

1 Art. 66. Subpoena of witness to appear before attorney general, ~~and~~ district attorney,
2 or defense counsel

3 A. Upon written motion of the attorney general, ~~or~~ district attorney, or
4 defense counsel setting forth reasonable grounds therefor, the court may order the
5 clerk to issue subpoenas directed to the persons named in the motion, ordering them
6 to appear at a time and place designated in the order for questioning by the attorney
7 general, ~~or~~ district attorney, or defense counsel respectively, concerning any offense
8 under investigation by him. The court may also order the issuance of a subpoena
9 duces tecum. Service of a subpoena or subpoena duces tecum issued pursuant to this
10 Article upon motion of the attorney general may be made by any commissioned
11 investigator from the attorney general's office, or in conformity with Article 734 of
12 this Code. Subpoenas to appear before defense counsel on behalf of an arrested
13 person shall only be issued after an arrest has been made.

14 * * *

15 C. The attorney general, ~~or~~ district attorney, or defense counsel, respectively,
16 may determine who shall be present during the examination and may order all
17 persons excluded, except counsel for the person subpoenaed.

18 * * *

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

20 A. The court, on request of the state or the defendant, shall immediately
21 order a preliminary examination in felony cases unless the defendant has been
22 indicted by a grand jury.

23 B. After the defendant has been indicted by a grand jury, the court may
24 rescind its order for a preliminary examination unless the defendant has preserved
25 his request for a preliminary examination in writing prior to indictment.

26 C. An order for a preliminary examination in felony cases may be granted
27 by the court at any time, either on its own motion or on request of the state or of the
28 defendant before or after the defendant has been indicted by a grand jury.

1 Art. 293. Time for examination; procurement of counsel

2 When a preliminary examination is ordered, the court shall conduct the
3 examination promptly but shall allow the defendant a reasonable time to procure
4 counsel. If the arrested person is determined to be indigent pursuant to R.S. 15:175,
5 the court shall appoint counsel to represent him at the preliminary examination.

6 Art. 294. Examination of witnesses; transcript of testimony

7 * * *

8 D. Upon motion of the state or the defendant, a transcript of the preliminary
9 examination proceedings may be made and shall be promptly provided to the state
10 or defense counsel. The cost of the transcript preparation under this Paragraph shall
11 be paid by the party making the motion, unless the party is an indigent defendant.

12 * * *

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

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

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

28 (2)(a) ~~When~~ Except as provided in Subsubparagraph (b) of this
29 Subparagraph, when the defendant is not continued in custody subsequent to arrest,

1 an indictment or information shall be filed within ~~ninety~~ thirty days of the arrest if
2 the defendant is booked with a misdemeanor and one hundred fifty days of the arrest
3 if the defendant is booked with a felony.

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

7 ~~(b)(c) Failure to institute prosecution as provided in Subparagraph (1) of this~~
8 ~~Paragraph shall result in release of the defendant if, after contradictory hearing with~~
9 ~~the district attorney, just cause for the failure is not shown. If just cause is shown,~~
10 ~~the court shall reconsider bail for the defendant. Failure to institute prosecution as~~
11 ~~provided in this Subparagraph shall result in the release of the bail obligation of the~~
12 ~~defendant if, after contradictory hearing with the district attorney, just cause for the~~
13 ~~delay is not shown.~~

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

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

23 D.(1) A motion by the defendant for a speedy trial, in order to be valid, must
24 be accompanied by an affidavit by defendant's counsel certifying that the defendant
25 and his counsel are prepared to proceed to trial within the delays set forth in this
26 Article. A defendant's motion for speedy trial does not relieve the state of its duty
27 to provide the defendant with any evidence constitutionally required to be disclosed
28 pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and its progeny, nor does it
29 relieve the state of its duty to provide previously requested discovery pursuant to

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

2 * * *

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

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 46 Original

2021 Regular Session

James

Abstract: Provides relative to certain pretrial procedures including issuance of subpoenas, 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. 66) provides that upon written motion of the attorney general or district attorney setting forth reasonable grounds, the court may order the clerk to issue subpoenas directed to the persons named in the motion, ordering them to appear at a time and place designated in the order for questioning by the attorney general or district attorney, concerning any offense under investigation by him. Further authorizes the court to order the issuance of a subpoena duces tecum.

Proposed law provides that defense counsel may also give written motion to the court to order the clerk to issue subpoenas to persons named in the motion to appear for questioning. Further provides that defense subpoenas on behalf of an arrested person shall only be issued after an arrest is made.

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. 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 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 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.

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