

Criminal Law Update: Bail

Bail is the security given by a person to assure a defendant's appearance before the proper court whenever required. An **appearance** is a personal appearance before the court or the court's designee, where the charges are pending.

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.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Arts. 312(A), (B), the introductory paragraph of (D), and (1) and (2), and (G)(2)(a), 316(1), (9), and (10), 318, 319(A), and 320(J)(1) are hereby amended and reenacted and Code of Criminal Procedure Arts. 312(G)(2)(c) and (d), 312.1, 315(D), and 316(11) through (13) are hereby enacted to read as follows:

Art. 312. Right to bail before and after conviction

A. Except as provided in this Article and, **Article 312.1**, Article 313, or

Article 313.1, a person in custody who is charged with the commission of an offense is entitled to bail before conviction.

B.(1) A person released on a previously posted bail undertaking for **any of the following shall not be readmitted to bail when the person previously failed to appear and a warrant for arrest was issued and not recalled or the previous bail undertaking has been revoked or forfeited:**

(a) A **crime of violence** as defined by R.S. 14:2(B) which carries a minimum mandatory sentence of imprisonment upon conviction or;

(b) The production, manufacture, distribution, or dispensing or possession with intent to produce, manufacture, distribute, or dispense a controlled dangerous substance as defined by **the Louisiana Uniform Controlled Dangerous Substances Law**, shall not be readmitted to bail when the person previously failed to appear and a warrant for arrest was issued and not recalled or the previous bail undertaking has been revoked or forfeited.

(c) Any offense involving **the possession or use of a firearm**.

(d) Any **sex offense** as defined by R.S. 15:541.

(2) If a person voluntarily appears without confinement by a law enforcement officer or bail recovery agent following a motion to revoke bail or issuance of an arrest warrant for failure to appear but prior to revocation or forfeiture, then he may be released only under one of the following circumstances:

(1)(a) After a contradictory hearing, a person may be released on the previously posted bail undertaking if the motion to revoke bail is rescinded or the arrest warrant is recalled and the surety is present or represented at the hearing and gives written consent. Previous instances of revocation and forfeiture in unrelated cases are admissible at the hearing. This relief is available only once.

(2)(b) A person may be released on a new bail undertaking without a contradictory hearing only on bail with a commercial surety and in an amount higher than the original bail.

D. A convicted person shall be remanded to jail to await sentence, **and shall be remanded to custody after sentencing**, unless any of the following occur:

(1) He is allowed to remain free on a bail undertaking posted prior to conviction by operation of Article 331(A), and the bail previously fixed is in accordance with all of the applicable provisions of this Article **and other applicable law.**

(2) He is released by virtue of a bail undertaking posted after conviction, and the bail was fixed in accordance with this Article **and other applicable law.**

However, post conviction bail is not authorized pursuant to this Article when there is proof of a substantial risk that the person may flee or poses an imminent danger to any other person or the community, including when the court finds the convicted person is likely to commit other crimes while on bail and is therefore a danger to the community.

G.(1)

(2)(a) After conviction of any crime punishable by imprisonment for twenty-five years or more that is both **either** a sex offense and **or** a crime of violence, there shall be a rebuttable presumption that the release of the person convicted will pose a danger to another person or the community and that there is a substantial risk that the person convicted might flee.

(c) This Paragraph applies based on the cumulative maximum sentences for all crimes for which a person was convicted, provided that any crime for which the person has been convicted is a sex offense or crime of violence as defined in this Paragraph.

(d) This Paragraph also applies to any person who has been charged as a habitual offender pursuant to R.S. 15:529.1.

Art. 312.1. Revocation of bail upon subsequent felony arrest

A. If a defendant is admitted to bail for any crime of violence, any sex offense, or any crime involving the possession or use of a firearm, the bail for such offense shall be revoked upon any subsequent arrest for a felony offense that is not a part of the same transaction, occurrence, or criminal episode which resulted in the arrest that is the basis for the defendant's current admittance to bail.

B.(1) Prior to booking the defendant, the arresting agency shall conduct a prompt and diligent search to determine if the defendant is currently on bail for any crime of violence, any sex offense, or any crime involving the possession or use of a firearm.

(2) The arresting agency shall provide the court with the information described in Subparagraph (1) of this Paragraph, along with an updated criminal history with all other booking information, for the court to consider when determining the defendant's entitlement to bail, the amount of bail, and conditions of bail.

C. If the court determines that the defendant is currently on bail for any crime of violence, any sex offense, or any crime involving the possession or use of a firearm, the bail for such offense shall be revoked upon any subsequent arrest for a felony offense that is not a part of the same transaction, occurrence, or criminal episode which resulted in the arrest that is the basis for the defendant's current admittance to bail. The court shall enter an order revoking such prior bail, pending a bail hearing which may be invoked by the state or the defendant. Either party may seek supervisory review of the granting or denial of any order that revokes the defendant's prior admittance to bail.

D. For the purposes of this Article, the following terms have the following meanings:

- (1) "Crime of violence" means any offense defined or enumerated as a crime of violence in R.S. 14:2(B).**
- (2) "Sex offense" means any offense that requires registration and notification pursuant to R.S. 15:540 et seq.**

Art. 315. Schedules of bail:

D. A bail schedule implemented by a district court shall fix the minimum bail amount for the following offenses, and any court that does not utilize a bail schedule shall not approve a bail undertaking that is less than the minimum amount specified for the following offenses:

- (1) For possession of child sexual abuse materials, R.S. 14:81.1, fifty thousand dollars.**
- (2) For production of child sexual abuse materials, R.S. 14:81.1, one hundred thousand dollars.**

Art. 316. Factors in fixing amount of bail

The amount of bail shall be fixed in an amount that will ensure the presence of the defendant, as required, and the safety of any other person and the community, having regard to:

- (1) The seriousness of the offense charged, including but not limited to whether the offense is a crime of violence, sex offense, or involves a controlled dangerous substance.**
- (9) Whether a firearm or other dangerous weapon was possessed or used during the commission of the offense.**
- (10) Whether available resources exist within the jurisdiction to impose**

enforceable conditions that would help ensure the defendant's appearance and protect the community.

(11) The likelihood that the defendant, if released on bail, will continue to commit crimes resulting in harm to any person or the property of another.

(12) Any other circumstances affecting the probability of defendant's appearance.

(13) The type or form of bail.

Art. 318. Juvenile records in fixing bail

A. For the purpose of fixing bail, a court may make a written request of any juvenile court for an abstract containing only the **pending or adjudicated** delinquent acts of a defendant currently before the requesting court. The request shall be promptly complied with; however, **juvenile court shall promptly comply with the request; however**, not more than forty-eight hours, exclusive of Saturdays, Sundays, and legal holidays, shall lapse before the requested information is deposited in the mail, **by means of an email address provided in the written request** addressed to the requesting court.

B. The requesting court shall not copy, duplicate, or otherwise reproduce such juvenile records, and these shall be deposited in the mail and addressed to the issuing juvenile court within seventy-two hours, exclusive of Saturdays, Sundays, and legal holidays, after bail is determined **issue a protective order concerning the use of the juvenile abstract for the purposes of protecting the confidentiality of the abstract from any individual who is not involved in the relevant proceedings that concern the defendant who is currently before the requesting court.**

Art. 319. Modifications of bail

A. The court having trial jurisdiction over the offense charged, on its own motion or on motion of the prosecuting attorney or defendant, for good cause, may either increase or reduce, **subject to any minimum amount provided by law**, the amount of bail, or require new or additional security. For purposes of this Article, good cause for increase of bail specifically includes but is not limited to the rearrest of the defendant on offenses alleged to have been committed while out on a bail undertaking. The modification of any bail order wherein a bail undertaking has been posted by a criminal defendant and his sureties shall upon the modification terminate the liability of the defendant and his sureties under the previously existing bail undertaking. A new bail undertaking must be posted in the amount of the new bail order.

Art. 320. Conditions of bail undertaking

J.(1) Crimes of violence. Notwithstanding the provisions of Paragraph G of this Article and notwithstanding any other provision of law to the contrary, if the defendant is alleged to have committed a crime of violence as defined in R.S. 14:2(B), the court shall require as a condition **the following conditions** of bail:

(a)(i) that the defendant refrain from going to the residence or household of the victim, the victim's school, and the victim's place of employment or otherwise contacting the victim in any manner whatsoever, and shall refrain from having any further contact with the victim. The court shall also require as a condition of bail that the defendant be prohibited from communicating, by electronic communication, in writing, or orally, with a victim of the offense, or with any of the victim's immediate family members.

(ii) This condition does not apply if the victim consents by way of a request to the court and the court issues an order permitting the communication. If an immediate family member of the victim consents by way of a request to the court

and the court issues an order permitting the communication, then the defendant may contact that person.

(b) That the defendant, if equipped with a global positioning monitoring system, comply with the appropriate geographic restrictions, monitoring conditions, and enforcement provisions of R.S. 15:571.36, 571. 37, and 571.38.

Changes in Louisiana Bail Laws Effective Aug. 1, 2026

La. C.Cr.P. Article 312 – Right to bail before and after conviction

- **[Subsection B] Prohibits bail on bench warrants where the defendant is charged with: (1) a crime of violence as defined by R.S. 14:2(B) which carries a minimum mandatory sentence of imprisonment upon conviction; (2) production, manufacture, distribution, or dispensing or possession with intent to produce, manufacture, distribute, or dispense a CDS; (3) any offense involving the possession or use of a firearm; (4) any sex offense as defined by R.S. 15:541.**
 - **(3) and (4) are NEW.**
- **[Subsection D(2)] Post conviction bail is not authorized when there is proof of a substantial risk that the person may flee or poses an imminent danger to any other person or the community, including when the court finds the convicted person is likely to commit other crimes while on bail and is therefore a danger to the community.**
 - **This portion of D(2) is NEW.**
- **[Subsection G] In cases where the defendant has been convicted of a crime punishable by imprisonment for 25 years or more that is either a sex offense or a crime of violence, there shall be a rebuttable presumption that the release of the person will pose a danger to another person or the community and that there is a substantial risk that the defendant might flee. This also applies to any person who has been charged as a habitual offender pursuant to R.S. 15:529.1.**
 - **Underlined portions are NEW. Old law required the crime to be *both* a sex offense and a crime of violence – now it is either/or. Also added habitual offenders**
- **[Subsection H] After conviction, a defendant shall not be allowed bail for a capital offense or any aggravated offense as defined in R.S. 15:529.1 that is committed against a victim who is a minor.**

- This entire subsection is NEW.

Article 312.1 – Revocation of bail upon subsequent felony arrest (New Article)

- [Subsection A] If a defendant who is charged with any crime of violence, sex offense, or any crime involving the possession or use of a firearm, subsequently commits another felony offense that is not part of the same occurrence, bail shall be revoked.
- [Subsection B] Prior to booking the defendant, the arresting agency shall conduct a prompt and diligent search to determine if the defendant is currently on bond for any crime of violence, sex offense, or any crime involving the possession or use of a firearm and provide the court with that information along with an updated criminal history for the court to consider when determining bail.
- [Subsection C] If the court determines to revoke the defendant's bail, the court shall enter an order revoking the prior bail, pending a bail hearing which may be invoked by the state or the defendant.

→ (this rule is from the 9th JDC) For any felony arrest, the arresting agency must provide the following at booking before a judge may set bonds:

- 1) Probable cause affidavit or arrest warrant affidavit
- 2) Arrest report
- 3) Booking sheet
- 4) Current criminal history
- 5) Law enforcement Article 312.1 certification (example attached to this memo)

Article 313 – Gwen's law; bail hearings; detention without bail

- [Subsection A(2)(b)] A person charged with DAB, violation of protective orders, stalking, or any felony offense involving the use or threatened use of force or a deadly weapon upon the defendant's family member or household member, or upon the defendant's dating partner, may be held without bail for not less than 48 hours nor more than 72 hours following a determination of probable cause.
 - (c) the court shall consider any facts presented that indicate an increased risk to the victim, including but not limited to stalking, strangulation, violation of a protective order; use or threatened use of force or a deadly weapon, serious bodily injury, or documented threats to the victim, the victim's family, or the public.

- (d) the holding period may be referred to as a “cooling off” period for the benefit of the victim.
- All of A(2)(b), (c), and (d) are NEW.

Article 313.1 – Detention of noncitizen defendant pending bail hearing

- No change.

Article 314 – Authority to fix bail; bail order

- No change.

Article 315 – Schedules of bail

- [Subsection D] Provides for the following minimum bail amounts:
 - (1) For possession of child sexual abuse materials (R.S. 14:81.1) - \$50,000
 - (2) For production of child sexual abuse materials (R.S. 14:81.1) - \$100,000
- Subsection D is NEW.

Article 316 – Factors in fixing amount of bail

- New factors for the court to consider:
 - [Subsection 9] Whether a firearm or other dangerous weapon was possessed or used during the commission of the offense.
 - [Subsection 10] Whether available resources exist within the jurisdiction to impose enforceable conditions that would help ensure the defendant’s appearance and protect the community.
 - [Subsection 11] The likelihood that the defendant, if released on bail, will continue to commit crimes resulting in harm to any person or the property of another.
- These three factors are all NEW.

Article 317 – Organization performing or providing pretrial services

- No change.

Article 318 – Juvenile records in fixing bail

- [Subsection A] A court may make a written request to any juvenile court for an abstract containing pending or adjudicated delinquent acts of the defendant. The juvenile court must promptly comply with the request – no more than 48 hours (exclusive of weekends and holidays) shall lapse before the information is deposited by means of an email address provided by the requesting court in its written request.
 - Bolded language is NEW. Changes are mostly just slight tweaks of already existing language.
- [Subsection B] The requesting court shall issue a protective order concerning the use of the abstract for the purposes of protecting the confidentiality of the abstract from any individual who is not involved in the relevant proceedings that concern the defendant who is before the requesting court.
 - The previous language of subsection (B) was replaced with this NEW language.

Article 319 – Modifications of bail

- [Subsection A] The court, on its own motion or on motion of the prosecuting attorney or defendant, for good cause, may either increase or reduce, subject to any minimum amount provided by law, the amount of bail.
 - Underlined portion is NEW.

Article 320 – Conditions of bail undertaking

- [Subsection J(1)(b) – Crimes of violence] That the defendant, if equipped with a global positioning monitoring system, comply with the appropriate geographic restrictions, monitoring conditions, and enforcement provisions of R.S. 14:571.36, 571.37, and 571.38.
 - The portion about GPS is NEW.
- [Subsection J(4)] If the defendant is alleged to have committed the offense of human trafficking in violation of R.S. 14:46.2 or trafficking of children for sexual purposes in violation of R.S. 14:46.3, the court shall require as a condition of bail that the defendant refrain from engaging in any of the following work:
 - (a) A transportation network company driver as provided in Part C of Chapter 4 of Title 45 of the Louisiana Revised Statutes of 1950.

- **(b) Operation of any bus, taxicab, or limousine for hire as defined in R.S. 15:553.**
 - **(c) A service worker who goes into a residence to provide any type of service.**
 - **(d) Operation of any carnival or amusement ride as defined in R.S. 15:553.**
 - **(e) A door-to-door solicitor, peddler, or itinerant vendor selling any type of goods or services including magazines or periodicals or subscriptions to magazines or periodicals.**
 - **(f) Supervisory or disciplinary authority over children.**
 - **(g) Operation or participation in the governance of any early learning center as defined in R.S. 17:407.33, residential home as defined in R.S. 46:1403, or residence in which child care services are provided by a family child care provider or in-home provider who is registered pursuant to R.S. 17:407.61 et seq.**
- **All of J(4) is NEW.**

SUPREME COURT OF LOUISIANA

ORDER

Acting in accordance with Article V, Sections 1 and 5 of the 1974 Louisiana Constitution and the inherent power of this Court, and considering the need to enact Section 4 of Rule XXVII of the Rules of this Court; and

WHEREAS, Act 354 of the 2026 Regular Session of the Louisiana Legislature ("Act 354") enacted Article 312.1 of the Louisiana Code of Criminal Procedure effective August 1, 2026, to require that "[i]f a defendant is admitted to bail for any crime of violence, any sex offense, or any crime involving the possession or use of

a firearm, the bail for such offense shall be revoked upon any subsequent &"Test for a felony offense that is not a part of the same transaction, occurrence, or criminal episode which resulted in the arrest that is the basis for the defendant's current admittance to bail.";

WHEREAS, Act 354 further requires that "[p]rior to booking the defendant, the arresting agency shall conduct a prompt and diligent search to determine if the defendant is currently on bail for any crime of violence, any sex offense, or any crime involving the possession or use of a firearm" and provide the relevant court with this information, "along with an updated criminal history with all other booking information, for the court to consider when determining the defendant's entitlement to bail, the amount of bail, and conditions of bail.";

WHEREAS, the implementation of Act 354 has resulted in confusion due to the difficulty in expeditiously obtaining criminal history information across parishes and due to the apparent lack of authority for a court to revoke bail issued by another jurisdiction, and the Louisiana District Judges' Association and the Louisiana Sheriff's Association have requested clarity to resolve these issues;

WHEREAS this Court possesses "general supervisory jurisdiction over all other courts" and "may establish procedural and administrative rules not in conflict with law," La. Const. Art. V, Sec. 5; and

WHEREAS this Court finds that there is a need to clarify procedures under Article 312.1 of the Louisiana Code of Criminal Procedure,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT RULE XXVII of PART F (GENERAL RULES OF PROCEDURE) of the Rules of the Louisiana Supreme Court is hereby amended to add Section 4 as follows:

PART F. GENERAL RULES OF PROCEDURE

RULE XXVII. PROCEDURES CONCERNING CERTAIN CRIMINAL PROCEEDINGS

Section 4. Implementation of Article 312.1 of the Louisiana Code of Criminal Procedure ("Article 312.1")

- (a) Nothing in Article 312.1 shall be construed to require or authorize a trial court to revoke bail for a criminal offense issued by another jurisdiction.
- (b) In any instance wherein a judge, magistrate, or commissioner is charged with setting bail for a felony arrest, and is able to determine from available information that a previously set bail in another jurisdiction may need to be revoked pursuant to Article 312.1, the court shall within ten (10) days cause its clerk of court to provide written notice of the relevant arrest to the prosecuting authority of the original jurisdiction(s) and to the court(s) of competent jurisdiction through its clerk(s). Any court receiving such notice shall conduct an inquiry pursuant to Article 312.1 within fourteen (14) days of receipt and take appropriate action.
- (c) The Louisiana District Attorney's Association is directed to provide the Louisiana Clerk of Court's Association with a uniform contact sheet for every prosecuting authority that includes a mailing and email address for the notices pursuant to Paragraph (b) of this Section. The clerks of court shall transmit notice required under that Paragraph in accordance with the addresses on that contact sheet.
- (d) Law enforcement is not required to obtain and certify information for offenses outside of its own parish, but shall otherwise diligently perform its duties concerning offenses within its jurisdiction. In any instance wherein a judge, magistrate, or commissioner is charged with setting bail for a felony arrest, and law enforcement is unable to discern and certify to the setting court whether the arrested individual

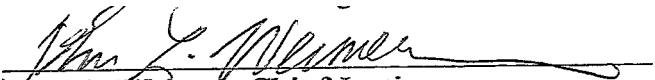
is currently on bail for any crime of violence, any sex offense, or any crime involving the possession or use of a firearm, the setting court shall not be required to immediately revoke bail and may instead fix the matter for a contradictory hearing within thirty (30) days, at which time the prosecuting authority shall

provide information relating to any existing bail obligation(s) in order for the court to make any determinations required by Article 312.1 or Subsection (b). If the prosecuting authority determines that a revocation is not required by Article 312.1, it shall provide written notice to the court at least ten (10) days prior to the scheduled hearing, and the court may cancel the hearing.

This Rule change shall become effective September 1, 2026, and shall remain in full force and effect thereafter, until amended or changed through future Orders of this Court.

New Orleans, Louisiana, this 27th day of August, 2026

FOR THE COURT:


John L. Weimer, Chief Justice