



LOUISIANA STATE LAW INSTITUTE

PAUL M. HEBERT LAW CENTER, ROOM W127

UNIVERSITY STATION

BATON ROUGE, LA 70803-1016

OFFICE OF
THE DIRECTOR
(225) 578-0200

FAX: (225) 578-0211

EMAIL: LAWINSTITUTE@LSLI.ORG

February 7, 2013

Senator John A. Alario
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

Representative Charles "Chuck" Kleckley
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804-9062

RE: SCR NO. 45 of 2012

Dear Mr. President and Mr. Speaker:

The Louisiana State Law Institute respectfully submits herewith its report to the legislature in response to 2012 Senate Concurrent Resolution No. 45, relative to waiver of trial by jury.

Sincerely,

A handwritten signature in black ink that reads "William E. Crawford".

William E. Crawford
Director

WEC/puc

cc: Senator Robert W. "Bob" Kostelka

e-mail cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.us

LOUISIANA STATE LAW INSTITUTE

**REPORT TO THE LOUISIANA LEGISLATURE:
WAIVER OF TRIAL BY JURY**

RESPONSE TO SENATE CONCURRENT RESOLUTION NO. 45 OF 2012

February 7, 2013

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CRIMINAL CODE AND CODE OF CRIMINAL PROCEDURE

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Judge Frank Foil, Co-Chair
Judge Robert Morrison, III, Co-Chair
Cheney C. Joseph, Jr., Reporter
Joseph J. Baiamonte, Staff Attorney

REPORT TO THE LEGISLATURE IN RESPONSE TO SCR 45 OF 2012

SCR 45 of 2012 requested the Louisiana State Law Institute to study the apparent conflict between Article I, Section 17(A) of the Louisiana Constitution and the Code of Criminal Procedure provisions dealing with the defendant's waiver of his right to a jury trial. It further requested that the Institute make "specific recommendations to the legislature". A copy of SCR 45 is attached as Appendix II.

The Institute's Code of Criminal Procedure Revision Committee was assigned to study this matter and after a great deal of analysis, study, and discussion the Committee offers the following proposed legislation.

C.Cr.P. Article 780. Right to waive trial by jury

- A. A defendant charged with an offense other than one punishable by death may knowingly and intelligently waive a trial by jury and elect to be tried by the judge.
- B. The defendant shall exercise his right to waive trial by jury in accordance with Louisiana Constitution Article 1, Section 17. The waiver shall be by written motion filed in the district court not later than forty-five days prior to the date the case is set for trial. The motion shall be signed by the defendant and by counsel, unless the defendant has waived his right to counsel.
- C. With the consent of the district attorney, the defendant may waive trial by jury within forty-five days prior to the commencement of trial.
- D. The waiver is irrevocable and the defendant cannot withdraw his waiver of trial by jury.

Reporter's Note

La. Constitution Article 1, Section 17 was amended by Acts 2010, No. 1053 and the constitutional amendment was approved by the voters on November 2, 2012. The amendment limited the defendant's right to waive trial by jury by providing that the waiver must be exercised no later than 45 days prior to the date the case is set for trial. The Constitution also provides that the waiver is irrevocable.

In State v. Chinn, 2011-2043 (La. 2/1/12) , 92 So.3d 324, the Louisiana Supreme Court held that the district court cannot approve a waiver of trial by jury exercised in less than 45 days prior to the trial date. However, the case was set for trial only 43 days after disposition of a series of pretrial motions. The Court held that in such case the district court must continue the trial in order to protect the defendant's right to exercise his Louisiana constitutional right to waive trial by jury. The Court said, 330, "[w]here, as here, the State did not agree to allow a waiver within the forty-five day period, the sole course of action available to the district court that did not cause

the defendant's right to waive the jury trial to conflict with the forty-five day period of La. Const. Art. I, § 17(A) was to consider the waiver, and if the waiver was accepted to set a trial date beyond the forty-five day period.... To protect the defendant's constitutional right to waive a jury trial in this matter, the trial date could not be set within forty-five days such that the right to waive trial by jury would be lost. Under the unique facts of this case, the district court erred, not in allowing the waiver, ... but in setting the initial trial date less than forty-five days away."

Respectfully Submitted,
Cheney C. Joseph, Jr.
Reporter, Code of Criminal Procedure
Revision Committee

Appendix I

Code of Criminal Procedure

Art. 780. Right to waive trial by jury

A. A defendant charged with an offense other than one punishable by death may knowingly and intelligently waive a trial by jury and elect to be tried by the judge. At the time of arraignment, the defendant in such cases shall be informed by the court of his right to waive trial by jury.

B. The defendant shall exercise his right to waive trial by jury in accordance with the time limits set forth in Article 521. However, with permission of the court, he may exercise his right to waive trial by jury at any time prior to the commencement of trial.

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

La. Constitution Art. I

§ 17. Jury Trial in Criminal Cases; Joinder of Felonies; Mode of Trial

Section 17.(A) Jury Trial in Criminal Cases A criminal case in which the punishment may be capital shall be tried before a jury of twelve persons, all of whom must concur to render a verdict. A case in which the punishment is necessarily confinement at hard labor shall be tried before a jury of twelve persons, ten of whom must concur to render a verdict. A case in which the punishment may be confinement at hard labor or confinement without hard labor for more than six months shall be tried before a jury of six persons, all of whom must concur to render a verdict. The accused shall have a right to full voir dire examination of prospective jurors and to challenge jurors peremptorily. The number of challenges shall be fixed by law. Except in capital cases, a defendant may knowingly and intelligently waive his right to a trial by jury but no later than forty-five days prior to the trial date and the waiver shall be irrevocable.

(B) Joinder of Felonies; Mode of Trial. Notwithstanding any provision of law to the contrary, offenses in which punishment is necessarily confinement at hard labor may be charged in the same indictment or information with offenses in which the punishment may be confinement at hard labor; provided, however, that the joined offenses are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan; and provided further, that cases so joined shall be tried by a jury composed of twelve jurors, ten of whom must concur to render a verdict.

Appendix II

Regular Session, 2012

ENROLLED

SENATE CONCURRENT RESOLUTION NO. 45

BY SENATOR KOSTELKA

A CONCURRENT RESOLUTION

To urge and request the Louisiana State Law Institute to study and make recommendations relative to a potential conflict between provisions of law regarding the notice that must be provided to a criminal defendant as to his right to waive trial by jury, and the defendant's right to waive formal arraignment.

WHEREAS, Article I, Section 17(A) of the Constitution of Louisiana permits a defendant in a non-capital case to waive his right to a trial by jury; and

WHEREAS, Code of Criminal Procedure Article 553(B) provides that the judge may permit the defendant in a non-capital felony case to waive formal arraignment and enter a plea of not guilty without pleading in person; and

WHEREAS, Code of Criminal Procedure Article 780(A) provides that at the time of arraignment, the defendant in a non-capital case shall be informed by the court of his right to waive trial by jury; and

WHEREAS, if the defendant in a non-capital case waives arraignment, there may be no opportunity for the court to inform the defendant of his right to waive a jury trial; and

WHEREAS, these two Code of Criminal Procedure articles present a potential conflict, in that one article requires that the defendant in a non-capital case be informed by the court of his right to waive a trial by jury at the arraignment, while the other article permits the defendant in a non-capital case to waive arraignment; and

WHEREAS, there has been concern expressed by members of the judiciary with regard to this potential conflict in the law, specifically, how a judge can adequately inform a defendant charged with a non-capital crime of his right to waive a trial by jury if that defendant has waived formal arraignment.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request that the Louisiana State Law Institute study and make recommendations with regard to the current law relative to a defendant's right to waive trial by jury and the means by which the court is to notify the defendant of this right.

BE IT FURTHER RESOLVED that the Legislature of Louisiana does hereby urge and request that the Louisiana State Law Institute report the results of its study findings and its specific recommendations to the legislature by April 1, 2013.

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