

2022 Regular Session

HOUSE BILL NO. 722

BY REPRESENTATIVE JORDAN

CRIMINAL/JUSTICE: Provides relative to certain pretrial procedures

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Articles 292, 293, 294(D), 701(B), (C),  
3 and (D)(1)(introductory paragraph) and (3), and 732 and to enact Code of Criminal  
4 Procedure Article 734(D), relative to pretrial procedures; to provide relative to  
5 appointment of counsel for certain persons; to provide relative to transcripts of  
6 preliminary examination proceedings; to provide relative to an order for preliminary  
7 examination before and after indictment; to provide relative to subpoenas; to provide  
8 relative to service of subpoenas; to provide relative to pretrial motions for speedy  
9 trial; to provide relative to the effect of a defendant's motion for speedy trial on  
10 certain duties of the state with regard to discovery; to provide relative to the court's  
11 authority to suspend or dismiss a pending speedy trial motion; to provide relative to  
12 the time period within which a bill of information or indictment is filed; to provide  
13 relative to the time period for setting an arraignment; to provide relative to the  
14 defendant's bail obligation under certain circumstances; and to provide for related  
15 matters.

16 Be it enacted by the Legislature of Louisiana:

17 Section 1. Code of Criminal Procedure Articles 292, 293, 294(D), 701(B), (C), and  
18 (D)(1)(introductory paragraph) and (3), and 732 are hereby amended and reenacted and Code  
19 of Criminal Procedure Article 734(D) is hereby enacted to read as follows:

20 Art. 292. Order for preliminary examination before and after indictment



1 defendant is being held for a misdemeanor and within ~~sixty~~ fifteen 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   \*       \*       \*

1 Art. 732. Subpoena duces tecum

2 A subpoena may order a person to produce at the trial or hearing, including  
3 a preliminary examination, books, papers, documents, or any other tangible things  
4 in his possession or under his control, if a reasonably accurate description thereof is  
5 given; but the court shall vacate or modify the subpoena if it is unreasonable or  
6 oppressive. A subpoena may be issued at the request of defense counsel or the state  
7 at any point after a defendant has been initially arrested for a charge, even if the state  
8 has not yet instituted prosecution by filing a bill of information or indictment and if  
9 the defendant is subsequently released.

10 \* \* \*

11 Art. 734. Service of subpoena by sheriff; investigators

12 \* \* \*

13 D. Upon motion of an arrested person, the court shall appoint a person over  
14 the age of majority, who is not a party and who is residing within the state whom the  
15 court deems qualified to perform duties required, to make service of process in the  
16 same manner as is required of sheriffs. Service of process made in this manner shall  
17 be proved as any other fact in the case.

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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)]

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HB 722 Original

2022 Regular Session

Jordan

**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, 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 (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 provides that if the arrested person is determined to be indigent pursuant to present law, the court is required to appoint qualified counsel to represent him at the preliminary examination.

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 information shall be filed within 30 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 30 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.

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.

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