By: Buckingham   S.B. No. 1424

A BILL TO BE ENTITLED

1   AN ACT

2 relating to criminal procedure, including grand jury proceedings

3 and the appointment of an attorney pro tem for certain criminal

4 proceedings.

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

6   SECTION 1. Articles 2.07(a), (b), (b-1), and (d), Code of

7 Criminal Procedure, are amended to read as follows:

8   (a) Whenever an attorney for the state is disqualified to

9 act in any case or proceeding, is absent from the county or

10 district, or is otherwise unable to perform the duties of the

11 attorney's [his] office, or in any instance where there is no

12 attorney for the state, the judge of the court in which the attorney

13 [he] represents the state may appoint, from any county or district,

14 an [any competent] attorney for the state or may appoint an

15 assistant attorney general to perform the duties of the office

16 during the absence or disqualification of the attorney for the

17 state.

18   (b) Except as otherwise provided by this subsection, [if the

19 appointed attorney is also an attorney for the state,] the duties of

20 the appointed office are additional duties of the appointed

21 attorney's [his] present office, and the attorney [he] is not

22 entitled to additional compensation. This subsection does not

23 [Nothing herein shall] prevent a commissioners court of a county

24 from contracting with another commissioners court to pay expenses

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1 and reimburse compensation paid by a county to an attorney [for the

2 state] who is appointed to perform additional duties.

3   (b-1) An attorney for the state who is not disqualified to

4 act may request the court to permit the attorney's recusal [him to

5 recuse himself] in a case for good cause, and on [upon] approval by

6 the court the attorney is disqualified.

7   (d) In this article, "attorney for the state" means a county

8 attorney with criminal jurisdiction, a district attorney, or a

9 criminal district attorney.

10   SECTION 2. Chapter 20, Code of Criminal Procedure, is

11 amended by adding Article 20.013 to read as follows:

12   Art. 20.013. WHO MAY BE INVESTIGATED. (a) Except as

13 provided by Subsection (b), a grand jury may not investigate a

14 person who is accused or suspected of an offense and may not vote to

15 present an indictment for the offense if the person has previously

16 been investigated by a grand jury for the same offense and that

17 grand jury found no bill of indictment.

18   (b) A grand jury may investigate, and may present an

19 indictment with respect to, a person described by Subsection (a)

20 only if the attorney representing the state establishes in an ex

21 parte hearing that it is in the interest of justice that the person

22 be investigated by a subsequent grand jury for the same offense.

23   SECTION 3. Article 27.03, Code of Criminal Procedure, is

24 amended to read as follows:

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

26 any other grounds authorized by law, a motion to set aside an

27 indictment or information may be based on the following:

1   1. That it appears by the records of the court that the

2 indictment was not found by at least nine grand jurors, or that the

3 information was not based upon a valid complaint;

4   2. That some person not authorized by law was present when

5 the grand jury was deliberating upon the accusation against the

6 defendant, or was voting upon the same; [and]

7   3. That the grand jury was illegally impaneled; provided,

8 however, in order to raise such question on motion to set aside the

9 indictment, the defendant must show that the defendant [he] did not

10 have an opportunity to challenge the array at the time the grand

11 jury was impaneled; and

12   4. That the grand jury improperly investigated a person in

13 violation of Article 20.013.

14   SECTION 4. Article 52.09(c), Code of Criminal Procedure, is

15 amended to read as follows:

16   (c) An attorney pro tem appointed under Article 52.01(d) [of

17 this code] is entitled to compensation in the same amount and manner

18 as an attorney appointed to represent an indigent person [pro tem

19 appointed under Article 2.07 of this code]. The district judge

20 shall set the compensation of the attorney pro tem based on the

21 sworn testimony of the attorney or other evidence that is given in

22 open court.

23   SECTION 5. Section 574.004, Government Code, is amended to

24 read as follows:

25   Sec. 574.004. ASSISTANCE BY ATTORNEY GENERAL. This

26 [Nothing in this] chapter does not [shall] prevent the attorney

27 general from providing assistance to district attorneys, criminal

1 district attorneys, and county attorneys on request by allowing

2 assistant attorneys general to serve as duly appointed and

3 deputized assistant prosecutors, nor does [shall] this chapter

4 prohibit the appointment of an assistant attorney general as an

5 attorney pro tem pursuant to Article 2.07, Code of Criminal

6 Procedure.

7 SECTION 6. Articles 2.07(c), (e), (f), and (g), Code of

8 Criminal Procedure, are repealed.

9 SECTION 7. The change in law made by this Act in amending

10 Article 2.07, Code of Criminal Procedure, applies only to the

11 appointment of an attorney pro tem that occurs on or after the

12 effective date of this Act. The appointment of an attorney pro tem

13 that occurs before the effective date of this Act is governed by the

14 law in effect on the date the attorney pro tem was appointed, and

15 the former law is continued in effect for that purpose.

16 SECTION 8. The change in law made by this Act applies to a

17 grand jury impaneled on or after the effective date of this Act. A

18 grand jury impaneled before the effective date of this Act is

19 governed by the law in effect on the date the grand jury was

20 impaneled, and the former law is continued in effect for that

21 purpose.

22 SECTION 9. This Act takes effect September 1, 2017.