

2020 Regular Session

HOUSE BILL NO. 567

BY REPRESENTATIVE JAMES

CRIMINAL/PROCEDURE: Provides relative to certain pretrial procedures

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Articles 66(A) and (C), 292, 293,  
3 294(D), and 732 and to enact Code of Criminal Procedure Article 734(D), relative  
4 to pretrial procedures; to provide relative to the subpoena of a witness to appear  
5 before certain persons; to provide relative to appointment of counsel for certain  
6 persons; to provide relative to transcripts of preliminary examination proceedings;  
7 to provide relative to an order for preliminary examination before and after  
8 indictment; to provide relative to subpoenas; to provide relative to service of  
9 subpoenas; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Code of Criminal Procedure Articles 66(A) and (C), 292, 293, 294(D),  
12 and 732 are hereby amended and reenacted and Code of Criminal Procedure Article 734(D)  
13 is hereby enacted to read as follows:

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

16 A. Upon written motion of the attorney general, ~~or~~ district attorney, or  
17 defense counsel setting forth reasonable grounds therefor, the court may order the  
18 clerk to issue subpoenas directed to the persons named in the motion, ordering them  
19 to appear at a time and place designated in the order for questioning by the attorney  
20 general, ~~or~~ district attorney, or defense counsel respectively, concerning any offense

1 under investigation by him. The court may also order the issuance of a subpoena  
2 duces tecum. Service of a subpoena or subpoena duces tecum issued pursuant to this  
3 Article upon motion of the attorney general may be made by any commissioned  
4 investigator from the attorney general's office, or in conformity with Article 734 of  
5 this Code. Subpoenas to appear before defense counsel on behalf of an arrested  
6 person shall only be issued after an arrest has been made.

7 \* \* \*

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

11 \* \* \*

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

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

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

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

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

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

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

28 \* \* \*

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

5 \* \* \*

6 Art. 732. Subpoena duces tecum

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

15 \* \* \*

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

17 \* \* \*

18 D. Upon motion of an arrested person, the court shall appoint a person over  
19 the age of majority, who is not a party and who is residing within the state whom the  
20 court deems qualified to perform the duties required, to make service of process in  
21 the same manner as is required of sheriffs. Service of process made in this manner  
22 shall 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 567 Original

2020 Regular Session

James

**Abstract:** 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, and service of subpoenas by sheriffs.

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. 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), and 732; Adds C.Cr.P. Art. 734(D))