
DIGEST

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HB 247 Original

2022 Regular Session

Magee

Abstract: Provides with respect to the recusal of judges.

Present law (C.Cr.P. Art. 671) sets forth the grounds for recusal.

Proposed law retains present law and adds an additional ground requiring a judge to be recused when there exists a substantial and objective basis that would reasonably be expected to prevent the judge from conducting any aspect of the cause in a fair and impartial manner. Proposed law also makes technical corrections.

Present law (C.Cr.P. Art. 672) provides for the recusal of a judge on his own motion or by the supreme court.

Proposed law changes present law to require a judge who self-recuses to contemporaneously file into the record the order of recusal and the written reasons therefor and to also provide a copy to the judicial administrator of the supreme court.

Present law (C.Cr.P. Art. 673) provides for the power and authority of the judge to act in the cause.

Proposed law retains present law and makes technical corrections.

Present law (C.Cr.P. Art. 674) requires a motion to recuse to be filed prior to commencement of the trial, or if the facts are discovered thereafter, immediately after the facts are discovered but prior to verdict or judgment. Present law also requires a judge who is the subject of a valid motion to recuse to recuse himself or refer the motion for hearing.

Proposed law requires a motion to recuse to be filed not later than 30 days after the facts are discovered but in all cases at least 30 days prior to commencement of the trial. Proposed law retains the exception in present law for facts that occur or are discovered after this deadline.

Proposed law retains present law concerning the action of the judge on the motion to recuse but adds a time limitation that requires the judge to act not later than seven days after the judge receives the motion from the clerk of court.

Proposed law also provides that if a motion to recuse is not timely filed or fails to set forth facts constituting a ground for recusal, the judge who is the subject of the motion may deny it without referring it to another judge but must give written reasons for the denial.

Present law (C.Cr.P. Art. 675) sets forth the procedures for referring a motion to recuse to another judge for hearing and, in courts having only one judge, permits the judge to appoint a district judge from an adjoining district or a lawyer domiciled in the district to hear the motion to recuse.

Proposed law changes present law to provide that in courts having only one judge, the supreme court shall appoint another judge to hear the motion to recuse.

Present law (C.Cr.P. Art. 676) sets forth the procedures for selecting another judge to try the cause when the judge who is the subject of a motion to recuse has been recused.

Proposed law changes present law to provide that in courts having more than two judges, the cause shall be randomly reassigned to another judge. Additionally provides that in courts having two judges, the cause shall be tried by the other judge, and in courts having only one judge, the supreme court shall appoint another judge to try the cause.

Present law (C.Cr.P. Art. 677) allows the defendant or district attorney, after a judge is recused and an ad hoc judge has been appointed to try the cause, to apply to the supreme court for the appointment of another judge.

Proposed law repeals present law.

Present law (C.Cr.P. Art. 678) provides for the recusal of an ad hoc judge appointed to try the motion to recuse or the cause.

Proposed law retains present law and makes technical corrections.

Present law (C.Cr.P. Art. 679) provides for the recusal of a court of appeal judge or of a supreme court justice.

Proposed law retains present law and allows an appellate court judge who is the subject of a motion to recuse that fails to set forth facts constituting a ground for recusal to deny the motion without a hearing, provided the judge gives written reasons for the denial. Proposed law also makes technical corrections.

Present law (C.Cr.P. Art. 684) provides for the review of recusal rulings, allowing the state to apply for review by supervisory writs and prohibiting the defendant from raising issues concerning recusal until after sentence on appeal.

Proposed law retains present law with respect to recusals of district attorneys.

Proposed law changes present law with respect to recusals of judges to require both sides to apply for review by supervisory writs and to provide that this shall be the exclusive remedy. Proposed law also requires the judge to advise the defendant in open court that rulings concerning recusals of judges cannot be raised on appeal.

(Amends the heading of Title XXII of the C.Cr.P., the heading of Chapter 1 of Title XXII of the C.Cr.P., C.Cr.P. Arts. 671-676, 678, and 679, the heading of Chapter 3 of Title XXII of the C.Cr.P., and C.Cr.P. Art. 684; Repeals C.Cr.P. Art. 677)