

2022 Regular Session

HOUSE BILL NO. 247

BY REPRESENTATIVE MAGEE

(On Recommendation of the Louisiana State Law Institute)

CRIMINAL/PROCEDURE: Provides relative to the recusal of judges

1 AN ACT

2 To amend and reenact the heading of Title XXII of the Code of Criminal Procedure, the
3 heading of Chapter 1 of Title XXII of the Code of Criminal Procedure, Code of
4 Criminal Procedure Articles 671 through 676, 678, and 679, the heading of Chapter
5 3 of Title XXII of the Code of Criminal Procedure, and Code of Criminal Procedure
6 Article 684, and to repeal Code of Criminal Procedure Article 677, relative to the
7 recusal of judges; to provide for the grounds for recusal; to provide for recusal on the
8 motion of the court; to provide for authority of judges; to provide for the procedure
9 for recusal; to provide for the selection of a judge to try the motion to recuse; to
10 provide for the selection of a judge after recusal; to provide for the recusal of an ad
11 hoc judge, appellate judge, and supreme court justice; to provide for review of
12 recusal rulings; and to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. The heading of Title XXII of the Code of Criminal Procedure, the heading
15 of Chapter 1 of Title XXII of the Code of Criminal Procedure, Code of Criminal Procedure
16 Articles 671 through 676, 678, and 679, the heading of Chapter 3 of Title XXII of the Code
17 of Criminal Procedure, and Code of Criminal Procedure Article 684 are hereby amended and
18 reenacted to read as follows:

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TITLE XXII

~~RECUSATION~~ RECUSAL OF JUDGES AND DISTRICT ATTORNEYS

CHAPTER 1. ~~RECUSATION~~ RECUSAL OF JUDGES

Art. 671. Grounds for ~~recusation~~ recusal of judge

A. In a criminal ~~case~~ cause, a judge of any trial or appellate court, ~~trial or appellate~~, shall be recused ~~when he~~ upon any of the following grounds:

(1) ~~Is~~ The judge is biased, prejudiced, or personally interested in the cause to such an extent that ~~he~~ the judge would be unable to conduct a fair and impartial trial;

(2) ~~Is~~ The judge is the spouse of the accused, of the party injured, of an attorney employed in the cause, or of the district attorney; or is related to the accused or the party injured, or to the spouse of the accused or party injured, within the fourth degree; or is related to an attorney employed in the cause or to the district attorney, or to the spouse of either, within the second degree;

(3) ~~Has~~ The judge has been employed or consulted as an attorney in the cause, or has been associated with an attorney during the latter's employment in the cause;

(4) ~~Is~~ The judge is a witness in the cause;

(5) ~~Has~~ The judge performed a judicial act in the ~~case~~ cause in another court; ~~or~~

(6) ~~Would~~ The judge would be unable, for any other reason, to conduct a fair and impartial trial.

B. In a criminal cause, a judge of any trial or appellate court shall also 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.

B.C. In any cause in which the state, or a political subdivision thereof, ~~or a religious body~~ is interested, the fact that the judge is a citizen of the state or a resident of the political subdivision, or pays taxes thereto, ~~or is a member of the~~

1 ~~religious body~~ is not of itself a ground for ~~recusation~~ recusal. In any cause in which
2 a religious body or religious corporation is interested, the fact that a judge is a
3 member of the religious body or religious corporation is not alone a ground for
4 recusal.

5 Comments - 2022

6 (a) This Article generally follows Code of Civil Procedure Article 151, with
7 such adaptations as are necessary to adjust the grounds for recusal to the special
8 differences in criminal proceedings.

9 (b) Subparagraph (A)(1) is the most important ground for recusal. It
10 continues the rule that interest in the cause is a ground for recusal and includes the
11 much-needed provision that bias or prejudice is also a ground for recusal. Bias or
12 prejudice of the trial judge was not a ground for recusal prior to the 1928 Code. In
13 State v. Phillips, 106 So. 375 (La. 1925), it was held that "interested in the cause"
14 means that the judge must have some personal gain at stake before he can be recused.
15 The Louisiana Supreme Court followed this rule after the 1928 Code in State v.
16 LaBorde, 38 So. 2d 371 (La. 1948). Recognition of bias or prejudice as a ground for
17 recusal is in line with the basic purpose of recusal procedure, i.e., to protect the
18 defendant's right to a fair and impartial trial. The requirement that the bias,
19 prejudice, or interest must be such that the judge would be unable to conduct a fair
20 and impartial trial is a standard requiring that the disqualifying bias, interest, or
21 prejudice must be of a substantial nature.

22 (c) Subparagraph (A)(2) is similar to Code of Civil Procedure Article
23 152(A)(4) in specifying the degrees of relationship that will serve as a ground for
24 recusal of the judge. In addition, Subparagraph (A)(2) clarifies that the district
25 attorney is one of the attorneys to whom the relationships apply.

26 (d) Subparagraph (A)(3) follows Code of Civil Procedure Article 151(A)(2).
27 State v. Perkins, 50 So. 805 (La. 1910), held that the statutory provision was met
28 when the judge was previously employed on the same matter in a civil proceeding.

29 (e) Subparagraph (A)(4), in conformity with Code of Civil Procedure Article
30 151(A)(1), provides for recusal if the judge is a material witness in the cause.
31 Construing Article 303 of the 1928 Code of Criminal Procedure, the Louisiana
32 Supreme Court stated that it "contemplates and refers to the judge's being a material
33 witness in the actual trial of the criminal cause and before the court - not a witness
34 at a hearing to determine whether he should be recused." State v. Riviere, 72 So. 2d
35 316, 319 (La. 1954). In State v. Kelly, 128 So. 2d 18 (La. 1961), the court stated that
36 the testimony of the judge must relate to the defendant's guilt or innocence. Under
37 this logical interpretation of the phrase "material witness," the judge would not be
38 recused if he had been called to testify to a matter relating to something other than
39 the guilt or innocence.

40 (f) Subparagraph (A)(5) follows Code of Civil Procedure Article 152(A)(3)
41 and makes no change in the law. Beginning with State v. Bill, 15 La. Ann. 114
42 (1860), it has been consistently held that a judge is competent to conduct the trial
43 after a mistrial has been declared, and retrial of a case after a new trial is ordered
44 may also be held before the same judge who originally tried the case.

45 (g) The term "cause" rather than "case" is used in this Chapter. The broader
46 word "cause" embraces the entire situation, in both its civil and criminal
47 implications. The word "case" is limited to the particular criminal prosecution at bar.

1 "Case is more of a limited signification, importing a collection of facts, with the
2 conclusion of law thereon, whereas cause imports a judicial proceeding entire, and
3 is nearly synonymous with *lis* in Latin, or *suit* in English." Black's Law Dictionary
4 (11th ed. 2019).

5 (h) Subparagraph (A)(6) is a catchall provision to include circumstances that
6 clearly indicate that the judge would not be able to serve fairly and impartially, even
7 though none of the specified grounds for recusal exist.

8 (i) A new Paragraph B has been added to provide an additional mandatory
9 ground for recusal when a substantial and objective basis exists that would
10 reasonably be expected to prevent the judge from conducting any aspect of the case
11 in a fair and impartial manner. This provision is intended to serve as a catch-all
12 supplementing the mandatory grounds for recusal set forth in Paragraph A and to
13 incorporate a clearer, more objective standard than the language of Canon 3C of the
14 Code of Judicial Conduct, which provides that a judge should recuse himself when
15 "the judge's impartiality might reasonably be questioned."

16 (j) Paragraph C, like Code of Civil Procedure Article 151(C), serves to
17 avoid frivolous claims that the judge is interested or prejudiced by reason of his
18 residence, or his membership in a religious organization that may be interested in the
19 prosecution. It will be significant in connection with the remaining provisions of this
20 Article.

21 (k) The terms "court" and "judge" are broadly defined by Article 931 to
22 include the various courts with criminal jurisdiction, except mayors' courts and
23 justice of the peace courts.

24 Art. 672. ~~Recusation~~ Recusal on court's own motion; ~~by supreme court~~

25 A. A judge may recuse himself in any cause in which a ground for recusal
26 exists, whether or not a motion for his ~~recusation~~ recusal has been filed by a party
27 or not, in any case in which a ground for ~~recusation~~ exists.

28 ~~On the written application of a trial judge, the supreme court may recuse him~~
29 ~~for any reason that it considers sufficient.~~

30 B. Prior to the cause being allotted to another judge, a judge who recuses
31 himself for any reason shall contemporaneously file in the record the order of recusal
32 and written reasons that provide the factual basis for recusal under Article 671. The
33 judge shall also provide a copy of the recusal and the written reasons therefor to the
34 judicial administrator of the supreme court.

35 Comments - 2022

36 (a) Paragraph A of this Article conforms with the generally accepted view
37 that a judge may recuse himself only if there is a valid ground for recusal. State ex
38 rel. Jones v. Judge, 6 So. 22 (La. 1889). This provision is broad enough to allow a
39 judge to recuse himself without a motion being filed.

1 (b) Paragraph B of this Article is new and requires the judge to file written
2 reasons containing the factual basis for the judge's self-recusal prior to the cause
3 being allotted to another judge. This provision also requires the judge to provide a
4 copy of both the recusal and the written reasons for the recusal to the judicial
5 administrator of the supreme court. This reporting requirement reflects the
6 countervailing considerations of a judge's duty to sit and his obligation to recuse
7 when a valid ground for recusal exists. A judge is "not at liberty, nor does he have
8 the right, to take himself out of a case and burden another judge with his
9 responsibility without good and legal cause." In re Lemoine, 686 So. 2d 837 (La.
10 1997).

11 (c) The factual basis for the judge's recusal must pertain to one of the
12 grounds for recusal set forth in Article 671. The fact that a judicial complaint has
13 been filed against the judge by one of the parties, without more, is not sufficient to
14 constitute a ground for recusal.

15 Art. 673. Judge may act until recused

16 A judge has full power and authority to act, even though a ground for
17 ~~recusation~~ recusal exists, until he is recused, or a motion for his ~~recusation~~ recusal
18 is filed. The judge to whom the motion to recuse is assigned shall have full power
19 and authority to act in the cause pending the disposition of the motion to recuse.

20 Comments - 2022

21 This Article provides a judge who has been selected to hear a motion to
22 recuse with full power and authority to act in the cause, but such power and authority
23 is discretionary. This provision is not intended to require the judge selected to hear
24 the recusal to act on other matters in the cause.

25 Art. 674. Procedure for ~~recusation~~ recusal of trial judge

26 A. A party desiring to recuse a trial judge shall file a written motion therefor
27 assigning the ground for ~~recusation~~ recusal under Article 671. The motion shall be
28 filed not later than thirty days after discovery of the facts constituting the ground
29 upon which the motion is based, but in all cases at least thirty days prior to
30 commencement of the trial, unless the party discovers In the event that the facts
31 constituting the ground for ~~recusation~~ recusal occur thereafter, ~~in which event it or~~
32 the party moving for recusal could not, in the exercise of due diligence, have
33 discovered such facts, the motion to recuse shall be filed immediately after the facts
34 occur or are discovered, but prior to verdict or judgment.

35 B. ~~If a valid ground for recusation is set forth in the motion to recuse sets~~
36 forth facts constituting a ground for recusal under Article 671, not later than seven
37 days after the judge's receipt of the motion from the clerk of court, the judge shall

1 ~~parish or a lawyer who is domiciled in the parish and has the qualifications of a city~~
2 ~~court judge.~~

3 ~~B. When a district court judge or a judge of a separate juvenile court or of~~
4 ~~a family court~~ When a judge of a court having more than two judges recuses himself
5 or is recused after a trial of the motion, the matter shall be randomly reassigned to
6 another judge for trial of the case cause in accordance with the procedures contained
7 in Code of Criminal Procedure Article 675.

8 B. When a judge of a court having two judges recuses himself or is recused
9 after a trial of the motion, the cause shall be tried by the other judge of that court.

10 C. When a city court the judge of a court having a single only one judge
11 recuses himself or is recused after a trial on of the motion, the supreme court shall
12 appoint an ad hoc judge ad hoc who tried the motion to recuse shall appoint to try the
13 case cause either a city court judge from an adjoining parish or a lawyer who is
14 domiciled in the parish and has the qualifications of a city court judge.

15 ~~C. When a city court has two judges, if a judge recuses himself or is recused,~~
16 ~~the case shall be tried by the other judge of that court.~~

17 ~~D. When a city court has more than two judges, if a judge recuses himself~~
18 ~~or is recused, the case shall be tried by another judge of that court through a random~~
19 ~~reassignment process.~~

20 E.D. The ad hoc judge ad hoc has the same power and authority to dispose
21 of the case cause as the recused judge would have.

22 Comments - 2022

23 The provisions of this Article are similar to Code of Civil Procedure Articles
24 156 and 4864. If a judge is recused, the cause will be allotted to another judge in the
25 same court. In courts with only one judge, the supreme court will appoint an ad hoc
26 judge to hear the cause.

27 * * *

28 Art. 678. ~~Recusation of judge~~ Recusal of ad hoc judge

29 ~~A judge~~ An ad hoc judge appointed to try a motion to recuse a judge, or
30 appointed to try the case cause, may be recused on the grounds and in the manner
31 provided in this Chapter for the ~~recusation~~ recusal of judges.

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Comments - 2022

This Article is taken verbatim from Code of Civil Procedure Article 159.

Art. 679. ~~Recusation~~ Recusal of an appellate judge and a supreme court justice

A. A party desiring to recuse a judge of a court of appeal shall file a written motion therefor assigning the ground for recusal under Article 671. When a written motion is filed to recuse a judge of a court of appeal, ~~he~~ the judge may recuse himself or the motion shall be heard by the other judges on the panel to which the cause is assigned, or by all judges of the court, except the judge sought to be recused, sitting en banc.

B. When a judge of a court of appeal recuses himself or is recused, the court shall ~~appoint~~ randomly allot another of its judges to act for the recused judge in the hearing and disposition of the ~~case~~ cause.

C. If the motion to recuse fails to set forth facts constituting a ground for recusal under Article 671, the judge may deny the motion without a hearing but shall provide written reasons for the denial.

D. A party desiring to recuse a justice of the supreme court shall file a written motion therefore assigning the ground for recusal under Article 671. When a written motion is filed to recuse a justice of the supreme court, ~~he~~ the justice may recuse himself or the motion shall be heard by the other justices of the court.

~~D.E.~~ When a justice of the supreme court recuses himself; or is recused, the court may have the ~~case~~ cause argued before and disposed of by the other justices or appoint a sitting or retired judge of a district court or of a court of appeal having the qualifications of a justice of the supreme court to sit as a member of the court in the hearing and disposition of the ~~case~~ cause.

Comments - 2022

(a) Neither this Article nor its source provision states the time when the motion to recuse a judge of a court of appeal or a justice of the supreme court must be filed. However, it is certain that the motion must be filed before the court has rendered its decision. State v. Jefferson Parish School Board, 19 So. 2d 153 (La. 1943). The general limitation of Article 674, that the motion for recusal shall be filed "at least thirty days prior to commencement of the trial," does not apply to this special situation. A ground for recusal of a judge of a court of appeal or a supreme

1 court justice will sometimes become apparent, for the first time, during the hearing
2 before that court.

3 (b) This Article includes language from Code of Civil Procedure Article 158
4 that provides a specific procedure for the resolution of a motion to recuse an
5 appellate judge.

6 (c) Paragraph C of this Article is similar to Article 674 in that it allows a
7 judge of a court of appeal to deny a motion to recuse that fails to set forth facts
8 constituting a ground for recusal without a hearing, but the judge must give written
9 reasons for the denial.

10 * * *

11 CHAPTER 3. REVIEW OF ~~RECUSATION~~ RECUSAL RULING

12 Art. 684. Review of ~~recusation~~ recusal ruling

13 A. If a judge or a district attorney is recused over the objection of the state,
14 ~~or if an application by the state for recusation of a judge is denied,~~ the state may
15 apply for a review of the ruling by supervisory writs. The defendant may not appeal
16 prior to sentence from a ruling recusing or refusing to recuse the ~~judge or the~~ district
17 attorney.

18 B. If a judge is recused over the objection of the state or the defendant, or if
19 a motion by the state or the defendant to recuse a judge is denied, the party's
20 exclusive remedy is to apply for a review of the ruling by supervisory writs. A
21 ruling recusing or refusing to recuse the judge shall not be considered on appeal.

22 C. Upon ruling on a motion to recuse a judge, the judge shall advise the
23 defendant in open court or in writing that the ruling may be reviewed only by a
24 timely filed supervisory writ to the appellate court and shall not be raised on appeal.

25 Comments - 2022

26 (a) Under Paragraph A of this Article, the manner in which rulings
27 concerning recusals of district attorneys are reviewed remains the same and has not
28 been changed.

29 (b) Paragraph B of this Article provides that if either party seeks to challenge
30 a ruling concerning the recusal of a judge, the party must do so in the form of a
31 timely filed supervisory writ. This is the party's exclusive remedy. This revision is
32 intended to ensure that rulings concerning the recusal of a judge are reviewed prior
33 to the trial on the merits.

34 (c) Because Paragraph B of this Article creates an exception to a defendant's
35 constitutional right to an appeal, Paragraph C requires the judge to advise the
36 defendant that the recusal ruling may be reviewed only by a timely filed supervisory
37 writ and cannot be raised on appeal. This notice must be given in open court or in

1 writing, and the form of the notice will likely depend upon the manner in which the
2 recusal ruling is made. The failure of the judge to provide the required notice to the
3 defendant may give rise to the issue of recusal being reviewed on appeal.

4 Section 2. Code of Criminal Procedure Article 677 is hereby repealed in its entirety.

5 Section 3. The existing Comments to Code of Criminal Procedure Articles 671
6 through 679 and 684 are superseded by the Comments appearing beneath those Articles in
7 this Act. The Louisiana State Law Institute is hereby directed to remove the existing
8 Comments and to print only the Comments appearing in this Act.

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 247 Engrossed

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)