
DIGEST

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HB 46 Engrossed

2021 Regular Session

James

Abstract: Provides relative to certain pretrial procedures including appointment of counsel for certain persons, motions to obtain transcripts of preliminary examination proceedings, orders for preliminary examination, and service of subpoenas by sheriffs; and 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 authorizes the attorney general or district attorney to determine who shall be present during the examination.

Proposed law adds defense counsel to those eligible to determine who shall be present during the examination.

Present law (C.Cr.P. Art. 230.1) provides that at the appearance before the court for the purpose of appointment of counsel, if a defendant has the right to have the court appoint counsel to defend him, the court shall assign counsel to the defendant. The court may also, in its discretion, determine or review a prior determination of the amount of bail.

Proposed law changes the condition for which the court is required to assign counsel from being based on whether the defendant has the right to being based on whether the defendant is determined to be indigent.

Present law (C.Cr.P. Art. 292) provides that after the defendant has been indicted by a grand jury, the court may rescind its order for a preliminary examination.

Proposed law retains present law but provides that a defendant can preserve his request for a preliminary examination in writing prior to indictment.

Present law (C.Cr.P. Art. 293) provides that when a preliminary examination is ordered, the court is required to conduct the examination promptly but shall allow the defendant a reasonable time to procure counsel.

Proposed law requires the court to conduct the preliminary examination promptly within two weeks exclusive of weekends and holidays, unless the defendant waives such timelines or just cause for the delay.

Present law (C.Cr.P. Art. 294) provides that upon motion of the state or the defendant, a transcript of the preliminary examination proceedings may be made. The cost of the transcript preparation shall be paid by the party making the motion, unless the party is an indigent defendant.

Proposed law retains present law and requires that a copy of the preliminary examination proceedings be promptly provided to the state or defense counsel upon written motion.

Present law (C.Cr.P. Art. 701) 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 bill of information shall be filed within 45 days of the arrest if the defendant is being held for a misdemeanor and within 60 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, unless just cause for the failure is shown after contradictory hearing with the district attorney.

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.

Present law (C.Cr.P. Art. 732) provides that a subpoena may order a person to produce at the trial or hearing, books, papers, documents, or any other tangible things in his possession or under his

control, if a reasonably accurate description is given.

Proposed law provides that the subpoena may also order a person to produce books, papers, documents, or any other tangible things in his possession or under his control at a preliminary examination. Further provides that a subpoena may be issued at the request of defense counsel or the state at any point after a defendant has been initially arrested for a charge, even if the state has not yet instituted prosecution by filing a bill of information or indictment and if the defendant is subsequently released.

Present law (C.Cr.P. Art. 734) provides that the sheriff of any parish in which the witness may be found or of the parish in which the proceeding is pending shall serve the subpoena and make return thereof without delay.

Proposed law provides that upon motion of an arrested person, the court shall appoint a person over the age of majority, who is not a party and who is residing within the state whom the court deems qualified to perform the duties required, to make service of process in the same manner as is required of sheriffs. Service of process made in this manner shall be proved as any other fact in the case.

Effective Jan. 1, 2022.

(Amends C.Cr.P. Arts.230.1(B), 292, 293, 294(D), 701(B), (C), and (D)(1)(intro. para.) and (3), and 732; Adds C.Cr.P. Art. 734(D))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill:

1. Make technical changes to citations.
2. With regard to the appearance for purpose of appointing counsel, change the condition for which the court is required to assign counsel from being based on whether the defendant has the right to being based on whether the defendant is determined to be indigent.
3. Add that the preliminary examination shall be conducted no later than two weeks, exclusive of weekends and holidays, from when the preliminary examination is ordered, unless the defendant waives such timeline or just cause for delay.
4. Provides an exception to releasing the defendant when just cause for failure to institute prosecution is shown after contradictory hearing with the district attorney.

5. Add an effective date of Jan. 1, 2022.