



LOUISIANA STATE LAW INSTITUTE

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March 14, 2025

Representative Phillip R. DeVillier
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804

RE: HOUSE RESOLUTION NO. 191 OF THE 2024 REGULAR SESSION

Dear Mr. Speaker:

The Louisiana State Law Institute respectfully submits its interim report to the legislature relative to a statewide bail schedule.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mallory C. Waller".

Mallory C. Waller
Coordinator of Research

MCW/pc

Enclosure

email cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.gov

Secretary of State, Ms. Nancy Landry
admin@sos.louisiana.gov

**LOUISIANA STATE LAW INSTITUTE
CODE OF CRIMINAL PROCEDURE COMMITTEE**

**INTERIM REPORT TO THE LEGISLATURE IN RESPONSE TO
HR NO. 191 OF THE 2024 REGULAR SESSION**

Relative to the feasibility of a statewide bail schedule

Prepared for the
Louisiana Legislature on

March 14, 2025

Baton Rouge, Louisiana

LOUISIANA STATE LAW INSTITUTE CODE OF CRIMINAL PROCEDURE COMMITTEE

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Mallory C. Waller, Staff Attorney

2024 Regular Session

HOUSE RESOLUTION NO. 191

BY REPRESENTATIVE BAYHAM

A RESOLUTION

To urge and request the Louisiana State Law Institute to study and provide recommendations relative to the feasibility of statewide bail schedules and to submit a report of its findings and recommendations to the legislature no later than thirty days before the convening of the 2025 Regular Session.

WHEREAS, Article I, Section 18 of the Constitution of Louisiana provides for the right to bail; and

WHEREAS, Title VIII of the Code of Criminal Procedure provides the statutory guidelines for bail; and

WHEREAS, Code of Criminal Procedure Article 314 provides the following magistrates with the authority to fix bail:

- (1) District courts and their commissioners having criminal jurisdiction, in all cases.
- (2) City or parish courts and municipal and traffic courts of New Orleans having criminal jurisdiction, in noncapital cases.
- (3) Mayor's courts and traffic courts in criminal cases within their trial jurisdiction.
- (4) Juvenile and family courts in criminal cases within their trial jurisdiction.
- (5) Justices of the peace in cases not capital or necessarily punishable at hard labor;

and

WHEREAS, Code of Criminal Procedure Article 315 provides that in noncapital felony cases, a bail schedule according to the offense charged may be fixed by a district court and in misdemeanor cases, a bail schedule according to the offense charged may be fixed by a district, parish, or city court for offenses committed within its trial jurisdiction; and

WHEREAS, the development of fixed schedules of bail applicable to all sixty-four parishes provides uniformity relative to bail hearings within this state, regardless of the parish where a criminal offense occurs.

THEREFORE, BE IT RESOLVED that the House of Representatives of the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to study and provide recommendations relative to the feasibility of statewide bail schedules and to submit a report of its findings and recommendations to the legislature no later than thirty days before the convening of the 2025 Regular Session.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the director of the Louisiana State Law Institute.

BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall submit one print copy and one electronic copy of any report produced pursuant to this Resolution to the David R. Poynter Legislative Research Library as required by R.S. 24:772.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

March 14, 2025

To: Representative Phillip R. DeVillier
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804

**INTERIM REPORT TO THE LEGISLATURE
IN RESPONSE TO HR NO. 191 OF THE 2024 REGULAR SESSION**

House Resolution No. 191 of the 2024 Regular Session urges and requests the Louisiana State Law Institute “to study and provide recommendations relative to the feasibility of statewide bail schedules.” The resolution also notes that “the development of fixed schedules of bail applicable to all sixty-four parishes provides uniformity relative to bail hearings within this state, regardless of the parish where a criminal offense occurs.” In fulfillment of this request, the Law Institute assigned the project to its Criminal Code and Code of Criminal Procedure Committee, which operates under the direction of Judge Marilyn Castle as Reporter and is comprised of prosecutors, defense attorneys, judges of district and appellate courts, and representatives of several associations.

The Committee met to discuss the feasibility of implementing a statewide bail schedule and noted at the outset that there are constitutional implications with respect to imposing any mandatory statewide bail schedule which does not take into account the defendant’s ability to pay. The Committee reviewed federal litigation, most notably in Texas and specifically *O’Donnell v Harris*, 892 F.3d 147 (5th Cir. 2018), which held that “mechanical application of the secured bail schedule” violates the Equal Protection Clause of the United States Constitution and that there must be “an adequate process for ensuring that there is individual consideration for each arrestee.” *O’Donnell* was eventually reversed, but only because Texas, during the course of the litigation, enacted new laws to guarantee the right to an individual bail hearing. As a result, the Committee’s most notable recommendation thus far is that any statewide bail schedule must have a vehicle for individual consideration; otherwise, it will not withstand constitutional scrutiny.

Subsequent to its initial meetings, the Committee formed a study group that further discussed issues with respect to the use of bail schedules for both misdemeanors and felonies as well as the difficulties in their establishment and the numerous factors that must be considered in determining a reasonable bail amount in each case. The study group suggests that a statewide survey of bail amounts would likely be needed in order to have practical guideposts and an evidentiary basis for bail amounts to be applied throughout all of the judicial districts and parishes in the state. The study group also expressed concern that a statewide bail schedule based upon average bail amounts throughout the state may “miss” the extremes, and again noted it also could not be mechanically applied.

The Committee’s study group also considered the existing provisions of Louisiana law with respect to setting bail, namely Code of Criminal Procedure Article 316 which sets forth certain

factors aimed to ensure the presence of the defendant while also taking into account public safety considerations. The study group discussed that it may be helpful to require the judge to verify that these and other factors were considered when setting a specific bail amount. Having a record of the factors applied by the judge in setting bail would be particularly helpful in the cases that seem to be of most concern, i.e. where bail is allegedly set too high or too low.

Additionally, the study group discussed alternatives to bail, such as electronic monitoring, drug testing, and mental health and other services, as well as other means of ensuring the defendant's presence in court, such as implementing text reminders of court dates, which have been found to be highly effective in the jurisdictions which employ them. The disparity across the state for resources to utilize such alternatives was also identified as a possible obstacle in establishing a statewide schedule.

The Committee's study group is working to finalize its recommendations for review and approval by the Committee at a future meeting. A final report will be submitted to the Legislature after the Committee receives approval of its work product from the Law Institute's Council.