

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 1424  
By: Buckingham  
Criminal Justice  
5/17/2017  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 1424 seeks to end 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. S.B. 1424 is an effort to level the playing field for citizens innocent until proven guilty and protect against grand jury shopping. S.B. 1424 establishes that the state may bring a subsequent grand jury only if the attorney representing the state establishes in an ex parte hearing that it is in the interest of justice.

In addition, the Code of Criminal Procedure and the Texas Government Code specify who may serve as an attorney pro tem. That is, who may stand in as an attorney for the state when such an attorney is disqualified to act in a case or proceeding, is absent from the county or district, or is otherwise unable to perform the duties of their office. S.B. 1424 provides that only prosecutors (county attorneys with criminal jurisdiction, district attorneys, or criminal district attorneys or their assistants) and assistant attorneys general may serve as attorneys pro tem. S.B. 1424 amends current law relating to the appointment of an attorney pro tem for certain criminal proceedings.

C.S.S.B. 1424 amends current law relating to criminal procedure, including grand jury proceedings and the appointment of an attorney pro tem for certain criminal proceedings.

### **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 Articles 2.07(a), (b), (b-1), and (d), Code of Criminal Procedure, as follows:

(a) Authorizes the judge of the court in which the attorney represents the state, whenever an attorney for the state is disqualified to act in any case or proceeding, is absent from the county or district, or is otherwise unable to perform the duties of the attorney's office, or in any instance where there is no attorney for the state, to appoint, from any county or district, an attorney for the state or to appoint an assistant attorney general, rather than appoint any competent attorney, to perform the duties of the office during the absence or disqualification of the attorney for the state. Makes nonsubstantive changes.

(b) Provides that, except as otherwise provided by this subsection, rather than if the appointed attorney is also an attorney for the state, the duties of the appointed office are additional duties of the appointed attorney's present office, and the attorney is not entitled to additional compensation. Provides that this subsection does not, rather than requiring nothing herein to, prevent a commissioners court of a county from contracting with another commissioners court to pay expenses and reimburse compensation paid by a county to an attorney, rather than attorney for the state, who is appointed to perform additional duties. Makes nonsubstantive changes.

(b-1) Authorizes an attorney for the state who is not disqualified to act to request the court to permit the attorney's recusal, rather than permit him to recuse himself, in a case for good cause, and provides that on approval by the court the attorney is disqualified. Makes nonsubstantive changes.

(d) Redefines "attorney for the state."

SECTION 2. 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 establishes in an ex parte hearing that it is in the interest of justice that the person be investigated by a subsequent grand jury for the same offense.

SECTION 3. Amends Article 27.03, Code of Criminal Procedure, as follows:

Art. 27.03. MOTION TO SET ASIDE INDICTMENT. Authorizes a motion to set aside an indictment or information, in addition to any other grounds authorized by law, to be based on the following:

(1) makes no change to this subdivision;

(2) makes a nonsubstantive change; and

(3) changes a reference to he to the defendant and make a nonsubstantive change; and

(4) that the grand jury improperly investigated a person in violation of Article 20.013 (Execution of Process).

SECTION 4. Amends Article 52.09(c), Code of Criminal Procedure, as follows:

(c) Provides that an attorney pro tem appointed under Article 52.01(d) (relating to the appointment of an attorney pro tem), is entitled to compensation in the same amount and manner as an attorney appointed to represent an indigent person, rather than as an attorney pro tem appointed under Article 2.07 (Attorney Pro Tem) of this code. Makes a nonsubstantive change.

SECTION 5. Amends Section 574.004, Government Code, as follows:

Sec. 574.004. ASSISTANCE BY ATTORNEY GENERAL. Provides that this chapter does not prevent, rather than requires nothing in this chapter to prevent, the Texas attorney general from providing assistance to district attorneys, criminal district attorneys, and county attorneys on request by allowing assistant attorneys general to serve as duly appointed and deputized assistant prosecutors, nor does this chapter prohibit the appointment of an assistant attorney general as an attorney pro tem pursuant to Article 2.07, Code of Criminal Procedure.

SECTION 6. Repealers: Articles 2.07(c) (relating to if the appointed attorney is not an attorney for the state), (e) (relating to "attorney for the state" including an assistant attorney general), (f) (relating to "competent attorney" including an assistant attorney general), and (g) (relating to an appointed attorney being authorized to be paid a reasonable fee for performing certain duties), Code of Criminal Procedure.

SECTION 7. Makes application of Article 2.07, Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 8. Makes application of this Act prospective.

SECTION 9. Effective date: September 1, 2017.