

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 1492  
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Criminal Justice  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Grand jury proceedings were created to protect citizens and to provide checks and balances against unjust or overzealous prosecution. Therefore, the grand jury plays an important role in the criminal justice system. Traditionally, prosecutors present adult felony cases to grand juries seeking an indictment, which is required for the case to proceed further in the criminal process. If no indictment is returned by the grand jury, the case is considered "no billed." It is different than normal courtroom proceedings because there is no judge and there are no lawyers present in the grand jury except the prosecutor. Unlike a trial, grand jury proceedings are not considered adversarial and the grand jury only has to find that probable cause exists for an indictment to be issued.

S.B. 1492 provides reforms to grand jury proceedings to ensure prosecutors do not have unfair advantages over the accused during this critical stage of the criminal justice process.

#### 1. Attorneys in the grand jury

Currently, a witness or a suspect providing testimony to the grand jury is not allowed to have an attorney present inside the grand jury room. This legislation would change that practice to allow for an attorney to be present during the questioning of a witness and be allowed to consult with the witness outside the presence of the grand jury members.

#### 2. Recording of grand jury proceedings

S.B. 1492 requires that grand jury proceedings be recorded either electronically or by a court reporter. However, deliberations by the grand jurors are exempted from this requirement. Under the current system there is no such requirement.

#### 3. Presentation to a subsequent grand jury

This legislation would prevent a grand jury from seeking an indictment against an individual if that person has previously been investigated by a grand jury for the same offense and the previous grand jury no billed the case. However, if the prosecutor is able to show there is material evidence that was not known at the time of the original grand jury investigation, the prosecutor could present the case to a subsequent grand jury.

#### 4. Disclosure of exculpatory evidence

Prosecutors are required to disclose exculpatory evidence, which is evidence that is favorable to the defendant or tends to negate their guilt. However, currently this requirement does not apply to grand jury proceedings. S.B. 1492 would mandate that this crucial evidence be disclosed to the grand jurors to aide in their decision.

As proposed, S.B. 1492 amends current law relating to grand jury 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 Article 20.011(a), Code of Criminal Procedure, to provide that only certain persons may 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 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, rather than a person accused or suspected, and all testimony of a witness, rather than of that person, to the grand jury, except as otherwise provided by this subsection, to 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. Makes nonsubstantive changes.

(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 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 20.03, Code of Criminal Procedure, as follows:

Art. 20.03. New heading: ATTORNEY ENTITLED TO APPEAR. (a) Creates this subsection from existing text. Defines "attorney representing the state," rather than "the attorney representing the state," to mean the Texas attorney general, district attorney, criminal district attorney, or county attorney for purposes of this chapter (Duties and Powers of the Grand Jury).

(b) Creates this subsection from existing text and makes conforming and nonsubstantive changes. Entitles the attorney representing the state 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:

(1) creates this subdivision from existing text; or

(2) voting on an indictment, rather than voting upon the same.

(c) Entitles a witness who testifies before a grand jury, including a witness who is an accused or suspected person, 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 6. Amends Chapter 20, Code of Criminal Procedure, by adding Article 20.035, 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:

- (1) favorable to the accused or suspected person;
- (2) material to the offense being investigated; and
- (3) 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.

SECTION 7. Amends Article 20.17(c), Code of Criminal Procedure, as follows:

(c) Requires a person accused or suspected, if the accused or suspected person is subpoenaed to appear before a grand jury prior to any questions before the grand jury, to be orally warned as follows:

- (1)–(3) makes no changes to these subdivisions;
- (4) "During questioning, you have the right to have an attorney present, rather than a lawyer outside this chamber, to advise you before making answers to questions you feel might incriminate you";
- (5) makes no change to this subdivision;
- (6) makes conforming changes to this subdivision.

SECTION 8. Amends Article 20.18, Code of Criminal Procedure, as follows:

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

(b) Requires a witness appearing before a grand jury, before the grand jury is authorized to question the witness, to be orally given the warnings described by Article 20.17(c), other than the warning described by Article 20.17(c)(6).

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

SECTION 9. Makes application of this Act prospective.

SECTION 10. Effective date: September 1, 2019.