

By: Thompson of Harris

H.B. No. 332

A BILL TO BE ENTITLED

AN ACT

relating to grand jury proceedings.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 20.011(a), Code of Criminal Procedure, is amended to read as follows:

(a) Only the following persons may be present in a grand jury room while the grand jury is conducting proceedings:

(1) grand jurors;

(2) bailiffs;

(3) the attorney representing the state;

(4) witnesses while being examined or when necessary to assist the attorney representing the state in examining other witnesses or presenting evidence to the grand jury;

(5) interpreters, if necessary;

(6) a stenographer or person operating an electronic recording device, as provided by Article 20.012; ~~and~~

(7) a person operating a video teleconferencing system for use under Article 20.151; and

(8) 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. Article 20.012, Code of Criminal Procedure, is

1 amended to read as follows:

2 Art. 20.012. RECORDING OF GRAND JURY PROCEEDINGS [~~CERTAIN~~
3 ~~TESTIMONY~~]. (a) Except as otherwise provided by this subsection
4 and Subsection (b), all statements made by the grand jury or the
5 attorney representing the state, all questions [~~Questions~~]
6 propounded by the grand jury or the attorney representing the state
7 to a witness, including a witness who is an [~~person~~] accused or
8 suspected person, and all [~~the~~] testimony of a witness, including a
9 witness who is an accused or suspected [~~that~~] person, to the grand
10 jury shall be recorded either by a stenographer or by use of an
11 electronic device capable of recording sound. Deliberations of the
12 grand jury may not be recorded.

13 (b) If the highest category of offense subject to indictment
14 in the grand jury proceedings is punishable as a state jail felony,
15 only questions propounded by the grand jury or the attorney
16 representing the state to an accused or suspected person and the
17 testimony of that person to the grand jury are required to be
18 recorded.

19 (c) The validity of [~~a~~] grand jury proceedings [~~proceeding~~]
20 is not affected by an unintentional failure to record all or part of
21 the proceedings as required by this article [~~questions propounded~~
22 ~~or testimony made under Subsection (a)~~].

23 (d) [~~(c)~~] The clerk of the court [~~attorney representing the~~
24 ~~state~~] shall maintain possession of all records [~~other than~~
25 ~~stenographer's notes~~] made under this article and any typewritten
26 transcription of those records, and may not release any record of
27 the proceedings unless authorized by Article 20.036 [~~, except as~~

1 ~~provided by Article 20.02~~].

2 SECTION 3. Chapter 20, Code of Criminal Procedure, is
3 amended by adding Article 20.013 to read as follows:

4 Art. 20.013. WHO MAY BE INVESTIGATED. (a) Except as
5 provided by Subsection (b), a grand jury may not investigate a
6 person who is accused or suspected of an offense and may not vote to
7 present an indictment for the offense if the person has previously
8 been investigated by a grand jury for the same offense and that
9 grand jury found no bill of indictment.

10 (b) A grand jury may investigate, and may present an
11 indictment with respect to, a person described by Subsection (a)
12 only if the attorney representing the state establishes in an ex
13 parte hearing that it is in the interest of justice for the person
14 to be investigated by a subsequent grand jury for the same offense.

15 (c) A motion to set aside an indictment due to a violation of
16 this article must be filed in writing not later than the 45th day
17 after the date the presentment of the indictment is entered in the
18 record under Article 20.22, unless the defendant demonstrates that
19 the defendant did not have a previous opportunity to challenge the
20 grand jury investigation based on the violation of this article.

21 SECTION 4. Article 20.02, Code of Criminal Procedure, is
22 amended by amending Subsections (f), (g), and (h) and adding
23 Subsection (i) to read as follows:

24 (f) A person who receives information under Article 20.036
25 [Subsection (d) or (e)] and discloses that information in a manner
26 not authorized by that article is subject to punishment for
27 contempt in the same manner as a person who violates Subsection (b).

1 (g) The attorney representing the state may not disclose
2 anything transpiring before the grand jury except as:

3 (1) permitted by Subsection [~~Subsections~~] (c); or

4 (2) provided by Article 20.036 [~~, (d), and (e)~~].

5 (h) A subpoena or summons relating to a grand jury
6 proceeding or investigation must be kept secret to the extent and
7 for as long as necessary to prevent the unauthorized disclosure of a
8 matter before the grand jury. This subsection may not be construed
9 to limit a disclosure under [~~permitted by~~] Subsection (c) or
10 Article 20.036 [~~, (d), or (e)~~].

11 (i) Except as provided by Article 20.036, an attorney
12 representing a witness may not disclose anything transpiring before
13 the grand jury. An attorney who discloses information in violation
14 of this subsection is subject to punishment for contempt in the same
15 manner as a person who violates Subsection (b).

16 SECTION 5. Article 20.03, Code of Criminal Procedure, is
17 amended to read as follows:

18 Art. 20.03. ATTORNEY [~~REPRESENTING STATE~~] ENTITLED TO
19 APPEAR. (a) In this chapter, "attorney [~~"The attorney~~]
20 representing the state [~~State~~]" means the attorney general
21 [~~Attorney General~~], district attorney, criminal district attorney,
22 or county attorney.

23 (b) The attorney representing the state [~~State,~~] is
24 entitled to go before the grand jury and inform the grand jurors
25 [~~them~~] of offenses liable to indictment at any time except when the
26 grand jury is:

27 (1) [~~they are~~] discussing the propriety of finding an

1 indictment; or

2 (2) voting on an indictment [~~upon the same~~].

3 (c) A witness who testifies before a grand jury, including a
4 witness who is an accused or suspected person, is entitled to have
5 an attorney present while the grand jury is questioning the witness
6 or while the witness is otherwise providing testimony to the grand
7 jury. The grand jury shall permit the witness to interrupt the
8 questioning at any time so that the witness may consult with the
9 attorney outside the hearing of the grand jury.

10 (d) An attorney representing a witness, including a witness
11 who is an accused or suspected person, may only speak to the person
12 the attorney represents and may not speak to the grand jury
13 regarding the grand jury investigation.

14 SECTION 6. Chapter 20, Code of Criminal Procedure, is
15 amended by adding Articles 20.035, 20.036, and 20.037 to read as
16 follows:

17 Art. 20.035. PRESENTATION OF EXCULPATORY EVIDENCE BY STATE.

18 (a) The attorney representing the state shall present to a grand
19 jury investigating an offense any evidence that tends to negate the
20 guilt of the accused or suspected person and is in the possession,
21 custody, or control of the attorney.

22 (b) Evidence described by Subsection (a) may be presented to
23 the grand jury at any time during the investigation.

24 (c) A motion to set aside an indictment based on a failure to
25 present exculpatory evidence to the grand jury in violation of this
26 article must be filed in writing not later than the 60th day after
27 the date the presentment of the indictment is entered in the record

1 under Article 20.22, unless the defendant demonstrates that the
2 defendant did not have a previous opportunity to challenge the
3 failure to present the exculpatory evidence to the grand jury.

4 Art. 20.036. DISCLOSURE OF TRANSCRIPT OF GRAND JURY
5 PROCEEDINGS. (a) The accused or suspected person or the attorney
6 representing the state may request from the clerk of the court a
7 copy of the transcript retained under Article 20.012(d), not later
8 than the 20th day after the date the presentment of the indictment
9 is entered in the record under Article 20.22, unless good cause is
10 shown for a late request.

11 (b) On receiving a request under Subsection (a), the clerk
12 of the court shall transcribe the recording, if necessary, and
13 deliver the transcript to the attorney representing the state.

14 (c) On receiving the transcript from the clerk of the court
15 under Subsection (b), the attorney representing the state shall:

16 (1) after considering the security and privacy
17 interests of each witness or victim, redact any portion of the
18 transcript that includes identifying information of a witness or
19 victim with a privacy or security concern, including:

20 (A) the name of the witness or victim;

21 (B) the address, telephone number, driver's
22 license number, social security number, date of birth, or bank
23 account information of the witness or victim; and

24 (C) any other information that by reference would
25 make it possible to identify the witness or victim; and

26 (2) deliver the transcript to the accused or suspected
27 person.

1 (d) On request of the accused or suspected person, the court
2 shall conduct a hearing to determine whether redaction was
3 authorized under Subsection (c)(1) or other law.

4 (e) The accused or suspected person shall pay any necessary
5 costs incurred by the clerk of the court in transcribing a recording
6 in response to a request submitted by the person. The court may
7 waive the costs if the court determines that the person is indigent
8 or demonstrates an inability to pay.

9 (f) The attorney representing the state, the accused or
10 suspected person, or the attorney representing the accused or
11 suspected person may disclose the contents of a transcript of a
12 grand jury proceeding obtained under this article during a criminal
13 proceeding that arises from the grand jury proceeding.

14 (g) Except as otherwise authorized by Subsection (f), the
15 accused or suspected person, the attorney representing the accused
16 or suspected person, or an investigator, expert, consulting legal
17 counsel, or other agent of the attorney representing the accused or
18 suspected person may not disclose to a third party a transcript
19 received under this article unless:

20 (1) for good cause, a court orders the disclosure
21 after notice and a hearing and after considering the security and
22 privacy interests of any witness or victim; or

23 (2) the transcript has already been publicly
24 disclosed.

25 Art. 20.037. SCOPE OF GRAND JURY INVESTIGATION. (a) A
26 grand jury may only investigate whether there is probable cause to
27 believe that an offense has been committed by an accused or

1 suspected person. The grand jury may not subpoena a document or
2 witness unless the grand jury has reason to believe that the
3 document or witness is relevant to the investigation.

4 (b) Grand jury testimony of a witness who is questioned in
5 violation of Subsection (a) may not be used by the state in any
6 subsequent legal proceeding, unless the testimony is introduced by
7 the defendant in the proceeding.

8 SECTION 7. Article 20.17(c), Code of Criminal Procedure, is
9 amended to read as follows:

10 (c) If an accused or suspected person is subpoenaed to
11 appear before a grand jury prior to any questions before the grand
12 jury, the person accused or suspected shall be orally warned as
13 follows:

14 (1) "Your testimony before this grand jury is under
15 oath";

16 (2) "Any material question that is answered falsely
17 before this grand jury subjects you to being prosecuted for
18 aggravated perjury";

19 (3) "You have the right to refuse to make answers to
20 any question, the answer to which would incriminate you in any
21 manner";

22 (4) "During questioning by the grand jury and during
23 your testimony, you ["You] have the right to have an attorney [a
24 lawyer] present [~~outside this chamber~~] to advise you before making
25 answers to questions you feel might incriminate you";

26 (5) "Any testimony you give may be used against you at
27 any subsequent proceeding"; and

1 (6) "If you are unable to employ an attorney [~~a~~
2 ~~lawyer~~], you have the right to have an attorney [~~a lawyer~~] appointed
3 to advise you before making an answer to a question, the answer to
4 which you feel might incriminate you."

5 SECTION 8. Article 20.18, Code of Criminal Procedure, is
6 amended to read as follows:

7 Art. 20.18. HOW WITNESS QUESTIONED. (a) Absent exigent
8 circumstances, a person who is subpoenaed to appear as a witness
9 before a grand jury shall be given a reasonable opportunity to
10 retain counsel and to consult with counsel before the person's
11 appearance.

12 (b) Before the grand jury may question the witness who is
13 not an accused or suspected person, a witness appearing before a
14 grand jury shall be orally given the warnings described by Article
15 20.17(c), other than the warning described by Article 20.17(c)(6).

16 (c) When a felony has been committed in any county within
17 the jurisdiction of the grand jury, and the name of the offender is
18 known or unknown or where it is uncertain when or how the felony was
19 committed, the grand jury shall first state to the witness called
20 the subject matter under investigation, then may ask pertinent
21 questions relative to the transaction in general terms and in such a
22 manner as to determine whether the witness [~~he~~] has knowledge of the
23 violation of any particular law by any person, and if so, by what
24 person.

25 SECTION 9. Article 27.03, Code of Criminal Procedure, is
26 amended to read as follows:

27 Art. 27.03. MOTION TO SET ASIDE INDICTMENT. In addition to

1 any other grounds authorized by law, a motion to set aside an
2 indictment or information may be based on the following:

3 1. That it appears by the records of the court that the
4 indictment was not found by at least nine grand jurors, or that the
5 information was not based upon a valid complaint;

6 2. That some person not authorized by law was present when
7 the grand jury was deliberating upon the accusation against the
8 defendant, or was voting upon the same; [~~and~~]

9 3. That the grand jury was illegally impaneled; provided,
10 however, in order to raise such question on motion to set aside the
11 indictment, the defendant must show that he did not have an
12 opportunity to challenge the array at the time the grand jury was
13 impaneled;

14 4. That the grand jury improperly investigated a person in
15 violation of Article 20.013; or

16 5. That the attorney representing the state failed to
17 disclose exculpatory evidence in violation of Article 20.035.

18 SECTION 10. Articles 20.02(d) and (e), Code of Criminal
19 Procedure, are repealed.

20 SECTION 11. The change in law made by this Act applies to a
21 grand jury impaneled on or after the effective date of this Act. A
22 grand jury impaneled before the effective date of this Act is
23 governed by the law in effect on the date the grand jury was
24 impaneled, and the former law is continued in effect for that
25 purpose.

26 SECTION 12. This Act takes effect December 1, 2017.