

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1492
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Criminal Justice
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Committee Report (Substituted)

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. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 1492 amends current law relating to grand jury proceedings and establishing a commission to study improvements and alternatives to those 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 20.012, Code of Criminal Procedure, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Requires questions propounded by the grand jury or the attorney representing the state to a fact witness or a person accused or suspected, rather than to a person accused or suspected, and the testimony of that person to the grand jury to be recorded either by a stenographer or by use of an electronic device capable of recording sound.

(d) Defines "fact witness" for purposes of this article.

SECTION 2. Amends Chapter 20, Code of Criminal Procedure, by adding Article 20.013, as follows:

Art. 20.013. CERTAIN INVESTIGATIONS AND VOTES BY GRAND JURY PROHIBITED. (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, that grand jury voted on whether to present an indictment, and fewer than nine grand jurors concurred in finding the bill.

(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 to the grand jury material evidence that was not known to the applicable attorney representing the state before or during the previous grand jury investigation.

SECTION 3. (a) Defines "commission" to mean the Texas Commission on Grand Juries (commission) for purposes of this section.

(b) Provides that the commission is established to develop recommendations for improvements to the grand jury system and explore alternative procedures for establishing probable cause to proceed to trial in a felony case.

(c) Sets forth the composition of the commission.

(d) Requires the members appointed by the governor to include certain members.

(e) Requires members appointed by the lieutenant governor and the speaker of the house of representatives to each consist of three members of the applicable legislative chamber.

(f) Requires the governor to designate the presiding officer of the commission.

(g) Provides that a member of the commission is not entitled to compensation or reimbursement of expenses.

(h) Requires the commission, not later than December 1, 2020, to prepare and deliver to the governor and the legislature a report that contains certain recommendations.

(i) Provides that the commission is abolished January 12, 2021.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2019.