

BILL ANALYSIS

Senate Research Center
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S.B. 1424
By: Buckingham
Criminal Justice
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1424 ends potential grand jury abuse. In criminal cases involving adult felonies, grand jury proceedings were created to protect citizens and were originally meant to provide checks and balances against unjust prosecution. Today, however, grand jury proceedings can provide prosecutors with an unfair advantage over the accused.

Among the common sense reforms in S.B. 1424:

- An attorney representing a witness, including a witness who is an accused or suspected person, will be allowed in the grand jury room during the time the witness is being examined or offering testimony to the grand jury.
- Statements made by the grand jury or the attorney representing the state must be recorded, excluding grand jury deliberations.
- A grand jury may not investigate or indict someone for the same offense without providing new material evidence if a previous grand jury found no bill of indictment for that offense.
- An attorney representing the state must present to a grand jury any evidence that is favorable to the accused or suspected person, material to the offense being investigated, and in the possession, custody, or control of the state or any person under contract with the state.

S.B. 1424 is an effort to level the playing field for citizens innocent until proven guilty.

Note: Senator Buckingham intends to offer a committee substitute that makes several changes. The committee substitute is identical to the committee substitute to H.B. 2640 reported favorably by the House Criminal Jurisprudence Committee on May 6, 2017.

Changes included in committee substitute:

- The state may bring a subsequent grand jury (after an ex parte hearing with the court) if good cause exists, but only one more time.
- The state is required to present evidence that tends to negate the guilt of the accused, and is in the possession, custody, or control of the attorney for the state.
- Codifies the purpose of the grand jury, which has always been to determine there is probable cause to believe a crime has been committed. States that witnesses shall not be called nor shall evidence be subpoenaed unless there is reason to believe it is relevant to the investigation.
- Transcription requirements, provisions regarding presence of counsel for a witness, and provisions regarding providing reasonable notice for a witness prior to testifying have been removed from the bill.

As proposed, S.B. 1424 amends current law relating to grand jury proceedings and provides a penalty for contempt of court.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 20.011(a), Code of Criminal Procedure, as follows:

(a) Authorizes only certain persons to be present in a grand jury room while the grand jury is conducting proceedings, including an attorney representing a witness, including a witness who is an accused or suspected person, during the time the witness is being examined or offering testimony to the grand jury and for the sole purpose of providing consultation in the manner described by Article 20.03(c).

SECTION 2. Amends the heading to Article 20.012, Code of Criminal Procedure, to read as follows:

Art. 20.012. RECORDING OF GRAND JURY PROCEEDINGS.

SECTION 3. Amends Articles 20.012(a) and (b), Code of Criminal Procedure, as follows:

(a) Requires that all statements made by the grand jury or the attorney representing the state, all questions propounded by the grand jury or the attorney representing the state to a witness, and all the testimony of a witness to the grand jury, except as otherwise provided by this subsection, be recorded either by a stenographer or by use of an electronic device capable of recording sound. Prohibits deliberations of the grand jury from being recorded. Deletes existing text requiring that questions propounded by the grand jury or the attorney representing the state to a person accused or suspected and the testimony of that person to the grand jury be recorded either by a stenographer or by use of an electronic device capable of recording sound.

(b) Provides that the validity of a grand jury proceeding is not affected by an unintentional failure to record all or part of the proceedings as required by Subsection (a), rather than by an unintentional failure to record all or part of questions propounded or testimony made under Subsection (a).

SECTION 4. Amends Chapter 20, Code of Criminal Procedure, by adding Article 20.013, as follows:

Art. 20.013. WHO MAY BE INVESTIGATED. (a) Prohibits a grand jury, except as provided by Subsection (b), 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 and that grand jury found no bill of indictment.

(b) Authorizes a grand jury to investigate, and to present an indictment with respect to, a person described by Subsection (a) only if the attorney representing the state presents material evidence that was not known to the state before or during the previous grand jury investigation.

SECTION 5. Amends Article 20.02, Code of Criminal Procedure, by amending Subsections (f), (g), and (h) and adding Subsection (i), as follows:

(f) Provides that a person who receives information under Article 20.036, which is added by this Act, and discloses that information in a manner not authorized by that article, rather than a person who receives information under Subsection (d) (relating to

authorizing the defendant to petition a court to order the disclosure of certain information or transcriptions) or (e) (relating to requiring that a petition for disclosure be filed in a certain district court and be filed with certain persons) and discloses that information, is subject to punishment for contempt in the same manner as a person who violates Subsection (b) (relating to the liability of certain persons for disclosing anything transpiring before the grand jury in the course of the official duties of the grand jury).

(g) Prohibits the attorney representing the state from disclosing anything transpiring before the grand jury except as permitted by Subsection (c) or provided by Article 20.036, rather than except as permitted by Subsections (c), (d), and (e).

(h) Prohibits this subsection from being construed to limit a disclosure permitted by Subsection (c) or provided by Article 20.036, rather than permitted by Subsection (c), (d), or (e).

(i) Prohibits an attorney representing a witness, except as provided by Article 20.036, from disclosing anything transpiring before the grand jury and provides that an attorney who discloses information in violation of this subsection is subject to punishment for contempt in the same manner as a person who violates Subsection (b).

SECTION 6. Amends Article 20.03, Code of Criminal Procedure, as follows:

Art. 20.03. New heading: ATTORNEY ENTITLED TO APPEAR. (a) Creates this subsection from existing text. Redefines "attorney representing the state."

(b) Creates this subsection from existing text. Provides that the attorney representing the state is entitled to go before the grand jury and inform the grand jurors of offenses liable to indictment at any time except when the grand jury is discussing the propriety of finding an indictment or voting on an indictment, rather than provides that the attorney representing the State is entitled to go before the grand jury and inform them of offenses liable to indictment at any time except when they are discussing the propriety of finding an indictment or voting upon the same. Makes nonsubstantive changes.

(c) Provides that a witness who testifies before a grand jury, including a witness who is an accused or suspected person, is entitled to have an attorney present while the grand jury is questioning the witness. Requires the grand jury to permit the attorney or the witness to interrupt the questioning at any time so that the witness may consult with the attorney outside the hearing of the grand jury.

SECTION 7. Amends Chapter 20, Code of Criminal Procedure, by adding Articles 20.035 and 20.036, as follows:

Art. 20.035. PRESENTATION OF EXCULPATORY EVIDENCE BY STATE. (a) Requires the attorney representing the state to present to a grand jury investigating an offense any evidence that is favorable to the accused or suspected person, material to the offense being investigated, and in the possession, custody, or control of the state or any person under contract with the state.

(b) Authorizes evidence described by Subsection (a) to be presented to the grand jury at any time during the investigation.

Art. 20.036. DISCOVERY. (a) Requires the attorney representing the state, except as otherwise provided by this article and if the state provides notice to the accused or suspected person of the grand jury investigation, as soon as practicable after receiving a request from an accused or suspected person, to produce and permit the inspection and the electronic duplication, copying, and photographing, by or on behalf of the accused or suspected person, of certain items.

(b) Provides that Subsection (a) does not authorize the removal of documents, items, or information from the possession of the state and requires that any inspection be in the presence of a representative of the state.

(c) Requires that the state, in the case of a pro se accused or suspected person, permit the inspection or review of the document, item, or information as provided by Subsection (a), but provides that the state is not required to allow electronic duplication as described by that subsection.

(d) Authorizes the attorney representing the state to provide to any accused or suspected person electronic duplicates of any document, item, or information described by Subsection (a).

(e) Provides that Subsection (a) does not authorize the disclosure of the work product of the attorney representing the state in the investigation or the work product of the state's investigators, including the investigator's notes or reports.

(f) Provides that the rights granted to the accused or suspected person under Subsection (a) do not extend to written communications between the state and an agent, representative, or employee of the state.

(g) Provides that the state, if only a portion of the applicable document, item, or information is subject to discovery under this article, is not required to produce or permit the inspection of the remaining portion that is not subject to discovery and may withhold or redact that portion. Requires that the state inform the accused or suspected person that a portion of the document, item, or information has been withheld or redacted.

(h) Prohibits certain persons from disclosing to a third party any documents, evidence, materials, or witness statements received under this article unless under certain circumstances.

(i) Provides that certain information identifying the victim or any witness, notwithstanding any other provision of this article, is confidential and prohibits disclosure of the information unless the disclosure is ordered by the court under Subsection (h) or otherwise required by Subsection (j).

(j) Requires that the state, notwithstanding any other provision of this article, disclose to the accused or suspected person any exculpatory, impeachment, or mitigating document, item, or information that is in the possession, custody, or control of the state or any person under contract with the state that tends to negate the guilt of the accused or suspected person or would tend to reduce the punishment for the offense being investigated.

(k) Requires that the state electronically record or otherwise document any document, item, or other information provided to the accused or suspected person under this article.

(l) Authorizes a court to order the accused or suspected person to pay costs related to discovery under this article, not to exceed the amounts authorized by Subchapter F (Charges for Providing Copies of Public Information), Chapter 552 (Public Information), Government Code, for providing public information.

(m) Provides that this article, except as provided by Subsection (i), does not prohibit the attorney representing the state from providing discovery and documentation beyond that required by this article.

(n) Provides that this article applies only to discovery for a grand jury investigation and does not limit an accused or suspected person's right to discovery authorized by other law.

SECTION 8. Amends Article 20.17(c), Code of Criminal Procedure, as follows:

(c) Requires that a person accused or suspected, if the person is subpoenaed to appear before a grand jury prior to any questions before the grand jury, be orally warned and sets forth the required language of the warning.

SECTION 9. Amends Article 20.18, Code of Criminal Procedure, as follows:

Art. 20.18. HOW WITNESS QUESTIONED. (a) Requires that a person who is subpoenaed to appear as a witness before a grand jury be given a reasonable opportunity to retain counsel and to consult with counsel before the person's appearance.

(b) Requires that a witness appearing before a grand jury, before the grand jury may question the witness, be orally given the warnings described by Article 20.17(c), other than the warning described by Article 20.17(c)(6) (relating to the language used to warn an accused or suspected person that the person has the right to have an attorney appointed).

(c) Creates this subsection from existing text and makes a nonsubstantive change.

SECTION 10. Repealers: Articles 20.02(d) (relating to authorizing the defendant to petition a court to order the disclosure of certain information or transcriptions) and (e) (relating to requiring that a petition for disclosure be filed in a certain district court and be filed with certain persons), Code of Criminal Procedure.

SECTION 11. Makes application of this Act prospective.

SECTION 12. Effective date: September 1, 2017.