crisis situation.

(s) Traumatic brain damage occurring after age eighteen.

Acts 2003, No. 698, §1; Acts 2009, No. 251, §1, eff. Jan. 1, 2010; Acts 2014, No. 811, §31, eff. June 23, 2014; Acts 2021, No. 238, §2.

Art. 926.2. Factual innocence

A. A petitioner who has been convicted of an offense may seek post conviction relief on the grounds that he is factually innocent of the offense for which he was convicted. A petitioner's first claim of factual innocence pursuant to this Article that would otherwise be barred from review on the merits by the time limitation provided in Article 930.8 or the procedural objections provided in Article 930.4 shall not be barred if the claim is contained in an application for post conviction relief filed on or before December 31, 2022, and if the petitioner was convicted after a trial completed to verdict. This exception to Articles 930.4 and 930.8 shall apply only to the claim of factual innocence brought under this Article and shall not apply to any other claims raised by the petitioner. An application for post conviction relief filed pursuant to this Article by a petitioner who pled guilty or nolo contendere to the offense of conviction or filed by any petitioner after December 31, 2022, shall be subject to Articles 930.4 and 930.8.

B.(1)(a) To assert a claim of factual innocence under this Article, a petitioner shall present new, reliable, and noncumulative evidence that would be legally admissible at trial and that was not known or discoverable at or prior to trial and that is either:

(i) Scientific, forensic, physical, or nontestimonial documentary evidence.

(ii) Testimonial evidence that is corroborated by evidence of the type described in Item (i) of this Subsubparagraph.

(b) To prove entitlement to relief under this Article, the petitioner shall present evidence that satisfies all of the criteria in Subsubparagraph (a) of this Subparagraph and that, when viewed in light of all of the relevant evidence, including the evidence that was admitted at trial and any evidence that may be introduced by the state in any response that it files or at any evidentiary hearing, proves by clear and convincing evidence that, had the new evidence been presented at trial, no rational juror would have found the petitioner guilty beyond a reasonable doubt of either the offense of conviction or of any felony offense that was a responsive verdict to the offense of conviction at the time of the conviction.

(2) A recantation of prior sworn testimony may be considered if corroborated by the evidence required by Subsubparagraph (1)(a) of this Paragraph. However, a recantation of prior sworn testimony cannot form the sole basis for relief pursuant to this Article.

(3) If the petitioner pled guilty or nolo contendere to the offense of conviction, in addition to satisfying all of the criteria in this Paragraph and in any other applicable provision of law, the petitioner shall show both of the following to prove entitlement to relief:

(a) That, by reliable evidence, he consistently maintained his innocence until his plea of guilty or nolo contendere.

(b) That he could not have known of or discovered his evidence of factual innocence prior to pleading guilty or nolo contendere.

C.(1) A grant of post conviction relief pursuant to this Article shall not prevent the petitioner from being retried for the offense of conviction, for a lesser offense based on the same facts, or for any other offense.

(2) If the petitioner waives his right to a jury trial and elects to be tried by a judge, the district judge who granted post conviction relief pursuant to this Article shall be recused and the case shall be allotted to a different judge in accordance with applicable law and rules of court.

(3) If the district judge denied post conviction relief pursuant to this Article and an appellate court later reversed the ruling of the district judge and granted post conviction relief pursuant to this Article, and if the petitioner waives his right to a jury trial and elects to be tried by a judge, upon the petitioner's motion the district judge who denied post conviction relief shall be recused and the case shall be allotted to a different judge in accordance with applicable law and rules of court.

Acts 2021, No. 104, §1.

Art. 926.3. Motion for testing of evidence

A. Upon motion of the state or the petitioner, the district court may order the testing or examination of any evidence relevant to the offense of conviction in the custody and control of the clerk of court, the state, or the investigating law enforcement agency.

B. If the motion is made by the petitioner and the state does not expressly consent to the testing or examination, a motion made under this Article shall be granted only following a contradictory hearing at which the petitioner shall establish that good cause exists for the testing or examination. If the state does not expressly consent to the testing or examination and the motion made under this Article is granted following the contradictory hearing, the district attorney and investigating law enforcement agency shall not be ordered to bear any of the costs associated with the testing or examination.

Acts 2021, No. 104, §1.

Art. 930.3. Grounds

If the petitioner is in custody after sentence for conviction for an offense, relief shall be granted only on the following grounds:

(1) The conviction was obtained in violation of the constitution of the United States or the state of Louisiana.

(2) The court exceeded its jurisdiction.

(3) The conviction or sentence subjected him to double jeopardy.

(4) The limitations on the institution of prosecution had expired.

(5) The statute creating the offense for which he was convicted and sentenced is unconstitutional.

(6) The conviction or sentence constitute the ex post facto application of law in violation of the constitution of the United States or the state of Louisiana.

(7) The results of DNA testing performed pursuant to an application granted under Article 926.1 proves by clear and convincing evidence that the petitioner is factually innocent of the crime for which he was convicted.

(8) The petitioner is determined by clear and convincing evidence to be factually innocent under Article 926.2.

Added by Acts 1980, No. 429, §1, eff. Jan. 1, 1981; Acts 2001, No. 1020, §1; Acts 2021, No. 104, §1.

Art. 930.4. Repetitive applications

A. Unless required in the interest of justice, any claim for relief which was fully litigated in an appeal from the proceedings leading to the judgment of conviction and sentence shall not be considered.

B. If the application alleges a claim of which the petitioner had knowledge and inexcusably failed to raise in the proceedings leading to conviction, the court shall deny relief.

C. If the application alleges a claim which the petitioner raised in the trial court and inexcusably failed to pursue on appeal, the court shall deny relief.

D. A successive application shall be dismissed if it fails to raise a new or different claim.

E. A successive application shall be dismissed if it raises a new or different claim that was inexcusably omitted from a prior application.

F. If the court considers dismissing an application for failure of the petitioner to raise the claim in the proceedings leading to conviction, failure to urge the claim on appeal, or failure to include the claim in a prior application, the court shall order the petitioner to state reasons for his failure. If the court finds that the failure was excusable, it shall consider the merits of the claim.

G. Notwithstanding any provision of this Title to the contrary, the state may affirmatively waive any procedural objection pursuant to this Article. Such waiver shall be express and in writing and filed by the state into the district court record.

Added by Acts 1980, No. 429, §1, eff. Jan. 1, 1981; Acts 2013, No. 251, §1, eff. Aug. 1, 2014; Acts 2021, No. 104, §1.

Art. 930.8. Time limitations; exceptions; prejudicial delay

A. No application for post conviction relief, including applications which seek an out-of-time appeal, shall be considered if it is filed more than two years after the judgment of conviction and sentence has become final under the provisions of Article 914 or 922, unless any of the following apply:

(1) The application alleges, and the petitioner proves or the state admits, that the facts upon which the claim is predicated were not known to the petitioner or his prior attorneys. Further, the petitioner shall prove that he exercised diligence in attempting to discover any post conviction claims that may exist. "Diligence" for the purposes of this Article is a subjective inquiry that shall take into account the circumstances of the petitioner. Those circumstances shall include but are not limited to the educational background of the petitioner, the petitioner's access to formally trained inmate counsel, the financial resources of the petitioner, the age of the petitioner, the mental abilities of the petitioner, or whether the interests of justice will be served by the consideration of new evidence. New facts discovered pursuant to this exception shall be submitted to the court within two years of discovery. If the petitioner pled guilty or nolo contendere to the offense of conviction and is seeking relief pursuant to Article 926.2 and five years or more have elapsed since the petitioner pled guilty or nolo contendere to the offense of conviction, he shall not be eligible for the exception provided for by this Subparagraph.

(2) The claim asserted in the petition is based upon a final ruling of an appellate court establishing a theretofore unknown interpretation of constitutional law and petitioner establishes that this interpretation is retroactively applicable to his case, and the petition is filed within one year of the finality of such ruling.

(3) The application would already be barred by the provisions of this Article, but the application is filed on or before October 1, 2001, and the date on which the application was filed is within three years after the judgment of conviction and sentence has become final.

(4) The person asserting the claim has been sentenced to death.

(5) The petitioner qualifies for the exception to timeliness in Article 926.1.

(6) The petitioner qualifies for the exception to timeliness in Article 926.2.

B. An application for post conviction relief which is timely filed, or which is allowed under an exception to the time limitation as set forth in Paragraph A of this Article, shall be dismissed upon a showing by the state of prejudice to its ability to respond to, negate, or rebut the allegations of the petition caused by events not under the control of the state which have transpired since the date of original conviction, if the court finds, after a hearing limited to that issue, that the state's ability to respond to, negate, or rebut such allegations has been materially prejudiced thereby.

C. At the time of sentencing, the trial court shall inform the defendant of the prescriptive period for post-conviction relief either verbally or in writing. If a written waiver of rights form is used during the acceptance of a guilty plea, the notice required by this Paragraph may be included in the written waiver of rights.

D. Notwithstanding any provision of this Title to the contrary, the state may affirmatively waive any objection to the timeliness under Paragraph A of this Article of the application for post conviction relief filed by the petitioner. Such waiver shall be express and in writing and filed by the state into the district court record.

Acts 1990, No. 1023, §1, eff. Oct. 1, 1990; Acts 1999, No. 1262, §1; Acts 2004, No. 401, §1; Acts 2013, No. 251, §1, eff. Aug. 1, 2014; Acts 2021, No. 104, §1.

Art. 930.10. Departure from this Title; post conviction plea agreements

A. Upon joint motion of the petitioner and the district attorney, the district court may deviate from any of the provisions of this Title.

B. Notwithstanding the provisions of Article 930.3 or any provision of law to the contrary, the district attorney and the petitioner may, with the approval of the district court, jointly enter into any post conviction plea agreement for the purpose of amending the petitioner's conviction, sentence, or habitual offender status. The terms of any post conviction plea agreement pursuant to this Paragraph shall be in writing, shall be filed into the district court record, and shall be agreed to by the district attorney and the petitioner in open court. The court shall, prior to accepting the post conviction plea agreement, address the petitioner personally in open court, inform him of and determine that he understands the rights that he is waiving by entering into the post conviction plea agreement, and determine that the plea is voluntary and is not the result of force or threats, or of promises apart from the post conviction plea agreement.

Acts 2021, No. 104, §1.