

2020 Regular Session

HOUSE BILL NO. 120

BY REPRESENTATIVE JAMES

CRIMINAL/PROCEDURE: Provides relative to pretrial procedures regarding the right to a speedy trial

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Article 701(B), (C), and

3 (D)(1)(introductory paragraph) and (3), relative to the right to a speedy trial; to

4 provide relative to the time period within which a bill of information or indictment

5 is filed; to provide relative to the time period for setting an arraignment; to provide

6 relative to the defendant's bail obligation under certain circumstances; to provide

7 relative to the effect of a defendant's motion for speedy trial on certain duties of the

8 state with regard to discovery; to provide relative to the court's authority to suspend

9 or dismiss a pending speedy trial motion; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Code of Criminal Procedure Article 701(B), (C), and (D)(1)(introductory
12 paragraph) and (3) are hereby amended and reenacted to read as follows:

13 Art. 701. Right to a speedy trial

14 * * *

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

17 (1)(a) ~~When~~ Except as provided in Subsubparagraph (b) of this
18 Subparagraph, when the defendant is continued in custody subsequent to an arrest,
19 an indictment or information shall be filed within ~~forty-five~~ five days of the arrest

1 ~~if the defendant is being held for a misdemeanor and within sixty days of the arrest~~
2 ~~if the defendant is being held for a felony.~~

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

7 (c) If the state fails to institute prosecution as provided in this Subparagraph,
8 the court shall order the release of the defendant.

9 (2)(a) ~~When~~ Except as provided in Subsubparagraph (b) of this
10 Subparagraph, when the defendant is not continued in custody subsequent to arrest,
11 an indictment or information shall be filed within ~~ninety~~ thirty days of the arrest ~~if~~
12 ~~the defendant is booked with a misdemeanor and one hundred fifty days of the arrest~~
13 ~~if the defendant is booked with a felony.~~

14 (b) When the defendant is not continued in custody subsequent to arrest for
15 a felony for which punishment may be death or life imprisonment, an indictment
16 shall be filed within sixty days of the arrest.

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

24 C.(1) ~~Upon~~ When the defendant is in custody upon the filing of a bill of
25 information or indictment, the district attorney shall set the matter for arraignment
26 within ~~thirty~~ seven days, exclusive of holidays, unless just cause for a longer delay
27 is shown. If no just cause for the delay is shown, the defendant shall be released.

28 (2) When the defendant is not in custody upon the filing of a bill of
29 information or indictment, the district attorney shall set the matter for arraignment

1 within thirty days, exclusive of holidays, unless just cause for a longer delay is
2 shown. If no just cause for the delay is shown, the defendant shall be relieved of his
3 bail obligation.

4 D.(1) A motion by the defendant for a speedy trial, in order to be valid, must
5 be accompanied by an affidavit by defendant's counsel certifying that the defendant
6 and his counsel are prepared to proceed to trial within the delays set forth in this
7 Article. A defendant's motion for speedy trial does not relieve the state of its duty
8 to provide the defendant with any evidence constitutionally required to be disclosed
9 pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and its progeny, nor does it
10 relieve the state of its duty to provide previously requested discovery pursuant to
11 Code of Criminal Procedure Article 716 et seq. Except as provided in Subparagraph
12 (3) of this Paragraph, after the filing of a motion for a speedy trial by the defendant
13 and his counsel, the time period for commencement of trial shall be as follows:

14 * * *

15 (3) After a motion for a speedy trial has been filed by the defendant, if the
16 defendant files any subsequent motion which requires a contradictory hearing, except
17 for motions relating to the state's duty to provide the defendant with any evidence
18 constitutionally required to be disclosed pursuant to Brady v. Maryland, 373 U.S. 83
19 (1963) and its progeny, motions relating to previously invoked rights to discovery
20 pursuant to Code of Criminal Procedure Article 716 et seq., motions in limine
21 regarding the presentation of evidence at trial, motions for jury instructions, and
22 other motions that do not necessitate a delay in the commencement of the trial
23 beyond the dates set forth in Paragraph D of this Article, the court may suspend, in
24 accordance with Article 580, or dismiss upon a finding of bad faith the pending
25 speedy trial motion. In addition, the period of time within which the trial is required
26 to commence, as set forth by Article 578, may be suspended, in accordance with
27 Article 580, from the time that the subsequent motion is filed by the defendant until
28 the court rules upon such motion.

29 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 120 Original

2020 Regular Session

James

Abstract: Provides relative to the time period within which a bill of information or indictment is filed, the time period for setting an arraignment, the release or reconsideration of the defendant's bail obligation under certain circumstances, and other procedures relative to the right to a speedy trial.

Present law provides that the time period for filing a bill of information or indictment after arrest is as follows:

- (1) When the defendant is continued in custody subsequent to an arrest, an indictment or information shall be filed within 45 days of the arrest if the defendant is being held for a misdemeanor and within 10 days of the arrest if the defendant is being held for a felony.
- (2) When the defendant is continued in custody subsequent to an arrest, an indictment shall be filed within 120 days of the arrest if the defendant is being held for a felony for which the punishment may be death or life imprisonment.
- (3) When the defendant is not continued in custody subsequent to arrest, an indictment or information shall be filed within 90 days of the arrest if the defendant is booked with a misdemeanor and 150 days of the arrest if the defendant is booked with a felony.

Proposed law amends present law as follows:

- (1) When the defendant is continued in custody subsequent to an arrest, decreases the time period within which an indictment or information shall be filed to within five days of the arrest regardless of whether the defendant is being held for a misdemeanor or for a felony.
- (2) When the defendant is continued in custody subsequent to an arrest for a felony for which the punishment may be death or life imprisonment, decreases the time period within which an indictment shall be filed from within 120 days of arrest to within 30 days of the arrest.
- (3) When the defendant is not continued in custody subsequent to arrest, decreases the time period within which an indictment or information shall be filed to within 14 days of the arrest regardless of whether the defendant is booked with a misdemeanor or felony.
- (4) Adds that when the defendant is not continued in custody subsequent to arrest for a felony for which punishment may be death or life imprisonment, an indictment shall be filed within 60 days of the arrest.

Present law provides that when the defendant is continued in custody subsequent to arrest, failure to institute prosecution as provided in present law 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, present law requires the court to reconsider bail for the defendant.

Proposed law amends present law to remove the requirement that a contradictory hearing be held prior to ordering the release of the defendant.

Present law provides that when the defendant is not continued in custody subsequent to arrest, failure to institute prosecution as provided in present law 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.

Proposed law retains present law.

Present law provides that upon filing of a bill of information or indictment, the district attorney shall set the matter for arraignment within 30 days unless just cause for a longer delay is shown.

Proposed law amends present law to provide:

- (1) When the defendant is in custody upon the filing of a bill of information or indictment, the district attorney shall set the matter for arraignment within seven days, exclusive of holidays, unless just cause for a longer delay is shown. If no just cause for the delay is shown, the defendant shall be released.
- (2) When the defendant is not in custody upon the filing of a bill of information or indictment, the district attorney shall set the matter for arraignment within 30 days, exclusive of holidays, unless just cause for a longer delay is shown. If no just cause for the delay is shown, the defendant shall be relieved of his bail obligation.

Present law provides that 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 or dismiss upon a finding of bad faith the pending speedy trial motion.

Proposed law amends present law to provide that certain preliminary motions which require a contradictory hearing are not grounds for which the court may suspend or dismiss a pending speedy trial motion. Such motions include but are not limited to motions relating to the state's duty to provide the defendant with any evidence constitutionally required to be disclosed pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny, motions relating to previously invoked rights to discovery pursuant to present law, motions in limine regarding the presentation of evidence at trial, motions for jury instructions, and other motions do not necessitate a delay in the commencement of the trial beyond the dates set forth in present law.

Proposed law provides that a defendant's motion for speedy trial does not relieve the state of its continued burden to comply with the holding in the case *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny, nor does it relieve the state of its duty to provide previously requested discovery pursuant to present law.

(Amends C.Cr.P. Art. 701(B), (C), and (D)(1)(intro. para.) and (3))