

BILL ANALYSIS

S.B. 1492
By: Whitmire
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Grand jury proceedings were created to protect citizens and to provide checks and balances against unjust or overzealous prosecution and are not considered to be adversarial, unlike trials. However, concerns have been raised that prosecutors may have unfair advantages over the accused when presenting cases to grand juries. S.B. 1492 seeks to address this issue by revising the law relating to grand jury proceedings and establishing a commission to study improvements and alternatives to those proceedings.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 1492 amends the Code of Criminal Procedure to require that questions propounded to a fact witness by a grand jury or the attorney representing the state in a grand jury proceeding and the testimony of the fact witness to the grand jury be recorded either by a stenographer or by use of an electronic device capable of recording sound. The bill defines "fact witness" as a person who is testifying regarding the person's personal knowledge of events relating to the case under investigation by the grand jury and excludes from that definition a law enforcement officer who is acting in the lawful discharge of the officer's official duty, is assisting the attorney representing the state by presenting evidence to the grand jury, and has no personal knowledge of events relating to the case.

S.B. 1492 prohibits a grand jury from investigating a person who is accused or suspected of an offense and from voting to present an indictment for the offense if:

- the person has previously been investigated by a grand jury for the same offense;
- that grand jury voted on whether to present an indictment; and
- fewer than nine grand jurors concurred in finding the bill.

The bill creates an exception to the prohibition for a proceeding in which the attorney representing the state presents to the grand jury material evidence that was not known to the applicable attorney representing the state before or during the previous grand jury investigation.

S.B. 1492 establishes the Texas Commission on Grand Juries to develop recommendations for improvements to the grand jury system and explore alternative procedures for establishing probable cause to proceed to trial in a felony case. The bill sets out the composition of the

11-member commission and requires the governor to designate the commission's presiding officer. A member of the commission is not entitled to compensation or reimbursement of expenses. The bill requires the commission, not later than December 1, 2020, to prepare and deliver to the governor and the legislature a report that recommends improvements to the grand jury system, including the identification of any statutory changes necessary for that purpose, and alternative procedures for establishing probable cause to proceed to trial in a felony case. The bill abolishes the commission on January 12, 2021.

EFFECTIVE DATE

September 1, 2019.